

Brighton, Thursday 22 March 2018

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Brighton & Hove City Council

22 MAR 2018

Health, Safety & Licensing

To be delivered by hand (and email to: jim.whitelegg@brighton-hove.gcsx.gov.uk)

Dear Sir

**Written Submissions Opposing the Renewal of Uber's Private Hire Operator's Licence –
Public Meeting 23 April 2018**

1. These are written submissions on behalf of a long-established group of taxi and private hire operators based in the city of Brighton and Hove, namely:
 - a. Brighton and Hove Streamline Ltd;
 - b. Brighton and Hove Radio Cabs Ltd; and
 - c. The Southern Taxis Group Ltd.

2. For ease of reference, they are collectively described in this document as (the “Undersigned”) Consistent with the approach adopted in October 2017, the Undersigned express the strongly-held view that Uber Britannia Ltd (the “Applicant”) is not a fit and proper person to be awarded a licence (an “Operator's Licence”) under section 55 of the Local Government (Miscellaneous Provisions) Act 1976 (the “Act”).

3. These written submissions address, principally, the following matters:
 - a. The fairness of the procedure previously adopted by Brighton and Hove City Council (“BHCC”) in relation to the granting of Operator’s Licences to the Applicant.
 - b. The relevant legal provisions.
 - c. Who is the Applicant and what does it do?
 - d. The stance adopted by the Applicant and other Uber Group companies.
 - e. The Applicant’s approach to disclosing relevant information.
 - f. The impact on the effectiveness and relevance of the Blue Book.
 - g. The proposed public meeting.
 - h. The conditions imposed on the Applicant.

The fairness of the procedure adopted by BHCC

4. It is understood that the Applicant is inviting BHCC to grant a renewal of its Operator’s Licence. That Licence was granted by a decision reflected in a letter dated 2 November 2017 and for a period of six months. The Operator’s Licence was made subject to four conditions, each of which was proposed by the Applicant itself.
5. The Undersigned contend at the outset of these submissions that the procedure followed in October and November 2017 was manifestly flawed, grossly unfair to those who participated in the process and led BHCC into making a decision which was legally erroneous.
6. As early as 25 August 2017, the Undersigned are aware that Cllr Lee Wares wrote to BHCC requesting that a public meeting be scheduled for the determination of the Applicant’s application for a renewal of its Operator’s Licence in October/November 2017.

7. On 8 September 2017, BHCC responded to Cllr Wares indicating that a public meeting was not required. The letter stated as follows:

*“We will clarify with the trade the objections which they raise, either directly or through yourself, and invite them to expand upon them and this will meet the criteria in our view for all matters to be put before the decision makers. A lot of the issues focus upon the operating systems of Uber, many of which have been dealt with repeatedly and it may be that if further clarification is sought from Uber, this will be commercially sensitive information, which should not be the subject of public debate. We undertake to provide reasons and deal with the complaints raised which **will make this a clear and transparent process**. We also note that at any point, if the licence is renewed and significant concerns are raised, the Council retains the right to take further action.”*

8. The Undersigned submitted a detailed letter, dated 3 October 2017, setting out their objections to the renewal of the Applicant’s Operator’s Licence, in accordance with a timetable set out by BHCC. A copy of that letter is appended to these submissions.
9. After the decision had been taken to provide the Applicant with a renewed Operator’s Licence, the Undersigned pressed BHCC for disclosure of a number of documents relating to this decision. BHCC’s response to those requests revealed that those who took the decision to renew the Applicant’s Operator’s Licence had been provided with a document titled, “Uber Briefing Document for Officers and Members” (the “**Briefing Document**”). This document, understood to have been drafted by Mr Simon Court, a Senior Lawyer at BHCC, refers to arguments raised by the Undersigned in their letter of 3 October 2017 and purports to advise “Officers and Members”. In reality, the Briefing Document consisted principally of subjective comment on the merits of those arguments.

