cornerstone barristers

Regulating the modern private hire industry

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ORDER OF EVENTS

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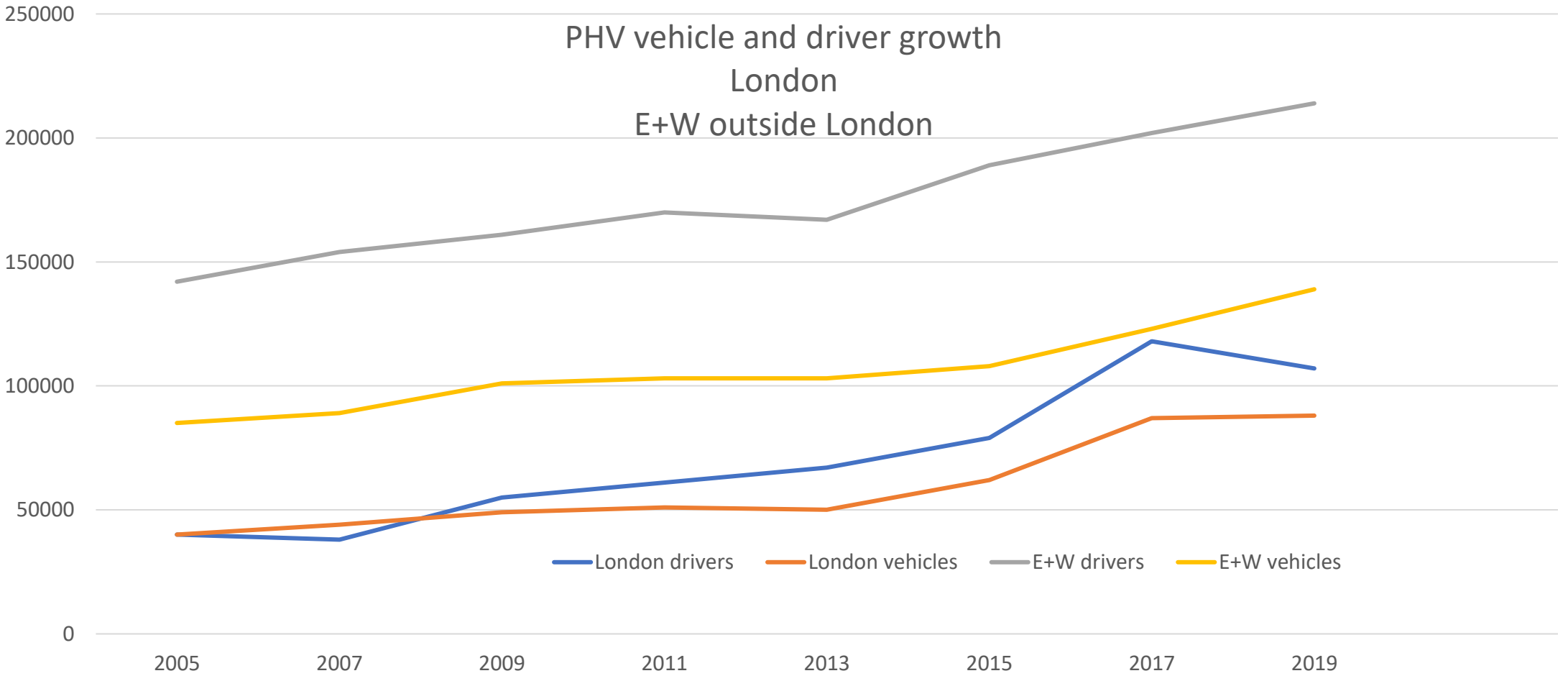
PART 1: INTRODUCTION

Introduction

- The private hire industry has been revolutionised by app-based providers.
- It has caused a huge increase in provision.
- It has benefited users in many ways.
- It has disrupted the market, to the chagrin of others, particularly the hackney carriage industry.
- And it has posed serious problems for regulation under our outdated legislative system.
- In this talk, I shall demonstrate that, used creatively, the legislation is still robust enough to respond to this new challenge.

The growth of the industry



Why?

Supplier side:

- App-based industry.
- National branding/advertising
- Reach of services: operators could trade nationally on one local licence

Customer side:

- Ease of booking
- Familiarity
- Safety
- Wait times
- Trackability
- ID of driver
- Sharing ride details
- Last mile
- Cost
- Ride sharing
- Transparent charging
- Rating

Concerns

Forum shopping

Sub-contracting

Lack of local connection of drivers

Unstaffed offices / no offices

Competition to traditional industry

Congestion / parking

Cross-bordering

Differential standards

Topographical knowledge

Language skills

Plying for hire

Safety

Driver exhaustion

Status, pay and conditions

Taxation

Enforcement powers

Cost of enforcement

Solutions?

- Some voluntary action by IOL, LGA.
- Calls for legislation
  - See e.g. Task and Finish Group, London Mayor, LGA.
  - But little Parliamentary bandwidth
    - Brexit
    - Coronavirus
- Case law:
  - All cases trying to control growth of industry have failed.

Self-help

- Thesis of this talk: authorities have all the powers they need to control the modern private hire industry.
- I shall now consider what measures have been taken.
- I shall look at what has not worked and why.
- Then I shall consider what will work.
- The solutions all arise from a study of the legislation and case law.

Health warning

- This is a legal talk about powers.
- It is not about what authorities should do as a matter of policy or politics.
- And it is about regulation of the industry as a whole
- It does not concern any operator in particular, even though the publicly documented case examples I use refer to particular operators.
- It is certainly not a call to action against any particular operator.
- And while it contains legal views, it is not, and should not regarded as, legal advice.
- All information in this talk derives from open source material the most important of which I reference.

PART 2:

REGULATORY RESPONSES TO MODERN PRIVATE HIRE INDUSTRY

Local Government Association

- Taxi and PHV Licensing Handbook for Councillors
- Last published by LGA in August 2017.
- Essential training tool, including “fit and proper”, partnership working, intel sharing, joint ops, disability/equality etc.

https://www.local.gov.uk/sites/default/files/documents/10.9%20Councillor%20Handbook%20-%20Taxi%20and%20PHV%20Licensing_November_2017.pdf

National Register of Taxis and Private Hire Revocations and Refusals (NR3)

- Commissioned by LGA as voluntary register.
- Went live July 2018.
- Authorities add refusals, revocations, suspension.
- It hinders drivers forum shopping after losing / failing to get a licence in another district.
- It improves information regarding past conduct available to authorities in determining licence applications.

Institute of Licensing

- Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades
- Launched April 2018
- Sets out proposed policy in relation to licensing those with previous convictions.
- Now widely used.

https://www.instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_(16_May_2018).pdf

Task and Finish Group

- Taxi and Private Hire Vehicle Licensing: Steps towards and safer and more robust system (Al Haq report). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745516/taxi-and-phv-working-group-report.pdf
- 34 recommendations, including legislation:
  - Update regulation of two-tier trade
  - National minimum standards
  - Single metropolitan licensing authorities
  - Definition of plying and pre-boking
  - Power to cap numbers
  - Power to inspect any vehicle in area
  - Prevention of cross-bordering

Government response

- Agreed objectives:
  - National minimum standards
  - National enforcement powers
  - National licensing database
- Largely rejected call for legislation, including cap powers.
- Supported better co-ordination and guidance

Draft statutory guidance (1)

- s 177 Policing and Crime Act 2017 passed following Jay and Casey report re Rotherham
- It provides:

  "The Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm."
- In February 2019, DfT issued draft guidance.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784216/taxi-phv-licensing-protecting-users-draft-stat-guidance.pdf

Draft statutory guidance (2)

- Authorities should publish policy based on public protection, including convictions policy.
- Fit and proper test: would you allow someone you care for, regardless of their condition, to travel alone in this person's vehicle, day or night?
- Language proficiency
- Checks: DBS, including barred lists, police, neighbouring authorities, applicant's self-disclosure re licensing history.
- Interim checks through DBS update service.
- Drivers to notify authority of arrest, charge or conviction for relevant offences.

