

**City of Portland, Oregon, TNC Drivers Committee**  
**Quarterly Ombudsperson Report, September 3, 2020**  
**Prepared for TNC Drivers Committee Meeting September 14, 2020**

## Executive Summary

This quarter, as with the second quarter of 2020, the volume of complaints has stayed consistent with a total of 16 complaints filed. Complaint categories were also relatively consistent, with complaints filed over deactivations for disputed rider complaints, driver safety / citations, and compensation. We saw the appearance of two new complaint categories: driver and rider safety (Personal Protective Equipment (PPE)), and fraudulent withdrawals from drivers' accounts. Two complaints were filed disputing deactivation based upon driving reports of citations.

Of the 27 complaints from the June 15, 2020 Quarterly Report, 14 were still pending at the time the Quarter 2 Report was submitted. Of those 14, 13 were closed with 1 pending and open.

Out of all sixteen complaints received this quarter, five have been resolved in favor of the driver and closed, four were closed as not within the scope of the Ombuds complaint resolution program, two were referred to small claims court and the Oregon State Bar Lawyer Referral Service, and five are still open and pending.

This report concludes with four recommendations to the TNC Committee by the Ombudsperson: 1) procedural due process in suspension and deactivation of drivers, 2) improved transparency in how drivers' compensation is calculated, 3) 24-7 customer service for drivers with urgent issues such as account fraud, and 4) dash cameras available to drivers at reduced cost or no cost. In addition, one change is proposed by a driver and included for the committee's 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
- Deactivation/Offboarding/Suspension: 7  
(3 rider complaints, 4 background report related)
- Compensation: 6
- Violation User Service Agreement: 1
- Other Complaints: 2

The complaints by category in QR2 were:

- Damage to Personal Vehicle: 2
- Deactivation/Offboarding/Suspension: 17
- Compensation: 5
- Other Complaints: 3

The complaints by category in QR3:

- Deactivation/Offboarding/Suspension: 6
- Compensation: 3
- Fraudulent account withdrawals / resulting app lockout / errors: 3
- Covid-19 PPE/ Safety: 2
- Other Complaints: 2

Status of Complaints filed in current reporting period (QR3):

- Complaints resolved as driver requested/in favor of driver: 5
- Complaints: open / pending: 5
- Complaints unresolved / closed: 6

#### **Update on Closure of Pending/Open Complaints in the Second Quarterly Report (June 2020).**

Of the 27 complaints from the June 15, 2020 Quarterly Report, 14 were still pending at the time the Quarter 2 Report was submitted. Of those 14, 13 were closed with 1 pending and open.

- Lyft. 19016-00. Driver deactivated for several rider safety complaints filed within three months. Ombuds contacted Lyft for more detail surrounding safety complaints. After additional review, Lyft determined driver was correctly deactivated. Ombuds sent driver arbitration and small claims court information and closed file. Complaint closed, driver referred to Oregon State Bar and provided small claims and arbitration information.
- 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). Ombuds contacted Uber for additional complaint details and submitted a statement from driver requesting account reactivation. Uber determined driver was correctly deactivated. Ombuds sent driver arbitration and small claims court information and closed file.