10. The Undersigned are not clear what weight was attributed to the Briefing Document by those who ultimately renewed the Applicant's Operator's Licence. The Undersigned are deeply concerned at the lack of critical analysis within the Briefing Document, the bold and unsupported conclusions reached in the Briefing Document and the remarkable failure on the part of BHCC to offer the Undersigned a right of reply to it.
11. This approach, compounded by the failure to determine the application at a public meeting, represented a significant departure from the "*clear and transparent process*" promised by BHCC in its letter to Cllr Wares on 8 September 2017. The decision was taken in private and misinformed by undisclosed, private and deeply controversial legal advice. BHCC will no doubt be aware that Birmingham City Council recently renewed an Operator's Licence it had granted to the Applicant in private and this understandably caused considerable disquiet in that city.
12. The Undersigned firmly maintain that, had a clear, informed and transparent process been adopted in October 2017, BHCC might very well not have renewed the Applicant's Operator's Licence on that occasion.
13. The Undersigned welcome the decision to hold a public meeting for the determination of this application for renewal, although they have expressed concerns in correspondence concerning the manner in which it will take place. Those making the decision are respectfully invited to approach the issues raised in these submissions with fresh and open minds and not to be influenced by the earlier, tainted decision.
14. Furthermore, in order to ensure that the public meeting proceeds in a manner which is fair to all participants, BHCC is respectfully asked to obtain independent legal advice, from external lawyers with experience in this field, in advance of that meeting and to disclose it on 5 April 2018 to those who have filed written submissions.

The relevant legal provisions

15. As before, the Undersigned implore BHCC to apply the well-known legal test on the granting of Operator's Licence with precision. The Undersigned remain deeply concerned that, when issues relating to the Applicant, and Uber more generally arise, a tendency towards elision and paraphrasing can sometimes be evident. The Undersigned were surprised and disappointed to read Mr Court declare the legislation in this area as "archaic" and "not fit for purpose" in the Briefing Document. The Act remains good law and any decisions on its reform should be made by Parliament. BHCC has no alternative but to follow the law.

16. Section 55(1)(a) of the Act states (emphasis added):

(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

*(a) that the applicant is a fit and proper person **to hold an operator's licence.***

17. The Undersigned emphasise these words because they consider that the approach BHCC took to the granting of the Applicant's Operator's Licence in 2015 and subsequently has failed adequately to take these words into account.

18. As a matter of language, a person or company might very well be a *'fit and proper person'* in the more general sense of the expression; whilst being a wholly unsuitable person to hold an Operator's Licence. By way of illustration, a person with a long-standing and exemplary record of service to the community, but who has no experience or expertise in the operation of private hire vehicles, might well fall into this category.
19. Before any determination can be made as to whether an applicant is a fit and proper person to hold an Operator's Licence, it is essential first to understand who that applicant is.
20. This issue was raised by the Undersigned in October 2017 but was inadequately addressed by Mr Court in the Briefing Document, under a heading, "Are they an operator or not?"
21. In October 2017, the Undersigned urged BHCC properly to consider whether the Applicant met the statutory test and not any other entity or, worse still, some vague notion of what "Uber" might be. In spite of that warning, Mr Court made no attempt to identify what the Applicant actually did by way of operating private hire vehicles, made reference to a completely inapposite analogy, and grouped an unknown number of entities and concepts together using terms such as "Uber" and "they".
22. To avoid a recurrence of this confusion, the Undersigned here dedicate a specific section to the question of the identity and function of the Applicant.

Who is the Applicant and what does it do?

23. The Undersigned have received a copy of an application form headed “Application for a private hire operator licence” which is dated 20 September 2017 and appears to have been received by BHCC on 9 October 2017 (the “**Application Form**”). It is understood that this was the document by which the Applicant formally requested the Operator’s Licence which it currently holds. It is the most recent such document available to the Undersigned at the time of writing.
24. The Applicant is identified as Uber Britannia Ltd, with its registered office given as Aldgate Tower First Floor, 2 Leman Street, London, E1 8FA. This information is consistent with a company registered at Companies House under company number 08823469. The Application Form asked the Applicant to name all of its directors and Mr Rob Van Der Woude, based at an address in the Netherlands, and described as a Tax Consultant at Ernst & Young was identified. The record at Companies House indicates that Mr Van Der Woude resigned as a Director on 18 October 2017 and the Applicant’s board now consists of three Directors:
- a. Thomas Elvidge;
 - b. Frederick Jones; and
 - c. Lauren Powers-Freeling.
25. The Application Form identifies the address from which the Applicant intends to operate private hire vehicles as Workshop 30, 30 Grand Parade, Brighton, BN2 9QA (the “**Brighton Premises**”). In their written submissions provided in October 2017, the Undersigned respectfully invited BHCC to investigate what, if any, activities are conducted by the Applicant at this address as part of the renewal process.

