Who breaks a butterfly upon the wheel?

Licensed into ‘brutal exploitation’ by Transport for London

The cruel regulation and sweat shop conditions of London’s booming minicab trade.
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1. EXECUTIVE SUMMARY

The shame of London’s ‘brutally exploitative’ minicab trade
Our survey of London’s private hire drivers reveals the misery of rolling sweatshops which keep London moving, under license from TfL. Conditions are set to plunge into crisis on account of TfL’s refusal to reign in runaway licensing levels and the imposition of punitive new regulations that place cost and regulatory penalties on those who can least afford it.

### Survey focus

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Our score card on TfL performance as regulator:

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<th>TfL Role</th>
<th>Score</th>
<th>Reason</th>
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<tr>
<td>Policy making</td>
<td>FAIL</td>
<td>- No compelling vision for London’s iconic taxi trade</td>
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<td>- Continued failure to define and protect taxi ply for hire rights from private hire encroachment four years after entry to the market of app operators using disruptive technology</td>
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<td>- No coherent vision for the role of private hire trade in an app era</td>
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<td>- No coherent vision for taxi and private hire integration with other transport options. Private hire now openly competing with mass public transport at TfL’s own admission.</td>
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<tr>
<td>Licensing</td>
<td>FAIL</td>
<td>- Licensing continues out of control despite the Mayor and TfL’s own admission current levels are unsustainable.</td>
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<td>- TfL and the Mayor have abandoned previous commitments to cap licensing but instead have resorted to cruel and discriminatory ‘scorched earth’ policy measures to push private hire drivers out of the trade after collecting their licence fees.</td>
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<td>- Failure to enforce ‘fit and proper’ obligations for private hire operators who avoid tax and exploit workers.</td>
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<td>Enforcement</td>
<td>FAIL</td>
<td>- TfL presides over Kafkaesque approach to enforcement: over license the market beyond physical carrying capacity then penalize drivers suffering from a lack of adequate operating infrastructure.</td>
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<td>- TfL has allowed the competing taxi trade to direct enforcement against private hire drivers – a clear conflict of interest.</td>
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<td>- TfL seeks additional police powers to criminalize the poor despite acknowledging ambiguity of the existing regulations and the Law Commission’s advice that existing criminal enforcement powers are unfair.</td>
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## Our summary recommendations to the Mayor of London

<table>
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<th>Recommendations</th>
<th>Comment</th>
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| **End TfL discrimination against private hire drivers** | • Stop expansion of enforcement powers to unfairly criminalize the poor  
• Set up independent review to reform TfL and bring an end to ‘brutal exploitation’ of publicly licensed drivers. Make the licensed trade a ‘fair trade’. |
| **Define and protect taxi ply for hire rights now** | • Protect ply for hire rights in regulation now. Don’t wait for parliament. Act now. |
| **Set and maintain a private hire license cap** | • TfL private hire licensing has spiraled out of control leading to congestion, worsening air quality and economic destabilization which in turn has serious implications for public safety. |
| **Enforce ‘Fit & Proper’ licensing terms for operators** | • Operators who exploit workers, use our public infrastructure but avoid tax through off shore corporate structures, must not be deemed fit and proper for public licensing. Enforce the rules fairly for all! |
| **Make English language testing fair – return focus to spoken not written tests** | • New requirements are unfair, discriminatory and TfL’s own analysis show deliver little public benefit. |
| **Drop redundant insurance requirements** | • Forcing private hire drivers to pay more for unused coverage is an unfair cost burden. |
| **Respect driver privacy** | • TfL already exhaustively checks driver ID through enhanced CRB/DBS checks. Collecting data for DWP and HMRC on the grounds drivers might be a tax or benefit cheat risk is unfair and discriminatory. |
| **No congestion charge** | • Lifting exemption for private hire drivers will have a devastating effect on driver incomes and will worsen congestion. Consider applying CC to Operators instead. |
| **Free and effective representation to the regulator** | • TfL refuse any dedicated representation from 111,000 private hire drivers whilst the taxi trade of 24,000 drivers is represented by 5 trade bodies. TfL must not dictate or manipulate the terms of how licensed drivers private hire drivers organize and represent themselves. |
| **Suspend ride share** | • The Mayor should immediately suspend dangerous ride share services until TfL has completed due diligence on safety it is obliged to carry out, developed effective controls and properly consulted drivers who must deliver this high risk service. |
2. FOREWORD

Alexander Pope, one of London’s most famous poets, was born in Chiswick in 1688 not long after Taxis were first regulated in the capital. As a Catholic, he lived his entire life under the shadow of the 1677 Test Act which denied him access to education the right to vote, to hold public office or to be a teacher. Violation of the law could lead to indefinite imprisonment.

Pope was adept in the art of satire, a dangerous game in 18th century England, and his poem, Epistle to Dr. Arbuthnot, is a brave defense of free speech. In the poem he uses the famous line ‘Who breaks a butterfly upon the wheel?’ to describe how the poor and politically disenfranchised can be brutalized rather than protected by the law. Almost 300 years later, Willam Rees-Mogg as Editor of The Times used the same line in an editorial to criticize the sentencing of Mick Jagger and Keith Richards to prison for relatively minor drug offences when considering the penalty. The editorial resonated powerfully and became a watershed in Britain’s transition from post war austerity to a more modern, liberal and tolerant society. Rees-Mogg was credited by many, including Jagger himself, in helping positively influence the eventual successful appeal of a harsh sentence.

Today, private hire drivers find themselves in a world of discrimination that Pope would find familiar. With up to 80% of private hire driver licensees hailing from minority communities they find themselves increasingly criminalized for what should be no more than civil offences. They are excluded from representing themselves to their regulator to whom they contribute more than £17 million per annum in license fees. They face a more than even chance of being assaulted or racially abused on the job and are without basic employment rights in an increasingly ‘brutally exploitative’ trade. ‘Brutally exploitative’ is not a term we use lightly in describing the trade. In fact, it was Dominick Moxon-Tritsch latterly of Addison Lee that first described it as such in his testimony before the Greater London Assembly Transport Committee.

The majority of private hire drivers, serving Londoners under public license, must work 90 hours a week or more just to survive. They struggle to service the debt and operating costs of their work for multinational operators before scraping out enough to feed their families. In fact, 81% of drivers we surveyed say they can no longer earn enough to meet basic family needs in an industry that, even the Mayor admits, has been licensed well past physical, environmental and economic sustainability. Worse than this, they face an increasingly intolerant climate not only on the job, but from the licensing authorities. With little evidence and ample prejudice, politicians and officials have been all too comfortable to refer to drivers as defectors, sex predators, tax cheats, benefit cheats, terrorists and now seek additional powers to criminally sanction drivers for violation of areas of the law that have become ambiguous due to the encroachment of app based business models on the ply for hire rights of the taxi trade. Thus, innocent private hire drivers have become cannon fodder, collateral damage and political pawns in a trade war not of their making from which they will never benefit whatever the outcome.

It is time now for Transport for London and the Mayor of London to stop the breaking of minicab drivers upon the wheels that keep London moving. We beg they take a second look, with a measure of compassion, at the desperate plight of private hire drivers in London today. ‘Brutal exploitation’ has no place in any workplace in London and certainly not in a trade publicly licensed by the Mayor. We say, enough is enough!

In invoking the words of Pope and the spirit of the 1967 Rees Mogg editorial, we hope this report may lead to a change in regulatory tone and raise new consumer awareness of the true cost of a cheap ride. After all it is 2016, we should not consign 111,000 private hire license holders and fellow Londoners to live their lives as if it’s still 1688.
3. INTRODUCTION

TfL stuck in a policy cul de sac
An FT headline last year summed up nicely the political cul de sac Transport for London (TfL) and the Mayor of London find themselves in updating and enforcing taxi and private hire regulations for the capital. ‘London Mayor Trapped between black cabbies and Uber’ - the headline screamed and it’s hard to disagree. Unfortunately, in this epic battle between the black taxi trade, the interests of big business, 111,000 working poor and politically disenfranchised private hire drivers have become collateral damage.

In appeasing both sides, TfL has avoided addressing the real issues that destabilize the trade: the failure to control licensing and the failure to define and protect taxi ply for hire rights. The big operators have avoided a cap on their runaway growth and taxis have received a £64 million package from tax payer coffers. Private hire drivers have been saddled with additional unnecessary costs as well as discriminatory barriers to enter and stay in their trade. The problem ‘can’ has been kicked down the road. Private hire drivers too, like the can, have been kicked down the road.

A ‘brutally exploitative’ trade
Dominick Moxon-Trisch, latterly of Addison Lee, testified to the Greater London Assembly in September 2014:

‘the traditional minicab business model is brutally exploitative as drivers are very low paid and have to work long hours’. vi

While it’s important to acknowledge that the trade has always presented a pretty rotten deal to private hire drivers, recent rapid growth has substantially worsened their lot. Big investment from Wall Street and the City is transforming the market. It creates windfall profits for investors but impoverishes those at the sharp end of the trade. Brutal exploitation is the dirty secret to the success of a trade that remains as dirty as ever.

Private hire drivers typically bear most or all of the cost and risk of the business but are denied basic rights from operators. They finance their own vehicles or rent one from their operator often under grossly unfair terms. They bear all direct operating cost whilst paying circuit rents, commission, network charges and a host of other ancillary expenses creatively levied on them by their operator.

A disrupted market leads to disrupted lives
The increasingly dominant corporate operators capture the market by offering lower and lower fares. Having delinked their business model from direct operating costs they can become ever more profitable by lowering fares and expanding the market. In fact we are in a race to the bottom.

These operators enjoy the positive network effects of wide coverage and low response times, which customers love, while drivers pay the price for the negative network effects of economic inefficiency with low pay & dangerously long hours. In an alarming trend, this new breed of marketing savvy operators quickly mobilize their customers, hooked on low fares, to mount intense political pressure against any regulations that might threaten their business models. We are witnessing what Frank Field MP has called the Wild West Workplace of the gig economy. v

TfL presides over a dysfunctional private market undermining public transport
TfL presides over this abusive system as the regulator and licensing authority. It offers no protection for drivers despite the Mayor’s promise of fairness and a London living wage for all. Neither has the regulator shown any appetite for exercising its power to deny any operator licensing if assessed to be not ‘fit and proper’ as a result of a poor record on worker rights and tax avoidance.

The day of local minicab offices is rapidly giving way to international corporations rapidly capturing the market. The one thing that has not changed however is that drivers, drawn largely from minority communities, continue to be ‘brutally exploited’ to deliver a service now openly competing with mass public transport and contributing greatly to London’s street congestion.
**Avoiding the hard questions: TfL discrimination and denial of representation**

A politicized TfL, caught between the powerful taxi lobby and the even more potent corporate interests, has failed in its mission to regulate the trade and protect the public. It licenses 111,000 workers into misery denying them either protection or the right of adequate representation. TfL recognizes 5 trade organizations to represent 24,000 taxi workers but allows no dedicated representation of 111,000 workers. Sadly, it is all too easy to see why this is the case. TfL already finds it difficult to balance the needs of the powerful taxi lobby on the one hand and the big money interests of multinational operators on the other. Discrimination against private hire drivers is a price TfL feels is worth paying.

