

Uber: TfL and the taxonomy of taximeters

Neil Brown examines the recent controversy over the taxi app “Uber”, and questions whether TfL’s decision in favour of Uber is a beneficial step for innovation.

Taxis, private hire vehicles and Uber

The London taxi market is a sizeable one. According to one source, over 450,000 journeys are taken by taxi in London every day, with the overall sector worth £3 billion a year. Across England and Wales, there are an estimated 231,000 taxis and private hire vehicles.¹

There are two main differences between taxis and private hire vehicles.

- First, a customer can get a taxi at a rank, hail one in the street or pre-book one. Conversely, private hire necessitates pre-booking.²
- Second, taxis are required to be fitted with a taximeter,³ whilst a vehicle to which a Private Hire Vehicle licence relates is not permitted to be equipped with a taximeter.⁴ Indeed, it is a criminal offence for a private hire vehicle to be equipped with a taximeter.⁵

Founded in 2009, Uber is a private hire vehicle operator,⁶ with an increasing fleet of drivers in various cities around the UK, and, with the benefit of around \$1.5 billion in funding,⁷ is present in

¹ Department for Transport’s “*Taxi and Private Hire Vehicle Statistics: England and Wales 2013*”

² <https://www.gov.uk/taxi-minicab-difference>

³ Regulation 35, London Cab Order 1934 (SI 1934 No. 1346)

⁴ Private Hire Vehicles (London) Act 1998, s11(1)

⁵ Private Hire Vehicles (London) Act 1998, s11(2)

⁶ “Uber London Limited is a licensed private hire vehicle operator” (<http://www.bbc.co.uk/news/business-2861539>)

⁷ <http://www.bizjournals.com/chicago/news/2014/09/08/uber-ceo-travis-kalanick-headed-to-first-ever.html>

just under 200 cities in 45 countries across the world.⁸ Uber describes itself as “evolving the way the world moves. By seamlessly connecting riders to drivers through our apps, we make cities more accessible, opening up more possibilities for riders and more business for drivers.”⁹

Uber works on the basis of apps, with a software backend. Customers order their ride via Uber’s customer app¹⁰ and drivers receive their instructions, navigation and fare determination via Uber’s Driver app.

What is the controversy?

As those of you who tried to get around London on 11th June may have noticed, London’s black cab drivers took part in a protest organised by the Licensed Taxi Drivers Association (LTDA) which, in its words, was designed to achieve “severe chaos, congestion and confusion” throughout London.

The Telegraph reported that it did indeed bring London to a standstill, claiming that 5000 cabs took part in the protest,¹¹ whilst the Independent cited an even more substantial attendance of 12,000 drivers.¹² TfL, by way of contrast, described the protest as “pointless disruption ... over a legal issue that is down to the courts”.¹³

Amongst a “litany” of other issues, one aim of the protest was to raise attention to TfL’s “failure [to] act against the minicab app

⁸ <https://www.uber.com/cities>

⁹ <https://www.uber.com/about>

¹⁰ Android: <https://play.google.com/store/apps/details?id=com.ubercab&hl=en>
iOS: <https://itunes.apple.com/gb/app/uber/id368677368?mt=8>

¹¹ <http://www.telegraph.co.uk/finance/newsbysector/transport/10944375/Uber-wins-early-victory-in-battle-with-London-cabbies.html>

¹² <http://www.independent.co.uk/news/uk/home-news/uber-london-protest-black-cab-drivers-blockade-traffic-square-in-goslow-demonstration-over-taxi-fare-row-9529299.html>

¹³ <http://www.bbc.co.uk/news/technology-27783218>

Uber".¹⁴ Ironically, Uber reported its "biggest day of sign-ups" since launch,¹⁵ with an 850% increase in registrations.¹⁶

The main¹⁷ issue in respect of Uber, and TfL's enforcement of the relevant licensing law, is whether Uber's Driver app constitutes a "taximeter".¹⁸ If it is a taximeter, Uber cannot operate in London on the basis of private hire vehicle regulations, but must instead seek Hackney carriage licensing.

