

LICENSING COMMITTEE

7 MARCH 2019

REPORT OF THE ASSISTANT DIRECTOR, GROWTH AND REGENERATION

RIDE HAILING APPLICATIONS (RHA) - UPDATE

Exemptions

None.

Recommendations

That Committee notes the content of this report.

Purpose

To provide an update to Licensing Committee on Ride Hailing Applications (RHA) and inform future decisions in this area of Taxi Licensing.

Executive Summary

An initial report went before Licensing Committee on the 2 March 2017. Members and the public may see and may have used ride hailing applications (RHA) e.g. Uber, Gett, Wheely, Addison Lee, MyTaxi. Therefore, Tamworth Borough Council should plan for an enquiry from licensed drivers and from prospective drivers about whether they can drive for a ride hailing application.

No ride hailing applications have been issued a private hire operator's licence with Tamworth Borough Council and so cannot operate private hire vehicles in our Borough, however, a company such as Uber has operator licences in other areas such as Wolverhampton, Solihull, Birmingham and Leicester.

As with all private hire operators, Uber can dispatch vehicles and drivers to carry out work anywhere in the country providing that the vehicle and driver that is allocated the booking is also licensed with the local authority that issued the relevant private hire operator's licence. Hackney Carriages that are licensed in Tamworth can do pre-booked work for any operator in the country. Our only condition is that we will not normally licence a vehicle that won't be used primarily in our area, so in essence the vehicle needs to be working in our Borough more often than not.

Following the relaxation on sub-contracting rules for private hire vehicles that came into effect on 1st October 2015, Uber can also sub-contract bookings to other

licensed private hire operators in other local authority areas so that the operator can dispatch an appropriately licensed vehicle and driver.

There is nothing in the legislation that restricts in any way the trading area of any private hire operator. Whilst it may be interpreted that Uber are taking advantage of this, they continue to conduct their business lawfully. Uber vehicles are subject to the same legislation as all other private hire vehicles, and where a breach of legislation is identified we will investigate and take appropriate action.

To date, we have not received an application for a private hire operator's licence from a Ride Hailing Application and if one were to be received it would be dealt with on its merits.

Background

Since the original report there have been a number of significant developments with Uber around the UK, most notably with Transport for London (TfL). These are detailed below. Additionally details of other companies are provided.

1. Uber v Transport for London

In September 2017, TfL refused to renew Uber's licence, saying it wasn't "fit and proper" to hold one. This was as a result of a number of issues TfL felt it had with the company. TfL cited;

- A) A failure to report serious criminal offences by drivers against passengers to the police.
- B) To conduct proper background checks on drivers.
- C) To obtain drivers' medical certificates showing they are fit to drive.

The licensing body also said it was concerned by Uber's use of Greyball, software that can block regulatory bodies from gaining full access to its app and undertaking regulatory or law enforcement duties. Uber successfully appealed this decision and was granted a probationary 15 month licence in June 2018 having made significant changes to its UK operation to comply with new conditions imposed by TfL. This included new procedures for reporting criminal offences and tighter checks on drivers.

It must be pointed out those drivers who use Uber and are licensed by Transport for London have been through the same enhanced DBS background checks as black cab drivers. Also, Uber now have a dedicated team who work closely with and support the Metropolitan police in conducting criminal investigations.

2. Uber v Aslam

Uber has always insisted its drivers are self-employed, and that it is essentially a technology platform connecting independent drivers to potential customers. In 2016, an employment tribunal ruled that Uber's UK drivers should be considered "workers" rather than self-employed contractors, and entitled to a range of additional benefits e.g. like a guaranteed national minimum wage and sick pay.

Uber is appealing to the Supreme Court on a ruling over the legal status of its former driver Yaseen Aslam. The decision criticised Uber's "twisted language," and said that "the notion that Uber in London is a mosaic of 30,000 small businesses linked by a common 'platform' is to our minds faintly ridiculous.

The firm appealed the decision in September 2017, and the judge's again found against Uber by a majority decision of 2-1. Uber is now appealing to the Supreme Court.