Draft statutory guidance (3)

- All involved in system should be trained, including procedures, natural justice, CSE, PSED etc.
- Authorities to provide system for making, recording, analysing and following up complaints.
- Authorities to notify risks to DBS.
- Info sharing / authorisation of enforcement officers in other authorities
- Authorities to provide safeguarding advice and guidance to trade, so that they behave appropriately and report concerns, including county lines.
- Authorities to give guidance to passengers, e.g. difference between

  hackney and PHV and recognising unlicensed vehicles.

Draft statutory guidance (4)

- Guidance cautiously encourages CCTV in taxis subject to:
  - proportionality. Strong justification and regular review needed.
  - Authority is data controller, so privacy must be considered. E.g.
    - AV or just video?
    - Ability to switch off when car not being hired.
  - Compliance with Codes by Home Office, Surveillance Camera Commissioner and Information Commissioner.

  See further below.

Draft statutory guidance (5)

When is final Guidance expected?

- Government received over 500 consultation responses.
- October 2019: Minister said guidance will be issued “very shortly.”

PART 3
RECENT CASE LAW

Recent case law

The case law represents a litany of failure for public authorities.

- LTDA v Lalov (2018)
- Reading BC v Ali (2018)
- R (Delta and Uber) v Knowsley MBC (2018)
- Uber v Brighton and Hove CC (2019)
- Milton Keynes Council v Skyline (2017)
- R (Rehman) v Wakefield CC (2019)

The plying for hire prosecutions

- Attempts to attack Uber drivers as plying for hire
  - LTDA v Lalov
    - Motivation – trade protection
  - Reading BC v Ali
    - Motivation – influx of London-licensed vehicles into Reading town centre.
    - So?

Cross-border hiring

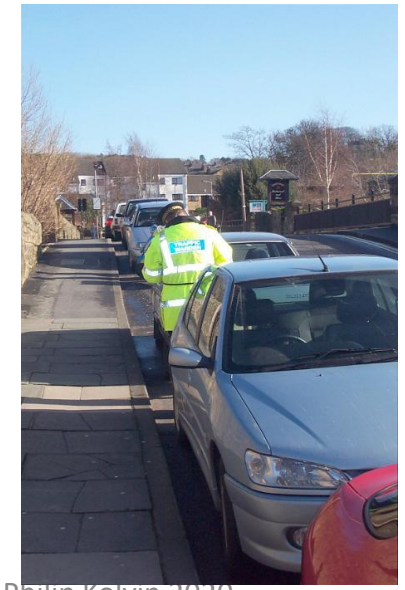
Reading BC spoke for a number of authorities in being concerned about cross-border hiring.

The issues include:

- Public safety
  - E.g. driver refused in area A can get licensed in area B and drive in area A
- Undermining local licensing standards. E.g.
  - Emissions
  - Vehicle safety
- Hindering complaints
- Lack of local enforcement powers
- Congestion
- Mismatch between licensing fee income and funding of enforcement where it is required.

Despite different motivations, the legal case was the same:

THE APP-BASED PRIVATE HIRE DRIVER IS PLYING FOR HIRE



The offence

Any person found driving, standing or plying for hire without a licence

Section 45 Town Police Clauses Act 1847

- The underlying basis is an inchoate offence.

Come again?

Going equipped for theft

- Possession of bladed weapon

Conspiracy

- If you are standing in street with your horse and carriage, you must be plying for hire.
- You are preparing to take as a passenger anyone who cares to step in.
- There can be no other explanation.

Meanwhile ….

- Hiring a carriage from a job-master has never been illegal.
- However, it became licensable in 1976.

Methods of private hiring mid-19th century

Method of private hiring
Early 20th century

Method of hiring 1930

Method of hiring
1950

Method of hiring
1990

Method of hiring 2018

The question

- Is hiring by app a form of plying for hire?

1847 PC to man with horse and carriage

Q What are you doing here if not plying for hire?

A Ummm.

2018 licensing inspector to driver in car

Q What are you doing here?

A I am awaiting a lawful private hire booking through an app.

The app-driver's defence

- Plying for hire is directed at invitations to public to step in without prior booking
- Private hire booking through job-masters (operators) has never been plying for hire
- Booking the cab through the app is just the modern way of doing it.
- There is a difference between:
  - inviting a member of the public to step in without a booking
  - a genuine pre-booking

Licensed Taxi Drivers Association v Lalov

- LTDA private prosecution following booking by app
- Proclaimed as a “sting”.
- Lalov invited Director of Public Prosecutions to take over the case, using rarely-exercised powers.
- DPP (through Crown Prosecution Service) took over the case and discontinued the prosecution.

Reading BC v Ali

- Council prosecuted Uber driver in unmarked vehicle sitting lawfully by roadside awaiting next booking through app.
- Council originally alleged that any private hire driver licensed elsewhere waiting in Reading was plying for hire.
- That case was abandoned.

- The Council then alleged that the driver signalling his/her presence through the app was plying for hire.
- Chief Magistrate rejected the argument.
- She said this was just a modern way of booking through a job master.

- Reading BC appealed by way of case stated.
- The High Court agreed with the Chief Magistrate.
  - Plying involves exhibition + soliciting custom + without pre-booking.
  - Display of anonymised image on app is not exhibition: it just informs customers that there are vehicles in vicinity. It is like a phone conversation: “there is one 5 mins away.”
  - There is no solicitation: neither vehicle nor driver were soliciting custom.
  - There was pre-booking.
  - Agency arguments are irrelevant.

Where does this leave plying for hire?

- Some authorities will only prosecute following a test purchase ride.
- That ensures that enforcement is taken only when the inchoate offence matures into a case of taking the rider without prior booking.
- This is a sensible approach.
- I.e. the concept of plying for hire can be used against errant PHV drivers.
- But it is not a means of controlling lawful cross-border hiring, much less of regulating the industry as a whole.

Intended use policies

R (Delta Merseyside and Uber) v Knowsley MBC

- PHV policy created presumption that drivers who do not intend to work predominantly in Knowsley will not be granted PHV licence.
- Drivers required to commit to driving predominantly in Knowsley on pain of suspension/revocation for "avoiding the statutory principle of local licensing."
- Claimants judicially reviewed the policy, arguing that:
  - all Act requires is trinity of licences in place (operator, vehicle, driver).
  - policy breaches the "right to roam" under s 75 LGMPA 76.
- KMBC argue that a driver who drives predominantly elsewhere is not fit and proper.
- Claimants retort that fit and proper relates to personal qualities and professional qualifications, not where driver chooses to drive.
- Court agrees. If you are fit and proper in Gateshead you are fit and proper in Minehead.

