

**LICENSING COMMITTEE
(NON - LICENSING AC T
PANEL**

Agenda Item3

Brighton and Hove City Council

	Application for a new Private Hire Operator Licence		
Applicant:	Ola UK Private Ltd		
Date of Meeting:	13 May 2019		
Report of:	Executive Director of Neighbourhoods Community and Housing		
Contact Officer:	Name: Alex Evans, Licensing Enforcement Officer/ Jim Whitelegg, Regulatory Services Manager		
	Email:	Alex Evans@brighton-hove.gov.uk	Tel: (01273) 296658/292438
Ward(s) affected:	All		

1. PURPOSE OF REPORT AND POLICY CONTEXT

1.1 To consider the application from Ola UK Private Limited of office Queensbury House 104 - 109 Queens Road, Brighton. BN1 3XF for the grant of a Private Hire Operator's Licence under the Taxi and Private Hire Vehicle (PHV) legislation: which has been made under Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act).

1.2 Ola is a registered company. Their head office is located at Ola UK Private Limited, 1 Primrose Street, London, United Kingdom. EC2A 2EX.

1.3 Each licencing authority is empowered to set its own licensing objectives as long as they are reasonable. Brighton & Hove City Council's licensing objectives are set out as follows:

'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.

1.4 In promoting these licensing objectives, the council will expect to see licence holders and applicants continuously demonstrate they can meet or exceed

specifications set by the council in the four licensing objectives and the objectives will be taken into account by the council when making decisions.'

2. RECOMMENDATIONS:

2.1 That the Sub-Committee determine an application for the Grant of a Private Hire Operators (PHO) Licence under the Taxi and Private Hire Vehicle (PHV) legislation: namely, Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act).

2.2 Options

The Sub-Committee may:

- Grant the Operator's licence for a 5 year period.
- Grant the Operator's licence for a limited duration up to 5 years.
- Grant the Operator's licence with such additional conditions as the Panel consider reasonably necessary.
- Refuse the application. This carries a Right of Appeal to Magistrates Court

If the Sub-Committee chooses option 4 they must be satisfied that OLA are not "fit and proper person" to hold an Operator's licence (as set out in s55 of the 1976 Act) and give their reasons for the decision reached.

3. BACKGROUND

3.1 The Council Standard Conditions, which are contained in the Blue Handbook for Hackney Carriage and Private Hire, Drivers, Vehicles and Operators 5th Edition which was approved by the Licensing Committee on the 29 November 2018, provide a minimum standard of expectation of Private Hire Operators Licensed within the City of Brighton and Hove.

3.2 All operator licenses usually run for 5 years, this licence, if granted, would therefore expire in May 2024

3.3 The Taxi Licensing Office received an application for a Private Hire Operators Licence on 6 December 2018 a copy of the application can be found at **Appendix A**

- 3.4 OLA UK Private Limited intend to operate an APP based booking platform for providing transportation services through private hire vehicles and hackney carriage vehicles on their platform. OLA UK Private Limited is one of the group companies on ANI Technologies Private Limited, which is a technology company providing an online platform for Taxi / Private Hire services based out of India. ANI Technologies operates under the brand name “OLA” and has a presence in more than 110 cities in India. OLA has successfully launched its operations in Australia and is desirous of expanding its operations in the UK. As of August 2018, OLA has begun its commercial operations in South Wales, Bristol area, Exeter and areas in the Midlands and Northern England.

OLA put forward on a voluntary basis a Memorandum of Understanding regarding out of town drivers. As part of the Memorandum of Understanding they confirm that only Brighton and Hove licenced drivers and vehicles will be used under their Brighton and Hove Operators Licence, they have also stated that any out of town driver/vehicles that come into the City to drop off will only be permitted to complete a maximum of 2 pick-ups within a 24 hours period. The reason for this is to avoid one way drop offs and to optimise driver earnings. The proposed Memorandum of Understanding is attached at **Appendix A**

- 3.5 The legislation does not mandate the need for consultation in relation to the application for a grant of a private hire operator’s licence. However, the Licensing Authority allowed for a period 4 weeks for written representations.

Supportive representations – None received

Opposing representations – 2 representation one being a joint representation was received,

- GMB Southern Region Brighton & Hove Taxi Section (Andy Peters), Unite Union SE Region (Cab Section) – Sean Ridley
- George Beresford

A copy of these representations can be found in **Appendix B**

4 Identity of the Applicant

- 4.1 Specific DBS checks were supplied for the listed directors for Ola UK Private LTD as well as certificate of good conduct in relation to one Director.

5.0 **Inspections and complaints**

5.1 The licensing service has inspected Ola's Brighton & Hove offices on one occasion in 2019, the office is in the early stages of being set up.

6.0 Relevant Legislation for grant / renewal of an Operator's Licence

Local Government (Miscellaneous Provisions) Act 1976 (The 1976 Act)

provides:-

6.1 s55. 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 to section 55ZA, every] licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.

(3) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.

(4) Any applicant aggrieved by the refusal of a district council to grant an operator's licence under this section, or by any conditions attached to the grant of such a licence, may appeal to a magistrates' court.'

6.2 The Council thus has a statutory duty to grant the licence unless it considers that the applicant is not a fit and proper person to hold a licence.

6.3 The licence should be granted for a five year period unless there are specific reasons in the particular circumstances of the case that justify granting the licence for a shorter period.

