

Taxi licensing: new guidance on passenger contracts

Transport for London becomes the first licensing authority to publish guidance for private hire operators on passenger contracts. **Neil Morley** gives an overview

On 6 December 2021 the High Court handed-down its judgment in the matter of *Uber London Limited v Transport for London & Others* [2021] EWHC 3290 (Admin).

The court had been tasked with hearing a claim, brought by Uber London Limited, for clarification on contractual relationships under the Private Hire Vehicles (London) Act 1998. Uber London sought from the court:

*...a declaration that an operator licensed under the 1998 Act who accepts a booking from a passenger is not required by the Act to enter as principal into a contractual obligation with the passenger to provide the journey in respect of that booking...*¹

Submissions were heard from each party on the central question of statutory interpretation and, at its base, Parliamentary intention. Consideration was given to provisions within, not only the Private Hire Vehicles (London) Act 1998, but also the Local Government (Miscellaneous Provisions) Act 1976.² Ultimately, the court found:

*...that in order to operate lawfully under the Private Hire Vehicles (London) Act 1998 a licensed private hire operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking...*³

In coming to this view, Lord Justice Males and Mr Justice Fraser concluded that Transport for London (TfL):

...will need to reconsider its current practice which is that it does not review the contractual terms of an operator when considering a licence application. Since an operator which does not undertake the required contractual obligation is not operating lawfully, TfL

*will need to consider how best to ensure that the basis on which...operators conduct their operations is in accordance with the requirements of the 1998 Act...*⁴

TfL immediately acknowledged its duty, as interpreted by the court, and directed operators to "...carefully consider the High Court's judgement and take steps to ensure they comply with it..."⁵ Supplemental TfL communications re-iterated the need for operator compliance, indicated regulatory checks had begun and confirmed guidance would be forthcoming.⁶

Subsequently, on 22 April 2022, TfL introduced Regulation 9(14) as an amendment to the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000. This regulation, which came into force on 23 April 2022, introduces a new condition of licence:

*The operator shall enter into a contractual obligation as principal with the person making the private hire booking to provide the journey which is the subject of the booking and any such contractual obligation must be consistent with the 1998 Act and these Regulations.*⁷

With a view to assisting said operator compliance, and in a first for licensing authorities, TfL announced the publication of guidance specifically focussed on:⁸

- *...what operators' responsibilities are when they contract with passengers...*;
- *...how the law applies in practice...*; and

¹ See para 3, *Uber London Limited v Transport for London & Others* [2021] EWHC 3290 (Admin).

² For additional comment on this aspect see *Private Hire Bookings – With Whom Are They Made?*, Button, J., *Journal of Licensing*, March 2022.

³ See para 57, *Uber London Limited v Transport for London & Others* [2021] EWHC 3290 (Admin).

⁴ See para 36, *Uber London Limited v Transport for London & Others* [2021] EWHC 3290 (Admin).

⁵ See Notice 19/21 *Private Hire Operators' Contracts with Passengers*, Transport for London, 6 December 2021.

⁶ See Notice 22/21 *Private Hire Operators' Contracts with Passengers – Next Steps*, Transport for London, 20 December 2021 & Notice 04/22 *Private Hire Operators' Contracts with Passengers – Roadmap*, Transport for London, 9 March 2022.

⁷ See Private Hire Vehicles (London) (Operators' Licences) (Amendment) Regulations 2022.

⁸ See Notice 06/22 *Private Hire Operators' Contracts with Passengers – New Regulation & Guidance*, Transport for London, 22 April 2022.

- ...what TfL is doing to help ensure compliance....

Initially, the *Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*⁹ covers the background High Court judgment, the new regulation and its purpose before moving onto the need for compliance. It then outlines the responsibilities required to meet the prescribed licence condition:¹⁰

- (1) ...a London PHV operator must – itself – accept bookings from its passengers, rather than anyone else (eg, a driver”) doing so;
- (2) ...a London PHV operator must – itself – take responsibility for the journey from point A to point B, rather than anyone else (eg, a driver) doing so;
- (3) ...the booking must be carried out in a London licensed PHV (or taxi) driven by a London licensed driver; and
- (4) ...the booking must be carried out for a fare which was either agreed or for which an accurate estimate was provided in advance...