BUT…

- Though not relevant to the decision, Judge considered whether a condition regarding place of use could be imposed.
- Without deciding the issue, he said:

> "…. in principle, a condition on a licence could be imposed which, if otherwise lawful, would require a fit and proper person who is a licence holder to abide by whatever restrictions are contained within the condition that are considered reasonably necessary to meet any perceived erosion of localism in the governance of PHV licensing."

Park that thought.

Attacking influx

Uber v Brighton and Hove City Council

- BHCC refused to renew Uber's operator's licence on the main ground that Uber permitted drivers using its App to drive in Brighton while being licensed elsewhere. It considered that this eroded local control and so Uber was not fit to hold the licence.
- DJ rejected the contention that Uber's conduct was relevant to its fitness and propriety as an operator:

  "The case law on the question of fit and properness is unequivocal. The test relates to the personal characteristics and qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do. The recent decision in [Knowsley] is on a very similar point and clearly rejects the argument that previous authorities justify a proposition that a policy restricting statutory rights is lawful. It follows that a refusal on the basis of the argument put forward by BHCC that UBL are fit and proper as long as they agree to a condition restricting their right to roam but otherwise are not is, therefore, clearly not lawful."

- On appeal BHCC additionally requested a condition preventing Uber allowing drivers to come into Brighton from certain other authority areas.
- DJ refused to impose a condition restricting Uber's right to use licences granted elsewhere to restrict its activities in Brighton. She said:

  "The law is equally clear in respect of the exercise of discretion in attaching conditions to licences. The authority is not at liberty to use [discretion] for an ulterior object, however desirable that object may seem to be in the public interest".

But what is an ulterior object in the context of PHV licensing?

Park that thought.

Cross-border sub-contracting

Milton Keynes Council v Skyline

- Since s 11 Deregulation Act 2015, operators can sub-contract bookings across borders.
- Skyline in MK sub-contracted to itself in South Northamptonshire without human intervention through iCabbi dispatch system.
- MK prosecuted saying the booking had not been lawfully sub-contracted driver so the “trinity” of operator/vehicle/driver licensed by same authority was not in place.
- DJ dismissed the case.
- High Court agreed.
  - No need for human intervention. Electronic transfer suffices.
  - An operator can sub-contract to itself.

- On the facts, High Court held it was open to DJ to hold that Skyline had accepted the job then transferred it.
- And it did not matter where precisely Skyline accepted the booking.
- The sub-contracting provision is focused on the district in which the sub-contracted booking is accepted as a booking, i.e. *"as a booking subject to the licence in that district…."*
- Here, the sub-contracted booking was accepted as a booking in South Northamptonshire and so a vehicle and driver licensed there could be provided to carry it out.

BUT ….

- What if the booking was not in fact accepted by the operator at all but by the driver?
- High Court judgment does not address that.

Park that thought.

Fees

R (Rehman) v Wakefield City Council (2019)

- WCC set vehicle fees to recover costs of supervising drivers.
- Court of Appeal hold this was unlawful.
- S 70 LGMPA only permits recovery against vehicles and operators for specific items
  - Inspecting vehicles
  - Cost of provision of hackney stands
  - Administrative costs of above + supervision of hackneys/PHVs
- Effect of R (Hemming) v Westminster City Council:
  - Taxi legislation is clear about what items are covered.
  - There is no general common law principle of cost recovery.
  - Hemming line of authorities are regime-specific.

BUT!

- Fees for vehicles and operators:
  - Court of Appeal makes clear that S 70 does permit recovery of costs of monitoring and enforcing conditions and requirements for operators' licences.
- Fees for drivers:
  - Section 53 permits recovery of "costs of issue and administration".
  - "Administration" adds something to "issue".
  - It extends to post-issue administration including:
    - Costs of suspension / revocation
    - Compliance monitoring.

Park that thought.

ONGOING LITIGATION

TFL and Uber

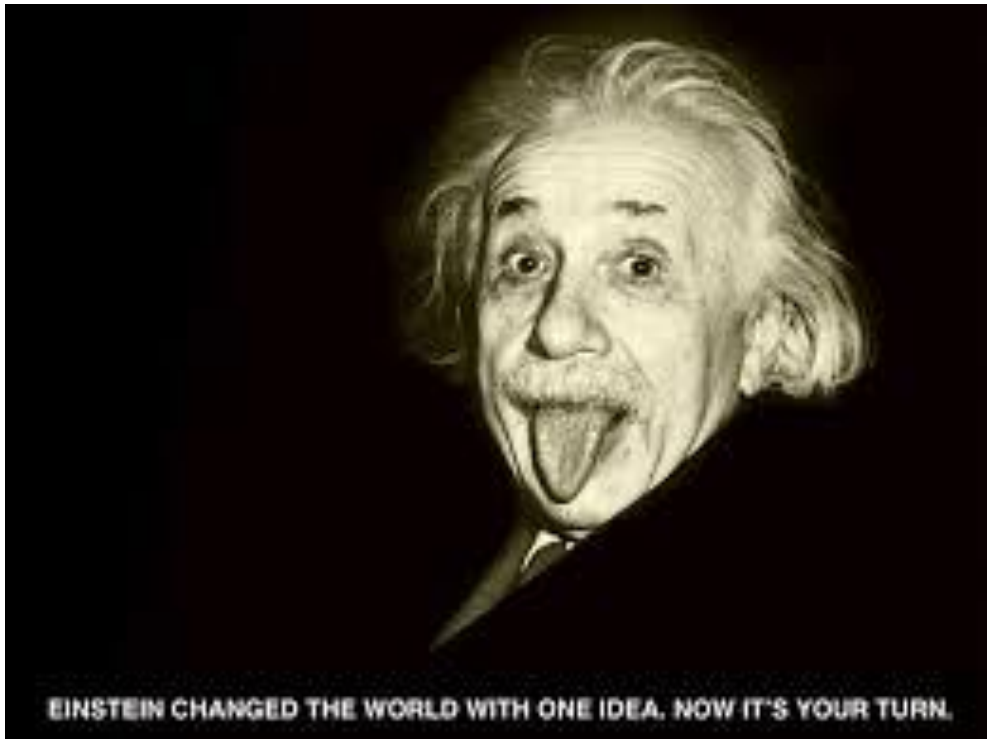
- TFL refused to renew Ubers' licence in November 2019 http://content.tfl.gov.uk/tfl-decision-letter-to-ull-25-november-2019.pdf
- Although Uber had improved systems and refusals since its previous appeal was allowed in 2017, concerns had arisen:
  - Drivers had driven without insurance.
  - Drivers driving using another's account details.
  - Uber was addressing systems faults and incidents falling.
  - But question of confidence remained in Uber's ability to prevent incidents of that kind occurring in the future, since some of them derived from weaknesses in ULL's systems and service management process.

    "The number, pattern, seriousness and causes of the breaches raised serious concerns for TfL as to Uber's ability to prevent such breaches recurring in the future."
- Appeal to be heard later this year.
- The case concerns Uber's systems, and therefore the result is likely to be relevant to authorities outside London too.

