

12 June 2019

Planning and Licensing Committee

Uber in Brentwood

Report of: Paul Adams – Joint Licensing Manager

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 Over the last 2-3 years there has been a steady proliferation of the number of Uber vehicles operating in the area as they spread outside of London utilising their TFL licence, which is having a significant impact on the level of business for the local licensing Hackney Carriage and Private Hire trade. This report seeks to inform the Licensing committee of the current legal position, the representations and concerns from the Brentwood Borough Taxi Drivers Association (BBTDA), the actions already taken by officers and national developments.

2. Recommendation(s)

That the Planning and Licensing Committee:

- 2.1 Consider the representation in the letter from the BBTDA.
- 2.2 Agree for a letter to be sent to Uber asking them to withdraw from Brentwood or apply for an Operators Licence with Brentwood Borough Council.

3. Introduction and Background

- 3.1 In the UK we have a two-tier system for Hackney Carriages (Taxis) and Private Hire Vehicles (mini cabs). A Hackney Carriage can, in the area that they are licensed, be hired immediately by hailing on the street or at a rank, this is called plying for hire, or public hire. A Hackney Carriage driver can also take a private hire booking for anywhere in the country directly without the need for an operator's licence.

- 3.2 A Private Hire Vehicle cannot ply for hire and may only be booked in advance through a licensed Operator. The law requires that the Private Hire Operator, the Private Hire Vehicle and the Private Hire Driver are all licensed by the same Authority, commonly known as the “triple lock licensing system”.
- 3.3 The law does allow for “Cross Boarder Hiring”, allowing an operator in one authority to take a booking in another authority’s area providing that they dispatch a vehicle and driver licensed by the authority that issued their operator’s licence.
- 3.4 An operator is defined as someone who in the course of a business makes provision for the invitation or acceptance of bookings for a private hire vehicle.
- 3.5 Uber are a globally operated Private Hire Company, who operate nationally across the UK taking bookings through their Mobile App. Uber hold an Operator’s licence with TFL and take bookings for TFL licensed vehicles that are driven by TFL licensed drivers, traditionally servicing London customers.
- 3.6 Customers book an Uber Private Hire Vehicle by requesting a vehicle through the App. At the time of booking, they are given an estimate of the cost for the journey, and how long it will take their vehicle to arrive. The customer can see where the nearest available vehicles are located on a map. Once the booking is accepted by Uber the customer is sent the details of the vehicle and driver collecting them.
- 3.7 Uber has a business model that is based around surge pricing. When there is low demand and lots of drivers the prices reduce to encourage customers to use their service. When there are lots of customers and few drivers the price increases, encouraging drivers to begin working or move to across to that area there is work waiting.

4 Issue, Options and Analysis of Options

The local picture

- 4.1 Over the last 2 years there has been a steady proliferation of Uber vehicles operating in the area as they spread outside of London. Uber is one of 4 large App based operators across the country, but for now are the only operator that has a significance presence in the Brentwood area.
- 4.2 In February 2018, Uber divided the country into 9 regions and imposed their own London and surrounding areas region that includes Brentwood, as well

as 4 other Essex authorities, Thurrock, Basildon, Harlow and Epping. This area is serviced by their TFL fleet.

- 4.3 This region was determined by the routes the vehicles take in and out of the TFL area and not by any geographical, political or administrative boundaries, and stretches out as far as places like Luton. The boundary is commonly referred to as Uber's "Geo-fence", that they have imposed on their App.
- 4.4 At this time Southend and Chelmsford saw the TFL Uber drivers withdraw from their areas, this was self-imposed and had no relevance to any pressure put on Uber by Southend or Chelmsford Council's. Currently these areas are serviced by Suffolk licensed vehicles of which there are very few, so it has the appearance that Uber has withdrawn from these areas.
- 4.5 It has been reported to us by the trade that the effect on the amount of business for our local drivers is a loss up to a 40% of business.

What are the key issues?

- 4.6 It has been regarded nationally amongst licensing authorities that Uber can operate as they do under the "cross border hiring" provisions, providing that the triple lock licensing system is in place.
- 4.7 Gerald Gouriet QC, who has acted for London Taxi Drivers Association (LDTA) and represented those against Uber in some of the recent cases, such as Reading Council v Ali (Uber), has towards the end of last year, given an opinion on Uber's operation outside the TFL boundary. His opinion provides that Uber, by the provision of drivers on the Uber App, are making the provision for the invitation or acceptance of bookings for a private hire vehicle, in a controlled district where they are not licensed.
- 4.8 This opinion is contrary to that previously accepted by other legal professionals that are well respected in the taxi licensing arena.
- 4.9 The Thurrock Licensed Taxi Drivers Association (TLTDA) have engaged Gerald Gouriet QC to provide them with an opinion which provided that Uber are operating unlawfully in Thurrock, and the TLTDA are calling for Thurrock Council to prosecute Uber so that they cease their activity in the borough. The Brentwood Borough Licensed Taxi Drivers Association (BBTDA) has obtained a copy of that opinion and have asked Brentwood Council to consider the same position here. A copy of this opinion is attached as Appendix A..

