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British Hospitality Association Supplementary Evidence to the Business Innovation and Skills Committee Oral Evidence Session: The Digital Economy

This supplementary evidence is submitted on behalf of the British Hospitality Association (“BHA”) which is a representative body for the UK hospitality and tourism industry, speaking on behalf of 40,000 hospitality and tourism establishments, including hotels, restaurants, catering and facilities management companies, attractions and apart-hotels in the UK. Most of this evidence refers to Airbnb, as it is the largest and most powerful home sharing platform but the suggestions for improving activities, transparency and safety of home sharing should be seen as applicable to all such platforms.

Summary

- 1. In London Airbnb is a £300m business with two faces: it is both a socially-positive tool for the ‘amateur landlord’ and a socially-destructive tool enabling professional landlords to operate while avoiding regulations.**
- 2. Airbnb facilitates professional landlords to illegally break Short-Term Letting Regulations in London, whilst denying responsibility and failing to assist in enforcing the law. Furthermore, they provide a loophole (albeit legal) for “pseudo hotels” to circumvent Planning Regulations.**
- 3. The impact of the above is reduced residential housing stock, increased rents and inflated property prices in the already-stressed London market. Given a large proportion of Airbnb guests are international tourists, “hard working families” who rent in London are effectively subsidising these tourists. We believe that the threat to the hotel industry is secondary to these broader social costs.**
- 4. In other regulation: Health and Safety, Tax and Food Safety are the biggest areas of concern.**
- 5. So what should change? Airbnb should be required to share host data and change their platform so the 90-day law can be enforced, and achieve its original purpose of helping to moderate rent inflation.**

1. Context: Airbnb is a £300m business in London. Nearly half are professional landlordsⁱ

Simplistically, Airbnb has two types of host: on the one hand, *amateurs* rent out a room in their home or their entire property for a few weeks a year – the “public faces” of Airbnb and an innovative (and worthwhile) new offering; on the other hand, Airbnb allows *professional landlords* (running pseudo hotels) to let out multiple properties on short-lets on a permanent basis – which comprise 40% of London listings. Headline statistics for Airbnb London:

| Airbnb London | Of left, “Professional Hosts” |
|--|--|
| <ul style="list-style-type: none">Listings = c. 30,000 (half are ‘entire properties’)# people staying in Airbnb tonight = 12,000# people staying in Airbnb p.a. = ~1mRevenue for London landlords p.a. = £300m+Revenue for Airbnb p.a. = c. £40m <p><i>Entire UK scale approx double the above</i></p> | <ul style="list-style-type: none">40% of listings are probably ‘professional’ hosts running pseudo hotels (>1 listing per host)Top 1000 hosts generating £150m of accommodation revenue (16% of hosts generate 50% of revenue)500 hosts each generating >£100k revenue pa10 hosts running businesses >£1m revenue pa |

Airbnb continues to grow rapid, roughly doubling its size in the last year. If this growth continues then its impact on the housing market and rents will escalate even further.

2. Airbnb facilitates professional landlords in illegally breaking Short-Term Letting Regulations in London, whilst denying any responsibility and failing to assist in attempts to enforce the law. Furthermore, they provide a loophole for “pseudo hotels” to (legally) circumvent Planning Regulations.

2a. Short-term letting in London for more than 90 days per year is illegal for the hosts, but is half of Airbnb’s business

Since 1973 the law has prohibited the use in London of a property for “temporary sleeping accommodation” for less than 90 nights without planning permission, or face a possible fine of up to £20,000 for each offence. This was replaced on 26 March 2015 with the Deregulation Act 2015 restricting short-term letting of residential premises so that *“the number of nights of use...in the same calendar year, does not exceed ninety nights”*, in order that properties cannot be used for short-term letting on a permanent basis throughout the year.ⁱⁱ

Our rough estimations conclude that in London the average occupancy is 25% or approx. 90 days meaning half of the stays are in breach of this regulationⁱⁱⁱ. Inevitably this is mostly by professional landlords who list multiple properties.

2b. However, the law is rarely enforced, in large part due to lack of accountability & responsibility by Airbnb

The 2015 Regulation Act does not explain how London Authorities and Councils will be able to determine whether a property has exceeded the 90 nights per year, nor the obligations of marketplaces like Airbnb that might facilitate (and be aware of) such behaviour.

