



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 21 January 2015

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
3rd Meeting 2015, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Cameron Buchanan (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Cara Hilton (Dunfermline) (Lab)

*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Berney (Scottish Older Persons Assembly)

Douglas Campbell (Renfrewshire Council)

Dr James Cooper (Edinburgh Napier University)

Bill McIntosh (Scottish Taxi Federation)

Les McVay (City Cabs)

Audrey Watson (West Lothian Licensing Board)

Kevin Woodburn (Edinburgh City Private Hire)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament
Local Government and
Regeneration Committee

Wednesday 21 January 2015

[The Convener opened the meeting at 09:30]

Subordinate Legislation

Freedom of Information (Scotland) Act
2002 (Scottish Public Authorities)
Amendment Order 2014 (SSI 2014/354)

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee's third meeting in 2015. Everyone present is asked to switch off mobile phones and other electronic devices, as they affect the broadcasting system. Some committee members will refer to tablets during the meeting because we provide papers in digital format.

Agenda item 1 is consideration of a negative Scottish statutory instrument. Members have a cover note from the clerk that explains the instrument. Members will note that the Delegated Powers and Law Reform Committee had no comments to make. As members have no comments, do we agree not to make any recommendation to the Parliament on the order?

Members indicated agreement.

Air Weapons and Licensing
(Scotland) Bill: Stage 1

09:31

The Convener: Item 2 is our sixth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will take evidence from witnesses on the provisions that relate to taxi and private car hire. We begin with evidence from Dr James Cooper of Edinburgh Napier University and the University of Missouri—St Louis in the United States of America. We will then hear from a panel of witnesses from the taxi and private car hire trade and then from licensing authorities and hire car service users. I point out that witnesses do not need to press the buttons on the consoles; the microphones will be operated by the sound engineer.

I welcome Dr James Cooper. Would you like to make opening remarks?

Dr James Cooper (Edinburgh Napier University): Thank you ever so much for inviting me to give evidence, convener. I have prepared a short presentation for the committee and I would be delighted to take questions to the extent that I can answer them.

The Convener: Please go ahead.

Dr Cooper: Good morning, ladies and gentlemen, and thank you ever so much for inviting me. My presentation will address issues specific to licensing of taxis, which in my definition will include hackney carriages, private hire cars and other operators of vehicle types that offer a comparable service, which have in some places been titled transportation network companies—examples include Uber, uberX, Lyft and others that provide services in a taxi-like way. If I mention trade names and company names in my commentary, that is intended to give you an example of a service type; it is not intended to single out any company.

I commend the Parliament and the Government for their desire and effort to develop taxi and private hire car legislation. It is appropriate and commendable to provide a legislative framework that facilitates and protects in the public interest.

I believe that legislation needs to be aware of the current market, current change in the market and future activities that might impact on its effectiveness and implementation. I contend that the bill fails to address the needs of the transformed market that is likely to emerge in the very near future.

I highlight the view that, in framing legislation, it is easy to suffer from a belief that the legislative

framework itself is sufficient to ensure appropriate supply. Evidence from locations where the market has been transformed does not uphold that view. Many of the new entrants sit between legislative instruments. It is important that that point is made clear. The market in its transformed state will be very different from the market that we see now.

I suppose that the most important question is: what is a transformed market? I highlight that it is the opposite of the legacy market—the one that we know and which has operated successfully for a significant time, with legislation dating back to 1847 and even prior to that still being in force in some places in the United Kingdom.

The transformed market will include new technology operators—predominantly those associated with smartphone applications, otherwise known as apps. Those exist in a number of generations and have been present in the taxi and taxi-like industries for about five years.

We have had six generations of apps, which suggests a rapid evolution in the market of one revolution per eight months or thereabouts, as opposed to one revolution in legislation for taxis every 80 years or so. That difference is significant.

The transformed market will include quasi-taxis—vehicles that operate in the taxi market and provide a taxi-like service, which are often indistinguishable from taxis to those who wish to use them. Those operator types have in the United States of America been named transportation network companies, which are often abbreviated to TNCs. New services will spread across licensing categories to offer services from a variety of traditional licensing distinctions and many services that sit outwith current legislation.

The transformed market will facilitate service provision by private individuals offering trips in their private cars under what is in effect a private contract. That does not fit readily into the distinction of ride sharing, which is a term that has been applied in some locations. In my definition, ride sharing is a positive public contribution that offers a ride for part of a trip that would exist in any case, whereas TNCs or quasi-taxis provide ride sharing on a commercial basis for profit.

It is worth noting that the transformed market and specifically the apps that facilitate transportation will often obscure from the user the category of vehicle that is being engaged and thus its legality or otherwise.

It is appropriate to frame legislation currently, but it needs to be sustainable. The Government and the Parliament need to be aware of the transformed market in developing legislation and must legislate to an extent that supports policy in the new market dynamic.

I will touch on taxi and private hire car distinctions. Hackney carriage and private hire car services are distinct only in the legacy market. They are consistent only in their legislative differences.

Apps in effect provide an electronic hail to quasi-taxis, which removes one of the few distinctions of the hackney carriage. Number constraint, which is a part of some hackney carriage markets, might become ineffective under the current testing of it if the regulation that allows for it is unenforceable. Number constraint might also become irrelevant if its market impact is lost.

The measurements that are applied to number constraint, commonly known as measures of significant unmet demand or SUD, will become impossible to use in their current form in a transformed market. That does not exclude the possibility of testing and measurement, but that requires change. That will have an impact on all other areas of regulatory control, to wit, quality control and economic constraint—fares and leases. The three elements of quantity, quality and economic controls are completely interlinked and cannot be divorced from one another.

If I may, I will touch briefly on taxi numbers and quantity constraints.

The Convener: Please be brief, as we have quite a lot of questions to get through.

Dr Cooper: The concept of quantity restraint has been based on a view of market failure and a lack of equilibrium. Concerns change when the market is transformed. The concept that is being proposed for the licensing and regulation of private hire car numbers appears to be unenforceable in a transformed market and is not measurable for quasi-taxis. I also note that the cost indicated for studies appears to be completely incorrect.

I will touch briefly on two further points, the first of which is market transformation. There has been and continues to be a clear demand for app-based booking. That is not being and has not been predicted in any SUD study, to my knowledge. The transformed market has grown, but it has also had an impact on traditional hackney carriages, resulting in a 20 to 40 per cent loss in taxi use. There is evidence that cities and Governments might find it easier to recast legislation than to seek to enforce it.

My final point relates to accessibility. To date, no TNC fleet vehicle has been accessible at all—the term “accessible” is well defined in relation to wheelchair-accessible vehicles—because the companies that provide such services rely primarily on private individuals to supply vehicles. That is an uberX type of service that negates any desire for equality of access at the same price.

I point out one area that relates to market manipulation. The licensing review discusses the concept of cost neutrality to councils, as the costs of any tests applied are covered through the fees of the private hire and taxi industries. A TNC does not need to win any legal challenge. It simply needs to push the price in the taxi industry beyond a tipping point where taxi supply becomes an uneconomic and non-commercial venture.

The Convener: You have highlighted some areas that the committee has already asked the Government for clarification on. We posed questions to the Government on the growth of mobile phone apps and Uber and had a response from civil servants that states that, while the taxi and private hire car provisions in the bill do not specifically address technological developments, the Civic Government (Scotland) Act 1982 provides considerable scope for secondary legislation to address such issues, and that the Government has the ability to provide clarification and best practice guidance for local authorities. What do you think of that response?

Dr Cooper: The technology appears to have moved so quickly that any response needs to be aware of its current and future development. It is true that the taxi industry has provided apps and app-based booking. The relative effectiveness of those services pales in comparison with the TNC operations, and they are restrained by the commercial operations in which they fit. The technology is advancing at such a speed that it might not be possible to understand its impact fully prior to its application.

The Convener: Uber has tried to be somewhat conciliatory this week in response to criticisms that have been made. It faces legal challenges in a number of countries and has been accused of flouting competition rules, and there are major concerns in some places about the lack of sufficient safety checks on drivers and their vehicles. How can we ensure that, if and when such companies enter the Scottish market, they cannot flout safety rules and regulations?

09:45

Dr Cooper: The question is difficult to answer, as evidence suggests that most cities and Governments have been powerless to control the excesses of some of the TNCs. To my knowledge, the most common response is to fine and place citations on Uber drivers. A difficulty is that the company that provides the service considers itself to be not a transportation company at all but a technology company and therefore outside the regulation of transport that applies to the drivers who happen to use its service. Citations and fines are therefore placed on the drivers, and the most

common response by Uber has been to pay the fines as, in effect, a cost of entering the market.

The only really successful action against Uber has been in the Spanish courts and has removed telecommunications access to its app, which prevents anybody from getting to Uber through their smartphone. That comes at a high price, in that not everything that the technology allows is a bad idea. Perhaps its application is bad or even illegal, but the concept behind it might be harmed by the removal of the service.

It is hard to accommodate Uber. Cities in the US that have done so have done that by changing their laws, chapters and codes in a way that is satisfactory—if you will excuse the term—to the companies that want the change. That has been the only method by which the service has become fully legal.

The Convener: Do you think that we have the flexibility under the current legislation and the bill to make changes in law if necessary, should Uber or others try to enter the Scottish market?

Dr Cooper: I am afraid that I do not. The bill as it stands reflects the legacy market alone and will not be fit for the following market.

The Convener: Do you disagree with the statement that I read out earlier from a civil servant in response to our questions?

Dr Cooper: I am afraid that I do.

The Convener: What is your reason for that?

Dr Cooper: I believe that Uber accrues a benefit in being seen to be on the wrong side of the law. It gains notoriety among its user group and benefits from that position. I also contend that the market that the bill will facilitate—the market that we are heading to—has inherent problems that will require further addressing. We are heading towards a monopolistic provider based on app provision. That will require considerable review in the future. I fear that the concepts as set out in the bill, and the proposals on the ability to control technological developments, do not foresee the extent to which the market will change.

The Convener: I will bring in Mr Rowley in a minute as he wants to ask a supplementary question, but first I have a question about the monopoly of the application of the app. This morning, I took a taxi in to Parliament—I should say, before anybody suggests that I am abusing my position, that I did so at my own expense. Sitting in the taxi, I saw an advert for the app for that taxi company, which I could download to my phone and then use to order and track the taxi—that is what the advert says, although I have not used the app.

You say that Uber has a monopoly on such applications, or is monopolistic. How is that possible when all those other apps are being developed?

Dr Cooper: The contention was that it may become monopolistic. The Edinburgh hackney carriage apps are extremely good and I can recommend them.

The benefits of the technology should not be underestimated. There are very good reasons for having such apps. Where Uber sits, in terms of its market dominance and share, and where others of the same type sit, are due to the nature of the market. For the first time, we are dealing with a company that is not local but global. The app is transferable, without any penalty, between locations. It has a great deal of power.

Of the six generations, while the taxi companies have a very good product, they are still behind the TNCs, primarily because their product is distinct to one form of transportation, whereas the TNC product crosses multiple distinctions, vehicles and prices. If you look you will see that the Uber app allows one to slide between vehicles of different types, without any particular awareness of the distinction of licensing and legality that such choice results in.

Alex Rowley (Cowdenbeath) (Lab): I have spoken to people who tell me that the bill does not reflect the transformed market. What does the bill need to do to reflect that market and are there examples of legislation in other countries that we can consider?

Dr Cooper: There are examples of legislation, in a transformed market, that exist post-app development; I point you to the Washington DC, chapter 31 regulations and the code in Houston, Texas. A significant difficulty arises in the testing and assurance of driver safety and vehicle safety. There are other issues around quality and age of vehicles. Those will often be handled by external third parties, against the will of the licensing authority and the traditional taxi industry. The taxi industry fits in a very distinct niche—this is how we do it and this is what is legally required—and tends to see the newcomer as not following the same rules, at a significantly lower cost. It is a competitive issue as well as a legislative issue.

The Convener: Would it be fair to say that in Scotland we have not yet entered what you call a transformed market?

Dr Cooper: That is a fair comment. I believe that Scotland is on the brink of entering the transformed market and will develop exceptionally quickly, once it starts.

The Convener: You say “on the brink”, but do you have any idea when the transformed market is likely to happen here?

Dr Cooper: I understand that Uber Britannia has applied for licences in Glasgow and Edinburgh. They will be granted and that company will begin to operate a variety of services in Scotland, starting with those that fall under private hire car legislation, but rapidly expanding into other forms of Uber—that is what evidence from other locations suggests.

Uber is not a single product, but is about seven different products. London, for example, has five Uber products, including something that it calls UberTAXI. The most contentious product is uberX, in which the private individual provides transportation; uberX gives me most concern in terms of its legislative standing and the power that it has to change the market to the greatest extent. The timescale from launch to uberX is probably six months.

Cameron Buchanan (Lothian) (Con): Do you consider that the underlying reasons underpinning the need for the licensing of taxis and private hire cars are necessary? You said in your submission that we should probably recast the legislation. Does that mean that we should abandon the proposals that are before us for the moment, because the technology is moving too fast? Have we covered only half the problem?

Dr Cooper: If we wait until the market is settled, we will have five or six more generations. The problem is that the technology will continue to change; what we see now will be followed by innovations that might involve planned ride sharing. The simple answer is that, in my view, there should be current legislation. However, that current legislation should provide sufficient power and regulatory authority to address changes that are currently foreseen.