26. The Applicant states in its submissions that BHCC has carried out inspections of the Brighton Premises on a number of occasions. The Undersigned have not been provided with the reports of any of those inspections and no detail has ever been provided concerning what activity actually takes place there.
27. As the Applicant has asked BHCC to grant it an Operator's Licence, it properly falls on BHCC to give some consideration to the question of whether the Applicant is, in any proper sense, an operator of private hire vehicles.
28. Section 46(1)(d) of the Act states:

Except as authorised by this Part of this Act

(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under section 55 of this Act

29. The term 'operate' in this context refers back to the definition in section 80 of the Act:

"operate" means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.

30. The Undersigned stress again that, when considering these tests, the focus has to be on the Applicant, i.e. the company which operates under company number 08823469 and not to fall into the error made by Mr Court in the Briefing Document in conflating the Applicant with vague concepts of what BHCC might understand "Uber" to mean.
31. The Applicant's own submissions are revealing on this point. Parts of this document have been redacted without explanation. Whilst this is plainly unsatisfactory, there appears to be sufficient information provided about the Applicant's working practices to determine without any doubt that it is not an operator of private hire vehicles.
32. It is to be remembered that the Uber platform operates on an app which both customers and drivers can download onto their mobile devices. When a customer

opens his or her device, a number of vehicles are displayed as operating in the nearby area. Because of the interpretation adopted by the Applicant and its related companies of the decision in *Adur D.C. v Fry*¹, it is apparent that the vehicles displayed on that consumer's app consisted of a mixture of vehicles licensed by BHCC and driving under the Applicant's banner, vehicles licensed by other (non-London) licensing authorities and driving under the Applicant's banner, and (at least prior to 14 March 2018) vehicles licensed by TfL and driving under the banner of Uber London Limited ("ULL").

33. It is to be remembered that ULL is an entirely different legal entity to the Applicant and is registered at Companies House under a different company number, 08014782. At page 9 of its submissions in October 2017, the Applicant says as follows:

"As set out in the Terms & Conditions for riders: "Your PHV Booking will be accepted and allocated to a Transportation Provider by Uber UK as holder of the relevant operator's licence. You should be aware that the Transportation Provider to which your PHV Booking is allocated and who provides the Transportation Services may be licensed in an area other than where the booking is requested or the Transportation Services are provided." Uber London Limited holds an operator licence for London, and accepts the bookings for TfL-licensed drivers under that licence. Uber Britannia Limited holds the operator licences elsewhere in England and Wales – including for Brighton & Hove – and accepts the booking under the applicable private hire operator licence.

When the booking request is allocated to a partner-driver who holds private hire vehicle and driver licences with Brighton & Hove, Uber Britannia Limited will accept the booking under its BHCC operator licence. The booking record is created electronically when the booking is accepted by Uber Britannia Limited."

¹ [1997] R.T.R. 257

34. The next sentence has been redacted from the Undersigned. It is instructive to note that the Terms & Conditions to which reference is made by the Applicant define Uber UK as follows:

"Uber UK" shall mean each of Uber London, Uber Britannia, Uber NIR and Uber Scot.

35. The Applicant's own evidence, therefore, is that an app, provided not by the Applicant but by Uber B.V., yet another company, based in the Netherlands, informs customers of the presence of drivers in their vicinity. The customer makes a request for a vehicle and the app alerts those drivers to the fact that a request has been made. Where, by happenstance, the request is accepted by a driver licensed by BHCC, the operator is deemed to be the Applicant. Where, at least prior to 14 March 2018, the request was accepted by a driver licensed by TfL, the operator was deemed to be ULL. This deeming process, or "*allocation*" as it is described in the Terms & Conditions cited by the Applicant, occurs either **after** the fare is accepted by the individual driver or at an identical time.
36. This is entirely consistent with the findings of a report by Deloitte UK, commissioned by TfL to investigate the mechanics of the booking process used by ULL. Those findings apply equally to the Applicant as they do to ULL.
37. In light of this fact, it is plainly nonsensical to suggest that the Applicant plays any function whatsoever in the operation of private hire vehicles at any time prior to the acceptance of a fare by an individual driver. How then, it is said that the Applicant, "*make[s] provision for the invitation or acceptance of bookings for a private hire vehicle*" within the scope of section 80 of the Act is not at all clear to the Undersigned. Whatever work is subsequently carried out by the Applicant, whether at the Brighton Premises or otherwise, in relation to these fares, it cannot properly be the invitation or acceptance of bookings of private hire vehicles.

