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Meeting	Gambling, Licensing & Regulatory Committee
Date	12 December 2017
Present	Councillors Douglas (Chair), Crisp, Hayes, Hunter, Looker, Mason, Mercer, Orrell, Reid, Richardson, Taylor and Wells
Apologies	Councillors Funnell, Gillies and Pavlovic

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## **6. DECLARATIONS OF INTEREST**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

## **7. EXCLUSION OF PRESS AND PUBLIC**

Resolved: That the press and public be excluded from the meeting during the consideration of Annex 1 of agenda item 5 on the grounds that it contains information relating to any individual, information which is likely to reveal the identity of an individual and information relating to the financial or business affairs of an individual(s). This information is classed as exempt under Paragraphs 1, 2 and 3 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

## **8. MINUTES**

Resolved: That the minutes of the meeting held on 13 November 2017 be approved as a correct record and signed by the Chair.

## **9. PUBLIC PARTICIPATION**

Members were given an overview of the report. This included an officer update relating to an e mail dated 22<sup>nd</sup> November 2017 received from Neil McGonigle of Uber Britannia Limited regarding a data breach.

It was reported that there had been 12 registrations to speak at the meeting under the Council's Public Participation Scheme. 8 spoke in objection.

Cllr Stuart Rawlings spoke as a Member of the Staffing and Urgency Committee at which the Uber licence was considered previously. He expressed concern regarding the number of complaints made against Uber and suggested that some of this detailed information was missing from the report presented to Members.

Saf Din, Chair of the York Hackney Carriage Drivers Association spoke in objection. In his view Uber had abused their position by allowing other Uber out of town vehicles to work in York, breached traffic rules, and failed to clarify with him who the customers' contract was with when travelling with Uber. Saf Din handed in a petition containing 1397 signatures. The petition asks City of York Council to restrict vehicles licensed by other authorities from working in the city and for the Uber licence not to be renewed . The Democracy Officer took receipt of the petition.

Lee Ward, Chairman of A Local Private Hire Association (ALPHA) Sheffield spoke in objection. He stated that Uber operated under a number of operating names and he listed the councils that he was aware of that had not granted a licence to Uber.

Wendy Loveday, of the York Private Hire Association spoke in objection . She cited the circumstances surrounding the Uber data breach and her concerns regarding passenger safety as reasons she considered warranted refusal of the application for renewal. In response to a question from Members she clarified that legislation required such a data breach to be reported within 72 hours.

Antony Green spoke in objection, referring to the data security breach and his understanding that Uber have withheld information from the police.

Jim Love, Chairman of Fleetways Taxis spoke in objection. In his view Uber did not take the shortest possible route to their destination. He submitted printed copies of examples of the map shown on a customer's Uber app, which he considered demonstrated this.

Lynn Brook, GMB Organiser spoke in objection. She stated that in her view Uber failed to complete drivers' background safety checks, and that the registered office at Clifton Moor was unmanned. She also alleged that Uber drivers plied for hire and drove illegally. When asked by Members she confirmed that there were no cases in York under which Uber drivers operated without background checks, and this was information from the GMB for Uber operating in other areas. She also clarified that the background checks referred to were criminal record checks, and in York she noted that the Licensing Authority was responsible for those checks.

Mike Palmer, Hackney carriage driver spoke in objection. He said the Uber office in York was empty.

Cllr Danny Myers, Ward Councillor for Clifton spoke in objection. In his view Uber Britannia Limited failed the fit and proper test for the licence and he added that the data breach may have included people living in York. He also referred to the alleged use by Uber of specialist software to restrict access to data when regulatory checks were carried out by authorities.

Neil McGonigle, Uber Head of Cities, North of England spoke in support. He stated that there had been an increase in the number of people using their service in York, increasingly by international visitors to the city. He explained:

- the use of information in the app and the ability to track journeys via the app
- the measures taken by the company when Uber drivers had been caught plying for hire
- that the company worked with licensing authorities to resolve such actions.

In response to Member questions, Mr McGonigle and the Uber legal representative present at the meeting clarified:

- Who the customer contracts for bookings and transportation were with.
- That the responsibility for undertaking driver DBS checks lies with the licensing authority.

