

# Licensing Sub-Committee

18 March 2020



<b>Subject</b>	To consider the application from OLA UK Private Ltd of Suite 139 Business Design Centre, 52 Upper Street, Islington London, N1 0QH for the grant of a Private Hire Operator's licence.		
<b>Purpose</b>	For determination		
<b>Report of</b>	Deputy Chief Executive	Ward	Staines
<b>Contact</b>	Lucy Catlyn, Principal Licensing Officer, 01784 444202		

<b>Reason for referral</b>	<p>On 4 September 2019 the Licensing Department received a new Operators licence application form from Fionn Hart from OLA UK Private Ltd. This is attached as <b>Appendix A</b>.</p> <p>Section 55 of the Local Government (Miscellaneous Provisions) Act 1976 (LG(MP) A 1976) requires that the Council shall not grant a Private Hire Operators licence unless they are satisfied that the applicant is a fit and proper person.</p> <p>Under the scheme of delegations officers can refer applications to be determined by the Licensing Sub Committee.</p>
<b>Operator's background</b>	<p>OLA UK Private Ltd are a private limited company registered under company number 1154418. The company was incorporated on 17 January 2018. They have 4 current officers: Fionn Conor Mccarthy Hart –Director Balasubrahmanyam Vijay – Director Karl Eric Andres Lutzow – Director</p> <p>OLA UK Private Limited intend to operate an APP based booking platform for providing transportation services through private hire vehicles on their platform; essentially allowing mobile phone users to book the services of private hire and metered taxis via an APP.</p> <p>OLA UK Private Limited is one of the group companies on ANI Technologies Private Limited, which is a technology company providing an online platform for taxi/minicab services based out of India. ANI Technologies operates under the brand name "OLA" and has presence in more than 110 cities in India. OLA has successfully launched its operations in Australia and is desirous of expanding its operations in the UK. As of February 2020, OLA has begun its commercial operations in around 79 Local Authority areas, including South Wales, Bristol Area,</p>

	Exeter, Coventry, Bournemouth, Liverpool, Luton, Manchester and Sunderland.
<b>Legal Implications</b>	<p>According to Section 255 of the Greater London Authority Act 1999, the provisions of both the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 apply in relation to the licensing of hackney carriage and private hire vehicles and drivers within the Spelthorne Borough Council area, along with the Spelthorne Borough Council Hackney Carriage Byelaws.</p> <p>Consideration must be given to the Human Rights Act 1998, namely Article 6 (the right to a fair trial), Article 8 (the right to respect for private and family life) which is a qualified right and Article 1 of Protocol 1 (the protection of property) which is also a qualified right.</p> <p>Article 6 provides licensees the right to a fair trial and provides as a minimum; a fair and public hearing, an independent and impartial tribunal (via an appeal in the Magistrates' Court) and a reasoned judgement. Any decision to potentially revoke or suspend a licence will engage these rights.</p> <p>In relation to Article 8, the purpose behind the licensing regime is public safety and accordingly a licence can be removed without consideration of the impact on a person's family.</p> <p>Case law has established that a decision maker dealing with a licensed driver should not regard the licence as a possession for the purposes of Article 1 of Protocol 1.</p> <p>Due regard must be given to the Public Sector Equality Duty. The Equality Act 2010 sets out obligations for public bodies to advance equality of opportunity among people and eliminate discrimination.</p> <p>Regard should also be given to Spelthorne Borough Council's Hackney Carriage and Private Hire Licensing Policy 2019 and the Private Hire Conditions.</p>
<b>Options</b>	<p>The Sub-Committee is asked to consider whether or not OLA UK Private Ltd is a fit and proper person to hold a private hire operator's licence.</p> <p>After considering all of the information, including oral representations, the options open to the Sub-Committee in respect of the operator licence application are:</p> <ol style="list-style-type: none"> <li>1) Grant the Operator's licence for a 5 year period</li> <li>2) Grant the Operator's licence for a limited duration up to 5 years</li> <li>3) Grant the Operator's licence with such additional conditions as the Sub Committee consider reasonably necessary</li> <li>4) Refuse the application. This carries a right of appeal to the Magistrates Court.</li> </ol> <p>If the Sub- Committee choses option 4 they must be satisfied that OLA are not 'fit and proper person' to hold an Operator's licence (as set out in s.55 of the 1976 Act) and give their reasons for the decision reached.</p>

