

All correspondence to:

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3rd December 2019

Transport for London
4th Floor
14 Pier Walk
London
SE10 0ES

Dear Sirs,

PRE-ACTION PROTOCOL LETTER

IN RESPECT OF TFL'S FAILURE TO SUSPEND UBER LONDON LIMITED'S OPERATORS' LICENCE WITH IMMEDIATE EFFECT

THIS LETTER REQUIRES YOUR URGENT ATTENTION

1. Proposed Claim for Judicial Review

Transport for London ("TfL"), 4th Floor, 14 Pier Walk, London SE10 0ES

2. The Claimant

United Trade Action Group Limited ("UTAG"), 1 Kings Avenue, London N21 3NA

3. The details of the claimant's legal advisers, if any, dealing with this claim

Darren Rogers, Chiltern Law – solicitors
Wessex House Oxford Road Newbury RG14 1PA

David Matthias QC and Charles Streeten - counsel
Francis Taylor Building, Inner Temple. London EC4Y 7BY

4. The details of the matter being challenged

The failure of TfL, on 25 November 2019, to suspend Uber London Limited's private hire vehicle ("PHV") operators' licence with immediate effect pursuant to sections 16(2) and 17(2) of the Private Hire Vehicles (London) Act 1998 ("the 1998 Act").

5. The details of any Interested Parties

Uber London Limited (“Uber”), Aldgate Tower - First Floor, 2 Leman Street, London, E1 8FA, which company has been sent a copy of this letter for information.

6. The issues/grounds of claim

UTAG proposes to challenge TfL’s aforementioned failure on the following grounds:

Irrationality

A press release issued by TfL on 25 November 2015 provided some public explanation for TfL’s decision not to renew Uber’s PHV operators’ licence. That press release included the following:

“TfL has identified a pattern of failures by the company including several breaches that placed passengers and their safety at risk. Despite addressing some of these issues, TfL does not have confidence that similar issues will not reoccur in the future, which has led it to conclude that the company is not fit and proper at this time. In September Uber was granted a two-month licence as further information was required on these issues, some of which emerged late in the process of its reapplication. A key issue identified was that a change to Uber’s systems allowed unauthorised drivers to upload their photos to other Uber driver accounts. This allowed them to pick up passengers as though they were the booked driver, which occurred in at least 14,000 trips - putting passenger safety and security at risk. This means all the journeys were uninsured and some passenger journeys took place with unlicensed drivers, one of which had previously had their licence revoked by TfL. Another failure allowed dismissed or suspended drivers to create an Uber account and carry passengers, again compromising passenger safety and security. TfL recognises the steps that Uber has put in place to prevent this type of activity. However, it is a concern that Uber’s systems seem to have been comparatively easily manipulated. Other serious breaches have also occurred, including several insurance-related issues. Some of these led TfL to prosecute Uber earlier this year for causing and permitting the use of vehicles without the correct hire or reward insurance in place. While Uber has worked to address these issues, they highlight the potential safety risk to passengers of weak systems and processes. This pattern of regulatory breaches led TfL to commission an independent assessment of Uber’s ability to prevent incidents of this nature happening again. This work has led TfL to conclude that it currently does not have confidence that Uber has a robust system for protecting passenger safety, while managing changes to its app.”

From this statement, it is apparent that TfL has done the following and made the following findings:

1. That Uber is not fit and proper to hold a PHV operators’ licence.
2. That Uber had repeatedly and seriously breached the terms of the 15 month licence it was granted following its successful appeal before the Chief Magistrate in June 2018.
3. That there was indeed a pattern of regulatory breaches the latest of which occurred in September 2019 (at the time of granting a 2 month licence to Uber) but still granted a 2 month temporary licence and didn’t revoke.
4. That many of those breaches had placed passenger safety and security at risk, especially the 14,000 unauthorised journeys “identified late in the process of its reapplication” as a key issue.
5. That Uber had “weak systems and processes” that facilitated 14,000 breaches putting the public at risk.
6. That TfL had commissioned an independent assessment of Uber’s ability to prevent the recurrence of such breaches.
7. Having considered that assessment, that TfL concluded it did not have confidence that Uber had any robust system for protecting passenger safety; and
8. By necessary inference that TfL did not have confidence that similar serious breaches would not reoccur in the future.

In light of those findings of fact, the only rational course open to TfL on 25 November 2019 was to suspend Uber’s current licence with immediate effect, so as to ensure that Uber could not continue operating pending the conclusion of any appeal that it might seek to bring against TfL’s decision that day not to renew Uber’s PHV operator’s licence. Any failure to take that course and to make that decision

would obviously fail to give effect to the purpose underlying the statutory scheme requiring the licensing of private hire vehicle operators in London. That purpose is first and foremost to ensure public safety (as explained in *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, with reference to private hire drivers' licences – see Lord Bingham at 891f).

