

Meeting	Licensing And Regulatory Committee
Date	11 June 2024
Present	Councillors Melly (Chair), Cuthbertson (Vice-Chair), Baxter, Clarke, Hook, Knight, Mason, D Myers, Nicholls, Ravilious, Rose, Smalley, Widdowson And Warters (until 21:02)
In Attendance	Matthew Boxall (Public Protection Manager) Sandra Branigan (Senior Lawyer) David Cowley (Taxi Licensing Manager)
Apologies	Councillor Kilbane

CHAIR'S OPENING REMARKS (17:34)

The Chair opened the meeting and explained that the Council's Director of Governance had provided legal advice that it was appropriate for the Committee meeting to go ahead that day to determine the application by Uber for a private hire operator's licence. She explained that the Director of Governance had made his decision with reference to the Code of Recommended Practice on Local Authority Publicity, published by central government, and the associated guidance provided by the Local Government Association (which notes that "*you are allowed to ... continue to discharge normal council business (including budget consultations or determining planning applications, even if they are controversial)*").

The Chair added that in the Director of Governance's legal opinion there was no reason for the meeting not to continue as scheduled. The Director of Governance had noted that the key focus of the pre-election period restrictions is publicity issued by the Council, rather than the business of the Council itself. Whilst matters directly impinging on local or national policy should be avoided (to ensure the decisions do not impact on the outcome of the election), the ordinary 'day-to-day' decisions of the Council should continue, even if those decisions may be controversial.

The Chair reminded anyone watching that when making their decision on the Uber application, the Committee needed to

consider national legislation and the Council's taxi licensing policy. She explained that the decision to be made lawfully could not be political or include considerations of matters such as market competition or support for local businesses or trade unions. She added that the decision could only be made within the regulatory framework on whether Uber was "fit and proper" to hold an operator's licence.

A Member noted that his opinion differed to that of the Monitoring Officer and asked whether the Committee could go into private session to make its determination. The Senior Lawyer advised that hearings for applications for premises licenses operated under a different legal framework which allow a sub-committee to deliberate in private and the taxi application was governed under separate legislation for committee meetings. She added that the Committee could only go into private session for specified reasons, and she could not see why the committee could go into private session in this case.

The Chair then read out the procedure for the determination of the application for a Private Hire Operators Licence.

50. DECLARATIONS OF INTEREST (17:41)

Members were invited to declare any personal interests not included on the Register of Interests, any prejudicial interests, or any disclosable pecuniary interests that they might have in respect of business on the agenda. Cllr Nicholls noted that he knew Matthew Freckelton (Uber Head of Cities, UK) and had not spoken with him regarding the Uber application. There were no further declarations of interest.

51. MINUTES (17:41)

Resolved: That the minutes of the meeting held on 16 January 2024 be approved and signed by the Chair as a correct record.

A Member asked for an update on hackney carriages vehicle licence waiting list. The Taxi Licensing Manager explained that there were six vehicles in operation, two vehicles had confirmed delivery and three applicants were sourcing vehicles. He added that there would be an update report at a future meeting and that the taxi licensing consultation ended on 14 July 2024.

52. PUBLIC PARTICIPATION (17:43)

It was reported that there had been eight registrations to speak at the meeting under the Council's Public Participation Scheme.

Flick Williams spoke under the general remit of the committee on progress towards getting additional wheelchair accessible vehicles on the road. She noted that in June 2022 there was a report to committee including information on wheelchair accessible taxis and that she had spoken at previous meetings on the matter. She was disappointed to see that it had not been included on the agenda and noted that there should be another unmet demand survey this year. She added that approving the Uber application would make the situation worse for disabled people and she explained how inequity for disabled people had worsened. He noted her inequality concerns with disabled people being refused taxis. She urged refusal of the Uber application.

The remaining seven registrations to speak were on agenda item 4 Application for a Private Hire Operator's licence - Mr Neil McGonigle on behalf of Uber Britannia Limited ('Uber').

