

Agenda Item No: 6 **Report No:** 35/17
Report Title: Determination of Operator's Licence Uber Britannia UK
Report To: Licensing Committee **Date:** 9th February 2017
Cabinet Member:
Ward(s) Affected: ALL
Report By: Director of Service Delivery
Contact Officer(s)-
Name(s): Michael Moss
Post Title(s): Licensing Officer
E-mail(s): michael.moss@lewes.gov.uk
Tel No(s): 01273 471600

Purpose of Report:

This report has been brought to the attention of the Licensing Committee to determine whether **Uber Britannia UK** is a suitable company to hold a Private Hire Operators Licence under the Local Government (Miscellaneous Provisions) Act 1976; based on whether the individual(s) who manage Uber Britannia UK are fit and proper.

Uber UK is already operating within the UK having successfully been awarded a Private Hire Operators Licence in Manchester, Leeds, Birmingham, Bristol, Newcastle, Sheffield and Brighton.

An application for a one year Private Hire Operators Licence was submitted by Uber Britannia UK to Lewes District Council on 17th November 2016; exhibited as

Appendix I

On 5th December 2016 the Licensing Officer requested, under section 57 Local Government (Miscellaneous Provisions) Act 1976, further information from Uber Britannia UK; to establish a clear identity of the applicant and potential licence holder(s), to assist the Local Authority with their assessment of the application; exhibited as **Appendix II**

Officers Recommendation(s):

It is appropriate that this application is considered properly on its own merits. A decision was made by the delegated Officer, in consultation with the Chair of the Licensing Committee that it would be more appropriate for the decision on whether to grant a Private Hire Operator's licence to Uber to be made by members. This application is likely to cause concern to existing operators in the Lewes District as the ways in which Uber works are different from current practices.

Information

1 Information relating to the applicant: Uber Britannia UK

1.1 Background of Uber

Uber Technologies Inc. is an American international transportation network Company and its headquarters are in San Francisco, California. Uber Technologies Inc. develops markets and operates the Uber mobile app, which allows consumers with smartphones to submit a trip request which is then instantly routed to an Uber driver based on each of their GPS locations. Essentially it is an online booking service for private hire vehicles without the need for a centralised booking service.

The service is reported to be available in 56 countries and 200 cities Worldwide. **Uber BV** operates from Amsterdam, providing the technology for the app to be used in Europe and the UK.

1.2 Operating within the UK

Uber UK consists of different operating regions, these include:

- Uber London UK
- Uber Britannia UK
- Uber NIR
- Uber Scot

Uber were first established in the UK over 4 year ago under the company name **Uber London UK**. There was some controversy around their operations in London. Protests were made by Hackney Carriage drivers aggrieved by the way in which the fares charged to passengers using the Uber app which were generally cheaper than London's "Black Cabs."

The fares charged by Uber BV are calculated via GPS and in London it has been argued that this is basically the same as using a taximeter, in London, only licensed hackney carriages can use as a result of section 11 of the Private Hire Vehicles (London) Act 1998.

However, It is important to recognise that the legal challenges to the way Uber operates in London are not replicated in the rest of England and Wales, as private hire vehicles are allowed to utilise taximeters outside of London as there is no equivalent provision to section 11 of the Private Hire Vehicles (London) Act 1998 in the Local Government (Miscellaneous Provisions) Act 1976.

Uber has now expanded its operation in England and Wales beyond London under the regional name **Uber Britannia UK**; previous known as Hinter UK.

In 2015 Uber Britannia UK submitted an application for a Private Hire Operators Licence to Brighton & Hove City Council, which was granted subject to conditions imposed on the licence.

The company's expansion has been rapid and Uber Britannia UK wants to expand their operation into the Lewes district and subsequently submitted an application for the same. This application should be considered in line with Lewes District Council's Guidance to Drivers and Operators.

Uber will continue to grow and will seek to expand its services into other towns and cities throughout England and Wales.

1.3 The Uber app

The app provides passengers with an estimated price and estimated time of arrival which is shown in real time on the GPS map. A text message is sent when the driver arrives and the vehicle details along with a name and photograph of the driver are provided to the passenger in advance, so they may check the identity of the driver against who actually shows up.

1.4 Types of Vehicles available

Uber has made significant improvements to the infrastructure of the app since it was originally designed, in addition to connecting the passengers location to the nearest Uber driver, it now caters for specific requirements, such as:

- **Uber WAV** – Wheelchair accessible vehicles
- **UberASSIST** – Trained drivers for customer with physical disabilities
- **Uber Partner App** – Assist deaf or hard of hearing customers
- **VoiceOver** (iOS compatible) – Blind or partially sighted customers
- **Uber Exec** – Executive Vehicles

1.5 Fares and Payments

Uber operates their own competitive tariff, and every customer may choose which Service Provider to use.