**Who pays?**

Much talk has been made of how these measures, recently announced, have helped to rebalance the trade and reduce the competitive gap between the private hire and taxi trade. We simply ask this: who is it that must pay for this? It is not the mega corporations who now control the trade, they will continue to profit without risk. The people who must pay for this are those who can least afford to and are already the most oppressed and exploited. It is the ranks of the very poorest working Londoners who will pay for the Mayor and TfL’s plan to protect the powerful taxi lobby without disrupting the profits of the mega corporations who have taken over the trade.

**Is there hope?**

But there is some hope. Private hire drivers are at last starting to speak up and find their voice. We believe the Mayor has been sheltered from the truth by TfL about this brutal trade. Sadiq Khan has a long history of defending human rights as a lawyer before pursuing a career in politics. We believe once licensed & enabled by TfL in his name, he will act.

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**About this report**

This report focuses on the role TfL has played in enabling and assisting exploitation of London’s minicab drivers by big money operators. We draw on the results of an extensive survey of our members in London and throughout the UK.

Due to ongoing litigation in pursuit of worker rights we will not be focusing on worker rights and working conditions for drivers engaged with London’s operators. We will be documenting working conditions in a forthcoming report.

The report is jointly published by Networked Rights and United Private Hire Drivers (UPHD).

**Networked Rights** campaigns for consumer and worker rights in our increasingly networked economy.

**United Private Hire Drivers** is the largest private hire driver representative body in London and the United Kingdom. The organization campaigns for driver rights and welfare.
4. **DRIVER SURVEY RESULTS**
The Mayor of London and Transport for London recently announced a package of measures to drive up standards for the private hire market and to protect London’s iconic taxi trade in the TfL Taxi and Private Hire Action Plan 2016. Unfortunately, TfL has struck the wrong balance and the effects will be to punish the working poor in the private hire trade and do next to nothing to effectively protect the taxi trade.

A survey of private hire drivers paints a stark picture of danger, exploitation and discrimination which is the lot of publicly licensed private hire drivers in London today.

The highlights of our survey include:

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### 5. Six Policy Elephants Still at City Hall - Summary

Six critical issues remain unaddressed in the recently issued TfL Taxi and Private Hire Action Plan 2016 launched by the Mayor:

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<td>‘Brutally exploitative’ working conditions blow back to present serious risk to the travelling public with stressed &amp; fatigued drivers at the wheel.</td>
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<td>Ply for hire Rights</td>
<td>New technology has led to encroachment on taxi ply for hire rights. TfL squandered the opportunity to regulate on this in the recent review and now the Mayor has kicked the issue into the long grass by asking parliament to address it instead.</td>
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<td>A cap on licensing</td>
<td>Private hire licensing has spiraled out of control leading to worsening air quality, congestion, undermining of public transport, a strain on operating infrastructure and economic destabilization of the trade for both taxi and minicab drivers. The only winners have been the big corporate interests now taking control of the trade and TfL itself in collecting a windfall of new license revenue. We believe TfL has bowed to corporate interests ahead of public interest in dropping its commitment to cap licensing.</td>
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<td>Enforce ‘fit and proper’ license conditions</td>
<td>All operators must meet ‘fit and proper’ requirements to hold a public license to trade in London. The Mayor must direct TfL that operators who deny worker rights and off shore to avoid tax cannot be deemed ‘fit and proper’ to be licensed in London.</td>
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<td>Ride share safety</td>
<td>TfL gave the green light to start dangerous ride share services without setting appropriate safety controls which are due to be issued only in 2017. Many riders and drivers have been attacked in the course of delivery of such services. TfL has refused FOI requests to publish the safety assurances it says it sought and received from operators before giving permission to start such services in London. What is TfL hiding? It’s time for TfL to come clean.</td>
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<td>Congestion charge for minicabs</td>
<td>The Mayor must commit to fairness and rule out imposing the congestion charge on private hire drivers. Such a measure will only increase rather than reduce congestion as drivers would need to work additional hours in the CC zone to cover the extra costs. If the exemption must be lifted it should be levied on licensed Operators who direct cars into the zone to service their customers and it should be lifted for the taxi trade also.</td>
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1. **A failure to put driver and public safety at the heart of the regulatory impulse.**
   TFL have been well aware that the consequences of over licensing the market and not protecting worker rights results finally in compromising the safety of the travelling public. Unbelievably, TFL can and do exercise powers to send drivers home for defective light bulbs and wipers but show no concern or regulatory focus on the public safety threat of private hire drivers working 90 to 100 hours per week at less than the minimum wage just to make ends meet.

2. **A failure to define and protect taxi ply for hire rights (the exclusive rights of taxis to be hailed directly for instant, on demand hire) and removal of TFL’s original proposals in this area.**
   Instead, the Mayor has promised to lobby central government to define ply for hire in statute which the Law Commission has already advised parliament against. The Law Commission is of the view that the encroachment of these rights, made possible by the immediacy of hire from app based services makes any further effort to define ply for hire futile. The effect is to kick the issue into the long grass but this issue is fundamental to the proper regulation and separation of the taxi and private hire trade. Without resolution conflict, due to encroachment of these rights, will continue unabated. We believe Ply for Hire can and must have regulatory definition now and should be addressed by statute in due course. The main focus of the regulatory review was to address the changes in our trade brought about by disruptive technology. In the earlier rounds of consultation specific measures to preserve ply for hire rights were proposed but, one by one, were quietly discarded.

3. **A failure to commit either to impose a cap on private hire licensing or seeking powers from parliament to do so despite the pre election promises of Sadiq Khan.**
   There is near unanimous agreement – including the current & previous Mayor and TfL – that there are far too many licensed private hire vehicles and drivers in London. The uncontrolled expansion of licensing has led to worsening air quality, increased congestion, a collapse of driver incomes and unsafe working hours. Operators have driven this runaway growth in a race to capture an enlarged market share unfettered by any expansion costs. It is the owner driver who must bear all operational and capital risk in this business model. Unless and until the market is capped at a sustainable level the race to the bottom will continue with grim consequences for drivers and the travelling public.

4. **A failure to better define and enforce ‘fit and proper’ licensing requirements for private hire operators.**
   Holding a public license is civic privilege and it is the Mayor’s responsibility to define the ‘fit and proper’ requirements of the primary legislation into local regulation. We believe it is perfectly reasonable to expect Operators to be required to observe basic standards of occupational safety, worker rights and fair taxation contribution. Alas, international corporate operators licensed by the Mayor continue to be domiciled off shore to avoid taxation and employment law obligations. We also feel the cost of licensing for these multinational operators is absurdly low with operators having freedom to run tens of thousands of cars on London’s streets, using public infrastructure while competing with public transport, for little more than a £500 per annum license fee.

5. **A failure to clarify regulation of ride sharing services.**
   At origination of the recent private hire regulatory review TfL sought stakeholder input on ride share regulation before pre-empting the completion of consultation to green light the start of such services in London. 97% of United Private Hire Drivers members are emphatic in their belief that delivering such a service is dangerous to them and their passengers. In the current action plan TfL is committing to design safety controls with the Department for Transport in 2017 which begs the question as to why on earth TfL would have allowed such
services to start without controls already in place.

6. **A failure to clarify the future of exemption from congestion charging for taxi and private hire trade.**

The recent action plan refers to TfL ‘exploring options’. The taxi trade has strenuously lobbied for the exemption to be lifted for the private hire trade but maintained for taxis. In reality such a move would be an abuse of a market instrument designed for environmental control because:

- there is no viable alternative for the private hire driver as he must enter the congestion charge zone to work and
- it would exasperate congestion because the driver, who will doubtless be forced to carry the cost, will now need to stay and work longer in the congestion charge to cover the additional daily cost.

At the least, we believe there must be equal treatment for taxi and private hire on this matter and consideration must be given to charging the licensed Operator who, after all, is responsible for directing private hire vehicles into the congestion zone to pick up or drop off the operator’s customers.
WHO BREAKS A BUTTERFLY UPON THE WHEEL?

7. FOUR UNFAIR NEW REGULATIONS TO PUNISH THE WORKING POOR

TfL and the Mayor must already fully appreciate the ongoing disruption in London’s private hire market cannot be a one way street delivering only benefits to the travelling public. The truth of the matter is the poor take the brunt of the cost in a race to the bottom. TfL should therefore be more alive to the impact of new regulations on some of the poorest Londoners employed in the trade. Sadly, TfL has pushed ahead with some particularly callous new regulations which hurt the poor while corporate operators carry on unimpeded in their race to the bottom.

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<th>New rules to punish the working poor</th>
<th>Impact</th>
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<td>Written English language tests</td>
<td>• TfL’s analysis shows there is little public benefit but adverse risk to drivers.</td>
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<td>• Making the rules retroactive means drivers face unemployment and a debt burden associated with stranded assets</td>
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<td>• Deputy Mayor for Transport previously lobbied only for verbal tests</td>
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<td>Redundant insurance requirements</td>
<td>• Drivers who work seasonally or return to families overseas for long periods will be burdened with unnecessary extra insurance costs.</td>
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<td>• Taxi industry remains exempt from these costly, redundant burdens.</td>
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<td>Collection of National Insurance numbers</td>
<td>• TfL’s suggestion it needed to do collect NI numbers for identity purposes smacks of discrimination since all drivers have enhanced DBS checks.</td>
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<td>• TfL board members previously suggested, without evidence, private hire driver payments should be monitored due to risk of terrorism, tax fraud and benefit cheating.</td>
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<td>New powers to criminalize the working poor</td>
<td>• Regulator is seeking additional ply for hire enforcement powers with criminal sanctions despite admitting the law is currently ambiguous.</td>
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<td>• Law Commission recommended in 2014 that existing laws should be decriminalized yet TfL seeks to expand criminal sanction.</td>
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1. Written English language tests
While in principle we welcome English language testing we believe the B1 level with written testing is unnecessary. Indeed, Val Shawcross Deputy Mayor for Transport when acting as GLA Transport Committee Chair last December told TfL standards testing should ‘focus primarily on spoken English’. Human Rights and minority representative groups too have criticized the way TfL has gone about this as discriminatory. TfL’s own analysis shows there is little evidence of this even being a major issue therefore of little public benefit.

But our main complaint is TfL’s refusal to grandfather in the new requirements to protect current licensees. Now drivers, who TfL was happy to previously license and collect fees from, face the worry of losing their livelihood at point of renewal.

