

BRIGHTON & HOVE CITY COUNCIL
LICENSING PANEL (NON LICENSING ACT 2003 FUNCTIONS)

10.00am 23 APRIL 2018

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors O'Quinn (Chair), Deane and Hyde

Officers: Jo Player, Head of Safer Communities; Jim Whitelegg, Regulatory Services Manager; Simon Court, Senior Lawyer, Housing and Litigation; Rebecca Sidell, Lawyer and Penny Jennings, Democratic Services Officer

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

1.1 **RESOLVED** – Councillor O'Quinn was elected Chair for the purposes of the meeting.

2 PROCEDURAL BUSINESS

2a Declaration of Substitutes

2.1 There were none.

2b Declarations of Interest

2.1 There were none.

2c Exclusion of Press and Public

2.2 In accordance with section 100A of the Local Government Act 1972 ("The Act"), The Committee considered whether the press and public should be excluded from the meeting during the consideration of any of the items listed on the agenda.

2.3 **RESOLVED:** That the press and public not be excluded from the meeting during consideration of any items contained in the agenda.

3 APPLICATION FOR RENEWAL OF PRIVATE HIRE OPERATOR LICENCE - UBER BRITANNIA LTD

3.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities and Housing requesting that they determine the application for renewal of a Private Hire Operators Licence received under the Taxi and Private Hire Vehicle

(PHV) legislation made under Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), in respect of Uber Britannia Limited (UBL) to operate from Workshop 30, 30 Grand Parade, Brighton BN2 9QA.

- 3.2 Before proceeding to the formal business of the meeting the Chair, Councillor O'Quinn, asked for introductions and each of the Panel members introduced themselves in turn and then all other parties introduced themselves. The Chair confirmed that they had read all the paperwork. The Chair explained that those who had made representations and were identified on the circulated Speaker's List would be called forward to make their representations, the Panel would ask questions; a commensurate amount of time would be permitted for the applicants to speak in support of their application at the appropriate point in the proceedings. The Panel would ask questions. When all the submissions had been heard, there would be an opportunity for the parties to sum up following which the Panel would retire to make their decision. The Chair laid down some ground rules for the hearing. She stressed the need for all to concentrate so there must be no heckling or disturbance. If there was disruption then persons may be removed.
- 3.3 Requests had been received to film/record the meeting, including representatives from the media and in line with agreed Council policy this would be permitted provided it did not impede the conduct of the meeting. The meeting was being recorded for the purpose of the Council's own records but would not be available for live viewing.

Officer Introduction

- 3.4 The Regulatory Services Manager, Jim Whitelegg, explained that the purpose of that days hearing was to determine an application for the renewal of a Private Hire Operator's Licence for Uber Britannia Limited (UBL). The Panel Members had received and read the agenda and paperwork in advance of that days hearing as had the applicant and those who had made representations via the link on the Council's website.
- 3.5 The report set out the relevant information and background concerning the application and the decision to be made by the Licensing Panel. It included the relevant law and policy in relation to the application, and contained legal comment on the issues raised in the representations. This was the third renewal application of Uber's Private Hire Operators licence to be determined since a licence had first been issued in November 2015 (a copy of the application was contained in Appendix A together Uber's written submission in support of their application, a copy of the current licence could be seen in Appendix B).
- 3.6 The legislation did not mandate the need for consultation in relation to the application for the renewal of private hire operator's licence. However, the Licensing Authority had allowed for a period of 4 weeks for written representations to be received.
- 3.7 During that period the Licensing Authority had received:
- 33 representations in support, including 26 from residents/businesses and 7 from taxi drivers; and
- 274 representations opposing the application, of which 267 were letters signed by taxi drivers and the remaining 7 were submissions from local operators, trade unions, taxi

driver associations and a campaign group (listed in paragraph 4.2 and contained in full in Appendix C). Legal commentary on the main issues to be considered was contained in paragraph 8.

3.8 The Committee might:

- Renew the Operator's licence for a 5 year period;
- Renew the Operator's licence for a limited duration up to 5 years;
- Renew the Operator's licence with such additional conditions as the Panel considered reasonably necessary;
- Refuse the renewal. This carried a Right of Appeal to the Magistrates Court.

3.9 If the Sub Committee chose to refuse to renew it must be satisfied that UBL were no longer a "fit and proper" person to hold an Operator's licence (as set out in sections 55 and 62 of the 1976 Act) and to give their reasons for the decision reached. Reference to relevant legislation in respect of renewal of a Private Hire Operator's (PHO) licence was contained in paragraph 6 of the report and advice on the context of fit and proper for an operator together with operator's responsibilities was contained in paragraph 7.

3.10 Having heard the Officers submission, the Chair, Councillor O'Quinn asked her fellow Panel Members if they had any questions. The Chair asked for confirmation that the Information Commissioner's Office (ICO) had not made any ruling. It was confirmed that was correct and that the TFL appeal would be a five day hearing in June. The applicant's representatives were asked if they had any questions in respect of the officer presentation and they confirmed that they did not. The Chair explained that each of those listed to speak would now have their opportunity to address the Panel. There would be some change to the order set down on the circulated list due to people's commitments.

Those Speaking to/on behalf of Representations Submitted to the Panel

Those Speaking in Objection

Andrew Peters – GMB

3.11 Mr Peters stated that Uber had indicated that they were unaware of the data breach which had occurred, yet, a multi-billion dollar disrupter technology had failed to pick up the phone or send an e mail within its own structure about this. Uber had apologised but ignorance of the law was not an excuse and Uber had acted completely irresponsibly in not informing users, its drivers or the council itself. Rather than advising of the problem they had kept quiet, this indicated that they were not a fit and proper person to hold a Brighton and Hove Licence.

3.12 Mr Peters referred to provision of Wheelchair Accessible Vehicles (WAV's) in the city. Uber identified itself as a caring organisation, this was "spin", it had no WAV vehicles operating in Brighton & Hove as only 26 drivers were actually licensed in the city who were therefore required to meet Blue Book requirements, notwithstanding the number of Uber drivers entering the city who had been licensed elsewhere. This from a multi-billion dollar company, if it really cared Uber could have used Brighton and Hove as a benchmark. Notwithstanding what had been said about the Uber app in the GMB's view

it was a peer to peer arrangement and bookings were made before they were accepted and recorded. This ran directly contrary to section 169 as contained in Brighton and Hove's Blue Book which expressly did not permit immediate hire and in their view also contravened the requirements of the Miscellaneous Provisions Act. Mr Peters referred to instances reported in the Guardian in February which indicated that in instances of allegations sexual assault victims were encouraged to deal with these issues outside the court system. It indicated that at its core Uber sought to suppress bad news. Finally, Mr Peters referred to the fact that Uber whilst pledged to improving standards in Brighton and Hove were averse to having CCTV fitted in their vehicles, something which was fitted in all Brighton and Hove private hire vehicles. He claimed Uber used out of town cars to drive in the wrong direction and encouraged drivers to get licensed in Lewes and created mythical Uber regions.

- 3.13 The Senior Solicitor, Housing and Litigation, Simon Court, confirmed that the Blue Book did not require an operator to provide 20 % WAV's until they reached 100 vehicles. It was confirmed that a piece of paper had been handed to the Panel which was a summary of Mr Peters' speech and that it would also be copied to the applicants.
- 3.14 The Chair, Councillor O'Quinn, referred to customer safety which was a prime consideration and responsibility for the licensing authority. The Chair and other Members had received training recently which had highlighted that safety was a top priority, and had also been referenced at a recent LGA conference. Councillor O'Quinn asked Mr Peters whether he considered that CCTV being fitted had contributed to safety. Mr Peters was firmly of the view that it had. He had been opposed to it initially because of the manner in which the conditions had been framed but it had gone through many changes to arrive at the way it was framed and he considered that the GMB had been instrumental in that, he was of the view that it protected customers and drivers. If as a driver he picked up a young women who was vulnerable due to alcohol on a Friday or Saturday night her parents could be assured that he could take her to her home in the knowledge that everything was recorded and that she was safe. He as a driver was also safe from false allegations. Uber had stated publicly in Taxi Forum meetings that they did support provision of CCTV. Councillor O'Quinn stated that she was aware CCTV footage had been used both to evidence wrong doing and to refute false allegations.
- 3.15 Councillor Hyde asked whether Mr Peters was of the view that the Council had been correct in pressing for CCTV and he confirmed that he fully supported this as an aid to public safety to the extent that the GMB were encouraging its use countrywide.
- 3.16 Councillor Deane referred to the claims he was making about Uber drivers driving the wrong way and sleeping in cars and what evidence there was. He said he had evidence in his briefcase as to Uber drivers sleeping in cars and had videos of drivers using cars as motels. So the evidence was there.
- 3.17 Councillor O'Quinn asked about instances of sexual assault in Brighton and Hove as opposed to London. Mr Peters said he was referring to an article which had appeared in the Guardian. This was not in London. There would not be a problem with Uber Brighton and Hove drivers but there were issues with out of town Uber drivers. Whilst drivers licensed in the city had not been subject to accusations of sexual assault if that was the case in respect of drivers operating in the city who had been licensed outside it that

would not necessarily be known. Councillor O'Quinn referred to the condition entered into by Uber about notification.

- 3.18 Councillor Deane asked about the article which had appeared in the Guardian which was a reputable paper asking whether while there were no such instances in Brighton and Hove was he saying if it did happen in Brighton and Hove then, looking at past history it was in the Uber philosophy to silence things? He said all that he knew was that it had been reported in a reputable paper that women were being silenced. Councillor O'Quinn clarified that the instances cited had occurred in America. Mr Peters said Uber the brand was multinational and that all elements of its business were related despite claims to the contrary.
- 3.19 Councillor O'Quinn then asked about WAVs, she had done the training and had been told that data collected indicated that the number of disabled customers who required WAV's was higher than average in Brighton and Hove. She enquired whether Mr Peters was aware of any vehicles which had come into the city which were WAV's. He said the trade were very well connected and that at no time had he ever seen an out of town Uber WAV.
- 3.20 The Chair stated that the Panel were likely to seek clarification of a number of issues from the applicants including this one.

George Beresford – Independent Taxi Drivers

- 3.21 Mr Beresford referred to his written submission. As set out in his circulated letter he was of the view that the processes which Uber was using were illegal. It was plying-for-hire. He referred to the Data Breach and the fact that customers had not been informed. In the relatively short time that Uber had been operating in the city a number of issues had arisen. He considered that the software used by UBL (Greyball and Ripley) was used to help evade compliance. Although UBL had promised that they would not use this technology in Brighton he considered that was not the case. Mr Beresford also cited the recent case involving York City Council considering that Brighton should follow York in applying its policies. Uber were not fit and proper. Mr Beresford considered that there were a number of parallels between Brighton and York where similarly there were a large number of vehicles plying for trade in the city which had been licensed elsewhere and had travelled there from some distance away. York had refused to renew Uber's licence, notwithstanding that Uber had stated that they would appeal, they had not done so. The Council needed to support its own high standards and those of other authorities where they were robust in order to avoid a race to the bottom.
- 3.22 Mr Beresford considered that the manner in which Uber bookings were made was illegal as it allowed drivers to take bookings in effect backfilling, plying for trade which was not the same thing as pre-booking. This combined with the fact that they had not initially disclosed the data breach which had occurred in November 2016 and had paid the hackers to avoid disclosure, so had tried to hide that from all parties, which did not indicate that Uber were fit and proper and their application should therefore be refused.
- 3.23 Councillor Hyde noted that Mr Beresford had referred to the number of hours worked by Uber drivers being longer than indicated, up to 30 hours per day potentially and asked for clarification of how that occurred and for his knowledge of that matter. Mr Beresford

explained that Uber claimed their drivers were allowed to work 12 hours but these hours were calculated based on the journey from where a job was picked up to the final destination, journey time into the city and or any waiting time between jobs was not included. Councillor O'Quinn explained it was also her understanding that all waiting journey time including waiting time at a rank for example, was not included. Mr Beresford confirmed that was so. Councillor O'Quinn stated that it was important to note that York was different to Brighton and that it was understood that rather than appealing it appeared that Uber were now making a new application to York.