Uber's Driver app and taximeters

When a driver joins Uber, they are given a box containing all necessary equipment (absent a car). Of particular relevance here, on payment of a deposit,¹⁹ Uber drivers are rented²⁰ a locked-down²¹ smartphone, along with a car cradle and 12v adapter and a charging cable. This smartphone is preloaded with the Uber app

¹⁴ "Taxi", issue 321, 24th June 2014, at page 4. (http://www.taxinewspaper.co.uk/downloads/Taxi_321.pdf)

¹⁵ <http://thenextweb.com/uk/2014/06/11/uber-sign-ups-jumped-850-taxi-driver-protests-london/>

¹⁶ <http://www.independent.co.uk/news/uk/home-news/uber-signups-increase-850-as-black-cab-drivers-stage-london-taxi-protest-9530061.html>

¹⁷ A second issue relates to the combination of the Uber customer app and Uber's backend booking system, and the compatibility of this arrangement with laws of pre-booking private hire vehicles, as opposed to hailing a taxi. This issue is not considered here.

¹⁸ IP lawyers may also be interested to read that TfL's legal team warned LTDA over its use of the "Transport for London Roundel, an iconic trademark used by Transport for London ... since 1908", which TfL alleged was infringed by its placement on an LTDA advertising van. See "Taxi", issue 321, 24th June 2014, at page 3. A photograph of the van bearing the allegedly infringing mark appears at page 5. (http://www.taxinewspaper.co.uk/downloads/Taxi_321.pdf)

¹⁹ <http://driveuberuki.com/faq>

²⁰ "A \$10-per-week service fee is automatically deducted [from a driver's post-commission earnings] to cover costs of the Uber phone and data plan." (<https://www.uber.com/driver-referral/uberx>)

²¹ "Speaking of the iPhone, that thing is locked down. Uber is using special profiles to disable most of the iPhone's features, but you are left with a handful of stock iOS apps. Unfortunately, you won't find the App Store, iTunes, or Safari as they have been hidden and restricted. Also, even though the Phone and Messages apps are available, they aren't functional." Dom Esposito, 9to5Mac (18 August 2014) (<http://9to5mac.com/2014/08/18/like-opening-an-apple-product-heres-what-uber-sends-new-drivers-video/>)

for drivers,²² which is integrated with Uber's backend systems. These systems manage and allocate the bookings made by Uber customers, who book rides through the Uber customer apps.

TfL has described the operation of the Uber service and, critically, the Uber Driver app, in the following terms:

"Customers download an App to their smartphone or computer and book a PH vehicle using it. The work is accepted by the operator, dispatched to a driver and the customer gets the name, photograph and registration number of vehicle and the journey is tracked using GPS. At the end of the journey data is transmitted to remotely located servers and the fare calculated and then communicated to the driver's smart phone. Usually customers have set up a credit card account to facilitate payment."²³

Does the combination of the smartphone and the Uber Driver app comprise a "taximeter"?

A taximeter is defined in the following terms:

"a device for calculating the fare to be charged in respect of any journey by reference to the distance travelled or time elapsed since the start of the journey (or a combination of both)."²⁴

A more detailed definition is set out in the Measuring Instruments (Taximeters) Regulations 2006. This definition provides that a taximeter is:

"a device that works together with a signal generator to make a measuring instrument; with the device measuring duration, calculating distance on the basis of a signal delivered by the distance signal generator; and calculating and displaying the fare to be paid for a trip on the basis of the calculated distance or the measured duration of the trip, or both."²⁵

The definitions share substantial commonality, in that they describe a meter for both duration and distance, on the basis of

²² Uber driver FAQs (<https://partners.uber.com/drive/>)

²³ Statement of Transport for London, 3 July 2014, available at <http://www.cnet.com/uk/news/uber-escapes-london-court-date-because-its-drivers-are-already-there/>

²⁴ Private Hire Vehicles (London) Act 1998, s11(3)

²⁵ Measuring Instruments (Taximeters) Regulations 2006, at regulation 2(1)

which the fare is calculated. They differ in that the latter definition requires that the fare is displayed as well as calculated, and, perhaps of particular relevance to the issue at hand, in that the latter definition notes expressly that the meter works in conjunction with a secondary apparatus fitted to the vehicle: a signal generator.