Finally, we remain concerned about the rampant levels of test fraud in the current testing regime overseen by TfL which sees Operators licensed to charge their own drivers for topography tests. Operators have routinely passed drivers by handing out test answers after collecting test fees. This problem has remained unaddressed by TfL and there is little assurance that the problem will not now escalate with expanded testing requirements.

2. The introduction of redundant additional insurance cover when the driver isn’t working.
We welcome any effective measure to ensure 100% of private hire drivers carry hire and reward insurance 100% of the time when they are working. However, private hire drivers are now required to have expensive hire and reward insurance on their vehicle even for periods even when they are not working. Many drivers use their vehicle for private use and may only work busy times of the year or may take extended breaks abroad to visit family.

The new regulations will require all drivers to maintain expensive hire and reward insurance for the full 12 month period of the vehicle license period while taxi vehicles have no such requirement. We believe this is unnecessary due to the pervasiveness of ANPR systems, such as for checking exemption from the congestion charge, and the new requirement for details of working drivers and vehicles to be regularly submitted by licensed operators to TfL, A simple cross check of this data with the Motor Insurance Database is a far more effective way of ensuring insurance coverage is in place than requiring continuous cover even when the vehicle is not in service.

TfL has produced no evidence that there is even any significant problem with insurance compliance which suggests this measure is being introduced for no other reason than to raise operational costs to improve the competitive position of the taxi trade. Unfortunately, again it is the working poor as drivers in the private hire trade who must bear this unfair burden.

3. The collection of private hire national insurance numbers for provision to HMRC and DWP.
We support all efforts to limit fraud that deprives much needed collective funds to the national Treasury. However, the way TfL has gone about this smacks of discrimination and prejudice. The measure was justified by TfL:

I. ‘as an additional identity check of the driver’ and
II. ‘to assist the HMRC and DWP in any potential investigations’.

However, all private hire drivers undergo an enhanced criminal records check so there can be no doubt about identity. Also, if the HMRC and DWP seek information about drivers surely they can use their own powers to investigate drivers.

4. Seeking additional powers to criminalize rather than regulate the working poor.
As later discussed in this report, private hire soliciting on the streets for work is a recordable criminal offence with mandatory DNA collection. Despite the advice to the Law Commission that criminalising drivers in this way is unfair, TfL and the Mayor now seek additional powers for
the Police to take DNA samples from private hire drivers accused of ply for hire offences. This is especially troubling given the TfL’s own admittance in the 2016 action plan that ‘ply for hire offences are difficult to prove’ and that there is an immediate need to ‘remove ambiguity and clearly define the difference between taxi and private hire services’. TfL must first do its job and define ply for hire regulations before seeking powers to criminalize violation.
8. OUR DETAILED RECOMMENDATIONS TO THE MAYOR OF LONDON

The Mayor can and must now act to restore some fairness to the working poor who truly keep London moving. We recommend the following:

1. The Mayor should immediately appoint an independent commission to investigate why and how TfL regulations have been shaped to cause such obvious & unfair harm to 111,000 working poor it licenses as private hire drivers. The level of systemic and continued exclusion of their interest in favour of corporate and political interests of the taxi and private hire operator community is so engrained it requires an external review. The commission should also investigate the harmful and discriminatory development of regulation which seeks to criminalize the poor in an area of regulation that should remain the domain of civil rather than criminal enforcement. In short, we are highly doubtful that the TfL Taxi and Private Hire division is capable of reforming itself. The consequences of not doing so risks continued violation of the basic rights and dignity of private hire drivers and a subsequent blowback on public safety with drivers working increasingly excessive hours without controls.

2. The Mayor should direct TfL to immediately begin the work of defining ply for hire regulations while lobbying parliament to lay down ply for hire rights in statute. We urgently need regulatory certainty on how private hire operators & drivers should conduct business in an era of on demand services and pervasive mobile computing. The certainty will stop the steady encroachment on taxi ply for hire rights and provide a more positive clarity on what is allowed not just what is not. Neither the combined trade nor the travelling public can afford to wait any longer for regulatory development that is way past due.

3. The Mayor must commit to using all his powers to set and maintain a cap on licensing at sustainable levels. He should not try to set a cap through the backdoor by effectively starving existing private hire drivers out of the trade while operators, unfettered by risk or cost, continue to prosper and deposit profits offshore. While the Mayor in the past has denied he has the powers to cap we believe the Mayor and TfL do have levers to pull, in the interests of public safety, to stop even more licensing. This would ease congestion, improve safety and reduce the immense suffering of private hire drivers caught up in a race to the bottom driven by the powerful financial interests behind multinational operators.

4. The Mayor must direct TfL to beef up ‘fit and proper’ assessment of operator licensing as required by national legislation. Any reasonable person must conclude parliament would have intended that any operator firm actively avoiding taxation and side stepping worker rights obligations through offshoring of entities should not be assessed ‘fit and proper’ to hold a public license from any local authority in the land. It’s time for the Mayor to speak out and deny a license to any operator who doesn’t respect worker rights and any who deploys a ‘brutally exploitative’ business model.

5. The Mayor should review the English language testing regulations to ensure the focus is restored to spoken rather than written skills. Grandfather rights protections must be assured for existing license holders so they are not thrown out of a livelihood and burdened with stranded assets and associated debt. TfL must be directed to clean up the existing woefully corrupt existing regulatory testing regime for topography tests. Drivers should no longer be the victims of test fraud scams with passes granted in return for cash while TfL look the other way. TfL must not be allowed to effectively cap the market through the back door by targeting the poor and marginalized with unfair regulations such as unnecessary language testing which TfL’s own independent analysis shows that there is no evidence of a major problem therefore testing is of little public benefit. On the other hand the analysis for BAME drivers effected the impact is categorized as Major Adverse.x

6. The Mayor should direct TfL to drop the unfair additional insurance requirements or make it an obligation for both taxi and private hire drivers. Otherwise this appears to be nothing more than a crude attempt to load unnecessary
costs onto private hire drivers who can ill afford to shoulder an unnecessary additional burden.

7. The Mayor should **direct TfL to end their illiberal & prejudicial intrusion into driver privacy** in the collection of data for DWP and HMRC. If TfL wants the authority to collect private data from drivers for no other reason than to distribute it then it should make an open and honest case for doing so and consult private hire drivers properly on the matter.

8. The Mayor should **clarify the future of exemption from congestion charging** for the taxi and private hire market. If a decision is made to lift exemptions then the Mayor must take care to ensure

   I. this will effectively reduce congestion rather than punish the poor and
   II. preserve parity on this between taxi and private hire drivers and
   III. in the event that the congestion charge is lifted consider levying the Operator rather than the driver. This will ensure that the customer bears the final additional cost rather than the driver. In turn this will ensure that congestion charging, as a market instrument, will be targeted correctly at the end consumer who can then choose whether to accept the environmental costs or select an alternative mode of transport.

9. The Mayor should ensure **TfL respects the right of licensed private hire drivers to organize and represent themselves** with their regulator as they see fit.

   TfL formally includes no less than 5 taxi representative bodies representing 24,000 workers and one general Union which represents the combined and sometimes conflicting interests of taxi drivers, private hire drivers and private hire operators. However, TfL accepts no formal representation from any dedicated representative body for 111,000 private hire drivers. In fact it has refused to recognise United Private Hire Drivers, the largest trade body for private hire drivers in London and the UK.

   On the other hand, the large private hire operators seem to enjoy unlimited access at every level. Indeed, TfL has a long history and much continued complaint about its inappropriate contact with the corporate operators it is charged to regulate. In the past few weeks Greater London Assembly Transport Committee Chair spoke out the ‘improper’ appearance of TfL’s behaviour in this regard. xi

10. The Mayor should direct TfL to immediately **suspend ride sharing services** in the capital until private hire drivers have been properly consulted and appropriate regulatory controls on safety, currently committed for 2017, are in place.
9. INDUSTRY BACKGROUND

The emergence of the minicab trade

The minicab trade in London first emerged in 1961 when Carline Cabs spotted a loophole in the 1869 Carriage Act and tapped into the new era of home telephones. They figured out that the public carriage laws only applied to taxis who ply for hire on the streets. Cars privately booked in advance by telephone call and then dispatched by radio were not operating contrary to the rules. xii

The two tier system
This early legal understanding for the private hire went on to form the basis of 1998 Private Hire Vehicles (London) Act when the minicab industry was finally brought under regulatory oversight. The clear distinction then between taxi and private hire markets has become known as the ‘two tier’ system of taxi and private hire in London.

The current law requires that licensed drivers must only take bookings from a licensed operator. This prohibits private hire drivers from plying for hire and maintains the ‘two tier separation’. Theoretically it should prevent the private hire trade from encroaching on taxi ply for hire rights but technology has blurred the distinction and disrupted the status quo.

Unfortunately, the role of a licensed private hire operator has set up a market intermediary. Too often this has resulted in private hire drivers having to endure a dysfunctional and abusive working relationship with an operator on whom he must depend for work. It is the licensed operators who decided what, if any, work drivers would receive and basic worker rights are too often anathema to many of them.

Back to the future
Just as the rise of fixed line telephones gave rise to new business models in the 1960’s, it is pervasive mobile telephony that does so again today.

Technology has torn down the walls between private hire services, which have to be pre booked, and taxis which are instantly available for hire. Open questions remain unanswered in law and in regulation such as:
• is displaying availability in app a plying for hire offence?
• is an electronic hail the same an instant hail and therefore a plying offence?
• is a driver waiting on the street for a ping effectively just virtually ranking and therefore committing an offence?
• is a calculation of time and distance billed at the end of a trip just a taxi meter by any other means?

The last question was indeed tested in the High Court last year by the London Taxi Drivers Association (LTDA) and the London Private Hire Car Association (LPHCA). They argued that Uber's app on a driver's smart phone, which calculates a fare in the cloud using time and distance inputs, is in fact a taximeter and should be prohibited. TfL and Uber argued that it is not a meter and should not be prohibited. In the end, The High Court ruled in favour of TfL and Uber but the inadequacy of old law in its application to new circumstances, transformed by technology, was not lost on the Judge:

It is impossible to know how Parliament would have dealt with Uber had it existed in 1998, or even now. xiii

Operator business model change: shrinking responsibility while expanding influence
Operators too have changed greatly from the role as originally envisaged by law and regulation. They are using technology to become increasingly virtual. Bookings are serviced on demand through app based technologies rather than telephone or by visiting a local minicab office. The minicab operator business model now seeks to eliminate fixed overhead costs and de link from direct operating costs. More firms than ever now require that the driver provides the vehicle for service together with his labour. In other words, the driver provides the capital and labour with the Operator providing a booking service and taking a commission.

Instead of drivers returning to a local base between jobs now drivers work continuously throughout the TfL licensed area and far beyond. In fact, TfL licensed drivers have the unique right to work anywhere in England and Wales, regardless of booking origin and destination, so long as the booking is received from a London based licensed operator. This rule has made enforcement of TfL licensed drivers operating in cities outside London extremely problematic for local authorities. It has also made drivers ever more vulnerable to unwitting violation of ply for hire regulation given the lack of clarity of current regulations.

