Private hire operators and the Deregulation Act 2015

The *Skyline* ruling has spelt out the conditions that must be met for private hire vehicles to sub-contract between districts using a remote booking system, as **Roy Light** explains

Private hire vehicles (PHVs) require a vehicle licence, driver's licence and operator's licence (known as the "trinity of licences"). These must be issued in the same licensing authority district. This enables the authority to have oversight of the business and to monitor and enforce its operation in the interests of public safety.

Traditionally, the legislation and case law were clear that while an operator could sub-contract a booking to another operator in the same district (while maintaining the trinity of licences) a booking could not be transferred to a different district. However, the Deregulation Act 2015 has fundamentally changed matters.

Law

PHVs are regulated under the Local Government (Miscellaneous Provisions) Act 1976. PHVs may only be operated by a licensed PHV operator. "Operate" means "in the course of business to make provision for the invitation or acceptance of bookings for private hire work" (s 80(1)). The operator has a duty to ensure that both the vehicle and driver are properly licensed.

Section 46(1)(d) provides that it is an offence to operate a vehicle as a PHV without having obtained a licence under s 55. The authority may impose conditions on the licence (s 55(3)) and the contract is with the operator who accepted the booking (s 56(1)); records must be kept in such form as the authority by conditions prescribes (s 56(2)&(3)); and if any person without reasonable excuse contravenes the provisions of s 56 he shall be guilty of an offence (s 56(5)).

Sub-contracting

Section 56(1) envisages sub-contracting as it states that the contract shall be deemed to be with the operator who accepted the booking "whether or not he himself provided the vehicle". Prior to the Deregulation Act 2015 the law was clear that while it was lawful to sub-contract within a district it was not lawful to operate PHVs by making provision for the invitation and acceptance of bookings received in another district[1] (for example, where a company has offices and operator's licences in two districts and its phone or online booking system at its office in one district diverts automatically to its office in the other district).

In *Shanks* the court considered that:

> *It is clear that whenever any operator acts by making provision for the invitation or acceptance of bookings for a private hire vehicle, he must use vehicles and drivers licensed by his licensing authority. He is perfectly entitled to do that by way of sub contract; but he cannot obtain the use of vehicles or drivers licensed by another authority in order to carry out the booking which he has as an operator made provision for by way of invitation or acceptance (para 27).*[2]

However, Latham LJ noted:

> *There is no doubt that there are advantages operationally and in the provision of a service to the public to be gained from a more flexible form of control. Accordingly, there may well be good policy reasons for revisiting the structure which has been created by the 1986 action (sic). In particular, there has been a significant development in modern communication systems which may make the demarcations, which are consequent upon the construction of the Act, which I consider to be correct, too restrictive in the public interest. But that is not a matter for this court. That is a matter for Parliament (para 25).*

Deregulation Act 2015

Section 11 of the 2015 Act inserts new provisions into the 1976 Act relating to sub-contracting of PHV bookings. Section 55A(1)(b) permits a PHV operator to sub-contract a booking *inter alia* "where the other person is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted in that district". Section 55A(2) provides:

> *It is immaterial for the purposes of subsection (1) whether or not sub-contracting is permitted by the contract between the person licensed under section 55 who accepted the booking and the person who made the booking.*

Section 55A(3) provides: *Where a person licensed under section 55 in respect of a controlled district is also licensed under that section in respect of another controlled district, subsection (1) (so far as relating to paragraph (b) of that subsection) and section 55B(1) and (2) apply as if each licence were held by a separate person.*

Thus an operator is able to sub-contract between districts as well as within the same district. It is also possible for a company with operator's licences in more than one district to sub-contract with themselves; as they are treated as separate persons (s 55A(3)).

Section 55B deals with sub-contracting and criminal liability. It provides that:

1. *"the first operator" means a person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle and then made arrangements for another person to provide a vehicle to carry out the booking in accordance with section 55A(1);*
   "the second operator" means the person with whom the first operator made the arrangements (and, accordingly, the person who accepted the sub-contracted booking).
2. *The first operator is not to be treated for the purposes of section 46(1)(e) as operating a private hire vehicle by virtue of having invited or accepted the booking.*

Sub-contracting would therefore not render an operator liable under s 46(1)(e). However, if the second operator utilises a vehicle and / or driver from a different district there may still be criminal liability under s 46(1)(e) for both operators - for s 55B(3) provides that the first operator is guilty of an offence if he knew "that the second operator would contravene section 46(1)(e) in respect of the booking".

