

LICENSING PANEL (NON LICENSING ACT 2003)

Agenda Item 7

Brighton & Hove City Council

Subject:	Application for a Operators Licence under the Taxi and Private Hire Vehicle (PHV) legislation: the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act)		
Applicant:	UBER Britannia Ltd.		
Date of Meeting:	19 October 2015		
Report of:	Director of Public Health		
Contact Officer:	Name: Jean Cranford		
	Email:	Jean.cranford@brighton-hove.gcsx.gov.uk	Tel: (01273) 292550
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To determine an application for a new Operators Licence under the Taxi and Private Hire Vehicle (PHV) legislation: the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act) from Uber Britannia Ltd, Tower Point 44, North Road, Brighton BN1 1YR.

2. RECOMMENDATIONS:

- 2.1 This application is for a New Operators Licence under the under the Taxi and Private Hire Vehicle (PHV) legislation: the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). (Appendix A: application form). This is new emerging technology and officers have no previous experience.

3. CONTEXT/ BACKGROUND INFORMATION & CONSULTATION

- 3.1 This application is for a New Operators Licence under the under the Taxi and Private Hire Vehicle (PHV) legislation: the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). (Appendix A: application form). This is new emerging technology and officers have no previous experience.
- 3.2 Section 80 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act) defines “operate” and “operator licence”:

“Operate means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle”

“Operators licence” means a licence under Section 55 of the 1976 Act.

Section 46(1)(d) makes it clear that anyone acting as an operator must have an operators licence: “(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under S55 of this Act” and a local authority cannot grant a licence (s55(1)) “unless they are satisfied that the applicant is a fit and proper person to hold an operators licence”. So, in simple terms, a private hire operator is the person who takes a booking for a private hire vehicle and then dispatches a PHV driven by a licenced private hire driver (PHD) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same authority.

3.3 PHV operator responsibilities

Taxi and PHV licensing is not an area where there is much scope for self-regulation, but PHV operators do have a key role in ensuring that the drivers they employ are fit and proper persons, and are properly trained in their roles.

The responsibility of PHV operators is to ensure that their drivers are fit and proper persons; this licensing authority requires operators to demonstrate what steps they are taking to ensure that their drivers are fit and proper persons, as well as appropriately trained.

3.4 However, the role goes far beyond simply taking bookings and despatching vehicles. In the course of making a booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. For example, when a booking is made to an airport, and a return booking made for a week or fortnight later, it is reasonably apparent that a holiday is being taken. With a little further research (either by questioning the person making the booking, or following reports of conversations between the passengers and the driver) it will soon be apparent that the house is going to be empty for that period of time. In dishonest hands this information is extremely valuable. Likewise, where regular bookings are made, it is easy to ascertain when parents are leaving children alone in the house, and so on.

3.5 It is therefore vital that PHOs are as trustworthy and reliable as a driver, notwithstanding their slightly remote role.

3.6 How does a local authority satisfy itself as to the “fitness and propriety”? The term “safe and suitable” is a modern interpretation of “fit and proper” but there are some difficulties placed in the path of the local authority. Unlike hackney carriage and private hire drivers, the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 does not cover PHOs who are therefore not excluded from the workings of the Rehabilitation of Offenders Act 1984 (the 1974 Act). This means that convictions become spent in relation to a PHO. However, the ruling of the High Court in Adamson v Waveney District Council means that local authorities can take spent convictions into account when determining the suitability for a licence. The fact that the role of the PHO is not an exempt occupation for the 1974 Act means that it is not possible to obtain an Enhanced DBS check, but they can be asked to obtain a Basic Disclosure. This can be combined with a statutory declaration as part of the application process requiring the applicant to list all previous convictions, together with other material information in a similar fashion to taxi drivers.