38. Mr Court circumvents this problem in the Briefing Document by asking himself the wrong question. There is plainly scope within the model identified for somebody, be they an individual or a company, registered in the U.K. or otherwise, to be an operator of private hire vehicles. Indeed, if nobody was undertaking the task of providing for the invitation and acceptance of vehicles, the model would collapse completely. It is thus correct but irrelevant when Mr Court states, “*there is no meaningful argument against Uber being an operator.*” The only relevant consideration here for BHCC is whether **the Applicant** is an operator of private hire vehicles. The Undersigned consider it is apparent that it is not.
39. It is not for BHCC or the Undersigned to speculate on the motivations behind the complex corporate structure by which the Uber Group of companies operates. All that is relevant to ask is whether the Applicant named on the Application Form is a fit and proper person (natural or legal) to operate private hire vehicles. For that question to be answered positively, the Applicant must at the very least show that it undertakes the tasks for which it seeks a licence. It has conspicuously failed to do so.

The stance adopted by the Applicant and other Uber Group companies

40. The Undersigned recognise, without hesitation, that Mr Court did not have access to the full decision letter of TfL dated 22 September 2017 when he came to produce the Briefing Document. In the Briefing Document, Mr Court identified four criticisms understood to have been made of ULL by TfL and purported to distinguish them from the position of the Applicant and BHCC.
41. The TfL decision letter of 22 September 2017 (a complete copy of which is appended to these submissions) identified a fifth criticism which is very plainly relevant to the question of the assessment of whether the Applicant is a fit and proper person and about which the Briefing Document is silent. TfL said as follows:

“It is considered that ULL misled TfL in correspondence in 2014 as to the process by which bookings are accepted through the Uber app. In particular, ULL provided a false picture of the order in which various steps take place,

when a booking is being accepted. TfL had asked ULL to explain its systems, and had been clear that we would rely on their answers when determining the lawfulness of their operating model. Whether or not the false information provided by ULL was determinative of the lawfulness of ULL's model (a matter we address in separate correspondence), TfL considers that ULL's answers were materially false and misleading."

42. In their letter of October 2017, the Undersigned also sought to demonstrate how the stance adopted by the Applicant as to how its booking process evolved between 2014 and 2017, including quoting at length from the Terms and Conditions in force at different times. They made the same points in similar detail in written submissions to TfL before September 2017. Put simply, whilst BHCC disregarded those observations and renewed the Applicant's licence, TfL took them seriously and declined to renew ULL's licence.
43. When similar arguments were presented to York City Council in December 2017, concerning the Applicant (i.e. not ULL) they too concluded that the Applicant was not a fit and proper person. This difference of both approach and outcome is stark and inexcusable. It is respectfully submitted that TfL and York City Council have taken these concerns on board and acted accordingly. Thus far, BHCC has not.
44. The Undersigned strenuously request that BHCC gives careful consideration to paragraphs 1 to 24 of TfL's decision letter of 22 September 2017 and to their letter of 3 October 2017.
45. The system by which the Uber Group provides services is both innovative and complex. It is an international organisation which draws heavily upon modern technology and the internet which transcends both licensing borders and even national borders. These features necessarily mean that many of the steps involved in the provision of those services are either virtual in their nature or at least substantially different from steps ordinarily associated with the operation of private hire vehicles.

46. These features afford the Uber Group a certain degree of flexibility as to how they characterise the legal effect of those steps. What both TfL and the Undersigned have observed is that companies such as ULL and the Applicant have gone to great lengths to characterise those activities in different ways at different times to suit the specific interests of the Group at that time.
47. In particular, where ULL or the Applicant seek to obtain a licence to operate from a licensing authority, they have been quick to emphasise the positive and active nature of their work. Where, in matters such as the *Aslam v Uber Britannia Limited (and ors)*² employment law dispute, they instead sought to emphasise the passive nature of their work and corporate structure.
48. When TfL drew this approach to the attention of ULL, it offered an explanation which was described by the authority as “*unconvincing*”.
49. BHCC was wrong in October/November 2017 to disregard these observations of the Undersigned and it is only proper that it should now, at last, heed these concerns and challenge the Applicant in much the same way as TfL challenged ULL on this issue.