Mark Durell – Brighton & Hove Private Hire Association

- 3.24 Mr Durell stated that when the original application had been determined in 2015, it had been based on the information provided at that time. It was considered that information provided by Uber at that time had been misleading. The representations sent in from Streamline Taxis, City Cabs and Radio Cabs, alongside the views expressed by a number of Brighton & Hove taxi trade groups opposing the renewal of Uber's operator's licence were supported. TfL had subsequently deemed that Uber were not fit and proper to hold a licence in London (September 2017), currently subject to appeal, a decision on which was still awaited. TfL considered on the basis of a review carried out by Deloitte that Uber's business model did not comply with the 1998 London Private Hire Act. Concerns had also been raised that allegations of serious criminal offences had not been reported to the Metropolitan Police and that Greyball technology had been used by Uber's senior management as a means of evading regulatory enforcement. Much of the information provided by Uber had been false/misleading and he considered that had the Panel been aware of that when the original decision to grant a licence had been made or subsequently, the outcome would have been different. He had been impacted by the data breach in 2016 and considered that the excuse given by Uber that only the CEO and a few high ranking staff no longer with the company had been aware was not a legitimate excuse and indicated that they were not fit and proper. The assertion that each arm of Uber was separate was also not correct as each branch of the business was interconnected. He agreed that it was not a normal operator in that data loss, a payment to hackers and the failure to report serious criminal offences within the TfL area had occurred. He did not agree that Uber should be given greater flexibility than other operators or, that, they were an exception/exempt from the legislation in place. The claim that Uber were helping to improve air quality was nonsense when they had been instrumental in flooding London and the city itself with extra vehicles.
- 3.25 Councillor Deane asked Mr Durell how he had been affected by and notified of the 2016 breach and he responded that he had been a customer and that he had not received any notification from Uber itself and had only been made aware as a result of press coverage.
- 3.26 Councillor O'Quinn referred to the need to improve air quality in the city, stating that her understanding was that electric vehicles/batteries for them were expensive, access to charging points was limited, that the amount of charge a vehicle could hold was limited and that the time taken for charging to take place was lengthy. Greater use of such vehicles would therefore take time, notwithstanding that the council itself was committed to using such vehicles in the longer term. Mr Durrell stated that he considered that the view of the trade had changed over the last 6-12 months. Discussions with officers had indicated that a number of charging points were proposed which would have wi-fi

connectivity with a charging time of 10-20 minutes. In the longer term this would save drivers money. That would however be undermined if a large number of drivers came into the city who were not subject to the Blue Book, this would reduce driver and customer safety amongst other problems.

Gerald Gouriet QC - On behalf of Brighton & Hove Streamline, Brighton & Hove Radio Cabs Ltd & the Southern Taxis Group Ltd, City Cabs Brighton Ltd

- 3.27 Mr Gouriet prefaced his submission by stating that use of taxi apps to dial up or provide a private hire vehicle using modern technology was something which should be welcomed by everyone with the proviso that the operator doing so was a fit and proper person, its use was lawful and that provision did not undermine local licensing control. It was his contention that Uber had failed in all of those areas, but he intended to focus on local licensing controls because he considered that area had been neglected. He considered that if a Licensing Authority wished to retain control of operations in its area it did have the power to refuse a licence.
- 3.28 Mr Gouriet went on to state that whilst much had been said by Uber regarding improvements they had made by sacking those involved in past incidents he wished to refer the Panel to a case considered by Justice Griffin at Knightsbridge Crown Court in relation to a company restructuring detailed at page 317 of the agenda. He read the appropriate section stating that the view had been taken that in cases where wrong doing by a company/licence holder was flagrant and well documented that no amount of restructuring could restore faith in it as a fit and proper person to hold a licence. They stood condemned and there would be a lack of confidence in the licencing justices system if they continued to operate. The case cited referred to a casino but he wanted consideration to be given to how that related to Uber.
- 3.29 Uber had a history of sustained misuse, they had obtained their first licence in the United Kingdom based on a false information. The letter supplied by TfL was very important. It had been indicated that Uber were accepting bookings whereas in fact it was the driver, which was unlawful, the High Court had been misled with the same falsehood. Every booking accepted by a driver was unlawful and the number of such bookings had numbered into tens of thousands, possibly millions. Greyball and Ripley systems had been used as a means of flouting regulatory requirements and in addition the data breach had also occurred of which the Panel were aware for which "hush-money" had been paid by Uber and failure to disclose.
- 3.30 Mr Gouriet referred to further case law including the Blue Line case where Justice Higginbottom had considered that the hallmark of the regime was localism. Others had stated that the Central purpose of the 1976 Act was to provide a local licensing authority with the ability to exercise full control within its area. Uber had driven a coach and horses through this and their proposals whereby the country was divided into with 9 regions and would continue to do so. There would be no point in having the Blue Book and its high standards if the city could be flooded with drivers over which it had no control. Mr Gouriet quoted what he considered to be the relevant sections of the Act at page 5 of the agenda - s62 of the Act. (a brief pause in the proceedings was permitted to enable page references to be checked). Importantly, a licensing authority had the discretion to refuse a licence on any reasonable cause where its policy and objectives were not met. Both the Court of Appeal decisions cited showed that local licensing

control was paramount and that an authority had all the powers it needed to have full control over vehicles operating in its town or city. Although reference had been made to the ability of Uber to operate in the city irrespective of whether they were licensed there he considered that if, by means of a platform, Uber and drivers from outside the city were making an invitation for bookings in Brighton where they were not licensed, this was unlawful.

- 3.31 The Senior Solicitor, Housing and Litigation, Simon Court sought clarification from Mr Gouriet whether he was in fact referring to a case involving “Silverline”, rather than “Blueline”. Mr Gouriet confirmed that he was referring to a case involving “Blueline” taxis, and in Newcastle in 2012.
- 3.32 Councillor Hyde noted that Mr Gouriet had referred to payment of “hush-money” being paid by Uber and asked whether he was able to evidence that statement. Mr Gouriet responded that whilst he did not have supporting documentation with him, it was generally accepted that the criminals who had hacked into the Uber system had been paid 100,000 dollars in order not to reveal the breach which had occurred. Councillor Hyde responded that she had thought that was the incident being referred to but had wanted clarification.
- 3.33 Councillor O’Quinn, the Chair, sought clarification of the different requirements under the Act in London and elsewhere. Mr Gouriet stated that whilst the powers were broadly similar there were wider powers to refuse a licence elsewhere as Section 62 had no equivalent in London. Provision existed for bookings to be made and until now this had deflected attention from the issue of where the invitation for a booking was made. Deloitte’s view (TfL) was that where the invitation to book was made it could be separate and different from the licensing area where the booking was taking place. The legal position in this respect remained to be addressed.
- 3.34 In noting what had been said, the Senior Solicitor, Housing and Litigation, Simon Court, confirmed that as the arrangements in Brighton & Hove differed from those in London, in making their decision the Panel needed to focus on Brighton & Hove. The Chair, Councillor O’Quinn stated that was so and she considered therefore that it was important to draw out what those differences were.
- 3.35 Councillor Deane sought clarification regarding differences between a vehicle being hired by telephone or by using an app. Mr Gouriet stated that to be lawful when calling through an operator, provision was being made to use a Brighton and Hove licensed taxi. That was very different from sending in and making provision for a vehicle to come into the area that had not been licensed there. Sufficient regard had not been taken of that until now in Mr Gouriet’s view. But the Panel had the discretion under the Act to make that differentiation.
- 3.36 The Chair, Councillor O’Quinn, commented that when the decision to grant a licence in Brighton and Hove had been taken in 2015, the Panel had sought to protect the conditions set out in the Blue Book by requiring Uber to use only vehicles licensed in Brighton and Hove, which would need to meet those conditions. That had not occurred and she considered that more light needed to be shed on that. If it was an undertaking to use only Brighton and Hove licensed taxis, that had been broken. If on the other hand Uber had been saying that under the terms of the licence they would use Brighton and

Hove drivers that was required by the law in any event. On that basis Mr Gouriet considered that the former rather than latter interpretation was correct and Uber had not met the agreement they had made.

Sean Ridley – Secretary Unite, the Union, Southern Region (Cab Section)

- 3.37 Mr Ridley referred to the need to uphold the licensing objectives referred to in paragraph 4.1 of the officer report querying how the health and safety of the public and drivers could be protected when there were so many drivers coming into the city from outside. This compromised it on so many levels, there had been instances of drivers operating who had no local knowledge, fatigued drivers using their cars as a dormitory. The Uber operating model compromised safety. The disproportionate amount of run in time and run out time following a job were not logged and were not therefore controlled by any app working times restrictions.
- 3.38 Mr Ridley contended that Uber UK was not a separate legal entity as it was not a data controller, as data was processed by Uber BV based in the Netherlands not by Uber UK nor in Brighton and Hove. This indicated that bookings were taken by drivers most of whom were not licensed operators. Details of the criminal data breach had not been passed on (it had taken over a year to do so) and they could certainly not be trusted with sensitive information such as customer holiday plans, this did not sit with the image painted of Uber raising standards. As well as not supporting the need for drivers to undertake a local knowledge test and provision of CCTV potential drivers were actively encouraged to obtain their licence from other licensing authorities with less stringent requirements. They had not acted responsibly and they were not fit and proper.
- 3.39 Councillor O’Quinn stated that she had attended Taxi Forum meetings where the knowledge and CCTV had been referred to (this point would be clarified with the applicants in due course) asking whether Mr Ridley was aware of why there was reluctance by Uber to use this. Mr Ridley stated that the case had been made that local knowledge was unnecessary as Uber drivers had access to sat nav.
- 3.40 Councillor Hyde sought clarification regarding Uber BV, noting that she would also be requesting information regarding this from the applicants later. Mr Ridley stated that he understood that Uber Britannia had yet to register as a data controller and that all data was currently processed by Uber BV which was registered with the Dutch Authorities.

Charles Holland, Barrister – on behalf of Licensed Driver/Sudanese Taxi Forum & United Taxi Drivers Association

- 3.41 Mr Holland stated that the point that he wished to make on behalf of his clients in line with their representations was that in his view there was a fundamental unlawfulness in the Uber model with the operator conducting their business under the guise of being a private hire licence model. Under the 1976 Act there was a two tier system for Hackney Carriage Vehicles and for Private Hire Vehicles. This gave local control to the appropriate licensing authority and, in the case of Hackney Carriages the ability to set fares and to control the number of vehicles operating in the area. Uber’s approach was simply a smokescreen to avoid conditions which other operators were subject to.

- 3.42 Uber drivers had complete autonomy about where to work, were their own bosses and as Uber's Super region covered a large area, drivers could come into the area from some considerable distance away. There was no contract between Uber Britannia and the customer, this was clear from Uber's own submission set out at page 49 of the circulated papers. The service provided was on demand and could not be pre-booked, delayed bookings could be made but in reality these could not be guaranteed, as they were dependent on a driver(s) being close to the customers location at a given time. Uber were operating in the same manner as hackney carriages did but without the ability for the licensing authority to set fares and minus the Blue Book controls which had to be met by private hire operators licensed by the city council. Uber operated as a "disrupter", that was the basis of their business model.
- 3.43 In order for Uber's licence to be renewed the Panel needed to be convinced that this operator was fit and proper which he contended they were not. The letter provided by TfL set out a "laundry list" of issues which had resulted in their decision to refuse the licence. One of the main issues which had arisen however, was, in connection with the data breach which had potentially affected at least 2.7m Uber users. Details of account holders' names, e.mail details, telephone numbers and other information had been compromised. Customers had not been informed until the breach had become public, users had not been informed in writing or by e. mail or given any support. This information had been held by Uber BV in the Netherlands, where their lawyer may have advised that the information accessed had not been sufficiently sensitive that it required disclosure. Basically Uber just "did not get it", they sought to keep their costs low and to avoid any regulatory burden, there was also an unwillingness to hold their hands up if anything went wrong.
- 3.44 Councillor Deane stated that use of the term "disrupter" was emotive and asked Mr Holland to expand on what he meant by it. He responded that a "disrupter" entered an existing business market with established players and profit margins and sought to take a percentage of that market often, as in this case, by avoiding any regulatory burden, economising and cutting corners. Uber cut across the private hire requirements by being misleading and by avoiding the law being correctly applied; it could be correctly applied by refusing Uber a licence.
- 3.45 Councillor Deane then went on to ask about any differences in private hire operator's responsibilities in relation to public safety and in the event of customer complaint. Mr Holland stated that there was no definitive answer to that as different operators had different ways of working. However, the norm would be for a customer to telephone an operator's head office and or detail their complaint in writing. With Uber this option was not available although it was understood that discussions were in place with TfL to set up a call centre, a customer could make contact via the app and dialogue also appeared on twitter but arrangements did not appear to be in place to the same level as required by the Blue Book in order to re-assure customers or to assist those who were vulnerable. Particular requirements for instance, for a female driver, or for vehicles for those with disabilities could not be met, because the app was not designed for that. In terms of contractual responsibilities if hypothetically an Uber driver broke down on the A34 whilst taking you to the airport, there was no responsibility to provide a replacement vehicle to avoid missing your flight. Your best hope of remedying the situation was to use the app on your phone in the hope that there was a cluster of vehicles in the vicinity and that one of them was willing to take the onward booking. The ply-for-hire

arrangements were blurred and the overlay of responsibilities was complex, it was not easy to see how it worked.

