

**BODY:** General Licensing Committee

**DATE:** 14<sup>th</sup> July 2014

**SUBJECT:** Consideration of matter referred to Committee by Scrutiny Committee on 2<sup>nd</sup> June 2014 relating to historic private hire and hackney carriage fee-setting

**REPORT OF:** Jay Virgo, Senior Specialist Advisor.

**Ward(s):** All

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

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**Recommendations:** Committee is 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 13<sup>th</sup> 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 13<sup>th</sup> 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 17<sup>th</sup> March 2014, General Licensing Committee agreed the fee amendment proposed on the 13<sup>th</sup> January 2014 and thereafter consulted on be adopted with effect from 1<sup>st</sup> April 2014. Minutes of that meeting and a copy of the report are contained in **Appendix 2**.
- 1.5 On the 2<sup>nd</sup> June 2014 Scrutiny Committee considered the historical setting of the Hackney Carriage Proprietor fee and Private Hire Vehicle licence fee. Minutes of that meeting and a copy of the report are contained in **Appendix 3**.

## **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 21<sup>st</sup> 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 4**. The effect of that decision was to render differential fees unnecessary at least from that point onward at least. Arguably the point at which they ceased to be necessary was when the cost of carrying out the last patent unmet demand survey in 2006 was met.
- 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 1<sup>st</sup> 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 5** 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 to fund service delivery. 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 actual cost of financing this function going forward.

### **4.0 Legal Considerations**

- 4.1 The Council's Legal Team has been fully consulted in relation to this report and has advised accordingly.
- 4.2 This Committee will wish to be mindful of the case law which 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 and it is permissible for a shortfall in one year to be rectified by increasing costs the following year. 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. Fairness to all members of the trade which fund this area is of course of paramount importance.
- 4.3 The evidence shows that a differential in charges levied on Hackney Carriage and Private Hire licencees was allowed to continue over a period of years although the justification for this fee arrangement had ceased to exist in or shortly after 2006. However, it is equally important to acknowledge that there had been no increase in fees to either arm of the trade since 2001.

4.4 With regard the fees levied overall it may be noted that the Eastbourne fee rate even for Hackney Carriage drivers in past years is lower than others charged both arms of the trade in the County currently. Moreover the new flat rate of £150 across both arms of the trade is comfortably the lowest in the County with other districts charging between £180 and £350. Given that the lowest charge elsewhere in the County is currently £180 and our charges in past years have been £187 for Hackney Carriage drivers and £95 for Private Hire drivers, it may be considered that even the differential rate levied on the Hackney Carriage trade was arguably not excessive compared with our neighbours.

4.5 Therefore whilst acknowledging that differential charges should not have been levied on the two arms of the trade once the rationale for doing so ceased to exist, the evidence of other authority charge levels shows that the differential could be viewed more as a case of a 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 results in a significant reduction in charge to Hackney Carriage Proprietors and a significant increase in charge to Private Hire Vehicle Proprietors. As a result, the Committee may consider that a line may be drawn now that fees have been set which achieve fairness and high value in the charging regime for both arms of the trade, noting moreover that those arrangements compare favourably overall with the fee levels set at other Sussex authorities.

Figure 1: Neighbouring Authority Hackney Carriage Proprietor and Private Hire Vehicle Licence Fees at 2014?

<b>Neighbouring Authority</b>	<b>Hackney Carriage Proprietor Licence Fee</b>	<b>Private Hire Vehicle Fee Licence Fee</b>
Hastings	£205	£205
Lewes	£180	£180
Adur	£352	£259
Worthing	£230	£191
Ashford	£270	£270
Mid Sussex	£226	£192
Rother	£225	£225
Wealden	£200	£185
Eastbourne	£150	£150

## 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 other body. It will note that the Report to Scrutiny considered alternative specific recommendations which that Committee might make, including a request that the option of a refund to the Hackney Carriage trade be considered either in the sum of £50,000 or to a lesser value, namely the £20,000 figure which represents the predicted profit in the 2014/15 budget. The minutes of the discussion of Scrutiny demonstrate that this issue was considered in some detail. While consensus was not achieved as to the way forward, that Committee's request that their comments be reported back to this Committee for them to consider and conclude will be noted and acted upon by this Committee.

### **Background Papers**

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