Cameron Buchanan: What are the advantages of the two-tier system that we have at the moment, with private hire and hackney carriages? Are there any advantages?

Dr Cooper: Today in 2015, yes; tomorrow in 2015, no.

Cameron Buchanan: Right—that is what I thought. Should we be recasting the proposed measures or slightly changing them? Should we take them out of the bill and reform or tighten the provisions?

Dr Cooper: I certainly agree that they need tightening. I do not have an alternative text for you, for which my apologies.

The single-tier/dual-tier system question is significant. In effect, it may become irrelevant—however many tiers you choose to have—if some

people ignore the tiers altogether, which is where things are going. The current dual-tier system serves, and has served, a purpose very well. That purpose and the reasons for the distinction will remain.

There is then a need to ask why we regulate in the first place. What is the purpose of having regulation? In a purely commercial market there is very limited control, but the taxi market has not operated in that way for hundreds of years, with good reason. The question is why we control it, what potential benefit there is to maintaining it and what potential disbenefit there is in the loss of that control.

Cameron Buchanan: Given that technology is moving so fast, if we do not remove the provisions from the bill, should we make them a bit looser, so that they cover all aspects? That is what I really meant earlier regarding the future.

Dr Cooper: It is appropriate to cover all aspects. It would be a loss of opportunity not to address the aspects that we foresee as being relevant in transformed markets elsewhere.

One of the fundamentals of taxis is street hire, or applying for hire, and operating in a restricted market in some locations. There is a question around the validity of tests being applied for maintaining that market once the market has transformed. We view that as the significant unmet demand test. Even if the industry were to move, as suggested, from taxis alone to taxis and private hire cars, that would require significant renovation in order to remain valid, and even further renovation in a fully transformed market with players that do not abide by it anyway.

John Wilson (Central Scotland) (Ind): Bearing in mind the transformed market that you have described, surely the issue around the legislation is to ensure that all cars and all drivers are licensed. Would that not be a way of getting round Uber and uberX? It would be a matter of saying that, if someone is providing a service for profit, the car should be licensed and the appropriate insurances should apply to the delivery of that service, rather than just moving towards a transformed market in which anybody can use an app and hail a car to come and pick them up. The individual does not know whether the driver or the car is licensed. They do not know whether the car is fully equipped to deal with its passengers or, more important, whether it is insured in the event of an injury or other incident arising from its use.

10:00

Dr Cooper: I need to preface my answer by saying that it is essential, in the public interest, that vehicles are insured and tested and that drivers are safe, insured, licensed and controlled. I

have no hesitation in saying that that is the correct outcome of a licensing and regulatory regime. That is the role of Government and its regulators.

I say that as a preface because I have observed multiple cities—too many to count—where the belief was that regulation and laws were sufficient to their purpose; in effect, they were saying, “My city has laws that are sufficiently good. Why would anybody break them or attempt to twist them?” Time after time, that has been proven wrong. There are determined companies with huge resource that seek to achieve reform or change that reduces and makes unenforceable the legislation of that city.

I give you the example of Houston, Texas. A year or a year and a half ago, Houston’s view was that its regulations were strong enough. The regulations were effective and strong in an industry that chose to follow them. The moment that a player came in with a massive number of operators—2,000, 3,000 or 10,000 private individuals—that law became unenforceable simply through the mechanics of its enforcement regime. If the same thing were to happen in Scotland, with Police Scotland seeking to prosecute tens of thousands of drivers and a company that was prepared to cover the fines applied to those drivers, it begins to paint a picture of a less enforceable regime.

It is a perfect storm, if you like. It is one that we cannot solve while we have an entity that chooses to go a different route. That is why so many cities answer the problem by changing their laws to reflect the demands of the incoming player, much to the complaint of existing players—who have done nothing wrong—and indeed much to their harm. When we have an incomer that takes up to 40 per cent of the market, the traditional market will be different. It will be a poorer market. The quality of services will be poorer. One of the outcomes of regulation as it stands is that we have very high-quality taxis in this city and others in the country. The impact on users of that service will be negative.

I could talk about relative qualities of service. In Scotland, there is a large advantage to the traditional taxi trade in that it is much better than its US counterpart. However, that in itself may not be a sufficient distinction to maintain the market share that it enjoys currently.

John Wilson: You referred to the current enforcement regimes and the fines applied. You said that Uber had picked up some of the fines that had been imposed on drivers in other jurisdictions. Are the fines sufficient? Do you think that there is a way under the present regime of international legislation of fining Uber itself?

You said that Uber claims to be a technology company but it contracts drivers to deliver a service for the company, so I do not regard it as a technology company. I regard Uber as a business that uses drivers. Are we tackling the issue correctly by fining drivers? Should any legislation that is introduced be able to target the company, which is, in effect, undermining the existing legislation of a region or area? You also said that Uber is a new entrant to the market, but you are giving me an image of a company that is undermining legislation and acting illegally, and will do so for future legislation.

Dr Cooper: I certainly agree with your stylisation of what Uber does, but I am not sure that it would agree with it. My perception is that Uber does a job that is no different from that done by a traditional radio taxi circuit in Scotland at present; the only difference is the way in which bookings are done—Uber will make a distinct difference.

There are examples of the company—Uber Technologies Inc—being indicted and prosecuted. The most recent example was in Spain, but a more relevant example might be the one in Germany, where the company was found to be in breach of regulations but was let off on a technicality, to use an American term, in that the wrong company was prosecuted. I have to make it clear that there are a number of Ubers and others: it is not simply one company. Authorities need to be aware of that and ensure that the prosecution goes to the right company, which I believe is Uber Technologies Inc Amsterdam, although I might be incorrect.

The problem that I have seen in the United States is that the value of the fine that can be imposed is not harmful or punitive for the company, but it can be very harmful and punitive for the driver. In some instances, the driver has their vehicle removed as well as receiving a fine. A fine for the company, which is unbelievably huge, is nothing to it and the company could interpret it as a cost of market entry. However, a fine is very significant to the driver and, were Uber not to pick up the fine, there would be a change in behaviour.

Do I believe that legislation can do something to tackle Uber? I believe that that is possible, but I do not think that it would be easy. The extent to which an enforcement regime would need to go after multiple individuals would make it very hard for enforcement to work.

John Wilson: Thank you.

The Convener: We talked earlier about safety checks on both drivers and vehicles, but it seems that Uber and the like do not have to comply with safety checks in many of the areas in which they operate or that they force licensing regimes to

dilute the nature of their safety checks. As well as having an expectation of safety when we go into a cab or a private hire car, we have an expectation of knowing how much we are likely to pay. We expect to know how much we will pay per mile and for waiting times. Maybe I am a bit naive, but what is the arrangement for payment with Uber cabs? How could anybody be sure that they were not being conned? How could we deal with that in terms of legislation?

Dr Cooper: I highlight the fact that private hire cars do not have the same regulatory requirements as taxis, but the point is absolutely appropriate. Uber publishes its fare and decides it on a competitive basis—it often sets a base fare that is below that of taxis. In fact, it makes a point of being lower than the taxi tariff. A tariff is a very fine system for taxis, because it is a distinct and clear measurement of cost and is unequivocal. Uber's fare seeks to mirror that, at least in the first instance, in which it is based on a defined distance and time cost. Actually, it differs from taxi tariffs in that the customer pays on the basis of distance and time, whereas the taxi tariff is based on distance or time, depending on the circumstances.

Uber, however, also practises something that it calls surge pricing. To give a brief description, that is a change in price above the tariff or base fare. Uber describes that as a method of ensuring supply—that is its claim. Surge prices are not just a little more; they are many multiples of the base fare. There are many references in press statements to a price of seven times the base fare. People are not obliged to accept that, so they are not being conned, but it is the price of accepting the service. People accept it or they do not get a trip—it is that simple.

If we compare the claimed driver income—Uber almost says, "Work for us and you get this amount of money"—with the number of trips and the base fare, it appears that a driver would not make the money that is suggested. In other words, at some point, there will be a requirement for surge pricing to be put into effect. Therefore, it is not an accident of supply. It appears to be an intentional policy to massage the market to profit maximise on the basis of the ability to do so. That is purely an interpretation. It is reasonable for fares to differ at different points of demand—that is the basis of night-time fares. Tariff 2 is an additional fare in the taxi industry and is related to the assurance of supply. That is not an unreasonable argument but, in practice, it appears to me to be not only a necessary application but one that seeks to profit maximise.

The Convener: You said at the beginning of that answer that the charging regime for private hire cars is not the same as that for hackney cabs. However, in the city of Aberdeen, which I

represent, if I order a taxi by phone, I might get a yellow-plate hackney cab or a red-plate private hire car but the charging regime will be exactly the same. Will you clarify that? Do you mean that there might be differences in the charging regime in some areas but not in others?

Dr Cooper: That is the correct interpretation—

The Convener: At present, it is up to each individual licensing area to decide on the situation in that regard.

Dr Cooper: Yes.

The Convener: Does that in itself cause difficulty?

Dr Cooper: I believe that local regulation of fares is appropriate, as the fares reflect local circumstances and costs. We have a regime that bases the fare on a measured consideration of the costs of production. By definition, that is a local activity. We might choose to define “local” as meaning a city or a country, but the issue is still related to the measurable costs.

One aspect of costs that might be worth touching on briefly is that the taxi fare models of which I am aware, particularly those in Glasgow, Edinburgh, Inverness and, I believe, Aberdeen, include an element called driver’s wages, which is the amount that the driver takes home after everything else is gone. In any instance where that model exists and a market shift occurs when somebody else joins the market, any additional service that reduces income is likely to result in an increase in tariff to maintain that level.

10:15

The Convener: I have one other question about local flexibility before I bring in Willie Coffey. It is about the distinction that exists between hackney licences and private hire car licences in most areas whereby a private hire car licensee would not have to sit a knowledge test yet a hackney cab driver would of course have to do so. In Aberdeen, if someone applies for a private hire car, they also have to sit that knowledge test, which means that there is really no distinction between a private hire plate and a hackney plate. Does that happen anywhere else in the country? Does that local distinction cause any tensions at all?

Dr Cooper: I am not aware of the approach of every authority so I cannot give you a definitive answer. I believe that the primary distinction between taxis and PHCs relates to street pick-up. The knowledge test or the ability to control drivers of any vehicle type appears to be an appropriate power of any authority.

The only place that I can identify where there is conflict is on the boundary between one authority

and another, where someone’s trip may cross an authority boundary and therefore give them a choice of one system or another. It is my belief that assurance of driver safety and ability is a very logical and desirable outcome. Whether that requires a knowledge test sits in the power of the authority making the regulation. I am not sure how I can answer better than to say that that should be based on the circumstances of the location.

The Convener: Thank you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Dr Cooper. As a former software engineer, I look at things such as applications as being a positive development for the customer, so it would come as a worry to me—and, I am sure, to others—if the application of the technology was providing opportunities for loopholes or illegality. Is that what you are saying is happening? What are established taxi companies doing to catch up and deploy the variety of technologies that we have heard about this morning? Would that be a way for them to overcome the threat that you have described?

Dr Cooper: I agree that the technology itself is a good thing. It provides access that has not existed before, it makes this market sector more attractive to its users and it increases the number of trips that are being made in the sector. All those developments are very positive.

The taxi industry was slow to respond—it was a late entrant to the application concept. Although local companies have a quality product, mirroring many of the benefits of the market leader, the market leader has one legal distinction and one less legal distinction that make it an advantageous choice to the user.

The legal distinction is that it is a multinational product that works across cities regardless of where you are. You get off your train or your aeroplane and your app works. The user does not need to seek out a local app, which would be a cost to them. The slightly less legal distinction is that the app allows access to a variety of service types that the traditional taxi company’s app does not. That is the case whether you sit in the PHC or the taxi or the ride-share TNC category. The user may well not be aware of the legality of the choice that they make, and I believe that that may be intentional.

Willie Coffey: How would we overcome that? Would we have to define the types of use for which such applications can provide services?

Dr Cooper: One of the greatest marketing coups in the debate on these apps is the categorisation of pundits—those providing commentary—as either loving or hating the app and having an emotional attachment to it. I love many apps and they do a lot for me, but emotion

does not fit in to the discussion. I make that comment because many responses fall into the categories of “I love it” or “I hate it”, which courts could style as being anti-technology, and even anti-free market. The question becomes a fundamental one that lies at the core of the market’s operation. The response of preventing access—as in the most recent response, in Spain—raises large question marks about the ability for a free market to operate. The authorities in Spain, for example, took such an extreme measure because it appeared to be the only measure that would have any effect.

I caution against the outright banning of something that brings benefit, but I cannot see a very good intermediate step, because so far most intermediate steps have been ineffective.

Willie Coffey: That is certainly food for thought.

I want to switch the conversation slightly to take advantage of Dr Cooper’s experience. There is an example in the media this morning of a driver of dubious reputation, let us say, who was able to move from one authority to another to evade the record that he had acquired in the first authority. He basically lied about his prior circumstances and was able to gain a licence in another authority. How could we—and should we—close that loophole to protect the public?

