



Consultation response

Private Hire Regulations

Private Hire Regulations Review: Response to consultation and Proposals- Which? response

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Introduction

Which? welcomes the opportunity to respond to Transport for London's (TfL) consultation on private hire vehicle (PHV) regulations. We support TfL's intentions to improve the quality, safety, accessibility and overall standard of private hire vehicle provision in London.

We are, however, concerned that a number of these proposals would likely damage competition, consumer choice and innovation in the market. The proposals would prevent new business-model PHV operators from delivering aspects of a service that consumers currently use and value, without providing clear, alternative benefits.

Overview

Consumers benefit from innovation within a market, if that innovation drives greater competition and choice. However, newer, more innovative players can be viewed negatively by more established players in the market because of the risk to their business.

The growth of PHV companies operating through smartphone apps has sparked complaints from Black Cab drivers and traditional PHV companies concerned about these risks. Similar complaints have been prompted in other countries, and have resulted in a number of regulations that could be seen as curtailing new business-model PHV operators' activities. We are concerned that a number of TfL's proposals could lead to similar consequences. If implemented these proposals would result in material consumer harm, by:

- causing consumers inconvenience by requiring them to wait five minutes before using a PHV even if one was ready and available sooner;
- significantly reducing the information available to consumers about likely availability and waiting times, and thereby lessening the efficiency of journey planning and associated time management activities;

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- requiring the use of a less efficient tariff type, which may increase costs to consumers.

If implemented, these proposals would be major regulatory interventions on the PHV sector. For such restrictions to be justified, we would expect to see:

1. evidence of material harm (absent the proposed changes),
2. careful consideration of the extent to which such harm could be addressed in ways that were less prescriptive, and
3. assessment of the extent to which such restrictions might give rise to other unwanted, harmful effects (such as deterring further innovation that would benefit consumers).

We are not satisfied that a sufficiently robust impact assessment has been undertaken which would justify such far reaching restrictions on business models that are growing in popularity with consumers.

We are also concerned that TfL has not sufficiently engaged with consumer views on passenger safety, nor on the quality, accessibility and overall standard of private hire vehicle provision. It is difficult to see how the information provision and tracking processes that new business-model PHV apps use do not materially enhance the safety of their users in many respects. Moreover, we believe TfL should treat consumer views concerning price and availability as an important consideration. Whilst over almost 80 per cent of respondents to the previous consultation were owners, drivers or representatives of taxi or private hire companies, members of the public only account for 5% of responses¹.

Detail of our response

1. Consumer benefits of PVH companies that operate through mobile apps.

The entry and growth of PHV operators operating through smartphone apps in London has resulted in significant benefits for consumers. These include:

Lower prices for taxi/PHV services

App-based fares can be significantly lower than an equivalent black cab fare.

Improved service levels

Through mobile apps, PHV companies can provide consumers with a convenient, quick and reliable booking method that can be used in a wide range of locations.

Innovation within the PHV market can increase the availability of services. The mobile app provides efficiencies in the matching of supply and demand. Moreover, availability is key in 'taxi' markets where a shift in supply can result in a shift in demand: the fact that there are more vehicles available with shorter waiting times can result in the size of the market growing, potentially to a significant degree.

¹ https://consultations.tfl.gov.uk/tph/private-hire-regulations-review/user_uploads/private-hire-regulation-review-consultation-analysis-report.pdf p.6



Improved information:

Passengers booking through mobile apps have greater access to information on local availability and likely wait times ahead of booking assists with assessing competing options and with time management. These passengers waste less time and have higher levels of certainty over how long journeys (including the waiting time) will take.

These passengers also receive information on the driver, the vehicle and the journey, and these details are recorded and held by the operator. This provides an improved level of security for consumers.

Cashless payment

By booking through an app, a passenger avoids the need to spend time getting cash in advance of the journey or for the need to carry cash. This also increases security of the vehicles in that the driver does not hold cash.

