



Ms Caroline Pidgeon MBE AM
London Assembly
City Hall
The Queen's Walk
London
SE1 2AA

10 March 2015

Dear 

Sir Peter Hendy CBE
Commissioner of Transport

Transport for London
Windsor House
42-50 Victoria Street
London SW1H 0TL

Phone 0343 222 0000
www.tfl.gov.uk

I refer to your letter of 25 February following my attendance at the Transport Committee also on 25 February.

Your letter deals with a number of issues which I will deal with in separate correspondence. The purpose of this letter is to respond to the request for me to inform the Committee of the name of the QC who advised TfL about the legality of Uber's operation as a private hire service and if possible to provide a copy of his legal advice.

I have since confirmed that Martin Chamberlain QC advised TfL as to the legality of Uber's operational model. The legal advice TfL received was given in conference.

A decision regarding the legality of Uber's operational model was made on 3 July last year. The note inviting that decision from TfL's Managing Director of Surface Transport is attached. You will see that the legal position is set out in the note in detail. This note was prepared with advice and input from Martin Chamberlain QC.

We have always been open about the legal advice we have received. The position has been communicated both in correspondence and meetings with the taxi and private hire trades to the extent that following a meeting with trade representatives on 8 April last year at which we explained what we considered to be the correct interpretation of the law, we wrote on that same day setting our position out and inviting their comments so that we could be sure that we were taking their views into account. We specifically invited views on what we considered to be, on balance, the correct application of the taximeter prohibition in private hire legislation to the use of Uber Smartphones setting out the opposing arguments.

The issue of taximeters and whether or not the use by Uber drivers of Smartphones is unlawful has been particularly emotive. We have made no secret of our legal advice on this issue both in correspondence and in what we have said to the trades. We have accepted all along that the law is not clear cut and for that reason we have said repeatedly that all interested parties should co-operate in inviting the High Court to issue a declaration as to how the law should be applied.

We have no interest whatsoever in keeping our legal advice on this issue to ourselves as we have no vested interest in a finding one way or the other; we will apply the law in the way the High Court says the law should be applied.

One argument is that it may be said that a smartphone or app, that communicates information about distance travelled and time taken with an external computer server, but does not calculate the fare itself, is not a device for calculating the fare to be charged in breach of the taximeter prohibition. The legislation does not preclude the calculation of a fare by reference to time and distance. The prohibition is on the use of a device to calculate the fare. If the device itself does not perform any calculation, but is merely used to relay information on the basis of which a calculation is performed outside the vehicle, it may be said that there is nothing unlawful about that.

We have always accepted that the contrary is arguable. It might be said for example that it shouldn't matter where the calculation takes place and that the smartphone or app, either on its own or in conjunction with the external server, therefore constitutes a taximeter.

However, even if we accept that the Uber Smartphone or app is a device for the calculation of fares (which on balance we do not think it is), the second question to be considered is whether or not an Uber PHV can be said to be "*equipped*" with that device as that is what the prohibition requires.

It might be argued that the notion of being "*equipped*" requires some kind of physical connection between the device and the vehicle. A taximeter in a taxi has a permanent physical connection to the vehicle and cannot operate independently of the vehicle. It is installed within the taxi and calculates distance by reference to variables including the mechanical movement of the vehicle itself.

On one view the mere presence in a vehicle of a GPS-enabled smartphone or an app which is installed on a smartphone is not enough to satisfy the requirement that the vehicle be "*equipped*" with a taximeter. The smartphone, after all, may be moved, removed, updated or changed and the app could be uninstalled from a smartphone.

However, we recognise, once again, that the contrary is also arguable. It might be said that a device does not need to be affixed (permanently or otherwise) to a vehicle, in order to be equipped with it. "*Equipped*" could be understood as not connoting any degree of physical attachment.

We have said all along that whilst this is a difficult issue with persuasive alternative interpretations of the law, on balance the use of the Uber Smartphone is lawful and this is the legal advice that we have received. It is because the position is not straightforward and open to different interpretations that we have maintained that inviting the High Court to issue a declaration as to how the law should be applied is the appropriate way forward.

As stated above, TfL has been open and transparent about its position and the advice it has received on all of these issues in what is a difficult and finely balanced matter of legal interpretation. The trades have consistently said that we have got the law wrong. However, whilst it would have been open to the trade representatives to have judicially reviewed TfL's decision in order to put our interpretation to the test, they chose not to do so.

Now that the LTDA have invited the Court to withdraw their summonses against Uber drivers for breach of the taximeter prohibition we can proceed with our application to the High Court but it will be important that LTDA, and other interested parties, support that process.

The sooner this matter gets to the High Court for a decision, the better.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Peter Hendy', written in a cursive style.

Sir Peter Hendy CBE