

**Objection by Campaign Against Unlawful Taxis In Our Nation Limited  
to the requested renewal  
by Uber Britannia Limited  
of a private hire operator's licence**

Campaign Against Unlawful Taxis In Our Nation Limited (CAUTION) objects to the requested renewal by Uber Britannia Limited (UBL) of a private hire operator's licence on the following grounds:

**Booking process**

Customer bookings are not accepted by UBL at its Brighton licensed operating centre (as specified in UBL's operator's licence as being the only place at which it may make provision for the invitation or acceptance of bookings for a private hire vehicle), but by drivers using the Uber driver app.

Whilst this contention has been made many times before in relation to statements made by senior Uber personnel to courts in the UK and Canada<sup>1</sup>, Transport for London (TFL) has now revealed<sup>2</sup> that in an IT systems architecture report it commissioned from Deloitte UK in relation to Uber London Limited<sup>3</sup> (ULL) (the sister company to UBL that uses the same platform and technology), the customer

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<sup>1</sup> Edmonton (City) v Uber Canada Inc, 2015 ABQB 214; City of Toronto v Uber Canada Inc et al, 2015 ONSC 3572; Transport for London v Uber London Limited and Others [2015] EWHC 2918 (Admin); and Aslam and Others v Uber BV and Others [2016] UKET 2202551/2015, [2016] EW Misc B68(ET).

<sup>2</sup> Letter from Transport for London to Uber Britannia Limited, dated 22 September 2017, detailing the decision and reasons for refusing to renew ULL's London private hire vehicle operator's licence.

See LTDA website @

<https://www.ltda.co.uk/assets/files/downloads/TfL%20licensing%20decision%20letter.pdf>

<sup>3</sup> Letter from TFL to ULL, 22/09/2017, paras 19-21.

booking is accepted by the driver and not ULL<sup>4</sup> (and by analogy, as ULL and UBL use the same IT system, this must also be the case in relation to UBL too).

## **Dishonesty**

By virtue of the false statements and declaration made by UBL that it operated (or would operate) in accordance with the law (ie, as a licensed operator it would accept bookings at its specified operating centre in Brighton and dispatch work to drivers) in its original application and subsequent renewal application(s) and / or in response to specific questions that have since been posed by the Council, UBL has obtained licences by deception<sup>5</sup>.

As a direct consequence of UBL fraudulently obtaining a private hire operator's licence<sup>6</sup> and its illegal booking process<sup>7</sup>, every UBL driver has acted illegally by either accepting bookings as if they were an operator<sup>8</sup>, but without holding a private hire operator's licence, or by e-hailing<sup>9</sup>. Whichever the courts finally determine this to be, the result is that drivers' insurance will probably have been invalidated as a result of the driver (albeit unknowingly) not acting in accordance with the law<sup>10</sup>.

## **Greyball and Ripley software**

In order to frustrate regulatory oversight and / or investigation into its operational arrangements, Uber Technologies Inc (UTI) (the ultimate parent company in the USA of Uber entities across the world) developed software including, but not necessarily limited to, Greyball<sup>11</sup> (software that deceived regulators and law

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<sup>4</sup> Letter from TFL to ULL, 20/09/2017, paras 20, 21 &70(a).

<sup>5</sup> Now an offence of 'fraud by false representation' under the Fraud Act 2006, s 2.

<sup>6</sup> It being assumed that Brighton & Hove City Council would not have granted or renewed a private hire operator's licence if it had known or had reason to suspect that UBL was not accepting and then dispatching bookings to its drivers.

<sup>7</sup> Letter from TFL to ULL, 20/09/2017, paras 20, 21 &70(a).

<sup>8</sup> 'Operate' is defined by the Local Government (Miscellaneous Provisions) Act 1976, s 80(1). It being an offence under the LG(MP)A 1976, s 46(1)(d) for a person to 'operate' any vehicle as a private hire vehicle without having a current licence under section 55 of the Act.

<sup>9</sup> Plying for hire without a licence is an offence under the Town Police Clauses Act 1847, s 45.

<sup>10</sup> Using a vehicle to ply for hire that is not insured for public hire is an offence under the Road Traffic Act 1988, s 143.

<sup>11</sup> The New York Times, 03/03/2017 @ <https://www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html>; and The Guardian, 04/03/2017 @ <https://www.theguardian.com/technology/2017/mar/03/uber-secret-program-greyball-resignation-ed-baker>

enforcement officials as to the availability of Uber vehicles) and Ripley<sup>12</sup> (software that enable UTI to remotely wipe servers in the event of Uber premises being raided, as they have been many times in Amsterdam, Brussels, Hong Kong and Paris<sup>13</sup>, to prevent evidence being secured of Uber's operational arrangements).

