



**SHEFFIELD CITY COUNCIL
Licensing Sub Committee**

Report of: Chief Licensing Officer

Date: 13th March 2018

Subject: Individual Licensing Case

Author of Report: Steve Lonnia, Chief Licensing Officer

Summary:

Individual Licensing Case

Category of Report: OPEN/CLOSED

LICENSING SUB-COMMITTEE - CASE LIST

HEARING DAY AND DATE:

13th March 2018

TIME:	CASE:	NAME:	TYPE:
10.00	06/18	Uber Britannia Limited	New App

SHEFFIELD CITY COUNCIL

**LICENSING OF TAXIS AND PRIVATE HIRE VEHICLES,
OPERATORS AND DRIVERS**

**IMPORTANT: NOTIFICATION OF A
HEARING OF THE LICENSING SUB-COMMITTEE**

To:
Uber Britannia Limited
Aldgate Tower
First Floor
2 Leman Street
London
E1 8FA

Case Number: 06/18
13th March 2018

Sheffield.licensing@uber.com

Legislation: Local Government (Miscellaneous Provisions) Act 1976

Licence Type: Private Hire Operators Licence

The Licensing Service received an application for a Private Hire Operators Licence, in the name of Uber Britannia Limited, on 18th October 2017.

Upon receiving the application, the Licensing Service made a request for further information under section 57(1) of the Local Government (Miscellaneous Provisions) Act 1976. A response to this request was received on 6th December 2017.

Due to answers received and further information, some of which is freely available in the public domain, your application has been referred to the licensing sub-committee for determination. The reasons for referral are set out in the attached report.

The licensing sub-committee has the authority to decide on the issue and you may, if you wish, make representations to it either verbally or in writing, or by both methods. You may also bring someone with you to the meeting to help with your representations.

The meeting will take place in the **Town Hall**, Sheffield (Pinstone Street entrance) as follows:

TIME: 10:00

DAY: Tuesday

DATE: 13th March 2018

You should note that the above time is approximate; the sub-committee will be hearing other cases on the same day and you may need to wait before your case is heard. You should attend at the time shown. Please confirm receipt of this notification and indicate whether you will be attending the hearing.



Steve Lonnia
Chief Licensing Officer and Head of Licensing

Address: Licensing Service, Sheffield City Council, Block C, Staniforth Road Depot, Staniforth Road, Sheffield, S9 3HD

Reception: 10am to 4pm - Monday to Friday.

Telephone: 0114 273 4264

Email: licensing@sheffield.gov.uk

Hackney Carriage and Private Hire Drivers Licensing

Licensing Sub-Committee Hearings - Guidance Notes

Sheffield City Council has a duty under the legislation (Local Government (Miscellaneous Provisions) Act 1976) to grant a private hire operators licence only if it satisfied that the applicant is a fit and proper person to hold such a licence. It is up to the applicant to show to the Council that they are a fit and proper person to hold a licence and not for the Council to show that you are not.

In most instances, licensing officers are able to grant licences but in some cases, the application must be referred to the Licensing Committee for a decision.

The "Notification of Sub-Committee Hearing" (overleaf) gives you details of when and where the hearing will take place.

Attached is a copy of the report that is circulated to Members of the Licensing Sub-Committee (elected Members of Sheffield City Council), detailing the issues of concern and other information.

You should arrive in good time and wait outside the meeting room. When it is your turn you will be invited into the meeting room and will sit down at the table. Around the table will be Members of the Licensing Sub-Committee and officers of the Council. The Chair of the Licensing Sub-Committee will introduce those people and explain the procedure that will be followed. You will be asked questions and you will be given the opportunity to ask questions of the officer presenting the report and say anything in support of your application. After the Sub-Committee has heard all the relevant information and any comments that you wish to make, you and the officer that presented the report will be asked to leave the room while a decision is made. Only Members of the Licensing Sub-Committee are involved in making the decision. You will be invited back into the meeting room and will be informed of the decision.

