

City of Portland, Oregon, TNC Drivers Committee
Quarterly Ombudsperson Report, submitted June 16, 2020
Prepared for TNC Drivers Committee Meeting held June 30, 2020

Executive Summary

This quarter, we have seen a dramatic increase in complaints despite COVID-19. Of the seventeen complaints from last quarter's report (published on January 13, 2020), six were resolved in favor of driver and closed and three were given resources for small claims court and the Oregon State Bar Lawyer Referral Service.

This quarter, the major category of complaints is deactivations. Out of all twenty-seven complaints received this quarter, seven have been resolved in favor of driver and closed, one was referred to small claims court and the Oregon State Bar Lawyer Referral Service, and fourteen are still open and pending.

This report concludes with recommendations to the TNC Committee by the Ombuds: (1) procedural due process for suspensions/deactivations of drivers and (2) clearer service animal policy protections for drivers and riders under the ADA. In addition, multiple changes proposed by drivers are included for your consideration.

Introduction

The first notice of the City of Portland / TNC Drivers Committee Ombudsperson program was sent to the TNC drivers in October 2019.

As reported in the first Quarterly Report ("QR1") (October 2019-January 13, 2020): Seventeen complaints were received from a total of fifteen individuals.

The complaints by category in QR1 were:

- Insurance: 1
- Driver App Errors: 0
- Vehicle Accident: 0
- Deactivation/Offboarding/Suspension: 7
(3 rider complaints, 4 background report related)
- Compensation: 6
- Violation User Service Agreement: 1
- Passenger Conduct: 0
- Other Complaints: 2

The complaints in QR2 increased and twenty-seven complaints were received. In some cases, more than one complaint was filed by an individual (23 complainants total).¹

The complaints by category in QR2:

- Insurance: 0
- Driver App Errors: 0
- Vehicle Accident: 0
- Damage to Personal Vehicle: 2
- Deactivation/Offboarding/Suspension: 17
- Compensation: 5
- Violation User Service Agreement: 0
- Passenger Conduct: 0
- Other Complaints: 3

Status of Complaints filed in current reporting period:

- Complaints resolved as driver requested/in favor of driver: 7
- Complaints: open / pending: 14
- Complaints unresolved / closed: 1
- Complaints closed due to non-responsive complainant or resolved prior to Ombuds contacting company: 3
- Complaints referred to Committee where driver-complainant did not pursue complaint, but wanted complaint published to Ombuds and Committee: 2

Update on Closure of Pending/Open Complaints in the First Quarterly Report.

Of the open / pending complaints in the first report, four were resolved in favor of the drivers/complainants. Three of the four were Checkr background check issues.

- Uber. 19008-01. Driver complained about inability to be a driver based on incorrect interpretation of background report where charges were dismissed in Florida and included in Checkr report. Background report was reissued, Uber reviewed and released driver to active driver status.
- Uber. 19013-00. Driver converted from a Commercial Drivers' License (CDL) endorsement when they elected to drive full-time for Uber. This change triggered a suspension from Uber. Driver's background report confirmed clear to drive, Uber reviewed information and driver was reinstated as an active driver.
- Uber. 19004-00. Driver notified by Uber of suspension due to more than 3 traffic-related incidents in 3 years. Driver provided information disputing this, one collision was fault of another driver, was told it was City's policy. Ombuds contacted City who ran background

¹ Causes of increase in complaints is unclear, given that rides have decreased during the Covid-19 pandemic, but may be a result of decreased local customer service available due the closure of the local Hubs.

check which indicated driver was able to drive under City code, this was provided to Uber. Driver reinstated.

- Uber. 19009-00. Driver Privacy. Driver's first and last name were provided on a rider's receipt. This was a violation of Uber's user agreement which provides only first name will be included to riders. Ombuds presented service agreement / guidelines to Uber representative with questions, Uber responded this was a temporary issue that had been corrected. Ombuds confirmed with driver that matter is resolved and closed file.

Closure and Referral to the Oregon State Bar, Small Claims Court, and Arbitration Process. In the first reporting period, three complaints were closed after they were not resolved as requested by the drivers. The Ombuds sent notice to the drivers of their rights to pursue further legal action against the TNC. To date, none of the drivers appear to have filed legal claims.

Detail of Complaints by Category in Current Reporting Period²

Damage to Personal Vehicle – 2 Complaints

- Lyft. 19022-00. Driver was not reimbursed for damage caused by rider's animal. Driver required to make multiple requests including visiting the Lyft Hub in person to obtain reimbursement. He was paid a flat fee of \$100 which did not cover both the cleaning fee and lost revenue when car not in use due to damage. Case resolved/closed.
- Lyft. 19020-00. Driver informed by TNC that because of method of submitting claim for damage caused by rider's animal, he would no longer be permitted to be reimbursed in future for any damage claims. Company asserted that driver had not responded to an email requesting further documentation which driver did not receive. Driver required to make multiple requests, including visiting the Lyft Hub in person, as well as multiple follow up requests to obtain reimbursement. Case resolved/closed after driver reimbursed.