Milton Keynes Council v (1) Skyline Taxis and Private Hire Limited (2) Gavin Sokhi[3]

Skyline Taxis has operator's licences in the districts of South Northamptonshire Council (SNC) and Milton Keynes Council (MKC). Work was sub-contracted between them utilising the iCabbi computerised booking system. A customer in Milton Keynes phoned the automated system and pre-booked a journey within Milton Keynes. The iCabbi system transferred the booking to South Northamptonshire and a vehicle and driver both licensed in SNC were used.

MKC prosecuted Skyline and the driver under s 46(1)(e) for operating a vehicle as a PHV for which a s 48 vehicle licence issued by MKC was not in force, driven by a driver who was not licensed by MKC under s 51. The basis of the prosecution was that the booking was with Skyline MK, which held an operator's licence issued by MKC, but the vehicle and driver were licensed by SNC. Thus the trinity of licences was breached.

Skyline's defence was that the booking had been transferred from Skyline MK to Skyline SN by the iCabbi system in accordance with s 55.

On 25 May 2017 a district judge found there was no case to answer as the prosecution had failed to show to the criminal standard of proof that the booking had not been transferred to Skyline SN under s 55A.[4] The DJ found that Skyline SN had an operator's licence from SNC and that the driver and vehicle were licensed by the same authority.

MKC appealed by way of case stated. The appeal was dismissed.

> *[The] essential issue before the District Judge ... focussed on whether treating them as distinct persons for these purposes, Skyline MKC arranged via the iCabbi system for Skyline SNC to provide a vehicle to carry out that booking in accordance with section 55 (para 28).*

It was accepted that s 55 permits sub-contracting between districts providing that the trinity of licences is maintained; but MKC argued that in order for s 55A(1)(b) to be satisfied, and for the sub-contracted booking to be "accepted in that district", something identifiable must happen in the district of the second operator, to whom the booking is transferred. In the Skyline case, it appeared as though nothing identifiable happened in the SNC district, because all the activity took place either in the geographical district of MKC, or in the computer "cloud".

The challenge was essentially to the operation of the iCabbi system. One concern, which the court shared, was the necessity for full and accessible records to be kept by both districts. The court concurred with the DJ that the system was compliant in this respect:

> *The evidence is that the iCabbi system is intended to be a comprehensive, integrated, post-Deregulation Act, web- and cloud based despatch software, which includes a despatch system designed to "manage all aspects of the booking process", using new technology such as Voice Response, the internet and apps; as well as a system to*

1 *Dittah v Birmingham City Council* [1993] RTR 356; *Murtagh v Bromsgrove DC* [1999] All (D) 114.

2 [2001] EWHC 533 (Admin).

3 [2017] EWHC 2794 (Admin).

4 It was accepted that the burden of proof lay with the prosecution.

record the details of the journey undertaken, which, in addition to providing useful management information, is seen as useful as assisting in dealing with incidents that might form the basis of a complaint by driver or customer (para 24).

MKC's argument that to satisfy s 55A the second operator has to take a positive decision to accept the booking and this requires some positive intervention of some description on the part of the second operator was not accepted by the court:

The provisions clearly contemplate a single operator having multiple operator's licences in different areas; and there is nothing in the legislative scheme to suggest the operation in each area has to have a separate and distinct controlling mind (para 46).

MKC further argued that the pre-condition of s 55A(1)(b) that "the sub-contracted booking is accepted in that district" had not been complied with as this meant "that the booking had to be accepted at a base of the second operator which had physically to be within the controlled area where the operator had an operator's licence" (para 50). There was no evidence as to where the iCabbi server was located. This too, although it has to be said in not particularly clear terms, was rejected by the court on the basis that:

"accepted in that district" requires that the second operator "is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted as a booking subject to the licence in that district ..." (para 52, emphasis in original).

It appears that what is intended by this is that the significance of the statutory wording is to ensure that the booking, once transferred to the second district, is covered by the licences and conditions pertaining in that second district. Geography is not the overriding consideration.

Summary

The Deregulation Act has fundamentally altered the law in relation to PHV sub-contracting making it lawful to sub-contract between districts provided that a transfer is made and the "trinity" of licences is maintained. *Skyline* provides guidance on the new provisions when operated through a remote booking system.

The challenge for licensing authorities is to ensure that their regulatory regimes and conditions on licences they issue keep pace with the technology and safeguard the public. It is essential that both first and second operators keep full records that are available for inspection by authorised officers. Further, the records must be easily accessible in intelligible form without delay should the need arise, for example if there is a road traffic accident or other incident.

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