Important points

1. You can bring along legal representation, trade association representation, a friend and/or some other person to help you with your case. You can submit written information such as references or such evidence if needed; it is helpful if you let the Licensing Service have a copy in advance.
2. You have the opportunity to present your case and to satisfy the Sub-Committee that you are a fit and proper person. If you do not attend or make other representations to the Sub-Committee then it will have to decide your case on the information that is available. The Sub-Committee will look at all the information available and consider the whole picture when considering your case. This includes considering all the facts presented.
3. Every case is considered on its own merits. No decision is made until the Sub-Committee has considered all the information available to it and until you have had reasonable opportunity to make representations to it.
4. What is a fit and proper person? The Sub-Committee takes a common-sense view based on the responsibilities of a licensed private hire operator, the public trust that a licensed private hire operator has and what any reasonable person would expect of a licensed private hire operator.

The Licensing Sub-Committee must refuse your application if it is not satisfied that you are a fit and proper person to hold a licence. It is up to you to show that you are a fit and proper person and not for the Council to show that you are not.

Local Government (Miscellaneous Provisions) Act 1976
Private Hire Licensing – Private Hire Operators Licence

1.0 Purpose of the Report

1.1 This report seeks Members determination of an application for the grant of a Private Hire Operators Licence, made under Section 55 of the Local Government (Miscellaneous Provisions) Act 1976.

1.2 The application is in respect of Uber Britannia Limited, to operate from:

Unit 10
Neepsend Business Triangle
1 Burton Road
Sheffield
S3 8BW

1.3 Uber is a registered company and their head office is located at:

Uber Britannia Limited
Aldgate Tower
First Floor
2 Leman Street
London
E1 8FA

1.4 A full copy of the application and accompanying documents supplied by Uber can be found at Appendix A.

2.0 Background Information

2.1 The relevant legislation (Local Government (Miscellaneous Provisions) Act 1976) relating to the licensing of private hire operators can be found at Appendix B.

2.2 On the 29th September 2016 the Licensing Committee approved the *Private Hire Operator and Vehicle Policy* which came into force on 1st November 2016. Contained within the policy is a set of standard conditions that are placed on all private hire operator licences if granted. A copy of the standard conditions can be found at Appendix C; a copy of the full policy can be made available at the hearing if required.

2.3 Uber currently holds a private hire operator's licence in the district of Sheffield. This licence is in the name of Ms Joanna Bertram, whom is the General Manager for Northern Europe but will shortly be leaving the company. The legislation is such that it does not allow for a change of name on such a licence; therefore, Uber have made a fresh application, in the name of Uber Britannia Limited.

3.0 Reasons for Referral

- 3.1 The Licensing Service received an application for a Private Hire Operators Licence, in the name of Uber Britannia Limited, on 18th October 2017.
- 3.2 Upon receiving the application, the Licensing Service made a request for further information under section 57(1) of the Local Government (Miscellaneous Provisions) Act 1976. A response to this request was received on 6th December 2017, along with further information on 12th February 2018; a copy can be found at Appendix D and K respectively.
- 3.3 Due to information contained in the original application and answers to subsequent questions, refusal and revocation of licences in other authorities, negative media reports, and the level of public interest surrounding the number of Uber vehicles licensed by other authorities operating in the district of Sheffield, the application is brought before Members for determination.
- 3.4 The Licensing Authority notes, with great concern, the reports about Uber's operation elsewhere in the country. This includes the ongoing appeal proceedings against the Transport for London decision in September 2017, and in York, and Swansea.
- 3.5 It is important to note that challenges that have been raised about Uber elsewhere do not relate specifically to Sheffield, and all remain unresolved at the time of writing the report.
- 3.6 The Licensing Authority has taken the view that it is not appropriate for Sheffield to prejudge the outcome of any of these ongoing challenges to Uber by concluding definitively against the company in the context of the application to this Council. The Licensing Authority is not the decision-maker considering the evidence in relation to any of those challenges, and the outcome on each one of them will be known in a relatively short space of time.
- 3.7 A number of the challenges to Uber's operation do not relate directly to the safety of the travelling public, such as criticisms about data protection, and "Greyball" software potentially blocking scrutiny by enforcement officers. The alleged failures to report offences by Uber drivers are of deep concern, but these are the subject of litigation, and did not occur in Sheffield, where no such similar reports have been made.
- 3.8 Uber supplied the Licensing Service with information in relation to Greyball software and the use of it in the UK. A copy of the correspondence relating to this can be found at Appendix E.
- 3.9 A response from Uber detailing the data breach was received on 13th December 2017. A copy of the letter can be found at Appendix F.
- 3.10 It must be noted that Uber London Limited's operating model, of which some of the concerns are founded, works under a statutory regime that only applies in London, the Private Hire Vehicle's (London) Act 1998; not the '76 Act that applies to Sheffield.
- 3.11 There is a requirement, as part of the application process for a Private Hire Operator's Licence in Sheffield, that applicants register with the Information Commissioner's Office.

