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Your Ref:

Our Ref: CDB/LIW/00126946/1

Date: 23 August 2016

Dear Sirs

Re: Legal Claims against Addison Lee

Our clients: [REDACTED]

We have been instructed by the above named individuals and the GMB union in connection with their work for Addison Lee and the termination of their contracts as drivers.

Our clients

[REDACTED] started working as a driver for Addison Lee in June 2013. [REDACTED] started working for Addison Lee in June 2014. [REDACTED] started working as a driver for Addison Lee in March 2015, having worked from February 2010 up until this point in the Addison Lee call centre. All three of our clients were told on 24 May 2016 that their contracts with Addison Lee were terminated with immediate effect.

Our clients' potential legal claims

Our view is that you have treated our clients unlawfully, as outlined below. Our clients intend to pursue the following claims in the Employment Tribunal:

- 1. Automatic unfair dismissal or unfair dismissal;**
- 2. Detriment on grounds related to trade union activity;**
- 3. Detriment on the grounds of making a protected disclosure;**
- 4. Wrongful dismissal;**
- 5. Failure to pay holiday pay; and**
- 6. Failure to pay the national minimum wage.**

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Background

During the latter half of 2015, a number of Addison Lee drivers, including our clients, became increasingly dissatisfied with their working conditions at Addison Lee. They therefore formed a group which became known as the United Addison Lee Drivers ("UALD"). UALD is an independent trade union within the meaning of section 1 and section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULR(C)A 1992").

There are approximately 900 drivers that belong to UALD. At a meeting on 21 March 2016, our clients, along with four other drivers, were elected as representatives.

Our clients are also members of the GMB union. Our clients are protected from dismissal and/or victimisation on the grounds of trade union activities as members of the GMB and UALD by the TULR(C)A 1992.

24 May 2016

As you are aware, at midday on 24 May 2016, approximately 170 Addison Lee drivers attended a protest in Berkeley Square, which was jointly organised by the GMB and UALD. The demonstration was in respect of new operating terms and conditions which were to be imposed on the drivers by Addison Lee on 4 June 2016. They viewed the intended imposition of even longer working hours as a significant assault on their personal safety as well as the safety of members of the public.

The protest was held outside the Carlyle Investment Management LLC's ("Carlyle Group") London office because the Carlyle Group owns Addison Lee.

Once the protest, which lasted approximately 2 hours, was over, our clients were telephoned individually by the driver liaison team and told to go to the Addison Lee office. [REDACTED] was told during the telephone conversation that Andy Boland, Chief Executive Officer of Addison Lee, wanted to speak to him at the office.

As you are aware, the UALD and the GMB separately had written and emailed Andy Boland on a number of occasions prior to the protest on 24 May 2016 asking him to meet with them to discuss their concerns about proposed changes to their working conditions. Their correspondence went unanswered. They, therefore, organised the protest as a last resort in order to have their views heard.

Our clients discussed the instruction that they go to the office and went together. When they got there, Tony Smith, Driver Liaison Manager, told them that their 'services were no longer required'.

Our clients were dismayed that they could be dismissed in this way without notice or reasons. Tony Smith told them that he did not need to give them any reasons because they were self-employed and that Addison Lee could therefore end their contracts without notice and without giving any reason.

Our clients deny that they are self-employed and, in any event, it is averred that all contracts, including theirs, are subject to reasonable notice of termination.

Our clients told Tony Smith that they wanted to speak to Andy Boland but were told that this would not be possible. They waited for approximately 40 minutes and then left. Whilst they were in the office, they were blocked from the central booking system and their Addison Lee cars had been removed.

Status of our clients as employees

Notwithstanding our clients' contracts, which purport to deny any employment relationship, our view is that our clients are employees, within the meaning of section 230(1) of the Employment Rights Act 1996 ("ERA 1996"):

"In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment."

The standard terms with which our clients were provided state as follows:

"Drivers who provide Services to Addison Lee are self-employed and contract to provide services to, and receive services from, Addison Lee on the terms of this agreement. Nothing in this agreement, or any aspect of our dealings with a Driver, will create either: (i) an employer/employee relationship; or (ii) the relationship of worker and principal; between a Driver and Addison Lee".

