

UBER

Executive summary

Uber supports changes to the existing licensing fee structure which, like many other aspects of PHV regulations, has become increasingly out of date. We also recognise that larger operators should pay more. However Uber cannot support a seven-fold increase in the TfL compliance budget without compelling evidence that such a drastic increase is necessary. The proposed figure is commensurate with the national budget of the Serious Fraud Office (£48m) or the Food Standards Agency (£38m). This appears entirely disproportionate considering the most frequent PHV non-compliance issue identified by TfL in its own compliance reports is a lack of visibility of badge and driver insurance documents.

Taken together with other recent changes by TfL, the burdens on PHV drivers will increase significantly. This risks reducing the number of PHVs on the streets, raising prices for consumers, and increasing incentives for both consumers and drivers to engage in the use of illegal cabs. TfL risks harming exactly the people the interventions are designed to benefit.

This submission is divided into four parts:

- The questionable case for increased compliance costs.
- Alternative methods for increasing compliance.
- The proposed allocation of licence fees.
- Broader problems with the approach to regulation by TfL.

1. The questionable case for increased compliance costs

TfL has failed to make a convincing case for increasing its compliance budget. It has provided limited or unclear information regarding the need for increased enforcement and how it intends to mitigate any perceived harm to passengers. This lack of clarity makes it difficult for stakeholders to engage meaningfully with the consultation.¹ In this section, we consider whether there is a need for increased compliance based on TfL's existing compliance work and changes in the PHV sector. We find that there is no obvious increasing risk to passengers and, while the number of drivers has increased (by a factor of less than two, compared to TfL's sevenfold increase), changes in technology and the way passengers engage with PHVs mean that total compliance costs should be reducing. Instead, TfL's enforcement budget appears disproportionate, especially in comparison to other agencies, and its initiatives potentially counter-productive.

a. TfL provides limited information and the information it provides is unclear

TfL advises in very limited documentation that accompanies the consultation that its enforcement and compliance costs for the next five years are projected to be £209m, or £42m per year. This represents a twofold increase on its 2015 expenditure² of £23.1m (which left a surplus of £2.4m from a total income of £25.5m) and a sevenfold increase compared to its expenditure in the previous five years. At no point does TfL explain this shift or how it intends to spend the increased budget, except to say that it relates to '*anticipated demand for resources to undertake the required compliance activities*'. Further, no explanation is given for the division in allocation of those costs between taxis (15%) and PHVs (85%) and within PHVs between operator, driver and vehicle licensing. By way of example, it would be useful for TfL to set out how/to whom various costs (including to prevent touting) are allocated.

¹ More formally, TfL has not followed the [Principles of Good Regulation](#), which requires that '*policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.*'

² [Taxi and Private Hire Licensing and Compliance Services 2015/16 Financial Summary, TfL.](#)

b. TfL provides no evidence of a need for increased enforcement spend

In addition to not providing sufficient information on what it intends to spend money on, TfL's consultation document fails to provide any description of why it needs to increase enforcement in the first place.³ In the Taxi and Private Hire Action Plan, Sadiq Khan states that '*we must not be complacent in ensuring it is safe for passengers. The need for greater enforcement and compliance, as well as stricter entry requirements, is clear for all to see.*'⁴ Uber agrees that the safety of passengers and drivers is paramount. However, it does not follow that greater enforcement and compliance is an effective means to achieve this or, if it is, whether a sevenfold increase is necessary to achieve this objective. Indeed, as discussed below, it may well be harmful to the objective of maximising passenger safety if it drives both drivers and customers into a cheaper unregulated and illegal market.

TfL suggests that the increased budget is necessary to keep up with the growing PHV sector. It states that '*the Capital's private hire industry has grown dramatically from 65,000 licensed drivers in 2013/2014 to more than 117,000 today. The number of vehicles has increased from 50,000 to 87,000 over the same period. With this growth, there has been a substantial increase in the costs of ensuring private hire operators fulfil their licensing obligations and in tackling illegal activity to keep passengers safe.*' If the increase in enforcement is due to an increase in drivers, it is unclear why the increase in the enforcement budget is not commensurate with the increase in drivers. In the last five years, the number of drivers has increased less than twofold whereas TfL's projected budget for the next five years is increasing sevenfold. No explanation is provided for this discrepancy. In addition, the increased number of drivers and vehicles must, in and of itself, have increased TfL's enforcement budget (through their own licensing fees) and presumably decreased instances of touting.

c. TfL's enforcement data shows no reason for concern

More fundamentally, the information which is available regarding TfL's enforcement activities suggests that there is no particular cause for concern.

