

Appendix 1:

General Licensing Committee Report and
Minutes dated 13th January 2014.

Agenda Item 7

BODY: General Licensing

DATE: 13th January 2014

SUBJECT: Hackney Carriage & Private Hire Licensing Fee Amendment

REPORT OF: Jay Virgo, Senior Specialist Advisor.

Ward(s): All

Purpose: To ask the Committee to approve the publication of the proposed hackney carriage and private hire licence fees detailed in this report, and to agree that the Council charge the fees outlined here with effect from 1st April 2014 if no objections are received in during the required period.

Contact: Jay Virgo, Senior Specialist Advisor, Telephone 01323 415933 or internally on extension 5933
E-mail address jay.virgo@eastbourne.gov.uk

Recommendations: Members are recommended to:

- 1) approve the publication of the proposed hackney carriage and private hire licence fees detailed in this report at figures 3a and 3b in accordance with statutory requirements, and
- 2) To agree that the fees outlined here will come into effect from 1st April 2014 if no objections are received in during the required consultation period.

1.0 Background

1.1 The Council's hackney carriage and private hire licensing function is self-financing. The fees which are levied are reviewed in consultation with Financial Management to ensure that there is neither a surplus nor deficit in the hackney carriage and private hire account.

2.0 Fee-Setting: General Principles

2.1 In order to ensure that council tax payers are not subsidising the work involved in the administration of licensing functions, income is raised by licence fees. These 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.

2.2 Case law has established a number of points relevant to fee-setting. It has 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, for local authorities must not make a profit. A shortfall in one year may moreover be rectified by increasing costs the following year where needed, although the council does not have to adjust the licence fee every year to reflect any previous deficit or surplus.



2.3 The setting of hackney carriage and private hire licensing fees is subject to the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976, as outlined later in this report. It is a requirement that such fees are reasonable and imposed 'with a view to recovering the costs of issue and administration'. This can include the following:

- The reasonable cost of carrying out vehicle inspections to decide if a licence should be granted
- The reasonable costs of providing hackney carriage stands
- Any reasonable administrative or other costs in connection with vehicle inspection and providing hackney carriage stands and
- Any reasonable administrative or other costs in the control and supervision of hackney carriage and private hire vehicles, including the costs of assessing the suitability of applicants.

It will also include the costs of badge issuing and other administrative tasks, as well as enforcement undertaken in respect of licensed (but importantly not unlicensed) drivers.

3.0 Fees: Current and Proposed

3.1 Individuals are currently required to obtain either a hackney carriage driver's licence, a private hire driver's licence or a dual driver's licence to enable them to drive a licensed vehicle. The vehicle that the driver utilises must also be licensed. Additionally, private hire operators require a licence in order for them to take bookings on behalf of the drivers/vehicles within their fleet.

3.2 The current table of licence fees is laid out in Figure 1 below:

Figure 1: Current table of fees:

| 2013-2014 | Number | Fee | Annualised Fee |
|---------------------------|--------|-----------|----------------|
| Hackney Carriage Vehicles | 102 | £187 | £187 |
| Private Hire Vehicles | 342 | £95 | £95 |
| Hackney Carriage Drivers | 85 | £255 | £85 |
| Private Hire Drivers | 308 | £255 | £85 |
| Dual Drivers Licence | 103 | £286 | £95 |
| Private Hire Operators | 18 | £62-£1277 | £62-£1277 |

3.3 The private hire operator fee levied is dependant on the number of private hire vehicles that the operator has within the fleet. The current fees are tabulated in Figure 2 below:



Figure 2: Current Private Hire Operator Fees

| | |
|-------------------------------|----------|
| Licence for 1 – 2 vehicles | £ 62.00 |
| Licence for 3 – 4 vehicles | £ 82.00 |
| Licence for 5 – 10 vehicles | £ 144.00 |
| Licence for 11 – 15 vehicles | £ 196.00 |
| Licence for 16 – 20 vehicles | £ 247.00 |
| Licence for 21 – 30 vehicles | £ 350.00 |
| Licence for 31 – 40 vehicles | £ 453.00 |
| Licence for 41 – 60 vehicles | £ 659.00 |
| Licence for 61 – 80 vehicles | £ 865.00 |
| Licence for 81 – 100 vehicles | £1071.00 |
| Licence for 101 – and above | £1277.00 |

- 3.4 Hackney carriage and private hire vehicle licence fees are paid annually, as is the private hire operator fee. The driver licence fees are however paid every three years. Figures 1 and Figure 3a include all fees – including the driver licence fees – expressed annually for comparative purposes.
- 3.5 The last fee amendment took place in April 2001. As a result, there has been no change in the fees levied for over twelve years.
- 3.6 **Appendix 1** tabulates all taxi and private hire fees and charges currently levied at the current time, including the Disclosure and Barring Service (DBS) fee of £44. This is an additional fee that is added to the relevant driver licence fee and is subsequently paid by the Council to the DBS.
- 3.7 It is envisaged that going forward members of the trade *may* utilise the DBS online service directly. Hence, in the future, payment of £44 for this service *may* not be included as an addition to the driver licence fee for all drivers. However, for the foreseeable future, a further £44 will be required from most drivers in addition to the fees tabulated in Figure 1 and the proposed fees tabulated in Figure 3a.
- 3.8 The proposed table of licence fees is laid out in Figure 3a and 3b below.

Figure 3a: Proposed table of fees:

| 2013-2014 | Number | Fee | Annualised Fee |
|---------------------------|--------|-----------|----------------|
| Hackney Carriage Vehicles | 102 | £150 | £150 |
| Private Hire Vehicles | 342 | £150 | £150 |
| Hackney Carriage Drivers | Remove | £0 | £0 |
| Private Hire Drivers | Remove | £0 | £0 |
| Dual Drivers Licence | 496 | £315 | £105 |
| Private Hire Operators | 18 | £70-£1400 | £70-£1400 |

Figure 3b: Proposed Private Hire Operator Fees

| | |
|-------------------------------|----------|
| Licence for 1 – 2 vehicles | £ 70.00 |
| Licence for 3 – 4 vehicles | £ 85.00 |
| Licence for 5 – 10 vehicles | £ 150.00 |
| Licence for 11 – 15 vehicles | £ 200.00 |
| Licence for 16 – 20 vehicles | £ 250.00 |
| Licence for 21 – 30 vehicles | £ 350.00 |
| Licence for 31 – 40 vehicles | £ 450.00 |
| Licence for 41 – 60 vehicles | £ 700.00 |
| Licence for 61 – 80 vehicles | £ 880.00 |
| Licence for 81 – 100 vehicles | £1100.00 |
| Licence for 101 – and above | £1400.00 |

- 3.9 The proposed removal of the hackney carriage and private hire driver licences, whilst retaining the dual driver's licence, is intended to rationalise the fee structure. It is envisaged that in the future all drivers will utilise a universal (dual) driver's licence that may be used in conjunction with either a hackney carriage or private hire vehicle licence. A single fee, payable every 3 years, will therefore enable a driver to drive either a hackney carriage or private hire vehicle.
- 3.10 The proposed reduction in the hackney carriage vehicle licence fee from £187 to £150 and the increase in the private hire vehicle licence fee from £95 to £150 will ensure that the fees are set at the same level going forward. Historically a difference in fees levied from the hackney carriage and private hire trades was required to fund a patent unmet demand survey in respect of the hackney carriage trade. At the current time, however, as a consequence of the Council's current delimitation policy, there is no requirement for a patent unmet demand survey. There is therefore no justification for not setting fees at the same level across both arms of the trade so as to reflect an even distribution of the costs of the Council performing this regulatory function.
- 3.11 Abridged accounts for 2011-2012 and 2012-2013 are shown below in Figure 4.

Figure 4: Abridged accounts for 2011-2012 and 2012-2013

| | 2011-2012 | 2012-2013 |
|-------------------------------|----------------|----------------|
| Total Expenditure | £148,348 | £129,111 |
| Net Income | £115,294 | £120,267 |
| Net Annual Expenditure | £33,054 | £8,844 |
| Net cumulative Surplus | £21,772 | £12,928 |

- 3.12 While expenditure has exceeded income during the last two financial years, the surplus which has been carried forward has offset this. However the Council's *projected* budget at the 2013/14 year end for the costs of administering and ensuring compliance with the scheme indicates a **potential budget deficit** of **£12K**. Therefore the proposed licence fee amendment is intended to address this projected deficit in the short to medium term.