The Uber app gives customers an immediate estimated cost of the fare based on their pickup location and destination, the app will calculate the cost based on the expected time of the journey, the distance and the current supply of vehicles at that time; the latter being referred to as Surge Pricing.

Surge Pricing is used in order to achieve a high level of service during exceptionally busy times. When the supply of vehicles reduces, Uber raises the price of the fare in increments, as supply increases, the fare is lowered.

The app notifies customers of when surge pricing is being taken in account for the estimated fare; the app will display the price increase against the normal rate so the customer is clear about the cost and can make an informed decision at the time of high demand.

Lewes District Council operates fixed pricing variations as part of their tariff, a higher rate is paid in an evening and even higher rates are applied on Sundays and Bank Holidays; despite whether there is any actual demand at that time.

Uber believes surge pricing will encourage more licensed drivers to sign up and tackle peaks of services by using basic economics. More demand means higher prices, higher prices encourages more drivers, more drivers means more people getting around and subsequently lower the level of demand.

Drivers receive payments directly into their bank accounts on a weekly basis from Uber. Uber takes 25% of every fare undertaken.

1.6 Safety Features

There have been concerns raised regarding the fees set by Uber and the amount of commission they require which leaves drivers working excessive hours leading to safety risks for the public.

However, Uber claims to be an industry 'leading in safety features' as shown in Uber's supporting information in **Appendix III**. The app has been developed so that Uber can protect both driver and passenger and collaborate closely with Local Councils to make towns safer.

- Only operates with fully licensed vehicles and drivers
- Technology assisted document checks: This prevents drivers from working without the right documentation and will automatically suspend them should any of their documents expire.
- Drivers name and photograph & registration of vehicle
- Anonymous calls & SMS between the passenger and driver
- All trips are GPS tracked, even if the trip is cancelled: this can be customised to the required? of each individual Operators Licence
- Passengers can share their fare details with another
- Easy Feedback: 1-5 star rating on every journey
- Cashless: No runners or arguments over fares: Receipt is emailed to the passenger at the end of the journey and riders can split the fare with friends travelling together
- Fast approach to dealing with complaints (see IRT below)
- System in place to prevent certain passengers and drivers being matched on future bookings

The Incident Response Team (IRT) was established to help resolve safety incidents through timely and thoughtful handling to create a safer platform for riders, partners and the public as a whole.

Provides 24/7 cover. Highly trained in identifying, investigating and resolving incidents and accidents.

- A vehicle collision
- Collision with a pedestrian / cyclist
- Damage to property done by an Uber partner
- Damage done to a partner's vehicle by rider or 3rd party
- An injury to a rider, driver or 3rd party

Escalating to senior management as needed

- Inappropriate Behaviour e.g. crime
- Altercations e.g. physical / verbal confrontations
- Sexual misconduct e.g. harassment or assault
- Discrimination e.g. unfair treatment based on certain characteristics (i.e. ethnicity, disability)

The IRT are able to call the rider, partner-driver and any third parties immediately to gather more information. With access to full trip and feedback records of both the rider and partner-driver, our IRT are better able to spot patterns and understand the true nature and severity of the incident.

2. Legislation and Policy

2.1 Private Hire Operator's responsibilities

Taxi and PHV licensing is not an area where there is much scope for self-regulation, but PHV operators do have a key role in ensuring that the drivers they employ are fit and proper persons, and are properly trained in their roles.

Uber only employs individuals who hold a Hackney Carriage or Private Hire Drivers Licence, having had their suitability and rights to work checked with a Licensing Authority.

2.2 The Deregulation Act 2015.

Previously, sub-contracting could only take place between operators licensed in the same district, now an Operator licensed within one area can sub-contract its bookings to another Operator (even if both are the same company) licensed in different area. This allows Uber to utilise licensed drivers from other districts to undertake bookings within an area where those drivers may not have been licenced.

This method of sub-contracting is not unique to companies such as Uber and can occur between existing traditional companies.

There is a strongly held view across licensing authorities and within the Local Government Association that the current legislation does not permit officers to take action against a driver/operator who is licensed by another authority.

This could have particular relevance to this district because of the high level of cross-border working that is currently undertaken by private hire vehicles between the Lewes district and Brighton.

As with all licensed 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 licence.

As bookings are made via the smartphone app, it is difficult to see how it can be proven precisely in which local authority areas Uber is "making provision for the invitation and acceptance of bookings for private hire vehicles" and therefore where it needs to obtain licences from.

