

Existential threat to the Brentwood Taxi Trade

This document is prepared with and on behalf of the Brentwood Borough Taxi Drivers Association (BBTDA).¹

1. The purpose of this document is to outline the desperate plight of the hackney carriage and private hire trade licensed by Brentwood Borough Council. There are currently 236 Hackney Carriages and 37 Private Hire Vehicles licensed in Brentwood with around 351 licensed drivers. The trade also employs around 40 staff who work directly within the industry that are local to Brentwood. Brentwood Council have set and expect high standards from the trade in the Borough, who provide an important service to the residents.
2. The hackney carriage trade and the private hire trade of Brentwood face an existential threat from non-Brentwood licensed private hire vehicles, who are licensed by Transport for London (TfL hereafter) where the licensing standards are less stringent.
3. This document sets out how that threat has taken shape over the last 3 years and the challenge that it poses to the trade itself as well as to Brentwood Council as the regulator. The trade seeks your support and assistance in ensuring that the hackney carriage and private hire trade within the borough can be maintained to the high standards that the council and residents expect. The trade believes that this can be done through a combination of joint working with other licensing authorities, including TfL, and by supporting reforms and changes which many councils have adopted including many of those in Essex.
4. We urge our local council to support their local taxi drivers. Brentwood Borough Council simply cannot afford to ignore the consequences that their decisions are having on the local taxi trade. In this document we make several recommendations that would increase the chances of preserving the future of the local taxi trade. It is apparent the Uber business model quite happily operates at a loss, to monopolise areas and quite literally put the local taxi trade out of business by dominating market share. Once the local trade has been decimated it is likely that the Uber price surging model will kick in.
5. There is a real contrast between the Brentwood taxi trade, which is local to the borough and the out of town drivers. Brentwood licensed operators pay business rates, corporation tax and VAT. Brentwood licensed drivers predominantly live within the Borough and therefore contribute to the local economy through council tax and spending their earnings locally. Brentwood licensed drivers are rigorously tested on their local knowledge of Brentwood and the surrounding area before being issued with a licence. Unlike the local taxi trade, the majority of out of town drivers work for Uber, the majority of these have no knowledge of Brentwood. Their operator, Uber, does not pay any corporation tax or as unbelievable as it is, does not pay any VAT as

¹The Association represents the Private Hire and Hackney Carriage drivers licensed by Brentwood Borough Council.

Uber invoices their drivers from Holland. The Uber business model therefore gives them a 20% advantage over local operators. The Good Law Project estimates that Uber in the UK have avoided paying £1,000,000,000 in VAT. This is money desperately need to fund schools, hospitals and other vital services.

6. Uber is a gig economy company recently valued at £91 billion, but which contributes nothing to the local economy.
7. In view of the above we request that the Council itself or through the Principal Licensing Officer contacts Uber and makes an urgent request to revise and redraw their Geo-Fence to reflect the TfL area boundary for bookings by London licensed drivers, which should not include Brentwood. We believe that this will have the effect of ensuring that the local licensed Brentwood drivers and vehicles can continue to provide the excellent service to the residents of the borough.

The size and nature of the threat

8. Over the last 3 years non-Brentwood licensed private hire vehicles have been looking for fares and work within the borough. Originally, this was on a relatively small scale but over the last 2 years has grown in scale. We now estimate that TfL licensed vehicles are covering approximately 25% of all journeys. This activity has been given the title, 'cross border hiring', as it involves an operator, vehicle and driver licensed by a different local authority working outside of the area where they are licensed. In Brentwood, the vast majority of these vehicles and drivers are licensed by TfL and work with the TfL licensed Uber private hire operator. Many of these vehicles have ranked up in or around the High Street and on many occasions have been waiting on hackney carriage ranks. Evidence of this has previously been submitted to Brentwood Council Licensing Department.
9. The arrival of the Uber drivers has therefore had a direct impact upon the income of Brentwood licensed drivers. The impact of this is to make many drivers question whether they can continue to work as hackney or private hire drivers.
10. TfL compliance officers visited Brentwood on Saturday 10th of March 2019. One of these officers was assisted by BBTDA member Paul Topley. In a 7-hour period the TfL compliance office recorded the registration numbers of 100 individual TfL licenced vehicles operating in the Brentwood and Shenfield areas. This compares to the total number of licensed vehicles in Brentwood of 273. This figure alone shows the effect that TfL licensed drivers are having upon the local trade. This is because the expansion of private hire licensed drivers and vehicles in the TfL area has been exponential over recent years. Those drivers and vehicles are moving away from the TfL area in search of work. The impact of 100 non-Brentwood licensed drivers working on a weekend in the borough massively affects the Brentwood licensed drivers.
11. The impact of the arrival of non-Brentwood licensed drivers within the borough is not just upon the drivers but also the wider public. The drivers and vehicles are licensed by TfL, they do not meet the standards set by Brentwood, particularly in relation to

