

The Licensing Team
Sevenoaks District Council
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Sent by email to: licensing.officers@sevenoaks.gov.uk

Our ref: 4278914

12th November 2023

Dear Sir / Madam

Response to consultation on proposed changes to taxi policy and licensing fees

1. We are an organisation focussed on assisting couriers, hackney and private hire drivers (“drivers”) in enforcing their employment rights, particularly where employment status is misclassified as self-employed. We write in response to your recent consultation on proposed changes to the taxi policy of Sevenoaks District Council (“the Council”).

Formalisation in policy of the introduction of the Equo Safeguarding training for all new and existing drivers

2. We support the introduction of Equo Safeguarding training for new drivers. However, it is unclear whether the proposal to introduce the Equo safeguarding training to existing drivers involves a requirement for existing drivers to complete and/or pay a fee for the training on a single occasion, or upon each licence renewal (“repeat training”). If repeat training is proposed, we oppose the proposal on the basis that it is excessive and onerous on drivers.
3. Safeguarding training raises awareness of the exploitation of vulnerable individuals and steps to be taken to combat it. Our cursory investigations appears to reveal, in our opinion, widespread exploitation and unlawful treatment of drivers by private hire vehicle operators, in some cases, local authorities, and in one case, a train operator with an appointed taxi rank at its train station. For example, in our opinion, it appears that private hire vehicle operators (“operators”) routinely unlawfully misclassify the employment status of drivers (by treating them as self-employed rather than workers). Also, in our opinion, it appears that the taxi permit system operated by SE Trains Limited (“SETL”) at

Sevenoaks Railway Station (“Sevenoaks Station”) is, and has been operating unlawfully. We intend to engage with the Council further on this issue as part of our investigations. However, at this stage, we invite the Council to, prior to or as part of the introduction of the proposed safeguarding training requirement for all drivers, to introduce and enforce a requirement for operators, and train operators with appointed taxi ranks at their stations, to complete and comply with training concerning the lawful treatment of drivers and lawful operation of appointed taxi ranks.

Formalisation in policy of the new HMRC rules for taxi and private hire drivers and operators

4. The proposed policy concerning the new HMRC rules for taxi and private hire drivers appears to presume self-employed status for drivers. Following the judgments in *Uber BV and others v Aslam and others* [2021] UKSC 5 (“*Uber v Aslam*”), *United Trade Action Group Limited v Transport for London and Transopco UK Limited* [2022] EWCA Civ 1026 (“*UTAG v TFL*”) and *Uber Britannia Limited v Sefton Metropolitan Borough Council, Bolt Services UK Limited, The App Drivers and Couriers Union, Veezu Holdings Limited and D.E.L.T.A Merseyside Limited* [2023] EWHC 1975 (KB) (“*Uber v Sefton*”), we submit that, where a driver is engaged with an operator, the starting point should be a presumption that drivers are employed by the operator. In *Uber v Aslam*, the Supreme Court held that the claimants (Uber drivers) were workers within the meaning of applicable employment legislation. In *UTAG v TFL* and *Uber v Sefton*, the High Court declared that operators licensed pursuant to the Private Hire Vehicles (London) Act 1998 and the Local Government (Miscellaneous Provisions) Act 1976 respectively, must engage with customers as principle to transportation contracts. On this basis, it is not possible for operators to lawfully treat their drivers as self-employed. We invite the Council to mandate and include in the new policy, a licensing condition requiring operators to treat their drivers as workers or employees, and for operators to provide the Council with evidence of the same; whether the evidence is in the form of documented confirmation of the registration of workers/employees with HMRC, or otherwise.

Formalisation in policy of online right to work checks

5. We are concerned that the proposed formalisation in policy of online right to work checks is focussed solely on driver applications, and appears to omit equivalent requirements on operator licence applications. As operators are obligated to employ drivers and usually engage multiple drivers, it appears appropriate for any formalisation in the policy to primarily focus on operators. We request that the Council includes in the policy, a requirement for private hire operators to: (a) treat their drivers as workers or employees by engaging them in employment contracts; (b) complete necessary online right to work checks in the process of employing drivers.