In consultation prior to the new law, 8 of the 15 London Authorities/Councils which responded were opposed to changing the legislation on the basis that they fear “an increase in short-term letting

would lead to a loss of amenity and housing supply". Westminster Councillor and Cabinet member for sustainability, Heather Acton, said "it is about making sure housing in central London does not become a chain of default hotels with rooms rented out at exorbitant prices to the highest bidder". Camden Council relayed its experience with residential properties in the borough being used permanently for tourist accommodation: of the enforcement action Camden Council took under the former law since 2010, 80% of homes (48 of 67 total) enforced against were brought back into use for private renting; in one recently completed private development, planning officers discovered more than 20 flats in the building were being used for short-term letting. This amounts to roughly 19% of the homes in the building. Camden Council Leader Sarah Hayward said: "The Government's 90-day rule solution is inadequate as it can't be properly enforced; we need tougher measures to help stabilise this growing problem".

From Airbnb's side, they provide **no public data** to help understand the use of their platform and the impact on cities around the world. They also provide **no data** to cities or states to assist them in ensuring that Airbnb hosts and Airbnb are following the local laws and actively obstruct attempts to engage them: New York State (in the land of free enterprise) has a law which prohibits lettings of less than one month unless the owner is present, designed to stop apartment buildings being turned into de facto hotels, without safety requirements, by landlords eager for the higher incomes short-term rentals bring. To persuade Airbnb to release user data, following their concerns about illegal lettings and unpaid taxes by hosts (April 2014), New York had to subpoena Airbnb. Airbnb say it is the host's responsibility to abide by local laws (see #5).

2c. Furthermore, Airbnb provides a loophole (albeit legal) for pseudo hotels to circumvent Planning Regulations and creates unfair competition

Many professional landlords on Airbnb operate as pseudo hotels - such as "Nabil" who hosts 50+ flats across Central London, furnished identically.^{iv} The Town and Country Planning (Use Classes) Order 1987 puts uses of land and buildings into various categories known as 'Use Classes'.^v Hotels, boarding and guesthouses have their own 'Use Class' category and thus require planning permission to convert to another category such as residential or offices into a hotel. For the community, this ensures sufficient property stock can be retained for residential use. It is a cost for hoteliers: this process can be lengthy and ties up capital that the hotelier could otherwise be using and delays the time at which the investment can start to be recouped.

Residential properties which are let-out on a short-term basis via platforms such as Airbnb bypass this requirement, even if they are operated as pseudo hotels. Properties with high levels of short-term use are 'hotels/guesthouses' in all but name and thus traditional business models are placed in a position of unfair competitive disadvantage.

3. The impact of the above is reduced residential housing stock, increased rents and inflated property prices. "Hard working families" who rent in London are effectively subsidising these tourists. We believe that the threat to the hotel industry is secondary to these broader social costs.

The majority of Airbnb's guests in London are foreign tourists looking for good value accommodation for their holiday. Across London housing stock is being removed from long-term residential letting and switched to short-term lettings on Airbnb, thereby housing these international travellers. This increases residential rent costs and given the rental market in London is skewed towards lower income households, this effectively means "hard working families" are subsidising inbound leisure travellers through increased rents.

Reduction in housing stock: We estimate an Airbnb host can generate a 6-7% net yield on a property compared to 3-4% long-term residential net yield across much of London^{vi}, incentivising landlords to switch. Camden Council research suggests property owners could achieve 4x in rent if they switch. It has been described as a “significant challenge” by housing director Rosemary Westbrook, who said earlier this year: “Rents for short lets in Camden are typically higher than longer term tenancies.”^{vii} Recent reductions in tax breaks by for buy-to-lets by the Exchequer will make the superior Airbnb returns even more attractive.

Increase in rents: Airbnb is big enough to be driving up rents by reducing supply. For example in Hackney, there are 1,500 “entire properties” listed on Airbnb^{viii}, half of which we estimate are let year-round and therefore removed from the long-term residential letting market. This is equivalent to 3% of private rental properties and likely to be contributing to the +6% growth in rental prices in Hackney last year. We expect Airbnb to grow to 6-10% of private rentals by the end of 2016, likely having an even more dramatic effect.

Increase in property prices: Superior Airbnb returns will enable landlords to bid higher on property and drive up prices, exacerbating an existing social problem in London.