Dr Cooper: One of the strongest opportunities for ensuring that there is no licence tourism is for services to maintain a relationship with Police Scotland through the fit-and-proper-person test and the ways in which we identify criminal backgrounds. That is a correct and proper outcome of the regulatory structure as it stands. I am not aware of the instance to which Willie Coffey refers but, as part of the structure in which an authority is designated as the competent authority to determine, the test is at least possible, even if it is not always applied effectively.

When we lose control to third parties, that opportunity and that certainty are lost. You may hear arguments that the third parties do a better job, and we have certainly seen that in some United States cities, where an authority will seek a Federal Bureau of Investigation fingerprinting check. However good they may be, the third parties need to have some relationship to regulation that is sustainable, and I do not believe that that is where they are at this point in time.

The short answer is that the competent authority must be associated with and approved by government, even if it is not government itself.

Willie Coffey: The problem in the instance that I mentioned occurred because the person sought to evade his past record. Is there an opportunity through software, applications and so on for that kind of information to be shared among licensing

boards so that a person cannot evade detection and has to reveal their past history?

Dr Cooper: There is a great deal of opportunity, but I am not sure that the will to use it is there. In this instance, the issue is not just the technology as we currently see it but its potential to provide a linked-up service.

As a researcher, and in my role on regulatory commissions, I would strongly seek to have information from the applications fed to me or to the authority. Although there is one case where it is getting a bit more friendly, so far the new technology companies have not provided any such feedback, despite the obvious benefit of feedback being made available.

John Wilson: I will follow up on that, Dr Cooper. You referred to the competent authority. Mr Coffey’s example was a good one. Suppose that someone applying to operate a licensed car decides not to apply to one authority because they have been told that its licensing regime is tough and takes cognisance of, say, reports from Police Scotland, whereas the licensing committee in a neighbouring authority may not be as stringent. What would you say about those circumstances? How can we ensure that there is a level playing field across Scotland?

Dr Cooper: The example that you give seems to me to be of a failure of one of the licensing authorities to fully take advantage of national information on drivers. I am not aware of any instances that fit the example.

The Convener: Is the authority in the example failing to fully take an opportunity or is it failing to comply with what it should be doing legally?

Dr Cooper: I do not know.

John Wilson: I will try to clarify the point. My understanding is that, at present, if a Police Scotland report appears before a licensing committee, the committee can take cognisance of the report or set it aside. Is that the situation?

Dr Cooper: I can only assume that it is, from what you say. I do not know the extent to which a report can be put aside; I am not aware of that.

To the question whether we can level the playing field for other groups, the answer is no. We are in the best position that we can be where there is a Police Scotland report of which cognisance is taken. Where that decision is given or assumed by a party that does not go through licensing, there is no way of ensuring a level playing field.

Clare Adamson (Central Scotland) (SNP): Thank you, Dr Cooper, for helping sort out what we have covered already this morning.

The Scottish Government has stated that it believes that services run by the community, social enterprises and voluntary services, such as cancer transport services, should still be exempt from the hire car licensing regime. Do you agree with its position on those organisations?

Dr Cooper: I have no view that I can give you helpfully. The only comment that may be helpful is that, were those services to be contracted to the taxi or private hire car industry, I see no reason why those taxis or private hire cars should not abide by all existing regulations.

Alex Rowley: Would it be fair to distinguish between the urban and rural areas of Scotland in terms of demand? For example, the evidence that we have received has generally welcomed the removal of the exemption for cars that are contracted for 24 hours or more, but the Convention of Scottish Local Authorities notes a division between urban and rural authorities. Rural authorities are more concerned that it could lead to a withdrawal from the market. That is what I want to touch on. Is there a major difference between urban and rural areas? You talk about Glasgow, Edinburgh and the other big cities, but there is not the same demand and, therefore, supply in rural Scotland.

Dr Cooper: Urban and rural areas are not the same—they are different, and their markets are different. Historically, that is why rural locations have one form of taxi-type service and urban locations have two.

From the evidence that I have on market entrants and TNCs, I believe that there will be very limited movement into rural areas by the TNCs simply because the market is not there for them—it is not a profitable venture.

As to whether differences will result from the removal of the exemption for cars that are contracted for 24 hours or more, that is not an issue that I have had in the forefront of my mind, and it is one on which I do not have a prepared answer—I apologise.

Alex Rowley: We can perhaps follow up on that at a later stage.

The Convener: Thank you very much for your evidence, Dr Cooper. It has been extremely useful.

I suspend the meeting for a few minutes to allow for a change of witnesses.

10:31

Meeting suspended.

10:36

On resuming—

The Convener: We move to our second panel of witnesses. I welcome Kevin Woodburn of Edinburgh City Private Hire, Les McVay of City Cabs and Bill McIntosh of the Scottish Taxi Federation. Would you like to make any opening remarks, gentlemen?

Bill McIntosh (Scottish Taxi Federation): I am not entirely sure what we have come here for today. I assume that we are giving evidence with regard to issues arising from the new bill on civic licensing. I will be brief in that respect.

As you know, there is an option to remove clause 22(c) of the Civic Government (Scotland) Act 1982, which allows vehicles and drivers to be hired on a 24-hour basis. We fully support removal of that clause because we have seen attempts by groups and bodies—including one body, in particular, that is publicly funded—to use such vehicles in an effort to get around the restrictions that are placed under licensing. As long as there is a loophole to allow unlicensed activity, some people will be willing to take the opportunity to drive a coach and horses through it. The Scottish Taxi Federation strongly supports removal of that clause.

We do not have any firm feelings on the option to extend driver training to private hire car drivers, although in our view that is unnecessary and would become burdensome for the local authorities involved. My local authority in Glasgow struggles to accommodate the number of taxi drivers who apply to take the test before they are granted a licence, and the situation would only get worse if the private hire sector was included. I know that it is intended to be an option and that councils may not choose to do that, but I understand that quite a high percentage of councils were in favour of it in their responses to the Government. I believe that it would slow up the feed of drivers into the private hire sector and, from there, into the taxi business.

The issue that concerns us most is the option to allow councils to limit the number of private hire cars. It is not that we object to limiting the number of private hire cars. We are concerned that, because of the way in which the option is structured, it has been decided that, rather than have unmet demand, there is to be overprovision. In his evidence, Dr Cooper alluded to the fact that there is, at this time, no measurement available—it is difficult to imagine how there could be any

measurement—of whether there are too many private hire cars in any one area.

Section 60 of the bill seems to take its approach from the Licensing (Scotland) Act 2005. It is fairly simple to walk down a street in any city, count 10 public houses and conclude that the street does not need another pub; it is an entirely different matter to try to measure the number of private hire cars that might be available.

Our major concern is that the financial memorandum says that although there are likely to be many more court challenges in respect of overprovision, there is nothing to worry about, because the costs will be recovered through the licence fees that the taxi and private hire trade are charged. I do not think that we should pick up the tab for an inept piece of legislation. The Government needs to find some other way of protecting councils from being dragged into court at every opportunity.

The Convener: Okay. We will tease out some of that in questioning, Mr McIntosh. Mr Woodburn, do you want to make opening remarks?

Kevin Woodburn (Edinburgh City Private Hire): No, I just want to thank you for inviting us to give evidence. I am very interested in answering the questions that members pose.

The Convener: Thank you. Mr McVay?

Les McVay (City Cabs): I echo that. I have been asked to give a more local view; Dr Cooper gave a more global view. I hope that I can give a more positive picture of the measures that are being taken in the taxi trade to generate competition and ensure that our drivers and vehicles meet a certain standard.

The Convener: Do you want to give us a brief overview now?

Les McVay: One of the things that Dr Cooper said was that we were slow to take up the app. We were offered the app by our service provider and we signed up the following day. We have used it for about two years now. We actively advertise it on the radio and in the back of the taxis, and we had an advertisement on the local Edinburgh Scottish Television channel recently. The number of jobs that come from the app has grown from zero to about 6,000 a month, but it is something that the public has to take up.

Another issue that was raised was the level of checks on drivers. Along with Central Radio Taxis, we put all our drivers through the protection of vulnerable groups process every three years, so we get a report back every three years for every driver who works with City Cabs. I know that Central Taxis does that, too, and I believe that Edinburgh City Private Hire does it, so two thirds

of the Edinburgh trade checks drivers every three years.

The Convener: People are going above and beyond the current legislation.

Les McVay: Yes.

The Convener: Let us think about the current legislation and the proposals in the bill. Are the current differences in licensing requirements between taxis and private cars justified?

Les McVay: I have been the service manager for Edinburgh airport's public rank for the past seven years. Two years ago, City Cabs was successful in winning the contract for five years—perhaps seven. We sit alongside the private hire cars. Before the contract was awarded, the private hire cars sat behind the fence. Onward travel was run by ComCab, on the premise that people would book a private hire car from a portakabin. However, bookings were never made—it was a sham. Because it was behind the fence, no one saw.

This time round, when the contract was renegotiated the private hire cars came out from behind the fence to sit alongside the public hire taxis. The public has a choice. We have a rank, and the private hire cars have an area where they rank up—they cannot officially call it a rank. It suits people to have a choice. Someone might come into Edinburgh and want a black taxi and a driver who has the knowledge, but if they are on their way to Gleneagles with golf clubs and suitcases they might want a people carrier or a saloon car, which is perceived to be a little more comfortable. People have a choice, which is what Edinburgh airport required.

The Convener: That is the Edinburgh perspective. Will Bill McIntosh give a national perspective? It can be difficult for the public to get their heads round the two regimes. Are the current differences justified?

10:45

Bill McIntosh: As I am sure you are aware, the situation that you describe evolved with the advent of the 1982 act and has been in place since. Over that period, a lot of confusion has built up, not the least part of which is caused by the media, who constantly refer to everything as a taxi, because they see the word "taxi" as a generic term. My colleague mentioned freedom of choice. The current two-tier regime gives the public choice. For that reason, above all else, I feel that we are justified in hanging on to where we are now.

Kevin Woodburn: The honest answer is that it hinges on where you are coming from, in that there is a distinct difference between the two trades. There is a two-tier licensing system and,

although there are areas of convergence and similarities between the jobs, there are distinct differences.

You have to understand the historical differences that come to the forefront for drivers every single day out on the streets. A lot of the differences hinge around what we wanted from a two-tier licensing system. If we could go back in time and speak to the people who put the legislation in place originally, we could ask what was their purpose. Was it to have two forms of transportation and two forms of taxi-like situations? If that were the case, why has the whole thing been eroded over the years?

My comments may be slightly controversial to my two colleagues on either side of me, but the situation now is that there are public hire vehicles—taxis, to all intents and purposes—that were originally designed to ply for hire, and there are private hire vehicles, which were brought in because they cannot ply for hire. That is the difference between the two trades. If one sector of the trade is pre-booked hires only, why would the other sector, which was designed as public hire, be allowed to do pre-booked hire work?

That is where the whole thing got blurred and changed. We have continued down that path over the years and we are now being asked whether there should be a single-tier or two-tier licensing system. The truth is that I do not think that it matters that much any more, to be honest, because at the end of the day the market and the public will dictate. With all due respect to the committee, and to the various committees that I have sat in front of and been questioned by, what gets lost in all this is that it is about the public. The public will decide what they want. We can talk all day long about apps and about what we do as companies, but the public will decide whether to use us. The public are not stupid; they make decisions based on the factors that are important to them in whatever area of the country they live in, whether it be a rural area or the centre of Glasgow or Edinburgh. They decide based on what is on offer to them.

The Convener: You said that the market will decide and Mr McIntosh talked about provision in the bill for the limitation of private hire car licences. However, without the bill having been passed, a number of local authorities are already using the 1982 act to limit the number of licences, maybe to the detriment of the general public, who are not being fully served.

I ask all of you whether you think, in the light of Kevin Woodburn's comment about the market deciding, that that is often not the case because of the limitations that are put in place by a licensing authority. Are any areas—I know that you can probably talk only about your own locales—not

being particularly well served because of possible misapplication of the 1982 act? Might the new legislation help in that regard? Alternatively, do some of the things that are in place, or that could be in place, make the entry of Uber and others easier because the market is not being served?

Kevin Woodburn: I will try and remember the various points that you made in that one question.

The Convener: I am sorry, it was very long.

Kevin Woodburn: At the end of the day, the market is being served in respect of the proposals in the bill to change the ceiling—for want of a better description—on private hire. It is not necessarily a bad thing for local authorities to have the power to decide whether private hire should have a ceiling. Colleagues in the private hire sector would probably disagree with me, but I am giving you my personal opinion. Much of what you have heard so far today, without being too nasty about it, is scaremongering, which there is a lot of in the taxi and private hire trade. I am thinking of the things that have been discussed today, in relation to the app, for example. There is a lot of misunderstanding out there.

Mr Wilson pointed out something very relevant earlier on. We seem to be targeting Uber and the apps as the big bad wolf coming over the hill, but nobody has asked the big bad wolf whether that is what they are. If Uber wants to come into the marketplace and do some of the nasty things that are being suggested, why has it even applied for a booking office licence? Why has Uber not just decided to start taking bookings and to not comply with the current legislation? It has applied for a licence.

A lot of what goes on is scaremongering and the trade is as guilty as anybody for causing the situation. Legislation is already in place. A company that takes bookings must have a booking office licence and if it has one but then supplies unlicensed vehicles the licence will be taken away by the relevant authority, whether it be the City of Edinburgh Council, Glasgow City Council or West Lothian Council, whose representative is at the committee today.