TfL's Private Hire Compliance & Enforcement update from March 2017 states that the majority of offences uncovered by TfL's enforcement efforts '*relate to missing badge and failure to carry insurance documents.*'⁵ These are minor infringements. What is more, while TfL hiring at least 50 extra officers since 2016 has led to more detections of these offences, '*the actual compliance rate remains static and within control.*'⁶ The data compiled by TfL shows that increasing enforcement checks by hiring more compliance officers is already leading to substantially diminishing returns. Hiring a total of 250 compliance officers by year end 2017 appears disproportionate and potentially wasteful. Serious offences, including drivers not having H&R insurance, make up a very small proportion of drivers checked. As of December 2016, they made up only 0.09% of all drivers checked. Not only is this rate very low, there are more efficient ways of ensuring that drivers are ensured than conducting random checks, as discussed further below.

d. If touting is primary risk, licensed operators and drivers offer a solution whereas these proposals risk increasing the problem

TfL's enforcement activities suggest that there are two key risks TfL wishes to stamp out: touting and drivers driving without H&R insurance.

If touting is the main risk to customers, the growing number of PHVs and advancements in new technology, which operators such as Uber harness, should reduce risks by providing customers a convenient, affordable and efficient alternative. We would therefore expect the incidence of touting to have reduced since the advent of tech-enabled platforms. Evidence pointing to a different conclusion should be published as part of the consultation process.

³ This is in contravention of the The Principles of Good Regulation, which state that policy objectives 'should be clearly defined and effectively communicated to all interested parties' and stakeholders 'should be given at least 12 weeks, and sufficient information, to respond to consultation documents

⁴ [Taxi and Private Hire Action Plan 2016](#) - Transport for London

⁵ TfL Private Hire Vehicle Licensing Compliance and Enforcement, 21 March 2017, slide 18.

⁶ TfL Private Hire Vehicle Licensing Compliance and Enforcement, slide 18.

In addition, the use of balanced licensing requirements for drivers and cars will incentivise drivers currently touting to join the legitimate PHV sector. Promoting low-cost PHV could have a far more effective and efficient impact in stamping out touting than increasing compliance checks.

e. Levels of customer satisfaction are increasing

Publicly available data and business-led initiatives suggest PHV customer satisfaction rates are increasing, further challenging the need for increased enforcement.

The latest publicly available customer satisfaction data (dating from 2014/2015) confirms that ‘a quarter of minicab users thought [minicab services] had improved this year.’⁷ Moreover, on virtually all measures (including standard of driving, personal safety, driver being professional and giving confidence), minicabs scored well, with similar satisfaction scores to taxis.⁸ These findings do not support a case for any increase to the enforcement budget.

In addition, systems such as driver ratings can help reduce the risks to passengers from risky drivers. Uber’s rating system provides an additional level of scrutiny that allows passengers to assess their driver’s behaviour. Uber encourages passengers to report incidents with a driver, for example where the driver was unsafe or unprofessional by prompting them to provide specific feedback about a range of options regarding their ride. Where a serious incident is reported, Uber may remove that driver from the app. In so doing, the driver rating system helps weed out problematic drivers without the need for enforcement from TfL.

f. Costs of compliance are falling

Advances in technology have enabled the storage of large amounts data which can be easily updated and shared. By way of example, Uber holds data on drivers, cars, customers and rides electronically. Such an approach enables faster, more cost-efficient compliance with operator regulations for Uber and oversight for TfL. TfL recognises the value of technological developments, identifying as one of its objectives in the 2015/2016 Annual Report ‘*exploiting technology to produce better and faster results.*’⁹ TfL states that it aims to use technology and data to simplify its business procedures¹⁰ and to build ‘*new partnerships with data and technology organisations to promote innovation and make the most of cutting edge ideas and products in the market.*’¹¹

However, the consultation document does not embrace any of this. Indeed, it notes that TfL spends £500k per annum checking Uber operator compliance alone. Uber would query how this figure is achieved given the lack of a single finding of non-compliance by Uber and the efficient electronic methods by which Uber is able to share data. In the previous two annual compliance inspections (April 2016 and April 2017), TfL brought over 20 compliance inspectors on-site in the Uber premises for two full days to inspect over 30,000 documents each year and did not find one single breach of Uber’s operator regulations. On both occasions Uber passed the annual compliance inspection with a ‘Category 1’ (zero error) result.

g. Budget is disproportionately high compared to other agencies

The disproportionality of TfL’s proposals is brought into stark relief by comparing their proposed budget with other agencies. The table below demonstrates that TfL’s budget for PHVs in London alone exceeds or is comparable to the national annual budget of government agencies protecting customers across the country such as the Office of Rail and Road, Food Standards Agency, Competition and Markets Authority and Serious Fraud Office.

Agency	Budget (current, per year)
TfL PHV compliance / enforcement	£35.4m projected

⁷ [Taxi and minicab Customer Satisfaction Survey Quarter 3, TNS, 2014/15.](#)

⁸ [See TNS 2014/2015 survey, slides 9 and 10.](#)

⁹ [TfL Annual Report 2015/2016.](#)

¹⁰ 2015/2016 Report, page 80.

¹¹ 2015/2016 Report, page 81.