Suba Miah urged the committee to consider the Local Government (Miscellaneous Provisions) Act 1976. He noted that it was almost seven years since the previous Uber application was refused. He raised a number of concerns regarding out of town Uber vehicles. He noted that the out of town Uber drivers had not completed the York safety test and he noted his concerns about their insurance. He asked the committee to ensure a fair playing field to allow all already licensed in York, including hackney carriages, to apply for an Uber licence.

Daniel Smith explained that Uber broke section 6 of the Local Government (Miscellaneous Provisions) Act 1976 adding that Labour had promised to change that law. He noted that Uber were not fit and proper to have a York licence. He gave examples of the practices of Uber drivers which included picking up illegal passengers at ranks. He stated there was a lack of the monitoring of it and that York operators did monitor this. He expressed concern that how safe the cars used by Uber were and that the Uber office would be empty and not manned. He added that public safety was a huge risk with Uber drivers.

Arfan Asif explained that Uber operated in York and not under York rules. He added that all Uber drivers will be able to apply for a York licence and could work for York operators. He asked a number of

questions about Uber and urged the committee to refuse the licence to reaffirm its commitment to just and fair and making it safe for visitors.

Muhammad Sulaman noted that Uber did not have a licence and operated in York. He explained that he had passed his taxi knowledge test and added that when the outside drivers were seen this made York taxi drivers feel low. He noted that he was unsure why Uber drivers work in York and break so many rules. He noted that since Uber had come to York, York drivers worked extra hours and could not spend time with their families.

Darren Avey (Director of York Station Taxis and Chair of YPTA) urged the committee not to grant the licence and work in grey areas. He gave examples of how Uber worked, and the fines imposed to settle claims across the world. He noted the safety of passengers and added that there were too many reports of accidents by Uber drivers. He noted that their business model was unethical, and he highlighted the impact on local drivers. He explained the increase in Uber drivers on race days and the impact of it. He noted it was imperative to prioritise the wellbeing of local communities.

Gary Graham (Member of YHCA and YTAD) explained the reasons why Uber should not be granted a licence and why it was not fit and proper. He noted that Uber was a middle man and facilitator. He noted the unfair working practices by Uber and its pricing. He added that if York taxi companies were run like that, they would have their licences removed. He noted that if the licence was granted, the council would not be fit and proper.

Arshad Mahmood (Chairman of York City Taxi Association) noted that there were 84 wheelchair users. He added that the report was misleading and did not include out of town drivers operating illegally. He explained that Uber ruined the livelihoods of York hackney carriage drivers and that wheelchair access hackney carriages were not available. He asked why York should trust Uber and asked for conditions to stop using out of town vehicles and use York hackney carriages.

Written representations had also been received from Phil Atkinson (Head of Operations, York Racecourse) and Mariya Miteva.

53. APPLICATION FOR A PRIVATE HIRE OPERATOR'S LICENCE - MR NEIL MCGONIGLE ON BEHALF OF UBER BRITANNIA LIMITED ('UBER') (18:10)

Members considered a report that sought their determination of an application for a private hire operator's licence by Mr Neil McGonigle on

behalf of Uber Britannia Limited ('Uber'), operating from Tower Court, Oakdale Road, Clifton Moor, York, YO30 4XL.

In coming to their decision, Members took into consideration all the information and submissions that were presented, and determined their relevance to the issues raised including:

1. The application form and the papers before it.
2. The Public Protection Manager's report and comments at the meeting
3. The oral representations made at the meeting by the applicant and the public speakers.

The Public Protection Manager outlined the report. He explained that the Local Government (Miscellaneous Provisions) Act provides that the council should, upon receipt of an application, grant a private hire operator's licence... unless it considers the applicant was not a 'fit and proper person' to hold such a licence or is disqualified by reason of their immigration status. He noted that the applicant was not barred by reason of their immigration status and that the committee was determining whether the applicant is fit and proper to hold a licence. He then provided background information on the application.