- 3.13 For comparative purposes Figure 5 includes the fees charged by neighbouring authorities for licensed vehicles and drivers. All fees are on an annualised basis:

Figure 5: Neighbouring Authority Fees

| Neighbouring Authority | Hackney Carriage Fee | Private Hire Vehicle Fee | Driver Licence Fee |
|------------------------|----------------------|--------------------------|--------------------|
| Hastings | £205 | £205 | £100 |
| Lewes | £180 | £180 | £120 |
| Adur | £352 | £259 | £88 |
| Worthing | £230 | £191 | £92 |
| Ashford | £270 | £270 | £49 |
| Mid Sussex | £226 | £192 | £46 |
| Rother | £225 | £225 | £105 |
| Wealden | £200 | £185 | £100 |
| Eastbourne (Proposed) | £150 | £150 | £105 (ex DBS fee) |

- 3.14 The data in Figure 5 clearly indicates that the proposed level of fees is highly competitive when viewed alongside the charges levied by neighbouring authorities. Monthly budget monitoring, to enable predicted year end budgets, will facilitate the requirement for licence fee reviews going forward. This will ensure that as far as foreseeable, the service runs at cost.

4.0 Implementation of New Fee Proposals

- 4.1 The legislation governing this area is the Local Government (Miscellaneous Provisions) Act 1976. Section 70 of that Act imposes a statutory requirement that the authority advertise proposed licence fee increases in the local press so as to give members of the public and the trade an opportunity to object to the proposals within 28 days of the advertisement. The procedure is documented in **Appendix 2**.
- 4.2 As part of the consultation process, all members of the hackney carriage and private hire trade will be individually written to outlining the proposals for the fee change and inviting representations. This will give the trade the opportunity to raise objections.
- 4.3 In accordance with **Appendix 2**, if any objections are received in from either the trade or the public then before any new scheme is implemented the matter will instead be brought back before this Committee. The task of considering the objections and determining the new fee structure to be implemented will then fall to members.
- 4.4 If no objections are received then the proposed new fee structure will be implemented from 1 April 2014.

5.0 Legal Considerations

- 5.1 The Council's Legal Officer has been fully consulted.

6.0 Financial & Resource Implications

- 6.1 The Council's Finance Team is actively involved in the project to set fees and charges

at fair and proportionate levels so that the income received does not exceed the cost of the function and the service is effectively self-financing. They have been fully consulted on this report and have advised accordingly.

7.0 Human Rights

7.1 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.

7.2 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;

8.0 An Equality and Fairness Analysis

8.1 An Equality and Fairness analysis and scoping report will be carried out.

9.0 Summary

9.1 The report explains the key elements of the procedural requirements required to implement a proposed licence fee amendment. Subject to committee approval, it lays the foundation for proposals which ensure that the fee income received reflects the cost of running the function in accordance with the law.

Background papers

Taxi Licensing Law and Practice 3rd Ed, James Button

The Local Government (Miscellaneous Provisions) Act 1976

Town Police Clauses Act 1847



Appendix 1: Taxi and Private Hire Fees and Charges Effective 1st April 2013

Driver's Licence

£

Three year Hackney Carriage, Private Hire or Dual Driver's Licence *incl. £44 for your 3 year Disclosure & Barring Service (DBS) check
299.00

(* If you have made a DBS check application since 17/6/2013 and subscribe to the DBS Update Service a new DBS check application may not be required. Go to www.gov.uk/dbs for further information)

Vehicle Licence

Hackney Carriage187.00
Private Hire95.00

Vehicle Suitability Test (VST) (including MOT)

Fee to be paid and booking made directly with Contractor See "How to Book Tests"

NEW VEHICLES TO THE TRADE

Before you buy any vehicle, please contact the office at 1 Grove Road to check that the vehicle is approved.

Following purchase, details of the vehicle and insurance must be sent to this office.

Plate Deposit 50.00

Replacement Plate40.00

Operator's Licence Renewals

Licence for 1 – 2 vehicles 62.00
Licence for 3 – 4 vehicles 82.00
Licence for 5 – 10 vehicles 144.00
Licence for 11 – 15 vehicles196.00
Licence for 16 – 20 vehicles247.00
Licence for 21 – 30 vehicles350.00
Licence for 31 – 40 vehicles453.00
Licence for 41 – 60 vehicles659.00
Licence for 61 – 80 vehicles865.00
Licence for 81 – 100 vehicles1071.00
Licence for 101 – and above1277.00

New Driver Application

(the CRB fee of £44 and DVLC licence check of £5.00 is included)
143.00

Knowledge re-test following fail
45.00

Replacement Driver's Badge
10.50

Set of Byelaws
10.00

Change of Vehicle – Transfer of Licence
35.00

Replacement Copy of Driver/Vehicle Licence
10.50

Approved Taximeter Agents

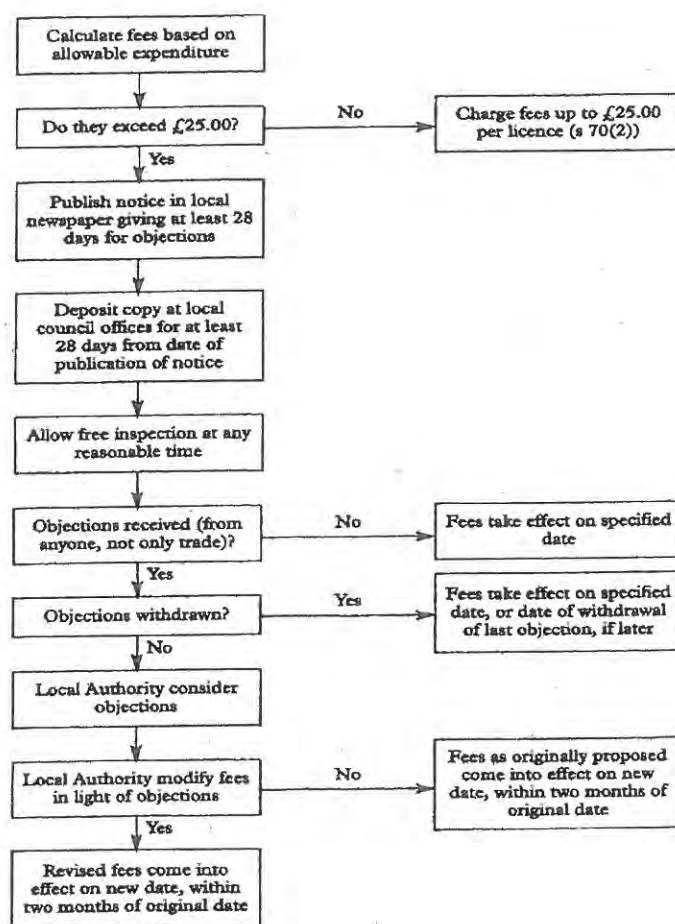
Taximeter Plusmax 15.00

Smith and Humphreys

Radio Relay Smith and Humphreys

Appendix 2: Flow Chart for Fee Setting

FLOW CHART FOR FEES SET UNDER SECTION 70 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976



(Taxi Licensing Law and Practice 3rd Ed, p106, James Button)

Monday, 13 January 2014
at 6.00 pm



General Licensing Committee

Members: Councillor Shuttleworth (Chairman), Councillors Ansell, Coles, Cooke, Hearn, Liddiard, Murdoch, Warner and West

(Apologies for absence were reported from Councillors Murray, Stanley, Thompson and Ungar)

1 Minutes of the meeting held on 18 March 2013

The minutes of the meeting held on 18 March 2013 were submitted and approved and the Chairman was authorised to sign them as a correct record.

2 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct

None were received.

3 Hackney Carriage and Private Hire Licensing Fee Amendment.

The Committee considered the report of the Senior Specialist Advisor in relation to the proposed amendment to the hackney carriage and private hire licensing fees.

The Council's hackney carriage and private hire licensing function were self-financing. The fees that are levied are reviewed in consultation with Financial Management to ensure that there was neither a surplus nor deficit in the hackney carriage and private hire account.

The Senior Specialist Advisor gave an overview to the Committee on the general principles of fee-setting. Income was raised by licence fees in order to ensure that council tax payers were not subsidising the work involved in the administration of licensing functions. The fees were not used to increase revenue but instead were set at a level which aimed to cover the cost of administering the function within the constraints of regulation.

Case law confirmed that approximate calculations were sufficient to discharge the requirement that the licensing authority endeavour to achieve a break even position. Surpluses in addition to deficits are required to be carried over year on year in order for local authorities to not make a profit. For example a shortfall in one year could be rectified by increasing costs the following year, although the authority does not have to adjust the licence fee every year to reflect a previous deficit or surplus.