One thing nearly everyone agrees on: the law is no longer fit for purpose. Almost nobody agrees on what the new laws should be.
London’s ‘Two Tier’ System for Licensed Taxi and Private Hire Services

Industry size and shape
At the end of 2014 the Greater London Assembly reported that there were over 300,000 taxi or private hire vehicle journeys in the capital every day for a trade worth an annual £3 billion in annual turnover. But while taxi driver and vehicle licensing rates have remained stable in recent years, private hire licensing has mushroomed with a marked acceleration since Uber entered the market. Since 2009 private hire driver licensing has jumped 78% and private hire vehicles by 59%. However, taxi driver licensing remain virtually unchanged and the London licensed taxi fleet shrunk by 3% over the same period.

Considering a population growth rate of approximately 8% since 2009, while absolute taxi stats look reasonably static, in real terms, the taxi trade is losing market share and failing to find new market segments as rapidly as the private hire trade. Since 2009 licensed private hire vehicles per 1,000 people in London has increased from 6.12 to 9.5 or a growth rate of 55%. Licensed taxis per 1,000 people fell from 2.78 to 2.46, a decline of 12%.

London Taxi & Minicab density

<table>
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<th>Year</th>
<th>PHV per 1,000 people</th>
<th>Taxi per 1,000 people</th>
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<td>2.78</td>
</tr>
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<td>2.75</td>
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</tr>
<tr>
<td>2015/16</td>
<td>9.50</td>
<td>2.46</td>
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10. LONDON PRIVATE DRIVER DETAILED SURVEY RESULTS

Between April and August 2016 we surveyed our members on their impressions of the conditions of their workplace, the operators they work for and the performance of TfL as our regulator. We did not expect the results to be as emphatic as they turned out to be. A community of people, whose plight is routinely ignored by TfL and the politicians who oversee the transportation authority, have finally spoken out.

Safety & security
Private hire drivers lack the safety protections taxi drivers who are separated from passengers by a secure enclosure. It’s fair to say the job has always been a difficult and dangerous one but in recent years as licensed operators retreat to a more virtual world drivers find themselves working alone without the immediate support of a base manned 24/7. In the pre app days of radio controlled cars drivers could alert a live controller of any danger and typically drivers nearby would race to the location to support the driver in trouble while the controller called our emergency services. It is a great irony then, that in an app era of hyper connectivity, drivers have never been more alone and isolated in their work.

Have you been physically assaulted or threatened on the job?

- Yes 51%
- No 49%

TfL cares about safety and security of drivers

- 76% Rarely, unacceptable
- 14% Generally not most times
- 6% Sometimes
- 1% Generally yes most times
- 3% Yes always
Racist attacks and abuse
Private hire drivers hail overwhelmingly from minority communities and it is this difference that has far too often attracted trouble from customers and indifference from an uncaring regulator. Levels of violence and racial abuse are at an unacceptably high level. TfL does not collect performance information on this aspect of licensee welfare and when specific issues are reported to TfL by drivers they are referred to the police. Of course, such attacks are an immediate individual matter for the police but we believe the regulator must also take responsibility for monitoring and managing overall driver safety & security performance. In particular, drivers need much more support from Operators and such procedures must be defined in regulation by TfL.

In the recent regulatory review for instance, TfL rightly proposed that passengers must be able to talk to a live agent via telephone during their journey. However, during the consultation phase, UPHD campaigned vociferously that the regulator should similarly make live emergency support for drivers in peril a regulatory requirement. Sadly, these pleas fell on deaf ears at TfL.

Have you been racially abused on the job?

- Yes 57%
- No 43%
Passenger safety and ride share
Leaving aside driver welfare, the travelling public should be very concerned when drivers who work at the sharp end of service delivery, do not believe TfL pays enough attention to passenger safety. 61% of drivers surveyed say TfL does not adequately care for passenger safety.

For instance, ride share services which allow strangers to share the journey together provide a significant additional risk to public safety. In a survey of drivers, we found that 97% of drivers feel UberPool, a ride share service, is unsafe for them to operate.

During the recent regulatory review, TfL sought to gather stakeholder input on the topic of ride sharing but then gave the green light to ride share services before the consultation had even concluded. TfL says it sought and received assurances on safety from large operators and were satisfied with this. However, when we asked for TfL to release this risk review due diligence to the driver community, who must bear significant risk in delivering such services after all, the regulator refused to do so. We have now appealed TfL’s decision to refuse disclosure to the Information Commissioner’s Office. We are also very grateful to the Greater London Assembly Chair of the Transport Committee, Caroline Pidgeon for raising this matter of great public concern with the Mayor.
Economic Conditions

Due to ongoing litigation we will not be commenting in any significant detail on driver pay and conditions save to give an overall impression of the desperate and worsening economic conditions the general community of drivers face as exposed by our survey. We will return to the specific issues of driver workplace conditions and worker rights in future reports.

However, it is undeniable that runaway licensing has transformed the market in recent years. In the last 12 months alone we have seen a 58% growth in private driver licensing and a 40% increase in private hire vehicle licensing. For TfL this has proven to be an incredible windfall estimated license fee revenue growth of about 37% of the same period from private hire licensing.
My take home pay is adequate to meet my family’s basic needs

No 81%
Yes 19%

Source: UPHD survey

Over the past 6 months my take home pay has...

Decreased 95%
Increased 5%

Source: UPHD survey

TfL only licenses enough drivers to meet demand

83%
9%
4%
2%
2%

Source: UPHD survey
TfL takes action to prevent exploitation of drivers

Source: UPHD survey

TfL treats private hire drivers fairly and with respect

Source: UPHD survey

TfL includes private hire drivers in policy and decision making

Source: UPHD survey
TfL applies the regulations fairly for all

Source: UPHD survey

TfL understands private hire driver's needs

Source: UPHD survey
There is undoubtedly a sharp demarcation in the ethnic composition of the respective pools of licensed taxi and private hire drivers in London. 73% of London taxi drivers are white compared to just 18% of licensed private hire drivers. It is beyond the scope of this report to investigate why this has come to be the case but it should be an area of focus for TfL and the taxi trade bodies. Nevertheless such diversity and disparity across both trades should be cause for TfL to consider carefully the impact of regulations and their enforcement on ethnic minority groups. Yet in this area we can see TfL again and again fails to deliver to this and the previous Mayor’s responsibility to make London fair for all.
WHO BREAKS A BUTTERFLY UPON THE WHEEL?

**A dangerous discourse of intolerance**

Far too often we have seen the cruel language of discrimination poison the regulatory environment which leads, inevitably, to a violation of driver rights.

**Val Shawcross**, Deputy Mayor for Transport and then Chair of the GLA Transport speaking at a Unite the Union hosted event, linked terrorism risk and private hire drivers. Shawcross went even further at a GLA Transport Committee hearing she Chaired. Speaking to Leon Daniels, TfL Managing Director for Surface Transportation, she said:

‘We all went to the 7/7 memorial services yesterday and we have been very security minded in this chamber since 9/11. We know that night clubs can be terrorist targets. We have seen a bombing at Glasgow and so we know that airports are obviously a terrorist target. It does worry me that we see minicabs hanging around some areas where there are potentially issues….maybe there is an issue to be looked at as to whether or not there are any security implications because it is the case that minicabs are hanging around either to pick up or for other purposes, as we will hear later. It does seem to me to be a bit of a risk area that so many vehicles are allowed to hang around in sensitive security locations when we are not 100% sure about the identity of the drivers.’

Of course in any city area there are all sorts of vehicles ‘hanging around’. Indeed there are dedicated ranks full of black taxis with drivers who have received the exact same DBS clearance as private hire drivers and yet Shawcross doesn’t address them as a security threat. The obvious difference between drivers of both trades hanging around is the prevailing ethnic background. Sensing the absurdity of Shawcross’ line of questioning Leon Daniels replied:

‘*A determined bomber could buy a fully liveried ambulance with blue lights on eBay for £1,500.*’

**Sian Berry**, Green Party Mayoral candidate, Camden Councillor and current GLA member called on Camden Council to invoke anti-terrorism measures to restrict private hire drivers serving their customers at St Pancras station. The Council declined to use these powers preferring instead to use traffic wardens.

**Nick De Bois**, former Conservative MP for Enfield North linked cleared asylum seekers working for minicab firms to serious crime when campaigning for the 2015 election. All drivers must have been a licensed driver in the UK or other EEA state for at least three years and undergo an enhanced Disclosure and Barring Service records check before they can qualify for a private hire license. Where a person has been outside of the UK for any period longer than three months in the previous three years then a letter of good conduct is required. This wasn’t enough to quell the panic of DeBois who commented:

*‘They could be putting vulnerable members of the public in the hands of thieves, murderers and rapists. It beggars belief.’*

**Steve Wright** of the LPHCA, licensed operator trade boss and former TfL board member, also linked drivers to terrorism despite often claiming to represent them. LPHCA represents many licensed London operators and is registered as a company owned by Steve
Wright. In the LPHCA submission to the TfL private hire regulatory review LPHCA wrote:

‘Bank accounts of licensed private hire drivers in London should be located in the United Kingdom. It is submitted that if a booking is for a private hire vehicle in London, through a London private hire operator, for a journey in the United Kingdom then financial payments to that private hire driver should be into a United Kingdom bank account. This ensures traceability of the transactions thereby mitigating potential tax evasion and / or risks of funds supporting foreign terrorist organisations.’

‘It also means we can better monitor whether drivers connected to a particular operator are consistently committing offences or other behavioural indiscretions. This will enhance enforcement and compliance activity.’

The problem of course is TfL’s reference to so called, alleged ‘behavioural indiscretions’ of private hire drivers. This language was later modified by TfL in later stages of the consultation process to ‘breaches of conduct’. It is another example of TfL’s Kafkaesque approach to regulation. How is a driver to know what TfL’s regulatory expectations of behavior are? What does the regulator believe to be an indiscretion? How could a driver possibly comply with the unknown, undefined and uncommunicated? Indeed TfL’s own statements have been problematic at times. In the recent private hire regulatory review process TfL proposed that licensed operators regularly provide driver details regularly to TfL. On the face of it there is nothing wrong with TfL having more information on drivers but the justification offered was deeply troubling.
WHO BREAKS A BUTTERFLY UPON THE WHEEL?