Formalisation in policy of the inclusion of driver ‘suspensions’ as well as refused and revoked drivers through the NAFN (NR3) central database

6. We are concerned that the proposed formalisation in policy of the inclusion of driver suspensions as well as refused and revoked drivers through the NAFN (NR3) central

database focusses solely on driver refusals, revocations and suspensions, and appears to omit any and all equivalent policy provisions or focus on refusals, revocations and suspensions of operators. We are further concerned that the proposed policy contains no equivalent provisions or focus on refusals, revocations or suspensions of taxi ranks appointed on private land. The unlawful and/or abusive conduct of operators and the owners of private land upon which taxi ranks are appointed, can, contrary to section 2 of the Competition Act 1998, cause severe unlawful prevention, restriction and/or distortion of competition in the district's hackney carriage and private hire vehicle market. We invite the Council to include in the policy appropriate equivalent provisions in relation to: (a) operator revocations, suspensions or judicial determinations that an operator violated employment and/or revenue law; (b) private land owners where taxi ranks appointed on their land is refused, revoked and suspended by reason of the rank operating unlawfully, unfairly or abusively.

Inclusion in policy of a process whereby authorisations be given for continued work where all documentation for a licence has been submitted, assessed and validated but not yet processed

7. We welcome this proposal.

Inclusion in policy that all new licensed vehicles (other than stretched limousines and wheelchair accessible vehicles) must meet or exceed Euro 5 and Euro 6 emission standards

8. We welcome the proposal to to include in the policy provisions that all new licensed vehicles, excluding stretched limousines and wheelchair accessible vehicles, must meet and exceed Euro 5 and Euro 6 emissions standards. However, we invite the Council to: (a) increase the taxi fare tariff rates ("taxi fare tariffs") to reflect the higher costs of purchasing and maintaining such vehicles. The purchase cost of such vehicles has increased significantly due to recent expansion of the Ultra Low Emission Zone by Transport for London. Also, the standard of such vehicles are closer to the standards of London hackney carriage vehicles which attract higher fare tariff rates; and (b) reduce the vehicle licence application fee for new and renewed wheelchair accessible hackney carriage vehicle licences. The higher cost of acquiring and maintaining wheelchair accessible vehicles, coupled with relatively low taxi fare tariffs may be a barrier to drivers acquiring wheelchair accessible vehicles. There appears to be a shortage of wheelchair accessible vehicles in the district. Information received from SETL reveals that 1 of 83 hackney carriage vehicle permit holders at Sevenoaks Station in 2022 had a wheelchair accessible vehicle. The number taxi permit holders with wheelchair accessible vehicles does not appear to have improved in 2023. We respectfully submit that the lack of adequate wheelchair accessible vehicles in the district may, contrary to the Equality Act 2010 potentially constitute indirect discrimination based on disability.

Hybrid, electric and LPG vehicles to be licensed for up to 15 years

9. We welcome the proposal to include in the policy provisions that hybrid, electric and LPG vehicles are to be licensed for up to 15 years. However, we invite the Council to increase

the current taxi fare tariffs, and reduce application fees for new and renewed hackney carriage vehicle licences for hybrid, electric and LPG vehicles to reflect the: (a) higher cost of purchasing and maintaining such vehicles. The purchase cost of such vehicles has increased markedly due to the recent expansion of the Ultra Low Emission Zone by Transport for London. Also, the standard of such vehicles is close to the standard of London hackney carriage vehicles which are subject to higher fare tariffs; and (b) increased electric charging, fuel and hire and reward motor insurance costs since the Council's last review of the taxi fare tariffs.

To remove the six year maximum age of a vehicle when first presented for licensing

10. We welcome this proposal.

Formalisation in policy of the responsibilities placed upon drivers under the Equalities Act 2010

11. We are concerned that the proposed formalisation in policy of the responsibilities placed upon drivers under the Equality Act 2010 ("the EA 2010") focusses solely on the responsibilities placed on drivers under the EA 2010, but appears to omit any mention or focus on the equivalent responsibilities placed on other relevant stakeholders under the EA 2010 (such as vehicle and train operators). Based on our cursory investigations, in our opinion, it appears that SETL is operating the taxi permit system at the appointed taxi rank at Sevenoaks Station in breach of the EA 2010 (amongst other alleged legal violations). We intend to communicate with the Council further on this issue in due course as our investigation progresses.