3 Taxation

The company has been frequently criticised over its corporate structure, which meant that in 2015 its main UK business only paid £411,000 in tax, while bookings from drivers were filtered through a company in the Netherlands. In September, The Financial Times reported that weeks before TfL's decision regarding Uber's license, a board member for the regulator brought up Uber's tax structure as a concern. "I know tax is a question for HMRC [HM Revenue & Customs], but I have never understood how Uber's services can be London-based for the purposes of the Taxi and Private Hire Act 1998, but non-UK based for the purposes of taxation, in particular VAT".

4 Reported positive aspects of Uber

- **Short, transparent wait times.** You can see an estimated time of arrival (ETA) before you book, and follow your car's location on the map once it's on the way. This means you can be confident a car is coming, and wait inside until it arrives.
- **Detailed driver information.** When you book an Uber trip the app shows you your driver's name, photograph, and the make, model and registration plate of their car. You have access to all of this information before you get in the car.
- **Every trip GPS-tracked in real time.** You can see the location of your car on the map at all times. You can even share your real-time location with friends and family.
- **Comprehensive receipts.** After every trip you get a receipt showing when and where you were picked up, the route taken, when and where you were dropped off, who was driving you and how much you were charged.
- **Best-in-class record keeping.** Records of every trip are stored securely and can be referred to if required for customer support. This information can also be shared with the authorities if there are reasonable grounds to for them to request it.
- **Rider and driver ratings.** At the end of every trip, both the rider and the driver rate their experience, and can also leave feedback to identify any specific issues. You see your driver's rating when you book a trip, and they also see yours.
- **Fully cashless operation.** This means that riders can always book a trip without having to carry cash. It's also a big deal for drivers, because it's safer to drive without cash in the car.
- **Family profiles.** Rider accounts for different family members can be linked together and share a payment card. This means you can be sure that everyone in your family can use Uber to get home if they ever need to.

- **Automatic documentation checks.** Uber captures the details from every driver's licence, insurance policies and so on, and if any of these are absent or expired then a driver will not be able to use the app to take trips.
- **24/7 customer support.** As well as handling routine enquiries, the support team can instantly suspend access to the driver or rider app in response to incidents reported by riders, drivers or the authorities.
- **Rider and driver deactivations.** Uber's community guidelines make it clear that both riders and drivers can have their access to the app withdrawn for unacceptable behaviour.

5 Uber v Knowsley Metropolitan Borough Council

On Wednesday 7th February 2018, the High Court quashed Knowsley Metropolitan Borough Council's intended use policy for private hire drivers. In late 2016, the Council noticed an increase in applications for private hire driver licences from outside its area. In March 2017, it adopted a policy which it said was designed to meet this trend. The policy required drivers to sign a declaration that they intended to drive predominantly in the Council's area and that they faced non-renewal or revocation of licences if in fact they drove predominantly elsewhere.

The policy was opposed by Uber Britannia Limited, a well-known national operator and Delta Cars, a Merseyside concern. They separately applied to judicially review the policy and, permission having been granted, the case was heard by Mr Justice Kerr in the High Court in Manchester on 6th and 7th February 2018.

The case for Uber presented in Court was that the private hire licence is a licence to drive anywhere. It is not confined in any way to the local area. That is made clear by section 75(2) of the Local Government (Miscellaneous Provisions) Act 1976, and by various decided cases including *Dittah v Birmingham City Council* (1993) and *Shanks v North Tyneside Borough Council* (2001). The statutory control does not concern where a driver may drive. It is simply that for each trip the "trinity" of operator's, vehicle and driver's licence has to be in place. When it is in place, the driver has a "right to roam". Furthermore, there is no discretion to refuse a licence to a driver who passes the criteria in section 51 of the Act, including the "fit and proper person" criterion. As the leading cases of *McCool v Rushcliffe* (1998) and *Leeds City Council v Hussain* (2002) demonstrate, the criterion is directed at the personal characteristics and qualifications of the driver, not where he might drive.