12. TfL PRIVATE HIRE REGULATORY REVIEW AND THE TfL TAXI AND PRIVATE HIRE ACTION PLAN 2016

Private hire regulatory review 201/16 – a golden opportunity squandered

During 2015 TfL initiated a consultation exercise towards an overhaul of private hire regulations explained as follows:

‘Due to a number of developments within the private hire industry including advancements in technology and changes to how people engage and share private hire services, we are reviewing the current regulations that govern the licensing of private hire operators, drivers and vehicles.’ xxv

Ambitious indeed. The scoping raised expectations that, at last, TfL would address the thorny issue of ply for hire encroachment in the app era and the safety of ride sharing. TfL went on to complete two rounds of consultation and finally introduced a package of regulatory changes. Yet somehow TfL failed to grasp the thorny central objective of the whole exercise. The regulator failed to tackle the main factors influencing disruption of the market which it identified from the outset:

- ‘....advancements in technology’
- ‘...changes to how people engage and share private hire services...

In more plain terms, TfL had the opportunity to bring regulatory certainty to ply for hire regulation in the current age but they choked.

In December 2015 before the second round of consultation, including specific questions on ride sharing, had closed TfL announced it was pre-empting the review and gave the green light for ride sharing services to start in the capital. xxvi

Shortly afterwards, Mayor Boris Johnson drew a red line through a key proposal to preserve taxi ply for hire rights by restricting the right of apps to displaying availability for instant hire and a proposal to build a 5
minute buffer between a private hire booking and pick up.

In the space of three short weeks, TfL and the Mayor demolished the raison d’etre for the regulatory review and kicked the key issues relating to private hire in an app era into the long grass. In short it made a mockery of a public consultation process it later declared to have been ‘hugely successful’. xxvi

Now Mayor Khan has issued his Taxi and Private Hire Action Plan 2016 and has committed to lobbying central government for a statutory definition of plying for hire. Of course, this is nothing more than tactically kicking the issue into the long grass. Boris Johnson had removed all the major proposals to defend ply for hire rights and in introducing the new regulations the current Mayor has added nothing back in to protect these rights.

The Law Commission has already advised against defining ply for hire in statute so the prospects of meaningful legislation emerging from parliament on this anytime soon is remote. If the Mayor is serious about defending ply for hire rights he must take regulatory action now while seeking statutory definitions that can come later, if ever.

The ever shifting sands of a politicised regulatory review
By January 2016, TfL was finally ready to announce the new regulations but the stated objective of the review had subtly shifted to measures which:

‘will enhance standards of safety and customer service in light of the impact of new technology and the rising numbers of private hire vehicles in London.’

Yet the watered down regulations, perhaps a testimony to the persuasive lobbying power of the corporate operators, never really addressed the challenges posed to ply for hire rights posed by new technology. The new regulations now also included a retrofitted objective – to respond to the problems of the ‘rising numbers of private hire vehicles in London’. In other words, the regulator is responding to a problem it actively causes through over licensing. It was lost perhaps on nobody but TfL that it had ensnared itself in its own failure to manage the conflicting roles of TfL as regulatory enforcer versus TfL as a licensing body.

But by August 2016, the rationale for the regulatory review had shifted once again. Now TfL said:

‘The changes to private hire regulation were made to enhance public safety and we are determined to create a vibrant taxi and private hire market, with space for all providers to flourish.’ xxviii

And perhaps this was the most honest explanation TfL has ever given. The cat was now out of the bag – the real objective for the regulations was to intervene to level the playing field between a surging private hire app market on the one hand and the politically connected taxi lobby with legacy private hire operators on the other.

Then in September 2016, the Mayor finally launched the TfL Taxi and Private Hire Action Plan 2016. It contained the same watered down protections but this time added a few more sweeteners for the taxi trade and a few more additional burdens for private hire drivers with private hire operators left unscathed.

English language testing
In the private hire regulatory review TfL introduced new requirements for English language proficiency training as a condition of licensing. The need for this regulatory intervention as a customer service quality requirement was brought into question by TfL itself in its own Integrated Impact Assessment report which noted:

‘there are potential positive outcomes of this proposal, however, as there is no evidence to suggest that the drivers’ lack of English is currently a widespread issue with regard to current levels of passenger safety, the proposal is presently considered a minor beneficial health impact.’xxix Uber, London’s largest Operator told TfL ‘there is no evidence of customer detriment from drivers’ lack of English skills’.

In a report drawn up by Steer Davies Gleave for TfL it was noted that Uber felt that TfL’s decision ‘could become an issue of discrimination’.xxx Indeed Uber has now sought a judicial review of some of the new regulatory impositions including English language testing. We have no illusions as to Uber’s motive here. Nevertheless, it is right that TfL is challenged on this.

Indeed, the Deputy Mayor, Val Shawcross lobbied TfL on this when she was acting as the Greater London Assembly Transport Chair, and advised the regulator that the testing should ‘focus primarily on spoken English’. Now in power, Shawcross has moved the goalposts.

It has to be said, TfL’s plan to implement this proposal is particularly heartless. There will be no grandfathering rights so drivers who fail this test at the point of renewal will lose their license and their livelihood. This will create a great deal of stress and hardship for drivers many of whom will be midterm in lease agreements for their vehicles. Many will face an incredible debt burden
to continue to meet car payments when their ability to earn has been taken away by TfL.

‘Even more robust hire and reward insurance requirements’
One of the more troublesome rumours put about in the trade is that there is a problem of uninsured private hire drivers operating in London. Certainly, TfL has never produced compelling enforcement data to show this to be the case. In fact, many drivers rent TfL licensed vehicles from commercial providers and hire and reward insurance is a mandatory part of the rental package. Further, in private hire regulations it is the role of the Operator to maintain a record of all insurance documents so as to ensure that all cars it dispatches are insured. This means there is a mutual accountability built into the system between driver and operator. There is no such cross check present in the regulatory system for taxis.

TfL itself mischievously concedes insurance is a none issue by announcing ‘even more robust requirements’ to an entirely binary question as to whether a vehicle is insured or not. And what are these robust requirements? TfL insists that drivers must insure a vehicle for the entire 12 month term of the private hire vehicle license or lose the license. For many drivers coming from an immigrant background who chose to work hard for 10 months a year and travel overseas to be with family for the remainder of the year, it means they must bear the cost of expensive & unnecessary cover even when not working.

As TfL anticipates modernising regulations in light of ‘the impact of new technology’ it is hard to understand why the regulator cannot leverage congestion charging surveillance databases and the central Motor Insurance Database to cross check cover without imposing unnecessary extra costs on those who can least afford it.

Collection of private hire driver national insurance numbers for provision to DWP and HMRC
On the surface of it we have no objection to any appropriate level of co-operation with agencies such as DWP and HMRC but the rationale and process followed for the introduction of this requirements raises some troubling questions. TfL says this measure is necessary and it is explained as follows:

Whilst a national insurance number is not a proof of identity, it does provide an additional safeguard to other identity checks. Furthermore, the information could be of use to the DWP to assist any relevant investigations.

The first point is an obvious red herring in so much as TfL already requires an enhanced DBS check as a condition of licensing so it is unclear what additional security collecting this information will be.

Secondly, if DWP want to conduct an investigation of any welfare recipient they have more than ample powers of their own. In collecting this information, it is as if TfL is signaling to DWP that private hire drivers are a fraud risk as suggested by the LPHCA led by then TfL board member Steve Wright.

While TfL sees it has a role to play in policing how drivers settle their tax and benefit arrangements with the state, it point blank refuses to consider what role it might play to protect drivers from exploitation as licensed drivers working for licensed operators. In an email from TfL when asked to comment on the regulatory implications of a new driver contract introduced by major operator the regulator looked the other way saying only:

‘I think it is important to note that drivers choose which operator (or operators) they work for, and the working terms and conditions they are prepared to accept. Transport for London (TfL) is not able to advise on private arrangements between drivers and who they work for, as our role is not to approve individual operator, or provider, terms and conditions such as the terms of indemnities, disclaimers or arbitration clauses in contracts between drivers and operators or app providers.’

Therein lies the contradiction. TfL is more than happy to impose regulation on issues of TfL licensed driver employment arrangements when it comes to tax and benefits but refuses to take action to prevent license holding operators from ‘brutally exploiting’ these same workers.

Further to this, in the Integrated Impact Assessment analysis report TfL claimed: ‘there were no comments regarding equalities impacts and mitigations’ submitted during the consultation phase of the integrated assessment review. In fact United Private Hire Drivers submitted extensive written input on behalf of private hire drivers.

TfL also conveniently fails to mention that it did not provide any equalities assessment before introducing this regulation as it is obliged to do. Further, we do not accept TfL’s failure to acknowledge our input in the analysis report was an oversight. We believe TfL was steering the regulatory outcome it wanted all along unencumbered by driver stakeholder input. UPHD comments on this during the consultation phase stated:
We believe it is a serious error that TfL has neglected to carry out an impact assessment. We believe there will be severe adverse equalities impact as a result of this proposal.

Additional powers to criminalize the poor

The latest action plan announces that TfL is seeking new powers to issue penalty charge notices and to further criminalize ply for hire offences. We believe, due to the discriminatory way TfL has dealt with the private hire driver community engagement, it would be unwise to grant additional sanctioning powers until it can prove it can regulate in a fairer manner than it has chosen to do thus far.

We do not agree that TfL seeking to further criminalize ply for hire without first defining the regulation more clearly. TfL admits that the law is ambiguous and, consistent with advice from the Law Commission, TfL might be better advised to first more positively define the regulations before further defining criminal sanctions.
13. THE PLY FOR HIRE QUESTION

A lack of vision for London’s taxi and private hire services

In the wake of the recent private hire regulatory review and the launch of TfL’s Taxi and Private Hire Action Plan 2016 it has become increasingly clear that TfL & City Hall still do not have a clear, positive vision for the future of London’s iconic taxi trade.

In plain terms, this latest plan just as the 2015 strategy document before it, fails to define a vision for the taxi trade, as valuable heritage asset, for an era of pervasive app services. It is an institution worthy of protection if only our politicians and policy makers could chart a course for it in a rapidly changing public transport environment. Recently, the best the Deputy Mayor could come up with in an interview with the BBC is that the taxi trade could ‘add more value’ by selling theatre tickets.

Similarly Leon Daniels, TfL Managing Director for Surface Transport, speaking at a bus transportation conference recently, sounds more like a groupie than a regulator for integrated surface transportation for one of the world’s mega cities:

‘…..the real news is personal mobility……Any time of the day or night diesel-hybrid, clean Prius or similar is available to you in this city, and increasingly in other cities … It will take you to where you want to go…. This is your biggest threat in the commercial bus sector. It’s cheap and it’s even cheaper if there’s more than one person travelling, and in many places it comes with an optional ride share scheme. So for three people travelling, whether they are friends or strangers, you can travel nearly as cheaply in many cases as you can on the bus network……And it’s on-demand, and it’s any time of the day, and it’s personal to you, and it’s door-to-door, and you are literally in a modern saloon car with air conditioning and even your own music channel through Spotify.’