- Lyft. 19024-01. Driver deactivated by Lyft and notified he cannot be reinstated. Ombuds contacted Lyft regarding reason for deactivation, as driver was uncertain. Lyft responded that riders complained of inappropriate driver conduct and that driver would remain deactivated. Ombuds sent driver arbitration and small claims court information and closed file.
- Uber. 19031-00. Driver deactivated after a rider 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. Ombuds had follow-up conference with Uber to confirm driver had been notified of prior complaints. File closed after Ombuds sent driver arbitration and small claims court information.
- Uber. 19030-00. Driver deactivated when rider complained that transport of a service animal was denied. Uber removed driver permanently for having two “plausible” complaints of this nature per the Uber Community Guidelines (which are based upon the ADA and settlement with the National Federation of the Blind). Driver argued that rider stated animal was for emotional support. Ombuds and Uber discussed laws surrounding service animals and if Uber Pet is available in Portland. Uber was unable to confirm with rider whether service animal is an emotional support animal and determined driver would remain deactivated. File closed after Ombuds sent driver arbitration and small claims court information.
- 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. Ombuds and Lyft discussed, driver was deactivated for receiving two driving safety complaints within a few days. Lyft reviewed account again and determined driver was correctly deactivated. Ombuds sent driver arbitration and small claims court information and closed file.
- Lyft. 19033-00. Driver complaint filed for deactivation. Driver’s app was malfunctioning due to an older model phone transmitting the incorrect location. Driver contacted Lyft after purchasing a new phone but was told deactivation was final. Ombuds and Lyft discussed issue and Lyft determined that driver could reapply to drive on platform. File closed.
- Lyft. 19017-00. Driver was not paid properly for a ride due to connectivity issues in app when arriving to pick up rider. Driver contacted Lyft support for proper payment, but complaint was not resolved. Ombuds and Lyft discussed driver’s insufficient earnings and Lyft recalculated and compensated driver. File closed.
- Uber. 19024-00. Driver complained that compensation decreased significantly over last two years, despite same driving patterns and calls. File was closed due to unresponsive driver.
- Lyft. 19032-00. Driver complaint filed after did not receive promised bonus. Ombuds requested documentation from driver, but driver decided not to pursue bonus further, due to lack of proof. File closed.

- Uber. 19032-01. Driver complaint filed for discrepancy between amounts paid and amount cashed out. Ombuds requested documentation from driver, but driver determined discrepancy was due to an insurance charge. File closed.
- Lyft. 19034-00. Driver filed a complaint when they were notified that due to poor passenger experiences, account had been flagged and will be deactivated if one more flag is received. Ombuds and Lyft discussed, and Lyft removed two cancellation offenses from driver’s account. Driver requested specific complaint details, but Lyft clarified that “poor passenger experiences” were related to cancellation issues and not offenses directed at driver. File closed.

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

## Detail of Complaints by Category in Current Reporting Period<sup>1</sup>

### Fraudulent Account Activity – 3 Complaints

- Lyft. 19041-00. Driver reported Express Pay account hacked. Driver requested reimbursement and to regain access to account (driver locked out as a result of account issues). Driver reported concerns about lack of availability of TNC customer service 24-7 for urgent issues and wait of three days for response to reports. After complaint filed, driver obtained assistance from Lyft, account was unlocked, reimbursed for fraudulent withdrawals, and complaint closed.
- Uber. 19048-00. Driver filed complaint for funds fraudulently withdrawn from account and to have the fraudulent account unlinked. Driver followed directions but was unable to have account removed. Company contacted, complaint open pending response.
- Uber. 19046-00. Complaint filed after locked and inaccessible following driver report of fraudulent withdrawals. Driver asked that account be unlocked and given access to his funds and the platform. Company contacted and case resolved/closed after driver reimbursed and given access to app and account.

### Deactivation / Offboarding / Suspension – 6 Complaints

- **Two complaints were filed by drivers deactivated or suspended for Disputed Traffic Infractions.**

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<sup>1</sup> 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.