PART 4
SOLUTIONS

Enough of

Let’s do some



I am going to approach it like this:

- Absent operators
- Wandering drivers
- National apps
- The concept of a fit and proper operator
- Numbers caps
- Licence periods
- Conditions
- Ranks
- Enforcement approaches
- Fees

ABSENT OPERATORS

- How do you deal with an operator
  - Without staff in the district?
  - Without an office in the district?
  - Without a server in the district?
- What of a business which has no infrastructure in the country at all?
- Can there be two operators?

In searching for answers, we have to consider what it is to operate.

- As everyone knows:
  - Outside London, the test is making provision for invitation or acceptance of bookings: s 80 LGMPA 1976.
  - In London it is making provision for the invitation or acceptance of, or accepting, private hire bookings: s 1 PHV(L)A 1998.
- Note the repeated disjunctive “or”. It is important, as we shall see.

Outside London

- Here are some general propositions:
  - Unlike London, there is no statutory requirement for bricks and mortar premises.
  - There is no statutory requirement for staff.
  - There is no statutory requirement for a server. This is 1976 legislation!

- Then what is required?

Case law on operation outside London

- It does not matter where the contract is actually made, only where provision is made for invitation or acceptance of booking: Windsor v Khan (1994).
- Operation does not mean “use”: Adur v Fry (1997).
- Advertising is not operation: Kingston v Wilson (1995).
- Milton Keynes v Skyline (although it concerned sub-contracting under s 55A, the dicta probably apply more widely):
  - It is not relevant to ask where the booking is accepted.
  - Manual booking records not required.
  - Location of the servers is not relevant.

- That is a lot of nots!
- Again, what is required?
- In general, look for anything at all – by way of infastructure, technology, administration or staff – which amounts to making provision either for invitation or for acceptance of bookings.
- But what if there is none?

- In Milton Keynes, Hickinbottom LJ made a suggestion, which is quite revolutionary in scope:

  "51…. To maintain the trinity of requirements, as section 55A does, it is vital that the second operator accepts the booking as one made in the district in which he has an operator's licence. It is in that manner that the integrity of the scheme is maintained."

- Therefore, at least outside London, one means of being characterised as an operator in a district is submission to the jurisdiction of the licensing authority in that district.

- But it does not work in reverse.
- An operator who did establish a full office to take bookings in a district could not say *“I am not an operator because I choose not to become licensed as one”.*
- That would turn the legislation on its head. Rather than saying *“operators need licences”* it would be saying *“only licensees are operators.”*

- Therefore, there could be two operators within the same business operation:
  - One who chooses to be licensed.
  - One who requires to be licensed.
- See e.g. East Staffordshire v Rendell (1995), the diverted phone call case, where both the offices from and to which the diversion was made required operators' licences.

- There are two significant ramifications of the above analysis.

Ramification 1

If an authority thinks, for proper regulatory reasons, that the operator should have an office in the district, it can require it by condition.

Section 55 permits conditions to be attached which the authority considers to be “reasonably necessary.”

What would be a proper regulatory reason?

- A place to make spot checks or for compliance meetings.
- A place for drivers to register, be trained and meet.
- A depository for lost property.

One benefit of this is to reinforce the localism inherent in this legislation.

For localism, see e.g. Blue Line Taxis (Newcastle) Limited v Newcastle City Council (2013) para 8.

Ramification 2

Once the concept of “operate” is disengaged from bricks and mortar, focus is then thrown on the driver under an app-based arrangement, particularly if the booking is accepted not by the app-provider but by him/her.

Park that thought.

- Where the “operator” accepts the booking and then looks for a driver to fulfil it, this is just like calling the driver on a car radio system and asking if they are free.
- From the customer’s point of view, seeing the outline of a driver’s car on the app and enabling them to book a (not necessarily the) car is like advertising in Windsor v Khan (1994) which is not operation.

- But what if the app-provider does not itself accept the booking, does not contract with the customer, and throws the customer's offer to drivers in general, for acceptance by one of them?
- The driver has autonomy. S/he is the one who says to the customer *"yes I will accept your booking"* and despatches him/herself.
- How is that different from the driver sitting in an office accepting a booking and then driving to the customer to execute it?
- And by switching on the app and making himself available to receive customer requests, is he not making provision at least for acceptance of bookings?
- What we now have, at least arguably, is a system in which the driver *"operates"* and therefore requires an operator's licence wherever he accepts the booking.

- If that analysis is right, what of the app-provider?
- The app-provider is not just advertising to the customer wherever s/he happens to be to enable the customer to call them at their office, like in Windsor v Khan.
- Arguably, the app-provider is also making provision, wherever the driver is, for inviting and/or accepting bookings by the driver in that district.
- Remember, the app-provider is not compelled to permit customers to book direct with drivers. It is a choice.
- Arguably, the consequences of that choice are that both the app-provider and the driver “operate” wherever provision is made through the app for the invitation or acceptance of bookings.
- The fact that this would be an inconvenient conclusion for app-providers does not make it wrong.

- But isn’t it unrealistic to have two operators for one booking?
- No.
- See East Staffordshire v Rendell.
- The Act does not prevent there being two operators.
- It just says that where someone makes provision in a controlled district they need a licence.
- If provision is made in two places, or through two entities, two licences may be required.
- Remember the disjunctive?
- If the Act says making provision for invitation or acceptance is operating, then where one makes provision for invitation and one makes provision for acceptance, both are operators.

- Isn’t this cured by the app-provider submitting to the jurisdiction in one district?
- No.
- That would cure them of criminal liability in the place in which they have done so.
- It does not prevent their being an operator, or their driver being an operator, somewhere else.

- A footnote.
- In East Staffordshire v Rendell Simon-Brown LJ said that the full consequences of the decision for drivers taking bookings over mobile phones would need to be worked through in other cases.
- This is that case.

What about London?

- The concepts above apply just as or even more strongly to London.
- For there, the definition of operate in section 1 and the offence provision in section 2 specifically refer to acceptance of bookings, and not just making provision.
- Remember the disjunctive!
- Therefore, the driver in London who accepts the booking on the app may be considered to be an operator as well as the person/company making provision.

Let’s test that

Step 1:

- The app-provider and its app technology are situated abroad.
- The app-provider is licensed in District A
- It utilises vehicles and drivers in District A.
- The driver is responsible for accepting bookings.
- The trips are in District A.
- Most would accept that the “trinity of licences” requirement is satisfied.

Step 2

- The app-provider surrenders its licence.
- It claims that it is not “operating” in District A.
- District A prosecutes app-provider and a driver.
- A court would hold that:
  - it is operating by making the app available to drivers and riders in District A;
  - the driver is operating by dint of making provision for acceptance of bookings (by him/herself) by registering and making himself available for bookings on the app.
- Certainly, the app-provider could not say “I was operating when I was licensed, but by ceasing to be licensed I am no longer operating.”

Step 3

- The app-provider now makes the app available in District B, using drivers licensed in District C and vehicles licensed in District D.
- District B prosecutes the app-provider and the driver.
- A court would hold that:
  - it is operating by making the app available to drivers and riders in District B;
  - the driver is operating by dint of making provision for acceptance of bookings (by him/herself) by registering and making himself available for bookings on the app.
- Certainly, the place where the drivers happen to be licensed would make no difference to the analysis of whether they are operating in District B.

Summarising:

- Cases suggesting that the app-based driver is plying for hire have failed.
- But there is a respectable argument that where the driver accepts the booking through an app, both s/he and the app-provider are operating where the booking is taken.