local knowledge. Brentwood Council licensing officers have no powers to act in relation to the TfL drivers or vehicles.

12. Only TfL enforcement officers have powers in relation to TfL licensed drivers. TfL in other authorities have carried out enforcement activity outside of the TfL area to deal with issues that inevitably arise. Such enforcement action has taken place in Uttlesford, Crawley, Reading, Southend. In areas where the local licensing authority has raised the problems that have occurred with TfL. The result of this is that there are real concerns about: 1) ensuring that TfL licensed vehicles operating in Brentwood are doing so lawfully and abiding by the conditions of their licence, and 2) that if issues/complaints do arise whether or not they are being identified and actioned. The reason for this is that there is confusion within the public as to which local authority has responsibility for dealing with the issue. The TfL document 'Cross Border Hiring – proposals for change'² identified that this was an issue. Several councils within Essex have raised concerns with regard to Uber operating within their areas. The eventual response to this by Uber has been that they have now prevented TfL licensed vehicles operating in areas such as Southend. However, TfL licensed Uber drivers are not prevented from working in Brentwood.
13. We are pleased that recently there has been some activity in Brentwood by TfL compliance officers. This is a positive step, which we hope will continue and be put onto a more organised and regular basis. We also hope that such work will be coordinated with Brentwood Council licensing officers.

The effect of Uber operating in Brentwood is as follows:

- i) Public Safety the very viability of the trade in Brentwood is put at issue,
 - ii) Brentwood as the licensing authority has no control over a large number of vehicles which operate within the authority and are therefore unable to deal with complaints and issues that arise,
 - iii) there is an impact upon public safety and confidence in the hackney and private hire trade,
 - iv) the erosion of localism and a local trade based upon drivers who live and work in the borough and develop strong and positive relationships with their customers.
15. The purpose of any licensing function is Public Safety. We believe that the mass influx of TfL Licensed vehicles into Brentwood puts the safety of local residents at risk. TfL licensed vehicles can only be identified by a small tax disc size badge which is displayed on the rear windscreen of the vehicle. This badge is almost impossible to see especially in the dark. The licensing department in Brentwood are well aware that we

² <http://content.tfl.gov.uk/cross-border-hiring-proposals.pdf> this document was prepared as a submission to the government appointed Task and Finish Group of Taxi and Private Hire Vehicle licensing, see note 4.

have previously had local examples of vehicles masquerading as taxi/private vehicles in order to lure vulnerable people into their vehicles. This is the specific reason why every vehicle licensed by Brentwood Borough Council has a 10" by 7" plate on the rear of the vehicle which details the vehicle registration number, make and model and the expiry date of the licence. The licence conditions also dictate that a 22" wide Taxi Roof Sign must be displayed as well as door signs displaying the HCV number of the vehicle. The Principal Licencing Officer has personally mentioned how important the distinct identification of our vehicles is the safety of the public.

Undermining local licensing control: Erosion of localism: Licence Conditions

16. The Courts have said that *"the hallmark of the licensing regulatory regime is localism and that the authorities responsible for granting licences should have the authority to exercise full control over all vehicles and drivers and drivers being operated within its area"*³
17. In view of the above and the high standards demanded by Brentwood Borough Council when issuing licenses, we must question why these Uber vehicles have been allowed to become so prevalent throughout our borough.