- 3.7 It has been suggested that a working test of fitness and propriety for PHOs is “would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”
- 3.8 The licence is granted to the PHO on the basis of their fitness and propriety but there is no overt mechanism to consider the suitability of those who work for the PHO. There is no reason why a condition cannot be imposed on the PHO licence requiring them to undertake checks (for instance enhanced DBS checks and training) on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task, and retain that information that they obtain to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement or act upon information that they obtain (therefore allowing unsuitable staff to work in positions of trust) would then have serious implications on the continuing fitness and propriety of the PHO.
- 3.9 This responsibility will be even more important when the Deregulation Bill comes into effect in October 2015 and operators are able to sub-contract bookings to other providers. There are existing obligations on operators who seek to pass on a booking and the first operator will always retain overall responsibility for its fulfilment. BHCC intends to enhance this responsibility by placing conditions on an operator’s licence to require them to set out how they will handle sub-contracting and ensure consumer protection.
- 3.10 All hackney carriage and private hire vehicles in Brighton & Hove must be fitted with CCTV cameras to protect public safety. This may not be the case in vehicles licensed in neighbouring authorities.
- 3.11 Licensing authorities have the responsibility for ensuring the public travel in safe, well maintained vehicles driven by competent drivers, as well as providing a fair and reasonable service for the taxi and PHV trade. There are no statutory timescales or performance measures for taxi/PHV licensing, unlike some other licensing regimes.
- 3.12 Uber’s terms and conditions state the following:
 “3. UBER’S ACCEPTANCE OF BOOKINGS AS AGENT OF THE TRANSPORTATION PROVIDER.
 Uber accepts Bookings acting as disclosed agent for the Transportation Provider (as principal). Such acceptance by Uber as agent for the Transportation Provider gives rise to a contract for the provision to you of transportation services between you and the Transportation Provider (the "**Transportation Contract**"). For the avoidance of doubt: Uber does not itself provide transportation services, and Uber is not a Transportation Provider. Uber acts as intermediary between you and the Transportation Provider. You acknowledge and agree that the provision to you of transportation services by the Transportation Provider is pursuant to the Transportation Contract and that Uber accepts your booking as agent for the Transportation Provider, but is not a party to that contract.

For the sake of clarity, your Booking will be allocated to the nearest available Transportation provider by the Uber entity which holds the relevant operator license”.

3.13 Although it is not statutory, all private hire vehicles in Brighton & Hove are fitted with a meter and the fares are regulated in line with fares charged by hackney carriages. Consumers are protected as fares are advertised and predictable. Uber do not use this method, see 3.14 below.

3.14 **Uber Fare Estimate (taken from Uber website)**

“Find out roughly what your trip will cost before you request. Just set your pickup location, enter a destination, and tap Fare Quote — the app will calculate an approximate amount based on the expected time and distance, so there are never any surprises on your receipt

We often receive questions about how reliable Uber is. “Will there be a car available?” “Can I count on you guys for the New Year’s festivities?”

One of our main aims is to provide a reliable ride to anybody who needs one, no matter how high demand is or what is going on in London. We won’t be perfect, but we’ll try our hardest; we’ve started turning on what we call Surge Pricing in order to achieve a continued high level of service during exceptionally busy times”.

Surge pricing (taken from Uber Blog: How does Surge Pricing work?)

When the supply of cars gets tight, we will raise the price in increments over time and conversely as supply opens up, we’ll lower the price.

How does Surge Pricing maximise the number of Uber rides available?

We are able to get a greater number of drivers on the system when Surge Pricing is in effect – it’s basic economics. Higher prices encourage more supply to come online. Higher prices mean more cars, more rides, more people getting around the city efficiently, safely AND in style.

You’ll always be notified when surge pricing is on

Any surge pricing event is accompanied with a pop up in your app of what the price increase is vs. normal rates before a request is made (riders must OK the notification), as well as immediately after the request, in case they want to cancel before the car arrives”.

3.15 UBER keeps electronic records, stored in a “Cloud”; there are concerns about the security of information stored and also how the local authority will be able to access that information if they need to examine it.

3.16 The Significant Unmet Demand survey which is being carried out during 2015 will contain a question on PHO licence conditions with a necessary proportion of WAVs. Issues identified by previous unmet demand surveys include discrepancies in waiting times for WAVs. The present WAV proportions (WAV + PHVs) is 41% for HC’s and 12% for PH’s and trends over past 3-5 years shows these figures increasing year on year.

Representations received

3.17 Details of the representationsL a summary appears below:

3.18 13 representations were received. They were received from local businesses, taxi unions, trade associations and from a councillor. Representations can be found at appendix 5, 6, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20 and 21.

3.19 Representations received had concerns relating to “fitness and propriety”.

4 COMMENTARY ON THE TAXI LICENSING POLICY (BLUE BOOK)

4.1 The following extracts from the Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The Blue Book) states Brighton & Hove City Council Taxi Licensing Policy (Blue Book) are considered relevant to this application and **are numbered as they appear in the policy:**

4.2 “Section 3. Part A. Procedure for Licensing a Private Hire Operator.