THE WANDERING DRIVER

What then of the wandering driver?

Now we have two solutions.

First solution

- As Kerr indicated in Knowsley, there is no jurisdiction to deem a driver unfit just because s/he elects to drive elsewhere, given that section 75 of the Act confers a right to roam.
- However, as he also said, a condition might be imposed to counter a perceived erosion of localism.
- Questions:
  - Is this right in principle?
  - What might a condition say?

The principle:

- Section 51(2) LGMPA 1976 confers a wide discretion to attach such conditions as are reasonably necessary.
- It is clear law that a statutory discretion, including to impose conditions, can only be exercised for a purpose relevant to the objects of the legislation. See e.g. Padfield v MOD (1968) and Blue Line v Newcastle (2012). Otherwise, it is exercised for an "ulterior" purpose.
- So what purposes are relevant?
- Clearly, purposes concerning safety are relevant.
- But it is also a fundamental purpose of the legislation that there is local control, hence:
    - licensing in each local authority district;
    - the need for a trinity of licences issued by the same authority as explained in Shanks v North Tyneside BC (2001).
    - Kerr J's comments in Knowsley.
- So why should a condition could not be imposed to protect local control if it is considered reasonably necessary?
- Any such condition should acknowledge the right under section under 75 to start in, pass through or end in any district.
- Subject to that, I am clear that a condition could be imposed in principle.

The content of the condition.

- The “predominant” requirement is uncertain.
- It is therefore difficult to enforce against. E.g.
  - Over what period is it measured?
  - What if a driver, quite by chance, spent the whole day running around out of district?
- The following conditions might be considered:
  - Driver to be “based” in the district. (This allows some flexibility but would stop a driver just driving to another district to await bookings.)
  - Driver to return to the “home” district following a booking. (This imposes a direct obligation to return if their previous journey ends out of district.)
  - Driver not to await bookings when out of district. (This would enable them to take a booking starting in any district, and also bookings out of district when on the move, but would prevent them parking up in a town centre out of district to await a booking.)

Second solution

- Where the driver is accepting the bookings, treating him/her as an operator (see above).
- This is obviously a more draconian approach.
- In London, it is even more draconian, because of the requirements in s 2 of the 1998 Act for an operating centre.

Enforcement against drivers

In addition, later on I shall consider effective enforcement against wandering drivers.

NATIONAL APPS

- A common feature of national app-based businesses is that, wherever the customer happens to be, they have a single means of making the booking, through the app.
- Imagine a provider with licences in different parts of the country.
- If you want to book a car from their operation in District A, you are not given a special means of contacting the operator in District A. You contact the operator through the app, and they "allocate" you a driver.
- Is this legal and/or can it be prevented by condition?

- In Blue Line v Newcastle Council (2012) an operator was licensed in North Tyneside.
- To cater for demand it also applied for a licence in Newcastle.
- Newcastle Council wanted the Newcastle operation to be a discrete business.
- It therefore imposed conditions that the operator had to maintain an independent operation in Newcastle by the installation of a dedicated, exclusive telephone line, with its own unique number.
- On opening, the operator provided a unique number, but it also operated a number in common with the North Tyneside office, to be answered according to staff availability.
- Newcastle Council found out about this, and revoked the licence.
- The Justices upheld the revocation.
- The operator appealed to the High Court.

- Among other issues, the High Court considered whether the conditions were *ultra vires.*
- That equated to whether they pursued a legitimate aim.
- The operator argued that the conditions were an “improper interference with its commercial freedom and its ability to expand taking its brand with it, without any furtherance of the purposes of the statute or its regulatory regime.”
- Hickinbottom J disagreed.

- Hickinbottom J said at [64]:

  The Act promotes various public objectives, including public safety and welfare, intelligence gathering and the combating of crime, and ensuring there is a regulatory scheme that is effective and effectively enforceable (see Law Commission Consultation Paper, paragraphs 4.68 and following), through a local authority licensing regulatory scheme. The hallmark of that scheme is localism: as well as the local licensing of every operation, vehicle and driver, the public vehicle hiring operation must be in fact be locally based, and the obligations imposed on operators must be capable of enforcement locally by the relevant local licensing authority.

- He went on to find that the conditions requiring the Newcastle operation to maintain an exclusive, discrete telephone number did promote a legitimate aim, and the licensing authority was best placed to know what is required in their own local area.

- He also said:

It seems to me that the telephone conditions pursued other legitimate aims. In particular, whether or not the public place faith in the local licensing system, more importantly Parliament does: Parliament has placed its faith in a system in which local licensing is at its core. It is a notable essential characteristic of the regulatory scheme imposed by statute that, in respect of any journey, a single authority must license the operator, vehicle and driver. In those circumstances, it must be a legitimate aim of a licensing authority to have better local vigilance, control and enforcement over an operator; and conditions that are imposed to obtain such control pursue that legitimate aim.

An inconvenient result for operators?

"It is clear from the evidence before me – and, as I understand it, uncontroversial – that private hire vehicles do very often make journeys partly, or even wholly, outside the area of their licensing authority, especially in conurbations … The licensing system for taxis, upon which the system for minicabs is based, was formulated at a time when most journeys would have been wholly within an authority's area – and, therefore, it could perhaps be said that local licensing may be less appropriate now than it was historically.

However … localism is still a hallmark of the private hire vehicle regulatory scheme. The problem of localism – if problem it be – is not for Newcastle Council as licensing authority (which has a duty to perform the obligations the 1976 Act has placed upon it), but for Blue Line as operators…. It is not for me to consider or comment upon the localism inherent in the regulatory scheme; except to say that it is a firm and clear characteristic of the scheme, which can only be changed by Parliament, if it considers such a change appropriate."

- Blue Line, of course, deals with telephone conditions rather than apps.
- But there is no principled distinction between the phone line and the app.
- Hence, if an authority considers it necessary to require an app-based operator to maintain a discrete mode of communication for bookings through it local operation, in my view it has the legal power to impose such a condition.

- In deciding whether a condition should be imposed, the authority might wish to consider other factors, e.g. what measures operators have put in place to protect customers who have disputes or wish to complain, such as complaints lines or informing the customer of the driver's licensing authority.
- However, that goes to whether a condition should be imposed in a particular case.
- It does not go to whether a condition may be imposed as a matter of law.
- In my view, it may.

THE FIT AND PROPER OPERATOR

In this section, I ask whether conduct of an operator, e.g. towards its drivers or the tax authorities, whether lawful or not, might be relevant to their fitness and propriety.

Below, I use a set of reported facts taken from open source material as a springboard for discussion, not as advice regarding the operator in question, about which I express no view.

The economic model

- Operators might keep tax and benefit cost low by:
  - treating themselves as information providers abroad, not transport providers here, so not having to pay VAT on fares;
  - treating drivers as self-employed rather than workers, so saving NI, payment of minimum wage and other worker benefits;
  - not earning significant profits in this country, so avoiding tax.
- The customers and shareholders may benefit, but public funds may be depleted and unfair competition may result.