- 4.10 Ultimately this is still a matter of opinion, there is no direct legal authority as to whether this is lawful or not and will take the courts to make that decision.

The implications for Brentwood

- 4.11 TFL have some standards in their licensing policies for drivers that are lower than ours (ours not being unreasonably high), e.g. violence convictions such as ABH, we do not allow an applicant to have any such convictions within the last 10 years, TFL allow one violence offence in the last 10 years. Thurrock and Southend have cases where drivers revoked by them, have become licensed by TFL in the following weeks.
- 4.12 The TFL drivers do not have to undertake any knowledge test requirements that would include the Brentwood area.
- 4.13 We have no enforcement powers over the TFL vehicles or drivers that are working in our borough to ensure that they are compliant with the conditions of their licence and that their vehicle is in a safe and suitable condition.
- 4.14 TFL vehicles have no obvious indications that they are licensed, other than a small circular disc in the front and rear windscreens, which is difficult to see. Our vehicles all have large rear licence plates, door signage and a front window card licence, all can be easily seen and displaying the vehicle licence number in a large font.
- 4.15 The BBTDA has asked us to consider the opinion of Gerald Gouriet QC, which advises that Uber are operating outside the TFL boundary without an appropriate licence and have asked us to take action.
- 4.16 There is an unsubstantiated estimate by the local trade that TFL vehicles are undertaking 25% of all journeys undertaken in Brentwood.

The View of the BBTDA

- 4.17 Concerns of Uber's significant presence has been increasingly reported to the Council over the last 2-3 years, and has been a regular subject for discussion at the Taxi Trade Consultative Group (TTCG).
- 4.18 On the 25 March a letter on behalf of the BBTDA was received from Giles Bridge, Barrister and Licensing Consultant, which has set out the concerns of the BBTDA and has requested that the Council take number of actions, a copy of their letter is attached as Appendix B.

Brentwood Council's actions around Uber.

- 4.19 We have had several meetings with Ubers representatives over the last 2 years to discuss the issues that we are facing locally, and have looked at how we can manage complaints about their drivers, and how the differing standards between Essex Authorities and TFL causes conflicts in standards and an increased risk to Public Safety . Uber have set up national a system for Local Authorities to report and request information around complaints and incidents. We have an agreed a procedure for reporting complaints and issues, with an understanding of how they will respond. Where we have referred issues using this process so far, we have had timely and satisfactory responses to all enquiries.
- 4.20 In a meeting in January 2019 with Uber, we further explored the issues we have and requested that they remove the Borough of Brentwood from their Geo-fence, and if they were willing to apply for an operator's licence with us, and then to subsequently require their drivers working predominantly in this area to obtain driver and vehicle licence with Brentwood. Their response was that there are some considerations on changing their regions boundaries, but this is not a short-term change and is likely to take between a year and two to implement. This would also not guarantee that we would be removed from that region. They could apply for an Operators licence but at this point would not actively seek to licence any drivers or vehicles with us for operational reasons.
- 4.21 We have sought an independent legal opinion from Barrister, Josef Cannon, who disagrees with the opinion of Gerald Gouriet QC that Uber are operating lawfully in Brentwood, utilising the cross boarder hiring arrangements and that there is no action to be taken. A copy of his opinion is attached as Appendix C.
- 4.22 We are working closely with both Basildon and Thurrock Council who both have sought their own independent legal opinions. We have reached out to both Harlow and Epping Councils, who at this time are not reporting a significant impact of Uber in their areas. Uber remains a subject of discussion at the Essex Licensing Officers forum which meets at least three times per year.
- 4.23 As a group of three Essex authorities that have been greatly impacted by Uber we have also reached out to other local authorities such as York, Stevenage, Gravesham and Reading and who have similar issues and representation from their trade to identify if there is anything further that can be done.