- 3.46 Councillor Hyde stated that she had been in the same situation and had been very grateful that arrangements for a replacement vehicle had been able to be put into place and she had caught her flight. However, using the example given was it not likely that a replacement vehicle could be provided from one of those in the area via the app? Mr Holland stated that was really a question for Uber but as vehicles tended to cluster in areas where there was likely be a high number of requests for hire they were likely to be less interested in an out of town journey. With a conventional private hire company you would have a claim against the operator, with Uber you would not. The Chair, Councillor O'Quinn, commented that she had not used Uber and that she nearly always pre-ordered a vehicle. She referred to his point about all the benefits of hackney carriages and asked him to explain that. Mr Holland stated that it was a matter of local control. In Brighton Hackney Carriages were subject to a quota system, numbers were limited, vehicles were required to wait on ranks, fees were set by the council, surge pricing could not be used and stringent requirements had to be met. Private Hire had been unregulated until various Acts had been agreed by parliament which enabled local control.
- 3.47 Councillor Deane referred to the app which had been mentioned a lot, as it appeared to be an innovative way forward, enquiring what prevented other operators from using an app. Mr Holland stated that it was his understanding that they did but that it was not the only way bookings could be made. Use of an app was available to those operating to a traditional business model and certainly Uber were not the first to use an app. The difference was that generally other providers contracted with their customers and that they controlled their drivers whereas with Uber it was the driver who was in control.

At this point in the proceedings there was a 15 minute comfort break.

Those Speaking in Support

Sunetta Kiarie – Local Resident

- 3.48 Ms Kiarie explained that she was a resident who also conducted her business in the city. She had a good experience recently with Uber after being stranded in London. The driver had been very helpful. She had been attracted in part to make Brighton her home because of the innovation that it supported. There were lots of new developments in the city and she considered that it was really important to support that. She had used Uber for a while and would continue to do and had been astounded by their professionalism and the cleanliness of their vehicles. She had always felt safe using Uber cabs as a woman and considered them to be equally as good as other taxi providers in the city; she had used Uber and other providers. She lived in the London Road area of Brighton and had found the service she had received to be very quick and reliable. She considered it was good for a city like Brighton and Hove to have both options available.
- 3.49 Councillor Deane referred to the fact that one of the issues for the Panel was to consider the safety of the local community, Ms Kiarie had stated that she had always felt safe using Uber vehicles and was asked whether she had ever felt unsafe using other operators and Ms Kiarie confirmed that she had not.

- 3.50 The Chair, Councillor O'Quinn, commended the contribution of developing business made by digital media in the city and asked Ms Kiarie whether she was aware that Uber were able to operate in the city despite having been licensed elsewhere. Ms Kiarie stated that she considered that it might be an issue of due diligence on Uber's part to be licensed here and Councillor O'Quinn responded that questions in that respect were likely to be asked by the Panel later in the proceedings. She wanted to make Ms Kiarie aware that if the Panel took the decision not to renew Uber's licence it did not mean that she would lose the ability to use Uber.

Claire Alcock

- 3.51 Ms Alcock spoke in support of Uber stating that she had used Uber when living in London and had been pleased to find this service was available when she had moved to Brighton. The benefits of Uber were three-fold, convenience, tracking and accountability. She found the service provided was perfect for her in that once the service had been called it could be tracked. Because the service could be tracked it gave a real sense of safety. As a woman who often travelled alone the amount of information held was reassuring. She found the rating system very helpful; they were accountable.
- 3.52 Councillor Hyde enquired regarding how reviews of drivers were logged and Ms Alcock explained that these could be logged within a few minutes of arrival at the customers' destination. Customers were encouraged to leave feedback. The App was very helpful in that it located the nearest available driver and she could see reviews of that driver. Councillor Hyde then asked if she had used other taxi companies and if she felt safer with reference to CCTV. Ms Alcock said she had used a local cab company and did not feel unsafe but she felt empowered by the information provided by Uber.
- 3.53 Councillor O'Quinn asked Ms Alcock whether she had used a licensed Brighton and Hove Taxi company and if it was cheaper, as she understood it was in London. Ms Alcock responded that it was around the same price but that price was not often her primary concern. Councillor Deane said that she was glad she used both but asked if there was much difference in the level of service. Ms Alcock replied that the service that was provided was the same but with Uber there was a better level of information and convenience. Councillor Deane then asked if it was reassuring that Brighton and Hove drivers had gone through rigorous hoops whilst drivers from elsewhere, who did not have to meet the same standards, had not. Ms Alcock replied that it was reassuring that there were many rules and regulations though these were not accessible when she booked a cab. Uber provided useful information at the point of booking. Councillor Deane then asked about the data breach and whether she had been aware of the data breach. Ms Alcock responded that she had not. Councillor Deane said that the information provided to Uber was sensitive and vulnerable and whether this was a concern given the breach. Ms Alcock said she had to provide information everywhere on line, she had made that decision. She was aware that companies had data breaches but had not been negatively impacted by the breach. Councillor O'Quinn highlighted that Uber drivers could come from a long way away. Ms Alcock replied that she had not had that experience and that all of the drivers she had used appeared to have good local knowledge and to be local drivers. Councillor Hyde then asked whether Ms Alcock was aware that cab services registered locally also had an app.

Caroline Jones-Rowe – Local Resident

- 3.54 Ms Jones explained that she had used Uber's App since it had been available and had found it safe convenient, reliable and something which fitted ideally with her lifestyle and that of her family. Use of the app gave her the ability to move freely around the city with her family without the need to over think/pre plan their travel requirements. She had never had a bad experience or been let down. The previous evening she had been at the theatre and one her children had been very tired and she had needed to take them home. By using the app she had been e.mailed direct to her phone and had been able to meet with the taxi at the precise location and time agreed. It was the most freeing way of moving around the city with a great interface. It was a brilliant service.
- 3.55 Councillor Hyde asked whether Ms Jones had used any of the other taxi providers in Brighton and Hove and Ms Jones responded that she had and that on occasion she still used them for pre-planned events but found the convenience and immediacy of the Uber app more suited to her lifestyle. A taxi always came from the nearest possible location and as this resulted in only minimal waiting times she considered that was positive. She did not care where the drivers came from. In terms of her freedom it did not matter. She had always received a good service and considered that if Uber brought greater competition into the market place that was a positive thing.
- 3.56 Councillor Deane referred to the data breaches which had occurred, asking whether Ms Jones had concerns about those. Ms Jones responded that she was aware of the data breach but that it was not serious in her view. She considered that the information held was no different to that provided during the course of other app/on-line transactions, the onus was always on the customer to protect their own data, in consequence she did not have major concerns and did not consider that Uber was at fault as any operation could potentially be hacked, that was a fact of modern life. Councillor Deane referred to allegations that drivers could have come from a long way away e.g., Margate and thus had worked very long hours. Ms Jones responded that she was not aware of this as an issue and did not take it into account and had never had a bad experience with Uber and that if Uber ceased operations in the city that would be a retrograde step. Conventional taxi services had their place especially for pre-booking, but were not always available when you needed them and Uber worked for her and her family.

Peter Woodcock – Local Resident and Taxi Driver

- 3.57 Mr Woodcock explained that he was a Brighton and Hove resident who worked for Uber and was licensed by Lewes District Council. He had taken advice from Lewes about the legalities at the time but now today was questioning that in his own mind. He totally respected the service provided by the licensed trade in Brighton and Hove; however, the Uber app provided an option for customers which was user friendly. He had found the technology very easy to use and had welcomed the fact that input was sought from drivers and customers, it provided a flexible way of working. Any queries he had were responded to quickly and the fact that information was shared was helpful in his view and served to protect drivers and customers. Uber had made mistakes but were learning from them. Changes had been made such as the Uber regions. Technology was moving forward and would continue to do and would in time replace the existing arrangements. In 15 years it was envisaged that customers would be calling up driverless pods.

- 3.58 Councillor O'Quinn asked regarding how drivers were notified of work and Mr Woodcock explained that he received a message on his phone which he was free to accept or decline, the transaction was completed on arrival at the destination. The process was very simple, the waiting time between jobs short. The limit on work times to 10 hours was good as it reduced driver fatigue.
- 3.59 Councillor Deane asked Mr Woodcock regarding his interface with Uber Management and how his current employment differed from his previous arrangements. Mr Woodcock stated that he had some reservations prior to joining Uber but was satisfied in his employment and considered that it provided a good customer service too. Mr Woodcock responded that he had always worked self-employed and had found that Uber had responded to any issues which he had raised quickly.
- 3.60 Councillor Hyde enquired regarding the arrangements in place in the event of a complaint and it was explained that any complaints could be made either by e.mail or by telephone if preferred.
- 3.61 At that point in the proceedings having heard all of the representations from speakers the Chair, Councillor O'Quinn, confirmed that following a short break for lunch submissions would then be heard from those representing the applicant who would be afforded the same amount of time to speak as had been afforded to those making representations.

Submission by Representatives in attendance on Behalf of Uber Britannia Ltd

- 3.62 The Chair, Councillor O'Quinn, confirmed that Uber would now have the opportunity to put their submission to the Panel and that they would be permitted the same amount of time to speak as had been allocated to the other parties in line with the legal advice given.
- 3.63 Philip Kolvin introduced himself as the Barrister representing the applicants and explained that he was accompanied by Fred Jones, General Manager and Head of Cities UK and Ireland Uber Britannia and Helen Hayes, Legal Director, UK and Ireland. He would be speaking on Uber's behalf but all of those present were on hand to answer questions. This was the fourth time Uber had made a licence application and they had been successful on each previous occasion, a number of the same objectors/objections had been made and had been dealt with by the Council already. The question for the Panel to consider was whether Uber Britannia was fit and proper to operate private hire vehicles in Brighton and Hove.
- 3.64 In opening his submission Mr Kolvin stated that he wished to state in summary that 1. Uber had a good track record in Brighton and Hove, 2. it had established good working relations with the council's officers, 3, it was popular with its customers, 4, Uber had a good safety record in Brighton and Hove, 5, no customer complaints had been lodged with the council, 6, no objections had been received from the Police 7, no objections had been received from any public authority, including the Police, child protection agencies, trading standards or the council's own licensing officers. Uber had shown itself willing and able to take on board any additional requirements requested by the council and this was evidenced by its willingness to take on board the extra

conditions required of it in November 2016 and to enter into a “Memorandum of Understanding” in November 2017, and finally, there was a new board of directors.

