

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2484

Title: Legal challenge to removal of exemption for Private Hire Vehicles from paying the Congestion Charge

Executive Summary:

On 15 March 2019 the Independent Workers' Union of Great Britain issued a claim in the High Court seeking to judicially review the Mayor's decision to remove the exemption for Private Hire Vehicles from the Congestion Charge. Transport for London (TfL) is an interested party in the proceedings. The parties have agreed to bear their own costs in this litigation.

This decision invites the Mayor to direct TfL to pay the Mayor's legal costs of defending the legal challenge and any other costs arising as a consequence of the challenge including any appeals.

Decision:

The Mayor directs TfL under s 155(1)(c) of the Greater London Authority Act 1999 ('GLA Act') in the terms of the attached Direction (Appendix 1).

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

9/7/19

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. The Congestion Charging Scheme ('the Scheme') was introduced in central London in February 2003. The Scheme imposes a charge on all motorised vehicles being driven within the Congestion Charging Zone ('CCZ') from 7am to 6pm on Monday to Friday, unless they are exempt or registered for a 100% discount. The current level of the charge is £11.50 per charging day (reduced to £10.50 if paid by the autopay method). The primary objective of the Scheme is to reduce traffic and congestion in the CCZ. Prior to 8 April 2019, Private Hire Vehicles ('PHVs') were exempt from the charge.
- 1.2. The Mayor's Transport Strategy, published in March 2018, requires that the Scheme and other road user charging schemes are kept under review to ensure that they remain effective to meet their objectives and the policies and proposals contained in the strategy. Transport for London ('TfL'), as the charging authority of the Scheme, recently consulted on the following changes to the Scheme and a minor related proposed change to the Ultra Low Emission Zone Scheme ('the ULEZ Scheme'), together referred to as the 'Consultation Proposals':
 - a) Removal of the exemption that applies to PHVs except those which are designated wheelchair accessible and are being used to fulfil a private hire booking;
 - b) Replacement of the Ultra Low Emission Discount ('ULED') with a new, phased discount to be known as the Cleaner Vehicle Discount ('CVD');
 - c) A minor boundary change at the Old Street roundabout (to be replicated in respect of the ULEZ scheme); and
 - d) Correction of out of date references to the Driver and Vehicle Licensing Northern Ireland licence display requirements and the ULEZ Scheme commencement date in the Greater London (Central Zone) Congestion Charging Order 2004 ('the Scheme Order'), the legal instrument which established the Congestion Charging Scheme and contains the rules which govern it.
- 1.3. The Consultation Proposals were reflected in the Greater London (Central Zone) Congestion Charging (Variation) Order 2018 and the Greater London Low Emission Zone Charging (Variation) (No. 2) Order 2018 which were made by TfL on 29 June 2018 (together referred to as 'the Variation Orders'). On 17 December 2018 the Mayor confirmed the Variation Orders.
- 1.4. The PHV exemption removal, first phase of the CVD and minor administrative amendments to the Scheme Order took effect from 8 April 2019.
- 1.5. On 1 March 2019 the Independent Workers' Union of Great Britain ('IWGB') sent a letter before claim to the Mayor and TfL indicating that they intended to judicially review the Mayor's decision to remove the exemption that applies to PHVs except those which are designated wheelchair accessible and are being used to fulfil a private hire booking ('the Decision'). The IWGB also indicated it would seek an injunction to delay the implementation date of 8 April 2019. The Mayor and TfL responded to the letter before claim on 15 March 2019.
- 1.6. On 15 March 2019 the IWGB issued a claim for judicial review in the High Court seeking a declaration that the Decision is unlawful and that it be quashed. The grounds for the claim were: (i) failure to discharge the Public Sector Equality Duty ('PSED') under the Equality Act 2010 ('the Equality Act') in light of the decision's alleged disproportionate impact on BAME drivers, part-time female drivers and disabled and elderly passengers; (ii) indirect discrimination contrary to the Equality Act against the same protected groups identified under the PSED ground (e.g. race, sex, disability and/or age); and (iii) breach of the Human Rights Act 1998 as the decision is allegedly incompatible with the right to a

private/family life (article 8) and interferes with the right to enjoyment of property (Article 1 Protocol 1).

- 1.7. The IWGB also made an application for interim relief seeking to prevent the Decision from being implemented on 8 April 2019 pending the outcome of the judicial review application or further court order.
- 1.8. On 28 March 2019 the Mayor and TfL filed summary grounds with the High Court resisting the claim. Witness evidence was also filed in response to the IWGB's application for interim relief.
- 1.9. On 4 April 2019 the High Court considered the IWGB's application for interim relief and whether or not permission should be granted to allow IWGB to proceed with their claim. The injunction application was refused. Permission was refused to proceed with the aspect of the claim alleging breach of the public sector equality duty. The High Court granted permission to proceed with the claim on two grounds: alleged indirect discrimination and breach of human rights legislation. The judicial review hearing will take place on 10 and 11 July.
- 1.10. On 30 April 2019 the IWGB filed consent forms to join two additional claimants to the proceedings for the purposes of the human rights aspect of the claim. Both individuals are PHV drivers.
- 1.11. This Mayoral Decision Form invites the Mayor to direct TfL to pay all of the Mayor's legal fees and all other costs and fees which are incurred as a consequence of the proceedings brought by the IWGB including any appeals.
- 1.12. The parties in these proceedings have agreed to bear their own costs in the claim. Therefore if the IWGB is successful in its claim for judicial review, the Mayor will not be liable to pay any of the IWGB's legal costs. Likewise, should the Mayor successfully defend the claim, the Mayor will not benefit from a costs order in his favour. TfL will also bear any legal and other costs associated with its involvement in the proceedings.
- 1.13. TfL has been consulted in relation to the terms and effect of the proposed Direction.

2. Equality comments

- 2.1. Under s 149 of the Equality Act 2010, as public authorities, the Mayor and TfL must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. Protected characteristics under the Equality Act are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership status (the duty in respect of this last characteristic is to eliminate unlawful discrimination only).
- 2.2. There are no direct equalities implications arising out of this Decision which relates to the funding of the defence to the legal claim. As set out above, the IWGB's claim alleges indirect discrimination under the Equality Act and this is something that the court will consider in the proceedings.

3. Financial comments

- 3.1. There are no direct financial implications to the GLA resulting from this proposed direction to TfL. All costs relating to this direction (as detailed within this report and associated appendix) will be borne entirely by TfL. External legal costs are currently estimated to be no more than £500,000, and any additional sums will be reported.

4. Legal comments

Direction to TfL

- 4.1. The Mayor may issue general and specific directions to TfL as to the manner in which it is to exercise its functions pursuant to section 155(1) of the GLA Act.
- 4.2. Section 155(4) provides that any directions issued under section 155(1) must be issued in writing and notified to such officer of TfL as it may from time to time nominate to the Mayor for this purpose.
- 4.3. The proposed direction by the Mayor to TfL is to be made under section 155(1)(c) of the GLA Act. It is attached at Appendix 1 and will be sent to the Commissioner of TfL.

Appendices and supporting papers:

Appendix 1 – Mayoral Direction

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 - Deferral

Is the publication of Part 1 of this approval to be deferred? NO

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FOIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form? NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Catherine Seaborn has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Debbie Jackson has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Heidi Alexander has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 8 July 2019.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature *M. D. [Signature]*

Date 8.7.19

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature *D. Bellamy*

Date 8/7/2019.