These terms, amongst others, do not genuinely reflect the relationship between Addison Lee and our clients, nor are they a true representation of what was intended and agreed between Addison Lee and our clients at the time the document was provided to them or since.

Under their contracts with Addison Lee (whether on the basis of the overarching contract or each individual occasion on which they worked), our clients were obliged to provide their services personally to Addison Lee, for which they were paid on a weekly basis. Addison Lee also had considerable control over their activities. Indicative (but not exhaustive) factors in relation to control are:

- i.) Addison Lee provided training to our clients. When they started their roles, they were required to attend a training/induction session;
- ii.) Our clients worked on standard terms which were dictated by Addison Lee and were not open to negotiation;
- iii.) They were obliged to work in accordance with detailed Addison Lee practices, policies and procedures as embodied, for example, in the Driver Operating Guide;
- iv.) They were obliged to use Addison Lee cars;
- v.) They did not have a contract with the customers, who contracted with Addison Lee for the driving service;
- vi.) Addison Lee set the rates charges to customers who were driven by our clients;
- vii.) Our clients had to personally to carry out the driving job.

Whilst all that is required for present purposes is the right to exercise control Addison Lee also exerted considerable control in practice.

Automatic unfair dismissal / unfair dismissal

Our clients were automatically unfairly dismissed contrary to section 152 TULR(C)A 1992 (on grounds related to Trade Union membership and/or activities) and / or section 103A ERA 1996 (the reason or principal reason for their dismissals being that they made protected disclosures). In the alternative, our clients were unfairly dismissed contrary to section 94 ERA 1996

Our clients had been active in the run up to the demonstration on 24 May 2016 in their capacity as both GMB and UALD members/representatives in voicing concerns about proposed changes to their contracts, which they considered were onerous and would result in:

- (a) A decrease in their pay; or
- (b) Being forced to work longer hours in order to make the same money.

Our clients raised these concerns with Tony Smith verbally on a number of occasions in the run up to the demonstration on 24 May 2016. As noted above, they also sent a letter to the Chief Executive of Addison Lee, Andy Boland, asking for a meeting to discuss these concerns as well as well as numerous follow up emails and letters, when they did not receive a response.

The GMB wrote an email on 23 May 2016 again requesting an opportunity to meet with management, stressing the "growing discontent among Addison Lee drivers" and describing the attitude of Addison Lee's senior management as "unacceptable and unsustainable".

Our clients were known by Addison Lee to be three of the seven elected representatives for UALD and active in mobilising other drivers, including by their involvement in organising the protests on 24 April 2016 and 24 May 2016.

Immediately after the demonstration on 24 May 2016 our clients were telephoned and asked to attend the Addison Lee office. When they attended the office, they were informed that their driving contracts were terminated. When they asked for the reasons for their dismissal, they were told that because our clients were self-employed, Addison Lee had no obligation to provide them with the reasons for their dismissal.

We aver that Addison Lee dismissed our client due to their organisation of the demonstration and the challenge to Addison Lee's practices, pursuant to section 152 of TULR(C)A 1992, is unlawful.

In the alternative or in addition, our clients were automatically unfairly dismissed pursuant to section 103A ERA because the reason or principal reason for their dismissals was that they made protected disclosures.

According to section 43B(1)(b) and section 43(B)(1)(d) of the ERA 1996, raising concerns related to failure or likely failure to comply with a legal obligation and concerns related to health and safety amount to 'qualifying disclosures':

"A "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure [is made in the public interest and] tends to show one or more of the following:

- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject"
- (d) that the health and safety of any individual has been, is being or is likely to be endangered;

Pursuant to section 43C of the ERA 1996, the disclosure must be made to the employer or another responsible person.

Our clients were of the view that the changes to their working conditions amounted to breaches of the drivers' employment rights and of their contracts and they raised these concerns with Addison Lee.