146. General.

Anyone who makes provision for the invitation or acceptance of bookings for a private hire vehicle must hold an operators licence (with the exception of those who only operate vehicles covered by section 75 of the Act of 1976). This means that any individual (group or company) which advertises the services of any private hire vehicle with the services of a driver for hire and reward, or has a mobile telephone or pager which is carried within a licensed vehicle then that driver and vehicle have made provision for the acceptance of bookings for hire and reward and will be required to hold a private hire operators licence.

Brighton and Hove City Council are subject to duties under the Equalities Act 2010 which includes the duties to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

In relation to the Hackney and Private Hire as the licensing authority we are wishing to ensure that the needs and requirements of those with a disability are being acknowledged and met.

Primary issues for the Council to take note of are:

- Mobility – this is being addressed by the introduction of wheelchair accessible cabs. It is noted that certain service users who may have mobility issues still prefer old style saloon cars. The trade should be able to respond as appropriate where a particular type is requested.
- Visual impairment - drivers to be aware that greater assistance will be required. As per the detail already included in this document.
- Hearing impaired – note should be taken that those with hearing difficulties should wherever possible be provided with a text service.
- Awareness of those with mental health issues.
- Awareness of those with learning disabilities.
- Training for drivers on disability awareness for instance not assuming that because someone is slurring speech that they are drunk as opposed to having neurological disorder.

It is desirable that the operators can on request provide monitoring information. What is required are figures on the numbers of journeys undertaken by those with an obvious disability or where one has been declared – personal information

is not required. In addition where there has been an issue around a disability the details of that issue and what if any steps were taken to address that and prevent its reoccurrence.

This information will be required to be provided annually when the application for renewal is made.

147. The Operator.

147.1 The application form must be complete and returned to the Taxi Licensing Office.

147.2 Every applicant will be checked to ensure that they are a fit and proper person to hold a private hire operators licence.

147.3 The applicant is required to provide proof of holding a radio transmission licence (and planning permission for any aerial if required) if such radios are used by the operator.

147.4 In the case of operators who invite the public to make bookings in person at a premises, the prospective premises will be inspected to ensure compliance with the following;

147.4.1 clean, adequately heated, ventilated and lit, both for bookings and waiting,

147.4.2 if required waiting area has adequate seating facilities.

147.5 The operator premises to be licensed must be situated within the district of Brighton & Hove.

147.6 The operator may only utilise drivers and vehicles also licensed by Brighton & Hove City Council.

147.7 No licence will be issued until all licence requirements are met to the satisfaction of the authorised officer and the appropriate fee has been paid.

147.8 All operators premises to which the public have access must be covered by public liability insurance to cover all risks.

147.9 Planning permission for operating purposes maybe required and it is the operator's responsibility to ensure any permission required is granted and produced to an authorised officer at the time of application.

147.10 All operators will be required to have a document setting out their policies and procedures in relation to those with a disability. They will also be required to undertake monitoring of use of their service by those with a disability and provide a summary of monitoring in a format as required by the Executive Director Environment Development & Housing

147.11 All operators will be required to have a document summarising all complaints received during the previous year with any renewal application whether upheld or not in a format as required by the Executive Director Environment Development & Housing.

148. Notes.

Any requirements of legislation which affect the operations being carried out under the terms of this licence shall be regarded as if they are conditions of this licence. Case law has shown that anyone making provision for the acceptance of bookings for private hire must be licensed in the District where such provision is made (this includes such things as mobile telephones, pagers and redirected calls by any electronic means) and such bookings must be fulfilled by drivers and vehicles licensed in the same district as which the operator holds his licence. So

if an operator accepts a call on a mobile telephone in a district other than the one in which he is licensed he will commit an offence of operating in an un-licensed manner”.

- 4.3 Uber were asked for information about they will comply with the above and also for a document setting out their policies and procedures in relation to those with a disability. On 4 August 2015, HCO received from Uber “Uber Accessibility” – see appendix 4.
- 4.4 www.parliament.uk says: Both the taxi and private hire industries are facing challenges from new technology, and from legislative change, causing concern and anger amongst a number of operators and drivers. Uber is subject to ongoing legal challenge in UK and other courts and its use by PHV drivers in London has proven deeply controversial. Meanwhile, the legal framework in England and Wales, including London, was reviewed in 2012-14 by the Law Commission, which published recommendations and a draft Bill in May 2014. The Government has yet to publish a response to this and indicate whether it intends to implement the wholesale reform proposed by the Commission. The Coalition Government made minor changes to the law in the *Deregulation Act 2015*.
- 4.5 The City receives 9.5 million tourism day trips and 1.4 million staying visitors per year. The cultural and tourism offer in Brighton & Hove is crucial to the ongoing economic success of the city; it brings both money and jobs including the large number of taxi and private hire drivers employed in the city.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 This application would have attracted a fee, which is designed to cover the Council’s cost of processing the application.