The Public Protection Manager detailed a number of aspects of taxi licensing case law in the context of the application. He explained that it had long been established that private hire operators could only dispatch vehicles and drivers that were re licenced by the same local authority as the operator. This is known as the 'triple licensing rule' and by similar phrases. He cited the case of *Shanks v North Tyneside Council, 2001* in which it was established that *the operator can use the vehicles within his organisation for journeys both inside and outside of the local authority in which he was licensed and, indeed, can use such vehicles and drivers which ultimately have no connection with the area in which they are licensed*'. He added that under those under these provisions, Uber had been lawfully enabling passengers to take journeys in York using vehicles and drivers from other licensing authorities in York. He highlighted that granting the application would not prevent them using 'out of town drivers' in York and that refusing the application would not prevent them carrying on and using out of town drivers in York and that the application was enable Uber to recruit York licensed drivers on to their platform, which they currently could not do.

The Public Protection Manager detailed the location of the premises at Clifton Moor (the operating address) noting that it had planning permission. He noted that customers and drivers would interact with Uber via the app and not by visiting the premises. He added that Uber provided a 24/7 emergency line for council officers in the event of any concerns, and he detailed the hours of operation to be 24 hours every day of the week. He detailed the annexes and advised Members that they should grant the licence unless they considered that the applicant was not fit and proper to have one. He explained that 'Fit and Proper' was not specifically defined in the Act and detailed Button's suggestions on the questions Members should ask as detailed in his textbook on Taxi licensing Law, Button on Taxis. He then detailed the options available to the committee in their determination of the application.

In addition to the Public Protection Manager, the Taxi Licensing Officer was in attendance to answer questions from Members. They were asked and explained that:

- The applicant was Neil McGonigle on behalf of Uber. Clarification was given on all the licences listed.
- The outcome of the decision was not a precedent and if the applicant appealed the decision it would go to Magistrates Court. It was noted when a different application went to appeal recently, the Magistrate granted the licence with standard conditions.
- Uber would be able to clarify the employment status of Uber drivers.
- All taxi drivers were self-employed and were given workers' rights through a set to case.
- The taxi office had to be a physical space.
- York carried out enhanced standard tests.
- Regarding whether the 31 complaints regarding Uber was standard, this number fluctuated.
- The applicant was an individual on behalf of Uber Britannia Limited. In York it was a requirement for an individual to apply.
- Officers were not aware of any additional conditions imposed by other authorities.
- The council was not involved with Uber data breaches as Uber was not licensed in York.
- Taxi complaints went through the operators and the council had access to the complaints records for taxi operators licensed in York.
- Taxi fares were brought to the committee to determine and fare tables were displayed.
- Customers would know what the fare was as it would be displayed on the app.

- If a decision was made to grant the licence, Uber would be able to operate in York.
- The different offences recorded in complaints made was explained.
- Uber were responsive to complaints from its own drivers.
- Regarding whether the business model for pricing could be considered as part of the test, Members would need to go back to the test. Button's comments were noted, and it was highlighted that business models were not specified by Button. The Senior Lawyer advised that Members needed to approach the test by looking at the purposes of legislation.
- It was confirmed that the two conditions regarding fare charts could be complied with.
- When complaints were made to police, they were passed onto the authority at which the operator was licensed.
- Fare charts were displayed at the operator's premises and in the vehicle.
- Magistrates could grant a licence for 5 years.
- All offences were listed in complaints.

Regarding the political manifesto referred to by a public participant, the Senior Lawyer advised that the Monitoring Officer had given legal advice on the meeting. The Chair noted that the Labour, the Conservatives and the Green Party had not published their manifestos.

[The meeting adjourned from 18:48 to 19:02]

4. The oral representations made by Matthew Freckelton (Uber Head of Cities, UK), who spoke on the application on behalf of the applicant. He was joined by colleagues Paul Kane (Head of Safety), Scott Preswick (Counsel) and Neil McGonigle (Applicant on behalf of Uber Britannia Limited ('Uber') and Head of Driver Operations), to give a presentation on the application as detailed at Annex 6 of the published report.

