

Guidance for London Private Hire Vehicle Operators: Contracts with Passengers

Introduction

Following the Divisional Court's judgment¹ given on 6 December 2021, in order to operate lawfully, under the Private Hire Vehicles (London) Act 1998 (the 1998 Act) a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking.

It is contrary to London private hire vehicle (PHV) operators' statutory role, and against the interests of public safety, for London PHV operators to transfer responsibility for the provision of private hire services onto others, such as drivers.

In order to comply with the 1998 Act, London PHV operators **must** therefore contract directly with passengers and **must** do so on their own behalf as opposed to on behalf of someone else (e.g. a driver). Contracting with passengers as "*principal*" means that operators must be legally responsible for the provision of the journey (or transportation services).

Prescribed licence condition

We have prescribed a licence condition to ensure all London PHV operators are aware of their obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.

Regulation 9(14) of the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (the 2000 Regulations) provides that:

"The operator shall enter into a contractual obligation as principal with the person making the private hire booking to provide the journey which is the subject of the booking and any such contractual obligation must be consistent with the 1998 Act and these Regulations."

Purpose of this guidance

We recognise that compliance with the obligation as confirmed in Regulation 9(14) of the 2000 Regulations (referred to in the rest of this note as "the obligation") may require changes to how operators organise themselves and do business. The purpose of this guidance is to assist operators with their consideration of whether change(s) are required to comply with the obligation and what those change(s) might be. However, the guidance has no legal effect in or of itself and it is a matter for individual operators to make their own decisions as to what they need to do to ensure compliance with the obligation.

We also recognise that making changes to the contractual arrangements between operators and their passengers and drivers, may impact on operators' compliance with other areas of

¹ [Uber London Ltd v Transport for London & others \[2021\] EWHC 3290 \(Admin\)](#)

law, which are outside of TfL's responsibility and expertise. We encourage licensees to take independent advice to ensure compliance with all such obligations as appropriate. For example, TfL is not able to advise operators in relation to their tax responsibilities and therefore licensees should seek their own independent advice or contact HMRC for further advice and guidance.

Who does the obligation apply to?

The obligation applies to all London PHV operators regardless of how many vehicles and drivers are available to them, the employment status of their drivers who carry out bookings accepted by them and whether the operator accepts bookings by telephone, in-person, online or via an app.

What does this mean for London PHV operators?

London PHV operators must satisfy themselves that they are complying with the obligation and fulfilling their responsibilities under private hire legislation in relation to the contractual arrangements they have in place with passengers and drivers. These responsibilities include that:

- a London PHV operator must – itself – accept bookings from its passengers, rather than anyone else (e.g. a driver) doing so;
- a London PHV operator must – itself – take responsibility for the journey from point A to point B, rather than anyone else (e.g. a driver) doing so;
- the booking must be carried out in a London licensed PHV (or taxi) driven by a London licensed driver; and
- the booking must be carried out for a fare which was either agreed or for which an accurate estimate was provided in advance.

The obligation applies to operators in the same way regardless of how they operate (e.g. if they take bookings via an app or over the telephone) and whether or not they use written contracts with passengers and/or drivers.

A contract will exist even if it is not recorded in writing and the same requirements apply to operators who orally agree arrangements with passengers as they do to those who have written terms.

An operator can still sub-contract a booking to another licensed operator but the contract with the operator who initially accepted the booking must remain in force in the usual way.

All operators must comply with the obligation including those without written contracts. Indeed, what a written contract says may not be conclusive evidence that an operator is complying with the obligation. What happens in practice must also be consistent with the obligation.

Operators with written contracts

For operators that have written contracts, there are no fixed rules concerning what those contracts should say in order to be compliant, but they must be consistent with the 1998 Act and the 2000 Regulations, and in particular the obligation to provide the journey that is the subject of a booking.

