

<b>Report title</b>	<b>Private Hire Operator contractual obligations</b>
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<b>Department</b>	<b>Environmental Health Licensing</b>
<b>Exempt?</b>	No
<b>Exemption type</b>	not applicable.
<b>Reasons for exemption</b>	not applicable

## **Purpose of report:**

**For information**

## **Synopsis of report:**

**The purpose of this report is to inform the Committee of a recent piece of case law affecting the Taxi and Private Hire Sector in respect of the contractual relationship for Private Hire Operators.**

### **1. Context and background of report**

- 1.1 The purpose of this report is to brief the Committee on a recent piece of case law affecting the Taxi and Private Hire Sector in respect of the contractual relationship which Private Hire Operators must enter into with passengers.

### **2. Report and, where applicable, options considered and recommended**

- 2.1 The private hire industry has experienced considerable changes in the last 10 years with the rise in popularity of mobile app based private hire operators which has resulted in a number of legal cases about operating models and workers' rights.
- 2.2 On 6 December 2021, in the case of Uber London Ltd v Transport for London & others [2021] EWHC 3290 (Admin), the Divisional Court ruled in order to operate lawfully under the Private Hire Vehicles (London) Act 1998 (the legislation governing private hire in London) a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking.
- 2.3 This case required the operator concerned to change its business model to contract directly with passengers rather than classifying itself as an agent. This has helped confirm driver status as workers with statutory protections and has also had VAT implications. This was predominantly a case relating to workers' rights. However, it has had implications for all London based operators in respect of their operating model. It places the operator under an obligation to enter into a contract with the

passenger as principal, where a passenger makes a booking, and affects their responsibilities under that contractual relationship.

- 2.4 Following this case, in order to level the competitive playing field nationally, Uber sought a declaration at the High Court to the one imposed on it for London to cover the rest of England and Wales where Operators are governed by the Local Government (Miscellaneous Provisions) Act 1976.
- 2.5 The most recent case is known as the Uber Britannia Limited v Sefton Metropolitan Borough Council & Others judgement on 28 July 2023. The Court agreed with Uber and declared that this does cover the rest of England and Wales.
- 2.6 The obligation applies to all Private Hire Vehicle Operators in England and Wales, regardless of how many vehicles and drivers are available to them, the employment status of their drivers who carry out bookings accepted by them and whether the operator accepts bookings by telephone, in-person, online or via an app.
- 2.7 All Private Hire Operators following the judgement must satisfy themselves that they are complying with the obligation and fulfilling their responsibilities under private hire legislation in relation to the contractual arrangements they have in place with passengers and drivers. These responsibilities include that:
  - a Licensed Private Hire Operator must itself accept bookings from its passengers, rather than anyone else (for example a driver) doing so;
  - a Licensed Private Hire Operator must itself take responsibility for the journey from point A to point B, rather than anyone else (for example a driver) doing so;
  - the booking must be carried out in a licensed Private Hire Vehicle (licensed by the same Council as where the Operator is licensed) (or taxi) driven by a licensed driver (again licensed by the same authority); known as the 'triple lock'
  - the booking must be carried out for a fare which was either agreed or for which an accurate estimate was provided in advance.
- 2.8 The obligation applies to operators in the same way regardless of how they operate (e.g. if they take bookings via an app or over the telephone) and whether or not they use written contracts with passengers and/or drivers.
- 2.9 An operator can still sub-contract a booking to another licensed operator but the contract with the operator who initially accepted the booking must remain. All operators must comply with the obligation including those without written contracts.
- 2.10 Following the ruling, there is likely to be an expectation that Local Licensing Authorities take steps to ensure that all licensed Private Hire Operators under their jurisdiction are aware and compliant with their obligations. From a licensing perspective, failure to do so could mean an unfair playing field for operators who are not compliant, and result in weakened protection for customers. There are also potential workers' rights and tax implications for operators. However, these are outside of the expertise and remit of the Council.

- 2.11 Section 55(3) of the Local Government (Miscellaneous Provisions) Act 1976 in respect of Private Hire Operator Licensing allows that:  
“a district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.
- 2.12 Clearly the judgement of the Senior Courts is one which all Local Authorities and Private Hire Operators must now have regard to in their practices. This can be achieved simply by the addition of a licence condition to be included in all licenses issued under section 55 to ensure all Runnymede Licensed Private Hire Operators are aware of their obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.
- 2.13 The additional condition would state:  
  
“The operator shall enter into a contractual obligation as principal with the person making the private hire booking to provide the journey, which is the subject of the booking, and any such contractual obligation must be consistent with the Local Government (Miscellaneous Provisions) Act 1976.”
- 2.14 Opinions vary on whether this is something Councils should be imposing as a condition and to date few Councils have. Legal opinion is also divided with questions over this being purely a VAT issue and not something Councils should be regulating at all.
- 2.15 There may be an appeal, (leave to appeal has been given), to this decision and the Government have stated a consultation will be held in early 2024 on the levying of full VAT on private hire operators they have also indicated that guidance for local authorities on this matter will be published in due course.
- 2.16 To avoid the possibility of the introduction of a condition and following an appeal or government guidance then having to remove it or change it, Officers believe it prudent at this point to be aware of the matter and revisit it when the situation becomes clear, as no date for the Appeal has been set and/or if guidance is forthcoming.

### **3. Policy framework implications**

- 3.1 Runnymede’s Policy could be amended in line with the suggested condition.

### **4 Resource implications/Value for Money**

- 4.1 None identified.

### **5. Legal implications**

- 5.1 Section 55(3) of the 1976 Act allows the Council to attach conditions to the grant of a Private Hire Operator Licence which is considered to be reasonably necessary. The Council sets out what is considered necessary via its adopted Licensing Policy.

### **6. Equality implications**

- 6.1 None identified.

### **7. Environmental/Sustainability/Biodiversity implications**

7.1 None identified.

## **8. Risk Implications**

8.1 None identified.

## **9. Other implications (where applicable)**

9.1 None identified.

## **10. Timetable for Implementation**

10.1 None identified.

## **11. Conclusions**

11.1 This report was requested by Members for their information and will be the subject of a further report once the outcome of the aforementioned appeal (if lodged) is made and any potential implications for our policy are known.

## **12. Background papers**

[Statutory Taxi and Private Hire Vehicle Standards \(Department for Transport, 2020\)](#)

[Taxi and Private Hire Vehicle Licensing: Best Practice Guidance for Licensing Authorities in England \(draft\). \(Department for Transport, 2022\)](#)

[Taxi and Private Hire Vehicle Licensing: Councillor Handbook \(Local Government Association, 2021\)](#)

[Uber Britannia Limited v Sefton Metropolitan Borough Council & ORS \[2023\] EWHC 1975](#)

[Guidance for London Private Hire Vehicle Operators: Contracts with Passengers - April 2022 \(tfl.gov.uk\)](#)

[Hackney Carriage and Private Hire Licensing Policy 2020 - 2025 \( June 2023\) \(runnymede.gov.uk\)](#)

## **13. Appendices**

**None.**