During their presentation they explained:

- They explained how the Uber app works.
- The Uber app, noting that there was an in app emergency button.
- Uber had a partnership with the Crisis Prevention Institute for de-escalation training and work with the Survivors Trust on sexual misconduct.
- If any driver failed the real time hybrid check they would be investigated.

- Uber only used licensed drivers. It was explained that driver and vehicle on boarding included an in person ID check, document uploading, and document checking, and drivers would only be eligible when all checks had been completed.
- An explanation given on booking records.
- The safety complaints process was detailed noting how it operated in the app, the process for complaints and how complaints were investigated, including those from licensing authorities.
- The technology for enhanced pick up and drop offs was outlined, noting that this included hackney carriage ranks.
- Regarding complaints, Uber had a dedicated team that responded to requests for information from law enforcement and public health officials.
- The use of electric vehicles on the platform as explained.
- It was the third anniversary of the Uber and GMB signing the first national union recognition agreement in the gig economy.
- Regarding drivers, they were guaranteed the national living wage, holiday pay and a pension fund.
- Marketplace health was detailed. Noting that dynamic pricing played a significant role.
- The growing ridership of Uber included the launch of new services like Uber Reserve, Pet and Assist. Uber were also adding other items onto the app.

Members then asked Matthew Freckelton, Paul Kane, Scott Preswick, and Neil McGonigle several questions to which they responded that:

- Uber drivers were classified as workers. Plying for hire or picking up from taxi ranks was the responsibility of drivers. Uber had gone to some councils to ask for more detailed complaint reporting and they could not think of one council that did not use the standard conditions.
- Data breaches were reported to the ICO and Uber operated under GDPR.
- Regarding whether data breaches were passed onto local authorities, that would depend on the particular conditions of that particular licensing authority.
- Most complaints came through the app and number of complaints in York could be provided in a letter to the Chair after the meeting. They did not have an estimate of the number of complaints and 99.9% of trips operated without complaints.
- Regarding the business model of having a staffed booking office for driver welfare, drivers were not wed to visiting an operator

base. They may have partnerships with other groups regarding conveniences and restrooms.

- Driver use of the app was built with safety in mind. The app was compatible with Apple carplay and other navigations apps. It was noted that the navigation apps were audible. Touches in the app were minimised to remove distractions.
- All hackney carriage ranks were geofenced and they had been working with York Racecourse on pick up and drop offs.
- Regarding Uber's commitment to wheelchair accessible vehicles, Uber did not own the vehicle, the driver did. Wheelchair accessible vehicles were a challenge across the country.
- The emergency button for safety contacted 999, the emergency services.
- The ride check was automated.
- Regarding how many times the rejection of a driver would spark concern, this would depend on the type of complaint and the history of the driver. If a rider made a complaint about a driver, Uber would unmatch them.
- Regarding FAQs on being blank about the living wage, it should be populated. Wages were based on HMRC expense rates.
- Regarding Electric Vehicles (EVs) and there being less wheelchair accessible vehicles, this was not unique to Uber, the supply of electric vehicles was lagging behind. Uber would take a pragmatic approach to electric wheelchair accessible vehicles.
- They did not have the information on how many of the 16,000 vehicles were wheelchair accessible. It was noted that electric vehicles tended to be smaller, and they would take a pragmatic approach towards 2030. Asked GMB's view on this, Uber worked closely with the GMB on a national level, and they could not comment on the local approach to York. They had made progress with drivers over the worker benefits that Uber provides.
- After the emergency button was pressed, they would contact the rider and driver.
- If the licence was granted, they would look to take on York drivers. When they were licensed recently in Stockton on Tees, drivers from outside had applied and they looked to on board local drivers.
- Concerning complaints about picking up from taxi ranks and them being geofenced, an explanation was given on how geofences were set up and it was believed that they work. They were happy to discuss geofences with licensing officers. They explained how the technology worked noting drivers could not physically be stopped from sitting on a rank.