Review options, and the potential to benefit from access to the reviews of others

Driver reviews provide a mechanism for the market to ‘self-regulate’ service provision problems and problematic behaviour.

2. Arguments put forward that regulatory intervention should be the response to the growth of new business -model PHV operators in London

Despite these consumer benefits, TfL has not outlined its rationale nor evidence for its proposals in the consultation document. We have, therefore, tried to identify a set of potential issues (from the TfL consultation and the wider debate) that have been put forward as reasons for a regulatory response to the rapid growth of new business -model PHV operators. We have then tried to assess the extent to which these issues might justify a regulatory response.

In order to frame our response to Tfl in an objective way, we have identified a set of potential issues (from the Tfl consultation and the wider debate) that have been put forward as reasons for a regulatory response the growth of new business -model PHV operators, and considered the extent to which these issues might justify a regulatory response. We have tried to separate out the different points that are often unhelpfully bundled together (e.g. level playing field concerns in terms of competition are different from taxi drivers feeling the entry of Uber is unfair).

Table 1 below considers a broad set of issues that people might point to in support of these TfL’s proposals.

Table 1: Summary of potential arguments for regulatory restrictions in the PVH market

Potential Issue	Comments
Non-compliance: Some commentators (including in other countries) have speculated that the success of new	TfL’s assessment is that Uber is in compliance with relevant regulations for PHVs - so there is no reason to think that using these new

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<p>business -model PHV operators relies on non-compliance with existing regulations - and this puts consumers at risk.</p>	<p>business models is any more risky than using any other PHV. And indeed the use of Smartphone technology (with consumer reviews) appears to provide more consumer protection than for other forms of PHV.</p>
<p>Regulatory loopholes: TfL claim that the approach of new business-model PHV operators exploits regulatory loopholes which should be closed and the regulation of all PHVs should be tightened up.</p>	<p>This rationale underpins most of TfL's current proposals, but there is a lack of evidence that there is material harm to be addressed.</p>
<p>Level playing field issues: TfL and other commentators have claimed that competition between black cabs and new- business model PHV operators is being distorted by a lack of regulatory neutrality.</p>	<p>While there are differences between regulation of taxis and PHVs, it is not obvious that this raises material level playing field issues - some black cabs might exit the market, but this does not seem to be because of an uneven playing field.</p>
<p>Increased competition will itself give rise to adverse effects: TfL has highlighted undesirable effects of increasing competition including an increase in road congestion and that competitive pressures would not result in cars with disabled access.</p>	<p>It seems wrong to respond to such concerns by restricting market entry - any regulatory responses should be targeted at a specific problem - so e.g. address congestion concerns through congestion policy, disabled access by appropriate rules, but not by TfL attempting to formulate competition policy.</p>
<p>Increased competition will not be enduring: some commentators have suggested that consumers will only benefit from use of these new- business model PHV operators in the short term and that once it has strengthened its market position consumers will be prone to exploitation of its market power.</p>	<p>The possibility of this does not justify significant restrictions being introduced now. The development of smartphone app usage could enable a range of different types of competitive offerings being developed. It is not appropriate to assume that there will be competition problems in the future.</p>
<p>Positive externalities associated with black cabs justify protection: e.g. the iconic black London taxi needs to be preserved in order to bring more general benefits to London.</p>	<p>There isn't any evidence that black cab provision is threatened (although some drivers might exit the market). If black cab provision was threatened, then targeted incentives aimed at encouraging some degree of provision could be considered, perhaps in the form of limited subsidies or payments to black cab drivers. But this would not justify removing a new entrant from the market which is successful because consumers choose to use it.</p>

<p>Unfair impact on black cab drivers: Many commentators (in particular black cab drivers) claim competition from new- business model PHV operators is having an “unfair” impact on licensed taxi drivers who have paid to do the knowledge and for their cabs.</p>	<p>Unlike in other countries, black cab drivers in the UK have not been charged a high fee for their licence, and no black cab driver should have had an expectation that future earnings were certain. All that is happening here is consumers are choosing to use a different provider - that can happen to any business, and these circumstances do not justify regulatory intervention.</p>
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These criticisms are considered in turn below.