We would be likely to consider an operator to be compliant with the obligation if the written contract and the way in which the operator provides its services:

- a) makes it clear that the London PHV operator is responsible for both accepting the booking as well as the provision of the journey (this is referred to by some operators and referred to in the rest of this guidance as the “transportation services”);
- b) states that a contract is created between the operator and the passenger for the booking as well as the provision of the transportation services;
- c) refers to fares for the journey being collected by the operator or collected by the driver on behalf of the operator, including arrangements where the driver acts as the agent for the operator in collecting fares;
- d) makes it clear that only the operator can cancel a booking with a passenger, (although the driver may reject an offer from the operator to carry out a particular journey); and
- e) makes it clear that liability in relation to the transportation services belongs to the operator.

We would likely not consider an operator to be compliant if the written contract states that the operator:

- a) retains responsibility only for accepting bookings and that drivers are responsible for providing the transport service or journey, or that the passenger’s contract is with the driver;
- b) acts only as an agent for the driver in relation to the transportation services;
- c) is not a transportation provider or does not provide transportation services;
- d) is an intermediary between the passenger and driver who is the transportation provider;
- e) has established payment arrangements by which passengers pay drivers directly, with the operator taking a fee or a proportion of the fare as the driver’s agent;
- f) transfers liability for its obligations under the 1998 Act onto anyone else such as drivers (although this does not prevent them seeking contractual redress from the drivers separately); or
- g) has no responsibility in relation to the performance of the contract to provide transportation services because such services are provided by the driver.

Operators without written contracts

In all cases, whether there is a written contract or not, we would expect the operator's processes and procedures to be consistent with the 1998 Act and the 2000 Regulations, including the obligation.

The evidence we will request in relation to those operators without written contracts includes, but is not limited to:

- a) any wording that operators use to describe their operating model which may be made available to passengers on their website or in publicity materials about their services;
- b) whether operator's take responsibility for anything that may occur on the journey;
- c) whom passengers should make complaints to about the journey;
- d) where applicable, payment of VAT on fares; and
- e) how bookings are cancelled.

All processes, systems and procedures should be consistent with the 1998 Act and the 2000 Regulations, including the obligation, and operators' responsibilities to accept bookings and provide transport services.

Compliance

All London PHV operators must ensure that they comply with the law as confirmed by the Divisional Court (and as outlined above) and they will be asked to provide evidence of their compliance to TfL.

Where written contracts with passengers and/or drivers exist, London PHV operators will be asked to provide them to TfL including an explanation of how they comply with the 1998 Act and 2000 Regulations (including Regulation 9(14)).

Whether a written contract is in existence or not, all operators will also be asked to demonstrate to TfL that they comply with the law by providing details of their operating procedures, systems and booking processes etc.

Evidence of an operator's end-to-end booking process helps to demonstrate how it takes overall responsibility for transporting a passenger. Any such description should provide confirmation of where the booking is accepted, by whom and how such acceptance is communicated to the passenger. Similarly, the description should also explain how a booking is ultimately fulfilled. This should include the scenario where the booking is cancelled, with details of who is able to cancel the booking and how such a cancellation is communicated to the passenger.

Action to be taken

London PHV operators should satisfy themselves that they are compliant and take appropriate advice, where necessary, to ensure compliance. Operators should not wait to be contacted by TfL before ensuring they are compliant and should be prepared to demonstrate compliance, upon request, at any time.

TfL has published TPH Notices [19/21](#), [22/21](#) and [04/22](#) to raise awareness of the obligation and what operators must do to comply with it. Operators should make themselves aware of these and any future Notices, and follow any updated guidance or instructions.

This guidance will be kept under review and may be updated from time to time.

Operators should make themselves aware of these and any future Notices and updates, and follow any updated guidance or instructions.

Guidance on changes to operating models

Alongside the new prescribed licence condition, we have revised the [guidance](#) for London PHV operators regarding their obligation to notify TfL of material changes to their operating model. The revised guidance provides that changes made by the operator that materially alter its contractual relationship with passengers and/or drivers, whether by amendment to its terms and conditions or otherwise, should be notified to TfL.

Transport for London
22 April 2022