

RE: UBER BRITANNIA LIMITED

**UNLICENSED PROVISION FOR THE INVITATION OF PHV BOOKINGS
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

YORK PRIVATE HIRE ASSOCIATION

OPINION

Introduction

1. On 12 December 2017 York city Council (“the council”) refused to renew the York private hire vehicle operators’ licence held by Uber Britannia Limited (“Uber”).
2. The refusal appears to have made little or no difference: Uber vehicles and drivers continue to present themselves in York and invite potential customers to book their services on their smartphones. Uber encourages and incentivises drivers to do so. The result is that out-of-town private hire drivers, and vehicles not meeting York’s licensing requirements, are undertaking PHV bookings on the City’s streets.
3. I have been asked by the York Private Hire Association whether the continued activities of Uber and its drivers in York is lawful. For the reasons given below, I am strongly of the opinion that Uber and Uber drivers are acting as unlicensed operators, contrary to section 46(1)(d) of the LGMPA 1976.

The law

4. It is important to recognise that the statutory provisions applying to PHV drivers and vehicles are materially different from the provisions applicable to PHV operators.

Vehicles

5. The owner of a vehicle may not use it as a private hire vehicle in a controlled district unless the vehicle is licensed under section 48 LGMPA 1976: section **46(1)(a)**.

Drivers

6. A private hire vehicle may not be driven in a controlled district otherwise than by someone licensed under section 51: section **46(1)(b)**. (It is also an offence for the owner of a vehicle to employ as a driver someone who is not so licensed: **46(1)(c)**).
7. No offence under sections 46(1)(a), (b) or (c) is committed, however, if a driver’s licence and a vehicle licence issued in a different controlled district are in force: section 75(2).

8. The so-called “right to roam” of PHV drivers and vehicles derives from section 75(2). It means that licensed drivers and vehicles may lawfully undertake journeys (not ‘accept bookings’) “which ultimately have no connection with the area in which they are licensed” (per Latham LJ in *Shanks v North Tyneside BC* [2001] LLR 706).
9. The right is not unqualified: PHV drivers and vehicles may not solicit custom, and may only fulfil a booking accepted by an operator licensed by the same authority as licensed them: *Dittah v Birmingham City Council* [1993] RTR 356. Thus all three licences (operator’s, driver’s and vehicle) must be issued by the same authority: *Dittah*.

Operators

10. Section 80(1) LGMPA 1976 provides:

“operate” means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.
11. An operator may only make provision for the invitation or acceptance of PHV bookings in the controlled district in which he is licensed: LGMPA section **46(1)(d)**, applying section 80, subsections (1) & (2).
12. **Section 75 of the LGMPA 1976 does not provide an exemption for operators from section 46(1)(d):** (i.e. there is no equivalent exemption to that provided for drivers and vehicles from sections 46(a), (b) & (c)). Thus, whilst drivers and vehicles may lawfully undertake *journeys* “which ultimately have no connection with the area in which they are licensed” (*Shanks*), provision for the invitation or acceptance of bookings may only be made in the controlled district in which the operator is licensed.
13. Whether or not provision has been made in breach of section 46(1)(d) is a question of fact. The following guidance emerges from the cases -
 - “It is simply a question of asking, in common sense terms, whether there has been provision made in the controlled district for invitation or acceptance of bookings”: *Kingston Upon Hull City Council v Wilson* (1995) WL 1082181, per Buxton J.
 - “There could well be provision for invitation of bookings in one place and for acceptance in another”: *East Staffordshire BC v Rendell* (1995) WL 1084118, per Simon Brown LJ.
 - “As the authorities clearly show, the [main] question is not where the act of accepting any particular booking or bookings take place, but where the provision is made”: *idem*
 - “The determining factor is not whether any individual booking was accepted, let alone where it was accepted, but whether the person accused has in the area in question made provision for the invitation or acceptance of bookings in general”: *Windsor and Maidenhead v Khan* [1994] RTR 87, per McCullough J.

Invitation of bookings

14. Uber customers make bookings using the Uber Rider App on a smartphone. The App is licensed by Uber BV. When customers activate the Uber Rider App, they are immediately presented with a map of their local area, showing the position of each nearby Uber vehicle that is currently available for hire. Each vehicle is continuously advertising its availability for hire and inviting potential customers in the vicinity to commence the process of booking.

15. *Rose v Welbeck* [1962] 1 WLR 1010 was a decision on the prosecution of a driver for plying for hire: but the court's analysis of the facts, and discussion of what amounted to an invitation to book, are relevant. There, a PHV vehicle was parked in a public street, bearing the inscription "Welbeck Motors, Minicabs" on both its sides, together with a telephone number. Winn J said: "At the very lowest, the evidence in the present case discloses behaviour and appearance on the part of this vehicle which amounts to an invitation:

'Get in touch one way or another with my owner and see whether he is willing for you to take me as a vehicle which you are hiring.'"