The Council contended that the fit and proper person criterion was an elastic concept, stretching beyond personal characteristics. It argued that a driver who had "failed to show commitment" to Knowsley and the concept of local licensing, might be deemed unfit to hold a licence, given the width of the Council's discretion. Mr Justice Kerr rejected the Council's case and accepted the above argument of Uber. He also agreed with a point made by Delta that the licence to drive a vehicle was a generic permission, without geographic control, as opposed to a specific permission, which attaches to a particular premise or place. Accordingly, he quashed the policy.

Delta also took further points: that in adopting the policy the Council took into account an immaterial consideration, namely where the driver might drive; that the

policy was vague and uncertain in effect; and that it was disproportionate. However, the case was not decided on any of these grounds.

The Court also awarded costs against the Council.

6 Uber rivals in the UK

Wheely

Wheely aims to add a touch of luxury to the ride-hailing market by offering "executive journeys" on-demand and in advance. Customers can use the app to book a luxury car driven by a personal chauffeur, who must pass a stringent on-boarding procedure involving multiple tests to get a job at Wheely. The company claims that only 30 percent of driver candidates with a background in UberEXEC passes its entrance exams.

Wheely initially launched in London in 2012 as an Uber-style minicab operator, but pulled out of the market to reinvent itself as a "premium" ride-hailing service with a licence to operate in the capital until 2023. The firm was founded in 2012 by Swiss/Russian entrepreneur Anton Chirkunov. It claims to generate \$50m in annual gross bookings and to employ roughly 2,500 drivers in London, Moscow, Saint Petersburg, Yekaterinburg, Kazan, Perm, Sochi and Krasnodar.

ViaVan

ViaVan is an on-demand carpooling service that bills itself as a more affordable and environmentally-friendly alternative to Uber. The joint venture between Mercedes-Benz and US ride-sharing start-up ViaVan launched in London in April. Customers across fare zones 1 and 2 can use the app to find real-time matches with other riders heading their way and jump aboard to share the trip. Individual rides are not offered, which reduces costs, emissions and congestion.

The company promises low fares, a safety-first ethos, and good treatment of drivers, claiming that it takes the smallest cut of any ride-hailing company in London. London is the second city in which the ViaVan is available, after Amsterdam, where the service launched in March. "Londoners deserve innovative transportation solutions that are safe, convenient, and affordable," said Chris Snyder, CEO of ViaVan. "ViaVan is a different kind of company: we have social responsibility built into our DNA. Our mission is to power truly dynamic mass transit systems, which reduce congestion in our cities while offering drivers the opportunity to earn a decent living.

MyTaxi

The UK taxi-hailing app Hailo merged with fellow European taxi-hailing app MyTaxi which is owned by German automotive giant Daimler in 2016. This creates what MyTaxi describes as "Europe's largest taxi app", with 100,000 registered taxi drivers in over 50 cities across nine countries, including 17,000 black cabs in London, its only UK city at the time of writing.

In practice the MyTaxi app is pretty similar to Uber in that you can get started quickly and order a taxi to your location and have it paid for using the app. The key

difference is taxis are licensed and you won't get stung with surge pricing at times of high demand.

In a very lightly veiled dig at Uber and other rivals, MyTaxi CEO Andrew Pinnington told Bloomberg Technology following the merger: "Unlike some of the other services, we work with the authorities," he said. "Our phrase we use is we're a constructive disruptor."

Uber has been battling with incumbent taxi companies, including London's black cabs, for years now, and although it introduced a taxi-hailing option for London black cabs, it removed the feature in March, with the company saying: "Since we first launched UberTAXI, hundreds of black cab drivers have taken tens of thousands of trips through the Uber app. However, in recent months, those numbers have tailed off."

This opens the door to companies specialising in linking up riders and black cabs, but the question is whether enough consumers care.

Gett

Israeli start-up Gett differentiates itself from Uber and Lyft by offering completely flat pricing, and works with licensed taxi drivers. Although it is admirable for companies like MyTaxi and Gett to not use surge pricing or unlicensed drivers this does have its competitive drawbacks. The hidden advantage of surge pricing is that it encourages more drivers to get into their cars at peak times in order to earn the extra money, meaning it is easier to get a cab using these services. MyTaxi and Gett facilitating normal taxis means these cars can dry up at peak times, as these drivers are more likely to be hailed down by people on the street.