- 3.65 Mr Kolvin went on to state that he had no intention of re-rehearsing the legal points already referred to and addressed in the officer report which was in their view balanced and legally correct, and would undoubtedly form part of the Panel’s deliberations, notwithstanding that two further legal points had been made by other parties that morning. Essentially Uber were before the Panel as wide ranging objections had been raised by rival trade representatives in Brighton and Hove, a number of them very technical which went to the heart of Uber’s operating model. Those who had lodged objections, and he meant them no disrespect, were not impartial and had a direct interest.
- 3.66 It was important to note that as a global entity, Uber had not always got things right in the past, mistakes had been made which had been significant if not serious. With the appointment of the new global CEO the previous autumn, Uber had worked extremely hard to enhance its relations with regulators. He signified a new broom and he was committed to dealing with justified criticism with humility to ensure that problems were addressed, these were the watchwords for the organisation. Arrangements were in place in every city in the UK where Uber operated and he wanted to highlight arrangements which had been put into place over recent months. There were key facts which he wished to draw to the Panel’s attention and of which the applicants wanted account to be taken. Uber had operated in the city for 19 months and there were now 62 drivers. They were licensed by the council had been DBS checked and insured and were driving around in vehicles checked by the council and fitted with CCTV in accordance with the council’s requirements set out in the Blue Book. The office in Brighton was staffed and its operation was overseen by regional management which reported to HQ based in Aldgate in London, staffed by 200 people, 50 of whom dealt with Uber operations nationally. This was supported by the customer services arm of the business located in Limerick, Ireland where 300 staff were employed to pick up and deal with any issues immediately they were notified.
- 3.67 Following Fred (Jones) appointment as Director of cities UK, Thomas Elvidge had been appointed as General Manager UK, thus there were two Executive Directors for the UK, both of whom had been DBS checked, were of impeccable character and had a reputation which they could lose. In the light of criticism received, in the last year Uber had decided to take a different approach to its corporate governance and had also appointed a new Independent Director, Laurel Powers-Freeling, whose CV included directorships of the Bank of England and Marks and Spencer’s and a financial directorship with Lloyds Bank, therefore she had wide experience of working in heavily regulated industries. Her role was to ensure that UBL operated in a transparent and compliant manner with UK regulators. The role of these independent directors was not tokenistic as two further senior independent posts had been created so that the majority of those on Uber’s Board were independent and those at the heart of Uber’s governance were independent.
- 3.68 Since Uber’s operations had commenced in Brighton two inspections had taken place which had shown that Uber were in compliance with all of the conditions set out in its licence and the bespoke conditions which had been volunteered by Uber following conversations with council officers. No areas of concern had been identified by the

council's own officers. This was not reactive, Uber had taken the lead. This showed that they were compliant and were to be trusted. In paragraphs 5 and 8.26 of the report, it stated that when any requests for information had been made, Uber had co-operated fully. In the time Uber had been operating 73 complaints had been received, 72 from the trade and only 1 from a Member of the public, that was telling. Uber operated in 80 areas of the country and in 36 of them licences had been granted or renewed in the last 12 months, with a further 24 since the TfL decision had been made in September 2017 including Cambridge and Sheffield. As a new operator in the UK, Uber had had to get used to the fact that different areas had different licensing requirements, time and care had been taken in trying to engage positively with authorities in order to ensure compliance, in the case of Brighton and Hove the additional conditions had included enhanced conditions for dealing with complaints to ensure that any received were reported on to the Police/Council Officers. If a complaint was serious, mechanisms were in place to disable the app so that the driver in question would not have access to it whilst the complaint was being investigated. The additional conditions on Uber's licence were also supported by the Memorandum on Understanding. Contrary to what had been said on using the app, the customers were notified of the name of the driver who would be attending them, their photograph plus their registration number, details of the licensing authority that had licensed them and their badge number, so the customer was aware of exactly who would be arriving. All drivers received disability and equality training, this was paid for by Uber and was delivered independently. Over recent months Uber had undertaken an enormous amount of work corporately to engage with licensing authorities around the country and this also impacted on Brighton and Hove. The measures put into place were:

- the licensing team had been provided with details of a help-line which was available around the clock;
- a dedicated e.mail address had been set up where complaints could be logged in respect of any Uber driver irrespective of where they were licensed;
- a guide had been set to deal with sub data requests;
- an intelligence reporting system had been set up which allowed drivers to be located;
- a cap had been placed on the number of hours drivers could work without a break, 10 hours not 12 as stated by objectors, the low number of complaints about "drowsy driving" had reduced from 1.1 per million trips to 0.7 per million trips;
- the app displayed details of the licensing authority where a driver was licensed enabling customers to use Brighton & Hove licensed vehicles in the city if they so wished;
- cross border driving, as this was a matter of discussion between authorities the country had been divided into regions in order to address this issue, in Brighton and Hove TfL drivers were no longer able to pick up trips in the city at all;
- an incentive scheme had been introduced to encourage drivers to licence in Brighton and Hove, this had effectively doubled the number of drivers which had now reached 62, Uber were not trying skirt the regulations applicable in Brighton and Hove;
- the app prevented drivers from parking on hackney carriage ranks;
- anti- terrorism measures had been put into place;
- a law enforcement portal had been created where the Police could request trip data;
- a corporate plan had been set up to help to promote low emission usage by encouraging to use or switch to low emission vehicles, the aim was for all vehicles to be hybrid or electric by 2022;

- an engagement forum had been set up for drivers to meet in their home licensing area on a regular basis, this networking opportunity enabled drivers to exchange information and to provide feedback to management.

Overall, this served to illustrate that Uber had undertaken an enormous amount of work corporately to engage with licensing authorities country wide.

- 3.69 Wider issues had also been raised in the papers. Uber had only been in operation since 2009 and so was a very young organisation. Generally (although in Brighton and Hove this was marginal), their fares tended to be cheaper. This was only achievable by minimising the amount of down time and as a result of healthy demand. Drivers did relatively well earning around £18 per hour after paying their service charge. Their service was popular with around 2 million rides taking place every week in the UK. Customers would not make repeated use of the service if they were not happy with it. They had the security of knowing what their wait time would be and could check on all aspects of their journey via the app. The transaction was cashless, which was preferred by customers and drivers. There was a complete route record. Both drivers and customers who were rude or about whom complaints had been received could be removed from the platform.
- 3.70 Trade rivalry and complaints were due to Uber being a strong competitive force. They tended not to be from members of the public. If Uber were dangerous or untrustworthy it would be obvious by now but the evidence was not there but Uber did not regard itself above criticism. Uber had worked pro-actively in answering any challenges it faced by putting robust structures into place. There was a new global CEO and corporate ethos.
- 3.71 Mr Kolvin referred to the data breach which had occurred in November 2016 in the USA. It did not extend to financial information, it was names and emails. Individuals in the USA did not report the breach to regulators as they clearly ought to have done. Those individuals were no longer with Uber. He stated that since that had occurred the new CEO had been working with colleagues across all branches of Uber's operation to seek to ensure that further breaches did not occur and to ensure that measures were in place to ensure that failure to disclose could not happen again. The Information Commissioner's Office (ICO), had commented that it had not affected UK citizens. UBL had not known of the breach. When it had learnt of it, it had done a number of things to address it. Firstly, it had notified licensing authorities, it had notified the ICO, it had communicated with National Cyber Security Centre, it had put information on line and it had responded to queries from members of the public about the breach. It had been wrong of Uber in the USA not to publicise the breach when it had occurred. But Uber gave the reassurance that here and internationally the integrity of customer data was given the highest priority. It was working with regulators to ensure compliance. In terms of data control this was in the Netherlands because the data was with UBV and ICO was happy with that. In terms of the relationship this had all now been strengthened with the arrival of the new CEO to ensure no repeat of that past breach.
- 3.72 Mr Kolvin, referred to the data breach which had occurred stating that since this had occurred the new CEO had been working with colleagues across all branches of Uber's operation to seek to ensure that further breaches did not occur and to ensure that measures were in place to ensure that failure to disclose could not happen again. Mr Jones would be happy to provide more detail about the specific measures put into place to the Panel.

- 3.73 Mr Kolvin referred to the fact that some objectors had queried whether UBL was an operator at all, however, the council's own officers response in paragraph 8 of the report addressed that point unequivocally and they were clearly of the view that they were and had no concerns regarding that point. UBL had also addressed that in their own submission at page 48 of the circulated papers. Cutting through that Uber accepted all of the conditions attendant on a private hire, these included licensing of vehicles, ensuring that vehicles were maintained that journeys were recorded and in relation to the disposal of lost property among others. UBL complied with all obligations in the Blue Book.
- 3.74 Some had referred to the contractual arrangements in place, querying the arrangement whereby the contractual arrangement to carry a customer for a given fare with Uber acting as an agent, this had not been a problem for tens of millions of users around the globe who booked via a platform and who were very familiar with booking and paying for services in that way.

Response to Points Made by Charles Holland

- 3.75 Mr Holland had made reference to the fact that because cars were visible on the app that a ply for hire arrangement was in place. What he had neglected to mention was that a licensed taxi association in London had sought to address that matter via a private prosecution. The Crown Prosecution Service had been asked to look into it and decided that there was no case to answer and the action was dropped on that basis by them, which gave a flavour of those points which had been earnestly put before them.

Response to Points Made by Gerald Gouriet

- 3.76 On the point made by Mr Gouriet in relation to cross bordering it was legal to do so provided the driver, vehicle and licence had been granted by the same authority and the position on this point had been re-affirmed by the High Court recently. In seeking to address concerns about this Uber had placed a restriction on its app which prevented drivers from London (TfL licensed) from operating in the city, this was a self-imposed restriction where the law imposed none and it had also set up a south east region which did not include Margate. This represented a substantial step for Uber as drivers leaving their region would then have to return cross-border empty handed without another fare. Uber were aware of the concern regarding TfL drivers coming into the city, they would no longer be able to do so. It was hoped this would go some way to meeting Brighton's concerns, coupled with the other measures referred to and set out above. Whilst this did not go far enough to satisfy some of the objections put by the trade, some of whom worked cross-border themselves, it was far more than Uber were required to do by law. Uber had put incentives in place to encourage more drivers to be licensed in Brighton and Hove and Mr Gouriet's point, the first time he had heard that legal point made, was not a runnable argument as Uber met all of the tests in the way that he had indicated. Plus his point about reasonable cause was also a surprise submission. It was nonsense; as the Panel needed to consider whether Uber were fit and proper. Mr Gouriet had also sought to advance arguments regarding the lack of WAV provision. The position was clear and unequivocal, that once the position had been reached that there were 100 Uber partners licensed in Brighton and Hove there was a requirement that 20 of those vehicles would need to be wheelchair accessible. Uber were willing to do so and would

comply with that requirement once that threshold had been reached. In the meantime, all Brighton licensed drivers had received disability equality training funded by Uber and the Uber assist service.

CCTV

- 3.77 Reference had been made to the fact that all Brighton and Hove licensed vehicles had CCTV but not those vehicles which had come into the city from outside. With the removal of TfL vehicles this would greatly reduce the number of such vehicles. Significant progress was being made with the increase in the number of vehicles licensed in Brighton and Hove, where it was a requirement that CCTV was fitted. In the wider south east region it was understood that the only other authorities where this was a requirement were Portsmouth and Southampton. A number of the issues about which there was concern would disappear if/when there was greater uniformity of standards across licensing authorities. Where this was a requirement Uber would comply with that condition.

Greyball Technology

- 3.78 Greyball technology could be used legitimately or otherwise. Uber had never used it to evade regulatory mechanisms or enforcement in the UK, the app did not permit its use but for the avoidance of doubt Uber was discontinuing its use internationally.
- 3.79 Mr Kolvin stated that he hoped the points raised by other speakers had been addressed, those present would be happy to answer questions by the Panel. Some of the criticisms made of Uber's operation were fair and some were not. Those which had been just had also been salutary and had spurred it on to make improvements.
- 3.80 In Brighton and Hove Uber had established good working relations with council officers and had changed its practices where appropriate in response to issues raised. This was evidenced by the additional conditions agreed to. There was no evidence that public safety had been compromised. The applicants would be happy to discuss further potential conditions if the Panel considered that would be beneficial, considering that would be preferable to a refusal.
- 3.81 Besides the objections received and notwithstanding the unremitting criticism made by the trade who had referred to deception and a "smoke and mirrors" approach by Uber, it was a very popular option with customers wherever Uber operated across the UK. If it was unfit, as had been suggested, customers would have come to know that and its business would not have continued to grow. A number of letters of support had been received from the public and drivers who had been delighted with the service and had found it to be safe, clean and reliable.