Proposals for change

18. In response to the concerns that have been raised over a considerable period of time by: the trade, interest groups such as the Suzy Lamplugh Trust, trades unions and also licensing authorities; the government commissioned a report by a Task and Finish Group on Private Hire and Vehicle Licensing, 'Taxi and Private Hire Vehicle Licensing – steps towards a safer and more robust system'⁴. This group sets out a detailed set of reforms to the hackney and private hire trade. The TfL document referred to in paragraph 12 above was the submission by TfL to the Task and Finish Group. The Task and Finish Group reported back in autumn 2018 and made 34 recommendations to the government. The government responded to the proposals on the 12th of February 2019 with Government Response – Moving Britain Ahead⁵. On the same date the government also published a consultation document on Statutory Guidance to local authorities on the licensing of the hackney and private hire trade⁶.

³ Blue Line Taxis v Newcastle upon Tyne City Council [2012] EWHC 2599 (Admin)

⁴ To access the document please click on this hyperlink below.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745516/taxi-and-phv-working-group-report.pdf

⁵ To access the document please click on this hyperlink below.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775983/taxi-task-and-finish-gov-reponse.pdf

⁶ To access the document please click on this hyperlink below.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778274/taxi-phv-licensing-protecting-users-condoc.pdf

19. The Brentwood trade ask that you consider the 4 reports and take the following actions:
 - i) respond to the consultation on the Statutory Guidance, which closes on the 22nd of April 2019,
 - ii) support the Brentwood trade in pushing for the adoption by central Government of the recommendations of the Task and Finish Group,
 - iii) continuing to work with other Essex local authorities, but to take that cooperation further and in effect adopt a joint licensing policy across the county,
 - iv) resolve to request that TfL carry out inspections and where appropriate enforcement action on TfL licensed vehicles operating in Brentwood,
 - v) support the Local Government Association and others in their efforts to reform the legislation on cross border hiring relating to private hire vehicles
 - vi) Make representations to Uber that they alter their geo-fencing so that London licensed drivers cannot collect passengers in Brentwood.
20. Below in Appendix 1 we set out the most important reforms and changes required, as we see them. We believe that they will ensure that the regulatory framework matches the reality of the trade now in the 21st century. In Appendix 2 we set out our initial views in response to the consultation on the Statutory Guidance.
21. We believe reforms and changes along the lines that we suggest will improve standards across the industry and, also protect the travelling public. We also believe that they will create a situation where Brentwood Council will, once again, be able to effectively regulate the hackney and private hire trade within the borough. We would welcome the opportunity to meet with you and discuss our proposals and what you can do to support us in our efforts.

Appendix 1

Reforms and changes as set out by the Task and Finish Group

We believe that the following reforms and changes ought to be adopted locally, within Essex and also nationally. We have not outlined all of the recommendations, we have highlighted those that we believe are most important to assuring the future of the trade within Brentwood. We accept that the government has not agreed to all of these suggestions, we would strongly urge that you consider supporting us in our efforts to get all the below adopted and implemented by government and local authorities.

The numbering refers to the numbering of the recommendations of the Task and Finish Group.

Recommendation 1

Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now.

The current legislation does not fit the reality of the taxi trade, which is changing very rapidly, such that the Law Commission report and draft bill of 2014 is already out of date. We appreciate the legislative pressure created by Brexit, but nevertheless it is very important that the taxi industry is regulated by appropriate legislation which matches the reality of the market. That is not the situation now. Government should be urged to deal with this issue, at the same time, that it sets minimum national standards: see recommendation 2, which the government has committed to do.

Recommendation 2

Government should legislate for national minimum standards for taxi and PHV licensing - for drivers, vehicles and operators (see recommendation 6). The national minimum standards that relate to the personal safety of passengers must be set at a level to ensure a high minimum safety standard across every authority in England.

Government must convene a panel of regulators, passenger safety groups and operator representatives to determine the national minimum safety standards. Licensing authorities should, however, be able to set additional higher standards in safety and all other aspects depending on the requirements of the local areas if they wish to do so.

We believe that this is an essential change, which needs to be prioritised, especially given the previous issues which have arisen in relation to child sexual exploitation, by a few licensed drivers. We would ask that Brentwood Council volunteers to join the panel of regulators and also uses the Council's own best efforts to lobby government by itself and through its representative bodies such as the Local Government Association (LGA) to push this forward.

Recommendation 3

Government should urgently update its Best Practice Guidance. To achieve greater consistency in advance of national minimum standards, licensing authorities should only deviate from the recommendations in exceptional circumstances. In this event licensing authorities should publish the rationale for this decision.