Our clients were also concerned that Addison Lee drivers were driving between 60-80 hours a week (and often more) and were often feeling that they had no choice but to drive when tired, which posed a danger to the drivers, customers and members of the public. Our clients were further concerned that with the imposition of even more

onerous conditions for drivers by Addison Lee, which meant that drivers had to work increased hours in order to make the same amount of money, meant that there was an increased risk of accidents as a result of drivers driving when tired.

As outlined above, our clients made numerous requests to meet with management to discuss these concerns. The requests for meetings by our clients were ignored and, therefore, UALD and the GMB organised a protest to demonstrate the widespread dissatisfaction and concern from drivers. A flier was handed out at the demonstration, which outlined the drivers' concerns. One of the points listed on the flier was the following:

"Drivers are working longer hours to try and retain income levels. We are worried about passenger and driver health and safety."

Immediately following this protest, our clients' contracts were terminated.

In light of the above, Addison Lee treated our clients unlawfully by terminating their contracts by reason protected disclosures they made in respect of breaches of legal obligation and / or risks to health and safety arising from drivers driving increasingly long hours.

Status of our clients as workers

In the alternative to our clients being Addison Lee employees, they were workers, within the meaning of section 230(3)(b) of the ERA 1996:

"In this Act "worker" means an individual who has entered into or works under (or where employment has ceased, worked under)-

(c) A contract of employment, or

(d) Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contracts that of a client or customer of any profession or business undertaking carried on by the individual."

As noted above, we do not accept that the written terms with which our clients' were provided genuinely reflect the relationship between Addison Lee and our clients, nor are they a true representation of what was intended and agreed between Addison Lee and our clients at the time the document was provided to them or since.

Our clients worked for Addison Lee under a contract to personally provide services. They did not carry on business undertakings of which Addison Lee was a customer or client. That is enough to satisfy the definition under section 230(3)(b). It is not necessary to establish subordination or control but, insofar as it is, our clients are more than able to do so as pointed out above.

Detriment on grounds related to union membership or activities

Under section 146 of TULR(C)A 1992, workers have the following right:

“not to [be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act of failure takes place] for the [sole purpose of]-

- (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,
- (b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time or penalising him for doing so”.

Our clients' contracts were terminated as a result of their trade union membership / activities as outlined above. Therefore, if our clients are workers as opposed to employees they have been subjected to detriment contrary to section 146 TULR(C)A 1992.

Detriment on the grounds of making a protected disclosure

Similarly, if our clients are workers, they have also been unlawfully subjected to detriment on the grounds of making a 'protected disclosure' under section 47B(1)(a) and 47B(1)9(b) of the ERA 1996.

Failure to pay holiday pay

Our view is that our clients were working for Addison Lee within the meaning of the Working Time Regulations 1998 (“WTR1998”) during all of the following periods:

- (a) When they were driving from home to the area in which they first logged in to the Addison Lee system;
- (b) Whilst logged in to the Addison Lee system and waiting for a driving job;
- (c) Between accepting a job and picking up the customer;
- (d) Whilst driving a customer;
- (e) Whilst returning from the customer's destination to a place where they could pick up another customer; and
- (f) Whilst returning home from the area where they logged on to the system.

Our clients are entitled to be paid for holiday that they have not been able to take and that they have not been paid for in lieu. They, therefore, are entitled to compensation

pursuant to Regulation 30 WTR 1998 for Addison Lee's breaches of regulations 13, 13A and /or 14 WTR 1998.

Failure to pay the national minimum wage

As workers for the purposes of the National Minimum Wage Act 1998 ("NMWA 1998"), our clients are entitled to receive payment of at least the national minimum wage for their work done for Addison Lee. Our clients contend that, taking into account deductions and expenditure in connection with employment, they have not been paid the national minimum wage and therefore Addison Lee has breached their legal obligations under the NMWA 1998.

Next steps

We have lodged our clients' claims with ACAS and would be grateful if you could acknowledge receipt of this letter and reply substantively to the issues raised within the next 28 days. We would also be happy to meet with you along with GMB and UALD representatives to discuss the content of this letter and potential resolution.

Yours faithfully



Leigh Day