Panel's Questions of Uber and Their Responses

- 3.82 The Chair, Councillor O'Quinn, asked why Uber wanted a licence in Brighton and Hove when vehicles licensed in Adur or Lewes District could come into the city. Fred Jones responded that primarily there were three reasons, that the 60 plus drivers licensed in Brighton and Hove and living in the city wished to work there too and it was considered important that that they had the opportunity to do so. A consultative and collaborative

relationship had been built up with the licensing team in Brighton and Hove and with Members themselves. Uber had been willing to take on additional new conditions and to agree to a Memorandum of Understanding. Another example was the fact that the receipt provided indicated whether a driver was licensed in Brighton and Hove, something subsequently required by other authorities. Committed to raising standards where the regulator and regulatee worked well together Uber would seek to roll out that best practice across the country. The situation in Brighton and Hove was unique. Many opportunities existed as the city's aims and ambitions were allied to what Uber wanted to achieve as a company. To touch on just a couple of them, Brighton and Hove was a sustainable city and Uber had a role to play in providing an alternative to reduce the use of private vehicles and to encourage the use of shared transport to reduce congestion and pollution, the use of hybrid vehicles was also being encouraged which was particularly relevant to Brighton and Hove. There was the opportunity to work towards use of zero emission vehicles. The city was a smart city and it was hoped to work with city planners, traffic and transport planners, hand in hand with the licensing team and across the council as a whole. Uber were committed to increasing social value and in the short period of its operation in the UK and across Brighton and Hove heavily discounted sickness and injury cover had been put into place, an industry first. Free access to courses was also available to drivers both to enhance their existing skills or to help them re-train for a new career.

- 3.83 Disability awareness training was provided for all drivers although the number of drivers licensed in the city had yet to reach the threshold for the provision of wheelchair accessible vehicles (WAV's). Over the Christmas period free journeys had been provided for those travelling to work at the Royal Sussex County Hospital.
- 3.84 Councillor O'Quinn referred to the number of vehicles licensed in Brighton and Hove, this had increased from 26 to 35 and with recent increases now stood at 60 plus. It was Councillor O'Quinn's understanding that there were a lot of shared vehicles and she wanted clarification therefore regarding the number of such vehicles. Fred Jones responded that typically most drivers in Brighton had their own car though it was not uncommon for drivers to have shared rental arrangements. Councillor O'Quinn stated that this was of interest as the council had greater control in regulating vehicles which it had licensed. An enforcement agreement had been put into place in relation to TfL licensed vehicles which had been operating in the city but no such arrangements were in place with Lewes District. It was understood that recently the number of licence applications made there had doubled, so she was concerned about how the regions were working as this had caused considerable upset and made the job of enforcing general taxi standards in the city harder. It was a great pity that those drivers had applied to Lewes District rather than Brighton and Hove.
- 3.85 Mr Kolvin explained that it was just not true that drivers were encouraged/incentivised to register with Lewes rather than Brighton and Hove. Councillor O'Quinn referred to the fact that Uber's webpage included comparisons which indicated the amount of time and cost of obtaining a licence in Brighton and Hove and the requirement for drivers to pass a knowledge test and to have CCTV fitted. As Lewes District took in a lot of rural areas that was not a requirement there. A higher standard was required in order to obtain a licence in Brighton and Hove and that was reflected in the higher cost and longer time it took to process and obtain a licence. This made it difficult for the council to enforce

safety standards and of course the council's preference would be for a greater number of vehicles operating in Brighton and Hove to be licensed in Brighton and Hove

- 3.86 Councillor O'Quinn referred to the geo-fence arrangements put into place by Uber asking whether if/when the position was reached whereby for example Uber had 200 drivers licensed and operating in the city, they would be prepared to geo-fence the city. If that position was to be reached it was unlikely Brighton and Hove licensed drivers would be happy if a number of drivers licensed elsewhere were coming into the city. Mr Kolvin referred to the measures which Uber had taken in order to incentivise drivers to licence with Brighton and Hove, in view of the time taken to obtain a licence this represented the bringing to fruition of work which Uber had undertaken over the past year coupled with removal of the ability for TfL drivers to work in the city this had borne fruit and the number of drivers had increased. The end game was to have more Brighton and Hove licensed drivers making trips around the city and this could only be achieved by two means. One was to continue to incentivise drivers to take up licences in Brighton and Hove, which Uber would continue to do, the other would be for there to be less regulatory disparity between neighbouring authorities. As long as this disparity existed whether in terms of the licence fee payable, or standards required of the vehicle or driver, there would always be an element of forum shopping by drivers. All parties had a part to play in trying to ensure that stark differences between authorities in the same general area were ironed out. It was understood that the Institute of Licensing was due to release a new national model convictions policy which sought to ensure greater uniformity between licensing authorities and which it hoped would gain support from the LGA and other bodies. Uber would play their part in that process although where it was possible to obtain a licence under a less stringent regime and or more cheaply or quickly, it was always possible that drivers would do so.
- 3.87 Mr Kolvin then referred to the question of whether it would be possible to geo-fence the city, he considered that this would be problematic as it could result in a number of unintended consequences, not least because having crossed into another local authority licensing area a driver would not then be able to take a fare back into the city, the reverse would also be the case. This would result in a decrease in income for drivers, the need to back-fill demand, which would result in more vehicles being on the road in any given area purposelessly with the attendant cost and environmental implications. To create a sustainable income, for customer convenience and for environmental reasons geo-fencing needed to have an element of regionalism. The regions recently drawn up by Uber itself would exclude 90% of the UK and mean that if you drove into Brighton you must be registered somewhere in the South East. The aim of encouraging Brighton and Hove drivers to register in Brighton and Hove would continue and was improving over time. In the meantime Uber was doing other things to help equip licensing authorities to ensure that they were not disadvantaged in terms of their enforcement capabilities. Customers had the advantage of knowing where a driver was licensed which enabled them to make the decision to use a Brighton and Hove registered driver if they so wished. A hotline facility for the licensing authority, the manner in which vehicles were identified, access to a law enforcement portal in addition to work being carried out on data protection sought to ensure that drivers were not driving around lawlessly in other local authority areas. The ability to carry out effective enforcement by strengthening working between local authorities represented "the holy grail" and Uber were working to achieve that too.

- 3.88 Mr Jones also responded on behalf of Uber stating that he had attended a workshop meeting with licensing officers from Brighton and Hove and Lewes District in order to understand issues arising in relation to the two authorities and the role that Uber could play in responding to that. He was unaware whether any further meetings had taken place or progress on that issue.
- 3.89 Councillor O'Quinn responded that whilst she had not been aware of this meeting or any subsequent ones she did know that there was no enforcement agreement in place with Lewes District Council. Councillor O'Quinn stated that it was her understanding that following the grant of its first licence in 2015 when the subsequent renewal application had been made it was understood that Uber had geo-fenced the city prior to its launch. What had been the rationale for that? Mr Jones responded that in effect the app had been turned off, as anyone accessing the app had received a message stating "no Uber here" or words to that effect. That had been put in place in order to allow time to find drivers and to find the right people to staff and run the office in Brighton. Due to the connectivity with London and the rest of the south east effectively the whole region had been blacked out during that period, the app had then be switched back on immediately prior to launch. Councillor O'Quinn stated that this indicated that as it appeared that this facility could be turned on or switched off and this had only been in place for a few days prior to the application for renewal being made that this had been unhelpful as it had not been possible to gain an understanding of how this would operate and it had been in response to those issues that the licence had only been granted for a year. It did however show that Uber could geo-fence the city if it wished. It appeared that when a car was sent to an out of city location in order for it to be financially viable there needed to be the prospect of a return journey which resulted in cross-bordering. It was explained that this discouraged drivers entering the city from some distance away because in the case of TfL drivers for example they were prevented from doing so; this had been instituted in response to the concerns expressed by the local authority in that regard.
- 3.90 Councillor Deane stated that reference had been made to the appointment of a new CEO and to the Executive Directors who represented a "new broom". Councillor Deane noted that although these individuals had experience of the banking sector, in finance and in venture capitalism, none appeared to have any background in the licensed taxi trade enquiring whether that gave cause for concern. Reference had also been made to working in concert with the local licensing authority and to responding to suggestions made by officers however, was it therefore the case that as Uber were inexperienced as a private hire operator they were therefore relying on officer expertise to function effectively rather than responding pro-actively?
- 3.91 Ms Hayes responded on behalf of Uber explaining that all of Independent Directors had extensive experience in regulated industries and would be able to bring that to bear. Their experience ranged across the banking and financial sector and aviation, all of which were highly and stringently regulated and this was the great strength that they brought to the UK branch of the business. They would be able to guide on these issues of compliance and good governance principles which extended across regulatory services. She stated that private hire licensing did not have that level of sophistication currently and Uber were trying to put themselves at the forefront of high standards in compliance.

- 3.92 Mr Kolvin explained that there was a board at one level, directors at another and Management at regional level, additionally there were corporate lawyers, licensing lawyers, regulatory and other staff all working jointly to ensure compliance. At the sharp end of the process conversations took place with Jim Whitelegg in order to ascertain what was happening in Brighton and Hove and to talk with management and customers too in order to find out what their concerns were and to address them. Uber were a young company but had enormous experience in dealing with over 80 licensing authorities across the country on a daily basis and so did not lack the necessary experience and that had not been a criticism of Uber – one did hear as a criticism of Uber that things had gone badly wrong in US in 2016 for example but not through lack of experience or ability to run a private hire business.
- 3.93 Councillor Deane referred to the fact that although Uber had an office and staff in Brighton and Hove, operational staff from that office were not present that day nor had they attended other meetings regularly. Arrangements seemed to be arms-length and the same network of relations was not in place as had been established with the local trade over a number of years and that was a concern. Mr Jones responded that a good local team was in place in the Brighton Office dealing with day to day operational issues on a daily basis. A new Member of staff had been appointed very recently to the Brighton office who lived in Brighton and would hold responsibility for the South East Region. The reason Mr Jones and Ms Hayes were in attendance was to indicate the importance to Uber of Uber's of their operation in Brighton and Hove and to provide assurance for Members that any concerns were listened to and taken on board. At Forum meetings questions were often asked regarding Uber's operational arrangements and model, whereas the local staff were more involved with day to day local issues such as providing support to drivers. Councillor Deane referred to meetings with the local licensed taxi trade via the Taxi Forum enquiring regarding those attending on behalf of Uber. Mr Jones and Ms Hayes stated that they had attended meetings in the past in order to answer questions/criticisms/enter into discussions which it had been considered they were better placed to respond to. In future they would be happy to put arrangements in place for a representative from the local office to attend too.
- 3.94 Councillor Deane noted what had been said but was of the view that it was still a matter of concern that there had not been more contact from the local office. In this area also it appeared that Uber were re-acting to what had been asked of them rather than taking a proactive approach. Mr Jones responded that those in the local office liaised with the licensing team on day to day matters. Often in the Forum there were lots of questions and criticism relating to Uber so he was just making sure that the right level of person was able to deal with them. The office staff were more focused on customer service issues.
- 3.95 Councillor Hyde referred to Uber's webpage which set out the differences between licensing requirements in Brighton and Hove and Lewes District which seemed to be at odds with the statement that Uber were seeking to encourage more drivers operating in Brighton and Hove to be registered there. Mr Jones stated that potential drivers often enquired regarding three things, the process, steps in obtaining a licence medical information B Tech requirements etc., how long it took and cost. This information was provided and updated as necessary in the interests of transparency and was information which was publicly available.