TfL has found that Uber's continued operation places the safety of members of the public at risk. In such circumstances, it is not sufficient simply to have refused to renew Uber's PHV operator's licence (which TfL did); TfL is obliged also to exercise its statutory power under sections 16(2) and 17(2) of the 1998 Act to suspend Uber's PHV operator's licence with immediate effect. As TfL has made clear in its own press release, it does not have confidence that Uber has any robust system for protecting passenger safety, and accordingly Uber's continued operation is placing passengers' safety and security at risk. TfL's primary role is to ensure public safety therefore TfL's failure to conclude that the interests of public safety require the immediate suspension of Uber's PHV operator's licence is in all the circumstances irrational and unlawful.

Reasons

Further, for the reasons stated above, TfL's failure to suspend Uber's licence with immediate effect is nonsensical. It is an aberrant decision which cries out for explanation and for which there is a duty on TfL to give reasons (see *R v Higher Education Funding Council ex p Institute of Dental Surgery* [1994] 1 WLR 242). In the absence of such an explanation there is necessarily a strong inference that TfL has no proper reasons for its failure to suspend the licence with immediate effect (see *R (Oakley) v South Cambridgeshire DC* [2017] 1 WLR 3765 at para. 76).

7. The details of the action that the defendant is expected to take

TfL is expected to suspend Uber's PHV operators' licence with immediate effect pursuant to sections 16(2) and 17(2) of the 1998 Act.

8. ADR proposals

Alternative Dispute Resolution is not considered to be suitable in this case.

9. The details of any information sought

As a public authority, TfL is under a duty of candour and must make full and frank disclosure of any and all documents relevant to the grounds set out above (see *R v Lancashire County Council, ex parte Huddleston* [1986] 2 All ER 941 per Sir John Donaldson at 945G).

The importance of complying with that duty of candour is enhanced in this case since TfL's failure to suspend Uber's licence with immediate effect when refusing to renew Uber's licence in the interests of public safety is conduct that cries out for explanation. In the circumstances, disclosure is necessary in order to resolve the claim fairly and justly in accordance with decision in *Tweed v Parades Commission* [2007] 1 AC 650 at [3].

UTAG requires TfL to disclose all documentation (including letters, faxes, emails, memos, and file notes) relating to its consideration of whether Uber was a fit and proper body to hold a PHV operator's licence and to its decision on 25 November 2019 not to renew Uber's licence in response to its latest application, including (without prejudice to the generality of the above) any documents relating to TfL's consideration of whether immediately to suspend Uber's licence.

10. The details of any documents that are considered relevant and necessary

1. The notice given to Uber of TfL's decision on the 25th June 2019 to refuse Uber's application to renew its PHV operator's licence and the grounds for that decision pursuant to Regulation 5 of The Private Hire Vehicles (London) (Operators' Licences) Regulations 1998.
2. All documentation relating to any assessment of Uber's ability to prevent regulatory breaches happening again, including an independent review and assessment by a consultancy know as Cognizant.
3. All correspondence between Uber and TfL relating to Uber's application to renew its PHV operator's licence upon the conclusion of the 15 month licence it was granted following its appeal before the Chief Magistrate in June 2018.
4. All correspondence between Uber and TfL relating to the 2 month temporary operator's licence granted to Uber in September 2019 and all of TfL's internal documentation relating to that decision.
5. All of TfL's internal documentation relating to TfL's consideration of Uber's application to renew, to TfL's decision that Uber is not a fit and proper body to hold a PHV operator's licence, and to TfL's decision not to suspend Uber's licence with immediate effect.

11. The address for reply and service of court documents

Please address any reply and service of documents to:

Darren Rogers, Chiltern Law, Wessex House, Oxford Road, Newbury RG14 1PA

We will accept electronic reply and service: djr@chilternlaw.com

12. Proposed reply date

We request a response to this letter by 4pm on 10 December 2019. Further, unless by 4pm on 10 December 2019 TfL has announced that it has served notice on Uber pursuant to section 17(2) of the 1998 Act suspending Uber's PHV operator's licence with immediate effect, UTAG will issue the proposed Judicial Review Proceedings against TfL without further notice to TfL. This timescale is necessitated by reason of the serious and ongoing risk to public safety occasioned by TfL's failure thus far to suspend Uber's licence with immediate effect.

Yours faithfully,

Chiltern Law

Copied to:
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E1 8FA