We need to change legislative problems in some respects, but in others the problem is how legislation has been twisted over the years. Going back in time and asking the people who enacted the legislation in the first place what they were trying to do might give everyone a clearer picture.

Les McVay: I disagree that there is any scaremongering about Uber by Edinburgh taxi companies or the public hire trade. I am aware of Uber; I know their working practices and their strengths and weakness. One of their weaknesses will be price surging. I know of two examples of that from Sydney. When the Sydney siege was in

progress there was a surge in requirement for vehicles, whether public hire, private hire or Uber. Uber's system has an algorithm through which if demand goes up to a certain level the surge price kicks in and, as Professor Cooper mentioned, it goes up and up. In Sydney regular customers were charged up to four times the normal price to take them away from the siege area.

On hogmanay, I was sent an email from a guy who lives in Sydney who uses Uber. Prior to the hogmanay celebrations, all the Uber customers were sent an email, with a graph, which warned them when the price surge would come into effect—it was from half past eleven right through to four o'clock. The warning said that a normal \$30 fare would go up to more than \$100. The email asked them to form groups to share vehicles. That is the level that Uber is coming into the market at, and that is how it prices.

I have seen the guy who runs Uber, Travers Kalanick, justify surge prices along the lines that if someone books a hotel at peak times the price goes up. He also tries to justify it by getting vehicles from outwith an area to travel to the area and pick up fares. I do not think that the Edinburgh public will take it too kindly if they are charged two or three times the normal amount just because the service is failing them. The taxi trade is quite strong in Edinburgh.

I will give another example. An Uber driver is charged 20 per cent: when someone books a taxi, they pay up front with a credit card and Uber keeps 20 per cent, while the driver gets 80 per cent. Currently in Edinburgh there are two strong associations, Central Taxis and City Cabs, and all the drivers are part of that, or the members own a share of the company. They are non-profit organisations. Our arrangement is flexible and depends on how many hours a driver works, but we try to work it out so that a driver will pay 10 per cent of every fare that they get from City Cabs or Central Taxis. However, a driver will pay 20 per cent to Uber.

The taxi sector in Edinburgh has moved on considerably over the past few years. We have become more responsible and adaptable. We incorporate all the latest technology—for example, we were the first ones to get GPRS—general packet radio service. This is maybe not an answer to your question, convener, but while I have it in my mind I want to point something out—again, in a positive way. If Uber comes in and starts taking drivers, if there is an incident regarding a passenger or suchlike, who will be responsible? At the moment, if there is a police inquiry about an incident, the police come to the taxi company's door at whatever hour of the day. We give them full access to all our information, because every taxi is tracked and monitored, and we know every

turn that a taxi driver makes. We have been involved in solving quite a few crimes in the Edinburgh area in recent times. I know that Central Taxis and ComCab offer the same service as us in that regard. However, who would do that if the company involved was Uber?

The Convener: Mr McIntosh?

Bill McIntosh: I am afraid that I have lost the thread of your the question.

The Convener: It was about the market deciding at the moment. Given the restrictions that can be put in place by local licensing authorities, does the market really decide? Do such restrictions make it easier for the likes of Uber to enter the market?

Bill McIntosh: It could be argued that they are making it easier for Uber to enter the market. You will be surprised to hear that I disagree with my colleague when he says that we need a different type of system. I think that the one that we have just now is tried and tested; it has worked very well since 1982 and is still working very well. Taxis supply both radio and street services. The street service is unlikely to discontinue, so I can see that there is going to be a need for the foreseeable future to retain a two-tier system—that is how I would like to see it go.

The Convener: Okay. You represent a national body, but you operate in Glasgow and the other two gentlemen are from Edinburgh. Do you think that the market is well served by the current licensing regimes in each of the 32 licensing authority areas?

Bill McIntosh: The short answer is yes, for the most part.

The Convener: Thank you.

Cara Hilton (Dunfermline) (Lab): Bill McIntosh just said that the current system is “tried and tested”, but what are the panel's observations on Dr Cooper's comment that the market is transforming in such a way that the two-tier licensing regime may be very difficult to enforce in future and that we could be heading towards a monopolistic provider?

Les McVay: Does “monopolistic” refer to Uber or to private hire or public hire taking over each other? I think that the two tiers work well. Uber will come, but I ask that, as Mr Wilson mentioned, it be allowed to use only licensed drivers and vehicles. In some areas in America, Uber just uses people who download its app, who are unlicensed and use an unlicensed vehicle. That is just a horror story, as far as I am concerned.

As I said, Uber will come, so it is up to us to pull up our socks and be on our toes to provide a better service—nobody is looking for a monopoly.

Again, it is up to the drivers, whether public hire or private hire. City Cabs has a taxi school, and about 40 per cent of the people coming to us to sit their test see the school as the way to the next level because they want to be public hire drivers.

I do not know whether Kevin Woodburn will agree with this, but drivers go into private hire because it is easier to do that, as they do not have to sit for their brief. They might have no knowledge of Edinburgh city, but they can study for their brief while driving for private hire. Some stay with private hire, and we have guys who have left public hire and gone to private hire because it suited them.

In terms of choice, there is sometimes a line where the choice between public hire and private hire becomes confusing for people. We see that at the airport every day, where some people like the choice but others get confused. I do not know how you would legislate against that.

11:00

Kevin Woodburn: My view is very similar to Les McVay's. I referred earlier to Uber—it is coming and whether we like that or not is, frankly, irrelevant. It is a company that is coming to the Edinburgh and Glasgow areas, and as long as it plays by the same rules as everybody else and the relevant legislation applies, that is fine—it is competition.

Uber is different from every other company out there in that it does not have any vehicles on its circuit, if you like. It comes to a city and tries to attract all the vehicles that are already working in the city—I am referring to private hire vehicles, not hackney cabs. It tries to get those drivers to associate themselves with the Uber app. We have around 500 drivers in our company. All of those 500 drivers could join Uber and stay with us. Drivers could feed into both systems—us when we were busy and Uber was quiet; and Uber, when it was busy and we were quiet. In effect, that is what the app is about, as far as drivers—rather than the public—are concerned. As long as the rules are the same, licensed vehicles are supplied and licensed drivers are used, I do not think that we will ever get a monopolistic situation.

As Les McVay said, the issue will come back down to price. There are parameters in the pricing structure, and there are things that can be done on both sides of the trade; it would be entirely up to individual companies whether they wanted to do them. I very much doubt that the public would ever allow there to be a monopolistic situation if there were surge pricing, for example. Would anyone in the room pay four or even seven times the normal price? We would not, because we all know that there are choices. The fact that we use a company

once does not mean that we will use it 10 times over and that we must pay whatever it wants to charge us, because we all know that there are choices out there, and that is the way it should be.

On whether there should be a single or a two-tier licensing system, it could be argued that choices are available because of the two-tier system. The situation might or might not change; there are reasons why it should change and there are reasons why it should not. What happens will come down to choice, which will relate to the availability of different types of vehicles. Does the legislation allow for the market to decide? That is a very difficult question to answer.

Bill McIntosh: I disagree with Dr Cooper's view that Uber or any other app company will have a monopoly. What we should be more concerned about is that the app suppliers comply with the current legislation. From the various bits of information that are available on YouTube and other sites, it would appear that they do not comply with the legislation in other countries. The situation might well be different here, but the main concern that the taxi industry has is that such companies create huge potential for unlicensed activity. The Government must find some way of legislating to deal with that.

We have already suggested that one way of tackling the issue might be to use the booking office legislation. That legislation would not necessarily have to be changed; more mandatory conditions could be created that would bring companies such as Uber under it.

The Convener: I want to touch on an issue that I raised earlier. Mr Woodburn, Mr McVay said that some of the private hire drivers use your training school because they want to complete the knowledge test. In Edinburgh, private hire drivers do not have to complete a knowledge test. Is that correct?

Kevin Woodburn: They do not have to.

The Convener: There is no obligation on them to do so. Is that the situation in most local authority areas?

Kevin Woodburn: To my knowledge, yes. I think that the situation might be different in Aberdeen.

The Convener: Aberdeen is the anomaly, and that is causing me difficulties. As far as the application of the 1982 act is concerned, Aberdeen is the only place that makes private hire drivers sit the knowledge test.

Kevin Woodburn: Yes—it is the only place that makes private hire drivers sit the knowledge test, but there are other areas of the country where companies get their drivers to do the knowledge test. For example, my company has its own

training school. We choose to train our drivers; we choose to take them to whatever standard we feel is appropriate for the marketplace that we are in.

When it comes to the legislative side of things, my company has no fear of there being legislation on the training of drivers. My slight concern would be if we were talking about training a private hire driver to the same level as a taxi driver. If that is the case, is it just about knowledge or is it as much about the other modules that a taxi driver may have to look at, such as the law on health and safety, disability discrimination and other things? All those things are important in training, if that is what we are talking about. As far as I understand it, the bill is talking only about knowledge training.

The Convener: Thank you. That is very useful.

Cameron Buchanan: You touched on the fact that you want a level playing field. What do you think of the two-tier system? The differences with private hire are that drivers do not need to have the knowledge in the same way and that there is no buying or selling of a plate, as is there is with hackney cabs. Would you favour any changes to the system? I could not gather that from your reply, although you said that you wanted competition. Should things be altered in any way?

Kevin Woodburn: I am trying to sit on the fence.

Cameron Buchanan: I gathered that from your reply.

Kevin Woodburn: It is a difficult question to answer, because there are parts of the legislation where a two-tier system currently works well, but there are other aspects that I would not necessarily agree work well. It is not clear exactly what is being proposed, for example, in relation to the numbers game and allowing local authorities to cap the number of private hire cars in a given area. That is fine, depending on the test that is applied to get the number correct, if everyone in the area agrees that that is the correct way to decide the numbers, but what is the next stage? Does the plate then become transferable? Are we talking about the incorporation of private hire plates that can then be sold on for a price, or are we saying that that is not to happen for private hire, taking us back to a situation in which private hire and hackney cabs are treated differently? What concerns me about all the proposals is that they rely on local authority interpretation of what happens next.

Cameron Buchanan: Do you think that it is a good idea to keep control within the local authorities, or would you suggest some other arrangement?

Kevin Woodburn: There is a case to be made for keeping it under the control of the local

authorities, because they know their own local environment best, as long as those local authorities are not concerning themselves with the vested interest groups that are lobbying them more strongly than other groups. I have concerns about all those things, but that is perhaps slightly more controversial.

The Convener: The 1982 act does not allow for capping, but we already see the capping of private hire licences in certain local authority areas, do we not?

Kevin Woodburn: No, not to my knowledge.

The Convener: Is it not the case that Aberdeen has a cap?

Kevin Woodburn: I do not have intimate knowledge of the situation in Aberdeen.

The Convener: I am being a bit parochial.

Kevin Woodburn: I do not think that a local authority can legally put a cap on the number of private hire licences at present. It cannot say that it will not issue any more licenses. That is not my understanding of the current legislation.

The Convener: Thank you, Mr Woodburn.

Cameron Buchanan: Just to be clear, did you say that local authorities cannot legislate as to how many private hire cars they license?

Kevin Woodburn: Today, no, not to my understanding—not when it comes to private hire licences.

Cameron Buchanan: The bill proposes that, but at the moment it is not the case.

Kevin Woodburn: The test would be to pick up the phone now to Aberdeen City Council and ask, “Can I put a private hire plate on?” If the reply is yes, there is your answer.

John Wilson: I want to pick up on a couple of the responses that we have heard so far. I seek clarification from Mr Woodburn about the issue of private hire drivers signing up for Uber. You gave the impression that private hire drivers could sign up for Uber as well as being members of Edinburgh City Private Hire. Is that what you were implying?

Kevin Woodburn: I am stating that Uber works by coming into a marketplace and attracting drivers who are already in the marketplace but who are perhaps with other companies. Our company has two different types of drivers—owner-drivers, who own their own vehicles and pay us a fee for the work that we provide them, and what I would class as rental drivers, who drive company vehicles that we supply to them.

The difficulty for us with the Uber scenario is that there is no way in which I could easily enforce

a rule to prevent an owner-driver from covering work for Uber—or for any other company, for that matter. I have a slightly stronger hand in relation to our vehicles that we supply to drivers, as we can specify that they cannot work for anybody else. However, under the legislation as it stands, a private hire driver can work for 10 companies if he chooses to; the only issue is gaining access to the work that those companies have. Alternatively, he can work just for himself and not for any companies. He can take bookings himself without needing a booking office licence.

John Wilson: I thank Mr Woodburn for that clarification. However, our understanding—which might be a misconception that arises from the material that is publicly available—is that Uber comes in and recruits non-licensed drivers—

Kevin Woodburn: They did—

John Wilson: Let me finish, Mr Woodburn.

Kevin Woodburn: Sorry.

John Wilson: Uber comes in and recruits non-licensed drivers with non-licensed cars. The examples that we have heard about in other jurisdictions worldwide show that Uber tends to attract individuals who are not existing drivers—private hire or hackney cab drivers—to operate the service. Would it not be a major worry for the black-hack companies and the private hire companies if Uber were to come in and say, “We’re not going to recruit or use any of the existing licensed cars or drivers; we are going to recruit publicly to build our own business that has no current association with any of the licensed cars or drivers”?