Example

- I have selected Uber because its activities are extensively documented on the internet.
- The most widely cited cases include:
  - UK
  - Spain
  - USA
  - Other jurisdictions

UK

Aslam v Uber

- Drivers claim as workers for minimum wage and paid leave
- Claim succeeds in Employment Tribunal.
- Uber appeal unsuccessfully to Employment Appeal Tribunal
- Uber appeal unsuccessfully to Court of Appeal which agrees that:

  "… it is not real to regard Uber as working "for" the drivers and that the only sensible interpretation is that the relationship is the other way round. Uber runs a transportation business. The drivers provide the skilled labour through which the organisation delivers its services and earns its profits."

- Uber also tried to argue that if there was a worker relationship it was with Uber BV, a Dutch company.
- Court of Appeal dismissed that too:

  “Despite protestations to the contrary in the Partner Terms and New Terms, [Uber London Limited] self-evidently exists to run, and does run, a PHV operation in London. It is the point of contact between Uber and the drivers. It recruits, instructs, controls, disciplines and, where it sees fit, dismisses drivers.”

  Uber has appealed to the Supreme Court.

- The case is important.
- Uber report to USA Securities and Exchange Commission:

> *"Losing the case may lead the UK tax regulator (HMRC) to classify us as a transportation provider, requiring us to pay VAT (20%) on Gross Bookings both retroactively and prospectively. It may also determine us to be an employer for tax purposes, resulting in 13.2% national insurance contributions being payable by us on driver income. Further, if Drivers are determined to be workers, they may be entitled to additional benefits and payments, and we may be subject to penalties, back taxes, and fines."*

R (Good Law Project) v HMRC and Uber

- Based partly on Aslam, GLP argues Uber is liable for VAT as principal rather than simply being the agent of the (independent contractor) driver.
- According to GLP:

  - When GLP started JR Uber's publicly stated position in its filings to SEC was:

    "Losing the [Aslam case] may lead … HMRC to classify us as a transportation provider, requiring us to pay VAT (20%) on Gross Bookings both retroactively and prospectively."

  - After the JR started Uber changed its position in its SEC filings, stating:

    "the Company is involved in a proceeding in the UK involving HMRC, the tax regulator in the UK, which is seeking to classify the Company as a transportation provider."

- GLP estimate the potential liability as > £1bn.

During the proceedings:

- On 19.11.19 Lieven J ordered that HMRC could make disclosure of information regarding Uber's tax position.
- Uber resisted on grounds of confidentiality.
- Uber have appealed the order to the Court of Appeal.

USA

- O'Connor, et al., v. Uber Technologies, Inc. and Yucesoy v. Uber Technologies, Inc., et al.
  - Class actions for alleged independent contractor misclassification and unfair competition.
  - $20 million settlement (not including arbitration claims).
  - Settlement did not require the Company to start classifying Driver Partners as employees in California or Massachusetts.
- Bill
  - However California passed a bill to change how contract workers classified.
  - So Uber changed the app, e.g. by letting drivers set their own rates, claiming drivers remained independent contractors.

Spain

Asociacion Profesional Elite Tax v Uber

- Taxi association brings claim against Uber claiming illegality, misleading practices and unfair competition.
- One issue is whether activities are licensable.
- This turns on whether services are transport services or information society services (i.e. provision of app).
- Uber says it is information provider not a transportation service.
- Spanish Commercial Court refers question to CJEU.
- CJEU says Uber provides a transportation service:
  - Uber sets the conditions under which drivers provide service.
  - Uber determines maximum fare.
  - Uber has some control over quality of vehicles, drivers and their conduct.

Other jurisdictions

- Australia
  - A class action is proceedings for losses cause by independent contractor misclassification.
- Canada:
  - Driver starts court proceedings against Uber stating he is employee.
  - Uber invokes arbitration clause and says case must proceed as arbitration in Netherlands.
  - Court of Appeal says arbitration clause is illegal contracting out of an employment standard and is unconscionable.
  - Uber appeals to Supreme Court.
- Switzerland
  - The Swiss State Secretariat for Economic Affairs and authorities in Zurich, Lausanne and Geneva regards Uber drivers as employees.
  - Geneva decides to ban Uber "until the company rectifies its violations and complies with the law."
- France
  - *La Cour de Cassation* (Supreme Court) has characterised drivers as employees: they cannot build their own client base or fix the prices which he/she thinks is fair.

Also:

Uber's SEC report:

> The Company has been subject to various government inquiries and investigations surrounding the legality of certain of the Company's business practices, compliance with global regulatory requirements, such as antitrust and Foreign Corrupt Practices Act requirements, data protection and privacy laws, and the infringement of certain intellectual property rights. The Company has investigated many of these matters and is implementing a number of recommendations to its managerial, operational and compliance practices, as well as strengthening its overall governance structure. In many cases, the Company is unable to predict the outcomes and implications of these inquiries and investigations on the Company's business which could be time consuming, costly to investigate and require significant management attention. Furthermore, the outcome of these inquiries and investigations could negatively impact the Company's business, reputation, financial condition and operating results, including possible fines and penalties and requiring changes to operational activities and procedures.

- What about corporation tax on profits?
- Uber London Limited's 2018 accounts say that its principal activity is to provide local marketing and support to the Uber Group.
- I.e. while it holds an operator's licence, its principal declared activity is not being a transport provider or operator.
- It had a turnover of £68m relating to the principal activity, administrative expenses of £62.5m and an operating profit of £5.9m on which it paid tax of £750,000.
- The equivalent figures for Uber Britannia Limited were £2.3m turnover, £2.2m expenses, £177,769 profit and £28,000 tax.
- It is public knowledge that there are 45,000 Uber drivers in London.
- Even just taking the London figures, it seems clear that the main income of the group is declared elsewhere.
- To be clear, there is no suggestion this is unlawful, but it is striking.

Issues:

- These issues relate to the industry in general:
  - Could an operator's treatment of drivers (whether lawful or not) impact on a fitness and propriety finding?
  - Could a licensing authority condition a requirement that drivers must be employed or that they should receive equivalent benefits?
  - Could so structuring the company that profits are earned in a different country affect its fitness and propriety?

Fitness and propriety: the test

- Classic statement in *McCool v Rushcliffe (1998):*
  - *Approach the test bearing in mind the objectives of the legislation.*
  - *Legislation is intended among other things, to ensure drivers are suitable, namely safe, good driving records, adequate experience, sober, mentally and physically fit, honest, and trusted not to take advantage of employment to abuse or assault passengers.*
- Note:
  - This was directed at drivers, not operators.
  - "Amongst other things."
- R (Blackpool Council) v Blacktax (2008): scheme is designed to serve and protect the public.
- Blue Line v Newcastle Council (2012) at [8]: hallmark of scheme is localism, including being capable of local enforcement.
- Ditto at (64) for objectives of legislation (above).

A modern approach to fit and proper

- “Fit and proper” is a protean concept, capable of adapting to the times.
- And legislation is treated as “always speaking”, i.e. responsive to societal developments.
- E.g. in SEVs, the concept of dancer welfare policies extended the suitability test beyond treatment of customers.
- In gambling, compliance regimes for online operators develop in response to technological evolution.
- In taxi licensing, requirements re emissions and WAVs

  respond to more recent concerns and the technological ability to

  deal with them.