Finance Officer Consulted Michael Bentley

Date: 22.09.15

Legal Implications:

- 5.2 As is identified above the primary test is whether an operator is a fit and proper person or the alternate definition. This test is to be applied to the applicant operator and not normally to any drivers who may be employed by them. The individual drivers will have to meet their own test to obtain the licence.
- 5.3 Case law and Counsels opinion (relating to drivers and the applicability of the fit and proper test) confirm, that for any piece of evidence to be used it must go above speculation rumour or innuendo. There must be therefore be a strong base for taking in to account any allegation of misbehaviour or inappropriate actions.
- 5.4 Complaints about behaviour in foreign jurisdictions. We have noted that multiple representations have been made about what has transpired across Europe and the USA. Neither of those areas are applicable in our determination. This is in part because there will be a different licencing regime and statutory framework and part because we have to determine the application based on facts known to us. On the basis of research carried out by legal while there may be many

pending applications, none as far as we can see have been determined and so no findings that we can definitively utilise within the test framework. Even if such findings were to be made they may well not be applicable within the domestic statutory framework.

- 5.5 Domestic challenges: We note that there is pending within the High Court an application made by TFL for a determination of the question as to whether the App and its price calculating element constitutes a 'meter'. This decision is expected in early October and it is to be hoped that it will be available for the committee. The fact that TFL have asked for a determination clearly demonstrates that this is an uncertain element of the law and consequently of itself it is unlikely to have the impact of not making the applicant fit and proper. It may require a condition to be imposed depending on the High Court decision.
- 5.6 Tax & VAT; This has also been referred to along with the accompanying letters from senior figures in HMRC. The HMRC is satisfied with the tax arrangements of the Uber parent company and as such we cannot rely upon this.
- 5.7 Allegations of nuisance at airports. These are at the moment allegations. We have no firm details that it has happened or that this is orchestrated by the operators. This may well simply be the drivers as opposed to the operators acting inappropriately.
- 5.8 Wheelchair accessible vehicles. These are a requirement under the Blue book but do not go in the strictest sense to fit and proper. It may be viewed that not providing them means that there is some inroad in to that concept and taken with other factors may have a small relevance. It is noted that any new operator is in any event generally given a window of time to grow their business before a quota of WAV's are deemed necessary. It would be unreasonable if this is common policy not to give the same.
- 5.9 Insurance issues; it is noted that there have been concerns over insurance provision with allegedly the possibility of obtaining work with Uber on the basis of false documents. Our understanding is that this has been addressed in two regards – the first is the availability of insurance by Uber themselves and the second is a tightening up of the application procedures. This can be clarified with Uber themselves. This may also raise concerns that if it is possible to get driver status by use of fraud and so is the checking process for drivers robust enough? Given the definition of fit and proper it is a reasonable question to ask as to what the checking and vetting process is and how it can be enhanced if this was felt to be necessary.
- 5.10 The meter issue manifests itself in a different format. Brighton and Hove has an agreement with all drivers in the private hire community that they will have meters. This is not strictly required under the law as this can be a privately negotiated arrangement between the contracting parties. The Uber model does not fit comfortably with this and so there is at least in principal (dependant to a degree on the High Court decision) a departure from the blue book model in certain circumstances (some if not all Uber drivers may well be metered). It is questionable that this is a relevant factor within the fit and proper test, but it could be a point of clarification.
- 5.11 It has been raised that there are concerns about the licensing status of Uber and in particular our attention has been drawn to s48 of the Local Government (Miscellaneous Provisions Act) 1972. We are not clear why reference has been made to this as this relates to drivers and not operators. The relevant is in fact sections 55 to 57 as set out below:

55 Licensing of operators of private hire vehicles..

(1) Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence: .

Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence.

(2) Every licence granted under this section shall remain in force for such period, not being longer than five years, as a district council may specify in the licence. .

(3) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary. .

Note – 56 Deals with duty to provide information during the course of a licence.

