

UBER

Introduction

Uber welcomes the Welsh Government's proactive review of taxi and private hire regulations and decision to take a thought leadership role in this area.

Taxis and private hire services provide a point-to-point transportation service which helps increase the coverage and efficiency of fixed-route public transport systems. Taxi and private hire services improve mobility for persons who, for geographical or disability reasons, cannot rely on the public transport system. Taxi and private hire also contribute to the economic agglomeration effects of urban and rural conurbations, benefitting the local economy beyond the jobs created and time saved by their use.

It is, therefore, important that the right regulatory framework is put in place to deliver results for passengers across all of Wales, and we support the Government's decision to work towards this outcome by building on the Law Commission's 2014 Report into Taxis and Private Hire Services.

Based on Uber's experience and previous academic and regulatory research into the taxi sector, we believe that the best way to service the diverse needs of Welsh customers is by adopting a two-tier regulatory system with national standards for pre-booked private hire services, and local standards for ply-for-hire Taxi services. For private hire, standards should focus solely on basic elements of security and safety which customers cannot (or should not) assess for themselves.

In the first part of this note, we discuss in more detail the need for a two-tier system and national PHV standards in Wales. We then respond to the consultation questions in the second part of the note.

Principles for delivering benefits to Welsh customers

The two tier system suits the diversity of Wales

There are two main services within the taxi / PHV sector: ply-for-hire "flag" services (which includes hailing and taxi ranks) and pre-booked "dispatch" services. Historically, flagging has been reserved for taxis while both taxis and PHVs can compete in the dispatch segment.

When a customer is flagging a car, they will usually take the first car available and have little or no opportunity to comparison shop. Regulation is therefore necessary to promote safety and avoid price gouging and poor service.

When pre-booking, a customer has the opportunity to choose among competing providers based on their own experience, the company reputation and the price/quality point that the customer desires. Because customers can easily compare providers, competition between providers leads to better services, competitive prices, innovation and new services targeting different customer groups. In this context, competition should only be restricted by regulations where there are evidenced concerns around customer safety. Customers can and should be encouraged to choose other parameters of the service (namely price and quality) from a range provided by the market.

Because of the fundamental differences between these services, the Law Commission recommended a two-tier regulatory system.¹ This view is shared widely among academics,² regulatory agencies³ and international organisations.⁴

¹ Law Commission Report on Taxi and Private Hire Services, [Law Com No 347](#), Chapter 2.

² Schaller, [Unfinished Business: A Blueprint for Uber, Lyft and Taxi Regulation](#), 20 September 2016, Bekken J T 2003. "[Taxi Regulation in Europe](#)", Jørgen Aarhaug & Kåre Skollerud, [Taxi: Different Solutions in Different Segments](#), Transportation Research Procedia Volume 1, Issue 1, 2014, Pages 276-283.

³ Office of Fair Trading, [Final Report](#) into The regulation of licensed taxi and PHV services in the UK, November

A two-tier system is particularly relevant for the range of population density, economic and demographic variation that Wales exhibits.

In more rural areas, the low density population means ‘flagging’ is likely to be uneconomic and point-to-point services will be provided by PHVs only. Requiring that the PHVs in these areas could also operate as ply-for-hire taxis would impose substantial unnecessary costs, increasing price and decreasing much-needed supply.

However, in more urban areas such as Cardiff or Swansea, the two-tier system will allow customers to ‘flag’ taxis with confidence, while also giving them the choice to pre-book from a range of services. Competition between taxis and PHV operators and between different PHV operators in these areas will likely be highly beneficial to customers.

Having different categories within a single tier would not simplify the sector for customers. In fact, it would likely render it more complex and less efficient. The adoption of a single tier regime could result in drivers choosing to be active in the hailing sector rather than pre-booked (as in the latter they have to relinquish some of their earnings to operators and [may]). Insofar as this happens, customers who live in less densely populated areas may suffer as taxis will be encouraged to service areas of high population density and work predominantly during peak demand hours to maximise their profitability.