Food Standards Agency	Total expenditure: £38.6m
Office of Rail and Road	Total expenditure: £30m
Serious Fraud Office	Total expenditure: £47.6m
Office of the Surveillance Commissioner	Total expenditure: £1.6m

In comparison to these other agencies' national budgets, TfL's local budget appears extremely high and Uber queries whether there is more TfL could do to make its compliance system more efficient.

2. Alternative methods for increasing compliance

The TfL consultation document does not state whether TfL has considered any alternative options for protecting consumers or increasing and monitoring compliance. Below we propose two options which we believe would not only be more efficient but would create more rational regulatory incentives to increase compliance. These are a) harnessing technology to avoid information-related breaches of compliance and b) applying the polluter pays principle.

a. Harms to consumers are information-related - technology can help solve them

According to TfL, the most common reasons for PHV drivers' non-compliance are not wearing a badge, their badge hidden from view, not being in possession of insurance papers, and not being in possession of their badge.¹²

These offences all relate to a lack of information which tech-enabled platforms like Uber can very efficiently rectify. By way of example, Uber always sends pictures of the driver, driver licence information and car registration to customers in advance of their ride and the information we hold is updated on a frequent basis.

We have also worked with Haven, the largest provider of H&R insurance to develop an API that allows us to update and check driver insurance information in real-time; something that TfL has previously expressed support for in principle but not made any concrete steps to provide. Systems like this would resolve TfL's concerns across the industry. A solution like this has the benefit of weeding out those few private hire or taxi drivers driving without insurance (and not subject to some form of operator insurance) without the need to deploy a huge number of compliance officers. TfL should consider updating its compliance systems in such a way that information could easily be shared and updated by operators as this may have more of an impact in reducing risks for customers than increased compliance checks.

b. The polluter pays principle

Another alternative to hiring more compliance officers is to increase the deterrence factor for those breaching the regulations by, for example, increasing financial penalties for breaches. The polluter pays principle, whereby the parties who create negative externalities (i.e. breach the regulations) bear the costs of managing the externalities (the compliance/enforcement regime) may incentivise better compliance and ensure TfL can recover costs through enforcement.

3. The proposed allocation of licence fees

Uber agrees that the current licensing fee structure has become obsolete and needs to be updated to make it more proportionate. However, under the proposed changes, Uber's licensing fee would increase to over £2m for a five year period, at least £1.5m ahead of the second largest operator. This is disproportionate to the costs of compliance generated by Uber. Further, the mechanism of apportioning operator fee by driver number will be hard to apply in practice.

¹² See TfL Private Hire Vehicle Licensing Compliance and Enforcement, March 2017 and December 2016 reports.

a. Historic cost of Uber compliance/enforcement is less than proposed fee

The consultation document states that TfL spends £500,000 per annum enforcing PHV operator regulations on Uber alone. We would welcome detail on how this figure was calculated. Uber, due to the way it holds data, complies with requests from TfL quickly and in a very accessible format.

b. Technology can reduce compliance/enforcement costs

As discussed in Section 2 above, the use of technology can facilitate information exchange and reduce likelihood of breaches (e.g. through rating system and automated compliance checks). The consultation document does not state whether TfL takes into account any of these potential effects.

c. Difficulty applying this system in practice

Applying this system in practice will give rise to significant difficulties. Some of the difficulties which might arise in determining how many PHV drivers work with an operator for licensing purposes include:

- PHV drivers can and [often] do work with for multiple operators;
- The number of drivers with a particular operator will fluctuate, potentially materially, over months and years;
- Drivers can be registered with a particular operator without being active on that operator's platform - will TfL take account of active and passive private hire drivers?

As a result, finding an indicative figure on which to base the licence fee may be quite contentious. It would be useful to receive more guidance from TfL as to how it intends to deal with these practical issues. We would certainly recommend that any proposed solution from TfL does not disincentivise part-time working and competition between operators.

4. This is a symptom of wider concerns with regulation

By establishing the right regulatory framework in the private hire sector, TfL has the opportunity to create a safer, more efficient transport network for London.

By making licensing requirements proportionate for PHV drivers and their vehicles, TfL can ensure the safety of passengers using PHVs and incentivise drivers who were previously touting to join the legitimate PHV trade. We recognise that putting in place the right regulatory framework poses challenges, as competing stakeholders will each have different opinions. It is therefore essential for TfL to follow the Government's Principles of Good Regulations¹³ when legislating in this area - principles designed to ensure sensible regulation in the face of lobbying by vested interests. If applied correctly, they should translate to a regulatory framework which covers those parameters of service that are not readily verifiable by consumers: these include the safety of the car, availability of insurance and driver criminal checks and allows a well-functioning market to deliver additional features .

However, TfL has in the previous year brought about changes to the licensing regime which stray from these principles and may in fact be counterproductive. The proposed licensing fee change is just a symptom of far deeper regulatory issues facing this sector. Examples include the imposition of an unnecessarily onerous written English exam, including a 120-word essay for PHV drivers despite drivers not having any written communication with passengers.

¹³ Better Regulation Commission [Principles of Good Regulation](#).