It is a requirement that such fees are reasonable and imposed 'with a view to recovering the costs of issue and administration'. This included such matters as the reasonable cost of carrying out vehicle inspections to decide if a licence should be granted and the costs of assessing the suitability of applicants. This also included the cost of badge issuing and other administrative tasks as well as enforcement undertaken in respect of licensed drivers.

Currently individuals are required to obtain either a hackney carriage driver's licence, a private hire driver's licence or a dual driver's licence to enable them to drive a licensed vehicle. All vehicles that a driver utilised were required to be licensed and in addition private hire operators required a licence in order to take bookings on behalf of the drivers/vehicles within their fleet. Current licence fees were included in Figure 1 as part of section 3.2 of the report. The private hire operator fees levied was dependant on the number of private hire vehicles that the operator has within the fleet. The current fees for private hire operators were included in Figure 2 as part of Section 3.3 of the report.

The last amendment made to the fees took place in April 2001; therefore no change in the fees had been made in over twelve years. Appendix 1 of the report tabulated all taxi and private hire fees and charges currently levied, including the Disclosure and Barring Service (DBS) fee of £44. This was an additional fee added to the relevant driver's licence fee and was subsequently paid by the Council to the DBS. The Committee was advised that going forward it was envisaged that the trade may utilise the DBS online service directly at a cost of a £15 fee. This could result in the additional payment of £44 not being included in the driver licence fee which the licensing authority charges all drivers.

The proposed table of licence fees was laid out in Figures 3a and 3b of the report. It was proposed that the hackney carriage and private hire driver licences be removed, whilst retaining the dual driver's licence, so as to rationalise the fee structure. It was envisaged that all drivers would utilise a universal (dual) driver's licence that could be used in conjunction with either a hackney carriage or private hire vehicle licence. The single fee, that would be payable every 3 years, would enable a driver to drive either a hackney carriage or private hire vehicle. The proposals also ensured that the hackney carriage and private hire licence fees were set at an equal level of £150.

The Council's abridged accounts for 2011-2012 and 2012-2013 were included in Figure 4 as part of 3.11 of the report. Whilst expenditure had exceeded income during the last two financial years, this had been offset by the surplus which had been carried forward. The Committee was advised that the Council's projected budget at the 2013/14 year end for the costs of administering and ensuring compliance with the scheme indicated a potential budget deficit of £12,000. The proposed licence fee amendment was intended to address the projected deficit in the short to medium term. A comparison with neighbouring authorities for licensed vehicles and driver's fees were included in Figure 5 as part of 3.13 of the report. The data clearly indicated that the proposed level of fees were highly

competitive. Councillor Cooke enquired whether the driver licence fee column, part of Figure 5 was for a dual licence. This was confirmed by the Senior Specialist Advisor, who advised the Committee that combining the two licences was a popular option amongst the trade.

The setting of hackney carriage and private hire licensing fees was subject to the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. The Act imposed a statutory requirement that the authority advertise the proposed increase of the licence fee in the local press, giving members of the public and the trade an opportunity to object to the proposals within 28 days of the advertisement. The full procedure was included at appendix 2 of the report. If any objections were received from the trade or the public, the matter would be referred back to the General Licensing Committee before any scheme was implemented. If no objections were received, the new fee structure would be implemented from 1 April 2014.

Mr Peter Smith, UNITE Hackney Carriage trade addressed the Committee and raised several concerns with the proposed fees. He made reference to the fact that the fees had last been amended 12 years ago in April 2001. In his view the hackney carriage trade had subsidised the private hire trade for a number of years. While the proposed fees might appear a reduction on paper, it was actually an increase. Mr Smith stressed that the hackney carriage trade had been harshly treated. He suggested a reduced fee arrangement for the hackney carriage proprietors.

He also feared that creating a single dual licence would lower the standards of driving in the trade. Currently hackney carriage drivers were expected to know a location in the town without the aid of a satellite navigation system, unlike drivers of private hire vehicles who sometimes utilise sat-nav systems. Mr Smith stated that he did not think private hire proprietors reach the standard of hackney carriage proprietors despite passing the compulsory knowledge test that all drivers are required to take. While a satellite navigation system would be useful if an address is picked up, problems would arise if an address could not be found by the system. Mr Smith advised that he did not have any objections to equal costs for licensing fees.

Mr Smith made reference to figure 5, as part of 3.13 of the report. He pointed out that the column for driver licence fee did not specify whether the fees charged by neighbouring authorities excluded the DBS fee of £44. He then raised concerns over the low and inconsistent fees proposed for private hire operator vehicles, going up the scale included at figure 3b, as part of 3.8 of the report. Mr Smith concluded by reiterating his concerns with the proposed fees. This included the proposed licence fee for hackney carriage vehicles, the anomaly that led to the hackney carriage trade paying more than required, the annual costs, the potential of standards being lowered in the trade and the cost of operation that Mr Smith felt had not been taken into account sufficiently.

Following a question from the Committee, the Senior Specialist Advisor clarified that currently when an individual passed the knowledge test they had an option to go for a dual licence and advised that there was no

difference in expectations for either licence. The proposed fees were designed to rationalise the service.

Councillor Warner enquired about the quality checking on driver standards amongst the trade. The Senior Specialist Advisor responded that the testing procedure had evolved over the past year. Prior to last year, four questions were asked to drivers at their knowledge test. This had now changed and the questions had been expanded and were regularly added to and at a knowledge test, twenty questions were picked at random. Mr Smith suggested that drivers were supplying questions and answers to each other to assist in the testing phase.

Councillor Liddiard asked how often new routes would be added to the knowledge test. The Senior Specialist Advisor responded that this was down to the Specialist Advisor's discretion but to avoid repetition the body of questions were added to regularly.

Councillor Warner enquired whether drivers were monitored after they had passed their knowledge tests. The Senior Specialist Advisor responded that once an individual passed a knowledge test, they had reached the customer expectation. It was a possibility that practical tests could be completed in an individual's car when required. If a driver failed a knowledge test, they could apply for a re-set with a new set of questions.

Councillor Liddiard suggested the idea of a mystery shopper style test for monitoring drivers. The Senior Specialist Advisor took onboard the suggestion and advised that this could be an option in the future. Currently if an individual contacted the Council regarding a driver, the Council would investigate and the appropriate action carried out.

Councillor Shuttleworth addressed the anomaly that had been raised by Mr Smith and assured that the Council was looking to put it right for the future. Councillor Ansell enquired what would occur if an undercharge occurred. The Senior Specialist Advisor responded that this would be addressed early by the Council's finance team and that it would flag up on the system.

Following a question from the Committee in relation to operator fees for quantity of vehicles, the Senior Specialist Advisor advised that Wealden District Council charged £120 per year irrespective of size of company/individual. For example the company Road Runner who operate 150 vehicles would pay the same cost per vehicle as an operator with one vehicle.

Councillor Hearn asked whether there was a difference in the tests for hackney carriage and private hire drivers. The Senior Specialist Advisor confirmed that the same test applied for all drivers.

Councillor Coles enquired about the consultation process and how many responses are normally received from the Trade. The Senior Specialist Advisor advised that the authority writes to all drivers and invites them to make a representation. This goes above the statutory requirement but the authority can't force a driver to respond.

Councillor Cooke asked about the proposed private operator fees and whether a set fee of £X per private hire vehicle licensed under the operator would be more appropriate. The Senior Specialist Advisor responded that the proposed fees were designed to not disadvantage those with a higher quantity of vehicles and reiterated that Wealden charged a flat fee across the board, regardless of vehicle quantity.

Councillor Murdoch reiterated the anomaly that had been raised by Mr Smith. He asked how regularly the fees would be monitored to avoid a repeat of the mistake that had led to the hackney carriage trade being overcharged. The Senior Specialist Advisor advised that monthly budget monitoring would take place, thus enabling year end budgets to facilitate the requirement for licence fee reviews going forward. The Committee was informed that it would be possible to revisit the fees set in the future.

Councillor West asked what legal steps could be taken to address the fact that hackney carriage drivers had been wrongly levied. The Monitoring Officer responded that this would need to be investigated in a different forum. Councillor Warner, Chairman of the Scrutiny Committee advised that the issue could be looked at by the Scrutiny Committee. This was supported by Councillor Shuttleworth, Deputy Chairman of the Scrutiny Committee.

