



Sir Peter Hendy CBE
Commissioner of Transport

Transport for London
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15 January 2015

Dear Board Member

Following the discussion about Uber at the TfL Board meeting on 10 December 2014, I undertook to write and clarify the background to the taximeter issue so that there can be no room for any misunderstanding about TfL's involvement.

Uber London Limited's application for a private hire operator's licence was received on 17 April 2012. Following a satisfactory pre-licensing inspection on 28 May 2012, Uber London's operating licence was issued on 31 May 2012. TfL is under a legal obligation to grant an operator's licence if it is satisfied that the applicant is a fit and proper person to hold a licence and we had no reason to consider this not to be the case in relation to Uber London Limited.

On 10 December 2013, solicitors instructed on behalf of the LPHCA formally raised at a senior level in TfL an alleged potential breach of the taximeter prohibition in relation to smartphones used by Uber drivers. We are also aware that it was raised in writing by Addison Lee in a letter dated 14 August 2013 and by the LTDA in a letter dated 17 December 2013. We do not have a record of this issue being raised earlier but cannot rule out the possibility that it was raised previously, for example with the former Director of Taxi and Private Hire.

Following careful consideration of the factual and legal position, lengthy correspondence and a number of meetings with all concerned, TfL informed the trades on 8 May 2014 that our provisional view was that private hire vehicles carrying smartphones which were being used to receive fares information were not unlawfully equipped with taximeters for the purposes of private hire legislation. The legislation has not kept pace with advances in technology and for that reason we had to consider very carefully, with advice from leading Counsel, how the law should be applied in these circumstances before coming to a view.

That said, we have always accepted that the law in this area is untested and is open to a different interpretation and that is why having invited, and taken into account, representations from the trades, we decided that it would be appropriate to invite the High Court to issue a declaration as to the correct interpretation of the law. We were, and are, mindful of the public interest in resolving the issue definitively and our concern was, and is, to do so as soon as possible in a cost effective and non-adversarial way. That is why we suggested making an application to the High Court. That route would allow for a legal determination to be made on the issue with all parties involved including the LTDA, LPHCA, Uber and TfL. It would also avoid the need for individual drivers to be singled out for prosecution.

TfL was informed by the LTDA at a meeting which took place on 20 May 2014 between TfL and the LTDA that it was preparing to issue summonses in the Magistrates' Court for alleged breach of the taximeter prohibition. At this meeting TfL said, for the reasons given above, that the more appropriate way forward, and TfL's preference, was for TfL to invite the High Court to issue a declaration.

Shortly after that meeting TfL started the pre-litigation process by issuing its letter before claim to the LTDA, LPHCA and Uber London Limited on 30 May 2014 in which we indicated our intention to seek a declaration.

Despite being aware of our intentions, the LTDA went on to start criminal proceedings against individual Uber drivers for breach of the taximeter prohibition. This meant that it was no longer legally possible for us to pursue our application to the High Court.

The Judge in the LTDA's criminal proceedings subsequently invited TfL to set out its intentions and I attach an exchange of letters with the parties to the criminal proceedings which make this clear. Having considered the position, the Judge agreed that the most appropriate place for this issue to be resolved is the High Court and with the agreement of the LTDA, and the lawyers acting for the Uber drivers, the criminal proceedings were adjourned indefinitely to allow that to happen.

However, legally we still do not think that we can proceed, even though the criminal proceedings have been adjourned. Our view is that the summonses need to be withdrawn and that is what we have asked the LTDA to do. I have attached a copy of our letter inviting the LTDA to do so and also a letter from the Uber drivers' lawyers endorsing our request. You will see that the lawyers acting for the drivers have agreed, in return for the withdrawal of the summonses, that if any future criminal proceedings are brought by the LTDA on the same issue, they will not argue that they are time barred.

TfL remains keen to see this matter resolved and also remains willing to pursue a High Court action. However, as things stand we are unable to pursue what we, and the Judge hearing the LTDA's prosecutions, consider to be the most appropriate way forward in the High Court unless and until the LTDA withdraw their summonses against individual drivers. We remain willing to engage with the taxi trade in order to try and find a way to resolve this and with this in mind met with the LTDA on 17 December 2014. At this meeting we again invited the LTDA to withdraw their summonses.