Non-compliance with existing regulations

TfL set out its position on non-compliance concerns in a July 2014 notice as follows:

“Concerns have been raised regarding the nature of Uber’s business operating model in London. ... In April we carried out TfL’s largest ever compliance inspection and at the time of that inspection Uber met all requirements for a private hire operation in relation to record keeping. We have also been in extensive correspondence with Uber to understand precisely how their business model operates in London.

Following this review, we have reached the conclusion that the way Uber operates in London is in accordance with the law as it applies to private hire operators and specifically in the way bookings are accepted and invited. However, TfL is aware of one incidence where it appears that a driver may have carried out private hire bookings for Uber using a vehicle without insurance and that matter is being dealt with appropriately.”

Whilst there appears to have been a significant amount of speculation concerning Uber’s non-compliance, it does not appear to have been a significant issue in practice in London.

It is notable that Uber is often referred to as providing a ‘ride sharing’ service. This terminology appears to have arisen from contexts where Uber launched services in competition to licensed providers, such that its services (or at least its lowest cost UberX services) were being provided by unlicensed drivers who were ‘sharing’ the use of their vehicles with the passengers they were transporting. Among other things, this has raised significant questions in some other jurisdictions concerning whether such drivers have compliant insurance arrangements for the provision of what are commercial services.

This ‘ride sharing’ terminology does not seem helpful in a UK private hire context, as all drivers will have to be licensed private hire vehicle drivers. The term is also used, however, to refer to the situation where passengers that are strangers are offered the opportunity to share their usage of a licensed vehicle for a given trip. This is considered further below.



Regulatory loopholes

Several of the proposed changes to private hire operations that TfL is currently consulting on are presented as addressing the potential for the current arrangements to provide insufficient protection to passengers in a context where new-business model PHV operators are being used.

We are not satisfied with TfL's explanation that the current system is not working. We do not believe that the consultation demonstrates that the proposed changes are appropriately targeted, nor that these are proportionate responses to the identified risks. Moreover, we are concerned that TfL has not adequately considered the potential consumer harm related to these proposals.

TfL's proposals are considered in detail below. While it is clear that this new business model, and - more generally - the use of smartphone apps, have disturbed the basis upon which taxi and PHV vehicles are being provided, it is not obvious that this suggests any material shortfall in the nature or extent of regulatory protections. Indeed, the use of smartphone apps looks likely to have significantly improved levels of security associated with the use of PHVs (given its data capture and tracking capabilities).

TfL's proposals would, if implemented, be likely to have substantial impacts on providers in the sector, and on consumers. Those impacts have not been sufficiently examined by TfL and it is argued below that most of TfL's current proposals can be expected to cause material harm to consumers.

Level playing field issues

Level playing field issues can potentially arise in this context where:

- New business models of PHV provision are 'under-regulated'; and/or,
- Licensed taxi provision is 'over-regulated'.

The issue of 'under-regulation' was considered above in relation to potential 'loopholes'.

While taxi drivers and taxis face more stringent licensing requirements, it is not obvious why this would be expected to give rise to material level playing field issues. In particular:

- The costs to a licensed taxi driver of completing 'the Knowledge' will be sunk. That is, the cost has already incurred and so cannot be recovered. The extent to which passengers value using a driver that has completed the knowledge will impact on the return the driver gets on their 'investment' in the Knowledge, but the requirement to have completed it would not impact on the costs of competing on a forward looking basis.
- The vehicle specifications for a black cab will impact on running costs to some degree, but it is not obvious that this raises level playing field issues: black cab costs will be higher only to the extent that their actual fuel/running costs are higher. If this undermines the business case for running black cabs then - with a level playing field - we would expect some market exit and a reduction in the use of these vehicles as a result of being less efficient. It may be, though, that some customers

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would be willing to pay a premium for using a black cab to an extent sufficient to off-set any such higher running costs.