The problems of Daniel’s analysis are glaring:

- Has he abandoned any notion of integrated, mass transport as environmentally preferable to everyone reverting to private cars in the city?
- Has he just drank the ‘personal mobility’ Kool Aid or does he not understand the external costs of allowing private hire vehicles to bleed traffic from the public transport network?
- Has he not understood the public safety threats of fatigued drivers working excessive hours to turn a meagre profit?
- Has he not considered the public safety risks of sharing a ride even if you do get to use Spotify?

The latest action plan appears to be more of a rear guard action, a bundle of measures to provide some financial support to the taxi trade and additional cost burdens for the private hire trade on the other. It doesn’t add up as a strategy to provide either trade with regulatory certainty and a pathway to return to economic sustainability.

Sadly, these measures will fail to either preserve the black taxi trade or improve the lot of private hire drivers.

In the recent 2015/16 private hire regulatory review, TfL had the opportunity to define and protect ply for hire rights for the taxi trade but most initiatives to do so were stripped out by Boris Johnson in January this year. Sadiq Khan did not restore any ply for hire protections in his recent package of measures but has promised to lobby parliament to set down ply for hire rights in statute. In effect, he has kicked the can down the road and into the long grass.

Taxis and the right to ply for hire

Only London taxis have the right to ply for hire (to pick up passengers from the street for instant hire without any booking intermediary) on the streets of London. Taxis also have the right to use bus lanes and to queue on one of many designated ranks around the city. Only taxis are allowed to use taxi meters.

Regulation of the taxi trade goes back to 1637 during the reign of King Charles I and has been protected by legislation since 1654. A licensing system similar to what we have today has been in continuous existence since 1662. From 1850 licensing and regulation of the trade was undertaken by the Metropolitan Police before responsibility was passed over to TfL upon its formation in 2000. Taxi drivers today must undergo a series of gruelling topography tests, known as the knowledge, which can take from 2 to 4 years to complete and costs around £1,000. With a pass rate of 27%, those who pass the knowledge understandably guard their unique rights and protections jealously.
However, TfL has been come in for severe criticism for its lack of effectiveness in regulating the joint Taxi and private hire trade with a recent GLA Conservative group report calling it an ‘absentee regulator’. The same report also argues a reduced testing burden for new taxi driver license applicants. But this is where TfL runs into a very difficult dilemma: if it reduces the licensing requirements & costs for taxi drivers it also risks further erasing the distinction between taxi and private hire services. If it takes no action and private hire licensing numbers continue to climb while encroaching on taxi ply for hire rights we could see the extinction of the historic taxi trade inside a decade.

**Apps and the encroachment on ply for hire taxi rights**

The line of demarcation between taxi and private hire is the right to ply for hire. For years the peace was maintained in a so called two tier system with taxis owning the instant hire domain and private hire owning the advanced booking domain. An uneasy truce between the trades has existed until the rise in app booking technology which has severely blurred the line between instant hire and advance booking.

**When is a hail not a hail but a booking?**

TfL maintains that a minicab summoned via an app is not an electronic hail but a pre booked service even if availability is near instantaneous.

Plying for hire regulations generally follow a definition that the practice includes display and availability. The regulations have never been properly defined and case law stretches back to the late 19th century. But a Law Commission report on the trade in 2014 noted:

> ‘However, the meaning of the concept is not set out in statute and has become the subject of a body of case-law that is not wholly consistent. Technological developments increasing the possibility of near-immediate bookings have made it even less practicable to apply. Furthermore, there is no statutory definition of a pre-booking.’

The taxi trade, the RMT Union most notably, vehemently dispute that applying plying for hire regulations in impractical. RMT is campaigning for a statutory definition of ‘plying for hire’ to be finally laid down in primary legislation, which unbelievably after 50 years of rancor, still hasn’t happened.

The stakes are high for industry money makers in the dispute over the legal definition of ply for hire. In the recent private hire regulatory review TfL proposed that Apps such as Uber should not show cars available on the users screen map. However, later in the consultation TfL abandoned this proposal and so apps may continue showing availability thus throwing plying for hire laws into further uncertainty. Now, in the recently issued TfL Taxi and Private Hire Action Plan 2016, the Mayor and the regulator are effectively kicking for touch by now turning to parliament for statutory definition of ply for hire while doing nothing to itself further develop regulation for ply for hire in an era of disruption caused by the use of apps.

We believe it is way past time for TfL to regulate to define and protect the ply for hire rights of the taxi trade while also providing much needed clarity for private hire drivers operating in an app driven market.

**Touting and unfair criminalization of licensed private hire drivers**

While displaying a vehicle available for hire might be considered a plying offence, approaching a member of the public to solicit is considered touting.

Touting is a criminal offence under the Criminal Justice and Public Order Act 1994. Enforcement sees drivers arrested, finger printed, DNA sampled, their driving license endorsed with up to 8 points, fined up to £7,500. In addition drivers face losing their livelihood as drivers convicted or cautioned will have their private hire license revoked by TfL.
On the one hand, enforcement of sound regulations in the interest of public safety is to be applauded. But on the other hand, we cannot ignore the continued regulatory mess the industry is mired in especially when unfair enforcement can have such a catastrophic effect on innocent people. As the Law Commission noted in their report:

'It is also a major problem that the definition of plying for hire arose before the emergence of an organised and regulated private hire trade. Much of the activity that has been criminalised as “plying for hire” was originally aimed at prohibiting completely unlicensed drivers from picking up passengers without any controls. In other words, the concept of plying for hire was part of a piece of legislation directed at those who ought not to be carrying passengers for hire at all. Reliance on plying for hire is a prime example of why taxi legislation can be regarded as outdated, through failure to reflect such a fundamental change to the licensing landscape.’

It is in this way TfL has misused unclear and unfair regulations to punish and criminalize a vulnerable workforce. In fact, what TfL should be doing is defining more precisely the rule and regulations under which private hire drivers must uniquely operate rather than focusing on the penalties for infringing on the ply for hire rights of the taxi trade. TfL squandered a golden opportunity to do just this in the recent regulatory review.

Instead of focusing on enforcement of the rules with large corporate licensed operators who deploy disruptive business models, TfL has chosen to focus enforcement on politically disempowered drivers. It imposes ever stricter penalties against private hire drivers but backs away from its own proposals to restrict app operators from displaying availability of cars in app – arguably a ply for hire offence in its own right.

Again, from the Law Commission report:

‘Our proposal is therefore to approach the problem of demarcation from the opposite direction: rather than attempting to define the things that taxis alone are permitted to do, we focus upon the precondition for lawful transport of a passenger in a private hire vehicle – namely pre-booking – and upon improving its enforceability through record-keeping obligations imposed on private hire operators (“dispatchers” as they are called in our draft Bill). We propose to buttress this with a new offence of accepting a “there and then” hiring.’

TfL’s current action plan rightly admits ‘plying for hire is difficult to prove and requires significant enforcement resources’. The problem is that TfL seeks to carry our enforcement in this murky area against private hire drivers while leaving the operators who may facilitate such offences unscathed. For example, Uber until recently has been an instant hire, on demand service with no pre-booking capability. This is something that might be considered a ply for hire offence. Yet, TfL’s Managing Director for Surface Transport, Leon Daniels has been recently exposed in coaching Uber’s UK General Manager, Jo Bertram in how to finesse their language on this. He writes:

‘Jo, I am getting a ton of tweets, insulting as usual, about the message from your customer service to a client. If you monitor it, then you’ll know the words ‘no prebooking’ are being exploited. I wonder if you agree that it might be helpful to use different terminology? Since ‘prebooking’ is the rationale behind PHVs it really is unwise to deny you do it in this way. I accept that the phrase used is the one by the customer but is now being used to complain that we are allowing something we shouldn’t. I am not really impressed having to try and explain long term prebooking versus short term pre booking.’
Consider also how technology has created a grey area and more risk for criminalisation of the driver. For example, a passenger may stand beside a private hire vehicle and hail it via the app but must wait until the booking has been accepted before entering the vehicle. This is a peculiarity of the laws that is increasingly difficult for private hire drivers and the travelling public to understand.

**Virtual touting?**

Similarly, in a recent Cosmopolitan Magazine feature on an Uber driver said to be the face of a major new Uber campaign to attract more women drivers, the reporter writes about the driver receiving a call directly from a regular client who she has contact with via Uber. She arranges to pick up the man and during the journey the driver makes arrangements to pick up the passenger once again a few days later to bring him to the airport. It is possible that the driver comes to a passenger’s location and the passenger then books the journey via the app which automatically allocates the job to the driver as the closest available vehicle. But even this innocent sounding activity under current rules would be a criminal offence as all bookings must be made initially via the Operator – Uber in this case – and arrangements cannot be made like this with the driver. But in this grey area it is only the driver who must face the consequences of enforcement despite the ambiguity of the law. Private hire operator managers in shiny suits face no such risk.

And it is the poor who will continue to face ever stiffer enforcement since the recent TfL action plan now announces that the regulator seeks to extend criminal law powers which the police already have to collect DNA samples from drivers caught touting (openly soliciting) to plying for hire (eg. displaying minicab advertising on or in the car) offences.

Given the admission of how poorly defined this area of the law is and TfL’s complete abdication of responsibility to engaged, educate and inform private hire drivers of it is worrying that TfL yet seeks even more powers of criminal sanction.

**Operation Neon & the rise of vigilantism: the regulated regulating the regulator**

As previously discussed, the Law Commission noted that anti touting enforcement against licensed private hire drivers criminalises drivers when the original regulations were aimed at prohibiting completely unlicensed drivers BEFORE the emergence of a regulated trade. But that hasn’t stopped TfL’s harsh approach which would appear to be driven by political pressure from the politically powerful taxi lobby. In May 2015 TfL announced a major anti touting initiative dubbed Operation Neon.

The initiative was hastily launched in May 2015 to head off another mass taxi protest on the streets of London. Now 17 months later and with untold manpower resources the enforcement statistics are telling. Despite the combined enforcement resources of Westminster Council, TfL and the Metropolitan Police across 141 operations only 65 drivers have been reported for plying offences. Yet this dragnet has produced over 10,430 orders to move and 3,400 parking tickets for private hire drivers. It would seem TfL is happy to license private hire vehicles far beyond what even the regulator and the Mayor believes to be sustainable but then punish private hire drivers suffering from a lack of infrastructure to operate.

But the greatest conflict of interest lies in how Operation Neon is overseen by the trade. TfL’s mantra is that ‘Operation Neon will continue as TfL and the trade agree that it’s needed.’ Although Operation Neon is directed exclusively at the private hire trade it is jointly overseen by TfL and taxi trade organisations including the London Taxi Drivers Association, London Cab Drivers Club and the UNITE Union Cab section. Of course this represents a massive conflict of interest and is highly discriminatory but yet the ‘crack down’ continues indefinitely without any input or representation from private hire drivers or operators.