12. The reach of stakeholders such as vehicle and train operators extends far beyond that of drivers. For vehicle and train stakeholders typically engage multiple drivers and passengers. Resultantly, we submit that it is appropriate to place primary focus on regulating and enforcing the other stakeholders compliance with their duties and responsibilities under the EA 2010 (and other laws). Further, we submit that it is appropriate to place primary focus on the other stakeholders requirement to comply with the law generally, including employment and competition law. In addition to contraventions of employment law, our cursory investigations appear to reveal that some stakeholders may be conducting business in contravention of the Competition Act 1998. If our cursory findings are correct, the stakeholders continued unlawful trading under the Competition Act 1998 and otherwise, may be unlawfully preventing, restricting and/or distorting the taxi and private hire market in Sevenoaks district, and having a detrimental effect on drivers and the general public within the district. We intend to communicate with the Council further on these issues in due course.

Mandating the use of card payment machines (as an addition to taking cash payments) in Hackney Carriage Vehicles by way of adding a condition to each licence

13. We object to the proposed mandating of card payment machines. In light of the generally increased business costs incurred by drivers, such as those set out above, coupled with the 'cost of living crisis'; in the absence of an increase to the district's taxi tariff rates, we

respectfully submit that it is inappropriate and detrimental to drivers to require them to incur the additional cost of acquiring and maintaining card payment machines. Notwithstanding this, it is our understanding that only a minority of drivers currently do not use card payment machines, so the proposed mandating of the use of card machines may be disproportionate.

14. Notwithstanding the above, legitimate, necessary and justified reasons exist as to why drivers may object to the use of card machines or demand payment in cash at any given time. Mandating drivers to use card payment machines may place some drivers in a precarious position and jeopardise the continued operation of their business (where they are genuinely self-employed). By way of non-exhaustive examples: (a) the earnings of some drivers, such as those operating independently in Swanley, may be so low that they cannot afford to lose the sum of transaction fees deducted by card payment machine providers from paid fares. The annual sum of card payment transaction fees may be considerable to low earning drivers, and may be an expense which renders them unable to continue trading; (b) there may be instances where drivers require immediate access to funds in order to continue trading immediately, such as an immediate need to refuel their vehicle or pay an insurance bill. As card payments may take days to be deposited into drivers' bank accounts, some drivers may be unable to continue working and operate their vehicles due to running out of fuel in their vehicle, or their insurance policies being cancelled due to non-payment; (c) the district and surrounding areas have patchy and unreliable mobile network signal coverage. There may be instances where drivers will have prior knowledge of a lack of mobile network connectivity at specific locations (less experienced drivers may struggle with this issue to a greater degree), but there may be instances where the lack of network connectivity is unknown until the driver arrives at the destination. On this basis, we feel it is appropriate for the Council to encourage passengers to always carry cash when using taxis as a backup payment method.
15. The proposal may place drivers continued business trading in a vulnerable position by increasing the risk to drivers incurring loss from unrecoverable fares. Customers are not obligated to provide personal details (such as names, addresses, telephone numbers, and email addresses) needed to pursue unpaid fares criminally or civilly. Thus drivers are in no position to demand or enforce a demand for the same. This leaves drivers in a precarious position where they may be vulnerable to further mistreatment, exploitation and low and lost earnings.
16. Dealing with issues related to unsuccessful card transactions arising due to a lack of network connectivity of otherwise, is likely to increase the time taken for drivers to complete jobs, and reduce drivers' earning potential and capacity. For example, assuming that passengers consent to the disclosure of their personal details required to pursue the completion of card transactions (whether by way of legal enforcement, deferred or delayed payment, or otherwise), assuming that passengers voluntarily provide correct personal details, the acquisition of the personal data and/or deferred processing of card payments is likely to consume valuable time for drivers. Furthermore, attempts to process card payments and/or obtain personal data needed to pursue the completion of card transactions in advance of the commencement of journeys (where the

destination is known to lack mobile network connectivity for example) is generally impractical for it is likely to significantly slow the movement of taxis on ranks, increase taxi congestion on the ranks or streets, delay journeys of other passengers waiting for taxis on ranks, and/or delay and obstruct other road users where taxis are hailed from the street.