RESOLVED: (Unanimously) (1) That the publication of the proposed hackney carriage and private hire licence fees, detailed in the report at figures 3a and 3b be approved in accordance with statutory requirements.

(2) That the approved fees come into effect from 1st April 2014, if no objections are received in during the required consultation period.

The meeting closed at 7.09 pm

**Councillor Shuttleworth
(Chairman)**

Appendix 2:

General Licensing Committee Report and
Minutes dated 17th March 2014.

Agenda Item 7

BODY: General Licensing Committee

DATE: 17th March 2014

SUBJECT: Hackney Carriage & Private Hire Licensing Fee Amendment

REPORT OF: Jay Virgo, Senior Specialist Advisor.

Ward(s): All

Purpose: To consider the representations received in during consultation on the proposals which were put before Committee on 13th January 2014 and to determine the future fee structure to be applied

Contact: Jay Virgo, Senior Specialist Advisor, Telephone 01323 415933 or internally on extension 5933
E-mail address jay.virgo@eastbourne.gov.uk

Recommendations: Members are recommended:

- 1) To consider the representations received in during the consultation process alongside the proposals for a new fee structure to come into effect on 1st April 2014
- 2) To determine the fee structure to be applied to the hackney carriage and private hire trade going forward.
- 3) To agree to remove the individual hackney carriage and private hire driver licences, whilst retaining the dual driver's licence.

1.0 Background

- 1.1 The Council's hackney carriage and private hire licensing function is self-financing. The fees which are levied are reviewed in consultation with Financial Management to ensure that there is neither a surplus nor deficit in the hackney carriage and private hire account.
- 1.2 On the 13th January 2014 this committee agreed to consult on proposals to amend the hackney carriage and private hire licensing fees. Minutes of that meeting and a copy of the report are contained in **Appendix 1**.

2.0 Fee-Setting: General Principles

- 2.1 In order to ensure that council tax payers are not subsidising the work involved in the administration of licensing functions, income is raised by licence fees. These 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.
- 2.2 Case law has established a number of points relevant to fee-setting. It has 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, for local authorities must not make a profit. A shortfall in one year may

moreover be rectified by increasing costs the following year where needed, although the council does not have to adjust the licence fee every year to reflect any previous deficit or surplus.

- 2.3 The setting of hackney carriage and private hire licensing fees is subject to the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976, as outlined later in this report. It is a requirement that such fees are reasonable and imposed 'with a view to recovering the costs of issue and administration'. This can include the following:

- The reasonable cost of carrying out vehicle inspections to decide if a licence should be granted
- The reasonable costs of providing hackney carriage stands
- Any reasonable administrative or other costs in connection with vehicle inspection and providing hackney carriage stands and
- Any reasonable administrative or other costs in the control and supervision of hackney carriage and private hire vehicles, including the costs of assessing the suitability of applicants.

It will also include the costs of badge issuing and other administrative tasks, as well as enforcement undertaken in respect of licensed (but importantly not unlicensed) drivers.

3.0 Proposed Fee Amendment

- 3.1 The legislation governing this area is the Local Government (Miscellaneous Provisions) Act 1976. Section 70 of that Act imposes a statutory requirement that the authority advertise proposed licence fee increases in the local press so as to give members of the public and the trade an opportunity to object to the proposals within 28 days of the advertisement.

- 3.2 In accordance with **Appendix 2**, the Local Government (Miscellaneous Provisions) Act 1976 provides that representations received in from either the trade or the public must be put before this Committee. The task of considering the representations and determining the new fee structure to be implemented falls to the Committee.

- 3.3 Accordingly a public notice was placed in the Eastbourne Gazette published on the 28th January 2014. It invited representations up until 3rd March 2014: a period which exceeds the statutory minimum. Notices were also exhibited at the Town Hall and at 1 Grove Road. Additionally, a public consultation page was also set up on the Councils website.

- 3.4 All members of the hackney carriage and private hire trade were in addition written to individually regarding the consultation and were invited to make representations regarding the proposed amendment to the fees. A copy of the letter sent to the trade is included in **Appendix 3**.

- 3.5 Specific attention was drawn to the following proposed amendments:

- 1) Hackney Carriage & Private Hire Vehicle Licence Fee = £150 per annum, paid yearly
- 2) To retain a single dual drivers' Licence Fee of £315 paid every 3 years (an

equivalent of £105 p.a.). An additional £44 will also be payable for the Disclosure and Barring Service every three years. The dual licence fee will enable all members of the trade to drive either a hackney carriage or private hire vehicle, subject to suitable insurance.

- 3) The proposed Private Hire Operator fee amendment is determined by the number of vehicles licenced by each operator, set out in Figure 1:

Figure 1: Proposed Operator Fees

| | |
|-------------------------------|----------|
| Licence for 1 – 2 vehicles | £ 70.00 |
| Licence for 3 – 4 vehicles | £ 85.00 |
| Licence for 5 – 10 vehicles | £ 150.00 |
| Licence for 11 – 15 vehicles | £ 200.00 |
| Licence for 16 – 20 vehicles | £ 250.00 |
| Licence for 21 – 30 vehicles | £ 350.00 |
| Licence for 31 – 40 vehicles | £ 450.00 |
| Licence for 41 – 60 vehicles | £ 700.00 |
| Licence for 61 – 80 vehicles | £ 880.00 |
| Licence for 81 – 100 vehicles | £1100.00 |
| Licence for 101 – and above | £1400.00 |

4.0 Response Received to the Consultation

4.1 A copy of all representations received is included in **Appendix 4**.

- 4.2 Trade members were invited to respond to the following questions as laid out in the correspondence included in **Appendix 3**.
- Do you agree with the proposed vehicle licence fee amendment that would charge hackney Carriage and Private Hire proprietors the same fee? (Yes/No – Give reasons)
 - Do you agree with one dual drivers licence fee? (Yes/No – Give reasons)
 - Do you agree with the proposed Private Hire Operator fee amendment and structure? (Yes/No – Give reasons)
 - Any further comments in relation to the proposed fee amendments?

The rationale for the questions was to facilitate empirical measurement of the responses received.

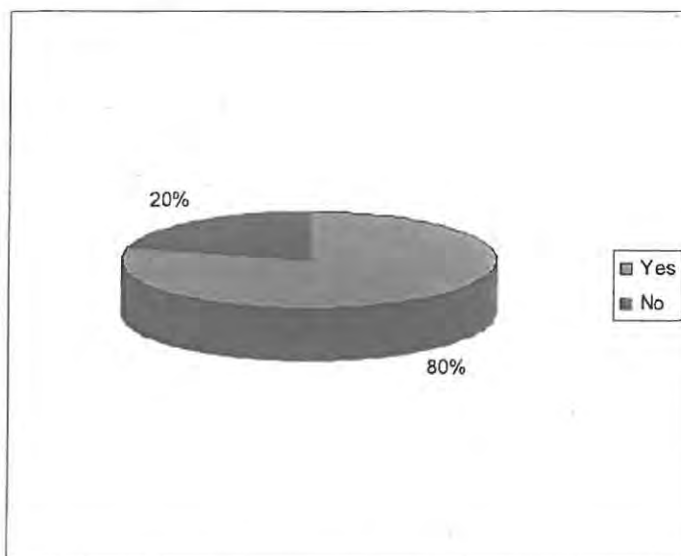
4.3 In total 960 letters were sent to members of the trade. This included all drivers, proprietors and operators. This was to ensure that all members of the trade were included in the consultation process. The authority received 50 responses from the trade.

4.4 A copy of all representations received is included in **Appendix 3**.

4.5 In response to the first question 80% agreed with the proposal and 20% disagreed, as per Figure 2:

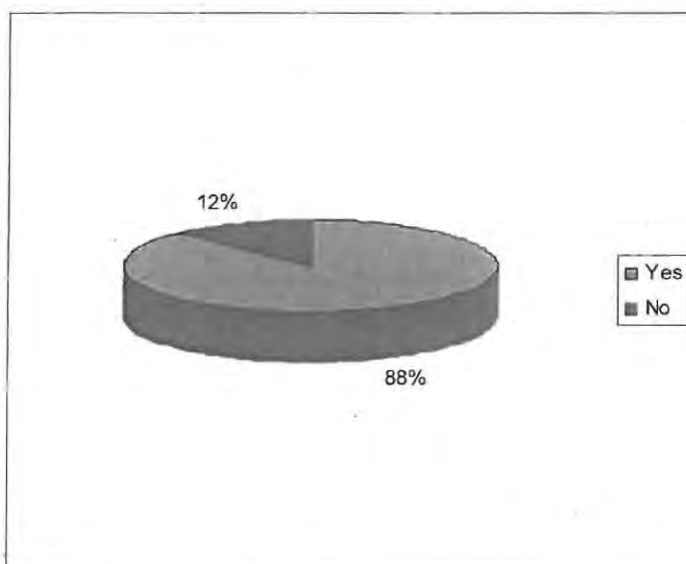
Figure 2: Do you agree with the proposed vehicle licence fee amendment that would charge hackney Carriage and Private Hire proprietors the same fee?