## 1. Background

- 1.1 The Licensing Department received an application from OLA on 4 September 2019 for a 5 year new Operators Licence for 21 or more private hire vehicles. They advised on their application form that ‘as an APP-based service we will on-board all drivers on launch – we will provide these details immediately upon launching’. OLA have advised on their application form that a “nearby office will be open during regular working hours and the APP will be available 24/7”.
- 1.2 Since the application form has been submitted OLA have advised that their office address in Spelthorne is: Mansell Office, 21 Woodthorpe Road, Ashford, Middlesex, TW15 2RP. I attach as **Appendix A** a copy of their application form. OLA have advised that the office would be an unmanned office with a desk, chairs and internet access and that that there would be no public access.
- 1.3 Customers book a ride with OLA (the Operator) through an APP on their smartphone, which automatically locates the nearest vehicle and dispatches it to them with full details of the driver and vehicle. The driver picks up the customer and upon completion of the journey the rider is charged via their credit or debit card, details of which are entered prior to the journey.
- 1.4 OLA have advised that they are able to meet the Licensing Authority at the office at any time in order for us to inspect their records or just for a general meeting. Further when they launch in Surrey they would have a central operating office which would be manned. A Regional Manager would be based there and would be our single point of contact. It should be noted that this would be somewhere in Surrey, but not necessarily in Spelthorne.

## 2. Additional Information

- 2.1 OLA provided a cover letter on 2 March 2020 in support of their application. Please find attached at **Appendix B**. The main points of this letter are covered in this report. OLA have also provided documentation to support their application which I have attached as **Appendix C**.
- 2.2 OLA were founded in India in 2011 by Bhavish Aggarwal and Ankit Bhati and is one of the world’s largest ridehailing companies.
- 2.3 OLA launched in the UK in 2018 and hold 80 Private Hire Operator Licenses throughout the country. Please find at **Appendix D** a list of their current operator licenses. This document also details where they have applied for a licence elsewhere as well.
- 2.4 OLA have advised that customers can book a ride through the OLA APP and can choose between a metered taxi or a private hire vehicle. They have stated that passenger and driver-partner safety is their priority and they have processes to make rides safer for passengers and drivers including in-APP emergency features, 24/7 customer care and an option to share ride details with emergency contacts.
- 2.5 The Licensing Department asked OLA what system they have in place for when a driver’s badge and plate is going to expire to ensure that they get the renewed badge of the driver. OLA have advised that the drivers receive messages in the lead up to their badges and plates expiring, reminding them

that they are due to expire and that they need to upload their updated versions. OLA have advised if drivers do not upload them in time they are automatically 'offroaded' (temporarily blocked from the APP) until they do.

2.6 Drivers supply their insurance and MOT when they apply and OLA state that the driver receives notifications when the renewal date is upcoming and is automatically 'offroaded' if any documents become out of date.

2.7 OLA have advised that they hold both the national insurance number and DLVA driving licence number for each driver as a unique identifier saved in their system. This means that if a driver is ever blacklisted with OLA they will not be able to drive with them again, even if they attempt to on-board with them under a new name or with new documents such as insurance or a council issued drivers licence.

2.8 The applicant has been invited to attend the meeting in support of the application.

### 3. Sub-Contracting

3.1 The licensing department have made enquiries with OLA regarding journeys that are booked and they have advised:

<p>Journeys starting and finishing in another district where OLA has a licence:</p>	<p><i>"We do not limit the number of jobs which drivers can do, so they can do as many as they like in Guildford, Runnymede, Woking etc. When done by Spelthorne drivers, we would subcontract the booking to our Spelthorne licence in order to comply with the legislation. The only exception would be if a job took them a long way from the region, for example Kent or Reading. Drivers would then only be able to get a job back to their licensed area."</i></p>
<p>Journeys starting in a district where OLA does not have a licence:</p>	<p><i>"If a journey has taken a driver to a council where OLA is not licensed, they would technically be able to get a job back to their licensing area. However this would be fairly unlikely as there would not have been any marketing done in the area, so customer app use is likely to be minimal. It's more likely they would not be able to do any pickups until they returned to their licensed area. Drivers would not be able to any jobs within the district."</i></p>

3.2 OLA state that they 'geo fence' the district to ensure all bookings can only be taken in Spelthorne. That "GPS/mapping data is built into the APP, which means that the APP 'knows' the location of the phone and therefore the user and whether they are within the district or not".

3.3 As per James button (Button on Taxis: Licensing Law and Practice 4<sup>th</sup> edition) point 12.60 "in October 2015 two new sections were introduced to the LG(MP)A 1976 by the Deregulation Act 2015. Sections 55A and 55B allow a

private hire operator to sub-contract a booking to another private hire operator, irrespective of where either is licensed within the UK mainland, with the exception of Plymouth". The relevant sections are at **Appendix E**.