Kevin Woodburn: Would that be a concern? Yes, of course it would. I suggest that it would be more of a concern to the public than to the trade, because I do not honestly believe for one second that the public would stand for unlicensed drivers and unlicensed cars running around the city picking them up at 2 or 3 o’clock in the morning. I genuinely cannot see that happening.

Again, I do not want to sit here and sound as though I am a fan of Uber—I am trying hard to sit on the fence and be objective. At the end of the day, however, my understanding is that Uber or companies like it would come in to a marketplace and try to recruit—for want of a better word—licensed drivers with licensed vehicles. Were that not to be the case, we would all be standing here objecting vehemently to the idea of allowing into the sector any company that runs unlicensed drivers and unlicensed cars. We would be the first to stand up and object to it, but I think that the public would be very close behind us.

John Wilson: Mr Woodburn, you referred to the booking office scenario, and said that Uber would

have to operate a booking office. My understanding is that, at present, someone who operates a taxi firm—whether it is a private hire or a black-hack firm—has their booking office in the premises from which they are licensed to operate by the local authority.

Uber, as I understand it, would not, as an app system, have 32 booking offices throughout Scotland to coincide with the licensing authority areas. It would, if it had a booking office at all, have one operational centre and apply the app to the whole of Scotland. How does that fit in with the current legislation, and with the proposed legislation whereby booking offices are associated with the licensing authority?

Kevin Woodburn: If you are correct in saying—I am not suggesting that you are not, as I do not know the facts, but I can tell you what I think the situation is—that Uber would come in and run one centre encompassing all 32 licensing authorities, that would be a huge problem. I think that the licensing authorities themselves would have a major problem with that.

However, that is not my understanding of what will happen. As far as I am aware, at this precise moment in time, Uber has applied for a booking office licence for Edinburgh to run an office somewhere on George Street, and for a licence for Glasgow. That suggests to me that if Uber was seeking to come into other areas of Scotland, it would apply for booking office licences in those specific licensing authority areas. However, I am not Uber, so it might be a good idea for you to speak to it. That is my understanding, anyway.

John Wilson: Mr McVay or Mr McIntosh, do you have any comments?

11:15

Les McVay: My understanding is that Uber has to apply for a booking office licence in any city in which it operates. That is the current legislation. If it were to start using unlicensed vehicles and unlicensed drivers, I would have thought that that would be a major concern for Police Scotland. You would have a gradual movement, over time, of no one going into the private hire sector.

We have a very good, competitive market in Edinburgh at the moment. No one is queueing up for public or private hire licences. I would suggest that that is market forces—that is what everyone is looking for. It is a good example of what can happen. If there is a surge anywhere, people will come in and look to buy public or private hire licences. At the moment, there is no movement. There are various reasons for that. The City of Edinburgh Council employs Halcrow to do surveys of unmet demand every three years. I do not want

to bang the drum for Edinburgh, but it is a very good, healthy market.

I am aware of Uber and its strengths and weaknesses. The Edinburgh trade—private and public hire—has to step up and meet the challenge. That is where the real situation will develop. As Kevin Woodburn said, the public will decide whether they want to get into a vehicle and be charged three or four times as much. In the festive season in Edinburgh—Christmas and new year—we implement a tariff 4. We lose work because of that tariff 4 because it goes up to a certain level. It was introduced several years ago to try to bring the supply up to meet the demand. All that it has done is to reduce demand during that period. Through the tariff review, we are trying to bring that tariff 4 down to a reasonable level to get our customers back. At a time of year when our customers most need us, we are overpricing.

The Convener: Mr McIntosh?

Bill McIntosh: Sorry, could you repeat the question?

John Wilson: It was that long ago that I have forgotten it. It was about Uber coming in, and the location of booking offices, and other issues, such as the recruitment of unlicensed drivers and cars. Is that an issue for your members?

Bill McIntosh: It is obviously an issue for our members; I would imagine that it would also be an issue for local authorities. Booking office legislation is quite clear—it applies to every local authority in Scotland. It is difficult to see how Uber would be able to operate in Dundee from an office in Edinburgh. That would be a major concern. In Dundee at least, it would be breaching the regulations.

John Wilson: How is a booking office registered with the licensing board? My fear is that Uber could say, “We’ve got one operator operating from a housing estate in Dundee and that’s the booking office,” and registers that. It does not need anyone at the end of a telephone because the computerised system will do all that for it. Should guidance or regulations be put in place to say that a booking office should operate in a certain way? Most of Uber’s bookings will be done through the app. The drivers will use a smartphone rather than a radio control system. How do we ensure that 32 people employed throughout Scotland is not the limit of Uber’s operation, or that of any similar company, in 32 licensing board authorities?

Bill McIntosh: That is a difficult question to answer. I hear what you are saying. Uber could have booking offices in 32 areas that are, in effect, not operating. The fact of the matter is that Uber could probably run its operation from the Netherlands or anywhere else if it chose to do so,

because it is all done in cyberspace. It is very difficult for me, as an ordinary individual, to say what legislation is required.

Kevin Woodburn: I agree with Bill McIntosh, to an extent. We are so-called experts in our field because of our 25 to 30 years’ experience in the sector—some would say that we are dinosaurs rather than experts. At the end of the day, our expertise is based on the fact that we have had that length of time in a certain trade.

When it comes to the specifics of the question, there is nothing in the checks and balances that are already in place in each licensing authority to ensure that the rules are being applied. The stupidity, if you like, of the situation that we are currently in is demonstrated by the fact that local cab inspectors can do nothing about a situation that they know is going on if the company involved is not a licensed company. The inspectors do not have a remit even to go and speak to that company because it is not licensed.

In response to Mr Wilson’s hypothetical situation, I would say that there are great concerns about whether such things might apply in the future. As trade people, we just have to hope that the legislation that is in place is enforced and that, if it needs to be changed, it is changed quickly. My concern is that we are still working under the provisions of the Civic Government (Scotland) Act 1982 and are talking about little changes here and there. I fully understand that in the greater scheme of things in the country, taxi and private hire licensing is nowhere near the top of the tree—of course, it should not be—but it is at the top of our tree.

The Convener: At this moment, it is at the top of our tree as well, Mr Woodburn.

Kevin Woodburn: I will get off the tree, then.

Les McVay: We applied for a booking office licence and received a visit from the council and Police Scotland. We have had two checks since then, over the past four or five years. We do get site visits from the police, who look at our system, but they know it anyway, because they are up there every second weekend.

Uber has been quite responsible in having applied for a licence. There is a company called Get Taxi that is currently going round the ranks in Edinburgh, trying to get our drivers to download its app and get work in that way. I do not think that there has been much take-up, although I imagine that some street cars might trial it during this quiet period; it is a matter of choice. However, that company does not have a booking office—that is the problem. That is where cyberspace comes in. Get Taxi has not made any effort to get a booking office licence, which the legislation requires, yet it is going round the ranks at the moment.

We have seen that happen twice before over the past year to 18 months, with companies trying to get drivers to use them. There has been very little take-up. Two thirds of the public car drivers in Edinburgh belong to a circuit—City Cabs, Central Taxis or ComCab. Street cars are street cabs for a reason: they do not want to be part of a radio-controlled company or an app-controlled company. It is a matter of choice. The difficulty is that Uber has applied for a booking office licence and Get Taxi has not. The two companies that previously went round the ranks promoting their business disappeared as quickly as they appeared.

Kevin Woodburn: Was one of them Hailo?

Les McVay: No, it was not Hailo.

The Convener: The other companies are not relevant to us, although if you want to send us that information later that would be fine.

Les McVay: No, I am just giving you an example. Uber has applied for a licence but the other app companies do not apply. For me, it is about market forces and how the current suppliers respond to the new guys who are coming in.

Clare Adamson: I want to take us back to an earlier part of the discussion in which we talked about the knowledge test. Given that we are also talking about apps, and given that most cars and smartphones now have satellite navigation systems, is the knowledge test still fit for purpose?

Bill McIntosh: Absolutely, it serves a purpose. Taxi drivers are hired instantly at the taxi stand. Very often, they pick up people who have come from abroad and who do not know how to get where they are going or where it is. The taxi driver needs to be able to instantly plot the journey, mostly in his head. I am sure that you will be aware that, in London, it takes up to two years to learn the geographical knowledge, although the situation is not quite so bad in Edinburgh or perhaps Aberdeen and Glasgow. Nonetheless, the test serves a useful purpose because, if drivers do not have the knowledge for that instant hire, when someone gets in the door there and then, where are we? They will be sitting pressing buttons on a satellite navigation unit. The test is definitely required.

Kevin Woodburn: That is a controversial question for me. At the end of the day, there is a need for a knowledge test for the hackney trade. For the private hire trade, a knowledge test is not a bad thing as a form of training for private hire drivers. Anything that raises the standard of drivers has to be a good thing.

That might or might not be controversial for other people in the private hire sector, but I do not see why training of drivers should be a negative thing. My concern is the same as the one that I

mentioned earlier: it is not necessary to have the same testing of knowledge of streets for private hire drivers as is applied to taxi drivers. That is because, as Bill McIntosh stated, a public hire driver—a taxi driver—takes there-and-then hires in a public place. Without boring you to tears on the current legislation, that is my stance on the matter.

Les McVay: Definitely, yes. As Kevin Woodburn says, the test shows commitment and sets a standard for people coming into the trade. We have to have knowledge of routes and the whole thing if it is not going to be a casual trade. At our taxi school, we teach about all types of situations that drivers will get involved in. I am sure that, if we made the system more casual, everybody who got into taxis in Edinburgh would start complaining if drivers did not know where they were going or had to turn on their sat nav to find out. We have had instances where guys have followed the sat nav, perhaps because new briefs have come in, and we have had to sit them down and go over things again because they have gone round the bypass and that has added an extra £5 or £6 on the fare. The drivers have to have the knowledge—that is a key part of our service.

Willie Coffey: On that last point, I want to share with the committee an unfortunate experience that I had in Edinburgh a couple of years ago.

Les McVay: There is always one.

Willie Coffey: Aye. This particular taxi driver did not have a clue how to get to Easter Road stadium. I mean, it is quite a big structure that has been there for quite a while. He charged me 20 quid for the pleasure of driving round in circles and he still could not find it.

The Convener: He maybe supported Hearts.

Les McVay: Was it a black taxi?

Willie Coffey: I cannot remember.

Kevin Woodburn: I hope it was a City Cab.

The Convener: Let us not deal with Willie's stadium problems now, anyway.

Willie Coffey: I want to tease out the idea of protection of the public and to connect that to the issue that John Wilson raised about unlicensed taxis and drivers appearing on the scene. What do we do in those circumstances? Do we need to tighten up the legislation, or is the solution to improve public awareness? When a car turns up at 2 in the morning, people do not look out the window and say, "Oh, there is no plate on that car, so I am not getting in it." What should we do to advise the public about their rights and obligations and to protect them? To go back to the issue of apps, which we have been talking about all morning, can an app not somehow signal to the customer that the car that is coming to get them is

licensed and the driver is Mr or Mrs X? Can an app do that?

Bill McIntosh: You have asked a very difficult question. We have been trying to educate the public since 1982, and the message still has not got across. There are so many people in the cities at weekends who will jump into anything that has four wheels, as long as they get home—that is their only objective. They do not look to see whether the car has a licence number or whether it is for pre-booked hires only or is a taxi; they just want to get home quickly. I really do not know how to answer that question. It would take a major media campaign to achieve what you are looking for.

11:30

Kevin Woodburn: I totally agree with Bill McIntosh. If you go into any city centre on a Saturday night you will find a multitude of different vehicles picking people up left, right and centre, whether they are licensed or unlicensed. Let us not pretend that Uber coming into the marketplace is the start of potentially unlicensed vehicles going out on a Saturday night plying for hire. It already happens in every city across the country every Saturday night in life. There are public hires, if you like, and there are unscrupulous private hire operators who will ply for hire on a Saturday night. The private hire companies can do their best to tell their drivers what they must not do, but once the drivers are out there driving around the streets, it is virtually unenforceable. That is the problem.

Mr Coffey is right that it comes back to educating the public. I do not know how you do that—good luck with that—but at the end of the day, it is the only answer. You have to start with the younger ones and work your way up eventually to the dinosaurs like us.

I am not saying that young guys are not vulnerable, but young females out at the weekend are probably the most vulnerable of all. We have all heard examples of people jumping into what they think is a private hire car or taxi. We must consider things like better and more appropriate signage.

We have talked about apps. It could be that when a response is sent via an app, a picture of the driver and his badge is sent with it. There are all sorts of technical innovations that can be added into apps to make them more public-safety oriented.

I am delighted that we are sitting here answering questions about public safety. Ultimately, regardless of what the trade might think, that is surely what all the legislation is about. My concern with all these things is that over the

years we have lost track of why we are doing what we are doing.

Les McVay: Was your question about members of the public jumping into unlicensed vehicles, with unlicensed drivers?

Willie Coffey: Yes. How do we protect people from that?

Les McVay: Do you think that that happens every week?

Kevin Woodburn: It used to happen a lot less. The honest answer is that I do not know.

The Convener: It certainly happens in my neck of the woods on a regular basis.