The Applicant’s approach to disclosing relevant information

50. It is respectfully submitted that the Applicant and other Uber Group companies have displayed a troubling tendency to withhold adverse but relevant information from the authorities which regulate it.
51. A stark recent example of this arose recently when in 2014 and again (twice) in 2016, Uber’s worldwide servers were attacked by hackers who stole personal data of up to 57 million customers and 600,000 drivers. This is a matter of public record and, it is submitted, it is highly likely that a number of those customers used drivers operating

² [2017] I.R.L.R. 4

under the auspices of the Applicant. It may indeed be the case that customers from the Brighton & Hove area had their personal details stolen.

52. In December 2017, City of York Council concluded that Uber had not notified the relevant authorities of this breach until November 2017, some 18 months after it first became aware of it. This was a fundamental reason why City of York Council found that the Applicant (the same company as here) was not a fit and proper person to hold an Operator's Licence.
53. A fit and proper person in the position of the Applicant would have notified all those who had awarded it an Operator's Licence, including BHCC, as soon as it discovered that customer data had been compromised. In the event that, as assumed, the Applicant failed to notify BHCC of the breach before November 2017, it is respectfully submitted that BHCC should join York in concluding that the Applicant is not a fit and proper person to hold an Operator's Licence.

Cross-border issues and the announcement by Uber on geo-fencing

54. An issue which has severely impacted both the private-hire trade in Brighton & Hove and the ability of BHCC effectively to regulate it has been the propensity for individual drivers to obtain a licence in London from TfL (where the regulatory standards are understood to be lower) and then to use that licence to accept fares using the Uber app predominantly in the Brighton & Hove area.
55. This practice has been widespread in Brighton & Hove since around 2015 and has been the subject of numerous complaints by the Undersigned both in written opposition to the granting and renewal of the Applicant's Operator's Licence and in other correspondence to BHCC.
56. On 14 February 2018, Uber announced a marked shift in its approach to the provision of services across licensing boundaries. The announcement said:

“From Wednesday 14 March, drivers will still be free to choose where they want to drive, however, drivers will only be able to receive requests from the Uber app in the region in which their licensing authority is. The location of your driver’s licence will allow you to drive in one of 9 regions in England and Wales.”

57. Brighton & Hove has been placed by this announcement into the South East region whilst Greater London (including surrounding areas) is given its own region. Assuming this announcement is backed up with effective action, and the technology works effectively to implement it, it would appear to follow that TfL and ULL registered Uber drivers will be prevented from picking up customers in the Brighton & Hove area going forwards. In the view of the Undersigned that represents a significant improvement, albeit it is regrettable how long it took for this announcement to be made.
58. It is apparent, however, that the announcement will do little to cure the wider problem of drivers operating in Brighton & Hove but licensed elsewhere in an attempt to circumvent BHCC’s high regulatory standards.
59. First, BHCC must bear in mind that this announcement, unilaterally declared by Uber, can be reversed at any time. It would be quite wrong for BHCC to give any substantial weight to it when determining this attempt by the Applicant to obtain a renewed Operator’s Licence.
60. Second, the Undersigned are deeply concerned to see that the South East Region as defined by Uber, seems to encompass a very wide area including both Brighton & Hove and Lewes. Lewes District Council is another licensing authority which has granted the Applicant an Operator’s Licence. It is well-known within the trade that Lewes District Council applies less stringent standards on the private hire drivers it regulates than BHCC.