The single tier system also lacks the flexibility of the two-tier system, to the detriment of customers. It means private hire services can no longer compete on price (as they would be subject to regulatory fares of taxis) and this would likely result in higher prices overall for customers as well as lower levels of quality (as, without competition on price, PHVs will not be able to control the level of quality they can provide to customers⁵ or the supply available in the market).

Proportionate, national regulations for PHVs should focus on safety standards

The two-tier system is a necessary but not sufficient condition to unlocking benefits for Welsh customers. It is also necessary to put in place the right regulatory framework for the private hire sector.

The type and degree of regulation for ply-for-hire taxis should deal with the specific features of flagging. Parameters such as price and minimum quality standards should be fixed by reference to local economic and social factors. It is therefore appropriate that taxi regulation is set locally, and covers both price and service levels.

However, as discussed above, customers can shop around and choose price and quality standards in the private hire sector. Restricting operators’ ability to flex these parameters limits their ability to meet the needs and preferences of customers. Additional regulations may also have unintended consequences, for example the use of livery stickers on the resale value of a car. Regulation should thus be limited to those features that a customer cannot easily ascertain, eg insurance, and baseline suitability of the driver and car. These safety standards are by their nature universal since they are defined by what it is that a customer is able to observe. They should apply at a national level. We propose that such standards would cover:

For drivers

1. Enhanced criminal background;
2. Clean driver licence;
3. Disability awareness training;
4. Immigration status; and

2003, para 7.6, Competition and Markets Authority, Private hire and hackney carriage licensing: [open letter to local authorities on Regulation of taxis and private hire vehicles: understanding the impact on competition](#), April 2017.

⁴ OECD, ECMT Round Tables (De)Regulation of the Taxi Industry.

⁵ e.g. Uber itself operates two platforms UberX and Uber Exec, with the latter made up of luxury cars. If Uber could no longer differentiate fares, it could not run both services simultaneously.

5. Medical fitness.

For vehicles

1. DVLA Vehicle Registration Certificate;
2. Hire and reward insurance;
3. MOT certificate;

These regulatory safety standards do not reflect local economic factors and therefore should not deviate between local areas. They should also be proportionate in the sense of identifying measures which will keep customers safe and there should not be any less onerous methods of achieving this objective.

Setting the standards at a national level presents a number of other advantages:

1. It avoids local regulatory capture by entrenched interests;
2. It avoids regulatory arbitrage between local authorities;
3. It facilitates enforcement and eradicates many of the concerns associated with cross-border private hire, and out-of-area taxi work; and
4. It makes it easier for the CMA and the Welsh government to have oversight over content of standards.

This view is supported by the CMA which has stated that ‘competition should only be restricted by regulatory rules to the extent that is necessary to protect consumers’⁶ and the Law Commission which recommended that ‘private hire services should only be subject to national standards. Licensing authorities should no longer have the power to impose local conditions.’⁷

Setting regulations that focus on safety standards benefit customers

Setting proportionate regulations helps to ensure that entry barriers are low and that companies can effectively compete against one another, deliver the services customers want and develop innovative solutions that benefit customers. By harnessing technological and fintech innovations, customers in the private hire sector have benefitted from the adoption of cashless payment methods, the use of apps to facilitate bookings, and the provision of driver and car details to passengers when a booking is made via SMS or in app.

The ability of private hire operators to unilaterally set their pricing and other parameters of competition is essential to promoting competition, which will push prices lower and quality higher. Conversely, restrictions on this ability could be particularly harmful for customers. The CMA discusses the effects of a number of licensing conditions in its Open Letter to Local Authorities on private hire and hackney carriage licensing. We would encourage the Welsh Government to carefully consider this advice.

Importing pricing models from other modes of transport is inappropriate

Uber understands that the Welsh Government is considering the possibility of importing the rail fare pricing model into private hire services, i.e. open competition for advance bookings and a maximum regulatory fare for same day (i.e. ‘turn up and go’) travel.

The pricing regulation applicable to rail travel is justified: customers seeking ‘turn up and go’ tickets face a monopoly transport provider that could set very high fare rates. Regulation is necessary to protect customers from excessive pricing in that context. However, when a customer seeks to book a ticket in advance, the rail provider faces more competition for that custom, including from other modes of transport and so there is less risk of an excessive fare being charged. The distinction

⁶ CMA Open Letter to Local Authorities, [Regulation of taxis and private hire vehicles: understanding the impact on competition](#), April 2017.