Les McVay: I am based in Edinburgh. I deal with the complaints that come into City Cabs. I cannot remember the last time I heard a complaint about that. You mentioned Easter Road, Mr Coffey. I was quite keen to get some information from you.

The Convener: He will give it to you afterwards.

Les McVay: It is frustrating for us as a company if someone comes in and makes a complaint when they cannot provide a plate number or a registration number. However, we have something in the system that is also beneficial to Police Scotland. The system can tell us the pick-up point, such as the Omni Centre, and the destination, such as Wester Hailes. From that information we can find out the driver. We can then find out the route that he took and how much he charged. We do not necessarily need the plate number.

There have been isolated incidents where rogue drivers have got into their vehicles and have approached people in George Street at 2 or 3 in the morning, but I do not think that it is a big factor. I would hate to say how often it happens; it is perhaps once a year. We know about the cases that make the press, for obvious reasons. There was one incident where a private hire driver had lost his licence but still had his badge. That was a few years ago now. The police were looking for him in connection with a rather unsavoury incident.

Colin Keir MSP runs a campaign every Christmas. Unfortunately he runs it too late; he runs it in the week after all the Christmas parties have been held. He wants people to use taxis and private hire cars.

We actively encourage people to use our app because it is a great thing, especially for a female on her own. She can stay where she is; she can stay safe; she can book the taxi herself; and then she can track the taxi. The app gives her the name, the registration and the call sign of the driver and she can see the taxi coming along the road and watch it on the screen. That is what we try to promote at Christmas and new year. We

have asked Colin Keir to try to get the campaign going the week before the office parties instead of the week after the office parties.

The Convener: I am sure that he will read the *Official Report* and get on to that, Mr McVay.

Les McVay: I just wanted to highlight that.

Willie Coffey: I have one last question, again on public safety. If a taxi turns up and a customer is unhappy about the circumstances, from the benefit of your own knowledge and experience, is the customer at liberty at that point to reject the transaction—or the contract, if you like? At what point does the contract become valid? I just want to make the public aware that if they are not happy with a car or a driver, they can reject the transaction.

Les McVay: Any time a customer is not happy, for whatever reason, they can reject the car or the driver. They can do that at any time.

Willie Coffey: When is the contract complete? When you have made the journey?

Les McVay: The contract is made after the journey is complete. If the driver fails to complete the journey for any reason—if the car breaks down, for example—he cannot charge.

Willie Coffey: Or if he could not find where he was supposed to be going.

Les McVay: You have had some bad experiences, haven't you? It is very much in the customer's favour. The customer can call off the transaction at any time for whatever reason.

Willie Coffey: So a taxi driver cannot say to a person, "You've rejected the booking but you still owe me the money."

Les McVay: Tomorrow, I am going down to Pentland Security and I hope to be the first taxi driver in Edinburgh who puts closed-circuit television cameras in his taxis. We have tried for this for five, six or seven years and we have always fallen at the last hurdle, but hopefully it will happen tomorrow. I have the variation of licence—the licence holder acts as data controller—and it all meets the requirements of the City of Edinburgh Council. We will have a CCTV unit in the back of the taxis with a forward-facing camera on the driver and a camera on the back for the customers.

Kevin Woodburn: I agree with Les that the contract can be cancelled at any point prior to the journey commencing. There is a cancellation charge within the tariff sheet; there are elements of treating it as a proper contract, so a cancellation fee can be levied. However, the circumstances are unique and individual to each and every journey. It is probably impossible to have a policy in place—whether it be a company policy or a legislative

policy—that will cover every possible eventuality. I think that what is already in place serves pretty well.

Bill McIntosh: I do not have a lot to add to what has already been said except to say that in my opinion, when a member of the public hires a taxi, whether it be in the street or through a dispatch company, they have the right to terminate that at any time. It then becomes a civil matter between them and the driver concerned and I do not know of any driver who would pursue the loss of a fare through the courts, so as far as I am concerned, customers can terminate at any time if they have good cause.

Cameron Buchanan: I declare that I have a contract with Edinburgh City Private Hire. I have sometimes had a problem with the drivers' lack of knowledge of English. Do you give the drivers an English test as well as a security test?

Kevin Woodburn: Is that a hypothetical question?

Cameron Buchanan: It is.

Kevin Woodburn: I just wanted to clarify that it was a hypothetical question.

The Convener: We are straying into strange realms that are completely and utterly outwith the scope of the bill. You can have that conversation with the gentleman afterwards.

Cameron Buchanan: Can I ask another question?

The Convener: If it is on another matter, you can ask it.

Cameron Buchanan: Does the bill have major flaws? Does it go far enough?

Les McVay: I think that it probably goes far enough. We have best practice guidance that councils work within. You cannot legislate for every area, whether urban, rural or in a city; it has to be flexible enough for every area. The guy who is operating in Pitlochry does not necessarily need to meet the same requirements as the people in Edinburgh. It is difficult to legislate for every single taxi or private hire service in Scotland. It has to be flexible.

Regulation and restriction are good, but only if the taxi firms do not try to hide behind them. Meeting the requirements of the public and the demands in relation to competition are where regulation and restriction come in, and that maintains a standard. As I say, it is very difficult to bring in laws to legislate for every single taxi enterprise or private hire business in Scotland.

Kevin Woodburn: I do not know the politics behind the provisions in the three sections of the bill that are relevant to our trade. I am not

suggesting that there is any politics behind them; but if there is any, I do not know the reasoning behind it. The question is very difficult to answer. Do the provisions go far enough regarding the three points that are covered in the bill? They probably do, yes.

Should there be some form of training? Yes. I would like to drill down into the specifics of that, and I would also like to drill down into the specifics of the numerical capping of licences and the formula that will be used in each individual authority area to achieve that. Is it a bad thing that capping is potentially allowable? No, I do not think so.

I am happy enough with the three things that are covered in the bill. Could it go further? Could more things be added? Probably, yes. Again, however, without going into the politics of it all and without knowing the motivation behind the three sections, it is difficult to add anything more.

Bill McIntosh: As we stated earlier, we have concerns regarding the overprovision measures, mainly because there is no measurement of which I am aware that councils can use to ascertain whether there is an appropriate number of private hire cars or not. I have no doubt that that will be challenged by some sharp lawyers, and that councils will end up in court on a regular basis by refusing. There is a cost factor to that, and the cost will end up on the back of the cab and private hire industry. That is our concern. The matter is by no means closed.

We suggested a controversial solution to the Government, although it did not find much favour with it. Our proposal was that the burden of proof of whether there is unmet demand—whether there is overprovision or underprovision—should rest with the applicant, not the local authority.

John Wilson: I have a question about unmet demand. Mr McVay intimated earlier that the City of Edinburgh Council does a survey every three years. Mr McIntosh, do you know of any other authority that does a survey about unmet demand?

Bill McIntosh: A lot of local authorities carry out their own surveys. How they do that I have no idea. The only other councils that carry out surveys on a regular basis as far as I am aware are Dundee and, to a lesser extent, Stirling. I am not saying that others do not do it, but it is a very costly exercise.

The Convener: Is there enough in the current and proposed legislation dealing with disability access issues?

Kevin Woodburn: That is a difficult issue for me to delve into deeply. Given how the current legislation on disability sits and because private

hire services must be pre-booked, there is a dearth of wheelchair-accessible vehicles in the private hire sector, other than the ones that are currently used for local authority school hires, for example. It is extremely difficult for me to go into detail or comment too much on the disability aspect, because there is not a lot of manoeuvrability in the private hire sector. It is probably better if the two taxi guys respond on that.

11:45

Bill McIntosh: There remains a difficulty in respect of access because there are so many different disabilities. People in wheelchairs are now well catered for; there are plenty of wheelchair-accessible vehicles in major cities such as Edinburgh and Glasgow. However, there are many other disabilities that affect people and the wheelchair-accessible vehicle might not be appropriate for their needs.

As I said in my letter to the committee, the cost of the vehicles is prohibitive as it stands. If we were to try to supply a vehicle that would meet every disability, the cost would be such that no one could afford to buy it or hire it. There are many difficulties to be understood and overcome.

Les McVay: Edinburgh was the first city in Britain to supply a fully wheelchair-accessible fleet, back in the mid-1980s. Every public hire vehicle on the road has a wheelchair facility. Again, that is fine in Edinburgh, but for rural areas where there may be only one wheelchair fare a month or whatever, the cost of putting in a wheelchair-accessible vehicle would be prohibitive, as Bill McIntosh said. It has to be driven by economics, rather than by legislation.

Is Glasgow not fully wheelchair accessible, like Edinburgh?

Bill McIntosh: Yes, that is right.

Les McVay: Glasgow is the same. I do not know what the situation is in Aberdeen, where they have saloon cars. You would have to legislate for different situations and ratios of wheelchair-accessible cars to saloon cars. In Edinburgh, all the hacks, or public hires, are wheelchair accessible.

The Convener: Thank you, gentlemen. I will suspend the meeting for a few minutes as I suspect that you want to talk to members about Easter Road and various other things.

11:46

Meeting suspended.

11:56

On resuming—

The Convener: I welcome our third and final panel of witnesses: Audrey Watson, managing solicitor at West Lothian Council, who was here a few weeks ago—welcome back; Douglas Campbell, assistant managing solicitor for licensing at Renfrewshire Council; and Tom Berney, chair of the Scottish Older Persons Assembly.

Would any of you like to make any opening remarks?

Douglas Campbell (Renfrewshire Council): Thank you for the opportunity to come along to address the committee on behalf of Renfrewshire Council. By way of introduction, I note that we are the authority that covers Glasgow airport. We have a numbers limitation in relation to taxis and we have a fairly high number of private hire cars. It might also be helpful for members to know that we have a taxi knowledge test and a wheelchair accessibility policy.

Tom Berney (Scottish Older Persons Assembly): In case people do not know, I explain that the Scottish Older Persons Assembly represents all the major voluntary organisations for older people in Scotland. We hold an annual assembly and we also go round the country inviting older people to tell us what they think is important. We then lobby Government on those issues. I confess that we have not done too much of that on taxis, but maybe I will say more about that later.

Audrey Watson (West Lothian Licensing Board): Thank you for inviting me back. I am happy to answer any questions on West Lothian's submission. We are near an urban area, but we are not quite an urban area. We are a semi-rural area.

The Convener: Thank you. What do you consider to be the advantages and disadvantages of the current two-tier licensing system? Please include in your answer whether you think that there are benefits for service users who have additional needs. Mr Berney, do you have an opinion on that?

Tom Berney: It is a little bit different for us, because we are concerned about the service that old people receive from taxis. There is more concern about that than about the structure of how they are organised, but I have comments on that as well.

If I may say so, this morning, Dr James Cooper and Kevin Woodburn talked about what seemed to me to be a free-market free-for-all for hire cars, which seemed quite scary. As you touched on earlier, we are putting vulnerable people—in our

case, older people—into potentially hazardous situations, so we are naturally in favour of licensing and regulation in principle, and we think that all hire-car people should be trained.

12:00

Perhaps I can give the committee a wee anecdote. Once when I was in London, I asked the people at my hotel to get me a taxi. A minicab turned up and I asked the driver to take me to the Department of Trade and Industry. He did not know where it was, so I said, "Victoria Street", but he still did not know where it was. I said, "It's near Westminster abbey"—and still he did not know where it was. When you get a driver who does not have a clue, you realise just how vulnerable you are.

You asked about the importance of knowledge testing. It is very important indeed, because people want to be confident that their driver at least knows where they are going. We are concerned that a lot of people who use taxis and hire cars are taking a step into the dark, because they are not too sure of their rights or the sort of service that they can reasonably expect from their driver.

Drivers should be thoughtful; for example, they should take note of the passenger's condition and treat older people as if they were their own mother or father. Our concerns are about the driver and his or her performance, and it seems to me that the only way of achieving what is needed in that respect is through regulation, testing, authorities licensing drivers and so on.

Little things make a difference. For example, a lot of older people who get a cab might have arthritis, or they might have just been picked up from a hospital, but drivers sometimes drive over speed bumps, which will be quite painful. There needs to be consideration for the passengers.

I am going to give you a list of problems that we—

The Convener: We will hear that list of problems as we move through the questions. I suggest that we stick to the specific question, and you will get an opportunity to go through all the other problems that you referred to, Mr Berney.

Tom Berney: What was the specific question?

The Convener: It was about the impact of the two-tier licensing system on service users with additional needs.

Tom Berney: I think—

The Convener: I think that you have already given us a fairly lengthy answer, Mr Berney. We will come back to you, but for the moment let us hear from Mr Campbell.

Douglas Campbell: The principal advantage of moving to a one-tier system is that there will be no issue with illegal ply for hires, as everyone will be able to ply for hire, but I am concerned about the disadvantages that such a move could bring. For instance, Renfrewshire has a wheelchair accessible vehicle policy for taxis, but private hire cars can be saloon cars, estate cars or hatchbacks—or even bigger vehicles such as multi-purpose vehicles, which we ask to be wheelchair accessible. In such scenarios, operators might well wish to carry more passengers.

As far as taxis are concerned, we have a separate set of conditions in a number of areas, but principally for wheelchair accessibility, and I am concerned that, if that distinction was removed, the question of who would run the saloon cars and the wheelchair-accessible vehicles would arise. After all, one is cheaper than the other. Having a wheelchair accessibility policy means that we have sufficient numbers of wheelchair-accessible vehicles to serve the travelling public, and particularly disabled people, who need them.