- 3.12 However, as part of the application (found at Appendix A), Uber informed that, “Uber Britannia Limited is not a data controller for the purposes of the Data Protection Act 1998 and therefore is not registered with the Information Commissioner’s Office. The data controller for the purposes of data protection is Uber B.V., a company incorporated in the Netherlands, and we can confirm that it is registered with the ‘*Autoriteit Persoonsgegevens*’, which is the Dutch equivalent of the ICO.”
- 3.13 On the 10th January 2018, Uber Britannia Limited provided additional correspondence in relation to their application. The document refers to Uber’s current operations in Sheffield and information about how they plan to work with the Council in the future:
- Uber in Sheffield
 - Our Public Safety Record
 - Providing Transparency on Global Issues
 - Working with the City of Sheffield
 - Forthcoming App Changes
 - Changes to Cross Border Hiring
 - Increasing Provision of accessible transport
 - Improving Air Quality

A full copy of the document can be found at Appendix G.

- 3.14 On the 12th February 2018 Uber Britannia Limited supplied the Licensing Authority with a Memorandum of Understanding, an indication of their intended mutual cooperation and efforts to achieve a common goal of promoting public safety in Sheffield. A copy of this Memorandum can be found at Appendix J.
- 3.15 On the 15th February 2018, Uber Britannia Limited Supplied the Licensing Authority with further information, specifically citing four main objectives:
- A regional restriction on ‘long distance’ cross-border driving
 - Support for drivers to get re-licensed locally, nearer to where they drive most
 - Enhanced visibility for passengers on the licensing authority
 - An improved process for managing complaints against Out of Town vehicles

A copy of the full correspondence can be found at Appendix K.

- 3.16 The legislation does not mandate the need for a consultation in relation to the application for the grant of a private hire operator licence; however, the Licensing Authority has received representations from licensees who undertake job bookings through the Uber App and these have been included in this report. A copy of these representations can be found at Appendix L.

4.0 Analysis of Booking System

- 4.1 Uber is unlike many other private hire operators, in that all bookings must be made through an app on a smart phone. The app is known as the 'Uber Platform'.
- 4.2 As part of the application, Uber have provided a copy of their operating model – *UBER OPERATING MODEL: HOW THE BOOKING PROCESS WORKS*. A copy of this document can be found at Appendix I.
- 4.3 In the last paragraph on page 2, it states, "...Uber provides booking services to riders but is not a party to the underlying transportation contract between the driver and the rider." However, Section 56 (1) of the '76 Act, states that, "every contract for the hire of a private hire vehicle licensed under this Part of this Act shall be deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle."
- 4.4 On the 12th February 2018 Uber provided the Licensing Authority with clarification on this statement. A copy of the correspondence can be found at Appendix K.
- 4.5 Uber's Terms and Conditions can be found at Appendix H. These have been taken directly from Uber's website and are freely available to the public. At the time of writing this report, the most up-to-date document was dated 4th December 2017.