- 3.96 Councillor Hyde referred to the undertaking given when the original licence was granted to Uber in 2015 and to the undertaking given at that time that Brighton and Hove Licensed taxi drivers would be employed in Brighton and Hove. Use of TfL drivers in the city until very recently had been mentioned and it was also understood that in 2016 Uber had attended meetings of the Taxi Forum and been involved in discussions around potential amendments to the Blue Book. As Uber did not advocate use of CCTV and there were currently no WAV's operating in the city, Councillor Hyde wished to know whether Uber had sought to amend the Blue Book in order to effect amendments to those areas of it.
- 3.97 Mr Jones responded that Uber had provided their input and had shared their thoughts based on their licensing experience elsewhere in the country. Some of their views were not shared by others but had been part of the consultation exercise. Mr Kolvin stated that Uber had participated in a proper and professional way and the current Blue Book reflected the amendments agreed as part of that process. Uber had sought to provide a helpful contribution to that debate and hoped that this would not be held against them. Subsequently their licence had been granted with various conditions attached which were being complied with in full.
- 3.98 Mr Jones referred to the reference made to Uber's use of Brighton and Hove licensed drivers stating that when the original licence had been due for renewal in 2016, soon after Uber had become operational in the city, it had become clear to him that there had been misunderstanding/misinterpretation about whether there would be a geographical restriction on vehicles operating in Brighton. He had responded to that issue in writing to the licensing team confirming what had been intended by those original comments in relation to how the app worked. He was aware of the challenges and concerns that had arisen in relation to cross-border journeys and as a result dialogue had taken place and Uber had sought to put measures in place to address that including directing complaints/issues towards the correct licensing authority and the setting up of the 24hour hotline. Mr Kolvin stated for the purposes of the minutes that the correspondence referred to by Mr Jones was in fact an e.mail which had been sent to Jim Whitelegg and Martin Seymour on Wednesday 2 November 2016 relating specifically to that issue, that the licence had been renewed shortly after that and that minutes dated 24 November 2016 referred to the licence having been granted the previous Friday. Mr Jones had provided clarification about use of non-Brighton drivers prior to grant of that licence.
- 3.99 Cllr Hyde referred to the fact that when the licence had been due for renewal in 2016 no track record had been available for 2015, she found that a little difficult to understand as whilst the answer had been given that Uber had been heavily engaged in setting up their operations here, as they had been operating worldwide since 2009, it was difficult to understand then why they had not been ready to proceed with an appointments process in the city. Councillor Hyde stated that had that been the case it would have helped to remove any suspicion that Uber had intended to move in and within a very short period of time obtain a licence for five years. Quite a lot of experience must have been obtained between 2009 and 2015/16.
- 3.100 Mr Jones explained that it had never been the expectation that a five year licence would take immediate effect and arrangements had involved recruitment. The company had been in the process of start-up with only around 40-50 people involved when he had

joined the company in 2015. In order to put the right stamp on its operations across the UK time had been taken to ensure the right individuals were in post. It was hiring of the team to staff the office here that had taken time rather than the hiring of drivers. Staff were also being hired for Portsmouth, Southampton and other locations at that time. During a period of some 18 months Uber had gone from representation in 5 to 40 local authority areas.

- 3.101 Councillor Hyde referred to the allegation that drivers had been observed asleep in their vehicles, more than one complaint had been received. Councillor Hyde also wanted to touch on the app in relation to drivers working for up to 12 hours at a time which it was alleged could in fact be for a far longer period, the applicant's observations were sought in respect of that matter. For instance, if a driver had a two hour journey into the city and out again with waiting time in between, the number of hours worked would soon build up, Councillor Hyde was concerned about the safety aspect in this regard as the number of hours worked could easily be more than 12. Mr Jones responded that the number of hours worked was controlled by the app and the maximum was 10. This was calculated not just by a driver logging in; confirmation of the booking, picking up the fare to completion of the job all contributed to that 10 hour period. Once that period had been reached the app would not be available for use until a "rest" period had expired. This element of a "forced break" of 6 hours was considered to be really important and that was why the app had been designed in the way that it had. This had impacted on the number of drowsy driver complaints which although already very low as indicated by Mr Kolvin had reduced by a further 35%. In respect of drivers resting in their vehicles, if they became tired they were encouraged to rest rather than to continue on the road. This was seen as an important industry first as this facility did not exist in relation to hackney carriages and although not perfect was a way of improving safety and industry standards, and a pro-active initiative by Uber.
- 3.102 Ms Hayes stated that as the app provided for driver feedback too in the event of any complaints being made it enabled investigations to take place based on accurate information and meant that Uber were in a position to respond quickly if it became established that a pattern of driver behaviour was emerging, a lot of safeguards were in place.
- 3.103 Councillor Hyde noted that a south east region had been drawn up taking in Brighton and Hove and asked whether consideration had been given to including its conditions across the whole of that region. Mr Jones stated that harmonisation was certainly considered to be a good thing and that this had been touched on in respect of CCTV. If there were things that could be rolled out Uber were happy to play their part and to support that conversation. Some things they could do but it would be presumptuous of Uber to appear to know best and to cut across conditions set by other licensing authorities.
- 3.104 Councillor Hyde referred to the fact that Uber had yet to reach the trigger number for which WAV's would be required asking whether they had considered introducing WAV's before they reached that number. One of the complaints by the trade was that in having not provided any WAV's it was not a level playing field. Mr Jones responded that Uber currently had a wheelchair accessible service operating in seven cities across the UK. They had done that voluntarily and wanted to roll that out elsewhere and wanted to do more than just comply with the rules at a minimum level. In the grand scheme of things

Uber had not been around for very long and as such vehicles cost a great deal to buy or convert they needed to convince a third party to do so and then to encourage drivers to do so and to seek to ensure that they were not out of pocket, to launch that process took time. They had received interest and were working to speed that process up. Mr Kolvin stated that Uber aspired to reach that figure of 100 Brighton and Hove licensed drivers and that at that point they would need to provide 20 WAV vehicles. From a very low level there were now 60 and Uber needed to work towards that figure by providing incentives for drivers for example.

- 3.105 Councillor Hyde asked how Uber intended to achieve this given that they would not be able to wait until they reached 100 drivers then demanding that 20 of them were WAVs, for example when they got to vehicle 81 would they need to insist that further vehicles had to be WAVs? Mr Jones responded that there would need to be a balance of carrot and stick, some drivers wanting to operate once a certain figure was reached would be told they could not unless they were a WAV and there would need to be incentives too, there would also need to be discussion with the licensing team to ensure they did not breach that condition if driver numbers fluctuated for example and any WAV drivers took up employment elsewhere.
- 3.106 Councillor Hyde enquired about the good working relationship with Brighton and Hove Officers which had been mentioned, for instance a Memorandum of Understanding had been drawn up following discussions, and sought further clarification on that point. Mr Jones stated that there was a good professional working relationship based on clear expectations having been set including that Uber had to operate in the same way as everyone else and regarding what they had been expected to do. There had been no break downs in communications. Mr Kolvin stated that as result of that officers were satisfied that Uber were statutorily compliant. New areas of economic life brought new challenges with them and that always gave rise to a little creative friction between the operator and the regulator and Uber were up for that.

At this point there was a 15 minute comfort break.

- 3.107 Councillor O'Quinn, the Chair, asked if Uber had breached their undertaking of 2015 to only use Brighton licensed drivers. Mr Jones responded that that was the not the case and Councillor O'Quinn thanked him for his clear and unequivocal response. She also asked for an explanation of the Ripley technology. Mr Kolvin explained that if for example a driver left their laptop on a train the Ripley technology would allow the system to be locked off so that any on that machine could not be accessed. The technology could be used illegitimately to prevent access to data (HMRC e.g.,) but that had not happened in the UK nor would it as very specific protocols were in place regarding access which would prevent that from occurring.
- 3.108 Councillor O'Quinn referred to the allegations of sexual assaults which had been referred to as having taken place in the US where victims appeared to have been encouraged to settle the matter privately outside of the judiciary process in an attempt to avoid adverse publicity. In response, Mr Kolvin explained that the article which had appeared in "The Guardian" newspaper had been misunderstood and misquoted. In the US the legal system in this regard was totally different as there existed means of settling matters by arbitration but which had no "privacy" attached to them. The English legal system was totally different and any such allegations, if there should ever be any of

sexual assault ,would be against the driver and would be a subject to legal action through the courts in the usual way. It was unlikely that any legal action would be against Uber Britannia Ltd but if that was the case it was that would also go through the court system. This situation referred to had not and could not arise in the UK.

- 3.109 Councillor O'Quinn noted that among the authorities elsewhere in the country who had granted a licence to Uber that in some instances this had been for a period of less than five years asking for clarification as to why that had been. Eight had granted for a year and then for a further year, Mr Kolvin explained that this equated to the period for which a standard licence was given by those authorities, for instance it was not for five years in all authorities, in others, Swindon for example, a temporary licence had been granted as had been the case in Brighton in order to allow time for Uber to establish itself and for an assessment of its operating model to be made. Mr Kolvin referred to Sheffield and Cambridge where similar objections had been made to those heard today and in both of those cases a five year licence had been granted.
- 3.110 Councillor O'Quinn referred to the fact that although the same regulatory arrangements were in place in the UK that the standards and conditions in Brighton and Hove were set very high and that standards might not be the same everywhere. Reference had been made to parity of conditions, there was a concern that those should not be the lowest possible. However, she had concerns because she knew that Uber's view was that the app was as good as CCTV so she was not sure that Uber had been convinced by arguments in favour of use of CCTV (a Blue Book) requirement; also in relation to the Knowledge Test where they appeared to take the same view. Councillor O'Quinn welcomed a response on that because she was concerned that there could be a reduction in standards and members did not want that. Uber had indicated their desire to push up standards yet they did not support two of them which were regarded as very important by Brighton and Hove as a Licensing Authority.
- 3.111 Mr Kolvin stated that whilst there was evidence that some corporations sought to meet minimum standards Uber did not, it wanted happy customers and well paid drivers in a safe working environment. There was no clear evidence that Uber drivers were any more prone to commit sexual assault or drive dangerously for example, and there was no clear evidence around CCTV. Different authorities used different approaches. However, all drivers licensed in Brighton and Hove had to fulfil the requirements set out in the Blue Book and Uber had put incentives in place to encourage that. There were issues of surveillance and safety and not all drivers wished to install that and have CCTV on them at all times. Drivers would not be forced to do that where it was not a requirement. Fred Jones stated some drivers wanted this and some did not, some felt more secure because payments were cashless and they were not carrying money, some considered that their safety fears had been allayed by the technology. As far as memorising street layouts and being knowledgeable about the local area was concerned that was extremely valuable and the app provided up to date information to supplement that, taking on board updates on real time road conditions, accidents etc; local knowledge alone would not address that. Uber had also started building its own mapping software and were seeking to improve on what was currently available. Mr Kolvin stated that use of quicker routes meant fewer miles and cheaper fares for customers, all Brighton and Hove licensed drivers were required to meet that condition.

- 3.112 Councillors Deane stated that she had sat on the Panel in 2015 when the original licence had been granted. Uber had been new then and had little past history so the licence had been granted in good faith. Various undertakings had been given seeking to ensure that operators were used a level playing field and met the same standards. One aspect was the use of Brighton and Hove only drivers, which had already been covered and the other was the WAV issue and disability. She was concerned that Uber argued that whilst being a large company they were too small to provide 20% WAV's across the city notwithstanding that hundreds of vehicles were coming into the city which having been licensed elsewhere were not required to meet that condition. This seemed to cut across the spirit of operating to a level playing field. Although the Panel had heard from residents speaking in support of Uber, none of them had been disabled and that would suggest that Uber provided a service for the fit and able but not for anyone with a disability and that rested uneasily with her as Uber appeared to be complying with conditions placed on their licence but not necessarily with the "spirit" of those conditions. A driver had also spoken on behalf of Uber but he was a licensed a driver who had been licensed by Lewes District, rather than one who had been licensed by Brighton and Hove.
- 3.113 Mr Kolvin responded by stating that the system for determining a licence was rule based and that his client was seeking approval of their licence on the basis of complying with the conditions placed on its licence, not what someone might imagine those conditions/rules to be. Uber had made it very clear to the council from the outset that they would meet those requirements when they had reached the threshold which meant that it needed to. In the meantime, Uber had continued to have dialogue with the Council in respect of this issue and additionally a condition had been placed on the licence in November 2017 that Uber Britannia Ltd needed to ensure that all drivers were required to undergo disability equality training to enable them to provide a service to disabled passengers or those who had an access need; this was a bespoke condition which Uber had offered in a spirit of working pro-actively to meet the concerns of this council. Mr Jones responded that in instances where a screenshot showed "Uber Assist" as being unavailable this meant that at that point in time there were insufficient vehicles available in the area, that did not provide a good customer experience and Uber were working to address that. Mr Kolvin sought clarification from Mr Jones that all drivers operating in Brighton and Hove were able to provide Uber Assist for but not necessarily wheelchair assistance. It was confirmed that was the case, the next stage would be provide WAV's in the city and Uber were working towards that.
- 3.114 In terms of the 2015 hearing Councillor Deane had been there, but it was right to say as Mr Gouriet who had spoken in objection to Uber's application before the Panel that day had himself stated, that the minutes of the 2015 meeting had been ambiguous. No one attending on behalf of Uber had been present at the meeting in 2015 when the initial decision to grant had been made. Those speaking on behalf of Uber had either been giving assurance that they would operate by the rules; that bookings taken through the Brighton and Hove licensed operation would be dealt with by drivers licensed by Brighton and Hove or they had effectively been stating that all drivers were to be licensed by Brighton and Hove only, effectively putting a portcullis around the city, that would have been a very strange statement bearing in mind that was not the situation anywhere else in the country. As previously stated, whatever misunderstanding/crossed wires there may have been the matter had been clarified by Mr Jones in the letter he

sent in 2016 prior to Uber commencing their operations in the city. The licence had been renewed subsequently and again in 2017.