- Lyft. 19045-00. Driver deactivated for number of driving infractions. When a driver appeals a traffic citation, the date that is considered is the date the court denied the appeal it became final, not the date of the infraction. Ombuds confirmed with PBOT that the dates of the infractions on the report were interpreted correctly. The complaint/file closed with the driver remaining deactivated.
- Lyft. 19042-00. Driver deactivated for number of driving infractions. Driver disputed the traffic citation but had not contested the citation and it became part of their DMV record. Ombuds confirmed with PBOT that the dates of the infractions on the report were interpreted correctly, informed the driver that they must dispute the citation with the entity that issued the citation rather than with the TNC / PBOT after deactivation. The complaint/file was closed with the driver remaining deactivated.
- **Four drivers filed complaints for deactivations after riders filed specific complaints.**
  - Uber. 19038-00. Driver deactivated by Uber, but for Uber Eats delivery, rather than rider transport. Uber Eats is outside the scope of the TNC Ombuds and PBOT and the complaint was closed.
  - Lyft. 19037-00. Driver reported that he was approved to drive with Lyft in March 2016. During his first week he had difficulties logging into the app, called customer service, and was told he had low star ratings. He emailed and asked for more detail about the complaints and an opportunity to improve rather than be deactivated. Customer Support responded the same day that his star rating “fell well below community standards,” that he was not improving and was being removed from the platform permanently. He reports visiting the Hub and was told he had low star ratings and the deactivation was permanent. He again applied to drive in June 2019 and February 2020 and was denied. In the most recent application process, driver reports he was told the company was unable to confirm the validity of his documents which is considered a violation of section 9(e) of the Terms of Service. Lyft reviewed this complaint and declined to reinstate the driver. Complaint was closed and driver referred to Oregon State Bar Lawyer Referral Service and provided small claims court information.
  - Lyft. 19044-00. Complaint filed by driver after complaint filed by a rider that he failed to pick up rider. Driver report is that rider began the trip but within 1 minute, the rider stated he was ill and asked to exit the vehicle. The rider asked him to cancel the ride, which he completed. Driver learned later that the rider filed a complaint, and he was deactivated. Lyft is investigating this complaint.
  - Uber. 19047-00. Driver reports they were driving 10-11 months, had a 4.91 star rating and was a Diamond driver. Driver self-identifies as a person of color and is gay. Driver reports that as a driver, he has been the subject of racial slurs and discrimination which he does not believe were addressed by the company. Driver reported that he transported a driver, the driver attempted to engage him in conversation relating his opinion on immigration, protests, and other politically charged issues. He declined to engage in the conversation, and

noted the rider was intoxicated. After delivering the driver without issue, he was notified by the company that he had been reported for making a discriminatory comment. He explained the inaccuracy of the report to the Uber rep, and has contacted the company by phone and email multiple times. He reports that he received contradictory information from Uber reps, that he was told there are three complaints on his account, and by another that he had only one. Driver recalled only one prior complaint - which he was able to successfully refute, and which was removed from his account. Uber responded to the Ombuds that the driver will remain deactivated. Complaint open.

### **Compensation – 3 Complaints**

- Uber. 19034-01. Driver filed complaint filed after she did not receive a promotion when she met the promotion criteria. The promotion was geographically limited, but this limitation was not clear. Company agreed to make a one-time exception and paid the driver for requested promotion, complaint closed.
- Lyft. 19040-01. Driver filed a complaint after noticing discrepancies between fees and income listed on Weekly Summaries in comparison to 1099 form. Ombuds contacted Lyft for details of fee calculations. Complaint remains open pending response from Lyft.
- Uber. 19043-00. Driver filed complaint after being notified by TNC that he was not allowed to accept cash tips. Ombuds contacted Uber and company representative provided information that cash tips are allowed. Driver notified and complaint closed.

### **Driver Safety / Personal Protective Equipment - 2**

- Lyft. 19040-00. Driver with health condition preventing ability to mask or wear face covering, requested accommodation from company in order to drive and not violate Covid-19 policy. Company confirmed that as an alternative precaution, driver could install an interior shield / barrier between passenger and driver. Because driver had to agree to wearing a mask within the app in order to drive, driver sought confirmation from TNC clearing them of any noncompliance based on lack of a face covering. Company confirmed driver would be in compliance, complaint closed.
- Lyft. 19039-00. Driver filed complaint because required PPE was not available for purchase from company and sought reimbursement for expenses incurred purchasing PPE. Ombuds contacted TNC requesting reimbursement and information on PPE availability, complaint open pending response from company.