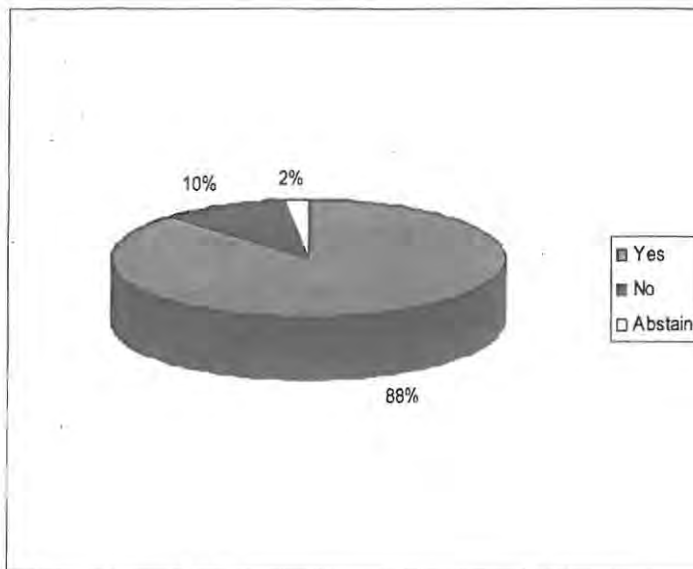
- 4.6 In response to the second question 88% agreed with the proposal and 12% disagreed, as per Figure 3:

Figure 3: Do you agree with one dual drivers licence fee?



- 4.7 In response to the third question 88% agreed with the proposal, 10% disagreed and 2% abstained, as per Figure 4

Figure 4: Do you agree with the proposed Private Hire Operator fee amendment and structure?



5.0 Implementation of New Fee Proposals

5.1 In accordance with **Appendix 2**, this Committee must consider all representations received in regarding the proposed licence fee amendment.

5.2 Having considered the representations, this Committee may either:

- Agree to adopt the proposed fee changes which were consulted upon, or
- Adopt an amended version of the proposals

It is not recommended that the Committee allow the fees to remain at their current level and form as the current level of fees charged will not cover the cost of the function on an ongoing basis.

5.3 While the new fee arrangements must come into effect no later than **1st June 2014** in order to accord with statutory timescales, it is recommended that the Committee agree that any new proposals come into force from 1st April 2014 so as to accord with the new financial year.

6.0 Legal Considerations

6.1 The Council's Legal Officer has been fully consulted.

7.0 Financial & Resource Implications

7.1 The Council's Finance Team is actively involved in the project to set fees and charges at fair and proportionate levels so that the income received does not exceed the cost of the function and the service is effectively self-financing. They have been fully consulted on this report and have been advised accordingly.

8.0 Human Rights

8.1 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.

- 8.2 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;

9.0 An Equality and Fairness Analysis

- 9.1 An Equality and Fairness analysis and scoping report will be carried out.

10.0 Summary

The report outlines the key elements of the procedural requirements required to implement a licence fee amendment. Subject to committee approval, it lays the foundation for proposals which ensure that the fee income received reflects the cost of running the function in accordance with the law.

Background papers

Taxis Licensing Law and Practice 3rd Ed, James Button

The Local Government (Miscellaneous Provisions) Act 1976

Town Police Clauses Act 1847



Monday, 17 March 2014
at 6.00 pm



General Licensing Committee

Present:-

Members: Councillor Ungar (Chairman), Councillors Ansell, Coles, Cooke, Harris, Hearn, Liddiard, Murdoch, Murray, Thompson and Warner

(Apologies for absence were reported from Councillors Shuttleworth and West)

4 Minutes of the meeting held on 13 January 2014.

The minutes of the meeting held on 13 January 2014 were submitted and approved and the Chairman was authorised to sign them as a correct record.

Councillor Warner advised the Committee that the issue raised at the last meeting about the historic fees levelled on hackney carriage drivers was scheduled to go to the Scrutiny Committee on the 2 June 2014.

5 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct.

None were received.

6 Hackney Carriage and Private Hire Licensing Fee Amendment.

The Committee considered the report of the Senior Specialist Advisor in relation to the schedule of proposed amendments to the hackney carriage and private hire licensing fees, that was considered by the General Licensing Committee on 13 January 2014 and the representations received during the consultation period.

The Council's hackney carriage and private hire licensing function were self-financing. The fees were levied and reviewed in consultation with Financial Management to ensure that there was neither a surplus nor deficit in the hackney carriage and private hire account.

The Committee at its meeting on the 13 January 2014 agreed to consult on proposals to amend the hackney carriage and private hire licensing fees. The proposed amendments were detailed in the report at Section 3.5 and Figure 1. In accordance with the Local Government (Miscellaneous Provisions) Act 1976, representations received from either the trade or members of the public must be considered by the Committee.

A public notice was placed in the Eastbourne Gazette on 28 January 2014 inviting representations up until the 3 March 2014, which exceeded the statutory minimum. Notices were also placed at the Town Hall, 1 Grove Road and a public consultation had been set up on the Council's website.

A total of 960 letters were sent to members of the trade, which included drivers, proprietors and operators. This ensured that all members of the trade were included in the consultation process. The Senior Specialist Advisor reported that 50 responses had been received from the trade and these were included at Appendix 3 to the report.

Trade members were invited to respond to the following questions:-

1. Do you agree with the proposed vehicle licence fee amendment that would charge hackney carriage and private hire proprietors the same fee? (Yes/No – Give reasons)
2. Do you agree with one dual driver's licence fee? (Yes/No – Give reasons)
3. Do you agree with the proposed private hire operator fee amendments and structure? (Yes/No – Give reasons)
4. Any further comments in relation to the proposed fee amendments.

The Senior Specialist Advisor reported that 80% of responses agreed with question one, while 20% disagreed, detailed in the report at Figure 2. 88% of responses agreed to question two while 12% disagreed, detailed in the report at Figure 3. 88% of responses agreed with question three while 10% disagreed and 2% abstained, detailed in the report at Figure 4.

Taking the representations into account, the options open to the Committee were to adopt the proposed fee changes or adopt an amended version of the proposals. It was not recommended to allow the fees to remain at their current level and form as the current level of fees charged would not cover the cost of the function on an ongoing basis. It was recommended that any new proposals come into force from 1 April 2014, so as to accord with the new financial year. The Committee was advised that the latest the fees could be implemented to avoid repeating the whole process would be 1 June 2014.

Councillor Coles asked for clarification about the projected budget, referenced in the committee report for the meeting on 13 January 2014. Expenditure had exceeded income during the last two financial years and had been offset by the surplus which had been carried forward. The Council's projected budget at the 2013/14 year end for the costs of administering and ensuring compliance with the scheme indicated a potential budget deficit of £12,000. The proposed licence fee amendment was intended to address the projected deficit in the short to medium term.

The Financial Services Manager responded that the projected budget deficit for 2014/15 year end for the costs of administering and ensuring compliance with the scheme was approximately £16,500.

Mr David Hopkins, representing 720 Taxis addressed the Committee and made reference to the pie charts, detailed in the report that indicated general support from the trade for an increase in fees. Mr Hopkins then made reference to the potential budget deficit of £12,000 for this year. He advised that if the Committee approved the recommended fees, this would result in a raise for the private hire trade of approximately 60% towards their licence, which he felt in the current economic climate was unacceptable. He continued that the taxi fares for the companies across the town had not gone up in 7 years due to the level of competition amongst the trade. He reiterated that it was unfair to increase the operating fees by 60%.

Mr Kenny Kemp, representing 720 Taxis addressed the Committee and raised concerns about the level of increases proposed. He had looked at the figures included in the budget that was approved at the Full Council meeting on the 19 February 2014. He stated that the Council were concerned about a deficit of over £12,000 yet with the increases proposed, the income to the Council would be £24,000.