Increased competition will itself give rise to adverse effects

If competition is found to be giving rise to material adverse effects, then consideration should be given to targeted and proportionate ways of responding to that that avoid restricting competition where possible. For example:

- Congestion concerns could be addressed through developments to the congestion charging arrangements (and innovation in relation to the sharing of PHV usage between passengers who are strangers provides a potentially beneficial development here).
- Concerns associated with the provision of accessible vehicles could be addressed through specific financial incentives aimed at ensuring such access.

When considering such interventions, it is important to carefully consider evidence concerning the extent of any problem (with this affecting the assessment of what a proportionate response is). In particular, while there may be concerns over the potential for some different types of adverse effects emerging, those concerns may not materialise in practice. Any regulatory response must be proportional and based on sound fact. Where quality levels are the source of concern, it is particularly important to consider how consumers view relevant quality changes. That is, the growth of new-business model PHV operators looks to have been associated with significant increases in service quality from a customer perspective: what evidence is there of a loss of quality, or that such a loss is likely to occur in the future?

Increased competition will not be enduring

While it is possible that there may be competition problems in the future, it is not obvious why that possibility should be understood as justifying major additional regulatory restrictions on competition now.

Positive externalities associated with black cabs justify protection

The concern here is that competition will threaten the continued provision of the iconic black cab service. Again, proportionality and targeting are key considerations. While it is possible that competition would result in passenger decisions that undermined the financial viability of black cab operations, it seems equally possible that black cabs would continue to be valued by sufficient numbers of consumers to support a significant black cab service for several years. If it became clear over time that the continued existence of black cab provision was threatened, then targeted incentives aimed at encouraging some degree of provision could be considered (if to do so passed a cost-benefit test).

Unfair impact on black cab drivers

The argument here is that competition is having an unfair impact on incumbent 'producer' interests. Such arguments would typically be given very little weight, although matters are complicated to some extent by the fact that the relevant incumbent producers in this context are self-employed black cab drivers.

Taxi deregulation has given rise to some significant distributional concerns in the past, but this has been particularly so in contexts where the value of incumbency had been capitalised and sold where the number of licenses was limited. For example, in Ireland, the value of taxi licences increased tenfold between 1978 and 2000, but deregulation had the effect of significantly undermining the value of licenses. Whether or not support should be provided to reflect such losses to some degree has been a contentious matter.

However, it is not obvious that this kind of issue arises in the context of London black cabs. That is, black cab drivers will have invested in doing the Knowledge, and in buying their vehicle, but would not have had to pay for a licence on the basis of expected future earnings (as there is not a restriction on licence numbers, and license fees have been set on the basis of recovering TfL administrative costs). While drivers will have had expectations about the earnings they could achieve in the future, those earnings would have been inevitably uncertain.

In any event, to the extent that issues arise in relation ‘unfair’ impact, the questions to be addressed concern whether some degree of compensation may be appropriate. This should not provide a justification for restricting developments that would otherwise be expected to benefit consumers.

3. Which? response to TfL’s proposals

Here we summarise our response to TfL’s consultation that appear to raise material issues

Proposal 1: PHV Operators must provide driver (including photograph where the customer has the means to receive it) and vehicle identification in advance of the journey commencing

This proposal looks unproblematic and simply formalises existing best practice that many operators already follow.

Proposal 2: PHV Operators must provide booking confirmation details of passengers at least 5 minutes prior to the journey commencing

This proposal looks likely to harm consumers while providing no material countervailing benefit. The harm to customers would come from the fact that PHVs may be available more quickly than five minutes, but this requirement would make it unlawful for the journey to commence until the five minutes is up. Both the passenger and the driver would have to wait - time would be wasted and inconvenience caused - simply because of this regulation.