⁷ [Law Com No 347](#), Recommendation 40.

between 'turn up and go' travel and pre-booked correlates very closely with the distinction between hailing and pre-booked services. In hailing, taxis have a temporary monopoly over customers and so maximum fares are necessary to protect the customer whereas in the pre-booked segment, the customer can choose between different providers (even if travel occurs on the same day) and fare restrictions are not necessary.

Moreover, business models (and marginal costs) vary hugely between taxis/PHVs and trains and buses. These modes of transport carry a large number of passengers on set schedules. Their pricing strategy will be set dynamically to achieve maximum occupancy on predetermined routes. On the other hand, the objective of taxis/PHVs is to maximise utilisation rates as fares do not vary depending on number of passengers. Different operators may choose to vary rates depending on how early the booking is made but there is no obvious benefit in forcing them all to do so. In fact, it could harm more vulnerable customers who cannot rely on public transport and whose movements are less regular or predictable.

Setting maximum regulatory fares is likely to be counterproductive

Uber would strongly recommend against the imposition of maximum regulatory fares. In jurisdictions where they have been introduced, eg Netherlands,⁸ they have led to an increase in fares (as providers increased fare to the maximum allowed).⁹

They also restrict the ability of PHV operators to set differential pricing (e.g. charge more during high tourism season). By flexing fares, PHV operators can offer cheaper rates to price-sensitive riders and this benefits the more vulnerable/low income sections of society - who are often more likely to be locals.

The Welsh Government may also want to consider the unintended consequences maximum fares may have.

If the maximum fare is set above the market rate, it may harm customers by pushing up fares to that maximum rate (as discussed above). A maximum fare set below the market rate, will result in the exit of some drivers or operators that would have otherwise competed to meet consumer demand and make potential entry by new drivers/operators less attractive.

A lack of supply will lead to longer waiting times for customers. Some may choose instead to rely on unlicensed drivers instead, which carries significantly more danger for customers.

Finally, in practice it can be very difficult to put this requirement into effect: how would the Government/local authorities set the maximum fare? How often would it be reviewed to reflect changing conditions in markets/changing costs? How would it be monitored? These are all questions to which licensing authorities will need robust answers.

Maximum regulatory fares do not increase price transparency

Pre-booked services allow customers to know the price (range) of a trip in advance and thus to compare prices between providers. As such, price information is already available to potential customers and the imposition of maximum regulatory fares would have no impact on price transparency in the private hire sector. It may be necessary for customers to be aware of the likely price of a hailed journey if they are not already and there are marketing campaigns which could be put in place to ensure that information is shared with potential customers.

Stipulating service standards is likely to have negative unintended consequences

⁸ In 2000, Netherlands amended its taxi regulations from fixed regulatory tariffs to fixed maximum tariffs. The authority expected this change to lead to a relative decrease in tariffs and more distinction between different providers. However, providers used the change in law to increase their rates up to the maximum tariff - the maximum rate acted more as a guide for setting the pace of tariff increase rather than functioning as a ceiling. See Paragraph 4.3 of the Deregulation of the Taxi Industry: Experiences in the Netherlands in the OECD's ECMT Round Tables on (De)Regulation of the Taxi Industry, No. 133..

⁹ The same phenomenon occurs in a variety of different contexts, e.g. university tuition fees.

In pre-booked private hire services, customers can choose their preferred level of quality and fare. By introducing minimum service standards, regulations limit the extent of choice available to customers, to the detriment of the most vulnerable sections of the population who are most price sensitive and least concerned with quality standards. The absence of minimum quality standards does not result in low quality services for customers but allows providers to calibrate their offering to the preferences of their customer base.

Certain service standards may also result in negative unintended consequences. Examples include livery stickers which lead to lower resale value, increasing costs and reducing the introduction of new vehicles. Livery stickers including the operator brand may also preclude private hire vehicles from driving for several operators at the same time or restrict their ability to shift between different operators.