- Uber acted on complaints made to them and where required would report to the local authority, investigate, and take action if necessary. [At this point an officer noted that this was in the authority that the operator was licensed in].
- Uber had a programme to aid drivers to obtain driver licences, including financial support.
- Regarding unmet demand, they did not want to create oversupply. If licensed in York they could look at this with licensing officers. A explanation of how dynamic pricing works was given, noting that multiple factors were taken into account for it in getting the optimum price for the rider and the driver. From a safety perspective it was worse if a person could not get home.
- Regarding what would happen if a person could not walk to the pickup, in York city centre the driver and rider could communicate in the app or ring (anonymously) to arrange a collection point.
- There was a guide dog policy.
- Regarding private hire vehicles having access to the city centre to pick up blue badge holders, Uber did not ask riders to identify if they had a disability. They could work with licensing officers on this. [At this point officers confirmed that Uber were consulted on blue badge access to the city centre].
- Rides to blue badge holders were not denied, they did not discriminate and did not sub contract bookings. Uber Access was noted, and it was noted that they were aware of the Equality Act.
- All cities that had Uber Access were linked to Uber X.
- Drivers could not pick and choose riders unless there was a medical exemption to take passengers with an assistance dog or a wheelchair user. They could investigate if passengers with assistance needs had journeys turned down and they noted the steps taken should this happen.
- They had a dedicated team to investigate allegations. They would contact the rider and driver regarding their version of events, and take action and report to the licensing authority.
- There was a whole range of scenarios regarding drivers being revoked and it was noted that it depended on the nature and severity of the allegation.
- Greyball was not used in the UK. Uber in 2015/16 was a different company and it now enjoyed positive relationships with all 61 authorities. It was an on shore business and paid all UK taxes.
- It was confirmed that they would be happy to display charges and surge pricing, which were in the app.

[At this point a Member asked if the committee could condition the applicant to make sure the operating model was not disenfranchised by

blue badge access. Officers advised that they could work with the applicant and that if the licence was granted they would operate under York (licensing authority), including the York knowledge test and there wouldn't need to be a condition. The applicant noted that they would need to look at how the technology on the blue badge side. A Member asked if drivers had equalities training. Officers advised that all new applicants had training on equalities and safeguarding through the local knowledge test. The applicant explained that all new drivers watched videos on that and they could look at this with officers].

- Since 2017 Uber had changed its third party risk analysis and it was explained how personal data was protected. Meetings were held to review data protection breaches. They noted that everyone was empowered to report a breach in data protection, and it was confirmed that they were there to develop a regulatory relationship with York.
- Cities with Uber Access was based on sufficient supply of wheelchair accessible vehicles. Regarding Uber X, this was the cheapest Uber product in the UK which was why Uber Access was tethered to it.
- There was Uber Access and Uber Assist to request wheelchair accessible vehicles.
- Regarding the role of local knowledge, for example road closures, Uber had its own mapping technology and if the driver saw that the route needed to change, they could change the route. If the driver wanted to take a different route to the mapping technology, they could, and the price could change.
- The technology used was industry leading and Uber could investigate reports of different drivers using a vehicle.
- The driver driving the vehicle was in the driver profile given to the rider. It was explained how trips were accepted by the rider.
- The actions taken if a trip was rejected was explained. They did not want drivers to cancel trips and there was a threshold for the cancellation of trips that worked across all products. There were different thresholds for Uber Access and Uber Assist.
- Drivers were paid a higher fare to take Uber Access.
- Regarding wheelchair accessible vehicles it would be for the driver to have a wheelchair accessible vehicle. They did not have sufficient supply of wheelchair accessible vehicles in York.
- In the cities with Uber Access there was sufficient supply of the availability of those drivers.

[A Member asked if the committee could stipulate the number of wheelchair accessible vehicles in a fleet. Officers advised that in the policy being consulted on included was the largest operator supplying

one wheelchair and if this was not possible, they had to give a reason why. Officers were not sure if the committee could stipulate the number of wheelchair accessible vehicles. At this point the Senior Lawyer reminded Members that their questioning should not turn into cross examination of the applicant].

- Concerning a driver breaking the law for access reasons there was no set reporting condition for to have a consequence for a specific breach.
- Uber did not have the ability for the rider to accept a driver licenced in the York area.