61. A particular feature has been placed on Uber's own website³ which highlights savings in terms of both time and money which drivers would experience if they chose to apply to Lewes District Council for a licence as opposed to BHCC. Since the announcement on 14 February 2018, the Undersigned have been informed that Lewes District Council has experienced a significant surge in applications for private hire licences. Given that there is no reason to suppose any corresponding surge in demand for vehicles in Lewes, the Undersigned suspect and fear that the applications are predominantly being made by drivers hoping to fill the gap left behind in Brighton & Hove by ULL drivers who previously operated there.
62. As a result of the sheer size of the geographical regions arbitrarily carved out by Uber, and the failure to make any reference to the jurisdiction of existing licensing authorities when devising them, the Undersigned consider that any benefits which might have been anticipated by Uber's announcement of 14 February 2018 are likely to be lost. Forum shopping by drivers seeking to obtain licences according to the lowest available standards and then working predominantly in areas of tighter regulation seem certain to remain a difficult issue in Brighton and Hove, notwithstanding the announcement.
63. Uber's announcement of 14 February 2018 is also revealing in that it might be assumed that the technology has always existed to restrict certain vehicles operating on the Uber App from certain geographical locations. It is to be remembered that, since 2015, the Applicant has undertaken that if it was given an Operator's Licence by BHCC, it would only use drivers and vehicles licensed by BHCC.
64. The Undersigned have consistently argued that undertaking was either devoid of practical meaning or was flagrantly breached by the Applicant by virtue both of the fact that the Applicant had obtained licences from numerous other authorities and by the fact that TfL-licensed drivers could be seen regularly accepting fares in the Brighton & Hove area.

³ <https://www.uber.com/en-GB/drive/resources/popular-jurisdictions-brighton/>

65. As it is now apparent that TfL licensed drivers could, all along, have been effectively excluded from Brighton & Hove by the geo-fencing technology, the Undersigned consider that the Applicant has deliberately misrepresented to BHCC that it would use only drivers licensed by BHCC whilst it has done nothing to prevent its drivers licensed by other authorities and ULL's drivers, licensed by TfL from operating in Brighton and Hove. It is respectfully submitted that this is not the conduct of a fit and proper person.

The impact on the effectiveness and relevance of the Blue Book

66. For some years, residents of Brighton & Hove have enjoyed a superb standard of service when using private hire vehicles. The Undersigned are very happy to credit BHCC with this and the clear and high standards set in the Blue Book.

67. By way of illustration, BHCC has imposed upon the Undersigned a requirement that a proportion of our vehicles are wheelchair-accessible and has imposed a requirement of all Hackney and Private Hire Vehicles that CCTV must be installed in the vehicle. These requirements are beneficial to the public but are very costly for the operators in the city.

68. It is apparent both from the Applicant's submissions in October 2017 and from Mr Court's Briefing Document that the vehicles registered on the Applicant's fleet by BHCC have CCTV equipment in them. It appears also that there is now at least one wheelchair-accessible vehicle among its fleet.

69. Nevertheless, for the reasons discussed at great length already, the vehicles which are presently available to consumers using the Uber app in Brighton & Hove include very many which are not registered by BHCC. As things currently stand, many vehicles operating in Brighton & Hove are licensed by other authorities and, historically, many were licensed by TfL. It is apparent that, if those vehicles are included within the field of enquiry, the Applicant's compliance and Uber's compliance more generally with the requirements of the Blue Book are plainly inadequate.

70. Furthermore, the Undersigned are concerned that the Applicant seeks to use the Operator's Licence given to it to lobby BHCC to reduce the standards traditionally imposed within this area. The comments made by the Applicant at page 14 of its submissions in October 2017 are particularly troubling:

"Our experience across over 80 jurisdictions in the UK indicates that one of the key deciding factors in where a driver chooses to get licensed is related to the time and cost of the licensing process. Councils with a modern streamlined process typically have the lowest incidence of cross-border driving. To assist Brighton & Hove to adopt a modern and streamlined process, Uber submitted a short discussion paper to the Taxi Forum."

71. This discussion paper plainly and openly sought to relax significant and important standard imposed on applicants by BHCC at present. These included:

- a. The topographical test;
- b. The practical driving test; and
- c. The professional taxis and private hire driver tests.

72. The Undersigned are passionate about ensuring that those who use private hire vehicles in Brighton & Hove continue to benefit from the safety, security, comfort and convenience which comes with ensuring drivers of private hire vehicles are regulated to the highest possible standards. Despite the positive sentiments expressed by the Applicant in its submissions, the Undersigned consider that the discussion paper sent to the Taxi Forum better reflects the Applicant's true approach to the issue of regulatory standards in Brighton & Hove.

The proposed public meeting

73. The Undersigned were very pleased to see that BHCC has acceded to the request which both they and others (including Cllr Wares) made that the determination of the

Applicant's request for a renewal of its Operator's Licence be made following a public meeting.

74. In their submissions made in October 2017, the Undersigned expressed the view that a well-advertised public meeting would enable BHCC to better understand the views of members of the public both about how the services are provided at present and the impact which Uber vehicle might have in the future.