Helping customers in low population density areas

We are conscious that low population density in some areas of Wales may mean that in some areas very few private hire operators might be active. However, imposing or retaining high levels of regulation in these areas is also likely to do more harm than good. A better solution may be to:

Keep barriers to entry low by ensuring PHV regulations are proportionate and limited to consumer safety. Given that for many operators and drivers regulatory costs are a substantial part of sunk costs (i.e. costs which cannot be recovered if they exit the market), keeping regulatory barriers low will promote entry; and

Maintain cross-jurisdictional driving (with cross-jurisdictional enforcement);

This will increase the number of PHV operators any given area will be able to sustain. Further, even if there is only one PHV operator in an area, these conditions will ensure that it cannot set excessive fares as this would lead to new entrants entering the market.

With this in mind, here is the response to different consultation questions.

Response to individual questions

Question 1. Should the two tier system be retained in Wales or should a single tier model be developed for the taxi and private hire vehicle sector in Wales?

As discussed above, because of the fundamental difference between flagging and dispatch services, a two-tier system is necessary. This view is supported by academics, the CMA and the OECD.

Question 2: Should the arrangements in Wales require taxi drivers to maintain accurate records of:

1. all journeys undertaken in taxis;
2. only journeys that have been pre booked or started out of the taxis licensing area; or
3. not to require taxi drivers to maintain records

N/A. All journeys are pre-booked on Uber and records kept of each.

Question 3: Should the arrangements for licensing taxis in Wales require any persons handling personal information to be licenced or not?

N/A

Question 4: Should a person taking a booking for a private hire vehicle require to be licenced?

Uber supports the existence of a proportionate licensing regime for PHV operators. The purpose of the licensing regime is to ensure that operators help deliver the customer safety objectives driving wider national standards. Any unrelated requirements, e.g. to hold a physical office or compulsory landline helpline within the licensing authority and/or restrictions on an operator's business model

(e.g. how data is recorded) are unlikely to be proportionate. Rather, as highlighted by the CMA,¹⁰ they are likely to harm consumers' interests.

PHV operators often adopt different business models and rely on different types of technology. Licensing regulations should thus be goals-based, as opposed to prescriptive. This is in line with the Government's Principles of Good Regulation¹¹ which state that prescriptive regulation 'will often be less flexible and less sympathetic to the way markets work than other tools' and that 'Prescriptive regulation quickly becomes outdated in areas where market conditions or technologies change rapidly, and may inhibit innovation.'

Operator licensing regulations should cover:

- Upon licensing: Evidence that the business taking bookings is suitable (so as to prevent those with, for example, links to organised crime, from acquiring a licence), including information on company directors.
- Upon licensing: A named contact, email address and phone number able to provide information required in response to a reasonable request;
- Upon request: Booking records, setting out the time and date of each trip made, the pickup and drop off location, driver information (name and licence details) and vehicle information;
- Upon request: Copies of private hire driver licences, vehicle licences and evidence of proper insurance for licensed drivers/vehicles for which the business takes bookings;
- Upon request: details of any drivers / vehicles which the business has ceased to use due to complaints from the general public or safety concerns.

Information provided to the public should include:

- Estimated time of arrival of vehicle (in minutes).
- Name (and, if possible, photograph) of driver, and make, model and number plate of car.
- Before the trip, on request, an estimate of the fare and information on how fares are calculated.
- At the end or after the trip, the final fare charged if the price was not agreed upfront.
- A mechanism to provide feedback / make queries or complaints.

Question 5: Should the "fit and proper persons" test for the application and issue of licences be retained in Wales?

Uber supports a national standard for 'fit and proper persons' to apply to private hire drivers with the objective of ensuring the safety of customers across Wales. We set out above the main elements that the 'fit and proper persons' test should include, namely:

1. Enhanced criminal background check;
2. Driver licence;
3. Disability awareness training;
Immigration status; and
4. Medical fitness.

Question 6: Do you agree that local authorities should have the discretion, within certain constraints, to impose conditions on individual licence holders to meet additional local

¹⁰ CMA '[Regulation of taxis and private hire vehicles: understanding the impact on competition](#)', April 2017, Examples of conditions that may harm the interests of passengers.