Audrey Watson: I echo Mr Campbell's comments. The policies that West Lothian Council has put in place over the past few years allow taxis and private hire cars to complement each other. If someone wants a specialist vehicle to carry a heavy wheelchair, they can book one of our type 2 private hire cars, and from the end of this month, they will know that a taxi that they hail in the street or queue up for will be an accessible one, because it will have to meet the accessibility standard.

In the past, we have found that the private hire trade was using bigger vehicles that were eminently suitable as wheelchair-accessible or disabled-accessible vehicles, but there was nothing to compel the operators to meet the requirements that would allow disabled people to access them easily.

The Convener: With regard to knowledge testing and the other points that Mr Berney highlighted, do you as licensing authorities try to ensure that taxi or private hire car drivers take into account the needs of the folks who use their services, or do you consider that to be a matter for the individual operators or companies?

Audrey Watson: I feel strongly about that. We are in a world that is quite regulated. The last time that I came to the committee, we were talking about liquor licensing. Almost everyone in liquor licensing needs to pass a test, and everyone in the hire car sphere should have a certain level of expertise. In West Lothian, most of those people are self-employed, so no employer will come along and tell them that they need to sit a particular test.

In that situation, the Government should set a standard.

West Lothian is one of two councils that worked with the Scottish Government on looking at training and testing for hire car drivers. We worked with People First, which set up modules covering customer service, accessibility, pricing and the law, and that was well received. We would like to put that in place, but we would like the Government to say that it should be in place for all areas.

Douglas Campbell: On assisting the travelling public in general, we have a condition for taxis that passengers should be given reasonable assistance with luggage. We also have a knowledge test, and I agree with Mrs Watson that such tests should be encouraged. However, there is a resource implication for local authorities, because the tests have to be invigilated.

The Convener: Is there a knowledge test for hackney cabs and private hire drivers?

Douglas Campbell: No, the test is only for taxis. If the provision were to be introduced, it would give authorities the discretion to introduce such a policy. The numbers are bigger in relation to private hire cars; we have 214 taxis in Renfrewshire, which is our limit, but there are more than three times—there are almost four times—that number of private hire vehicles. That would have to be accommodated.

Knowledge tests differ throughout the country, but section 13 of the 1982 act is geared towards topography and knowledge of the streets in an area, plus “such other matters” as the council thinks appropriate.

I accept what Mrs Watson said about the People First training, but there are difficulties in having that as a mandatory system, given the current provision. The difficulty with extending the training and making it wider is that, although the legislation states that it can cover “such other matters” as the council thinks appropriate, it may be a moot point as to whether that would include child protection and so on.

Tom Berney: We would prefer that private hire drivers also had to be licensed and undergo knowledge testing. I have heard comments today about regulations varying around the country and arrangements varying between different companies in the same area, but people want clarity about what they are getting into when they hire a car, whether it is a taxi or a hire car. We recommend that there is some kind of taxi passengers charter.

Mr Woodburn said that the important thing is to educate the public about the use of private hire cars. It is one thing to have regulations, but the

public should know what the regulations are and what they are entitled to under them, in terms of both the price that they will pay and the service that they can expect from drivers. Rather than just talking about the detail of the regulation and how it will work between the two different sectors, I would like us to publish guidance for drivers and the public about the type of training that is done.

We have heard that drivers do training modules on disability and various other things. I did not know that, and it is something that the public should know. The public should know that every driver has been trained and should understand what type of training it was and the kind of service that they should be given.

I am not saying that all taxi drivers are bad, by any means. Most are very good, but we get the odd case where a driver seems not to accept that they have some responsibility for the passengers. I would like to see something that makes that clear. It could be press adverts saying what the charter is between the hire company and the passenger and what they are entitled to, or there could be little notices in doctors' waiting rooms and community centres to try to get across to the public how the licensing process works—

The Convener: Do you think that the public are interested in how the licensing process works?

Tom Berney: No—that is what I was going to say. They want to know not so much how the licensing process works but the implications of that for what they are entitled to, which cars they can use, how much they can be charged and what type of service the driver should provide. They want to know what kind of cars they can have and whether they should have ramps.

The Convener: I will stop you there. I am going to play devil's advocate. I always say—my fellow committee members are probably bored of me saying it—that sometimes we cannot legislate for common sense. We could create lots of different things, but the charter that you talked about and all the advertising and booklets would have to be paid for through the fees that are charged to the trade, which would be reflected in the fares that the public had to pay. Would what you suggest be welcomed by the public if they were likely to be charged for it?

Tom Berney: Mr Woodburn talked about the free market and said that the market will decide and that people have a choice, but people do not have a choice unless they have an informed choice. People want to know how one company is different from another. For example, some companies advertise that they are women friendly because they have particular concern for women. Why not also have companies saying that they are age friendly and that they will have particular

concern for older people? That is the type of thing that I am talking about.

The Convener: Is that not up to individual companies, which will gain—or not—from what they do? Again, that is a market scenario.

Tom Berney: That depends on your view of what the Government should do. Some might say that we can have a public service—that is what taxis come down to, in the end—that is run solely on the basis of what individual companies decide, but I believe that as part of the licensing arrangements there should be Government oversight of the service and the commitment that companies give to vulnerable groups.

John Wilson: Mr Campbell said, I think, that 214 taxis is the upper limit or the maximum number of taxis, but he said that there are about three times as many as private hire cars. Do you have an upper limit for private hire cars?

Douglas Campbell: Sorry, but I said that there are more than three times as many private hire cars because we do not have an upper limit. I take the view that we cannot have an upper limit at present.

John Wilson: Why is it the authority's view that you cannot have an upper limit for private hire cars but you can have one for taxis?

Douglas Campbell: Section 10 of the 1982 act specifically allows authorities to refuse an application for a taxi licence where there is no significant unmet demand for taxi services in the area. There is no provision on private hire cars. One provision is made explicitly, but it is not replicated in the act for private hire cars.

John Wilson: I am trying to find out why you feel that an upper limit can be applied to taxis but not to private hire cars when the lines are being blurred in the distinction between the two.

As I said earlier to a couple of colleagues, I was on a licensing board in 1980, and I vaguely remember that part of the reason for the change in the legislation in 1982 was that it was felt that there was an adequate number of taxis in local authority areas but that private hire cars could be used to help to service peak-time demand. Your authority says that the maximum number of taxis is 214, but you make no distinction in terms of private hire cars. How do you make that distinction between how a private hire car operates and how a taxi operates?

12:15

Douglas Campbell: I will explain some of the context. We have a numbers limitation on taxis. The view that we have taken of the legislation is, I understand, the view of other authorities as well.

Because the provision is explicit for one but not for the other, it would not be competent for us to introduce a policy at the moment. Obviously, that would change if the provision in the bill was enacted.

Any decision on that has to be evidence based. Because we have the power in relation to taxis, we have an external survey produced from time to time, and we boost that evidence on a voluntary basis with taxi stance observations by our civic enforcement officer. Because there is no provision in legislation at present, it is not something that we have sought, and I have to add that it would come at a considerable cost to get the evidence to inform such a policy.

I add that, although there is a bottleneck and an issue of peak time demand, the case law under the 1982 act seems to say that there will be periods when demand reaches a peak and there may be an element of waiting time at ranks. The guiding principle, as I understand it, relates more to a general demand by the public for services.

John Wilson: I understand that, Mr Campbell. I am picking your authority in particular because of the distinction that it has made between taxis and private hire cars. How often are the surveys carried out by your authority? Given that Renfrewshire Council is the authority responsible for taxi ranks at Glasgow airport, has any account been taken of the increased demand that might have arisen because of the increased number of passengers arriving at the airport? Moreover, do you have any indication of unmet demand, or demand peaks, during the Commonwealth games and other such events that the local authority could have taken into account to increase the number of taxi licences?

Douglas Campbell: With regard to how often the surveys are carried out, I think that the last update, which was done externally, was done in 2010. Civic government enforcement officers make periodic inspections, and I know that stance observations have been done from time to time, but I am not sure that there was any particular examination during the Commonwealth games. We have to work to general demand as well; there will be times of peak business, and obviously private hire cars, too, can service the market.

With regard to the process, I should point out that even if a report on numbers from an external organisation indicates that we have reached our numbers threshold, that does not bar people from applying for a taxi licence. A person is entitled to make an application, and it will be considered by our regulatory functions board, which is effectively our civic licensing committee.

John Wilson: Just for clarification, Mr Campbell, if you have reached your maximum

number of operational taxis in Renfrewshire, and somebody makes an application, will that application be rejected?

Douglas Campbell: No, we cannot do that. There is case law, in particular from the mid-noughties, with regard to residual discretion. Having a policy does not mean that we can rigidly adhere to it; we have to be able to listen to people and make exceptions. I am not able to project what the board might consider to be a successful application, but we have to put any applications that we receive before it. Initially, it will be flagged to the applicant that we have reached our threshold and that, as a result, there is a risk that their application will not find favour with the board, but ultimately it is a matter for councillors and it is not a reason for an officer to bounce an application.

The Convener: Can I take you back a little bit? You have said that, under section 10 of the 1982 act, you cannot put a cap on the number of private hire cars. If a local authority were to put a cap on private hire cars, would it, under the current legislation, be in breach of the 1982 act?

Douglas Campbell: Not explicitly. There is a specific provision for taxis that has not been replicated for private hire cars. I do not know what a court would make of that—I am not sure whether the point has been taken up before.

The Convener: I know that you will probably not be able to answer this, but how many local authorities that you are aware of have a cap on private hire?

Douglas Campbell: I am not aware of any, but there might be some.

The Convener: Ms Watson, what is your interpretation of section 10 of the 1982 act with regard to a cap on the number of private hire cars?

Audrey Watson: I agree with Mr Campbell—I have always thought that no authority had a limit. I certainly think that, if an authority had such a limit, it would be challengeable on appeal under the current legislation.

John Wilson: I am still trying to understand the remit of the licensing committee in Mr Campbell's authority. Are you saying that, if the cap has been reached and someone makes an application, the licensing committee can adjust its thinking and grant a taxi licence? If the licensing committee agreed to grant another licence, your limit would go up from 214 to 215, so is there really a cap?

Douglas Campbell: The limit would still be 214. If the situation that you are describing arose—and it is not a situation that we face at the moment—the limit as far as the policy was concerned would remain at 214. However, we would de facto have

made an exception, which would take the number of licences that had been issued to 215.

The point that I am trying to make about the application process is that although we have a policy, someone can still make an application. The wording of the 1982 act is such that we “may” refuse a licence when we consider that there is “no significant unmet demand”. It does not say that we “shall” refuse a licence if we find that there is no such demand.

John Wilson: As I have said, convener, I am just trying to get my head round the flexibility that exists for licensing committees to exceed an upper limit that has already been set.

The Convener: I think that the answer is that the licensing committee or board will set the limit but will still consider applications that might breach that limit.

Douglas Campbell: We must consider applications. Every application is considered on its own merits, and the board has discretion, which, as the courts have made clear, cannot be fettered. It is not to say that a good case might not merit an exception.

Cameron Buchanan: I presume that, when you used the phrase “significant unmet demand”, you were talking about somewhere outwith the reach of the centre of, say, West Lothian. Is that what you meant?

Douglas Campbell: No. I think that the test is that we can refuse an application for a taxi licence if we are satisfied that there is “no significant unmet demand”. I apologise if I did not make that as clear as I might have done.

Cameron Buchanan: So it is the other way round. Thank you.

Alex Rowley: Does determining whether there is overprovision involve significant costs? Do the kinds of surveys that you have to do to establish whether there is overprovision of private hire have major cost implications? A previous witness raised the question of how you can determine what constitutes overprovision of private hire cars.

The Convener: We will start with Ms Watson this time.

Audrey Watson: In 2009, West Lothian Council decided to do away with its limit on the number of licensed taxis for two reasons. First, we did not think that there could be no unmet demand if new private hire cars were being licensed every day. The market must work; these people need to find work in order to remain licensed, and the number of private hire cars has gone up steadily over the past few decades. We therefore thought that the situation presented a difficulty.

Secondly, having a cap creates a black market for licences. Licence plates change hands for money. The legislation provides that a licence comes to an end when the holder dies, but we found situations in which Mr A no longer wished to operate his taxi, so he leased it to Mr B, who might otherwise have provided a new vehicle. When Mr A died, the licence came to an end. We did not think that that was right, so we did away with the limit.

Douglas Campbell: There are substantial costs even for doing a taxi survey. I broadly welcome anything that gives discretion to local licensing authorities, but there is a different test for private hire cars and I am not sure whether the costs of surveys would double if an authority decided to go down that route on the question of overprovision. I cannot release any figures on how much we spend—I am not aware at the moment what those figures are—but even a single survey of taxis would cost a substantial amount.

Measuring private hire cars is perhaps more difficult than measuring taxis; after all, you can measure taxis at ranks. I am not sure how you would establish overprovision of pre-booked cars. As far as the proposed legislation is concerned, that would also require an examination of demand.

I do not understand how the proposal would work in practice. With liquor licensing, there are clear licensing objectives that the legislation seeks to achieve, such as crime prevention, securing public safety, preventing public nuisance, and health. I am not sure whether overprovision, as opposed to unmet demand, necessarily sits well with taxis. It would be hard to say whether there were too many cars to take people home at the end of an evening.