In a letter dated 29 December 2014 the LTDA invited TfL to take over their prosecutions. We are considering whether or not this is legally possible. If it is possible it would be with a view to discontinuing the prosecutions and proceeding with what we have always considered to be the more appropriate way to resolve this matter in the High Court.

I hope this is helpful in explaining the history behind this issue.

Yours sincerely

A black rectangular redaction box covering the signature of the sender.

Sir Peter Hendy CBE

Howard Carter
General Counsel
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13 October 2014

Dear Mr Carter

Licensed Taxi Drivers Association v Akinlonu, Ali, Durrani and Kulmiye

The Licensed Taxi Drivers Association ("LTDA") has brought private prosecutions against the above-named individuals. In short, the complaint made by the LTDA is that a GPS-enabled smartphone with the Uber app installed on it is a "taximeter" with which the Defendants' vehicles are equipped, contrary to section 11 of the Private Hire Vehicles (London) Act 1998. A case-management hearing took place on 25 September 2014 at Westminster Magistrates' Court before Senior District Judge Riddle, at which the Defendants asked the Court to set a timetable for the hearing of an application to withdraw the summonses against them.

The Defence intends to apply for the summonses to be withdrawn, and the Court agreed that it would hear the application on the scheduled trial dates (18th/19th December). However, to assist in its determinations, the Court requested that the parties ask TfL to clarify its present position in relation to the civil proceedings and its position at the time the summonses were issued.

The parties have jointly drafted the following questions for TfL to answer in order to assist the Court:

1. Please confirm when it was that TfL considered bringing proceedings in the High Court and provide a full history in this regard, including the dates of any relevant meetings (and any minutes from such meetings) and correspondence between TfL and Uber, the LTDA or the Licensed Private Hire Car Association (LPHCA).
2. When did TfL become aware of the LTDA's intention to bring private prosecutions? Was this before or after TfL had contemplated commencing proceedings in the High Court? If before, did this constitute the reason for instigating civil proceedings?
3. Were civil proceedings either commenced or expedited in order to prevent the LTDA from commencing private prosecutions?
4. Was TfL aware that the LTDA was proposing to apply for summonses on 30 May 2014?
5. Why did TfL not proceed with their claim when the summonses were issued?
6. Did TfL think they were prevented in law from proceeding with the declaratory judgment once summonses were issued?

7. If the summonses were withdrawn, or for any other reason not proceeded with, how would TfL propose to proceed?
8. Would TfL be prepared to bring proceedings before the High Court for a declaratory judgment if summonses were withdrawn?
9. If so, who would be the proposed parties to the proceedings?
10. What question would the High Court be asked to determine?
11. Is it TfL's understanding that a declaratory judgment is binding on all parties and if so why?

The parties request that TfL responds to these questions by letter addressed to both parties (and copied to the Court) by close of business on **Monday, 27 October 2014**.

If any clarification is required, TfL is requested to contact Charles Brasted of Hogan Lovells, copying Michael Demidecki & Co.

Yours sincerely

*Hogan Lovells International LLP
(on behalf of the Defense and Prosecution)*

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Solicitors for the Prosecution



27 October 2014

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Dear Sirs

Licensed Taxi Drivers Association -v- Akinlonu, Ali, Durrani and Kulmiye

Thank you for your letter dated 13 October 2014.

Some of the matters to which you refer relate to confidential documents or advice which are protected by legal professional privilege. We have responded below to your questions to the fullest extent possible to assist the Court given our understanding of the issue but we do so without waiving any legal professional privilege which attaches to the documents or advice to which those questions relate.

I have adopted the numbering of your questions in the responses below:

1. TfL decided on 8 May 2014 that it would be appropriate to invite the High Court to issue a declaration as to the correct application of section 11 of the Private Hire Vehicles (London) Act 1998 to the use of Smartphones by drivers of private hire vehicles and that it should commence the pre-action process with a view to bringing such an action.

TfL was, prior to this, mindful of the difficulties in interpretation of the taximeter prohibition in this context and the public interest in resolving the issue definitively. TfL's concern was to do so as soon as possible in a cost effective and non-adversarial way. With this in mind, TfL was considering whether or not the High Court's intervention would be the most appropriate way forward. However, the decision on 8 May to start the pre-action process before bringing High Court proceedings for a declaration was an internal TfL decision. TfL subsequently issued its letter before claim to the LTDA, LPHCA and Uber London Limited on 30 May 2014.