- Section 55 LGMPA simply asks whether an operator is fit and proper to hold an operator's licence.
- Any conduct of the operator as an operator of vehicles must be relevant.
- The more so if drivers, subject to poor remuneration and working conditions, are forced to work longer hours or otherwise evade their own obligations, which carries potential safety risks for themselves and the public. See e.g. Al Haq report para 6.7.
- The licensing authority does not need to take a legal decision on a question of driver status. But it is perfectly entitled to consider whether the operator's approach to the core function of the service – its drivers - makes it suitable or not to be licensed as an operator. The legislation does not mandate that only illegal conduct is relevant.
- See e.g. R v Holborn Licensing Justices ex p Stratford Catering Co (1926): justices required managers of pubs to be on 3 months notice. Licence refused to operator who only granted 1 month. This made manager indifferent to matters of compliance. Refusal upheld.

- I suggest there is a spectrum.
- At one end is conduct so directly relevant that it must be taken into account. E.g. the operator who sold customer's data to a burglar.
- At the other end is conduct so clearly irrelevant that it could not possibly impact on the operator's ability to uphold the objectives of the legislation. E.g. the operator's HQ is abroad.
- In between there is an evaluative judgment to be made, whose lawfulness is subject to *Wednesbury* principles. If that is right, it is unlikely that a court would hold that an operator's treatment of drivers is simply irrelevant.

- Conditions re employment status?
  - I regard this as contentious.
  - There is a lot of lawful self-employment in transportation field.
  - Not all, or maybe not much, self-employment is dangerous, illegal or unethical.
  - Where would authority draw the line?
  - And it may create unfair competition in favour of hackney carriage trade to require PHV drivers to be employees (assuming they want to be).
  - But note Geneva decided to classify Uber as an employer, so obliging it to pay social benefits to drivers to continue operating.

- Conditions re other benefits?
  - Such conditions could lawfully be imposed, such as:
    - Conditions protecting the health or welfare of the driver, e.g. maximum hours, minimum pay per hour.
    - Conditions protecting customers, e.g. from being driven by an exhausted driver.
  - An authority is entitled to want PHV drivers to be awake, alert, efficient and well, and not in rush.
  - It may also not want drivers to wait by the roadside until a surge pushes up prices. The aim should be for the service to be available throughout the day and for drivers to be adequately incentivised to provide it.
  - If there is evidence that the business practices are threatening these goals, it may add relevant conditions to the operator's licence.

Refusal because of treatment of drivers

- An authority concerned with this topic also has the power to refuse a licence/renewal where an operator's conduct in relation to drivers, or approach to the issue, renders it unsuitable.
- This generally accords with advice given by Leading Counsel to the union, the Independent Workers of Great Britain.
- It is also in step with Al Haq report, recommendation 33.

What about tax?

- The licensing system does not exist to regulate the tax affairs of companies.
- If there is no suggestion of illegality, this is not something which falls within the objectives of the PHV licensing regime.
- If there was evidence of criminal activity by a driver or operator in relation to tax, that could be relevant to fitness, because it would go to the integrity of the applicant.
- But although there is debate about the integrity/ethical outlook of global businesses operating on-line, this is not in my view relevant to their fitness and propriety to hold a licence.

- In conclusion on this point:
  - Licensing authorities do have power to impose conditions and even refuse licences, because of poor benefits to drivers, where their working conditions are liable to affect their driving and/or endanger passengers.
  - Licensing authorities are unlikely to have the power to refuse licences or add conditions:
    - concerning the employment status of drivers;
    - regarding matters of tax.

NUMBERS CAPS

- A licensing authority can’t refuse a PHV licence for the purpose of limiting the number of vehicles licensed: s 48 LGMPA.
- An authority can’t refuse an operator’s licence to restrict the number of vehicles because the available grounds of refusal are restricted to fitness and propriety: s 55(1).
- But nothing in the Act legally prevents a condition capping the number of vehicles which an operator may operate provided that a cap is reasonably necessary: s 55(3).

- What could the authority take into account?
  - In my view it could take into account the impact of the decision on congestion, emissions and other road users.
  - See e.g. R (Independent Workers of Great Britain) v Mayor of London (2019) where the decision to impose congestion charge on PHV drivers was upheld. The Court said:

    "… the aim … is to reduce traffic and congestion in the CCZ without affecting the number of wheelchair-accessible private hire vehicles. The congestion reflects the fact that there are more cars in the CCZ. This leads to delays in journeys. Furthermore, average traffic speeds for journeys were forecast to fall and, logically, journey times would take longer still if no action were taken. The presence of vehicles in central London was also considered to contribute to poor air quality and one consequential benefit of reducing the number of vehicles in the CCZ would be a small improvement in air quality. The aim that the defendant sought to pursue, namely achieving a reduction in the number of private hire vehicles in the CCZ, is a legitimate one adopted as a measure of economic, social and environmental policy.
  - Conversely, the authority might take into account danger to vulnerable people by reducing the number of vehicles available to take them away safely. This is a concern raised by the Suzy Lamplugh Trust.
  - It might also take into account:
    - competition issues (see Al Haq p 56)
    - the practicality of a cap. E.g. would drivers just choose to work for another operator? (If other app-based operators are also capped, that issue may not arise.)
- Again, I make no comment as to how this might play out in an individual case.

LICENCE PERIODS

- For operators, the licence period is 5 years *"or such lesser period … as the district council think appropriate in the circumstances of the case."*
- Practice varies as to the period of licence granted.
- A shorter licence (e.g. a year) gives the authority the opportunity to:
  - Keep abreast of changes in regulatory practice and impose such conditions as appear necessary.
  - Formally review performance more frequently.
  - Respond to any relevant issues about the industry or the operator which have been identified by authorities elsewhere.
- It is a wide discretion. All that is needed is for the authority to specify why a licence has been granted for less than 5 years.
- Authorities should consider harmonising licence lengths at least regionally, to reduce forum shopping.

THE USE OF CONDITIONS

Operators

- In general, licence conditions principally require compliance with safety and recording standards.
- It is possible, however, to require more advanced corporate compliance systems, as are required in gambling regulation. E.g.
  - Board oversight of compliance systems.
  - Documented risk assessments, e.g. driver hours (22% of drivers work 7 days p.w.), safeguarding, ride-sharing, hot-spots.
  - Appointment of compliance and/or police liaison officer.
  - Independent audit of compliance (and supply to regulator).
  - Complaints:
    - Recording and reporting of complaints, anonymised if necessary
      - to licensing authority and/or Police
      - where complaint occurred and/or in district licence is held.
    - Regulator access to complaints records / law enforcement portal.
    - Complaints data reporting, with outcomes.
  - Reporting of key events as defined, e.g. systems changes, systems faults (e.g. ability to drive without insurance or licence), serious offences, suspensions, data breaches or losses, investigations by other regulators.
  - Co-operation with investigations, remotely or on-site.
  - Co-operation with enforcement officers in other areas. (See Al Haq recommendation 9).