#### **4. Spelthorne Borough Council taxi policy requirements:**

- 4.1 Spelthorne Borough Council's Taxi Policy point 2.10 states: "with the increasing popularity of APP-based PH Operations there has been an influx of enquiries from prospective PH Operators who wish to work via "virtual offices". For the avoidance of confusion, a virtual office is one which need not be manned, from which any landline is redirected to a head office based elsewhere (often outside of the borough). In line with legal guidance outlined in Button On Taxis and under these circumstances, the Council is prepared to accept applications for PH Operator licences under the proviso that the applicant agrees to supply digital records from their head office without delay on request from a LEO or other authorised officer working on behalf of the Council. Any failure to subsequently do so would immediately call into question the suitability of the applicant to hold a PH Operator licence and would usually trigger a referral to a Licensing Sub-Committee accordingly in order for members of the Licensing Committee to determine whether they deem it appropriate for the licence to remain in place." A copy of the Spelthorne Borough Council Taxi Licensing Policy 2019 is attached at **Appendix F**.
- 4.2 The Licensing Team have checked with OLA and they have advised that they are able to provide digital records from our single point of contact without delay.
- 4.3 The Spelthorne Borough Council Taxi Licensing Policy at 5.4, together with (attached as **Appendix G**) 'Form A Spelthorne Borough Council Private Hire Operators licence conditions of licence' details the conditions we expect Operators to follow.
- 4.4 Under the Spelthorne Borough Council Taxi licensing policy 2019 applicants and every controller are required to submit a standard DBS disclosure or a Police National Computer (PNC) check obtained within the last month.
- 4.5 A Basic Disclosure and Barring Service (DBS) check was submitted with the application form for Fionn Conor McCarthy Hart which is dated 22 July 2019 and no police records of convictions, cautions, reprimands and warnings are recorded. A copy of this is attached at **Appendix H**. A further updated DBS was submitted on 2 March 2020 dated 29 November 2019 which shows no offences recorded.
- 4.6 A basic DBS check was submitted on 2 March 2020 for Balasubrahmanyam Juturi dated 20 January 2020 and shows no police records of convictions, cautions, reprimands and warnings are recorded. A copy of this is attached at **Appendix I**.
- 4.7 A basic DBS check was submitted on 2 March 2020 for Karl Eric Lutzow dated 7 November 2019 and shows no police records of convictions, cautions, reprimands and warnings are recorded. A copy of this is attached at **Appendix J**.
- 4.8 As per point 2.12 of the Spelthorne Borough Council Taxi Licensing Policy - all controllers working under the employ of a Spelthorne-licensed PH Operators (whether paid or not) will be required to undertake this training

module (Barnardos' Safeguarding Adult & Child Sexual Exploitation (CSE) online training module) before commencing work. The Licensing Sub Committee need to direct who they specifically want to undertake the CSE Training.

## **5. Legal Implications**

- 5.1 A private hire operator (PHO) is the person who takes a booking for a private hire vehicle (PHV) and then dispatches a private hire vehicle driven by a licensed private hire driver (PHD) to fulfil that booking. All three licenses (PHO, PHV and PHD) must have been granted by the same authority.
- 5.2 The underlying purpose of this regulatory regime is "to provide protection to members of the public who wish to be conveyed as passengers in a motor car provided by a private hire organisation with a driver" (St Albans District Council v Taylor [1991] RTR 403-A-B per Russell LJ).
- 5.3 A private hire vehicle can only be despatched to a customer by a private hire vehicle. The licensing of operators of private hire vehicles is provided at section 55 of the LG (MP) A 1976 (**Appendix E**).
- 5.4 The Council thus has a statutory duty to grant the licence unless it considers that the applicant is not a fit and proper person to hold a licence.
- 5.5 The licence should be granted for a five year period unless there are specific reasons in the particular circumstances of the case that justify granting the licence for a shorter period.
- 5.6 Section 80 of the 1976 Act defines "operate" as follows: - "operate means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle".
- 5.7 Section 46(1) (d) LG (MP) A 1976 makes it clear that anyone acting as an operator must have an operator's licence: "(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under S55 of this Act" and a local authority cannot grant a licence (s55(1)) "unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence". Attached as **Appendix K**.
- 5.8 Should the Sub-Committee decide not to grant the operator's licence to OLA, the grounds on which such a decision was made must be given to them in writing within 14 days of the date of the hearing, as required by section 62(2)(a) of the Local Government (Miscellaneous Provisions) Act 1976.
- 5.9 Under the provisions of section 62(3) LG (MP) A 1976 OLA has the right to appeal against the decision to the Magistrates Court within 21 days of receiving written notice of the Sub-Committee's decision.

**Appendices:**

Appendix A	Application form
Appendix B	Cover letter from OLA
Appendix C	Supporting documentation from OLA
Appendix D	List from OLA of Operator licenses applied for/granted
Appendix E	Section 55 LG (MP) A 1976
Appendix F	Spelthorne Borough Council Taxi Policy 2019
Appendix G	Form A - Spelthorne Borough Councils' PH Operator Conditions
Appendix H	Fionn Hart DBS dated 29 November 2019
Appendix I	DBS Balasubrahmanyam Juturi dated 20 January 2020
Appendix J	DBS Karl Eric Lutzow dated 7 November 2019
Appendix K	Section 46 LG (MP) A 1976