Mr Kemp agreed that the hackney carriage and private hire vehicle licence fee should be the same but believed that the £150 per annum fee was too high even taking into account the projected budget deficit for 2014/15 being approximately £16,500. He recommended that a fee of £130 per annum was more appropriate and would allow the Council to still recoup the required costs to avoid an income deficit.

Councillor Ungar asked for reassurance that the figures set out in the report were an accurate representation. The Financial Services Manager responded that these figures were part of the budget that was approved at Full Council on the 19 February 2014. The Committee were also advised that the 2014/15 budget would be circulated to the Committee following the meeting. Following a question from the Committee, the Financial Services Manager confirmed that an income deficit could result in higher fee charges in future years. Legislation required the authority to recoup any costs over a 3 year period as part of a rolling programme.

Mr Peter Smith, representing UNITE Hackney Carriage Trade addressed the Committee and reiterated comments that he made at the last meeting on the 13 January 2014. He referenced that the hackney carriage trade had subsidised the private hire trade for a number of years and considered that it had been harshly treated.

Mr Smith believed that the pie chart, detailed in the report were a misrepresentation and distorted the true situation surrounding this issue. As only 50 responses were received out of 960 letters sent out, this represented less than 6% of the trade. He then referenced various duplicate comments that had been made in the responses and suggested some trade members had been pressured into responding. He advised the Committee not to place too much weight on these responses when making its decision.

Mr Smith remained concerned regarding the variable cost of the private hire operator licence. He proposed that private hire operator licences should be issued at £15 per vehicle in 10 vehicle sections. This would give flexibility to operators whilst creating a fairer charge across the trade, so as to not

penalise the smaller operators. He continued that there should not be any upper maximum charge and that instead the charge levied would be in accordance with the number of vehicles within the operating fleet of the operator concerned.

Councillor Coles addressed the Committee and made reference to the observation she made at the previous meeting regarding the relatively poor response from the trade during consultations. She was pleased with the responses that had been received during this consultation, with the majority being in favour of the suggested fees. She supported approval of the proposed fees.

Councillor Warner queried whether a suspended collection policy could be applied for those hackney carriage proprietors that may have overpaid until the Scrutiny Committee had investigated the issue. Councillor Ungar responded that it was not within the Committee's remit to take the past overpayment into account and that the Scrutiny Committee would scrutinise the issue and make any recommendations as a result. The Monitoring Officer clarified that it was important that a new fee structure be implemented by 1 June 2014 otherwise a further consultation would be required. The Monitoring Officer reiterated that the historic fees levied would be a matter for the Scrutiny Committee.

Councillor Ansell asked for clarification regarding the increase in the projected budget deficit between this year and next. The Financial Services Manager advised that the budgets need to take into account inflation, price increases, legislation change and an increase in expenditure beyond the authority's control that occurred every year. The projected 2014/15 budget deficit was not detailed in the report at the previous meeting because the budget had not been approved by the Council at that time.

Councillor Ansell asked for reassurances regarding the budget detailed in the report and in the future, given the issues that had occurred regarding the fee structure highlighted by the speakers tonight. Councillor Ungar indicated that the Council will ensure that the figures detailed on budgets would be consistent and advised that as chair of Audit and Governance Committee it is evident that officers were ensuring that the processes of the Council worked correctly.

Councillor Liddiard addressed the Committee and asked for reassurance that if there was a sizeable surplus after a year of implementing the new fee structure, the Committee could review the fees. Councillor Ungar confirmed this was correct and reiterated that the new fee structure was part of a 3 year rolling programme.

Councillor Liddiard then made reference to the correspondence sent to trade members with the 4 question consultation and expressed confusion about why no officer name was attributed to the document and instead referred to Customer First. The Officers agreed to take this feedback onboard.

RESOLVED: (By 6 votes to 0 with 5 absentions) (1) That the proposed fee structure detailed in the report at section 3.5 and Figure 1 be approved in accordance with statutory requirements.

(Unanimous) (2) That taking into account the representations received during the consultation phase, the new fee structure come into effect on 1 April 2014.

(3) That individual hackney carriage and private hire driver licences be removed, retaining the dual driver's licence.

The meeting closed at 6.34 pm

Councillor Ungar (Chairman)

Appendix 3:

Scrutiny Committee Report and Minutes dated 2nd June
2014

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.

Contact: Jay Virgo, Senior Specialist Advisor, Telephone 01323 415933 or internally on extension 5933
E-mail address jay.virgo@eastbourne.gov.uk

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

Agenda item

Hackney Carriage Proprietor Fee Levied.

- Meeting of Scrutiny, Monday, 2nd June, 2014 6.00 pm (Item 28.)

Report of Senior Specialist Advisor, Licensing.

Minutes:

Members were advised that the setting of hackney carriage and private hire licensing fees was subject to the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. It was 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 was self-financing. The fees must not be used to raise revenue but instead were set at a level which aims to cover the cost of administering the function within the constraints of regulation.

The power to set fees had 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, 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. 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.

Further, at the meeting of 13th January 2014, the current Chair 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.

Between 2001 and 2014, each Hackney Carriage Proprietor paid £187 per year for their licence compared to the sum of £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. However, on 21st April 2009, the numerical limit on the number of taxis ceased following a direction by the General Licensing Committee. The effect of that decision was to render differential fees unnecessary from that point onward.

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) ensured that the requirement to set the fees at a level to ensure the budget did not fall into deficit and remained self financing was met going forward, as well as removing the

differential between the Private Hire Vehicle licence fee and Hackney Carriage Proprietor fee.

While insufficient financial data existed to reach a definitive assessment, it appeared that up until 2011 support charges may have been set too low and as a result the Hackney Carriage and Private Hire budget had 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.

From 2014, the fees are now at a level which reflects a realistic prediction of the cost of financing this function going forward.

The committee discussed the possibility of refunding the differential of the fees charged to Hackney Carriage Licence owners between 2009 and 2014 in the interests of fairness and queried the legalities of such a refund. The Lawyer to the Council advised that drawing such a refund from Council Reserves – a pot which effectively belonged to the people of Eastbourne - could potentially be the subject of judicial review. In addition the committee were advised that there was no legal requirement to 'refund' any perceived overpayments and that the risk of successful challenge to the historic fees levied was unlikely. The regularisation of the fees from 2014 onward has brought necessary equality and fairness to both arms of the trade.

The committee discussed the pros and cons of any such refund and it was apparent that a number of Councillors felt that a refund would be the most appropriate and fair course of action. However, it was acknowledged that this may be the more complicated option given the turnover of licence holders in relevant years. Further the ring-fenced budget was currently estimated to be in credit in around the sum of £20,787 by the end of April 2015, which would mean that a shortfall of up to £30k would need to be found to refund the full differential should that be the desired course of action. The Financial Services Manager clarified that accounting rules required any shortfall to come from the ring-fenced taxi account and did not permit Council reserves to be drawn on. As a result the £30K shortfall could only be found by increasing the fees for the current and future trade. The Lawyer to the Council confirmed noted that any such increase could potentially be challenged by those members of the trade on whom those increased fees were levied.

Members discussed the value of a refund which acknowledged the differential to the value of the £20K predicted profit in the 2014/15 budget only in recognition of the perceived unfairness of the previous charging policy for Hackney Carriage licencees. The Chair expressed disappointment that such an option had not been placed before Committee but was informed that it could be considered by General Licensing Committee.

The committee also noted that the evidence showed that a differential in charges levied on Hackney Carriage and Private Hire licencees was allowed to continue between 2009 and 2014, although the justification for this fee arrangement had ceased to exist in 2009.

However it was equally important to acknowledge that there had been no increase in fees to either arm of the trade since 2001.

Further, evidence shows that the Eastbourne fee rate for Hackney Carriage drivers over these past years had been one of the lowest in the County. The proposed charge of £150 across both arms of the trade going forward was comfortably the lowest in the County (other districts charge from £180 to £350). Given that the lowest charge elsewhere in the County is £180 and our differential charges over the last 5 years has been £187 for Hackney Carriage drivers and £95 for Private Hire drivers, it was the latter that was out of step rather than the former.

Therefore, whilst acknowledging that differential charges should not have been levied between 2009 and 2014, the evidence of other authority charge levels shows that the differential was more a case of an historic under-charge to the Private Hire trade rather than an over-charge to the Hackney Carriage trade. Further, the blanket £150 charge agreed by Licensing Committee going forward, resulted in a significant reduction in charge to Hackney Carriage drivers and a significant increase in charge to Private Hire drivers. As a result, the matter had been resolved and achieved fairness and high value in the charging regime for both arms of the trade in comparison with all other Sussex authorities going forward.