Emboldened by this experience formal and informal taxi driver groups, such as the LTDA and the so called Mayfair Mob have taken it upon themselves to marshal private hire drivers and vehicles at key locations around London. This activity has quickly escalated to intimidation and has already resulted in violence and legal writs flying around. The matter has been raised repeatedly with TfL who abdicate all responsibility saying it is solely a police matter.
WHO BREAKS A BUTTERFLY UPON THE WHEEL?

14. TOUTING AND SEX CRIME

Cab related sex crime is a sensitive issue for both trades. Being a licensed driver requires a high degree of public trust and any breach must be punished severely. Passengers often take a taxi or mini cab home late at night because they want a safer, calmer passage than that offered by public transport. Unfortunately, over the years there have been some terrible sex crimes committed from both the taxi and private hire trade. John Worboys, a licensed taxi driver, is said to have sexually assaulted up to a 100 women over a seven year period. The mini cab sector too has had numerous high profile incidents such as that of Sothisundaram Soorriyakumaran and Masood Ahmed both of whom were convicted of sexual offences.

TfL touting strategy – panic the public but no sensible prevention strategy

There is a particular problem with unlicensed drivers posing as licensed minicab drivers targeting vulnerable passengers for assault. TfL and the Metropolitan Police have launched a major enforcement and public education campaign targeting high risk ply for hire activity. An expensively produced TfL public service video warns:

‘The dangers of using unlicensed and unbooked minicabs should never be underestimated. Any minicab journey that is not booked is not safe.’

Unfortunately, the travelling public are faced with a rather more confused message from TfL as the video goes on. Matt Bell, TfL Head of Taxi & Private Hire Compliance admits:

‘It’s difficult for member of the public to differentiate between certain different types of transport because people don’t necessarily understand the difference.’

At the moment it is indeed difficult for a passenger to identify a legally licensed private hire vehicle. The TfL license decal for the vehicle must be displayed in the front and rear window of the car and the driver must display the license. Both can be seen in the image below.

Unfortunately, TfL has opposed on or in car advertising which might have helped the customer more quickly identify a licensed private hire vehicle and the operating company behind it. Indeed, Uber provided small dashboard signs for drivers but TfL ordered Uber to instruct drivers not to display them. Further, in the recent private hire regulatory review TfL clarified the regulation that advertising not be allowed inside the vehicle. It was already established that advertising was not allowed outside. It is disingenuous for TfL to continue to allow the public to be confused about private hire vehicle identification and therefore expose vulnerable people to risk of sexual assault while opposing all attempts for the operator to identify the firm with advertising on or in the car.

The public information video shows a licensed driver wearing his badge being placed in handcuffs ‘so they can be put through the criminal justice system’ according to TfL’s Matt Bell. But consider again the Law Commission report findings:

‘It is also a major problem that the definition of plying for hire arose before the emergence of an organised and regulated private hire trade. Much of the activity that has been criminalised as “plying for hire” was originally aimed at prohibiting completely unlicensed drivers from picking up passengers without any controls. In other words, the concept of plying for hire was part of a piece of legislation directed at those who ought not to be carrying passengers for hire at all. Reliance on plying for hire was a prime example of why taxi legislation can be regarded as outdated, through failure to reflect such a fundamental change to the licensing landscape.’

In this case is it right then for the Police and TfL to criminalise someone for touting offences in the same way as someone who is not licensed at all and with no Disclosure and Barring Service screening?

The Law Commission also went on to make another fundamentally important point about the conflation of touting with other crimes such as sexual assaults:

‘If plying for hire is meant to catch any broader behaviour than touting, it must necessarily be an inchoate offence, involving an implicit intention to offer services; convictions will frequently depend on circumstantial evidence, with all the attendant difficulties.’
WHO BREAKS A BUTTERFLY UPON THE WHEEL?

Enforcement: focusing on everything is focusing on nothing

The trap into which proper regulatory enforcement falls as a result of poor legal framing is perhaps best exemplified by comments made by current TfL board member and former Conservative London Mayoral candidate Michael Liebreich. While riding shot gun with Operation Neon Liebreich claims to have watched TfL Operation Neon (the private hire and anti touting initiative) enforcement teams deal with ‘potential sex attackers’. Of course this was patent nonsense. There was no way even TfL staff, let alone anyone else, could identify a ‘potential sex attacker’. How could they? And even if they could there was little action they could take since no crime had been committed. However, this incident does reveal the trap TfL enforcement has fallen into in linking touting with sex crime yet not effectively dealing with either in the context of taxi and private hire enforcement.

To put this more simply – if the Met Police & TfL want to end in cab sex crime then it is the detection and prevention of such crimes they should bear down on and take all regulatory action possible to make licensed private hire vehicles and drivers more readily identifiable. Touts and the attendant risk of unlicensed private hire drivers only exist because they can so easily fade into the background of many relatively unmarked yet legally licensed private hire vehicles.

TfL must engage private hire drivers and operators and publish crime data openly. And yet TfL fails to engage private hire drivers at all on any subject. TfL has released sex crime data under embargo to the taxi trade who have then used the data to smear private hire drivers in what has become an increasingly ugly trade war. Rape is too serious a crime for it to be used as a weapon of trade war.

From bad data to bad policy

In January 2016 TfL shared in cab sexual assault data to taxi trade representatives which was later leaked on line by the London Cab Drivers Club. In a statement released by TfL:

'It was stressed during both meetings that these were provisional and unverified figures and not official confirmed figures. As such these figures were confidential and were shared purely to explain the context of the work being undertaken. We asked both trades to respect the confidential nature of the data being shared and not to repeat or publish it outside the meetings.'

Unfortunately, TfL has never engaged the private hire driver community before or since their leaking of this data to the taxi trade & TfL’s inner circle of private hire operators nor do we have any evidence the data has been shared with victims groups.

Given the prominence TfL gives to sex crime risk associated with touting it is surprising that published data is so scarce. Despite all the public information alarm about the risk of sexual assaults in unbooked or unlicensed vehicles TfL admit:

'It is not always possible to determine whether these offences were committed by unlicensed or licensed taxi and private hire drivers or any details of how the victims were approached. The specific details regarding the offender’s characteristic in each case are often not clarified until the investigation of each allegation is complete, and in a significant number of offences, the profile of the suspect is never confirmed and remains unknown.'

All that TfL can tell us for sure is that taxi and private hire sexual offences were 30% lower in 2012/13 compared to the same period ten years earlier and in the 2013/14 period sexual offences were down 15% and rapes down 30% over the previous 12 month period.

We do know from a Freedom of Information request made to the Metropolitan Police there were 154 allegations of sexual assault made between February 2015 and February 2016 related to all cabs in London. This includes all licensed taxi drivers, licensed mini cab drivers, unlicensed drivers and even rick shaw drivers. Of this, 32 allegations were specifically related to Uber drivers. This number may also include in cab offences between passengers who may have been unknown to each other. Ride sharing services are a particular risk in this regard. Nevertheless, clearly there is a problem here that needs to be addressed strenuously. Private hire drivers must be urgently engaged by TfL to be part of the solution.
15. CAPPING THE TRADE

Failure to control licensing

Sadiq Khan and Boris Johnson before him together with TfL, the taxi trade, private hire drivers and most operators all agree the combined taxi and private hire market has been licensed well beyond sustainable economic and environmental limits.

Both Mayor Johnson and Mayor Khan have insisted they do not have the powers to set a cap on private hire licensing and such powers must be devolved from central government. Boris Johnson committed himself to lobbying for these powers and Sadiq Khan committed himself to action during his election campaign. However, Sadiq Khan has dropped the idea completely from the latest policy commitments signaling an evaporation of political will.

We note the experience of Mayor De Blasio in New York when he attempted to impose a cap on private hire licensing in New York before backing down within 5 days in the wake of a public onslaught from consumers activated by Uber in defense of cheap services.

At the time a top New York City Democrat commented to Buzz Feed:

‘for Uber this is existential — they just have to kick the shit out him forever as an example to other mayors.’

We believe, the threat of consumer political activism in defense of cheap private hire fares on the one hand and the political threat of a well organised political taxi lobby on the other has led the Mayor to take some unfortunate policy decisions which hurt some of the poorest workers and most disenfranchised citizens of London – private hire drivers.

Instead of seeking to control licensing the Mayor has instead chosen market intervention strategies with the costs borne by those who simply cannot afford it. Instead of restoring the market so there is ‘space for all providers to flourish’, the Mayor has loaded additional burdens on to those already suffering Dickensian levels of exploitation while the money men can continue to expand ever cheaper services unfettered by a license cap.

More enforcement cures all ails?

The licensing of private hire vehicles knowingly beyond physical, economic and environmental capacity while ramping up enforcement to deal with the inevitable fall out is a classic Kafkaesque response to a very public policy problem.
WHO BREAKS A BUTTERFLY UPON THE WHEEL?

16. FIT AND PROPER LICENSING REQUIREMENTS

We believe the Mayor has a moral responsibility not to license private hire drivers into poverty, exploitation and danger.

The ‘brutal exploitation’ of drivers, the unsafe working hours, the abuse and assaults suffered in the course of their work, all of these circumstances are very well known to Transport for London. The recent explosion of licensing of the trade and uneven enforcement means drivers suffer even more. We believe it is past time for the Mayor to clean up the trade and this can only happen if vulnerable workers are protected by the regulator not just licensed, sanctioned and criminalised.

The Mayor should use powers available to him to better vet the suitability of operators to have a license if the drivers they engage are mistreated, over worked and abused. In addition, the Mayor should also question whether TfL should license Operators who domicile offshore to avoid tax. For instance, Uber records all consumer transactions made in London through its Netherlands entity and Addison Lee’s parent company is based in Luxembourg.

This simple control on operators with a threat of losing their license to operate as ‘unfit and improper’ would send a powerful signal that fair taxation, driver worker rights, safety and welfare must be protected.

TfL’s abdication of responsibility to run an ethical trade

When it comes to the important question of ‘fit and proper’ assessment of ‘brutally exploitative’ licensed operators TfL goes one worse than abdicating responsibility, it places even more responsibility on drivers for the consequences of their own exploitation.

In an email from TfL’s head of Taxi and Private Hire Public Carriage Office, Helen Chapman wrote:

Drivers choose which operator (or operators) they work for, and the working terms and conditions they are prepared to accept. It is not within our remit to advise on private hire arrangements between drivers and who they work for. Transport for London’s (TfL) role is not to approve individual operator, or provider, terms and conditions.

We are aware of increasing reports of drivers working excessive hours within both the taxi and private hire industries. I agree this is a concern, but as I’m sure you are aware, self-employed drivers are exempt from the European Working Time Directive which means TfL or I are unable to directly regulate a driver’s working hours.