## 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 the companies, although both Uber and Lyft have objected to providing sufficient details that would allow the Ombuds to thoroughly review TNC decisions. Information lacking includes specifics relating to the rider complaints, the company's investigation, and evidence relied upon in making the decision to deactivate a driver.

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 all disputes.

Options:

- Provide drivers with an opportunity to review the complaint, subject to confidentiality safeguards. And with exception should there be 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.<sup>2</sup>

### Dash Cameras Available to Drivers at Reduced or No-Cost

Many drivers report they were the subject of false reports by riders, and without a camera, would have faced deactivation. Often drivers are not aware of the importance of this equipment until they are the subject of a rider complaint. In some of the most serious complaint categories, they could be deactivated over a single rider complaint.

Companies could include this information in the on-boarding / training materials and also provide opportunities for drivers to purchase dash cameras at the start of their work, rather than later after a complaint is received.

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<sup>2</sup> This legislation was adopted in 2019 by the City of Seattle it is our understanding this has not yet been fully implemented.

## Transparency of Lyft Platform and Service Fees

Lyft drivers are charged a Platform Fee and Service Fee on a rider's payment. While drivers have access to a Weekly Summary of these fees, the final calculations may differ from the amounts represented on a Weekly Summary. There should be more transparency in how these fees are calculated and the ability to immediately access and/or calculate total fees charged.

Options:

- On a monthly basis, provide drivers with a summary of all final fees, payments, and non-ride earnings.
- Allow drivers access to information adequate to manually calculate Platform Fees.
- Drivers and the Public are informed that Platform Fees are:

**Rider Charges – (Driver Fare + Tolls/Surcharges + Service Fee + 3rd Party Fees + Bonuses)**

- However, the basis for how the Service Fee is calculated is not known. Efforts to determine the calculation have been challenging without clear information provided by the company to date.

## 24 Hour Lyft Driver Customer Service Line for Drivers Experiencing Fraud and Other Urgent Matters

Often, urgent matters experienced by drivers do not warrant calling 911 but need immediate attention nonetheless to avoid additional loss/harm. Lyft drivers have reported finding it difficult or nearly impossible to get in contact with a live person via phone when an urgent matter arises (such as money being fraudulently stolen from account).

Options: Provide drivers with access to a 24/7 telephone line or live in-app messaging.



## Proposed Change by TNC Driver

### Clarify and Supporting Data Provided to Drivers by TNC Relating to Complaints and “Flags” for Poor Passenger Experience.

Driver was notified in app that account was flagged for poor passenger experience, and the message listed a number of different bases for poor ratings, including excessive cancellations. Driver was informed that another poor rating could lead to deactivation. Driver requested specific information to refute these reports from company. The company declined to provide supporting information about specific complaints but did agree to remove two negative ratings. Driver proposes that TNCs be obligated to provide details about individual complaints to allow drivers the right to dispute such complaints and provide fairness and transparency to drivers.

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## **Appendix 1**

### **Ombuds Recommendations by Quarter**

#### **Quarter 1: January 13, 2019 Recommendations**

**Recommendation 1:**

**Timeline for Compensation Review by TNCs**

**Recommendation 2:**

**Uber Compensation made by TNC in Responses to Complaint treated as Settled**

**Recommendation 3:**

**Procedural Due Process in Suspension and Deactivation of Drivers**

#### **Quarter 2: June 30, 2020 Recommendations**

**Recommendation 1:**

**Procedural Due Process in Suspension and Deactivation of Drivers**

**Recommendation 2:**

**Service Animal Policy Protections for Drivers and Riders Under the ADA**

#### **Quarter 3: September 14, 2020 Recommendations**

**Recommendation 1:**

**Procedural Due Process in Suspension and Deactivation of Drivers**

**Recommendation 2:**

**Transparency of Lyft Platform and Service Fees**

**Recommendation 3:**

**Dash Cameras Available to Drivers at Reduced or No-Cost**

**Recommendation 4:**

**24 Hour TNC Customer Service Line for Drivers Experiencing Fraud and Other Urgent Matters**