3.115 Mr Kolvin stated that Uber had not approached anyone to speak on their behalf that day, they had not been aware of, had sight of or vetted what the driver or others would say, the process had not been orchestrated in any way, individuals had been at liberty to come along and speak and some had taken up that invitation. It was hoped that despite the concerns which Members clearly had Uber were laying those concerns to rest and that they were going forward on a proper regulatory basis. Mr Jones stated that whilst Uber were a large company in terms of their operations in Brighton and Hove the number of drivers licensed by Brighton and Hove had been small until recently, and that had made it difficult to provide the economies of scale which made it viable for drivers to operate WAV's. Now that the number of drivers in Brighton and Hove had grown considerably over recent months as a result of incentives used that was something that was being actively pursued; they were not seeking to duck the issue. Councillor Deane stated that notwithstanding all that had been said she was concerned that the needs of those requiring WAV's in the city were going unmet by Uber she also felt the training was pointless if you didn't have a WAV. Whilst noting those concerns Mr Kolvin responded that 8% of disabled people needed wheelchair access so the other 92% would be catered for. Uber were fit and proper and were in compliance with all conditions placed upon them due to the fact the figure set by the council had yet to be met, to suggest otherwise would be irrational. Uber were serious about meeting a commitment to provide WAV vehicles and have evidenced the action they had taken in that respect.

3.116 Councillor O'Quinn noted all that had been said, stating that the number of WAVs available for use of passengers in the city was one of particular concern because proportionately there were a high number of individuals with those needs in the city. She reiterated that when the licence was renewed in 2016, the same undertaking was referred to in the renewal decision. Mr Jones said he hoped since then that their actions and steps taken had shown they were addressing those concerns. Mr Kolvin referred to minutes of the 24 November 2016 meeting. Reference was made to the Taxi Forum and that he was pleased that a rep from Uber would attend and it was hoped there would be less TfL drivers over time and more Brighton and Hove drivers. There had been no breaches and a review had not been called for. The Chair clarified that it was Councillor Wares who had attended that meeting. The Chair, Councillor O'Quinn, then asked for clarification about the workshop referred to, and when it had taken place. Mr Jones could not recall the exact date but it had been prior to renewal in 2017. It was a discussion with Jim Whitelegg, Martin Seymour and two officers of Lewes District Council. The Regulatory Services Manager, Jim Whitelegg, said that it had been a meeting not a workshop and had been initiated by Lewes District Council. As a result officers from Lewes had carried out some monitoring in Brighton to determine numbers of Lewes District licensed vehicles. In terms of driver incentives Councillor O'Quinn wondered how many had taken these up. He was not sure of the exact numbers, it had been around 40 initially. Councillor O'Quinn also wondered about the pension take up. Mr Jones said it was sickness and injury cover and again he was not sure of the exact numbers but it was a popular offer. Councillor Hyde asked about reports of Uber drivers hanging around taxi ranks. Mr Jones replied that they sought to prevent this and were clear with drivers it was against the law, they had also made it impossible for drivers on

certain ranks to take bookings via the app. There were no further questions so each party was then afforded the opportunity to sum up.

Summing up

Licensing Officer

3.117 The Regulatory Services Manager, Jim Whitelegg, summed up stating that having read and considered the report in detail which set out the relevant provisions of the Licensing Act and having listened to the submissions that had been made, the Panel must be satisfied that UBL were fit and proper to hold an operating licence. If UBL were no longer considered to be fit and proper reasons for that decision would need to be given. If the Panel considered Uber were fit and proper then the licence should be granted for five years, if the decision was taken to grant for a period of less than five years in that case specific reasons for granting for a shorter period needed to be given.

Gerald Gouriet, QC

3.118 Mr Gouriet stated that in concluding he was anxious not to dilute what needed to be said and so wanted to stress one point. Uber had failed in any meaningful way to grapple with the fact that their application before the Panel that day was a wholesale negation of local licensing control. Apart from the TfL area which Uber had removed from the equation, their south east region cut across nine separate licensing authority areas each of which had their own set of standards and none of which would be able to do anything about out of town drivers coming into their area operating under different standards. It was Uber's choice to bring forward for approval the South East Region as they had set it up, it was their choice to operate in that way.

3.119 If approval was given to their licence application that day, it would effectively remove Brighton and Hove's ability to require out of town driver's to meet the high standards set by the Blue Book. Uber had not dared to say that there was no need for licensing controls because two Lord Justices at appeal had stated that there was. What Uber had said was that the Panel could not do anything about it by characterising what he had said about their powers as "nonsense" in response to a legitimate legal argument. It was not he who had said that but Parliament who had stated that an application could be refused on any reasonable ground, urging that when making their decision and deciding what they wanted to do that the Panel looked at Section 62 of the 1976 Act (summarised on page 5 of the report), which set out in the clearest of terms that there five grounds on which a licence could be refused. One of them was that an operator was not fit and proper and the other was on any reasonable cause. It was not correct to say "fit and proper" was the only ground. This was supported by case law and by parliament which had local licensing control at its heart. Parliament would not have created an Act with local licensing control at its core without giving local authorities the power to do so. What had been learned from those residents who supported the use of an app and they may have that already, was that Brighton and Hove needed a smart phone app for a private hire operator who gave them all of the convenience they desired but who was also subject to their controls rather than seeking to by pass them.

Charles Holland, Barrister

- 3.120 Mr Holland stated that he wished to respond to what he understood to be Mr Kolvin's suggestion that the ply for hire app was some sort of fringe position. He referred to the Local Government Association Councillor Handbook in relation to Taxi and Private Hire Operators issued in August 2017, so hardly a document from the perspective of the trade which gave guidance and a checklist of issues for Councillors to consider when considering new technologies which used non traditional methods of calling up vehicles, and the closer scrutiny which members might wish to give to them when deciding whether or not to grant a licence. This was available on-line and set out a number of issues which members might wish to consider in terms of making bookings and so on. Two points of particular note were whether there was the ability to book vehicles in advance or whether they could only be booked at the time, clearly that was the case with Uber. If it was not possible for a vehicle to be booked in advance, then councillors needed to be satisfied that a vehicle was not unlawfully plying for hire and needed to be clear in their reasons for coming to that conclusion. Whilst this was only guidance it recognised the importance of controls and the need to consider whether an operating model was lawful.
- 3.121 In determining whether this was a "fit and proper" operator it needed to be considered that Uber had initially set up a national ply-for-hire app and that now it was seeking to run a mega national ply-for-hire which would allow drivers to come into the area from some distance away, including Mr Woodcock who was a Hackney Carriage driver in Lewes who was able to operate in the city under a loophole. Mr Holland went on to refer to the Knightsbridge Casino case, in that instance the operator's past issues and conduct was considered to have been of such severity and so flagrant that the authority could never be satisfied, even if the company re-structured that they would operate correctly. He did not consider that Mr Kolvin had addressed that point at all. Mr Holland wished to leave those thoughts with the Panel.

Philip Kolvin, QC on Behalf of UBL

- 3.122 Mr Kolvin stated that in making their decision the Panel needed to have regard to the legal framework set out by the legislation and by the council's own local rules. The decision to be made was not political, nor was it about competition, or considering whether Uber was a better business than a local business. It was a decision within the regulatory framework on whether Uber was "fit and proper". Uber had been operating in the city for 19 months and now had 62 drivers licensed by in Brighton and Hove and operating in Brighton and Hove and subject to the Blue Book of operating conditions and were wholly compliant with them.
- 3.123 Uber had fulfilled all of its regulatory functions as an operator to the satisfaction of the council's own officers who brought their expert knowledge to this question. The application for renewal had not been opposed by any public authorities, all of whom had the public interest at heart, be it child protection, public safety, trading or licensing including from the Police. A large section of the public in Brighton and Hove clearly enjoyed the service provided. In the report before the Panel, officers had correctly, properly and fully explained the framework under which this decision should be made and Uber were fully compliant with that framework. He contended that not a single word had been said which should lead them to a different view of the law or policies to be met. Uber had complied religiously with the requirements of the council under the framework which it had set and would continue to do so.

- 3.124 Additionally, Uber had shown that it was evolving in order to improve its status as a regulatory partner and 13 ways in which it had sought to do so in recent months had been set out. In responding to the points made by Mr Gouriet who had referred to cross-border journeys which were something which operators had a legal right to do and that “right to roam” had been reiterated by the “Knowsley” decision made recently by the High Court. Members had made clear their concerns about the number of drivers coming into the area licensed elsewhere and Uber had taken that on board and were addressing that and would continue to do so and to seek to iron out any remaining problems. He argued that it was not a legal ground for refusing the licence. It was better to have Uber licensed here as a regulatory partner inside the tent rather than out. As an operating partner Uber expected to be challenged to continue improving its standards and was also in a position to provide its perspective as a nationwide and global operator as well as seeking to continue to provide a positive customer experience. Uber provided an alternative and healthy competition to the existing trade who he was sure also provided an excellent service to their customers. Uber asked that that partnership be allowed to continue.
- 3.125 Uber had had their licence renewed until now but it was understood the TfL hearing due to take place over a 5 day period had yet to take place (anticipated, June 2018). If the Panel decided to renew the licence for a period of less than 5 years, perhaps 18 -24 months that would be consistent with their previous decisions and would allow for continued monitoring of compliance and development to take place. In the highly unlikely event that the High Court held Uber to be constitutionally unfit any licence could be called in for review at that time. Another option open to the licensing authority would be to attach further bespoke conditions. Councillors Deane and Hyde were unhappy that currently there were no WAV vehicles operating in the city, to address that the Panel might require WAV vehicles to be provided when the number of operators in the city reached 80 rather than 100, at which point 16 such vehicles would need to be provided which would prevent Uber from growing other than by providing such vehicles.
- 3.126 In responding to the points made by Mr Holland, Mr Kolvin considered that it was unhelpful to refer to a handbook which no one had before them. However, it should be stressed that Uber met all of the legal requirements, James Button who was a licensing expert was clearly of the view that drivers were permitted to await their next journey via an operator which was exactly what Uber did. The Knightsbridge case related to a casino operator who had shown scant regard for the conditions with which they needed to comply which was diametrically at odds with Uber who had met what was required of them 100%. Mr Kolvin therefore commended Uber’s application for renewal subject to those points which he had just made.
- 3.127 Having heard all of the submissions and having given all the opportunity for summing up, The Chair, Councillor O’Quinn, thanked all who had attended confirming that the Panel would retire to make their decision which would be conveyed subsequently following the meeting. This would be announced on Wednesday morning.

The Panel’s Considerations and Deliberations

3.128 The Chair, Councillor O'Quinn, stated that the Panel had read the report and all the documents appended to it including all the written representations and submissions and had listened carefully to all the submissions made at the hearing.

3.129 The Panel had considered the legislative framework in respect of which the application by UBL was made, set out below and had made their decision accordingly the rationale for which is set out below:

Legislative framework: Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act")

The Act stated as follows:

55. Licensing of operators of private hire vehicles.

'(1) 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.

(2) [Subject t

, 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.'

S.62 of the 1976 Act also applies, and provides:

'(1) Notwithstanding anything in this Part of this Act a district council may suspend or revoke, or (on application therefor under section 55 of this Act) refuse to renew an operator's licence on any of the following grounds:—

(a) any offence under, or non-compliance with, the provisions of this Part of this Act;

(b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;

(c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; [...]

(ca) that the operator has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or

(d) any other reasonable cause.

(2) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the operator notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal.