57 Power to require applicants to submit information..

(1) A district council may require any applicant for a licence under the Act of 1847 or under this Part of this Act to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence. .

(2) Without prejudice to the generality of the foregoing subsection— .

(b) a district council may require an applicant for an operator's licence to submit to them such information as to— .

(i) the name and address of the applicant; .

(ii) the address or addresses whether within the area of the council or not from which he intends to carry on business in connection with private hire vehicles licensed under this Part of this Act; .

(iii) any trade or business activities he has carried on before making the application; .

(iv) any previous application he has made for an operator's licence; .

(v) the revocation or suspension of any operator's licence previously held by him;

(vi) any convictions recorded against the applicant; .

as they may reasonably consider necessary to enable them to determine whether to grant such licence;

(c) in addition to the information specified in paragraph (b) of this subsection, a district council may require an applicant for an operator's licence to submit to them— .

(i)if the applicant is or has been a director or secretary of a company, information as to any convictions recorded against that company at any relevant time; any trade or business activities carried on by that company; any previous application made by that company for an operator's licence; and any revocation or suspension of an operator's licence previously held by that company; .

(ii)if the applicant is a company, information as to any convictions recorded against a director or secretary of that company; any trade or business activities carried on by any such director or secretary; any previous application made by any such director or secretary for an operator's licence; and any revocation or suspension of an operator's licence previously held by such director or secretary;

(iii)if the applicant proposes to operate the vehicle in partnership with any other person, information as to any convictions recorded against that person; any trade or business activities carried on by that person; any previous application made by that person for an operator's licence; and any revocation or suspension of an operator's licence previously held by him.

5.12 There is a presumption for grant unless it is determined that a person is not fit and proper and above is set out the fact that conditions can be attached and information required to help determine the application.

5.13 Data Protection; concerns have been raised that Uber are guilty of Data Protection breaches. To remind the committee this must be more than mere speculation. Legal have reviewed the decisions at the Office of the Information Commissioner. Only one reference to Uber was found and this related to a complaint that TFL had not answered a request about Uber. We cannot locate any findings against Uber itself. Likewise we can find only newspaper articles suggesting breaches, but framed as allegations rather than proven facts. It is a legitimate issue of concern under the fit and proper test to be confident about confidentiality; it is legitimate to ask Uber about this situation. At this stage however there is little or no evidence that the allegations and the reality match.

5.14 In summary – many allegations have been made, but it is important to differentiate those that relate to matters abroad and are often multiple hearsay and those within a domestic environment. Within the domestic environment, much again is hearsay and should be treated with extreme caution. It is noted that TFL and numerous other local authorities have licenced Uber. This would suggest (but is not definitive) that they have not uncovered any concerns about the operating company that would mean that they are not fit and proper. Given that all English authorities licence using the same basic principles, this has to be noted if we are to look at Uber in its widest context.

5.15 It can also be noted that Brighton and Hove have a very stringent licensing regime, which has and is adhered to by the other operators in the city. It is not unreasonable to use the bench mark applied locally as opposed to other authorities tests. This particularly applies to the attachment of conditions.

5.16 There is the fact that deregulation allows work to be contracted out of area. This will come in to force as of first of October.

Equalities Implications:

- 5.17 There are some concerns: Data Barring Service checks have not been sought for private hire operator companies. A prescribed proportion of WAVs condition on PHO licences would assist provide a prescribed proportion of accessible/WAV. Enhanced DBS of drivers post deregulation may be essential when PHOs can use drivers licensed by other licensing districts. Diversity is valued and strong, safe communities are vital to future prosperity. Taxi licensing policy aims to protect public safety including protecting children and vulnerable people from harm.

Sustainability Implications:

- 5.18 There are no direct sustainability implications.

SUPPORTING DOCUMENTATION

Appendices:

1. Uber application form
2. Uber Legal pages
3. Uber overview
4. Uber Accessibility
5. GMB rep
6. Streamline rep
7. Blank
8. Work instructions for dealing with complaints etc.
9. Work instructions for dealing with complaints etc.
10. Cllr Mears rep
11. CAUTION/Square One rep
12. Trade members rep
13. A Cheesman rep
14. A Cheesman rep
15. A Peters GMB email rep
16. A Peters GMB email attachment rep
17. Child Protection flowchart
18. Licensed Private Hire Car Association rep
19. GMB rep
20. Martin Walker rep
21. Streamline rep 051015

Documents in Members' Rooms

The Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The Blue Book).

Background Documents

The Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The Blue Book).