Where aspects of licensing are not covered by guidance nor national minimum standards, or where there is a desire to go above and beyond the national minimum standard, licensing authorities should aspire to collaborate with adjoining areas to reduce variations in driver, vehicle and operator requirements. Such action is particularly, but not exclusively, important within city regions.

We would ask that Brentwood Council works with TfL and other Essex authorities to work out a joint approach to regulate drivers and vehicles who operate across borders. We would ask that Brentwood also respond to the consultation document on Statutory Guidance. Please see Appendix 2 for our suggested responses to the consultation. We would also ask that Brentwood Council continues to work with the other Essex local authorities with a view to implementing consistent standards for the regulation of the taxi trade across the whole county.

Recommendation 4

In the short-term, large urban areas, notably those that have metro mayors, should emulate the model of licensing which currently exists in London and be combined into one licensing area. In non-metropolitan areas collaboration and joint working between smaller authorities should become the norm.

Government having encouraged such joint working to build capacity and effectiveness, working with the Local Government Association, should review progress in non-metropolitan areas over the next three years.

Although Essex is not itself an urban area, it is adjacent to London and is therefore affected by TfL and the regulatory environment of London. So, we would ask that joint working within Essex continues and deepens. We would also ask that the relationship with TfL be expanded, so that joint regulatory and enforcement takes place. TfL have worked with other local authorities, such as Uttlesford and Southend, to deal with issues in those local authorities, we would therefore want to see similar joint work be conducted in Brentwood.

Recommendation 5

As the law stands, 'plying for hire' is difficult to prove and requires significant enforcement resources. Technological advancement has blurred the distinction between the two trades.

Government should introduce a statutory definition of both 'plying for hire' and 'pre-booked' in order to maintain the two-tier system. This definition should include reviewing

the use of technology and vehicle 'clustering' as well as ensuring taxis retain the sole right to be hailed on streets or at ranks.

Government should convene a panel of regulatory experts to explore and draft the definition.

Although the government has not accepted this recommendation, we think it is nevertheless important that the legislation is amended so that there is clarity about what does or does not amount to an offence. It is the issues of new technology and 'clustering' that are causing real problems in Brentwood. The recent High Court case of Reading Council v Ali [2019] EWHC 200, where the situation in Reading, which is very similar to that in Brentwood, shows that the law needs to be clarified and updated. We would ask that Brentwood lobbies for a review of the legislation on this as well.

Recommendation 8

Government should legislate to allow local licensing authorities, where a need is proven through a public interest test, to set a cap on the number of taxi and PHVs they license. This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions.

We do not believe that there is the necessity for a cap on private hire vehicles in Brentwood, however we do believe that the necessity for such a cap has been shown in London. TfL has argued for one given the massive increase in the number of private hire drivers in London over recent years. The result has been that driver incomes have reduced, so that TfL licensed drivers have been pushed outside of London in seek of income. We therefore believe that Brentwood Council should lobby in favour of this change.

Recommendation 9

Licensing authorities should use their existing powers to make it a condition of licensing that drivers cooperate with requests from authorised compliance officers in other areas. Where a driver fails to comply with this requirement enforcement action should be taken as if the driver has failed to comply with the same request from an officer of the issuing authority.

We believe that Brentwood Council should approach TfL to adopt this measure, to enable Brentwood and other licensing officers to carry out their regulatory functions in Brentwood.

Recommendation 10

Legislation should be brought forward to enable licensing authorities to carry out enforcement and compliance checks and take appropriate action against any taxi or PHV

in their area that is in breach of national minimum standards (recommendation 2) or the requirement that all taxi and PHV journeys should start and/or end within the area that issued the relevant licences (recommendation 11).

We would ask that Brentwood authorises officers from across Essex and TfL and seeks the same powers from those other local authorities. This is a stop gap measure until legislation is brought forwards which enables all local authority officers to carry out enforcement and compliance checks to ensure that national minimum standards are maintained.