These, TfL states, apply to all operators regardless of “... how they operate...and whether or not they use written contracts...”.¹¹ Where a written contract exists, TfL provides clarification on its approach to finding an operator is compliant when its services:¹²

- a) ...makes it clear that the London PHV operator is responsible for both accepting the booking as well as the provision of the journey [also known as transportation services]...;
- b) ...states that a contract is created between the operator and passenger for the booking as well as the provision of the transportation services...;
- c) ...refers to fares for the journey being collected by the operator or collected by the driver on behalf of the operator...;

d) ...makes it clear that only the operator can cancel a booking with a passenger...; and

e) ...makes it clear that liability in relation to the transportation services belongs to the operator...

It also clarifies terms which would not be considered compliant in a written contract. These include instances where an operator:

a) ...retains responsibility only for accepting bookings and that the drivers are responsible for providing the transport service or journey, or that the passenger’s contract is with the driver...;

b) ...acts only as an agent for the driver...;

c) ...is not a transportation provider or does not provide transportation services...;

d) ...is an intermediary between the passenger and driver who is the transportation provider...;

e) ...has established payment arrangements by which passengers pay drivers directly, with the operator taking a fee or proportion of the fare as the driver’s agent...;

f) ...transfers liability for its obligations under the 1998 Act onto anyone else such as drivers...; or

g) ...has no responsibility in relation to the performance of the contract to provide transportation services because such services are provided by the driver...

Whilst these factors represent likely considerations for TfL, it is clear account must be taken of them in any such agreement. If, in the alternative, an operator does not possess a written contract, TfL will request evidence of its ...processes, systems and procedures...¹³ This will, at minimum, cover:¹⁴

a) ...any wording that operators use to describe their operating model which may be available to passengers on their website or in publicity materials about their services...;

b) ...whether operator’s take responsibility for

⁹ See *Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.

¹⁰ See page 2, *What does this mean for London PHV operators?*, *Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.

¹¹ *Ibid.*

¹² See page 3, *Operators with written contracts*, *Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.

¹³ See page 4, *Operators Without Written Contracts*, *Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.

¹⁴ *Ibid.*

Passenger contracts

anything that may occur on the journey...;

c) *...whom passengers should make complaints to about the journey...;*

d) *...where applicable, payment of VAT on fares...;*
and

e) *...how bookings are cancelled....*

Such evidence may in any event, as TfL later states, be sought to check compliance regardless of whether a written contract is used or not.¹⁵ TfL has indicated it will also require an explanation from each operator on how it complies.¹⁶ These requirements, it should be borne in mind, are subject to review and the guidance itself may be periodically updated.¹⁷

Moving forward, it is of paramount importance London operators heed this guidance. While it has no legal effect,¹⁸ it does outline the basic approach taken by TfL to assessing

15 See page 4, *Compliance, Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.

16 *Ibid.*

17 See page 5, *Action to be taken, Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.

18 See page 1, *Purpose of this guidance, Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.

whether an operator is, or will be, compliant with the licence condition. The burden to meet this obligation remains with the operator and, if TfL is not satisfied, the repercussions for non-compliance may be refusal of an application or enforcement action.¹⁹

Ultimately, while taking some four months to appear, the guidance must be welcomed as providing at least some clarification on TfL's stance for applicants and licence holders. Given Uber has commenced proceedings against Sefton MBC seeking a declaration as to the construction of the legislation applicable in the provinces,²⁰ and that uncertainty pervades around the full impact on tax law²¹ and employment law, this may offer a useful insight to future regulatory approach.

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19 Note: TfL also expects to be notified of material changes, under Regulation 9(13) Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (as amended), to contractual relationships which affect bookings or the provision of transportation services (see *Private Hire Operators: Guidance on Changes to Operating Models*, Transport for London, 22 April 2022).

20 *High Court Declaration Proceedings...* Notice, Sefton Council, 14 April 2022.

21 See *...TfL is not able to advise operators in relation to their tax responsibilities...* at page 2 *Purpose of this guidance, Guidance for London Private Hire Vehicle Operators: Contracts with Passengers*, Transport for London, 22 April 2022.



The course will be provided via an online platform. Let us know if your Councillors need this training and we can get a date booked in.

We recently added our virtual Councillor Training Day to our list of online courses. A must for all councillors who are part of the licensing decision making process, providing an introduction for those who are new to the role and a refresher for more experienced councillors.

This training course is aimed at all councillors who are involved in the decision making process of licensing applications. The course will cover the general principles of licensing, including hearings under the Licensing Act 2003 and committee decisions relating to the hackney carriage and private hire regime.