Hackney case study:

- **Reduction in housing stock:** 3% of private rentals currently Airbnb. Likely to rise to 6-10% next year
 - 25,000 private rented properties in Hackney^{ix}
 - 1,500 “entire properties” let on Airbnb
 - Half of these (750) are let permanently = 3% of total private rents
 - Meanwhile 8000 households in Hackney are on the waiting list for authority housing
- **Increase in rents:** Average private rents in Hackney are up +6% yoy in 2015 vs. 1% in broader UK
 - Median private rent now £1520 which is +£90 yoy^x
- **Increase in property prices:** Average house price in Hackney are up 7% yoy in 2015 vs. 5.6% in broader UK
 - Average price now £640k which is +£41k yoy^{xi}

Ironically, the whole point of the now-deregulated 1973 90-day legislation was to protect much-needed housing accommodation for permanent residents in the capital following concerns over housing availability and prices. Since then house price inflation has been twice as fast as income inflation in real-terms.

4. Income Tax and Food Safety are the most compelling areas of disparate regulation and nuisance, a concern for residents.

Corporation Tax: Their UK operation is listed as a ‘Small Company’ at Companies House, i.e. turnover less than £6.5m (we estimate their turnover at £30-40m) so it is likely that they are funnelling revenue through their European headquarters in Ireland and thus not paying it in the UK. Ireland’s generous tax regulation means they would pay zero corporation tax on UK earnings.^{xii}

VAT: Airbnb guests’ fee (6-12%) and hosts’ fee (3%) both include VAT. The VAT is paid to their respective home governments. E.g. if a guest from Spain books to stay in London; Airbnb pays Spain VAT on their guest fee and HMRC VAT on the host fee. No VAT is chargeable on residential rent in the UK^{xiii}, so the majority of a guest’s payment is ex-VAT.

Income Tax: People hosting their main (or only) residence, can use the “rent-a-room” allowance, which allows you to earn an amount of income (£4,250 per year at the time of writing – but due to rise to £7,500 in future tax years) from renting out part of your main residence without tax^{xiv}. Hosts renting out a property that isn’t their main (or only) residence are subject to the same rules that

apply to rental income from property^{xv}. However with the data, it is difficult for HMRC to identify this tax is due and are reliant on self-reporting – even for those hosts earning >£1m pa.

Today Airbnb shares data with the IRS in a number of cities, including San Francisco and Chicago, in the US, and the Irish tax authorities forced them to share earner details last summer but, to-date, Airbnb insists it will not hand over details on its British customers to HMRC. HMRC believes billions of tax revenue is lost each year in through this “hidden economy” of people earning income through online platforms and not declaring it, as HMRC has the legal powers to insist on disclosure, it should use them.^{xvi}

Liability for staff employment and tax: Support services such as cleaners are likely to be cash-in hand jobs, taking work away from hotel-cleaners who do pay income tax. If a host employs cleaners through an agency the agency assumes liability for tax. The main area of concern is large operations where staff may be employed almost full time for a multi-listing host who is in effect running a business without declaring tax or complying with employment legislation.

Fire Safety Order 2005: All people taking paying guests must comply with the 2005 Fire Safety Order which makes the host responsible for taking steps to protect the people using their premises from the risk of fire, the main part of which is that they must carry out a fire risk assessment (this does not have to be written down).^{xvii} This regulation equally applies to Airbnb as any B&B, however, it is not enforced or checked in the case of Airbnb properties, including those multi listings which operate like hotels, giving rise to serious safety concerns.

Food Safety: Some Airbnbs operate as their name suggests as Bed and Breakfasts, and thus the food safety requirements would be the same as for any B&B, yet it is likely that they are not following the same stringent food safety requirements with many not even registered as businesses.

Under the food hygiene legislation (Regulation (EC) No 852/2004 and the Food Safety and Hygiene (England) Regulations 2013^{xviii}, properties serving food must; register themselves as a Food Business Operator and have written food safety management procedures, which are monitored, with a record of the checks kept. They must also meet all the respective food preparation, equipment and hygiene standards.^{xix} This is an area of complex regulation and of potentially huge public safety risk.