5.0 Inspections and Complaints

- 5.1 The Licensing Service has undertaken several inspections of Uber Sheffield since the inception of their initial licence in 2014, where Joanna Bertram was named as proprietor. During these inspections, the Licensing Service found compliance with all licence conditions and no concerns were raised.
- 5.2 Where the Licensing Service has made requests for information, Uber have been very quick to respond, either by email, phone or face-to-face.

6.0 Financial Implications

- 6.1 There are no specific financial implications arising from this application. However, additional costs may be incurred should the matter go to appeal. In such an eventuality it may not be possible to recover all these costs. The impact of these additional costs (if any) will be kept under review and may be subject of a further report during the year.

7.0 The Legal Position

- 7.1 The Local Government (Miscellaneous Provisions) Act 1976, Section 55 states:

Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence

Provided that a district council shall not grant a licence unless they are satisfied

- (a) *that the applicant is a fit and proper person to hold an operator's licence; and*
- (b) *if the applicant is an individual, that the applicant is not disqualified by reason of the applicant's immigration status from operating a private hire vehicle.*

- (1A) *In determining for the purposes of subsection (1) whether an applicant is disqualified by reason of the applicant's immigration status from operating a private hire vehicle, a district council must have regard to any guidance issued by the Secretary of State.*
- (2) *Subject to section 55ZA, every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.*
- (3) *A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.*
- (4) *Any applicant aggrieved by the refusal of a district council to grant an operator's licence under this section, or by any conditions attached to the grant of such a licence, may appeal to a magistrates' court.*

7.2 A full copy of the relevant sections of the legislation can be found at Appendix B.

8.0 Consultation

There is no requirement under the Local Government (Miscellaneous Provisions) Act 1976 to undertake a consultation in relation to the application for the grant of a private hire operator licence, and as such, a consultation for this application has not been carried out.

9.0 Appeals

- 9.1 There is a right of appeal under section 55(4) of the '76 Act to the Magistrates' Court if the application is refused, or against the imposition of additional conditions attached to a licence.
- 9.2 There is no third party right of appeal to the Magistrates' Court. If granted, the recourse for a person aggrieved by the decision would be by way of a judicial review.

10.0 Policies to Consider

- 10.1 Sheffield City Council's *Private Hire Operator and Vehicle Policy*. A copy of the policy will be available at the hearing if required.

11.0 Basis for Decision

- 11.1 Are there reasonable grounds to refuse the application based on the facts, evidence and representations made.

12.0 Recommendations

- 12.1 Members are asked to determine the application for the grant of a private hire operator's licence in accordance with the Local Government (Miscellaneous Provisions) Act 1976, as amended by the Deregulation Act 2015 and *Sheffield City Council's Private Hire Operator and Vehicle Policy*.

13.0 Options

The Sub Committee may:

- 13.1 Option 1: Grant a licence as applied for – 5 years. (If granted, Members may be minded to accept a surrender of their current licence (if requested), mitigating the need to consider the review of their current licence).
- 13.2 Option 2: Grant a licence for a shorter than normal term. (If granted, Members may be minded to accept a surrender of their current licence (if requested), mitigating the need to consider the review of their current licence).
- 13.3 Option 3: Grant a licence, with additional conditions as deemed appropriate. (If granted, Members may be minded to accept a surrender of their current licence (if requested), mitigating the need to consider the review of their current licence).
- 13.4 Refuse to grant a licence if not satisfied, having regard to the facts set out in the application and this report.
- 13.5 Defer the application.

Appendices

Appendix A	Application and Accompanying Documents
Appendix B	Local Government (Miscellaneous Provisions) Act 1976 Sections 46, 55, 55A, 55B, 55ZA, 56 & 62
Appendix C	Private Hire Operator Licensing Conditions
Appendix D	Uber's Response to Request for Further Information
Appendix E	Greyball Technology
Appendix F	Data Breach
Appendix G	Additional Information
Appendix H	Uber's Terms and Conditions
Appendix I	Uber Operating Model
Appendix J	Memorandum of Understanding
Appendix K	Further Information
Appendix L	Licensee Representations

Date: 13th March 2018

Stephen Lonnia



Chief Licensing Officer
Head of Licensing