Is the Uber Driver app a “taximeter”?

In a letter sent to taxi and minicab drivers,²⁶ TfL’s Managing Director for Surface Transport set out TfL’s position:

“TfL’s view is that smartphones that transmit location information (based on GPS data) between vehicles and operators, have no operational connection with the vehicles, and receive information about fares which are calculated remotely from the vehicle, are not taximeters within the meaning of the legislation (section 11 of the Private Hire Vehicles (London) Act 1998).”²⁷

In the eyes of the TfL — the relevant licensing authority for both taxis and private hire vehicles in London²⁸ — Uber’s Driver app is not a taximeter because (a) it has no “operational connection” with the vehicle, and (b) the fare is calculated remotely, not within the vehicle.

One might sympathise, of course, with the unenviable position in which TfL likely finds itself. Faced with the risk of considerable criticism if seen as blocking a fast-growing, high-profile service which some consider to be a cheaper option to black cabs,²⁹ and

²⁶ According to the response to an FoI request, the letter was sent to around 97,000 recipients, at a cost approximately £38,000: “*Taxi*”, issue 324 (5 August 2014), at page 3

²⁷ TfL Notice 07/14 “Taxi and Private Hire smartphone apps in London: Letter to all drivers and private hire operators” (17 July 2014) (<http://www.tfl.gov.uk/cdn/static/cms/documents/07-14-taxi-and-private-hire-smartphone-apps-in-london-letter-to-drivers.pdf>)

²⁸ <https://www.tfl.gov.uk/corporate/about-tfl/what-we-do/taxi-and-private-hire>

²⁹ See, for example, <http://blogs.spectator.co.uk/coffeehouse/2014/06/uber-offer/> and <http://www.independent.co.uk/voices/roadtesting-the-taxis-uber-was-cheaper-and-quicker-than-a-black-cab-9524060.html>

of stifling innovation,³⁰ the decision which TfL made is, perhaps, understandable. However, whilst perhaps understandable, it is of questionable merit.

First, in referring to the lack of “operational connection” between the Uber smartphone and the driver’s vehicle, TfL introduces a seemingly defining element of a taximeter which does not appear in either of the statutory definitions. In any case, the finding of no “operational connection” seems to have limited support as a matter of fact, since Uber supplies its drivers with a cradle to be attached to the car, into which the Uber-supplied phone is placed, and a 12v adapter and cable to connect the phone to the car’s integrated power supply. Whilst it might have been open to TfL to take a literal reading of the statute, and argue that there is no signal generator in Uber’s system, TfL chose not to rely on this to indicate compliance.³¹

Second, it is the measurements made by the Uber Driver app, by virtue of the GPS receiver contained with the phone, which form the distance figures used in the calculation of the fare. It seems arbitrary to hold that, because the measurements are conveyed to a remote facility for the processing of the fare, which is returned and displayed to the customer, neither the app alone, nor the combination of the app and the backend software, performs the relevant functions of a taximeter.

Third, TfL’s analysis focusses on form over function.³² From the perspective of a user, there is unlikely to be an discernible difference between the taximeter of a black cab and the smartphone-based system of an Uber vehicle; in both cases, the cost of a customer’s journey is calculated by cross-referring the

³⁰ It may be true that the rules on taximeters may limit the scope for innovation. However, in reaching the decision that Uber’s app is not a taximeter, TfL has effectively eliminated any chance of such technology being used by taxis since, if the system is not a taximeter, it cannot be deployed lawfully in a taxi: the scope of application of Uber’s innovation is thereby limited.