[Cllr Warters left the meeting at 21:03]

[The meeting adjourned from 21:03 until 21:11]

The applicant made closing remarks, thanking the Chair and Councillors. They noted that they had been questioned and answered questions extensively and believed that they met the fit and proper test. They added that they had been licenced in 60+ authorities.

The Chair reminded anyone watching that when making their decision on the Uber application, the Committee needed to consider national legislation and the Council's taxi licensing policy. She explained that the decision to be made lawfully could not be political or include considerations of matters such as market competition or support for local businesses or trade unions. She added that the decision could only be made within the regulatory framework on whether Uber is "fit and proper" to hold an operator's licence.

Having regard to the above information, the Committee considered the steps which were available to them to take under Sections 55 and 57 of the Local Government (Miscellaneous Provisions) Act 1976:

Option 1: Grant a private hire operator's licence as requested, with the standard conditions attached for a period of one year.

Option 2: Grant the private hire operator's licence with the standard conditions and any additional conditions considered reasonably necessary for a period of one year.

Option 3: Refuse the application providing the grounds for refusal.

Members debated the application at length. During debate a Member asked if the committee could add a condition relating to the geofencing

of hackney carriage ranks. The applicant expressed that they did not feel that it needed to be a condition but if it was a condition, they would meet with officers to discuss the matter. A Member noted that they would like a confirmation that information on blue badge users was filtered to drivers. Members were advised that the wording of such a condition would need to be looked at.

During debate Cllr Myers proposed refusal of the licence on the grounds of Uber failing the “fit and proper” test from the scale of the files released in 2022 and the data breach being worse than seven years ago, along with the lack of welfare provision (handwashing and toilet facilities) in the office facilities. This was seconded by Cllr Baxter. Officers were asked and noted their concerns regarding some of the reasons put forward noting the reasons needed to be reasonable and proportionate, and that it would be a struggle if challenged on the reasons for refusal. Members were advised that that there would need to be reason as to how public safety would be addressed and that it was a legal requirement to give reasons. On being put to the vote with three voting in favour, eight against, and one abstention, the motion fell.

Cllr Rose proposed Option 2, to grant the private hire operator’s licence with the standard conditions and an additional conditions considered reasonably necessary for a period of one year. The additional conditions were for geo fencing around hackney carriage ranks and to take action against drivers in breach of parking at hackney carriage ranks. Members were advised that it would be the council that took action against taxi drivers parking in hackney carriage ranks.

Cllr Mason then proposed Option 2, to grant the private hire operator’s licence with the standard conditions and any additional conditions considered reasonably necessary for a period of one year. The additional conditions related to the geofencing of hackney carriage ranks to prevent parking at hackney carriage ranks and Uber cascading information regarding blue badge access to support disabled users’ access to the city centre. This was with the wording of the conditions delegate to the Chair and Vice Chair in conjunction with Officers. The proposal was seconded by Cllr Nicholls. On being out to the vote with ten Members voting in favour and three against, it was;

Resolved: That approval be given to Option 2, to grant the private hire operator’s licence with the standard conditions and any additional conditions considered reasonably necessary for a period of one year. The additional conditions related to the geofencing of hackney carriage ranks to prevent parking at hackney carriage ranks and Uber cascading information regarding blue badge access to support disabled users’

access to the city centre. This was with the wording of the conditions delegate to the Chair and Vice Chair in conjunction with Officers.

Reasons:

- (i) The Committee were satisfied that:
 - a. The applicant was a fit and proper person to hold an operator's licence.
 - b. The Committee considered that two additional conditions are reasonably necessary in order to ensure that there was a reduction in the number Uber vehicles standing / waiting / picking up on designated hackney carriage ranks and at other inappropriate locations within the authority's area and to demonstrate that the operator ensures that its drivers have an understanding of the city centre pedestrian zone in order to assist Blue Badge holders with their booking requirements and to promote equalities in service delivery.

Cllr Melly, Chair

[The meeting started at 5.30pm and finished at 9.45pm].