Lord Parker CJ said: "The vehicle was saying:

'Not only do I, if I may personify the vehicle, recommend you to Welbeck Motors Ltd., where you can hire a minicab, but further I am one of those minicabs and I am for hire.'"

16. In terms of 'invitation to book' there is no meaningful distinction to be drawn between the invitation made by vehicles displayed on the Uber Rider App, and that made by the parked *Welbeck* vehicle: the former is merely a modern, internet-assisted manifestation of the latter.

17. By exhibiting (on the Rider App) their physical presence in York, and their availability for immediate hire, Uber drivers and vehicles self-evidently invite bookings for their services. Provision for that invitation is made by 'Uber'; and it is made in York, where Uber are unlicensed.

Uber's 'Regions'

18. On 14 February 2018 Uber announced its unilateral decision to divide the UK into nine 'regions', each of which spans several different licensing districts, with their own standards and local licensing requirements.

19. UBL has told drivers on the Uber platform that if they hold a vehicle/driver's licence from any licensing authority within one of Uber's so-called regions, they will have exclusive rights to work as Uber drivers anywhere within that region.

20. Uber has placed York within its wide “Yorkshire Region” (which includes other local authority areas such as Leeds, Bradford and Kirklees). Uber uses surge pricing to encourage ‘out-of-town’ Uber drivers, including those licenced by Leeds, Bradford and Kirklees, to come to York and activate the Driver App. I have been shown screen shots of a Leeds Driver App showing how Leeds drivers are encouraged to go York where there is surge pricing.
21. The only discernible difference to Uber’s operations in York, since the refusal to renew its licence there, is that York licensed drivers who were working on the Uber platform on 12 December 2017 are no longer eligible to do so: the entirety of Uber’s provision in York is now made by ‘out-of-town’ vehicles and drivers licensed by other authorities.

Surge Pricing

22. ‘Surge pricing’ (also known as “dynamic pricing”) is a feature of the Uber model. It applies a multiple to its standard rates for journeys that commence in certain areas. These areas, and the applicable multiple, are broadcast to drivers via the Driver App. Drivers who commence journeys in areas where surge pricing is in force receive a multiple of whatever fare they would otherwise have received. Surge pricing therefore provides a strong incentive for drivers to travel to areas where ‘surge’ is in operation, in the expectation of receiving enhanced rewards for their work.

Local Licensing Control

23. Uber’s conduct is in no way a ‘technical breach’ of the statutory provisions. It goes to the heart of the licensing regime and its purposes. The Courts have said that “*the hallmark of the licensing regulatory regime is localism*”¹, and that “*that the authorities responsible for granting licences should have the authority to exercise full control*” over “*all vehicles and drivers being operated ... within its area.*”²
24. The undermining of local licensing control is a nationwide concern. In its representation to TfL, on the opposed renewal of Uber’s London licence, the Mayoress of Watford wrote:

“Uber’s method of operation seems inconsistent with the principles of a locally determined licensing regime that allows for each authority area to decide what is best in the interests of public safety for residents and visitors...”

I understand there to be every bit as great concern in York about the lack of local licensing control as there is in Watford - and as there is in licensing authorities throughout the Country.

¹ *Blue Line Taxis v Newcastle upon Tyne City Council* [2012] EWHC 2599 (Admin).

² *Shanks v North Tyneside Borough Council* [2001] EWHC 533 (Admin).

Conclusions

25. The licensing requirements of PHV drivers and their vehicles, and the exemptions therefrom, are different from those made of PHV operators. The gross oversimplification - “*cross-border hiring is lawful*” – is a misreading of the relevant case law (*Shanks*) and suggests a failure to recognise that distinction. There is no “loophole” in the law that allows Uber to operate a private hire vehicle in an area in which neither Uber, the vehicle nor the driver are licensed.
26. Uber is not a licensed operator in York.
- a. Uber supplies Uber drivers (who are not licensed in York) with the means (smartphone and App) by which the drivers advertise their presence in York, and their availability for immediate hire there.
 - b. Uber actively encourages and incentivises Uber drivers (not licensed in York) to trade in York.
 - c. Uber drivers, so supplied with the means, and so incentivised, come to York and invite potential passengers to make bookings with Uber, via the Uber App.
27. I have no doubt at all that Uber, together with Uber drivers, are making unlawful provision in York for the invitation of PHV bookings, contrary to section 46(1)(d) of the LGMPA 1976.

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