TfL present the following justification:

‘A delay between the booking and commencement of a journey will further reduce the risk of a customer getting into the wrong car and/or into an unlicensed vehicle. It will also enable the driver to ensure the passenger is in a safe pick-up location, i.e. not having to run out into traffic to get into the vehicle. A short time period will give more certainty

that the driver and vehicle information has been successfully sent, delivered and read by the passenger, and that the driver has had sufficient time to plan an appropriate route.'

TfL does note the potential for unnecessary inconvenience to passengers, but says that: *'In our view, the period between booking and commencement of the journey must...be long enough to facilitate consideration of the booking confirmation details by passengers whilst short enough not to unnecessarily inconvenience passengers'*.

Consider a booking that is made using a smartphone app. With such a booking, the driver information is typically sent as part of the booking confirmation, and so there is no source of delay (if there is a delay in delivering the driver information, there is a delay in delivering the booking confirmation). So the only purpose that the proposed five minute time period could have in such a context would be to give sufficient time for the consumer to process the information. But such information would be likely to be processed in moments (not minutes). The timing of that information processing is likely driven by need: driver and vehicle details are likely to be treated as information to be examined when the passenger is trying to find the vehicle (not five minutes beforehand), and even then will depend on the likely difficulty of identification.

The time needed for the passenger to process the relevant information, therefore, seems likely to be somewhere between none and a few moments, and the requirement for a five minute gap can be expected to cause unnecessary inconvenience and wasted time.

If there are particular situations in which TfL considers that PHV booking causes potential difficulties, then the appropriate response is to examine those situations more closely, specify what those difficulties are and why they arise, and then to identify targeted and proportionate ways in which the difficulties might be lessened or resolved. The proposal as it stands is neither targeted nor proportionate.

Proposal 3: Operators will be required to seek TfL approval before changing their operating model

We believe that this is a highly undesirable form for regulation to take, particularly in a context where there is the potential for further significant innovation. TfL says that operators must be mindful when making any changes to their operating business model that they are still required to meet the same requirements under which their licence has been issued. But since compliance is the responsibility of the operator, we are not satisfied with this justification. This proposal would make innovation subject to administrative approval.

This can be expected to dampen incentives to innovate, and slow the pace at which customers can expect to benefit from innovation. It also introduces significant regulatory uncertainty associated with efforts to develop new services. This could include the development of innovative services aimed at enabling the matching of customers who are strangers but who have similar route requirements, to share the use of PHV. Such developments have the potential to provide lower cost PHV use options to consumers and to lessen the impact of PHV usage on congestion and emissions (although the net impact would depend on the extent to which the availability of lower cost services would have an upward impact on the level of demand).

Proposal 4: Requirement that app based platforms can demonstrate appropriate security measures are in place to prevent the app being used by a person other than the licensed driver they are allocated to and to protect passengers from fraudulent use of their accounts and/or personal data

This requirement looks to be sensible and to reflect the use of new technology in this context. TfL should ensure that the requirement is developed and applied in a sufficiently flexible and proportionate manner. The objective is to provide protection in relation to these security risks. Regulatory are not well placed to identify how such protection can best be provided, and TfL should focus on the achievement of the objective and not set requirements on the detail.

Proposal 5: Operators must offer a facility to pre-book up to seven days in advance

This proposal is likely to unnecessarily raise costs, has the potential to harm competition. It is, therefore, likely to harm consumers. It would require some operators to put in place arrangements to offer a service that they do not currently offer. This may have implications for operator business models, and would be expected to increase operator costs. This may deter entry as it would require entrants to offer broader range of services than they would choose to on a commercial basis.

TfL's justification for this proposal is that an increasing absence of advance booking facilities will restrict the choice for passengers and that it is reasonable to expect private hire operators to offer such a facility. But TfL provide no evidence of there being an absence of advance booking services that causes consumer harm, or of such harm being a likely prospect.