Gett certainly hasn't hit the popularity or levels of brand familiarity that Uber has in the UK yet but it is a serious competitor and is the only other ride-hailing service that operates in UK cities other than London, with users able to use Gett in Edinburgh, Manchester, Birmingham, Liverpool, Glasgow, Leeds, Oxford, Cambridge, Reading, Slough, Milton Keynes, Brighton, Bristol, Bath, Cardiff, Portsmouth, Bournemouth, Leicester, Coventry, Sheffield, Nottingham, Bradford, Hull, and Newcastle.

The company will also look to use the \$300 million that Volkswagen Group invested in May 2016 to aid further expansion.

Addison Lee

The biggest minicab company in the UK has been working hard to keep up with changing consumer habits when it comes to ordering cars since Uber appeared on the scene. It has since made sweeping changes to its mobile app and online ordering capabilities.

The Addison Lee app is now a handy fall back for when Uber is surging, or for booking airport transfers ahead of time, and is popular with corporate clients that want fixed pricing and support. For consumers, the app works in many of the same ways that consumers have become accustomed to in the age of ride-sharing, with no more calling a taxi dispatch office.

The downside of Addison Lee is that it is not available outside of London and can be pretty expensive.

Ola

Ola is a ride-hailing company from India which has dominated its local market. It has already expanded to its first overseas market of Australia earlier this year and announced in August 2018 that it will be launching services in the UK. The company announced on its website that it had obtained licences to operate in South Wales and Greater Manchester ahead of launching operations in South Wales by September. Ola will then seek to expand nationwide throughout the year. The ride-hailing app includes its own private hire drivers, as well as black cabs. The Indian company is keen to position itself as the anti-Uber when it comes to how it treats its drivers.

A company announcement reads: "Ola places drivers at the heart of its approach, providing the industry's leading commissions, resulting in higher earnings and daily payments. Ola seeks to lead the industry with its approach to passenger safety including DBS screened drivers and processes such as 24/7 voice support, options to share ride details with emergency contacts and in-app emergency features. "Ola is recognised for its collaborative approach, working with national governments and local authorities, to help solve transport mobility issues in innovative and meaningful ways." At the time of writing there was no Ola app available on the UK Apple App Store.

Kabbee

London minicab aggregator Kabbee claims to be up to 65 percent cheaper than a black cab. It pools cars from more than 70 providers, giving users access to 10,000 London cabs. All drivers are licensed and minicab fleets with poor ratings get struck off from the service. The service is currently only available in London though.

BlaBlaCar

The French carpooling start-up is a bit different to the other alternatives on this list. Instead of hailing a ride, registered users of BlaBlaCar can carpool with people who are already making a journey, say back from London to university in Cardiff. The European start-up has proved popular in its home market and has a sizeable UK pool of registered members, with thousands of rides available every day.

BlaBlaCar raised \$200m (£129m) in a 2015 funding round that valued the company at €1.4bn. The investment was led by Insight Venture Partners and Lead Edge Capital. The start-up has said that it does not plan on expanding to the USA where car ownership is higher and fuel prices lower than across Europe.

Resource Implications

No specific financial or resource implications emanate from this report.

Legal/Risk Implications

There are no immediate legal implications arising from this report. Currently, there is no indication that Uber want to extend their operations into Tamworth, however,

Uber and similar companies are expanding their operations across the UK. If an application was made to Tamworth Borough Council it would be considered in line with the current Hackney Carriage and Private Hire Licensing Policy.

Sustainability

A visibly effective licensing service links into the Corporate Priorities of Living a Quality Life, Growing Strong and Delivering Quality Services in Tamworth. Furthermore, measures to promote fair trading; reduce Crime and disorder enhances the attraction of Tamworth as a place to visit and run a business.

REPORT AUTHOR

"If Members would like further information or clarification prior to the meeting please contact Steve Lewis, Head of Environmental Health. Ext 437"

LIST OF BACKGROUND PAPERS

1. Licensing Committee – 7 March 2017.