(3) Any operator aggrieved by a decision of a district council under this section may appeal to a magistrates' court.'

3.130 The key consideration for the Panel was therefore whether UBL were 'fit and proper' to hold an operator's licence. The principal aim of the test is to ensure that public safety is paramount.

3.131 The Panel has looked at this application on its own merits taking into account the specific facts and circumstances which relate to this application, and the particular circumstances prevailing in Brighton & Hove. In addition the Panel has considered the legislation outlined above and the objectives contained within the Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The 'Blue Book') referred to below:

Blue Book Licensing Objectives:

'The Council will adopt and carry out its Hackney Carriage and Private Hire licensing functions with a view to promoting the following licensing objectives:-

- The prevention of crime and disorder, safeguarding of children & the vulnerable and the protection of the public.
- The safety and health of the public and drivers.
- Vehicle safety, comfort and access.
- Encouraging environmental sustainability.

3.132 In promoting these licensing objectives, Brighton & Hove City Council ('the Council') would expect to see licence holders and applicants continuously demonstrate they could meet or exceed specifications set by the council in the four licensing objectives and those objectives would be taken into account by the Council when making decisions.'

The Brighton & Hove context.

3.133 The social and economic background of Brighton & Hove was important both to the context to the Blue Book but also in terms of how safeguarding and regulatory

responsibilities were undertaken. The City had some significant social issues and high levels of vulnerabilities, which included; a higher than national prevalence of people with mental health issues; problematic drug and alcohol use and significantly above average rates of children in care and children in need.

- 3.134 The Council had endeavoured to take steps in relation to a range of issues to protect the City's vulnerable groups. The Council had also taken to the core of its work the lessons learnt in Rotherham, Rochdale and similar situations. This had led to wholesale revisions of the Blue Book to reflect those lessons learned.
- 3.135 All these factors made it imperative that the high regulatory standards set out in the Blue Book in relation to the taxi trade were adhered to and enforced in the City.

Consideration of Representations

- 3.136 The Panel wished to thank all of those who took the time and trouble to make written submissions or to attend the hearing and also to thank UBL and their Counsel for attending and making a thorough presentation and answering all of the Panel's questions.
- 3.137 The Panel had considered and listened carefully to all the matters raised both in the written submitted representations and by those who had spoken at the meeting. In making its decision the Panel had focused on those issues they considered to be relevant to the issue of whether the applicant was a fit and proper person to hold an operator's licence pursuant to Sections 55 and 62 of the 1976 Act set out above.

The Decision

- 3.138 The Panel considered that Uber Britannia Limited (UBL) met the statutory definition of an operator. The Panel noted the submissions on this point which had been made by Counsel on behalf of those objecting to the application and those made on behalf of the applicant. The Panel considered the applicant to be an operator, as defined, for the reasons set out in paragraphs 8.2 to 8.5 in the report.
- 3.139 The Panel also considered a number of other issues raised by those objecting to the application which the Panel found to carry very little or no evidential weight. These issues are addressed below:
- Sexual assault and sexual harassment in the USA, where the sole evidence was a newspaper report. The Panel accepted the submissions by Counsel for UBL on this point;
 - Inappropriate driver routes - no evidence was put forward to support this allegation;
 - Lack of insurance - no evidence was put forward to support this allegation;
 - Drivers sleeping in their vehicles – the Panel took the view that it is advisable for any driver who is tired to take a rest;
 - DBS checks and medical evidence – the Panel did not consider that issues around DBS checks or medical evidence were relevant as regards to the operation of UBL in Brighton & Hove, as the licensing authority had its own systems in place and was satisfied with those;

- The Panel heard from Counsel for UBL about both Greyball and Ripley technology and find that there was no evidence to support any allegations of their misuse;
- The Panel noted that a 5 day appeal was scheduled in relation to an Uber application that was rejected by TfL. Many of the concerns raised in that case such as medical and DBS checks did not apply here in Brighton & Hove as there were different procedures in place. There was also a different legislative framework in London. As such the Panel has discounted the TfL situation for the purposes of considering this application;
- In relation to Wheelchair Accessible Vehicles (WAV vehicles) the Panel were clear that UBL were not in breach of the Blue Book requirements. It was noted that UBL had offered voluntarily to go outside the Blue Book criteria by reducing from 100 vehicles to 80 the point at which 20% of the fleet have to be WAV vehicles.

3.140 The Panel did have significant concerns however about other matters raised at the Hearing and in the papers and these formed the basis for its decision.

3.141 The Panel was not satisfied that UBL were a fit and proper person to hold an operator's licence pursuant to the 1976 Act for the reasons set out below. The decision of the Panel was therefore not to renew the operator's licence for UBL.

1.Data Breach.

3.142 While the Panel acknowledged that UBL was a separate legal entity from other Uber companies, the Panel found that the practical reality was that the actions of other Uber companies clearly had relevance to UBL. The Panel heard that data processing was conducted by Uber BV, a European arm of Uber. The Panel also heard how the management of the US arm of Uber had changed and it was clear on submissions of UBL that the line of authority ran ultimately to the US companies and that they were closely interlinked.

3.143 The Panel noted that there had been additional changes within the structure of UBL and that a range of non-executive directors had been appointed who although they had regulatory experience did not appear to it within the private hire vehicle area.

3.144 Details of the circumstances of a significant data breach were contained within the circulated papers and this had been addressed in the submission by UBL. The Panel had not learnt of this breach until after the licence had been renewed by officers on the 2 November 2017.

3.145 It is clear and not disputed that the breach had been covered up by company officers in America for at least a year. The applicant, UBL, accepted that this was a serious mistake on the part of the parent company and had explained that a new CEO was in place with a new company ethos. UBL sought to distance itself from the actions of the American company. However, in the Panel's view, Uber was a multi-national business with a distinct corporate culture which extended across national borders. The Panel believed that this incident, and in particular the failure to report the breach, reflected extremely badly on Uber as a whole, including UBL, and in their opinion rendered them unfit to hold a licence.

3.146 Trustworthiness and integrity in holding and dealing with sensitive personal data should be a key characteristic of an operator and the Panel considered that in this respect UBL had fallen short of the standard required. The Panel noted the comments of the ICO dated 22 November 2017, when they had said "Uber's announcement about a concealed data breach last October raises huge concerns around its data protection policies and ethics." The Panel also noted that a week later on 29 November 2017 The ICO said " We would expect Uber to alert all those affected in the UK as soon as possible". We questioned two witnesses about what information they had had and they confirmed they had heard nothing from UBL. UBL did not provide any information detailing steps that they had taken to alert individual users of the App. We note the comments by the ICO dated 29th November:-

"On its own this information is unlikely to pose a direct threat to citizens. However, its use may make other scams, such as bogus emails or calls appear more credible. People should continue to be vigilant and follow the advice from the NCSC." Given this is a possible risk; we would have expected Uber to have taken more pro-active steps.

3.147 The Panel was not satisfied that the changes of management reported by UBL, which were relatively recent, were sufficient to provide reassurance that there would not be a repeat of the data breach. The Panel could not identify an additional licence term that would provide reassurance.

2.Commitment only to use Brighton & Hove licensed drivers, regulatory standards and enforcement concerns regarding out of town drivers.

3.148 At the original licence application before the Panel in October 2015, UBL had given a firm commitment to adhere to the standards set out in the Blue Book and further only to use Brighton & Hove licensed drivers. This had been set out in the decision letter of the 23 October 2015 and was reflected in the minutes of that Panel hearing. It had been a critical factor in the decision to grant the licence. In 2016 that undertaking had been repeated and set out in the decision letter of the 31 October 2016 which reiterated that the renewal granted was subject to Blue Book compliance and the commitment only to use Brighton & Hove drivers. At the renewal stage UBL had not yet launched in the City at that stage.

3.149 When UBL had launched in Brighton & Hove, a large number of out of town Uber taxis, mainly those licensed by Transport for London (TfL), had entered and operated in the City. This had been an unexpected consequence of granting UBL the licence and had given rise to a number of associated regulatory consequences and concerns. The high standards set out in the Blue Book did not apply to drivers and vehicles licensed elsewhere. Out of town taxis were often licensed with less stringent controls and conditions than those from the City. An important example was the presence of CCTV in taxis licensed in Brighton & Hove. This was a vital tool for the protection of residents and visitors and had provided crucial evidence in the investigation of complaints. It was not standard in other licensed areas.

3.150 There were enforcement difficulties for the Council's officers in relation to out of town drivers in that they were unable to take swift and appropriate action if problems occurred. The influx of TfL taxis into the City necessitated approaches to TfL in order to perform and seek agreement to joint enforcement operations.

- 3.151 In response to the above concerns, UBL created a Geofence area around the 'South East'. Initially this had been warmly welcomed. However what had become apparent was that while TfL registered drivers were now absent from the City, there continued to be a large number of drivers not licenced locally operating in the City. This was a direct consequence of the functioning of the Uber App. Therefore UBL had significantly increased the 'alternate' PHV market in the City. Despite the Council having repeatedly expressed concerns to UBL that their App reduces the Council's ability to perform its regulatory functions, UBL had not addressed this issue to the Panel's satisfaction.
- 3.152 What had particularly brought matters into focus was UBL's web site which sets out on one page a comparative table between Brighton & Hove and Lewes District Council. The comparison made it clear that it was cheaper and quicker to register as a PHV driver in Lewes. One hundred and thirty applications to be licenced as a PHV driver were received between 15 February and 15 March according to Lewes District Council. The Panel's view was that these drivers would be likely to drive in Brighton & Hove.
- 3.153 The Panel noted the assertion by UBL that this website comparison had been done at the drivers' request but the Panel was unimpressed by that assertion. The reality was that UBL had facilitated, whether intentionally or not, an increase of people applying for PHV driver licences outside of Brighton & Hove, which meant the City was likely to be inundated with PHV vehicles and drivers operating using the Uber App who would do so without meeting the stringent Brighton & Hove Blue Book standards.
- 3.154 In the Panel's view, large numbers of taxis operating in the City which did not meet the Blue Book standards put the safety of residents and visitors at potential risk. The Panel considered that by operating in such a way as to cause this influx of out of town taxis, UBL had breached the spirit of their written commitment only to use Brighton & Hove drivers. The Panel considered that UBL had misled the Licensing Authority in that respect and that this went to the definition of 'fit and proper' for the purpose of the 1976 Act.
- 3.155 The Panel noted that UBL did not accept that they had breached any undertaking and that out of town drivers are able to lawfully operate in the City. However, the Panel considered that the comparison webpage proactively encouraged drivers to take the quicker and cheaper route to driving in Brighton & Hove in the knowledge that the safety and security measures that applied would be less stringent. UBL stated that they had been unable to recruit large numbers of Brighton & Hove drivers to their licence. The Panel's view was that recruitment to the Brighton & Hove City licence was undermined by providing the comparison with Lewes above. The Panel noted that there had been some incentives to drivers to register in Brighton and Hove, but that these have not proved sufficient.
- 3.156 The Panel had hoped that matters could be resolved by UBL Geo-fencing Brighton & Hove. UBL had said they would not do this due to the financial considerations of their drivers (and other issues, such as air quality). As UBL had indicated that they cannot/will not Geofence Brighton & Hove then the Panel could not consider putting this forward as a condition or ask them to enter in to a voluntary arrangement.

The Panel's Decision

3.157 For the reasons set out above, the members of the Panel decided unanimously that they were not satisfied that UBL were a fit and proper person to hold an operator's licence pursuant to the 1976 Act and the decision of the Panel was therefore not to renew the operator's licence legislation for UBL.

3.158 **RESOLVED** – That for the reasons set out above the Panel has determined the application for renewal of their Private Hire Operator Licence under the taxi and private Hire (PHV) legislation, Section 555, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act) by Uber Britannia Limited (UBL) to operate from Workshop 30, 30 Grand Parade, Brighton BN2 9QA, be refused.

Note : Appeal Rights

It was explained by the Legal Adviser to the Panel that under S55(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.

S62 (3) Any operator aggrieved by a decision of the district council under this section may appeal to a magistrates' court.

Any Appeal must be made to the Magistrates Court (Edward Street, Brighton) within 21 days of notification of this decision.

The meeting concluded at 5.05pm

Signed

Chairman

Dated this

day of