The committee requested that their comments be reported back to the Licensing Committee for their consideration and final resolution to this matter.

RESOLVED: That the committees comments be reported back to the Licensing Committee for their consideration and final resolution to this matter.

Appendix 4:

General Licensing Committee Report and Minutes dated
21st April 2009

Body: General Licensing Committee

Date: 21st April 2009

Subject: Quality Control Policy Linked to Delimitation of Hackney Carriage Proprietor Licences.

Report Of: Kareen Plympton, Licensing Manager

Ward(s): All

Purpose: To agree the Council's Policy in relation to Quality Control, linked to delimitation of hackney carriage proprietor licences, following a decision to remove restrictions on the number of hackney carriage proprietor licences available.

Contact: Kareen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937
E-mail address kareen.plympton@Eastbourne.gov.uk

1.0 Background

- 1.1 The purpose of the hackney carriage and private hire licensing regime is to ensure the provision of a safe, accessible service. Public safety is of paramount importance.
- 1.2 The service provided by the hackney carriage and private hire trade plays a key role in the provision of an integrated transport system. Decisions taken by the Licensing Authority should be approached in the interests of the travelling public.
- 1.3 At the time of writing this report, the Borough has 312 licensed private hire vehicles, and 90 hackney carriage licensed vehicles. Since 1976, the Authority had issued 84 hackney carriage proprietor licences. In 2006, following a unmet demand survey, the Committee agreed to release a further 6 licences, subject to a series of terms and conditions as detailed in 1.7 of this report. These 6 licences came into service in 2007.
- 1.4 The Licensing Authority is not, however, permitted to dictate or control the number of private hire vehicle licences in the Borough.
- 1.5 Eastbourne has high vehicle standards for its licensed fleet. It is intended that a mixed fleet of licensed vehicles be retained, ranging from saloon to multi-seater vehicles, and that the 84 hackney carriage licences already issued prior to 2006 without conditions remain, and be replaced on a "like for like" basis.
- 1.6 The commercial premium associated with hackney carriage proprietor licences is something the Licensing Authority has no control over. This "like for like" approach may help to preserve some of the value of the "licence plate," as well as fulfilling the principles of a "mixed fleet." This means that several different types of vehicle are licensed to meet the various requirements of the travelling public.

- 1.7 The 6 hackney carriage proprietor licences issued in 2006, which came into service in 2007, will continue to have conditions aligned to their use, these being that vehicles are wheelchair accessible, not more than a specified age when entering the Trade, meet European Whole Vehicle Type Approval, and have attained required safety standards.

2.0 The Decision

- 2.1 On 9th March 2009, the Full Licensing Committee met to determine its future approach in relation to the provision of hackney carriage proprietor licences in the Borough.
- 2.2 This review came about following guidance from the Department of Transport to relax the restriction on licences, the expiry of the current unmet demand survey, a petition from the Disability Involvement Group, and a need for the Council to review its overall future approach.
- 2.3 The Full Licensing Committee heard evidence from a range of "interested parties", and on balance, after hearing representations, and considering the interests of the travelling public, opted for delimitation, linked to a policy of quality control.
- 2.4 The decision to remove restrictions on the number of hackney carriage proprietor licences can be kept under review by the Committee, at suitable intervals, for example annually or 6 monthly. This will enable monitoring to be undertaken, so the Authority can ensure that the service meets the needs of the travelling public, and review any potential effect on the trade.

3.0 What is Quality Control?

- 3.1 A policy of quality control means that new hackney carriage proprietor licences issued after a specific date will only be released for vehicles meeting certain technical, age and safety specifications. It is intended that this policy will detail specific conditions to ensure the maintenance of vehicle standards, address any potential safety issues, as well as meeting the needs of the travelling public.
- 3.2 Where a policy of delimitation is linked to a quality control policy in other areas of Sussex, for example, Crawley and Worthing, evidence from Council Licensing Officers is that it assists in the management and maintenance of vehicle standards, and rank space availability. This appears to have improved overall service provision for the travelling public. Crawley has issued 23 hackney carriage proprietor licences over the past 6 years.
- 3.3 Members are advised that the concept of delimitation linked to a policy of quality control has been challenged, but upheld in the cases of Regina v The City and County of Swansea ex parte Jones and Regina v The City of Newcastle ex parte Blake. Therefore such an approach is considered to be lawful.

4.0 Conditions Aligned to the release of Hackney Carriage Proprietor Licences forming the Quality Control Policy

- 4.1 In order to ensure that the needs of the travelling public are met, and that vehicles meet the required quality standards. The Committee can choose to adopt a policy of Quality Control linked to future hackney carriage proprietor

licences. A set of suggested conditions aligned to the Policy and future hackney carriage proprietor licences, is included at Appendix 1.

- 4.2 At the time of writing the report, feedback had been received from the following as to the form of the Quality Control Policy. Copies of correspondence are included at Appendix 2.

- ☐ Mr Peter Smith, Hackney Carriage Proprietor
- ☐ Mr Guy Lane, Hackney Carriage Proprietor
- ☐ Mr Kevin Jefferies, Hackney Carriage Proprietor

- 4.3 Members of the trade have been notified that they may provide written information that they would like the Committee to consider, at least 5 working days in advance of the meeting. The draft conditions forming the Quality Control Policy were discussed at the Taxi and Private Hire Forum on 9 April 2009. Various views were expressed and those attending were encouraged to submit written information to the Committee.

5.0 Options Open To The Committee

- 5.1 The Full Licensing Committee has already taken the decision to adopt delimitation linked to quality control, and now needs to determine the specifics of its policy. The Committee can choose to:

- (a) Adopt or amend all or some of the quality control policy conditions
- (b) To ensure that the needs of the travelling public are met and the correct balance is struck, the Committee may choose for the matter to be monitored and regularly reviewed, for example, annually or six monthly.

6.0 Community Safety Issues

- 6.1 The overriding concern that the Council, as the Licensing Authority, must consider is the provision of an accessible service where public safety is of paramount importance. Hackney carriage and private hire vehicles play a key role in the provision of an integrated transport system. The safe transportation of the public and the provision of a service at key times facilitates dispersal and has an impact on wider community safety objectives.

7.0 Human Resource & Financial Implications

- 7.1 There are no financial implications.

8.0 Human Rights Act 1998

- 8.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Full 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.
- 8.2 Article 8 - which 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.

8.3 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

- ☐ Has a basis in law;
- ☐ Is intended to pursue a legitimate purpose;
- ☐ Is necessary and proportionate; and
- ☐ Is not discriminatory.

Background Papers

- Local Government (Miscellaneous Provisions) Act 1976
- Town Police Clauses Act 1847
- Halcrow Fox Study For Unmet Demand, 2000
- MCL Study of Demand For Hackney Carriages August 2006
- Department of Transport, Taxi and Private Hire Vehicle Licensing.
- R v Swansea City Council ex parte Jones
- Taxis, Licensing Law and Practice, Edition 2. James Button.
- R v City of Newcastle ex parte Blake
- Department of Transport Guide Best Practice Guide – Taxi and Private Hire Licensing 2006
- Department of Transport "Taxi Licensing: Review of Local Authority Quantity Control Policy" 2008
- White Paper, "A New Deal For Transport, Better For Everyone," HMSO 1996
- Kelly and Smith v Wirral Metropolitan Borough Council 2006

Appendix 1

Proposed Terms and Conditions for Quality Control Policy linked to Hackney Carriage Proprietor Licences Released After 22nd April 2009

All new Hackney Carriage Proprietor Licences released after 22nd April 2009 will only be released subject to the following terms and conditions. This Policy must be read in conjunction with Eastbourne Borough Council's Standard Hackney Carriage Vehicle Licence Conditions and complied with prior to a hackney carriage proprietor licence being issued.

- (1) The vehicle shall include Council approved Accessible Vehicle signage.
- (2) Vehicles must hold "European Whole Vehicle Type Approval (EWVA). The appropriate "Type Approval Certificate" must be made available for inspection to an Authorised Officer prior to being licensed and at any time thereafter.
- (3) Vehicles first presented for licensing must not be more than 12 months old from the first date of registration, and except in the case of manufacturer's purpose built vehicles, namely London Cab /TX vehicles, may not be presented for the purposes of renewing the licence beyond 7 years of age.
- (4) Vehicles presented for licensing must be fully wheelchair accessible, (WAV) side loading and capable of being licensed to carry 5, 6, 7 or 8 passengers.
- (5) The Hackney Carriage Proprietor licence granted under this policy and conditions may not be transferred to another individual or organisation within 12 months of the date of this issue, except where the licence holder is permanently relinquishing all Hackney Carriage/Private Hire licences issued by Eastbourne Borough Council.
- (6) A vehicle will only be licensed where it has met the criteria set out in the above conditions, forming the "Quality Control Policy." Any vehicle replacing one issued under this Policy and conditions must meet the same criteria.