17. The Council's proposed directive on acceptable payment methods and/or the removal of drivers' discretion in selecting their preferred payment method at any given time may potentially add weight to a proposition that drivers may be employed by the Council. Drivers already lack an essential feature of independent business, namely, the ability to set their own public hire fare rates. The removal of another essential feature of independent business, namely, the ability to exercise discretion and choice as to accepted payment methods; may increase the Council's control of drivers' trading operations to an extent whereby the drivers' employment status may potentially stray beyond self-employed to an employed relationship.

Proposal to increase and introduce new licensing fees

18. In the absence of an increase in the Council's taxi fare tariff rates, we object to any increase or introduction of new licensing fees.

Summary of our further requested policy amendments

19. Having had regard to the Statutory Taxi & Private Hire Vehicle Standards, we request that the Council makes the following amendments to its policy and practice.

Increased and adjusted taxi fare tariff

20. The current taxi fare tariff may be inadequate based on the level of public trade secured by hackney carriage vehicle drivers on the district's streets and ranks. We request that the Council completes an immediate and urgent review into fare tariffs. Transport for London ("TfL") increased London taxi fare tariff rates in 2023, and proposes a further imminent increase following a further review.¹ TfL identified factors justifying increased fare tariffs. The identified factors apply equally to Sevenoaks licensed hackney carriage vehicle drivers and proprietors. The wider employed society attracts premium pay rates for work completed during '*unsociable hours*', namely, during nights, evenings, weekends and bank holidays. We invite the Council to adopt the approach taken by TfL by: (a) increasing the standard daytime tariff rate; (b) adjusting the night tariff to commence from 10:00pm at the latest; (c) introducing an intermediate evening tariff to commence from 8pm at the latest and to end upon the commencement of the night tariff; (d) introducing a weekend tariff set at the intermediate tariff rate and applies throughout daytime until the night tariff commences (from 10:00pm at the latest); and (e) increasing the tariff rates for shorter and longer journeys.

21. Hackney carriage vehicle drivers must be paid fairly and generate sufficient profit to remain in business. However, drivers must also generate sufficient profit to account for annual leave and sick days. For health and safety reasons, the wider society employed

1 Accessed at: <https://haveyoursay.tfl.gov.uk/taxi-fares-review-2023> on 12 November 2023.

in England & Wales is entitled to 28 days holiday annually (pro rata); is protected from working in excess of 48 hours weekly; is entitled to 2 consecutive rest days weekly; and typically works 8-10 hour shifts when working full-time. Equally, for health and safety reasons, we submit that it is necessary for drivers to benefit from the same standards enjoyed by the wider employed society. This is only achievable if drivers can fairly and comfortably generate sufficient business profits in typical daily shift worked. Currently, it appears that some drivers may be operating at a loss, working excessive hours and earning below the national minimum wage after the deduction of their business expenses. Our cursory investigations appears to reveal that drivers operating in Swanley are experiencing dire low earnings, and are susceptible to exploitation by operators and local authorities, as set out below. Swanley drivers appear to be further adversely affected by Uber operating in Swanley (allegedly unlawfully) and distorting the market by undercutting the local competition.