Whilst such software was developed by UTI and not ULL or UBL, it is clear from the TFL refusal letter, dated 22 September 2017, that Greyball was available for use in the UK<sup>14</sup> and that Ms Joanna Bertram, Uber's Regional Manager for Northern Europe (which included ULL and UBL) had it at her disposal and was, at the very least, a party to correspondence about its use in other jurisdictions for which she had personal responsibility<sup>15</sup>.

The TFL letter does not refer to Ripley, because its existence had not been discovered by the date of TFL's refusal letter<sup>16</sup>.

Although Ms Bertram has publicly resigned from her position with Uber<sup>17</sup>, as have many others including its former Chief Executive Officer and Co-founder Travis Kalanick<sup>18</sup>, it is respectfully submitted that the whole organisation is not a fit and proper person to hold an operator's licence.

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<sup>12</sup> Bloomberg Businessweek, 11/01/2018 @ <https://www.bloomberg.com/news/articles/2018-01-11/uber-s-secret-tool-for-keeping-the-cops-in-the-dark>; and The Guardian, 11/01/2018 @ <https://www.theguardian.com/technology/2018/jan/11/uber-developed-secret-system-to-lock-down-staff-computers-in-a-police-raid>

<sup>13</sup> Bloomberg Businessweek, 11/01/2018, para 9 @ <https://www.bloomberg.com/news/articles/2018-01-11/uber-s-secret-tool-for-keeping-the-cops-in-the-dark>

<sup>14</sup> Letter from TFL to ULL, 22/09/2017, paras 26-52.

<sup>15</sup> Letter from TFL to ULL, 22/09/2017, paras 31-52.

<sup>16</sup> News of the existence (and use of) the Ripley software was made by Bloomberg Businessweek on 11/01/2018. See <https://www.bloomberg.com/news/articles/2018-01-11/uber-s-secret-tool-for-keeping-the-cops-in-the-dark> and <http://uk.businessinsider.com/report-uber-system-disrupted-government-investigations-2018-1>

<sup>17</sup> Letter from TFL to ULL, 22/09/2017, para 43; The Guardian, 02/10/2017 @ <https://www.theguardian.com/technology/2017/oct/02/uber-uk-london-licence-jo-bertram-dara-khosrowshahi>; The Telegraph, 02/10/2017 @ <http://www.telegraph.co.uk/technology/2017/10/02/uber-uk-boss-quits-amid-london-licence-ban/>; Financial Times, 02/10/2017 @ <https://www.ft.com/content/f73aa638-a786-11e7-ab55-27219df83c97>

<sup>18</sup> The New York Times, 21/06/2017 @ <https://www.nytimes.com/2017/06/21/technology/uber-ceo-travis-kalanick.html>; BBC News, 21/06/2017 at <http://www.bbc.co.uk/news/business-40351859>; The Guardian, 21/06/2017 @ <https://www.theguardian.com/technology/2017/jun/20/uber-ceo-travis-kalanick-resigns>; and The Telegraph, 21/06/2017 @ <http://www.telegraph.co.uk/technology/2017/06/21/uber-boss-travis-kalanick-resigns-ceo/>

## Data protection breach

Uber's servers have been hacked and personal data of drivers and customers stolen on at least three occasions (once in 2014<sup>19</sup> and twice in 2016<sup>20</sup>).

On at least the two occasions in 2016, Uber paid ransoms to the hackers<sup>21</sup>.

Whilst Uber may not have acted irresponsibly in relation to its data security arrangements, on each of the three occasions it is now known that there have been data breaches, Uber did not promptly report the breaches to regulators (and may not have reported them at all) or provide information to their drivers or customers so that they could take steps to protect themselves from identity or conventional fraud<sup>22</sup>.

It has been reported that the 2016 data breaches involved 57 million customers and drivers<sup>23</sup> of which Uber has admitted that 2.7 million were people in the UK<sup>24</sup>.

Despite more than two months having elapsed since these data breaches were exposed in the media<sup>25</sup>, Uber (whether that be UTI or UBL) seems to have failed to take any steps whatsoever to contact those affected, despite the Information Commissioner's Office (ICO) stating that Uber should do as long ago as 22 November 2017<sup>26</sup>.

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<sup>19</sup> Los Angeles Times, 27/02/2015 @ <http://www.latimes.com/business/technology/la-fi-tn-uber-data-breach-20150227-story.html>

<sup>20</sup> BBC News, 22/22/2017 @ <http://www.bbc.co.uk/news/technology-42075306>; Information Commissioner's Office (ICO), 22/11/2017 & 29/11/2017 @ <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2017/11/latest-ico-statement-on-uber-data-breach/>

<sup>21</sup> Bloomberg, 21/11/2017 @ <https://www.bloomberg.com/news/articles/2017-11-21/uber-concealed-cyberattack-that-exposed-57-million-people-s-data>

<sup>22</sup> Ibid 19-21.

<sup>23</sup> Ibid 19-21.

