

Passenger contracts – the legal view

TRANSPORT FOR LONDON IS THE FIRST LICENSING authority to publish guidance on passenger contract for private hire operators.

On December 6, 2021 the High Court handed-down its judgement in the matter of *Uber London Limited v Transport for London & Others*.

The court had been tasked with hearing a claim, brought by Uber London Ltd, 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."

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.

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."

In coming to this view, Lord Justice Males and Mr Justice Fraser concluded 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".

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". Supplemental TfL communications reiterated the need for operator compliance, indicated regulatory checks had begun and confirmed guidance would be forthcoming.

Subsequently, on April 22 this year, 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 April 23, 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."

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

- What operators' responsibilities are when they contract with passengers
- How the law applies in practice
- What TfL is doing to help ensure compliance.

Initially, the 'Guidance for London Private Hire Vehicle Operators: Contracts with Passengers' covers the background High Court judgement, 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:

- A London PHV operator must – itself – accept bookings from its passengers, rather than anyone else (eg a driver) doing so
- 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
- The booking must be carried out in a London-licensed PHV (or taxi) driven by a London licensed driver
- 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". Where a written contract exists, TfL



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provides clarification on its approach to finding an operator is compliant when its services meet these criteria:

- The London PHV operator is responsible for both accepting the booking as well as the provision of the journey (or transportation services)
- A contract is created between the operator and passenger for the booking as well as the provision of the transportation services
- Fares for the journey are collected by the operator or collected by the driver on behalf of the operator
- Only the operator can cancel a booking with a passenger
- 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:

- 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
- Acts only as an agent for the driver
- Is not a transportation provider or does not provide transportation services
- Is an intermediary between the passenger and driver who is the transportation provider
- 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
- Transfers liability for its obligations under the 1998 Act on to anyone else such as drivers
- Has no responsibility in relation to the performance of the contract to provide transportation services because such services are provided by the driver.

While these factors represent "likely" considerations for TfL, it is clear they must be taken into account 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".

This will, at minimum, cover:

- 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
- Whether operators take responsibility for anything that may occur on the journey
- To whom passengers should make complaints about the journey
- Where applicable, payment of VAT on fares
- 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. TfL has indicated it will also require an explanation from each operator on how it complies. These requirements, it should be borne in mind, are subject to review and the guidance itself may be periodically updated.

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

The guidance took four months to appear, but must be welcomed as providing at least some clarification on TfL's stance for applicants and licence holders. Given proceedings on this statutory question are being commenced outside London in Sefton, and uncertainty pervades around its full impact on Tax Law and Employment Law, this may offer a useful insight to future regulatory approach.

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