- The driver checks undertaken by Uber are validated via technology.
- 28,000 people had used the app in York during the last three months.
- There are 10 Uber drivers licensed in York, (later corrected by the Licensing Officer that there are six).
- Customer payment is to a specific Uber company from which Uber take their fee and pay the driver.
- The obligation for vehicle checks is with the Uber driver.
- An administrative error made by Sheffield City Council was the reason for the suspension of the Uber operator licence in Sheffield.
- The company's use of map routes and surcharges.
- The Directors of Uber Britannia Limited are also Directors of Uber London Limited.

#### **10. APPLICATION FOR THE RENEWAL OF PRIVATE HIRE OPERATOR LICENCE BY UBER BRITANNIA LIMITED**

Members considered a report which sought determination of an application for the renewal of a Private Hire Operators Licence which had been made under Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976, in respect of Uber Britannia Limited (Uber) to operate from Tower Court, Oakdale Road, Clifton Moor, York, YO30 4WL.

In response to Member questions Officers clarified:

- City of York Council does not give preferential treatment to Uber
- The App Platform used by Uber could not be considered as part of the Committee decision.
- The contract between the driver , the operator and the customer is no different to the situation for other licensed drivers in the city who work for an operating company.
- The data breach is a relevant consideration in determining whether Uber remain "fit and proper" to hold a licence. Members were advised that the investigation into the data breach by the Information Commissioner's Office was not yet concluded.
- Detail about the complaints against Uber in York was given. Members were referred to the information included in Annex 4 of the report.

- If the application for the licence was refused, this would not stop Uber drivers licensed outside of the authority area working in York.
- As the Licensing Authority, City of York Council undertakes relevant safety checks on drivers.
- The law relating to the “fit and proper” test and Wednesbury reasonableness.

During debate Members raised the following issues:

- Concern regarding the data breach in respect of Uber user data, from which there were serious potential consequences to those members of the public in York who had entrusted their personal information to Uber.
- Concern that despite an admission that Uber was aware of the data breach in late 2016, there was a failure to inform the relevant authorities, including the Licensing Authority, of the breach in a timely manner, contrary to information laws.
- Concern in respect of the increase in complaints received by the Licensing Authority regarding private hire vehicles driving in York which were operated by Uber.
- There was no clear information about how Uber carried out checks on drivers and their vehicles.

Members considered the following options:

#### Option 1

Grant the licence, with the standard licence conditions attached, for a period of 5 years in accordance with the 1976 Act.

#### Option 2

Grant the licence, with the standard licence conditions attached, and/or other conditions that are considered appropriate and for a lesser period if considered appropriate by the Committee in accordance with S55 to the 1976 Act.

#### Option 3

Refuse the application if satisfied having regard to the facts sets out in the application and this report that any of the grounds set out in Section 62 are made out.

Following consideration of the options, it was:

Resolved: That, in accordance with Option 3, Uber Britannia Limited’s (Uber) application for the renewal of a Private Hire

Operators Licence be refused, and pursuant to S.62 this was on the following grounds:

Reasons:

- i. S.62 (b) of the 1976 Act: any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence IN THAT

Within the last year (22 November 2017) the applicant admitted in writing to the Licensing Authority that a significant data breach occurred in respect of Uber user data. The compromised data included some personal information of 57 million Uber users around the world, including names, email addresses and mobile phone numbers. There are serious potential consequences of a data breach of this magnitude to those members of the public in York who entrust their personal information to a licensed operator. It is understood that the data breach is presently being investigated by the Information Commissioner's Office. It is of concern to the Licensing Authority that despite an admission that the applicant was aware of this serious breach in late 2016, there was a failure to inform the relevant authorities, including the Licensing Authority, of this serious breach in a timely manner, contrary to information laws. Such conduct is considered to render the applicant unfit to hold an operator's licence.

- ii. S.62 (d) of the 1976 Act: any other reasonable cause IN THAT

Within the last year there has been an increase in complaints received by the Licensing Authority regarding private hire vehicles driving in York which are operated by the applicant. This trend is of sufficient concern to indicate that there are issues with the proper management of drivers by the applicant in its role as operator.

Cllr H Douglas, Chair

[The meeting started at 5.00 pm and finished at 7.35 pm].