

BODY: Scrutiny Committee

DATE: 2 June 2014

SUBJECT: Hackney Carriage Proprietor Fee Levied

REPORT OF: Jay Virgo, Senior Specialist Advisor.

Ward(s): All

Purpose: To present to Scrutiny Committee details of findings in relation to the historical Hackney Carriage Proprietor Licence Fees levied.

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Recommendations: Members are recommended to note the contents of this Report and to make such proposals as it wishes in accordance with the Committee's remit

1.0 Background

- 1.1 The setting of hackney carriage and private hire licensing fees is subject to the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. It is a requirement that such fees are reasonable and imposed 'with a view to recovering the costs of issue and administration'. The Council's hackney carriage and private hire licensing function is self-financing. The fees must not be used to raise revenue but instead are set at a level which aims to cover the cost of administering the function within the constraints of regulation. With this in mind, the level of fees need to be reviewed regularly in conjunction with Financial Management to ensure that neither a deficit nor a surplus is created in the relevant account.
- 1.2 The power to set fees has not been delegated to officers but rather to Committee. On the 13th January 2014 General Licensing Committee decided to consult on proposals to amend the hackney carriage and private hire licensing fees charged from April 2014, this with a view to introducing consistency between the two arms of the trade going forward by setting new fee levels for the first time since 2001. Minutes of that meeting and a copy of the report are contained in **Appendix 1**.
- 1.3 At the meeting of 13th January 2014, a member of Scrutiny Committee suggested General Licensing Committee also refer the historical difference between the Hackney Carriage Proprietor fee and Private Hire Vehicle

licence fee to Scrutiny Committee for consideration.

- 1.4 On the 17th March 2014, General Licensing Committee agreed the fee amendment proposed on the 13th January 2014 and thereafter consulted on be adopted with effect from 1st April 2014. Minutes of that meeting and a copy of the report are contained in **Appendix 2**.

2.0 Rationale for the Proprietor Licence Fees levied historically

- 2.1 The difference between the Hackney Carriage Proprietor fee levied and the Private Hire Vehicle licence fee had arisen as a consequence of the need to fund a patent unmet demand survey in relation to supporting the policy of limiting the number of Hackney Carriage Proprietor licences in Eastbourne.
- 2.2 Between the financial years of 2001 to 2014, each Hackney Carriage Proprietor paid £187 per year for their licence compared to £95 per year paid by each Private Hire vehicle licence. The difference of £92 was held in reserve each year to reflect the requirement to fund patent unmet demand surveys. Such surveys were required at 3 year intervals in accordance with section 16 of the Transport Act 1985 and subsequent case law in order to support a policy to impose a numerical limit on the number of Hackney Carriage Proprietors within the Borough.
- 2.3 However on 21st April 2009, the numerical limit on the number of taxis ceased following a direction by the General Licensing Committee. The minutes of that meeting and a copy of the report are contained in **Appendix 3**. The effect of that decision was to render differential fees unnecessary from that point onward.
- 2.4 The situation was rectified by the alignment of the Hackney Carriage Proprietor fee and Private Hire Vehicle licence fees following the decision of 1st April 2014 by the General Licensing Committee. The new fee arrangements (the first such changes since 2001) ensure that the requirement to set the fees at a level to ensure the budget does not fall into deficit and remains self financing is met going forward, as well as removing the differential between the Private Hire Vehicle licence fee and Hackney Carriage Proprietor fee.

3.0 Relevant accounting data and practice

- 3.1 **Appendix 4** provides a breakdown of the Hackney Carriage and Private Hire licensing budget since 2005. The analysis document shows the recharges levied and the recharge figures up to 2009/2010 will be noted as well as those for subsequent years.
- 3.2 The Council has put in place more detailed and rigorous accounting processes in recent years and as a result, internal support service recharges are now broken down into constituent parts which aim to reflect with greater precision the true costs of running the service.

- 3.3 While insufficient financial data exists to reach a definitive assessment, it appears that up until 2011 support charges may have been set too low and as a result the Hackney Carriage and Private Hire budget has effectively been subsidised by the central Council budget. As a result, the account remained in surplus over a period of years and no fee increase to the Hackney Carriage and Private Hire licence fees was needed to meet the overall cost of this function.
- 3.4 The arrangements now in place ensure that the position with regard this self-financing function have been regularized. The fees are now at a level which reflects a realistic prediction of the cost of financing this function going forward.

4.0 Legal Considerations

- 4.1 This Committee will wish to be mindful of case law which has established a number of points relevant to fee-setting. It has been confirmed that approximate calculations of anticipated costs are sufficient to discharge the requirement that the licensing authority endeavour to achieve a break-even position. Surpluses as well as deficits must be carried over year on year and although the council is not required to adjust the licence fee every year to reflect any previous deficit or surplus, it is important that the account is self-financing.
- 4.2 Because the account as whole remained financially healthy and seemingly self-financing overall, no fee increases at all were levied on the trade for a thirteen year period up until 2014. Moreover it may be considered that the fees charged in recent years as well as those set from April 2014 are not out of step with those of other authorities.
- 4.3 If minded to consider the matter of the relative fees levied on Hackney Carriage proprietors between 2009 and 2014, Committee will need to consider the legal issues that would then arise in relation to meeting the costs of any refund. Any refund would have to be calculated with reference to exact fees paid by each individual up to a maximum of £92 per year over the five year period; this being the differential between the charges levied on hackney carriages and those on private hire vehicle license holders. The cost of this has been estimated at a maximum of £50,000. Further costs may be incurred in relation to the cost of administering a programme of refunds.
- 4.4 Any attempt to fund the above using monies from the taxi licensing budget would be potentially vulnerable to challenge from existing licensees, who would be effectively subsidizing that refund. Similarly any attempt to meet the costs from say Council reserves could potentially be judicially reviewable or the subject of an Ombudsman complaint from Council tax payers on similar grounds. Committee may also note that no complaints have been received in from those members of the Hackney trade who may consider that they have not been treated fairly over time and that those

individuals would at the current point be out of time to judicially review the authority in relation to the majority of fees levied over the relevant period.

5.0 Financial & Resource Implications

5.1 The Council's Finance Team has been fully consulted in relation to this report and has advised accordingly.

6.0 Human Rights

6.1 The provisions of the Human Rights Act 1998 must be borne in mind by the Committee when taking licensing decisions. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property.

6.2 Article 8 relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:
Has a basis in law;

- Is intended to pursue a legitimate purpose
- Is necessary and proportionate; and
- Is not discriminatory;

7.0 Summary of Options

7.1 This Committee is aware of its powers to make proposals for service improvement to Cabinet, full Council or another body, and may consider the following:

- 1) A recommendation to Licensing Committee that it refund those members of the hackney trade who paid fees in excess of those levied on private hire trade members during the period 2009-2014. Any such refund would have to be calculated with reference to the exact fees paid by the relevant individual up to a maximum of £92 per year; this being the differential between the charges levied on hackney carriages and those on private hire vehicle licence holders. The cost of this would be in the region of £50,000. Consideration would have to be given to how to meet those costs given the issues raised above in paragraph 4.3.
- 2) A determination that given the complexity of the situation in terms of the historical picture and the legal issues around the cost of any refund, this balanced against the actual fees levied (albeit on just on one arm of the trade) when looked at against those of other

comparable authorities, it considers the most equitable solution overall to be to draw a line under the matter given that the position has now been rectified going forward.

Background Papers

Taxis Licensing Law and Practice 3rd Ed, James Button
The Local Government (Miscellaneous Provisions) Act 1976
Town Police Clauses Act 1847
Transport Act 1985