³¹ Since taximeter regulation, such as metering standards and requirements that meters be sealed to avoid tampering, exists for the protection of consumers, it is perhaps surprising that TfL should find that the Uber’s system is not a regulated taximeter.

³² TfL’s approach can be contrasted with the methodology adopted by the Law Commission in considering digital technology and taxi services in its 2012 consultation and subsequent recommendations, “Reforming The Law Of Taxi And Private Hire Services” (Law Commission consultation paper no. 203, and Law Com No 347)

distance and/or duration of a customer's journey with the applicable fare plan.

TfL's conclusion is thus concerning from the perspective of technology neutrality. By treating similar things in different ways, and by regulating according to underlying technology and not by effect of the use of that technology, TfL undermines the notion of technology neutrality enshrined firmly in European law,³³ which recognises that innovation and investment require a clear and consistent regulatory framework, and a level playing field. As Labour MP Margaret Hodge wrote to Mayor of London Boris Johnson, "Surely TfL has a duty to enforce legislation that will ensure a fair and level playing field for all taxi and private hire operators?"³⁴

Taximeters: High Court or criminal court?

The matter is not, however, over. In reaching its conclusion that Uber's Driver app and backend processing system is not a taximeter, TfL acknowledged that its position was "finely balanced",³⁵ and suggested a reference to the High Court, a move seemingly welcomed by Uber.³⁶

Still, one court reference does not appear to be enough, as the Licensed Taxi Drivers Association has "formally applied for summonses"³⁷ against six Uber drivers³⁸ for the commission of the offence of equipping a private hire vehicle with a taximeter,³⁹

³³ See, for example, the common regulatory framework on communications (described by the European Commission, perhaps a little ambitiously, as "simple, flexible, technology-neutral" (<http://ec.europa.eu/digital-agenda/en/telecoms-rules>)), or the framework around copyright

³⁴ <http://www.bbc.co.uk/news/business-28615392>

³⁵ <http://www.cnet.com/uk/news/uber-escapes-london-court-date-because-its-drivers-are-already-there/>

³⁶ "Transparency, Accountability & Safety" (29 May 2014) (<http://blog.uber.com/clarity>)

³⁷ Tweet from @The_LTDA: "This afternoon the LTDA formally applied for summonses against 6 uber drivers for offences under the Private Hire Vehicles (London) Act 1998" (30 May 2014)

³⁸ "Uber escapes London court dates - because its drivers are already in the dock" Rich Trenholm, cnet (3 July 2014) (<http://www.cnet.com/uk/news/uber-escapes-london-court-date-because-its-drivers-are-already-there/>)

³⁹ Private Hire Vehicles (London) Act 1998, s11(2)

and has hired an unnamed QC.⁴⁰ It would appear that Uber has agreed to cover the legal fees of these drivers.⁴¹

Until this criminal matter is concluded, it seems unlikely that the High Court will rule on the TfL's reference.

Conclusion

Although its decision is likely to have delighted Uber's fans, in determining that Uber's Driver app and Uber's backend systems do not constitute a taximeter, TfL seems to place excessive reliance on the form of the system, rather than on its function: black cab drivers may have good reason to be frustrated. Whether the civil or criminal courts will agree with TfL's analysis remains to be seen.

If the laws relating to private hire vehicles and to taxis are anachronistic, and discourage innovation, reform may well be needed. However, to ensure that a fair, level playing field for all competitors is maintained, it is legislative reform, rather than broad interpretations of the existing rules, which is most likely to create a sustainable pro-innovation environment.

⁴⁰ Tweet from @The_LTDA: "1st batch of summonses served today against Uber drivers, QC appointed for High Court hearing with TfL. Only the LTDA can act at this level!" (6 June 2014)

⁴¹ "Uber London: Fully compliant and standing behind our partner-drivers" (4 July 2014) (<http://blog.uber.com/fully-compliant-standing-by-partner-drivers>)