2. TfL was informed by the LTDA at a meeting which took place on 20 May 2014 between TfL and the LTDA that it was preparing to issue summonses in the Magistrates' Court for alleged breach of section 11. At this meeting TfL said, for the reasons given above, that the more appropriate way forward and TfL's preference was for TfL to invite the High Court to issue a declaration.
3. No.
4. Please see the answer to question 2 above.
5. TfL is of the view that it is prevented from commencing High Court proceedings while there are ongoing criminal proceedings dealing with the same issue.
6. Please see the answer to question 5 above.
7. If the summonses were withdrawn, or for any other reason not proceeded with, TfL would continue with an application to the High Court for a declaration in relation to the correct interpretation of section 11 in these circumstances.
8. Please see the answer to question 7 above.
9. The proposed parties would be TfL and: (i) Uber London Ltd; (ii) the Licensed Private Hire Car Association; and (iii) the Licensed Taxi Drivers Association.
10. TfL proposed inviting the Court to issue the following declaration in its letter before action dated 30 May 2014:

"A Private Hire Vehicle operating in London [is/is not] equipped with a taximeter, for the purposes of Section 11 of the Private Hire Vehicles (London) Act 1998, in circumstances where: the driver of that vehicle uses a GPS enabled smartphone; the smartphone receives GPS signals from a satellite; the smartphone forwards that GPS data on to an external server; the external server calculates a fare that is partially or wholly determined by reference to distance travelled and time taken and the external server sends the fare information back to the smartphone."

TfL did, however, receive representations as part of the pre-action process which would be taken into account before considering what the Court should be invited to determine, should proceedings be issued. TfL did not respond to these representations at the time because proceedings could no longer be commenced in the light of the summonses which were issued.

11. Whether or not a High Court declaration is considered to be binding on parties other than TfL would we suggest be a matter for them and would be dependent on the precise wording of the declaration and the issues to be determined in any given case. Nevertheless, I can confirm that TfL's intention

would be, subject to any successful appeal by any party, to exercise its regulatory responsibilities in accordance with the terms of any High Court declaration unless or until there was any change in the law.

Yours sincerely



Howard Carter
General Counsel

Cc: Westminster Magistrates' Court, 181 Marylebone Road, London NW1 5BR



26 November 2014

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Dear Sirs

Licensed Taxi Drivers Association -v- Akinlonu, Ali, Durrani and Kulmiye

We sent a representative to observe the case management hearing in the above matter which took place on Friday 21 November. We note that, with the agreement of the parties, the Court has adjourned the prosecutions without a further hearing date having been set in order to allow the High Court to consider the legal issues. We understand that the Court will be recording the reasons for the adjournment and notifying the parties accordingly. We would be grateful if you could share a copy of the Court's order with us, and the detailed reasons for it, as soon as they are available.

As we have maintained since before criminal proceedings were started, TfL believes that resolving how the taximeter prohibition applies in these circumstances is more appropriately dealt with by means of a High Court declaration and we remain willing to commence such proceedings.

However, we are unsure why it is felt that adjourning the criminal proceedings, albeit without a further hearing date having been set, will allow that to happen. Criminal proceedings remain extant, even though adjourned, and it therefore appears that TfL is prevented from making an application for a declaration in such circumstances.

This is based on case law including, in particular, Viscount Dilhorne's leading speech in Imperial Tobacco Ltd. v Attorney-General [1981] A.C. 718 where it was held at p742:

"My Lords, it is not necessary in this case to decide whether a declaration as to the criminality or otherwise of future conduct can ever properly be made by a civil court. In my opinion it would be a very exceptional case in which it would be right to do so. In my opinion it cannot be right to grant a declaration that an accused is innocent after a prosecution has started."

That position was implicitly endorsed by the House of Lords in R (Rusbridger) v Attorney General [2004] 1 AC 357, at [16] and [22].

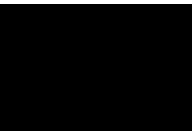
And in R (Haynes) v Stafford BC [2007] 1 WLR 1365, Walker J said at [14]:

"The court should adopt an essentially flexible approach to the exercise of its declaratory jurisdiction in this field. The only rigid rule is that once criminal proceedings have begun the civil courts should not intervene."