Deactivation / Offboarding / Suspension – 17 Complaints

- **Five complaints were filed by drivers deactivated or suspended for background check errors.**
 - Uber. 19018-00 & 19023-00. Two drivers converted from a Commercial Drivers' License (CDL). This changed triggered a suspension from Uber. Driver's background report confirmed clear to drive, both drivers were reinstated by Uber, and their complaints were closed.
 - Lyft. 19018-01. Driver converted from a Commercial Drivers' License (CDL). This changed triggered a suspension from Lyft. Driver's background report confirmed clear to drive,

² In some cases, the driver's report/complaint has not been validated by documentation, or the TNC, and some statements by complainants in this report are disputed by the TNC.

submitted to both the City and Lyft but was not resolved and driver is still locked out of Lyft platform.

- Uber. 19027-00. Driver deactivated after accidents appeared in duplicate on OR and WA reports. Driver was reactivated prior to Ombuds contacting company, and the complaint/file closed.
- Uber. 19036-00. Driver deactivated for over three weeks when Checkr report incorrectly identified driver, by mistaking him for another person with the same surname. The other person had a criminal conviction. Driver was able to resolve this with Checkr and be reactivated, but lost three weeks' earnings and filed complaint with Ombuds. Driver's complaint is to Checkr for its error, not TNC. Complaint was closed and driver referred to Oregon State Bar Lawyer Referral Service and provided small claims court information.
- **Driver Deactivated due to duplicate accounts.** Uber. 19008-02. Driver was deactivated after using different email accounts to access Uber versus Uber Eats. Ombuds contacted Uber and driver was reinstated.
- **Driver Suspended due to City policy to suspend driver for two years following license suspension.** Lyft. 19019-00. Complaint by driver that was deactivated, resolved without Ombuds contacting company or city, driver determined after filing complaint that decision by company was correct, complaint closed.
- **Driver difficulty uploading driver's license created driver fraud accusation and deactivation.** Uber. 19035.00. Driver difficulty in uploading driver's license and repeat attempts to upload documentation created a "flag" in account of fraud, driver was permanently deactivated and filed a complaint. Ombuds contacted Uber and driver was promptly reinstated.
- **Six drivers filed complaints for deactivations after riders filed specific complaints.**
 - Lyft. 19016-00. Driver deactivated for several rider safety complaints. Ombuds requested information from Lyft repeatedly, no information was provided. Complaint remains open pending Lyft response.
 - Uber. 19028-00. Driver deactivated after rider complained of racial discrimination in cancelling ride. Uber records indicated another similar complaint had been filed in past. Driver vigorously refuted complaints. Driver had provided 11,000 rides between Lyft and Uber prior to this deactivation. Ombuds and Uber met to discuss, driver not reinstated. Complaint closed, driver referred to Oregon State Bar and provided small claims and arbitration information.
 - Uber. 19029-00. Driver deactivated for a pattern of rider complaints over driver's alleged behavior in making comments that were offensive (religious, racist, sexist in nature). Complaint is open while driver response is drafted for Uber's review.