¹¹ Better Regulation Taskforce, [Principles of Good Regulation](#).

requirements and standards where there is a reason to do so?

As per our comments above, and in line with the CMA's guidance to local authorities, licensing requirements should ensure that passengers are adequately protected. There are a number of features which passengers would find difficult to verify (driver's ability/health, proper insurance, safety of the car) and which can be easily set at a national level.

Effective competition is best placed to deliver customer benefits and additional regulations would therefore likely harm customers rather than benefit them. Allowing local authorities to impose additional conditions also creates a risk of regulatory capture by incumbents and makes Government/CMA oversight and cross-jurisdictional enforcement very difficult to achieve.

Question 7: In relation to setting fees for the licensing of taxis and private hire vehicles, do you agree that:

1. The fees for the licensing of private hire vehicles should be set by the Welsh Ministers with fees for taxis being set by local licensing authorities at a rate not less than those applied to private hire vehicles – as recommended by the Law Commission; or
2. Local licensing authorities be required to set all fees in their areas, exercising their functions having due regard to guidance issued by the Welsh Ministers?

Licensing and enforcement levels should be proportionate to likely harm for both for taxis and PHVs, and fees should cover costs unless there is a good reason to depart from this approach. Uber would also welcome consideration of how licensing fees could be used to increase cross-jurisdictional enforcement and information sharing.

Question 8: Do you agree that:

1. Local licensing authorities should be required to publish driver, vehicle and operator licensing data information as prescribed by the Welsh Ministers as recommended by the Law Commission, or
2. Local licensing authorities should be required to share information about any enforcement action that has taken place and resulted in the removal or suspension of a licence, and that licensing authorities required to consult that information prior to any application for a licence being granted.

Uber supports the disclosure of enforcement action that results in the removal or suspension of a licence in the interest of customer safety. However, we do not see any benefit to customers of publishing driver, vehicle and operator data. Rather, licensing data is consistently evolving and may be erroneous. In particular, drivers join and leave operators regularly and may work for several operators simultaneously. Because the data may be out-of-date and/or confusing, it may in fact endanger customers. For this reason, we do not support the publication of this data.

Question 9: If required, should the Welsh Ministers have the power to make a scheme that:

1. a. Allows taxi licences to be traded between licence and prospective licence holders; or
2. Requires licences to be returned to the local licensing authority for reissue but allow for a compensation scheme to be established ensuring that licence holders that have traded plates previously in relation to Wales to be compensated for any potential loss.

N/A

Question 10: Do you consider that equality requirements proposed by the Law Commission can be met under the requirements imposed by the general public sector equality duty (s149) and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011?

Uber supports the introduction of mandatory disability awareness training for all taxi and private hire drivers. We are committed to serving the needs of wheelchair users and other passengers with disabilities in Wales. We welcome the opportunity to have constructive discussions with the

Secretary of State for Transport about optimising accessibility requirements. In our experience, quantity restrictions are particularly unhelpful in promoting better accessibility as drivers may have incentives to remain in more populated areas and off pre-booked services.

We would recommend that the recommendations of the the UK's Accessibility Action Plan are followed.¹² Disabled people face far, far too many instances of inadequate service, overcharging and limited availability of wheelchair accessible vehicles.

Uber has worked with Scope and other organisations representing disabled people, to review these challenges. This work resulted in the launch of two new travel options: ASSIST and ACCESS, enabling passengers to request a driver who has completed disability awareness training and to book a wheelchair accessible PHV. We have also made sure that these services cost no more than our cheapest standard option.

Question 11: Do you agree that applicants or existing licence holders must first allow a review of a refusal, suspension or revocation by a person not involved with the initial decision to be undertaken within a reasonable timeframe before an appeal to magistrates' courts can be made?

Uber considers that licence holders should be given a choice to ask for reconsideration or proceed to magistrates' court. If the driver requests a reconsideration, this should be done within well-defined and respected timeframes.

National standards should include very clear guidance for refusals, suspensions, or revocations of licences.

¹²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638404/accessibility-action-plan-consultation.pdf