Tuesday 21 April 2009
at 6.00pm

321



General Licensing Committee

MEMBERS: THOMPSON (Deputy Chairman – in the Chair), Councillors BELSEY, ELKIN, Mrs GOODALL, GOODWIN, GOODYEAR, Mrs HEAPS, Mrs MADELL, Mrs POOLEY, PURCHESE and Miss WOODALL.

(Apologies for absence were reported from Councillors Bloom, Harris and Mrs Salsbury).

11 Minutes.

The minutes of the meeting held on 9 March 2009 were submitted and approved and the Chairman was authorised to sign them as a correct record.

12 Declaration of Interests.

None were received.

13 Quality Control Policy Linked to Delimitation of Hackney Carriage Proprietors Licences.

The Committee considered the report of the Licensing Manager regarding a proposed quality control policy linked to a delimitation of hackney carriage proprietor licences.

At its meeting held on 9 March 2009 the Committee had approved the removal of restrictions on the number of hackney carriage proprietors licences. This was in response to a need for the Council to review its overall future approach and following guidance from the Department of Transport and a petition received from the Disability Involvement Group. The Committee had considered evidence from a range of parties including the hackney carriage trade.

A policy of quality control would require that new hackney carriage proprietor licences issued after a specific date will only be released for wheelchair accessible vehicles meeting certain technical, age and safety specifications. A set of proposed conditions aligned to the policy were detailed in appendix 1 to the report.

Members of the trade had been consulted and feedback in respect of the form of the Quality Control Policy had been circulated to the Committee.

Mr B Morris (Eastbourne and Country) addressed the Committee on behalf of the trade and requested that two additional provisions should be included within the proposed terms and conditions for the Quality Control Policy. With reference to condition 3 which provided that vehicles presented for

licensing must not be more than 12 months old, a further condition be included that vehicles presented must not exceed a mileage limit of 20,000. A further condition was also requested that would require individuals issued with a new licence under the policy to complete the NVQ/BTEC Transporting Passengers' qualification and that this should also be a requirement for journeymen operating under the provisions of new hackney carriage proprietor licences.

Mr Morris stated that this was an important condition which would ensure that health and safety requirements were met. This was particularly important for drivers who would be required to transport wheelchairs and passengers safely. Mr Morris reiterated that the policy of delimitation was not supported by the trade and that the decision should be reviewed after 6 months or when a set number of plates had been issued ie. six, whichever is the sooner. He made reference to the survey undertaken in 2006 to assess demand and that in his view it remained valid until November 2009.

The Licensing Manager advised the Committee that the course recommended for completion by new licence holders was nationally recognised and its provision had been discussed with a number of local colleges. Currently there were several funding streams available from training providers who can access government funding.

The Committee was advised that existing drivers would not be required to undertake the course, unless there had been specific complaints regarding a particular driver which called into question their conduct and a training need was identified.

It was proposed that as the course involved on the job training a period of 12 months within which a new licence holder would be required to successfully complete the course should be stipulated.

The Committee agreed that journeymen who may be employed to operate the licence should also be required to complete the course. The Licensing Manager outlined concerns regarding the ability to enforce such a requirement and highlighted a number of issues around this.

Any driver who failed to complete the course would be required to continue to attain the qualification and offer reasons to the Authority as to why they had not attained the qualification within the set timescale.

The Committee supported the additional terms and conditions for quality control put forward by the trade and also agreed that a review mechanism be implemented to assess any potential effect on the trade.

Councillor Elkin queried paragraph 2.4 of the report which outlined an option to review the decision to remove restrictions on a 6 monthly or annual basis, and whether this option had been agreed at the last meeting. The Licensing Manager confirmed that it had not been previously agreed but that the ability to review any approach was discussed at the meeting on 9 March 2009 and the review mechanism detailed at 2.4 was being put forward for consideration at this meeting.

The Legal Adviser advised the Committee that the review process acted as a trigger to inform members of licences granted to enable effective monitoring of such and did not suspend or set aside the delimitation policy.

Where a policy of delimitation was in place, a restriction placed on the number of licenses which could be issued could result in a legal challenge from valid applicants.

The Committee agreed that a shorter review period of 3 months from the date of implementation should be set.

RESOLVED: (1) That the Quality Control Policy terms and conditions as set out in appendix 1 to the report be approve with the following amendments:

Condition 3 – insertion of requirement that the vehicle mileage shall not exceed 20,000 miles at the time of the vehicle first being presented for licensing.

Additional condition (7) to read "New individuals issued with a licence under the policy are required to attend the VRQ2 (BTEC) course for Transporting Passengers by Taxi and Private Hire and to have passed the course within 12 months of being issued with a licence, this requirement shall also apply to journeymen operating that licence.

(2) That the delimitation policy be reviewed after 5 new licences have been issued or after 3 months of the implementation date of the policy, whichever is the sooner.

The meeting closed at 8.04 p.m.

M Thompson
(in the Chair)

Appendix 5:

Breakdown of the Hackney Carriage and Private Hire
Licensing Budget since 2005.

PRIVATE HIRE VEHICLES

| | 2005/2006 ACTUAL | 2006/2007 ACTUAL | 2007/2008 ACTUAL | 2008/2009 ACTUAL | 2009/2010 ACTUAL | 2010/2011 ACTUAL | 2011/2012 ACTUAL | 2012/2013 ACTUAL | 2013/2014 PROVISIONAL | 2014/2015 BUDGET |
|---------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|--------------------------|---------------------|
| Employee Expenses | £ 56,385 | £ 68,042 | £ 67,564 | £ 68,826 | £ 65,429 | £ 68,241 | £ 46,746 | £ 43,205 | £ - | £ - |
| Transport | 4,228 | 4,130 | 4,185 | 3,504 | 4,269 | 3,698 | 3,363 | 3,158 | - | - |
| Supplies and Services | 4,128 | 18,995 | 9,203 | 16,845 | 10,008 | 13,362 | 11,758 | 27,710 | 22,789 | 5,700 |
| Recharge from Customer First | - | - | - | - | - | - | 24,400 | 24,400 | 83,127 | 86,700 |
| Recharge from IT | - | - | - | - | - | - | 6,484 | 5,034 | - | - |
| Central Support Charge | 2,000 | 2,000 | 3,196 | 2,215 | 17,464 | 3,596 | 48,797 | 17,650 | 7,763 | 8,600 |
| Management Fee | 22,833 | 8,921 | 9,300 | 9,300 | 9,300 | 7,300 | - | - | - | - |
| TOTAL EXPEND | 89,624 | 102,084 | 93,468 | 101,090 | 106,470 | 96,597 | 141,048 | 121,257 | 113,679 | 101,000 |
| Fees and Charges | -90,018 | -89,652 | -94,041 | -102,312 | -106,409 | -110,576 | -105,707 | -109,630 | -112,548 | -84,200 |
| Criminal Record Bureau Fee | - | -5,685 | -6,442 | -7,272 | -6,624 | -5,854 | -7,804 | -8,668 | -8,054 | -350 |
| Other Income | -1,544 | -186 | -620 | -589 | -1,065 | -1,308 | -1,783 | -1,949 | -2,231 | - |
| TOTAL INCOME | -91,562 | -95,523 | -101,103 | -110,173 | -114,099 | -117,738 | -115,294 | -120,267 | -122,833 | -84,550 |
| NET ANNUAL EXPEND/INCOME | -1,938 | 6,565 | -7,635 | -9,083 | -7,628 | -21,141 | 23,754 | 990 | -9,164 | 16,450 |
| RESERVE | | | | | | | | | | |
| Opening Balance | 13,956 | 15,904 | 9,139 | 16,974 | 26,057 | 33,686 | 54,827 | 29,073 | 28,083 | 37,237 |
| Transfer from Revenue Account | 1,938 | -6,555 | 7,635 | 9,083 | 7,628 | 21,141 | -23,754 | -990 | 9,164 | -16,450 |
| Closing Balance | 15,904 | 9,349 | 16,774 | 26,057 | 33,686 | 54,827 | 29,073 | 28,083 | 37,237 | 20,787 |