Deactivation / Offboarding / Suspension, *continued from pages 3-4*

- Lyft. 19024-01. Driver deactivated by Lyft and notified he cannot be reinstated. Driver believes there was an allegation of inappropriate comment to a rider, but is not certain. Ombuds contacted company to request basis for decision. Lyft has not responded. Complaint remains open pending Lyft's response.
- Uber. 19031-00. Driver deactivated after a complaint was filed. Driver attempted to contact Uber but was notified he was permanently restricted from the platform. Ombuds and Uber discussed, Uber notified that driver had a pattern of behavior and similar complaints regarding misconduct. Complaint is open and pending while Uber reviews additional questions raised by Ombuds.
- Uber. 19030-00. Driver deactivated when rider complained that he denied transport of a service animal. Driver is himself a person with a disability covered by the ADA. Driver states he asked a legally permitted question of the rider - is it a service animal? The rider responded that it was not a service animal, was an emotional support animal, and that rider had documentation in support. Driver notified that animal is not protected by the ADA, the rider cursed at driver and informed him he would complain and have him removed as a driver. Uber removed driver permanently because the policy is that if a driver has two "plausible" complaints of this nature, the Uber Community Guidelines (which are based upon the ADA and settlement with the National Federation of the Blind) require the driver to be deactivated. The driver had denied a rider with an emotional support animal in the past, and that rider also complained. Driver had over 4000 rides with Uber prior to deactivation. Complaint open.
- **Driver deactivated for low rider ratings (star ratings).**
Lyft. 19037-00. Driver filed complaint after they were deactivated for low ratings. Driver had only completed one week as a driver, new to City, unclear what errors were made. Complaint is pending receipt of information requested from driver by Ombuds.
- **Two drivers filed complaints after they were deactivated due to Driver / App Errors.**
 - Lyft. 19026-00. Driver filed complaint after he experienced problems with the app in February 2020. Complaint state he estimated 20-25 rides calculated incorrectly, that the riders were overcharged, and the distance driven was incorrect. He reported he called Lyft customer service repeatedly to notify, and asked riders to do the same as they were experiencing problems. His complaint asserts that he eventually received an email from Lyft that he was purposely causing the app to malfunction, and he was being deactivated. He states that he visited the hub but was told it was "beyond" them.
Note: this statement/complaint was not verified by documentation, the driver did not respond to additional requests by the Ombuds, and the complaint was closed.
 - Lyft. 19033-00. Driver complaint filed for deactivation. Driver was student in 2017 and using older model phone, app would malfunction and freeze phone, causing problems. He received two warnings from Lyft, responded with explanation, and then was deactivated by email. He purchased a new phone, contacted Lyft by visiting the Hub and

sending emails asking to be reinstated. Lyft responded the decision to deactivate him was permanent. He continued to attempt to be reinstated and in 2019 was told that he had “poor passenger experiences resulting from violations of the Terms of Service.” Driver responded on 6/13/2019 that he had a 4.9-star rating and good feedback from customers. He remains deactivated. Complaint is open, pending response and information requested from Lyft.

Compensation – 5 Complaints

- Lyft. 19017-00. Driver was not paid properly for a ride, she contacted Lyft support and was not able to have her complaint resolved. She had connectivity problems when arriving to pick up the rider and was unable to successfully click “arrive.” The ride was not recorded in the system until nearly half through the ride, despite contacting customer service and elevating her complaint, Lyft would not correct the error. The amount was less than \$10, but the driver’s frustration with the app and Lyft’s lack of support lead her to file a complaint. Lyft has not responded to the Ombuds Team requests for information or paid the driver the requested amount.
- Uber. 19021-01. Driver filed complaint after they parked at the airport and waited in a queue for two hours. After two hours the passenger canceled the ride, and the driver was pushed to the end of the queue. Driver called Uber customer service and they reiterated that her passenger canceled within the 2-minute grace period. Uber paid driver a courtesy \$5 cancellation fee and \$18.20 for the ride that was cancelled. Complaint closed, driver asks the committee and TNC to consider policy recommendations on p9.
- Uber. 19024-00. Driver complained that compensation decreased significantly over last two years, despite same driving patterns and calls. Complaint pending additional information from driver.
- Lyft. 19032-00. Driver complaint filed after did not receive promised bonus. Complaint pending, waiting for additional information from driver.
- Uber. 19032-01. Driver complaint filed for discrepancy between amounts paid and amount cashed out. Complaint pending, waiting for additional information from driver.

Other Complaints - 3

- Lyft. 19034-00. Driver with a perfect 5-star rating filed a complaint when she was notified that due to poor passenger experiences, her account had been flagged and will be deactivated if she receives one more flag. Did not have any issues with the two rides she’d given that evening and her dash app didn’t show anything unusual. Driver responded via email to Lyft twice asking for more information. Lyft responded via email on Monday, 5/25, stating that the company is “always willing to investigate a ride and potentially remove an unfair rating depending on the situation” but that they were unable to make an adjustment in this situation. Driver later learned that she was flagged for cancelling rides. Driver suggests they should have right to see complaints that could lead to deactivation, that the “flags”

should be removable, that the cancellation policy favors riders making cancellations, but drivers are not permitted to cancel if necessary, without negative repercussions by company. Complaint is pending / open awaiting response from Lyft. Driver recommendations for policy changes are below on page 9 of this report.

- 19021-00. Asks that several rate caps be implemented. Driver would like to see a cap on TNC and City fees at 20% and no more than \$50, a cap on dynamic pricing at no more than 500%, and a City fee cap at \$.50 per ride.
- 19025-00. Asks that certain taxing end. Driver proposed a rental vehicle tax exemption for local drivers who rent vehicles for use on TNC platforms. Driver would like to see a tax exemption because drivers who rent vehicles are charged \$40 per week for Multnomah County's Excise Tax and have to drive more to offset that fee.