22. Drivers' economic difficulties are compounded further by: (a) operators typically charging drivers 20% commission fees on completed fares supplied to drivers by operators. In many cases, the operators appear to already be depriving drivers of further income by violating their employment rights (such as failing to pay drivers holiday pay and at least the national minimum wage after deducting business expenses); (b) SETL charging Sevenoaks Station taxi rank permit holders £573.00 annually (in 2023) whilst allegedly operating the permit system unlawfully, abusively and unfairly; and (c) the Council's annual vehicle licensing and MOT fees being disproportionately higher than the equivalent fees payable to TfL despite TfL operating higher taxi fare tariff, and a disproportionately greater number of taxi ranks (including those located at train stations). It is also arguable that TfL's hackney carriage vehicle drivers have greater opportunities to secure public hire jobs and incur less 'dead milage' between jobs. TfL charges £66.00 for annual hackney carriage vehicle licence applications, and £44.00 for 6 monthly hackney carriage vehicle MOT tests. A total annual vehicle licensing cost of £154.00. By contrast, the Council charges £325.00 for annual hackney carriage vehicle licence applications and £54.85 for 6 monthly hackney carriage vehicle MOT tests. A total annual vehicle licensing cost of £434.70. The annual vehicle licensing cost payable to the Council is 2.82 times higher than that charged by TfL. The Council has 7 listed taxi ranks in the district (we are unable to locate the taxi rank listed at The Green, Westerham, so there may actually be 6 operational ranks in the district), 5 of which are accessible by all of the Council's licensed hackney carriage vehicle drivers ("hackney carriage drivers"). However, the largest and most lucrative rank in the district (Sevenoaks Station rank) is accessible to a perpetual, exclusive group of licensed hackney carriage drivers only, and currently only upon payment of a fee of £573.00 for a permit. Taking Sevenoaks Station permit taken into account, the total annual licensing cost to access the ranks in the district is £1,007.70. This is 6.54 times higher than the equivalent fees payable by London taxi drivers. By contrast, TfL has 714 ranks which are accessible to licensed hackney drivers free of additional charges. TfL has 102 times more ranks in its boundaries based on the 7 listed ranks in Sevenoaks District. TfL has 142.8 times more ranks based on the 5 ranks accessible to all licensed drivers in Sevenoaks District. We respectfully submit that the vehicle licensing fees payable by the Council's licensed hackney drivers is disproportionately high in comparison those payable to TfL; despite TfL providing a far greater number of universally accessible ranks, higher fare tariffs

providing drivers with greater earning capacity, and there generally being more custom available within TfL's boundaries.

23. The higher purchase and maintenance costs of 8 seater hackney carriage vehicles may cause economic difficulties for proprietors. It appears that the vast majority of their secured fares are based on the 4 seater tariff. As such, they may benefit from 5 to 8 seater fares only on rare occasion. Drivers of 5 to 8 seater vehicles may be at an economic disadvantage based on the current fare tariffs.
24. We request that the taxi tariff fare rates for shorter journeys be increased. From our observations, drivers may experience considerable intervals between securing fare paying passenger on some of the district's taxi ranks. For example, we have observed intervals of over 3 hours before a single passenger requests a taxi from the rank at Swanley Railway Station ("Swanley Station"). This is problematic and unsustainable for instance, where several drivers are waiting on the rank. It appears that the drivers operating from Swanley Station have no access to permits for the rank at Sevenoaks Station, the main taxi trading port in the district. Having potentially waited hours to secure a fare the Swanley Station rank, the eventual fare may only be a short distance job. In such circumstances, drivers could possibly earn less than £5.00 in 3 hours. For their business to remain viable and to cover living expenses, it seems that drivers need to earn around £30.00 an hour. This is consistent with Council's current waiting time charge on the standard daytime fare tariff. Although drivers may secure longer distance fares after the interval between jobs, the possibility remains that they may complete a series of short distance jobs after the intervals. In this example, drivers need to complete around 6 short distance jobs hourly in order to cover their business and living costs within a reasonable timescale (an 8 hour shift for example). This target appears to be unrealistic, particularly on ranks such as that at Swanley Station, where drivers typically have no access to the more lucrative rank at Sevenoaks Station. The lack of trade faced by Swanley drivers is principally due to Uber absorbing local trade in circumstances where Uber may be operating unlawfully based on its calculation of drivers' working time, contrary to *Uber v Aslam*.

Mandating operators to engage drivers in employment contracts.

25. We request the introduction of an enforced policy mandating operators to engage with drivers in employment contracts as a condition of licence. We request that the licences of operators who fail to engage their drivers in employment contracts are revoked or not issued upon application, and such operators are treated as a not fit and proper person for the purposes of the Local Government (Miscellaneous Provisions) Act 1976. A growing body of case law declared private hire drivers as workers for the purposes of employment law having previously been misclassified as self-employed. In such cases, drivers have employment rights such as entitlement to receive holiday pay and at least the national minimum wage (after the deduction of their business expenses). Additionally, as set out above, in *UTAG v TFL* and *Uber v Sefton*, the High Court determined that, in order to operate lawfully, private hire operators licensed under the Private Hire Vehicles (London) Act 1998 and the Local Government (Miscellaneous Provisions) Act 1976 respectively, are required to engage with customers as principal to the contracts. Accordingly, it is not lawful or feasible for operators to purport to treat

drivers as self-employed. In accordance with UTAG v TFL and Uber v Sefton, in order to operate lawfully, operators are effectively required to engage drivers in employment contracts.