While Chapman washes TfL’s hands of responsibility for the inevitable blow back on public safety resulting from over licensing and resulting sweat shop conditions of long hours on low pay, her predecessor took a different view. John Mason, writing to the Greater London Assembly, hinting at a lack of competence in his former department, recommended, that strategy setting for the trades be taken out of the hands of TfL’s Surface Transportation division and assigned to TfL’s Group Planning Department. Mason recommended that one of the planks of the prospective strategy should include:

How the Mayor and TfL will support the well-being and livelihoods of the people it licenses
17. ENFORCEMENT OF REGULATIONS FOR TAXI LOBBY AND BIG MONEY OPERATORS – TOO BIG TO COMPLY?

In a forthcoming report focused on worker rights we will detail more fully the plight facing drivers in their relationship with the major Operators and the associated regulatory implications. Due to ongoing litigation it would imprudent to expand on this topic in this report at this time.

Two flies in the policy ointment

For now though we simply ask the question: does TfL apply the regulations fairly for all actors in the licensed taxi and private hire system? In our survey our members voted overwhelmingly no.

We believe there are two aggravating factors at play that explains TfL’s willingness to be more punitive and discriminatory when it comes to private hire driver regulations while seemingly taking a laissez faire approach with operators, especially large operators:

- the encroachment on ply for hire rights by driven by technology driven business model changes for operators continues to remain unaddressed leaving a regulatory vacuum.
- In a highly regulated market consumer power can be quickly converted to political power to undermine undesired public policy controls which threaten profits

Political dirty tricks

TfL remains under fire by the powerful taxi lobby on the one side and the threat of lawyered up corporate operators on the other. Corporate operators have been also more than willing to unleash consumer power to apply political pressure. For example, during the private regulatory review Uber rallied its customer base to apply pressure on the Mayor of London to back down. And there can be no denying that political leaders do succumb to such pressure. As mentioned previously, in New York, Mayor DeBlasio attempted to cap private hire vehicle numbers in the city before backing down after immense public pressure mounted by an Uber appeal to consumers.

At the time a top New York City Democrat commented to Buzz Feed:

‘for Uber this is existential — they just have to kick the shit out him forever as an example to other mayors.’

Appearances over substance

Meanwhile, in London we have had two successive Mayors agree that a cap is needed but lack the powers to cap that only central government can grant – apparently. Neither Mayor, despite claiming to lobby for such powers, have shown much evidence of trying very hard. In fact, in the current Mayor’s just released Taxi and Private Hire Action Plan 2016 document the commitment to lobby for powers from central government to cap the trade has been quietly dropped. Perhaps this is a fight that is more politically expedient to avoid. Still the Mayor needs to be seen to do something but has to avoid a fight with either the taxi lobby or the even more powerful corporate operator lobby. The result is unfair targeting of the politically weak and economically disadvantaged private hire driver community. Regulations that punish private hire drivers are wildly popular with the taxi trade while cause no real threat to market onslaught from large multinational operators.

A business model built on influence peddling?

Addison Lee too has much political influence in City Hall as a long time Tory donor. Indeed, MP and Green Party leader Caroline Lucas accused the firm of trying to influence national taxi and private hire deregulation on the back of a Tory party donation of £500,000 when the firm was under the ownership of the Griffin family. The firm has since been sold to the Carlyle Group whose whole business model appears to be predicated on political influence. Speaking about the firm’s founder, David Rubenstein, a former associate said:

‘his vision was to combine capital with politically connected people whose phone calls are accepted around the world.’

Ayn Rand and the principle of ‘principled confrontation’

Uber CEO Travis Kalanick is an eager devotee to the extremist ideology of Ayn Rand who championed the cause of laissez faire capitalism. Rand once famously said: ‘the question is not who is going to let me; it’s who is going to stop me.’ Perhaps in a nod to Rand, Uber has been unapologetic about aggressive challenging of regulatory authorities in a strategy it calls ‘principled confrontation’.

Addison Lee also has been aggressive in its challenging of regulations such as its defiance of TfL rules that taxis may the right to use bus lanes but licensed private hire vehicles may not. Addison Lee once ordered its 4,000 drivers to disobey TfL regulation and use London’s bus lanes regardless of the rules. The firm’s then owner, John Griffin, also argued in the company magazine that deaths and serious injury of London’s cyclists were inevitable and the fault of untrained riders.
Unfortunately, such defiance and disrespect of public regulation was met with as much force from TfL as a dead sheep. Licensees who make a virtue of defying our laws surely cannot be considered ‘fit and proper’ for licensing. TfL never came close to making such a call.

**The great Heathrow defecation row**

Of late though the major private hire operators have turned on each other. The London Private Hire Car Association, a trade body for large operators including Addison Lee at the time, filed a legal complaint against Uber with TfL demanding the removal of their license. The London Taxi Drivers Association representative on TfL’s board caused ‘delays, conflicts of interest and constant battles’ with the regulator’s executive staff. However, this may flag up a need for an investigation.

TfL’s previous head of Taxi and Private Hire Public Carriage Office wrote to the Greater London Assembly, after leaving his role, and made some astonishing observations:

- the presence of the London Taxi Drivers Association representative on TfL’s board caused ‘delays, conflicts of interest and constant battles’ with the regulator’s executive staff
- when the capability for the public to check the validity of private hire and taxi driver license details on the web was introduced the taxi organisations reacted ‘hysterically’ and TfL quickly backed down and removed the functionality. The public can now only check private hire driver details.
- consistent complaints by disability rights groups that their street hails were being ignored by passing taxi drivers in clear breach of regulations.

Even London TravelWatch, London’s transport watchdog, had their recommendations to TfL for taxi passenger safety defeated by the Taxi lobby. In a letter to the Greater London Assembly the advocacy group complained:

’Following the Worboys case London TravelWatch worked with TfL to assure ourselves that all that could be done to reduce the likelihood of a reoccurrence of similar incident was being done. There were several positive outcomes of that work, but there are still some outstanding actions:

I. TfL agreed to recruit an officer with a specific remit to liaise between TfL and the MPS.
II. That there would be a driver ID with a photograph displayed in every taxi whilst in service;
III. We advocated for a better located poster or equivalent describing the complaints process to alert passengers how to complain. We think that encouraging passengers to complain is a good consumer principle and if a pattern of misdemeanours occurs this may flag up a need for an investigation.
IV. We asked that a medical check should be undertaken every three years rather than just initially on first becoming a taxi driver and then at the age of 55.

We understand that TfL have implemented i) although there was a delay in recruitment. TfL...’

In any event the legal case ran out of steam. TfL eventually went on the record releasing the legal advice it received in an effort to defend Uber.'

The toileting incidents may not have happened. It may or may not have been a private hire driver if it did happen. Even if it did happen once, it certainly not representative of the driver community, it would be an anomaly. Heathrow Airport Limited also complained that drivers were sleeping in their cars. Supposing for a moment such practices were typical, perhaps it should give the regulator pause for thought and compassion for workers caught in such circumstances.

The good name of drivers was an early victim in this legal complaint which repeated Heathrow Airport Limited complaints of drivers allegedly ‘defecating and urinating in gardens’. The claims made by the Stop Heathrow Expansion were always going to be suspect given they have an axe to grind with the airport operators.

**Taxi enforcement: too hot to handle?**

TfL's previous head of Taxi and Private Hire Public Carriage Office wrote to the Greater London Assembly, after leaving his role, and made some astonishing observations:

- undue pressure from the taxi lobby to focus on private hire safety when such complaints were not corroborated by public complaints: ‘over the four years I spent as Director I do not recall seeing any complaints regarding the safety or availability of taxi and private hire services except those made by taxi drivers regarding private hire vehicles.’
- passenger complaints about taxi drivers are aggressively challenged by powerful taxi representative bodies leading to impotence of the regulator: ‘Taxi drivers are rightly proud of their reputation and tend to be very resistant to any suggestion that they may have provided a poor level of service or that a customer has a valid complaint. Taxi driver trade associations will often take up complaint cases and deal with these on behalf of their members following all routes of challenge and appeal and creating considerable workload and cost to TfL. The vast majority of complaints made by passengers are often unproven and end up with the passengers word against the drivers word. This does make taking real and meaningful action against drivers for genuine complaints quite challenging.’

We understand that TfL have implemented i) although there was a delay in recruitment. TfL...’
agreed to implement both ii) and iii), in the form of a combined A5 insert located in a frame directly behind the driver at eye level. However this has been delayed. We continue to raise this issue when we can. We understand that there have been changes to the requirement for medical examination.’

London TravelWatch wrote this letter in June 2014 however, to this date, TfL has not implemented the key recommendations on taxi driver identification and taxi driver complaints information.

Meanwhile, TfL continues to bow to taxi trade demands for ever more repressive and unfair regulatory penalties for private hire drivers.

**Private Hire driver concerns about operators unheeded by TfL**

United Private Hire Drivers members raised specific issues concerning specific operators with TfL which the regulator has singularly failed to address:

- TfL says it sought and received assurances on ride share safety before pre empting the public consultation by giving it the green light in December 2015. TfL has refused to publish details of this due diligence work for the benefit of drivers who must perform these services which carry significant additional risk. Caroline Pidgeon, Chair of the Greater London Assembly Transport Committee has now asked the Mayor to publish information in a published question to the Mayor. TfL now says it is designing safety controls for ride share with DfT while insists TfL will do so alone. As of yet, 9 months after ride share services were first introduced, no additional control procedures have been published by either TfL or DfT. Drivers and the travelling public remain at risk while TfL fiddles.

- After TfL announced it had closed 17 local, small topography test centres and ordered 300 drivers to retest. At least one UPHD member came forward to TfL and reported he had been supplied the answers during the test at one of the large corporate operator’s test centre. TfL failed to clarify if his license is now invalid. Our member offered to make a statement to TfL under oath but TfL made no attempt to advance the investigation.

- Another member reported serious concerns about errors in document checking by a major operator which left the travelling public exposed to unacceptable risk. To date TfL have made no attempt to contact him to take a statement and properly investigate this matter.

- UPHD lobbied TfL to provide whistle blower access to TfL for private hire drivers. TfL have yet to implement this common sense suggestion.

- UPHD lobbied TfL to ensure all operators had 24 hour emergency contact for drivers as well as for customers as was proposed in the regulatory review. TfL failed to regulate this common sense proposal which might have been a slight additional regulatory burden for operators but would have had a significant positive impact of driver and public safety. TfL mandated only customers should have 24 hour contact support.

The message is clear: TfL do not want to deal with private hire driver whistleblowing and do not have the appetite to enforce the rules with the large, multinational operator firms.
18. CONCLUSION

111,000 working poor Londoners provide an essential public service to their City under license from their Mayor. They suffer intolerable abuse, violence and are deprived of their rights as private hire drivers. They find their plight is ignored by an uncaring and indifferent regulator. The regulator in turn is reactionary and responds disproportionately to political pressure with insufficient regard for what is in the better interests of the travelling public. The regulator also abdicates responsibility for the rights and welfare of the private hire drivers it licenses.

It is time for TfL to stop the crushing of 111,000 butterflies on the wheels that keep London moving.
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