Proposal 6: TfL no longer issues licenses for in-venue operators or temporary events

TfL point to touting concerns outside venues as a concern underpinning this proposal. It is not clear, however, how reducing options for PHV bookings would be expected to lessen such concerns. The rationale for this proposal is thus not well articulated.

Proposal 7: Operator must have a fixed landline telephone which must be available for passenger use at all times

TfL point to this proposal as providing that customer concerns can be 'addressed in real time rather than through often less reactive electronic communication'. The assumption that a fixed line telephone provides a more effective means of communication is unsupported and in this context would simply not be expected to hold.

Importantly, though, if customers value telephone communication, they can use a PHV company that provides this. A key reason for telephone communication in the use of PHVs is delay in arrival for pick-up, and questions over how long it is likely to be before arrival. Apps that show the location of the car that is picking up the customer provide a much better source of information to customers on this (and the information that is provided is much more credible than a statement over the phone as to how long a vehicle is likely to be, in a context where that statement may be affected by concerns of losing the fare).

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If the passenger concern is more serious, such that the customer is concerned about a source of threat, then the appropriate source of support is likely to be the police. It is not obvious that this proposal would have any benefit and it would increase costs. It would be likely to harm competition and consumers.

Proposal 8: Operators must ensure that PHVs are not visibly shown to be available for immediate hire, whether physically, via and app, or by other means.

This proposal would materially harm consumers and competition. A key feature of new-business model PHV operators is that consumers are able to get a view of availability and wait times ahead of booking. This can be extremely valuable information for consumers. It allows them to take an informed view of how much time they need to allow for their journey. In many locations, it allows consumers to assess competing options, on a basis that is likely to be quicker and more reliable than traditional telephone booking or street hailing options.

TfL's only clear justification for this proposal is that it increases the risk of touting. However, there is no assessment of the likely scale of this potential impact, or of the contexts in which it is considered to arise. That is not an adequate basis on which to introduce a major restriction on business activity that can be expected to cause material harm to consumers.

Proposal 9: Operators will be required to provide information on driver and vehicle details on a regular basis

This proposal looks to be a sensible means for TfL to keep up to date records, providing it is implemented in a way that does not generate unnecessary administrative burdens that may unduly raise costs to consumers.

Proposal 10: Operators must specify the fare prior to the booking being accepted

This would rule out, for example, Uber's charging mechanism which includes a per minute and a per mile element. TfL says that this will provide certainty to customers and minimise the risk of overcharging. However, TfL provides no evidence that pricing arrangements such as Uber's - which provides a clear upfront estimate range, is calculated on the basis of a pre-determined basis, and is calculated by the operator (not the driver) on the basis of a GPS assessment of the journey - give rise to any material risk of over-charging. This is an unwarranted restriction on pricing flexibility and imposes the use of fixed-price arrangements in a context where distance and time based charges may be more efficient.

Proposal 15: A PHV driver must be registered to a licensed operator and may only be registered to a single operator at any time

TfL says that this proposal would reduce the risk of drivers working excessive hours for a number of different operators, and would assist enforcement and compliance activities. However, this is a poorly targeted response to such concerns that could harm competition between operators. In particular, where an operator's proposition to consumers is heavily dependent on having a significant number of potential drivers, this would make the



achievement of scale for new entrants more difficult. This restriction may particularly benefit new- business model PHV operators in that, having achieved scale in terms driver numbers, it would make it more difficult for competing operators to secure drivers (in a context where driving for another operator which may, in the short term generate limited business, would rule out the possibility of still earning via a new-business model PHV operator).

Conclusion

We are supportive of attempts to improve the quality, safety, accessibility and overall standard of private hire vehicle provision in London. However, we have serious concerns related to some of the proposals as detailed in our response. We are keen to keep engaged as TfL move along the consultation process and we look forward to meeting you to discuss our concerns.

For more information, please contact Amber Bechrouri on 0032 2 791 7675 or amber.bechrouri@which.co.uk

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