Regional / national standardisation

- There is no reason why many operator conditions could not be standardised in order to:
  - Produce a level playing field.
  - Prevent forum shopping.
  - Equalise consumer protection.
  - Standardisation need not be across the whole industry: there could be different tiers depending on size of operator.
  - See London Assembly: *Raising the Bar* p 21 https://www.london.gov.uk/sites/default/files/raising_the_bar_-_taxi_and_private_hire_services_in_london_final_report.final_pdf.pdf

- Consider:
  - wheelchair accessibility: only 5% of authorities require all or part of PHV fleet to be accessible. All should require some part of fleet, or some part once x vehicles are reached, to be accessible.
  - 24 hour emergency phone lines.
  - Office in district (see Delta para 28).
  - Prohibition of “national” booking system: see Blue Line.
  - Supply of trip, geographic and hotspot data to regulator. (As in New York.)
  - Clean air plans.
  - Restriction of driver hours. This should be hours on the app, not actually driving.
  - Operators could also be obliged to risk assess drivers, e.g. regarding what other jobs they have and hours they are working, to reduce the number of hours they are working on the app.
  - Supply of data on driver hourly/weekly earnings. See London Assembly, *Raising the Bar* p 18
  - Ability for passengers to register concerns about those with whom they have ride-shared.
  - Eventually, driver verification: biometric or face-recognition log-on technology.
  - Register of ancillary staff taking bookings or despatching vehicles: Basic DBS checks.
- Possible to differentiate larger operators and apply some of the above only to that category.

Driver and vehicle licensing

Standardisation

- Drivers may forum shop over fees, period for determination and licence conditions.
- Authorities may have differential approaches to past convictions, which is what IoL guidance set out to cure.
- This could easily be standardised at least regionally.
- National mininum standards will be an important start.
- As Al Haq said, minimum should not equal minimal.
- But it is likely that authorities revisiting their policies will want to go beyond national minimum standards on an individual or regional basis.

Drivers

- Drivers:
  - Security checks:
    - Presently, 90% of authorities require enhanced DBS and barred list checks
    - 10% require enhanced DBS only
  - Model convictions (IOL guidance)
  - CSE training (77% of authorities require this)
  - Disability awareness training (only 41% of authorities require this)
  - Medical examinations
  - Local knowledge
  - English language assessment
  - Driver training and proficiency
  - Based in district.
  - Display of information
  - Drivers to notify authority of arrest, charge or conviction for relevant offences.

Vehicles

- Testing standards
- Emissions
- Ages
- Livery:
  - See s 47(2) LGMPA
  - R (Simmonds) v Guildford BC (2017).

  E.g.

  “LICENSED AS PRIVATE HIRE VEHICLE BY XXX.
  ADVANCED BOOKINGS ONLY: NOT INSURED UNLESS BOOKED.”

  - Some drivers resist livery because it impedes chauffeur work.
  - But livery is crucial to protect public and identify licensed (and non-licensed) vehicles.
  - See Blue Line v Newcastle (2012) para 6: it is for authority to ensure that customers can complain about an operator to the licensing authority as first and primary port of call.
  - Balance this out.

CCTV conditions

- CCTV is a deterrent and detection device, protecting the public and drivers, reducing the fear of crime and assisting insurance companies investigating incidents.
- It is a cost, but a justifiable one.
- But only 4% of authorities require it.
- Requirement needs to be justified in data protection terms.
- See:
  - LGA Guidance: https://www.local.gov.uk/sites/default/files/documents/5.42%20LGA%20Guidance%20developing%20an%20approach%20to%20mandatory%20CCTV%20in%20taxis%20and%20PHVs_WEB.pdf
  - draft statutory guidance 2.104 for uses and prerequisites.
  - Draft guidance impact assessment p 8 for benefits. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775978/taxi-phv-licensing-protecting-users-ia.pdf
  - Al Haq recommendation 17.

- Draft Guidance cautiously encourages CCTV in taxis subject to:
  - proportionality. Strong justification and regular review needed.
  - Authority is data controller, so privacy must be considered. E.g.
    - AV or just video?
    - Ability to switch off when car not being hired.
  - Compliance with Codes by Home Office, Surveillance Camera Commissioner and Information Commissioner.

ENFORCEMENT APPROACHES

General points

- The system depends on effective regulation
- Wakefield allows you to raise fees to cover the entire compliance function: use it.
- Don’t be the latest Rotherham.
- How much compliance monitoring and enforcement is required is a professional judgment, not a political decision.

- Regulate smart.
- Require operators to provide you the data you need for efficient monitoring, using conditions. E.g. trip and hotspot data.
- Use body worn cameras.
- Use social messaging aimed at drivers, reinforcing key messages.
- Joint working: authorities, DVSA, police, trading standards, EH.
- Joint operations:
  - Councillors' Handbook makes point that joint licensing/police ops are important because only police have powers to stop and search vehicles.
  - Intel sharing protocols.
- Prosecute and suspend/revoke for deliberate, serious or repeated non-compliance.
- Consider penalty points system.
- NR3 is a great tool. Use it.
- Monitor complaints. Don't be another Rotherham.
- Increased clarity for public on complaining.
- The above produces a culture of compliance.
- The public, including vulnerable people, benefit.

Out of district enforcement

- Joint enforcement operations between home and away authorities.
- Protocol for reports of non-compliance by away authority to home authority, using body worn footage, e.g. illegal parking, vehicle defects.
- Authorise officers from other authorities to use enforcement powers on your behalf. Useful protocol in Councillors' Handbook p 25.

Ranks

- Increasing ranks
  - Assists hackney carriage trade
  - Provides more opportunity for step-in trade.
  - Reduces ability for un-licensed vehicles and PHVs to ply for hire.

FEES

- The effect of Wakefield is that all compliance monitoring and enforcement is recoverable.
- It just needs to be charged against the right licence.
- Well-established that authorities cannot make a profit.
- Therefore, must reflect actual costs.
- Therefore, harder to standardise regionally.
- But try to avoid large disparities, which promote forum-shopping.
- Not every operator has to be charged the same fee. The fee could be linked to:
  - Number of vehicles.
  - Number of drivers.
  - Number of trips.
  - Number of out of district trips.

- Standing back:
  - The operator with strong corporate compliance systems reduces costs on authorities.
  - If it is still necessary to increase fees for drivers to cover strong compliance monitoring, this may (and perhaps should) result in adjustment in economic arrangements between drivers and operators.
  - It may also result in an increase to the fare. See e.g. R (Independent Workers of Great Britain) v Mayor of London (2019) where it is recorded that imposing congestion charges on PHV drivers resulted in one company levying £1 for trips in the congestion charge zone and passing it on to drivers.
  - Therefore, do not assume that setting a fee at a level which permits proper enforcement work is unsustainable for drivers.
  - Discuss this with operators too. What are their actual profits from their activities?

PART 5:
CONCLUSION AND NEXT STEPS

LOOK OUT FOR …

- National Guidance
- Any legislation
- The outcome of the Uber v TfL appeal
- The outcome of Aslam v Uber in the Supreme Court

NEXT STEPS

- Revisit policy, particularly regarding conditions and standards.
- Review licence fees.
- Review licensing procedures and information sought.
- Train / retrain councillors.
- Form sub-regional and regional groups to discuss some of the matters canvassed in this talk, common issues, policies and approach to cross-bordering.
- Explore joint and cross-border enforcement initiatives.

CONCLUSION

- In this talk, I have tried to show that, utilising all the powers given to them by the legislation, authorities have all the tools they need to regulate the app-based private hire industry.
- It is sometimes said that corporations wield more power than governments.
- But corporate transportation behemoths yield to the power of the smallest licensing authority.
- There are still many issues to resolve.
- Some will become clearer when the government acts on the Al Haq recommendations.
- I will send out a supplement when this happens.

Thanks for listening

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