<sup>24</sup> Ibid 19-21.

<sup>25</sup> Ibid 19-21.

<sup>26</sup> Information Commissioner's Office (ICO), 22/11/2017, 5.35pm @ <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2017/11/latest-ico-statement-on-uber-data-breach/>

## Rotten to the core

In *R v Knightsbridge Crown Court ex parte International Sporting Club (London) Limited and Another*<sup>27</sup> the Divisional Court said:

We have no hesitation in saying that past misconduct by the licence holder will in every case be a relevant consideration to take into account when considering whether to cancel a licence. The weight to be accorded to it will vary according to the circumstances of the case. There may well be cases in which the wrongdoing of the company licence holder has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence; it will stand condemned in the public mind as a person unfit to hold a licence and public confidence in the licensing justices would be gravely shaken by allowing it to continue to run a casino.

Whilst not all Uber's current reputational issues would ordinarily be relevant licensing considerations, the number and range of the issues currently facing the company are:

- Sexism and sexual harassment<sup>28</sup>
- Tracking user's phones for five minutes after they leave the car<sup>29</sup>
- Uber employees spied on ex-partners, politicians and celebrities<sup>30</sup>
- Failure to report serious criminal offences to police, including sex attacks by drivers<sup>31</sup>
- Driver employment status<sup>32</sup>

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<sup>27</sup> [1981] 3 WLR 640, [1982] QB 304

<sup>28</sup> The Guardian, 07/06/2017 @ <https://www.theguardian.com/technology/2017/jun/06/uber-fires-employees-sexual-harassment-investigation>; and The Guardian, 12/06/2017 @ <https://www.theguardian.com/technology/2017/jun/12/uber-silent-travis-kalanick-future-adopts-holder-proposals>;

<sup>29</sup> The Guardian, 29/08/2017 @ <https://www.theguardian.com/technology/2017/aug/29/uber-u-turn-tracking-users-after-trip-ended-app-user-privacy-new-ceo>

<sup>30</sup> The Guardian, 13/12/2017 @ <https://www.theguardian.com/technology/2016/dec/13/uber-employees-spying-ex-partners-politicians-beyonce>

<sup>31</sup> Letter from TFL to ULL, 22/09/2017, paras 54-58

<sup>32</sup> *Aslam and Others v Uber BV and Others* [2016] UKET 2202551/2015, [2016] EW Misc B68(ET); The Guardian, 19/04/2017 @ <https://www.theguardian.com/technology/2017/apr/19/uber-appeal-uk-employment-ruling-drivers-working-rights>

- Bribery law violation investigation<sup>33</sup>
- Appeal against TFL's refusal to renew ULL's London private hire operator's licence<sup>34</sup>
- Appeal against the City of York Council's decision to refuse to renew its private hire operator's licence because of: (i) the unreported data breach concerning 57 million driver and customer records; and (ii) the increased level of complaints, which indicates a lack of proper management of drivers by UBL<sup>35</sup>

Although Uber has many loyal users of its services, it has growing numbers of detractors, including many who were previously loyal users of its services. It is submitted that, despite having some loyal users, Uber in the UK, particularly ULL and UBL, stands condemned in the public mind and public confidence in Brighton & Hove City Council as a licensing authority would be gravely shaken if it did not refuse to renew UBL's licence.

In all the circumstances and applying the principles enunciated by the Divisional Court<sup>36</sup>, UBL in its own right and as part of UTI, is not a fit and proper person to be licensed and its application to renew its private hire operator's licence should be refused.

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<sup>33</sup> Reuters, 29/08/2017 @ <https://www.reuters.com/article/us-uber-probe/u-s-probes-uber-for-possible-bribery-law-violations-idUSKCN1B92TG>

<sup>34</sup> Letter from Transport for London to Uber Britannia Limited, dated 22 September 2017, detailing the decision and reasons for refusing to renew ULL's London private hire vehicle operator's licence. See LTDA website @ <https://www.ltda.co.uk/assets/files/downloads/TfL%20licensing%20decision%20letter.pdf>

<sup>35</sup> City of York Council, Minutes of the Meeting of the Gambling, Licensing & Regulatory Committee, 12/12/2017 @ <http://democracy.york.gov.uk/mgAi.aspx?ID=47421> and webcast @ [https://www.york.gov.uk/info/20241/webcasts/2082/webcasts\\_of\\_gambling\\_licensing\\_and\\_regulatory\\_committee\\_meetings](https://www.york.gov.uk/info/20241/webcasts/2082/webcasts_of_gambling_licensing_and_regulatory_committee_meetings); BBC News, 12/12/2017 @ <http://www.bbc.co.uk/news/uk-england-york-north-yorkshire-42328380>

<sup>36</sup> R v Knightsbridge Crown Court ex parte International Sporting Club (London) Limited and Another [1981] 3 WLR 640, [1982] QB 304