The emergence of Uber and other smartphone taxi booking apps has highlighted the urgent need for reform of the badly outdated taxi and private hire legislation that struggles to cope with regulating this service due to modern technological advances like smartphones and the internet, which were not around in 1976.

There are other apps similar to the Uber brand, such as Hailo and Addison Lee; which although established and known amongst the trade, they don't share the publicity which has befallen Uber.

3. Sensitive information and how it is stored

UBER keeps electronic records, stored in a "Cloud"; the Licensing Authority should always be concerned about the security of information stored by Operators and how the Local Authority will be able to access that information if they need to examine it. Uber make rigorous checks on personal and vehicle documents and states their standards are high and nationally consistent.

The Uber website at www.uber.com/legal/gbr/terms states that Uber is the holder of Private Hire Vehicle Operator licences in each of the jurisdictions in which it operates, and accepts at its registered address and/or operations centre, private hire bookings made by the Uber App.

4. Premises

Uber's Operating Centres are accessible in every Local Authority area, enabling a local presence and a local team can be contacted 24/7 on an emergency line.

5. Legislation

The legislation regulating Private Hire Operators has remained unchanged in most part since it was first adopted in 1976. Since the 1976 Act the way in which private hire operators run their business as changed with new technologies being developed.

6. Fit & Proper Assessment

Under section 55 1976 Act the 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 the Council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence. This is the only ground on which an application can be refused.

Under section 57 1976 Act the Council has powers to seek information about a prospective private hire operator. (I assume that the information you have received now makes it clear whether the applicant is an individual or the company? I am not clear whether your request for further formation related to 57(2) (b) or whether you also asked for information as outlined in 57(2) (c)?

Under section 55(3) the Council may impose to the grant of a licence any conditions that it considers reasonably necessary on a private hire operator's licence.

How does a local authority satisfy itself as to the "fitness and propriety"? The term "safe and suitable" is a modern interpretation of "fit and proper" but there are some difficulties placed in the path of the local authority. Unlike hackney carriage and private hire drivers, the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 does not cover Private Hire Operators who are therefore not excluded from the workings of the Rehabilitation of Offenders Act 1984 (the 1974 Act).

The fact that the role of the Private Hire Operators is not an exempt occupation for the 1974 Act means that it is not possible to obtain an Enhanced DBS check, but they can be asked to obtain a Basic Disclosure; see **Appendix IV & V**.

The sole Director of Uber Britannia UK is **Karen Walker** who is based in San Francisco has provided a clean FBI check.

The Operations Manager for Uber Britannia UK is **Frederick Jones**, who will be responsible for the operations under this licence should it be granted has provided a clean (basic) Disclosure & Barring Service certificate.

The licence is granted to the PHO on the basis of their fitness and propriety but there is no overt mechanism to consider the suitability of those who work for the PHO. It has been suggested that a working test of fitness and propriety for PHOs is "would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?"

The role of Private Hire Operator goes far beyond simply taking bookings and despatching vehicles. In the course of making a booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. For example, when a booking is made to an airport, and a return booking made for a week or fortnight later, it is reasonably apparent that a holiday is being taken and the house is going to be empty for that period of time. In dishonest hands this information is extremely valuable. It is therefore vital that PHOs are as trustworthy and reliable as a driver, notwithstanding their slightly remote role.

7. Options

The following options are available to the Committee:

- To grant the application in full without any additional conditions (other than the amended mandatory conditions imposed by Lewes District Council).
- To grant the application imposing conditions (under Section 51(2) of the Local Government (Miscellaneous Provisions) Act 1976).
- To refuse the application

An applicant aggrieved by the refusal to grant an Operator's Licence or by any conditions attached to the grant of the licence may appeal the decision of the Licensing under Section 55(4) of the Local Government (Miscellaneous Provisions) Act 1976. The appeal must be made to the Magistrates Court within 21 days of the applicant being informed of the decision.

8. Financial Appraisal

There are no financial implications

9. Legal Implications

The Legal Services Department has vetted this report.

10. Risk Management Implications

Please refer to the Checklist for Decision Makers under Risk Management Implications on how to complete this section of the report. This guidance provides five option statements that you can choose from.)

11. Equality Screening

(NOTE: Where appropriate, please remember to attach an Appendix to the Report which sets out details relating to the associated Equality Analysis).

12. Background Papers

There are no background papers to support this report.

13. Appendices

Appendix I Uber's Operator Licence application form

Appendix II Section 57: Uber's response

Appendix III Uber's supporting information

Appendix IV Karen Walker: FBI record

Appendix V Frederick Jones: Basic Disclosure & Barring Certificate