Issues the Ombuds Recommends Committee Consider

Procedural Due Process in Suspension and Deactivation of Drivers

The company deactivation and suspension processes have been shared in part by Uber, with no response from Lyft to the Ombuds' requests. TNC processes for driver review, suspension and deactivation are not transparent and lack procedural safeguards and due process for drivers. Drivers report they have a telephone interview, sometimes with correspondence via the app, and drivers are then notified of the outcome within 2-3 days. Drivers with many positive reviews report they are fearful of deactivation even with one rider complaint. The agreements typically state they are non-appealable and the TNC has sole discretion to deactivate drivers. The User/Driver Services Agreements require mandatory binding arbitration for nearly all disputes.

○ Options:

Provide drivers with an opportunity to review the complaint, subject to confidentiality safeguards. There should be an exception if there is an allegation of fear of bodily harm by the rider or other extenuating circumstances.

Mandate that companies engage in the process review with the TNC Ombuds when a complaint is filed.

Explore implementing a model similar to Seattle's Driver (Dispute) Resolution Center, in which appeals of deactivations will be handled by the City and moved quickly through the process and with less expense to the TNC and drivers.³

³ This legislation was adopted in 2019 by the City of Seattle and has not yet been fully implemented.

Service Animal Policy Protections for Drivers and Riders under the ADA

To protect the rights of those covered by the ADA, riders are not required to provide documentation that an animal is a service animal. Drivers are permitted to ask only two questions of a rider and may not request documentation to verify the animal is a service animal. Riders who seek to transport a non-service animal may file a complaint against a driver without repercussions, while the driver will be permanently deactivated if two such “plausible” complaints are made by riders. The standard of “plausibility” is so low as to be nearly imperceptible, with any report likely to meet this low threshold. Such complaints remain in a driver’s file permanently, and do not decrease in significance over time should another report be made even years later.

Drivers report they are not consistently reimbursed for damage to their vehicle caused by a non-service animal.

Drivers are placed in a situation in which they are risking unreimbursed damage to their vehicle should they transport a non-service animal, but rider complaints are treated as *de facto* valid unless proven otherwise. Drivers are left with two bad options: transport a non-service animal and risk unreimbursed damage to vehicle or decline the ride and incur an irrefutable rider complaint and risk deactivation. The system allows riders to strongarm drivers to transport non-service animals.

- Options:

Investigate a system in which riders voluntarily submit documentation that they are transporting service animals, so as not to violate the ADA. A voluntary system of compliance could result in less conflict for drivers.

Provide riders with an animal the opportunity to make a ride request for a driver that will transport non-service animals, with a minor charge.⁴ Allow drivers to choose whether they will provide these rides and reimburse them for the damage incurred as a result of non-service animal damage.

Proposed Changes Submitted by Drivers

- **Limit number of drivers allowed to operate, either daily or in total on the app.** This would ensure drivers have more predictable income and reduce the number of cars on city streets (and reduce congestion, accidents and pollution).
- **Lyft Process Change.** Make customer service records available longer in the Lyft app. Currently they expire after 24 hours.
- **Improved and more Transparent Investigation by Internal Uber/Lyft Teams.**

⁴ Uber has a similar program (“UberPet”) which is available in other markets and is under consideration for expansion by Uber later this year.

- **Length of time as driver and volume of positive rider (star) ratings, carry more weight in TNC’s decision to suspend or deactivate.**
- **Better customer support for drivers with app problems.**
- **Rides at the Portland Airport:**
 - If a rider cancels at the airport, that driver should be entitled to the next incoming ride and not be placed at the end of the queue.
 - Driver should be entitled to the fare they would have made prior to the passenger canceling.
- **Equity in Cancellation Policy (Lyft).** Riders are permitted to cancel rides within 2 minutes without this incurring negative rating, and with no recourse permitted from a driver. Concomitantly, a driver will be flagged if they cancel rides (according to complainant), even if they are required to cancel in order to use a restroom, or purchase gas. Driver submits they are independent contractors who are running a business, need to make sound business decisions, and should be able to cancel a ride if necessary.
- **Implement a new “Long Pick Up Fee” for Drivers to cover time spent driving and encourage riders to commit to completion of a ride (reduce rider cancelations) (Lyft only).**
 - Lyft Drivers that are required to travel greater than 10 minutes to pick up a rider should receive a “long pick-up fee” which will both compensate the driver (as the ride could be very short, incurring only a minimum fee) and encourage riders to commit to completing the ride.
 - Example Driver Provided: Once drove 29 minutes to drive a rider ½ mile for 3-4 minutes, with a minimum fare paid of \$3.75. Driving even 20 minutes for a minimum fare does not cost out and may prompt a ride cancellation by a driver.

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