Recommendation 11

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHV and taxi – see recommendation 6) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

We believe that this is the key recommendation to ensuring the future of the Brentwood trade. Such a measure would not prevent TfL vehicles from working in Brentwood, but it would reduce the negative impact that the existing clustering of TfL Uber drivers in Brentwood in an attempt to gain work. The government has not adopted this recommendation, though it is policy of the LGA. We would request that Brentwood uses it's position, as an authority on the edge of London which is being affected cross border hiring, to make the case for reform of the law on this issue.

Recommendation 24

As a matter of urgency Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement.

The government has indicated it's willingness to adopt this proposal and legislate accordingly. This proposal takes up the private members bill which was promoted by Daniel Zeichner MP, we would ask that Brentwood Council pushes for the adoption of this proposal together with a wider updating of taxi legislation.

Recommendation 34

Government should urgently review the evidence and case for restricting the number of hours that taxi and PHV drivers can drive, on the same safety grounds that restrict hours for bus and lorry drivers.

There are issues about the monitoring and enforcement of a restriction on the number of hours worked. There are repeated anecdotal concerns about the fact that TfL licensed drivers work very long hours, given the little that many of them earn. The fact that most private hire operators now use App based systems for the managing of bookings, means that there are means by which hours of work can be measured and monitored. We therefore believe that Brentwood Council should also ask that government carry out research on this issue with a view to adopting proposals in the future.

Appendix 2

Consultation on Statutory Guidance

Set out below are the trade's responses to the consultation document. We set out our views, which you may wish to consider when deciding on your own response to the consultation document. We welcome the new draft guidance as we believe that it sets out a clear means by which decisions can be made that will ensure consistency and improve and maintain the high standards that Brentwood Council expects from licensed drivers.

2.19 to 2.22 Administration

We welcome the suggestion that Councillors taking decisions receive training, we believe that this will ensure consistency of approach. Where urgent and serious cases need quick determination, we believe that the Director with responsibility for Licensing ought to conduct such reviews.

2.32 Disclosure and Barring Service

We agree that in addition to the enhanced DBS check that checks should also be made of Barring Lists on application or renewal.

2.38 DBS update service

We agree with the suggestion that all licensed drivers be required to sign up to the DBS update service, so that checks of DBS status can be made at regular intervals and also on an ad hoc basis where there is cause to do so.

2.41 Licensee self-reporting

We agree that there should be a requirement for a licensee to inform the local authority of an arrest and release, charge or conviction for any motoring offence, or offence involving dishonesty, indecency or violence. We would suggest that this duty ought to extend to accepting a police caution for such an offence as well.

2.47 Overseas convictions

We agree that persons who have spent significant time overseas should obtain a 'Certificate of Good Character' from the country where they have resided.

2.49 Convictions policy

We agree with the convictions policy as set out at Appendix A, which uses the excellent work done by the Institute of Licensing. It is important that the convictions policy is simple and easy for applicants to understand and that it focuses the mind of decision makers on the question of whether or not the applicant or licensed driver is fit and proper to hold a licence.

2.57-61 Other information

We agree that applicants for a drivers' licence must be required disclose if they have had a licence with another local authority and if such an application/licence has been refused or a licence revoked or suspended by an other local authority. The NR3 register is an important tool for use by local authorities and should be put on a statutory footing through legislation, so that all local authorities are required to access and contribute to it.

2.62-64 Multi Agency Safeguarding Hub (MASH)

We agree that multi agency working and sharing is key to safeguarding. The sharing of information with and receiving information from MASH is key to maintaining confidence in the licensing of drivers.

2.65-68 Complaints against licensees

We agree with the requirement that all licensed drivers be made responsible for displaying a notice outlining how a complaint about a driver can be made within the vehicle. A means must also be devised by which complaints are shared when received by one local authority about a driver licensed by another local authority. This is key as drivers are increasingly operating outside of their licensing authority.

2.79 Language proficiency

We agree with this and believe that a national standard should be set through this guidance.

2.81-83 Enforcement

We strongly agree that the sharing of information between local authorities is key, especially where drivers operate outside of their licensing authority, which is increasingly common. Joint authorisation of officers in neighbouring authorities is essential to maintaining standards when drivers operate outside of their licensing authority.

2.90-101 Private Hire Operators

We agree with the proposals, which are proportionate.

2.104-2.116

We agree with the principles laid down regarding CCTV in licensed vehicles and agree that a blanket requirement to install CCTV can only justified on strong grounds.