26. We request that an enforced policy mandating operators and hackney carriage drivers to engage drivers and personal assistants in employment contracts for each transportation contract entered into with local authorities (such as school run contracts). To our knowledge, the contractual terms of school run contracts issued by authorities such as Kent County Council, require operators and hackney carriage drivers to employ their drivers and personal assistants engaged in the performance of awarded contracts. However, this requirement does not appear to be enforced by some local authorities. Resultantly, operators and hackney carriage drivers may be incentivised to engage drivers and personal assistants on a bogus self-employed basis, whereby drivers unlawfully bear the transportation costs incurred in performing the contract (such as vehicle acquisition and depreciation, maintenance, fuel, insurance, and cleaning), and personal assistants are denied employment rights such as entitlement to holiday pay and the national minimum wage. Such costs should properly be borne by operators and hackney carriage drivers whom are obligated to employ their drivers (or they must deduct such expenses against drivers' earnings when calculating whether the driver earned the national minimum wage in their hours worked). As operators do not bear the true operational costs of performing the contracts, they are able to tender for local authority transportation contracts at artificial and unsustainable low prices. Resultantly, some operators and hackney carriage drivers secure local authority transportation contracts by unlawfully undercutting law abiding operators and hackney carriage drivers. The unlawful conduct of such operators and hackney carriage drivers, and the failure to regulate and eliminate this unlawful conduct may, contrary to the Competition Act 1998, constitute unlawful prevention, restriction and/or distortion of the taxi and private hire market in the district. It appears that it may potentially contravene other laws also.
27. We request the introduction of a policy whereby, every 6 months, operators are required to declare the names and badge numbers of all their drivers; and provide determinative evidence of the operators' employment of drivers and compliance with employment and revenue law.
28. Unlawfully trading operators distort the taxi and private hire market by the offering artificially low fares, partly resulting from their failure to charge VAT on fares. As operators are required to engage in contracts with customers in principle (in accordance with UTAG v TFL and Uber v Sefton), it follows that operators with an annual turnover over £85,000 are required to charge and pay VAT on their income. We request the introduction of a policy enforcing the requirement for such operators to charge pay VAT on customer fares.
29. The large number of hackney carriage drivers engaged by private hire operators in the district may be indicative of an inadequate amount of public hire trade available on the Council's streets and ranks. The fact that private hire operators attract a considerable amount of trade in the district, and are able to supply work to hackney carriage drivers (at a cost in commission fees of 20% of fare prices), may be indicative of the distortion of competition in the taxi and private hire market by operators that trade unlawfully. For

example, by violating drivers' employments rights and unlawfully shifting the operators' vehicle operating costs onto drivers. Resultantly, law violating operators are able to offer artificially and unsustainably lower fare prices which independent, lawfully trading hackney carriage drivers are unable to compete with. Further, such operators degrade the working conditions and welfare of drivers who may often be receiving payment below the minimum wage after their expenses are deducted, contrary to employment law. Commission fees (typically 20% of fares) charged to drivers by law violating operators further compounds drivers' struggles associated with low pay.

30. Drivers' low pay poses a health and safety risk to drivers and the public. For drivers may be compelled to work excessive hours to cover their business and living costs. Also, drivers may be compelled to work, for example, 6 to 7 days weekly and be unable to take adequate time off for rest, holidays or sickness without incurring financial debt. Resultantly, the health and safety risk to drivers and the public is increased due to, for example, drivers working when exhausted, fatigued or sick.

Introduction of requirement for operators to pass safeguarding and exploitation of drivers assessment

31. We request that the Council introduces and enforces a policy requiring operators to pass a safeguarding and exploitation of drivers assessment. This includes training into and enforcement of: (a) lawful engagement with drivers under employment and revenue law, (including national minimum wage, holiday pay and maximum working time duties, obligations and responsibilities); and (b) conducting business in compliance with competition law.