- 4.24 Two joint operations have been undertaken with TFL's Taxi and Private Hire Compliance Team in Brentwood, undertaking checks on both Brentwood and TFL vehicles and drivers. More dates have been organised for this to continue.
- 4.25 A response on behalf of Brentwood Council has been sent for the consultation on the Statutory Guidance, which supported all the recommendations that it was making.
- 4.26 It is the intention with the support of Member's from this committee to write formally to Uber, requesting them to either remove the Borough of Brentwood from their London and Surrounding Areas region, or to apply for an Operator licence with Brentwood, and to subsequently licence all drivers and vehicles with Brentwood that are predominantly working in this area.
- 4.27 A number of reports will follow this year, revising and updating Brentwood Taxi Licensing Policies, ensuring that they remain current and maintain the high standards that Brentwood Council requires from its licence holders, including consultation with stakeholders.

National Picture

- 4.28 The Government established in September 2017 a Task and Finish Group (TFG) on Taxi and Private Hire Vehicle Licensing. The group's remit was to consider evidence relating to the adequacy of current taxi and private hire vehicle (PHV) licensing authority powers, as set out in legislation and guidance, and to make recommendations for actions to address any priority issues identified.
- 4.29 Government in February 2019 published its response to the TFG recommendations providing that "Government will when time allows bring forward legislation to introduce national minimum standards for taxi and PHV licensing, reinforcing the consistently high standards that the statutory guidance will bring to the sector. To ensure that drivers are under the same level of scrutiny when operating away from their licensing area we will legislate to enable enforcement and compliance checks to be conducted by any licensing officer against any vehicle regardless of where they have been licensed. Where drivers or vehicles fail to meet the national minimum standards, they will be able to take appropriate action to protect the public."

- 4.30 In particular the TFG 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 (PHVs and taxis – 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.
- 4.31 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.
- 4.32 The Government Response was: There are clearly a range of views within the sector and interested parties about how cross-border, or out-of-area, journeys by taxis and PHVs should be permitted or restricted. This can clearly be seen in the range of views expressed by individual members of the TFG in their comments in the annex to the report.
- 4.33 Currently, a PHV journey can take place anywhere in England provided that the driver, vehicle and operator are licensed by the same licensing authority. However, the licensing requirements in different areas (for example, the training required of drivers or the vehicle standards set) can vary considerably.
- 4.34 Such variations, combined with the freedom to carry out journeys anywhere, can incentivise drivers or operators to license away from the area where they actually intend to carry out work. This means that the ability of local licensing authorities to set and maintain taxi and PHV standards for their local areas is undermined.
- 4.35 We acknowledge the view that national minimum standards will go some way towards resolving that problem. The Suzy Lamplugh Trust noted in its comments on the TFG report that it did not support recommendation 11 because the introduction of national minimum standards would resolve the current practice of drivers choosing which licensing authority to obtain their licence from based on "less stringent" safety checks.

- 4.36 Even with national minimum standards in place, there will still be variations in licensing conditions (and therefore matters like licence costs and processing times), since the Government does not intend to remove the ability of licensing authorities to set their own local standards in matters not covered by the national minimum standards, or above and beyond those minimum standards. Local authorities are accountable for licensing in their areas and it is only right that they have the powers to properly shape and influence their local market.
- 4.37 Government therefore agrees with the principle of this recommendation, and will consider further (with a view to legislation) how it might best work in detail. In particular, Government will need to consider what size of area is appropriate. We will also consider what flexibilities or exemptions might be needed to reduce or avoid negative impacts on any particular business models, types of transport or passenger, and businesses or localities that are close to (perhaps multiple) licensing authority borders.
- 4.38 The London Assembly in March 2019 in the report, Raising the Bar - Taxi and private hire services in London, have in Recommendation 5 stated that, TfL should also review the criteria for 'fit and proper tests' for private hire operators, in line with Government findings.
- 4.39 Statutory Guidance - In February 2019 the Department of Transport began a consultation seeking views on proposed statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how to use their licensing powers to protect children and vulnerable adults. Brentwood Council has responded to this consultation which closed on 22 April 2019, to date there has been no further update on the results of the consultation or any proposed implementation date of the published guidance.

5 Reasons for Recommendation

- 5.1 The support of this committee is important in highlighting the impact Uber is having on the localism of Licensing in Brentwood.

6 Consultation

- 6.1 There has been no consultation in relation to the matters contained in this report due to the short implication time scale. Consultation on the fees will take place after review after the first year.

7 References to Corporate Plan

7.1 None

8 Implications

Financial Implications

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8.1 There are no direct financial implications of this report.

Legal Implications

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8.2 The legal aspect of this report is detailed and sound.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

9. **Background Papers** (include their location and identify whether any are exempt or protected by copyright)

9.1 None

10. Appendices to this report

Appendix A – Opinion of Gerald Gouriet QC re Uber operating outside London.

Appendix B – Representation from BBTDA.

Appendix C – Legal opinion provided for Brentwood Council.

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