6.4 Section 80 of the 1976 Act defines "operate" as follows:- "Operate means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle"

- 6.5 Section 46(1)(d) makes it clear that anyone acting as an operator must have an operator's licence: "(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under S55 of this Act" and a local authority cannot grant a licence (s55(1)) "unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence". Ola UK Private LTD
- 6.6 A private hire operator (PHO) is the person who takes a booking for a private hire vehicle (PHV) and then dispatches a PHV driven by a licenced private hire driver (PHD) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same authority.

COMMENTARY ON THE TAXI LICENSING POLICY

7.0 Fit and proper in the Context of an Operator

- 7.1 The underlying purpose of this regulatory regime is "... to provide protection to members of the public who wish to be conveyed as passengers in a motor car provided by a private hire organisation with a driver" (St Albans District Council v Taylor [1991] RTR 400 at page 403A-B per Russell LJ).

S55 of the 1976 Act (set out at paragraph 6.1 above) states that an operator must be fit and proper.

PHV operator responsibilities

- 7.2 PHV operators have a key role in ensuring that the drivers they employ are fit and proper persons, and are properly trained in their roles.
- 7.3 As a Licensing Authority, Brighton & Hove City Council requires operators to demonstrate what steps they are taking to ensure that their drivers are fit and proper persons, as well as appropriately trained.
- 7.4 The operators' role goes beyond simply taking bookings and despatching vehicles. In the course of making a booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information.
- 7.5 It is therefore vital that PHOs are as trustworthy and reliable as a driver.
- 7.6 Unlike hackney carriage and private hire drivers, the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 does not cover PHOs. This means that convictions become spent in relation to a PHO. However, the ruling of the High Court in Adamson v Waveney District Council means that local authorities can take spent convictions into account when determining the suitability for a licence. The fact that the role of the PHO is not an exempt occupation for the 1974 Act means that it is not possible to obtain an Enhanced DBS check, but they can be asked to obtain a Basic Disclosure. This can be combined with a statutory declaration as part of the application process requiring the applicant to list all previous convictions, together with other material information in a similar fashion to taxi drivers.

- 7.7 A working test of fitness and propriety for PHOs is “would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”
- 7.8 A licence is granted to the PHO on the basis of their fitness and propriety but there is no overt mechanism to consider the suitability of those who work for the PHO. There is no reason why a condition cannot be imposed on the PHO licence requiring them to undertake checks (for instance enhanced DBS checks and training) on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task, and retain that information that they obtain to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement or act upon information that they obtain (therefore allowing unsuitable staff to work in positions of trust) would then have serious implications on the continuing fitness and propriety of the PHO.

8 Comment on issues raised in representations

- 8.1 Ola have provided a working office landline which is 01273 862323 and officers have inspected the office on 29 March 2019.
- 8.2 “Operate”, for the purposes of section 55, has been considered in a series of cases, including Britain v ABC Cabs [1981] RTR 395, Windsor and Maidenhead Royal Borough Council v Khan [1994] RTR 87, Adur District Council v Fry [1997] RTR 257 and Bromsgrove District Council v Powers (Unreported) (16 July 1998). These cases establish that, in this context, “operate” does not have its common meaning. Rather, it is a term defined strictly by section 80(1) as meaning “in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle”. Therefore, as Dyson J said in Powers:

“... [T]he definition of the word ‘operate’ focuses on the arrangements pursuant to which a private hire vehicle is provided and not the provision of the vehicle itself.... [T]he word ‘operate’ is not to be equated with, or taken as including, the providing of the vehicle, but refers to the antecedent arrangements.”

In terms of the issue raised in the Joint GMB representation as to Ola’s terms of conditions, and the purpose of a private hire operation, this has been referred to Ola for comment. However the purpose, nature and requirements of an operator is set out in the Council’s Blue Book and in the legislation. It is not considered that Ola’s terms and conditions are incompatible with the Blue Book requirements as to operators.

Section 56 of the 1976 Act makes it clear that for the purposes of that part of the Act every contract for the hire of a private hire vehicle is deemed to be made

with the customer and operator who accepts the booking for that vehicle whether or not he himself provides the vehicle. Where relevant this provision cannot be overridden by Ola's terms and conditions. 14.3 of those terms and conditions are relevant in this respect.

Ola was asked to comment on the representation and they responded that they did not wish to lodge a formal response at this stage but they would welcome the opportunity to discuss the issues raised.

Financial Implications:

- 10 There are no direct financial implications arising from the recommendation made in this report.

Finance Officer Consulted Michael Bentley

Date:01.05.2019

Legal Implications:

- 10.1 These are dealt with in the body of the report

Lawyer Consulted: Rebecca Sidell

Date:01.05.2019

Equalities Implications:

- 10.2 The primary issue is in relation to disability. There does not appear to be any issues raised around the other protected characteristics as contained within the Equality Act 2010. The report contains specific references to the local authority's duties under the Act and the local requirements under the 'Blue Book' (wheelchair accessible vehicles and wider duties). It is for the members to ask for any such information that they consider would assist them to meet the duties as contained within the Act and the Blue Book in so far as they apply to the licensing requirements.

Sustainability Implications:

- 10.3 There are no direct sustainability implications

SUPPORTING DOCUMENTATION

Appendices:

Appendix A - Application for a Private Hire Operator Licence and Memorandum of Understanding
Appendix B- Representations

Documents in Members' Rooms

The Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The Blue Book).

Background Documents

The Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The Blue Book).