Removal and relocation of the taxi stand at Sevenoaks Railway Station to public land

32. We request that the Council retracts the appointment of the taxi stand at Sevenoaks Railway Station ("Sevenoaks Station") and relocates it to nearby public land. The taxi stand at Sevenoaks Station ("the rank") is the largest in the district in terms of taxi capacity, passenger footfall, and lucrativeness. As such, the rank is of critical importance to the district's licensed hackney carriage drivers.
33. In our opinion, the rank and associated taxi permit system appears to be operating and/or administered unlawfully, unfairly, and subject to abuse by SE Trains Limited ("SETL") and some private hire operators. On the whole, hackney carriage drivers are adversely affected by what appears to be, in our cursory opinion, unlawful conduct and abuses on the part of SETL and some private hire operators. We have identified a number of issues with the rank's arrangements which we are currently unable to set out in detail. However, we are currently investigating the full scope issues and concerns with the rank, and we intend to raise them with the Council appropriately as our investigation progresses. As a brief non-exhaustive example of an issue, SETL appears to be operating a 'closed shop' in relation to the issuing of permits, whereby SETL has imposed a cap on the maximum number of permits issuable annually; restricted the submission of permit applications to 1 out of 12 months of the year only; and the permits of existing permit holders are renewed before any new applicant or new recipient is granted a permit. The net result appears to be that new permit applicants and potential

recipients are unable to obtain permits. Also, new and existing hackney carriage vehicle and driver licensees and applicants must wait up to 11 months to apply for a permit, and eventually, their permit applications are very highly likely to be refused. Due to the critical importance of the rank, existing permit holders are unlikely to forego renewing their permits. Drivers granted Sevenoaks Station taxi permits trade at a considerable economic advantage to drivers who are refused permits, or otherwise have no access to the rank.

Council conducted investigation into the operation of the rank at Sevenoaks Station, irrespective of whether the rank is removed and/or relocated

34. We request that the Council conducts an immediate investigation into the operation and administration of the rank at Sevenoaks Station irrespective of whether or not the rank is removed and/or relocated. We request that the investigation includes the obtaining of data from hackney carriage vehicle proprietors and drivers into their individual permit applications submitted, granted or refused since the commencement of the taxi permit system. We suspect that the results may reveal an unlawful, abusive and unfair state of affairs, which we submit, should be treated by the Council as wholly unacceptable and remedied appropriately.
35. If the Sevenoaks Station rank is not removed and relocated to public land, we request the:
- (a) immediate removal of the cap on applications imposed by SETR. So far, our investigation has revealed that the cap is the result of irrational decision making and in our opinion, appears at the least to be contrary to the EA 2010 and the Competition Act 1998. We intend to raise this issue with the Council in greater detail as our investigation progresses.
 - (b) immediate removal of the existing restriction on the submission of taxi permit applications between 1st July to 31st July only each year. The restriction appears to be the result of unlawfully irrational decision making, and in our opinion, appears to be contrary to the EA 2010 and the Competition Act 1998. We intend to raise this issue with the council in greater detail as our investigation progresses.
 - (c) mandating of SETL (or the current operator at any given time) to: (i) operate any taxi permit system lawfully (including adhering to duties and responsibilities imposed by the EA 2010 and Competition Act 1998; (ii) retain personal data concerning taxi permit applications and issue of taxi permits for at least 6 years; and (iii) ensure that no caps are applied to the number of taxi permits issuable.
 - (d) introduction of reduced licensing application and renewal fees for driver and vehicle licences where the driver and/or vehicle proprietor has no taxi permit for Sevenoaks Station.

Data gathering in relation to Sevenoaks Station permit applications and issue

36. We request the introduction of an annual requirement for hackney carriage vehicle proprietors (and/or drivers) to confirm whether they applied for a taxi rank permit in the preceding years and the current year, and whether or not they were granted or refused a permit in preceding years and the current year. Our ongoing investigation has revealed that SETL purports to delete taxi permit data annually. We submit that this is unacceptable and may potentially be unlawful under data protection laws. In our opinion, it certainly leaves the administration of the taxi permit system open to abuse, and obstructs the ability to hold SETL accountable for its acts and omissions in relation to the administration of the permit system.

Introduction of policy to review of taxi tariffs every 6 months.