The Convener: We are talking about demand. Ms Watson has described an approach in which the authority lets the market decide—even though you are paying for surveys and so on—and Mr Campbell has just referred to surveying demand. Local authorities survey residents quite a lot and in various ways. Would it be wise in those surveys of residents, whether they take place with citizens panels or whatever, to survey the general public on what they think about taxi and private hire car provision in their areas?

Tom Berney: That is a good point. Of course, I come here with a different remit from the other members of the panel, as I do not represent a local authority and I am not a taxi owner; we come from the point of view of the customer. I presume that, at the end of the day, the reason why you are tidying up the regulations is to make life better and safer for customers and the general public. I do not think that you can really do that unless you tell them what you have done and what you have

achieved. One of the things that I was asking for—and I do not think that I am winning here—

The Convener: You're nae losing, either, Mr Berney.

Tom Berney: If, in order to be licensed, drivers must have disability training, discrimination training, health training and so on, it would be helpful for the public to know that. I also think that it would be interesting to know whether taxi drivers must have that training but private hire car drivers do not. If that is the case, that is wrong. I think that anyone who is being paid to drive the public around ought to be properly qualified, and part of that qualification ought to be some training in how to deal with disabled people and so on.

The Convener: Mr Berney, I know that you have views on all of those things, and we will get to them. However, the specific question was: do you think that local authorities should be asking the public about demand in their area and whether the provision of taxis and private hire cars in their areas is enough?

Tom Berney: Yes, certainly. We are organising another series of meetings around the country. If you want, we can make that one of the issues that we discuss with our people.

The Convener: That would be extremely useful. We would be grateful for anything that you could feed back to us.

Douglas Campbell: Perhaps for the first time today, I will be brief. Bluntly, I think that it would be wise to survey the public. To put that in context, I should say that we carry out external surveys of taxis from time to time. Those surveys are quite detailed and thorough; ultimately, all of this is challengeable in the courts, so we tend to produce evidence that is robust.

12:30

Audrey Watson: In our submission, we mention a lot of the changes that West Lothian Council has brought in since 2009. In our 2008 survey, we got a very good response rate—more than 40 per cent, which is quite incredible. The biggest response was on disability issues, so the council decided to set up a consultative group with representatives from key stakeholders, and that is where our changes came from.

The biggest fault was the lack of disabled-accessible vehicles. Some people told us that they had had a very good response from the local operators that they used, but the vast majority of respondents said that there were not enough vehicles that were accessible to them. It is not only people with wheelchairs who need accessibility, but those who are hard of hearing or cannot see properly and people who need ramps and steps.

Drivers need to be trained as well, and we believe that it is important that the Government introduces such training for all drivers.

The Convener: What did your survey show with regard to demand? Did the results lead to any policy changes, or were your changes already in place?

Audrey Watson: The survey told us loud and clear that there were not enough accessible vehicles, so it was a no-brainer: our policy restricting the number of accessible vehicles that were licensed—and therefore the overall limit on taxis—had to go. Over the past five years, taxi numbers have stayed at almost the same level, but the number of private hire cars has gone down and the number of accessible vehicles has gone up.

The Convener: Thank you. That was extremely useful.

Willie Coffey: I want to take some advice from my local authority colleagues on the issue that I raised earlier of protecting the public. I used the example of a taxi driver who had moved from one authority to another, but the second authority did not know that a substantial number of complaints about the driver had been made to the first authority. How can we improve that situation to ensure that the public are protected?

Douglas Campbell: Our application forms ask whether applicants have applied to other authorities, which covers one aspect. Obviously, all applications are sent to Police Scotland, which will comment on them, and those comments can highlight convictions and non-conviction conduct that has not gone as far.

I appreciate the point that you have made. The situation might depend on the strength of the information that is available to the police, and ultimately on the presentation to the board. There will always be differences in the approach taken by any board of elected members, because the legislation entrusts them with discretion. Local authorities are certainly concerned about the issue that you have raised, but as I have said, we ask applicants whether they have applied to another authority and we take into account information from the police.

On a related point that was raised earlier, the board would not set aside the police letter. It would exercise discretion in deciding how much weight should be given to certain information that came before it.

Willie Coffey: If the person was intent on concealing and lying about his or her personal circumstances, how would the second authority find out? I am not talking about your particular authorities, but how would you know? Is one

authority entitled to pass on to another authority examples of where substantial complaints have been raised about a taxi driver, or are you not permitted to do that?

Douglas Campbell: I am not absolutely certain about that. The application form that asks that question is passed on to Police Scotland, which sometimes highlights that, for example, the applicant applied to Glasgow for a licence and was refused. That happens.

Audrey Watson: Our application forms say the same thing. It probably works fine for criminal matters, but if we are talking about low-level conduct, I am not entirely sure whether we would know that a driver had had problems in other areas short of their being suspended.

Willie Coffey: So an authority would not necessarily pass on to neighbouring authorities information that substantial complaints had been raised about a particular driver. They would not naturally share that information, would they?

Audrey Watson: I am not a data protection specialist, but I can see issues with that.

The Convener: Okay.

Do you welcome the removal of the contract exemption? What might the practical implications of that be? We have heard that some rural local authorities are concerned about the withdrawal of the exemption because the additional cost might cause some hire car operators to withdraw from the market and because there might be an adverse impact on councils' procurement of transport to take children to school and older folk to lunch clubs or whatever, for example. Do you have a view on that, Mr Berney?

Tom Berney: No. I do not have a comment to make on that.

The Convener: Do you have a view, Mr Campbell?

Douglas Campbell: I am not involved in the procurement process, but I think that it is part of our standard framework that those who have contracts hold such licences anyway, so I do not know whether there would be any implications for Renfrewshire.

In broad terms, I welcome the proposal to remove the exemption, as I indicated in our consultation response. It is an enforcement lacuna because, unless a driver is monitored 24 hours a day—which cannot realistically be done—and they say that they take only one hire a day, that gives them a potential loophole. Ms Watson cites a couple of cases in her response, and I accept that there may be merit in an exemption in such cases, although I did not argue for that in our response. Nevertheless, limousine companies that had

limousines with eight or fewer passenger seats could say, "You can't license us." It is an issue, and I think that there could be more control if the exemption were to be removed, as is proposed.

Audrey Watson: In my consultation response, I said that it would be quite difficult to identify the top end—the chauffeur-driven vehicles. How would Police Scotland know whether they were taking someone on a hire car journey? There would have to be some sort of signage, and that would have to differ from the private hire signage. As you have heard this morning, a lot of steps have been taken to ensure that the public know the difference between a taxi and a private hire car. In West Lothian and in Edinburgh there are door signs, but I do not imagine that the top end of the market would want that. However, if the top end did not have that signage, how would anyone identify what was the top end? What markers would there be? I worry about how that would work in practice. In England, private hire cars have plates in the boot that passengers can check to make sure that the vehicles are licensed, but I do not see how enforcement officers could check that.

The Convener: Okay. That is useful.

Do you share the Scottish Government's view that services that are run by community groups or charities and that are not for profit should continue to be exempt from the licensing regime?

Tom Berney: I know that some local communities have been running their own services, and that worries me a bit because I would want to feel that the people who were doing that had had some testing before they were allowed to do it. It is one thing for me to say that I can give somebody a lift to the hospital occasionally, which I do, but it is another thing to run such a service. In some cases, those services are being used to cover up the lack of public transport, and that is a worry. I would prefer there to be some sort of testing for people who run those services, too.

The Convener: You think that community groups and charities that run services should be included in the licensing regime.

Tom Berney: I think so, although it could be a less-restrictive licensing regime. It worries me that someone could just start replacing the local bus service. I know a couple of people who are doing that down in Dumfries, and it is a bit worrying. I would want people to know that they had at least a public service vehicle operator licence or something and that they were properly qualified to run such a service.

Douglas Campbell: Coming at it from a regulation perspective, I take the protection of the public as a starting premise. I understand why the

view that has been described would be held, but I do not feel that I can comment further on that.

Audrey Watson: I imagine that most hires would be covered by the Protection of Vulnerable Groups (Scotland) Act 2007, which protects people from the drivers. I am simply not aware of whether there have been issues with vehicles that are not in a good state of repair being used to take people around. We certainly would not want to be involved in licensing vehicles if they did not need to be licensed.

The Convener: Do you have any concerns about the operation of the licensing regime that are not being addressed in the bill?

Audrey Watson: On the checking of previous convictions, if someone is a taxi or private hire applicant no offences are spent unless they are offences that have been dealt with by alternatives to prosecution, which are the fixed penalties that were introduced a few years ago. I would like to see those not becoming spent for taxi and private hire car drivers, because we are seeing some fairly serious offences, such as violent disorder and drugs offences, being dealt with day and daily by ATPs. Some of them become spent immediately they are issued and some within three months. It means that, if the police want to bring forward a person's entire history, they have to do what is known as a two-stage test. That can become quite legalistic and I do not think that it is necessary for members of committees to deal with that. They first have to say, "There is something that is not here that we want to tell you about. Will you let us tell you about it?" Then they need to say what it is if it passes that test. If someone wants to transport the public, their whole record should be before the committee so that it can decide whether they are a fit and proper person. A lot of the offences that I have concerns about are drugs offences.

Douglas Campbell: I echo Ms Watson's thoughts. The two-stage test becomes quite complicated when we get into different regimes, because there are exclusions and exceptions in relation to drivers of private hire and taxi vehicles. As I understand it, that can in effect disable boards from looking at offences that have become spent, either immediately for fiscal warnings or after three months in the case of fiscal fines.

The Convener: We have heard concerns about companies such as Uber and Hailo entering the market. Do you have concerns on those fronts and, if so, what are they?

Tom Berney: I am sorry. I did not catch the question.

The Convener: I was asking about Uber and Hailo, the app companies that we were talking

about earlier. Do you have any concerns about them entering the market?

Tom Berney: As I said at the beginning, I have an app on my phone, like most people do, and I can contact the local taxi company. That is relatively secure. The worry is about the possible explosion in the market that Dr Cooper described. If there are a few local companies, people can get to know their reputation, but if there is a complete free-for-all with dozens of companies and people are not sure who they are getting, that could be worrying. Dr Cooper's paper outlined the difficulty of keeping track of that type of thing, but it is important that the local authority takes a grip of the situation to ensure that anyone who provides a service is a properly qualified driver. I can see the problems involved in that. If someone picks up their phone and dials a number to get a car, how do they know? As I said, the important thing will be to let the public know what the situation is with those companies.

Douglas Campbell: There is widespread concern about the points that Dr Cooper raised; he certainly raised considerable concerns. All that I would add to those concerns—Dr Cooper is probably best placed to speak about them in detail, given his knowledge of the technology and his specialism—is that we have level 2 fines in civic government where offences are committed by people not having licences and so on, whereas there are level 5 fines for liquor licensing. Perhaps, at some point, the levels of those penalties might be looked at.

12:45

Audrey Watson: I was interested in what members of the previous panel said about booking office licences. Mr Campbell and I had a quick look at the legislation when we were sitting in the public gallery. As far as we could see, the evidence that you heard was not correct. Firms do not need to be licensed in their area to have a booking office. We have a booking office that operates vehicles from the Falkirk area, which is licensed in West Lothian. There is nothing to say that the booking office, the vehicles and our drivers have to be connected.

Most people in the cities work for one of the big companies, but that is simply not the case outwith the cities. Lots of people there are self-employed, they might have their own vehicles and they might not be involved with any booking office at all. As far as I can see, it may not be the case that Uber would need booking office licences. If someone had a booking office in England, I do not think that they would need a licence. That should be tightened up immediately.

The Convener: That is extremely useful information.

Tom Berney: Regarding the situation that Dr Cooper described, I am worried that, given how the internet works, I could launch a website tomorrow, for instance, inviting people to put forward their names to be drivers. They could put their names on my website, someone would consult the site and the job would go to one or other of the drivers. How can it be ensured that such things are properly regulated, rather than our just having that kind of random system, to which the internet lends itself? That is the type of thing that Dr Cooper described as being difficult to control.

Douglas Campbell: I am not quite sure on this point. I take Ms Watson's points entirely. We had a discussion, and I agree with what she said. However, I am not sure how things would work if the office was outwith Scotland altogether. That might be theoretically possible, although it must be relevant vehicles that are registered at booking offices, so it is perhaps less likely that they would be registered in England.

In Renfrewshire, we have a local condition, in addition to the mandatory conditions, regarding booking offices. It states:

"The holder of a taxi licence shall not have installed in his taxi a two way radio or similar device the base of operation or control point of which is situated outwith the boundary of Renfrewshire Council."

That was introduced when the booking office regime came in. It may be that, given that there are other mandatory conditions for booking offices, such measures could be considered.

Audrey Watson: That would be an excellent idea. My issue is that we do not have a condition like that. I am not satisfied that that is a reasonable condition that would stand up to scrutiny in the appeal court. However, if such a condition was in the guidance, it certainly would.

Things have moved on very quickly, as Dr Cooper said earlier. The mandatory and other conditions and the guidance all need to be scrutinised to ensure that they are completely up to date.

The Convener: There are no further questions from members. Thank you very much for your evidence.

12:48

Meeting continued in private until 13:23.

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