75. In the Briefing Document, Mr Court said:

"We may wish to take notice of the source of objections. In any event all of the objections come from the established trade within the city. We have identified no complaints from the residents of or visitors to the City. This would seem to suggest that the users of Uber have no concerns. It has been put to us that they may not know how to complain. I regard this as unlikely. People actively have to set up Uber and it is hard to believe that hundreds of thousands of users (millions?) are not able to work out how to complain. Indeed, this might be regarded as insulting to those who use Uber."

76. Again, Mr Court seems to have somewhat misrepresented the point raised by the Undersigned in their submissions. What they said on that occasion, and which remains true today is that Uber is a global organisation which operates using sophisticated app-based technology. Operators such as the Undersigned would likely be recognised by customers as local businesses regulated locally. It may well not be obvious to customers unfamiliar with the complex regulatory structure of private hire vehicles that, when dissatisfied by their experiences with Uber, they can complain to BHCC.

77. The proposed framework of the public meeting is highly unlikely to address these concerns. It appears that, in order to be afforded an opportunity to speak at the public meeting, a person will be required to have made written representations by 23 March 2018. The notice of hearing for the public meeting is not planned to be

published until 5 April 2018. Accordingly, members of the public will be unaware of the existence of the public meeting until after the deadline for participating in it has expired.

78. A remarkably short period of time has been allocated for interested parties to make representations at the public meeting. You will note that the Undersigned constitute three distinct interest parties, who have chosen to collaborate in making these submissions. They respectfully request that 15 minutes is allocated to them at the public meeting in order to make oral representations.
79. This proposal will plainly fail to provide BHCC with anything like an accurate picture of the public perception of the private hire industry in Brighton & Hove.

Conditions

80. As has been stated already, it is understood that four conditions were imposed on the Applicant when its Operator's Licence was renewed in October/November 2017. Those conditions were proposed by the Applicant itself and, with respect, represent nothing more than the bare minimum which could reasonably be expected of a business in the Applicant's position.
81. In the event that BHCC does not accept the submissions made by the Undersigned and is of the view that the Applicant is a fit and proper person to be granted a new Operator's Licence, the Undersigned consider that any relaxation of the conditions already imposed should be avoided at all costs.
82. BHCC's decision letter of 2 November 2017 expressed concern about the scope of Condition 2 and sought to explore with the Applicant whether the period of 72 hours in which the Applicant was required to report criminal activity could be reduced. The Undersigned consider this period is unacceptably long and a period of 24 hours is more than enough time to report allegations of criminal conduct to BHCC.

83. The Undersigned consider that if, contrary to what is said here and at the public meeting, BHCC is minded to grant a renewed Operator's Licence to the Applicant, further conditions ought properly to be imposed.
84. Uber's announcement on 14 February 2018 suggests that it is possible within the app's technology, to geo-fence an area and to restrict the app's functionality outside that area. If that is correct, the Undersigned see no reason why BHCC should not impose a condition that only BHCC-registered drivers should be available to customers using the Uber app within the Brighton & Hove area.

Conclusion

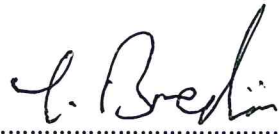
85. For the reasons set out above, the Undersigned respectfully submit that the Applicant is not a fit and proper person to hold an Operator's Licence. When the identity of the Applicant is properly identified, it is abundantly clear that it bears none of the characteristic features of a private hire operator and performs few, if any of the tasks anticipated by the Act.
86. Beyond that, the Applicant and the group of companies of which it is a part have ruthlessly and unashamedly exploited every possible flexibility and ambiguity in the interpretation of its working systems to its advantage. It has amended its Terms and Conditions and tailored its evidence to suit the specific outcomes which it has sought to achieve at different times. TfL has described this approach as "*materially false and misleading*". The Undersigned do not consider this to be conduct of a fit and proper person to hold an Operator's Licence.
87. If BHCC disagrees and is minded to renew the Applicant's Operator's Licence, it is requested that the renewal be for no more than six months to await the outcome of ULL's appeal to TfL in July 2018 and subject to a condition that only BHCC-registered drivers should be available to customers using the Uber app within the Brighton & Hove area.

Yours faithfully


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Andy Cheesman
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