37. We request the introduction of a policy whereby taxi tariffs are reviewed every 6 months. The current cost of living crisis demonstrates how quickly the economic position can deteriorate. A lack of sufficient remedial regulatory measures may jeopardise the business, health and wellbeing of hackney carriage vehicle proprietors and drivers.

Introduction of provisions for the revocation and suspension of vehicle operator licences

38. We request the introduction of a policy providing for the revocation and suspension of operator licences where operators breach the law, including employment and competition law.

Introduction of a policy to exercise joint authorisation from TfL (other licensing authorities)

39. We request that the Council enters into an agreement with TfL whereby TfL authorises the Council's officers to jointly enforce compliance with TfL's regulatory policies which require licensees to adhere to the law. Under the sought joint authorisation agreement with TfL, we request that the Council takes action against TfL's licensees found to be in contravention of TfL's policies whilst operating within the Council's boundaries. Unlawful operations should include failures to comply with employment, revenue and competition law. In *Uber v Aslam*, the Supreme Court declared that Uber's drivers are workers, and their working time for the purposes of relevant employment legislation begins when they log onto Uber's app, and ends when they log off the app. However, in our opinion, Uber appears to be operating in defiance of the court's judgment by treating drivers' working time as only the periods when they are carrying fare paying passengers. If so, it appears that Uber is not bearing its true operating costs and it able undercut the competition by offering low fares which law abiding operators and hackney carriage drivers are unable to compete with. Uber is currently specifically targeting the transportation market in Swanley and placing Swanley hackney carriage drivers under severe economic pressure.² The proposed joint authorisation agreement would enable the Council to preclude unlawful players, such as Uber appears to be, from operating in the district by assisting TfL in its regulatory enforcement duties.

2 Please refer to file: "*Uber.pdf*" attached.

Appointment of additional ranks

40. We request that further taxi stands are appointed on public land in the district. This will increase visibility of the hackney carriage vehicle trade and drivers. We submit that it is of public benefit for a taxi stand to be of reasonable walking distance from their location. For in the event, for example, that private hire bookings are delayed or cancelled, passengers would have the added option of walking to the nearest taxi stand to secure taxi transportation. We submit that with sufficient publicisation of new taxi stands, the public and drivers may be encouraged to use the new stands.
41. Additional taxi stands may reduce the operating costs and increase the income of hackney carriage drivers. For, upon completing journeys, drivers may wait at the nearest taxi stand rather than incurring 'dead mileage' by returning to the primary source of fares, such as Sevenoaks Station, Swanley Station and Asda Superstore in Swanley. The current situation poses a risk to the local population who are not located in close proximity to the 7 listed taxi stands within the district. There may effectively be only 5 taxi stands in the district which are available to all licensed taxi drivers. For, we are unable to locate the listed stand at The Green, Westerham. Also, the largest and most lucrative stand in the district, namely the stand at Sevenoaks Station, is inaccessible to a large portion of the Council's licensed hackney carriage drivers. Further, it appears to be perpetually accessible to an exclusive group of drivers only, currently upon drivers making payment of £573.00 annually.
42. We request, with the consent of land owners, that further taxi stands are appointed on private land within the district, such as at Otford, Bat and Ball, Shoreham, and Eynsford Railway Stations, Tesco Superstore in Riverhead, Sainsbury's Superstore in Otford, Aldi Superstore in Otford, and Lidl Superstore in Sevenoaks.

Introduction of annual driver wellbeing and welfare checks

43. We request that the Council introduce a policy for it to complete annual wellbeing and welfare checks on its licensed drivers. In addition to the request for data gathering about Sevenoaks Station taxi permits applications, granting and refusals above, we request that the Council annually gathers and assesses data in relation to drivers concerning: (a) the average number of hours worked weekly; (b) the average number of days worked weekly; (c) whether they were able to generate sufficient profit to enable them to take annual leave and/or days off work for sickness; (d) the number of days taken off work for holiday and sickness respectively; (e) whether on average they take 2 consecutive days off work weekly; (f) whether they work evenings, nights and/or weekends; (g) whether, after the deduction of business expenses, they earned the national minimum wage or above on average; (h) whether they are in receipt of Universal Credit or other state benefits; (i) and whether they pay into a pension scheme.

Yours faithfully,



Shareb Affiliates