In the light of these authorities we do not see how we could proceed to issue proceedings for a declaration while there are criminal proceedings extant, albeit adjourned. That being the case, we invite you to withdraw the summonses so that this matter can progress, as all parties now seem to agree is appropriate, via application for a declaration by TfL to the High Court.

We would be grateful for your views on this within 7 days of receipt of this letter.

Yours sincerely



pp

Howard Carter
General Counsel

Cc: Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London
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27 November 2014

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For the attention of Michael Demidecki

By email and postPaul Dacam
Partner
paul.dacam@hoganlovells.comYour ref L269014/L/LTDA (Uber)
Our ref C6/PAD/BG/5564848
Matter ref 154231/000024

Dear Sirs

LICENSED TAXI DRIVERS ASSOCIATION V AKINLONU, ALI, DURRANI AND KULMIYE

We write further to the hearing at Westminster Magistrates' Court on Friday 21 November 2014 in relation to the above proceedings.

As you are aware, following agreement by the parties, the court adjourned those proceedings *sine die*, so that Transport for London ("TfL") could begin a Part 8 claim in the High Court for a declaration as to the proper interpretation of section 11 of the Private Hire Vehicles (London) Act 1998. That agreement was subject to both parties providing mutual undertakings as to the future conduct of the criminal proceedings, to be reduced to writing in subsequent correspondence.

We have since received a copy of TfL's letter to your firm dated 26 November 2014, confirming that it remains willing to commence Part 8 proceedings. We note that TfL states that it is prevented from making an application for a declaration while the criminal proceedings against our clients are extant (even if they are adjourned) and has invited the LTDA to withdraw the summonses. We do not agree that TfL is so prevented; however, we acknowledge that notwithstanding the agreement of the parties and the very clear statement made by Senior District Judge Riddle (which we record below) there is at least a risk that the High Court will refuse to hear a Part 8 Claim if the summonses are not withdrawn. Our position, as articulated before the court on 21 November, is that the withdrawal of the summonses is therefore the most appropriate procedural step in the circumstances. We would, therefore, endorse TfL's request and invite the LTDA to withdraw the summonses in light of the agreement of the parties, and the magistrates' court, that the most appropriate venue for the matter to be heard is the High Court.

We recognise your client's concern that it could be out of time to reissue fresh summonses in future if for any reason the High Court decides that it cannot hear TfL's claim, or if it hears the claim but finds in favour of the LTDA. While we do not agree that a timing point arises, our view is that your client's concerns in this regard would nevertheless be addressed by the undertaking that our client's Counsel indicated in open court on Friday that we and our clients could give in this regard.

For the avoidance of doubt the undertaking proposed in return for withdrawal of the summonses by your client at this stage would be in the following terms:

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In return for withdrawal by the LTDA of its summonses against each of Messrs Akinlonu, Ali, Durrani and Kulmiye (the "Defendants") so that the Transport for London can proceed with a claim under CPR Part 8 seeking a declaration on the proper interpretation of Section 11 of the Private Hire Vehicles (London) Act 1998, if for any reason the LTDA subsequently wishes to apply for fresh summonses against the Defendants, [I/we] confirm that [I/we] will not seek to argue that those summonses are time-barred.

We very much believe that this is a sensible course to achieve the intentions and best interests of all the parties to this matter. In the circumstances, we should be grateful if you would confirm that your client would now be prepared to withdraw the summonses, in light of TfL's position set out in its letter of 26 November 2014, and in return for an undertaking from both this firm and the Defendants in the above terms.

You will note that TfL has requested that we send them a copy of the statement made by Senior District Judge Riddle at Friday's hearing as to the reasons for the adjournment, and which he said could be recorded and agreed between the parties. Our contemporaneous note of that statement was as follows:

"In the case of Akinlonu, Durrani, Kulmiye and Ali, the case is adjourned sine die at the agreement of the parties and the fixture in December has been broken.

This follows agreement by the parties, shared by this court, that the most appropriate venue for the case to be heard is the High Court.

I also bear in mind that, even were these proceedings to continue, they would almost inevitably end up as a matter for the High Court in any event."

We have copied this letter to TfL, and assume that this wording accords with your own records.

Yours faithfully

Hogan Lovells International LLP

CC (by email only) Zeena Begum, Maidstone Chambers

Howard Carter, TfL