Insurance: Most home insurance policies do not cover short-term lets. However Airbnb’s Host Insurance provides primary liability coverage for up to \$1 million for 3rd party damages and for damages of host property up to £600,000. By short-term letting many hosts would breach their mortgage terms and invalidate building insurance policies.

Nuisance: Camden Council is considering imposing a ‘nuisance’ levy as a local tax to curb the disruption to neighbourhoods caused by the large number of people booking rooms in flats and houses on platforms such as Airbnb.

Awale Olad, the Labour chairman of the council’s culture and scrutiny committee, also wants hosts to be registered on a database. “If we could get this going we can use the money to put more noise and antisocial behaviour officers on the ground and protect our residents,” he said. Camden accounts for about 1,400 out of the 18,400 listings for Airbnb in London.^{xx} Noise can be a serious annoyance for local residents; in residential areas platforms such as Airbnb increase the transience of the population who are more pre-disposed to nuisance behaviour.

5. So what should change? Airbnb should be required to share host data and change their platform so the 90-day law can be enforced, and achieve its purpose of helping moderate rent inflation.

Marketplace platforms such as Napster and eBay have traditionally eschewed legal responsibility for the activity that happens on them, insisting that they are enablers rather than active market

participants - implying that the burden of compliance lies with the transacting parties. However, the level of disruption they directly create on such a vast scale means they have a duty of care to help prevent non-compliance.

To address these growing and serious problems we suggest the following immediate action:

- Airbnb and home sharing websites should share with government bodies (London Authorities & Councils, HMRC) named host level data to show for instance: who is letting over 90 nights in London? How many people are letting out a secondary residence? How much tax is due on the income? How are staff employed by hosts paid and on what terms of employment?
- Airbnb and home sharing websites should directly restrict hosts from letting out for more than 90 days per year through their platform. This is presumably a fairly easy change for a company, valued at \$25Bn, to make.
- Other platforms the committee has previously heard from perform much stricter regulatory checks; Uber for instance interview each of their 25,000 drivers in-person and check all of the relevant documentation, such as licences.^{xxi} Airbnb and others offers no such effort at ensuring quality and compliance and should be required to implement much stricter safety and security checks.

Appendix:

ⁱ Source: InsideAirbnb.com – all figures in this document unless otherwise stated are calculated from data available on Airbnb as of September 2015.

ⁱⁱ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402411/Promoting_the_sharing_economy_in_London.pdf

ⁱⁱⁱ Source: InsideAirbnb.com // Estimated occupancy based on # reviews, which has proved to be an accurate predictor

^{iv} <https://www.Airbnb.co.uk/users/show/23977491>

^v <http://www.planningportal.gov.uk/permission/commonprojects/changeofuse/>

^{vi} Source: InsideAirbnb.com // and written communication with a ‘professional host’ on occupancy rates

^{vii} <http://news.camden.gov.uk/holiday-let-websites-worsening-the-capitals-housing-shortage-finds-report>

^{viii} 3,000 listings total of which half are “entire property”

^{ix} GLA <http://data.london.gov.uk/dataset/housing-tenure-households-borough>

^x <http://data.london.gov.uk/dataset/average-private-rents-borough/resource/73b9fb07-b5bb-4a53-88b7-c17269879a08>

^{xi}

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488368/November_2015_HPI.pdf

^{xii} <https://beta.companieshouse.gov.uk/company/07797907/filing-history>

^{xiii} <https://www.Airbnb.co.uk/help/article/436/what-is-vat-and-how-does-it-apply-to-me>

^{xiv} <https://www.gov.uk/rent-room-in-your-home/the-rent-a-room-scheme>

^{xv} <https://www.gov.uk/renting-out-a-property/paying-tax>

^{xvi} <http://www.telegraph.co.uk/finance/personalfinance/tax/11796861/Are-shock-tax-bills-on-the-way-for-British-Airbnb-landlords.html>

^{xvii} https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11085/payingguests.pdf

^{xviii} <http://www.eden.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=10899>

^{xix} http://www.startabedandbreakfast.co.uk/food-hygiene-requirements-for-bb.html?sm_au=iWVJ5ktrr6F3Sj

^{xx} <http://www.camdennewjournal.com/Airbnblevy>

^{xxi} BIS select committee with Uber giving evidence - <http://parliamentlive.tv/Event/Index/46064c56-dc04-4ef1-b8bd-e492c9e6f00f>