

Monday, 14 July 2014
at 6.00 pm



General Licensing Committee

Members: Councillor Shuttleworth (Chairman) Councillor Ungar (Deputy-Chairman) Councillors Ansell, Cooke, Hearn, Liddiard, Murdoch, Murray, Thompson and Warner

1 Minutes of the meeting held on 17 March 2014.

The minutes of the meeting held on 17 March 2014 was submitted and approved and the Chairman was authorised to sign them as a correct record.

2 Apologies for absence.

Apologies for absence were reported from Councillors Coles, Jenkins and Stanley.

3 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 (please see note at end of agenda).

None were declared.

4 Historic Private Hire and Hackney Carriage Fee-Setting.

The Committee considered the report of the Senior Specialist Advisor regarding the historic private hire and hackney carriage fee-setting that was referred back to the Committee by Scrutiny Committee.

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 the account had neither a surplus nor deficit on an ongoing basis.

At its meeting on 13th January 2014, the General Licensing Committee decided to consult on proposals to amend the hackney carriage and private hire licensing fees charged from April 2014. This was designed to introduce consistency between the two arms of the trade by setting new fee levels for the first time since 2001. It was also suggested that the historic difference between the hackney carriage proprietor fee and private hire licence fees be referred to Scrutiny Committee for consideration. Minutes of the meeting were included at Appendix 1.

At its meeting on 17th March 2014, the General Licensing Committee agreed the fee amendment proposed at the meeting on 13th January 2014. Minutes of the meeting were included at Appendix 2.

At its meeting on 2nd June 2014, the Scrutiny Committee considered the historic difference between the hackney carriage proprietor fee and private hire licence fees and referred their comments back to General Licensing Committee for consideration and final resolution to the matter. Minutes of the meeting were included at Appendix 3.

Between the financial years of 2001-2014, each hackney carriage proprietor paid £187 per year compared to £95 per year paid for each private hire vehicle licence. The £92 difference was held in reserve each year to reflect the requirement to fund patent unmet demand surveys, in accordance with section 16 of the Transport Act 1985 and subsequent case law. This supported a policy to impose a numerical limit on the number of hackney carriage proprietors within the Borough.

At its meeting on 21st April 2009, the General Licensing Committee lifted the limit on the number of taxis within the Borough. Minutes of the meeting were included at Appendix 4. The decision rendered differential fees unnecessary from that point onwards although it could be argued they ceased to be necessary when the cost of carrying out the last patent unmet demand survey in 2006 was met.

The situation was rectified following the decision of the General Licensing Committee to align the hackney carriage proprietor fee and private hire vehicle licence fees, which came into effect on 1st April 2014. The new fee arrangements ensured that the requirement to set the fees at a level to ensure the budget does not fall into deficit and remain self-financing was met going forward, in addition to removing the differential between the two arms of the trade by setting a flat £150 fee.

A breakdown of the hackney carriage and private hire licensing budget since 2005 was set out in appendix 5.

While insufficient financial data existed to reach a definitive assessment, it appeared that up to 2011 support charges had been set too low and as a result, the hackney carriage and private hire budget may have effectively been subsidised by the central Council budget. As the account had remained in surplus over a period of years, no fee increase to either fees were required to meet the overall cost of this function.

The arrangement now in place from April 2014 onward ensured that the fees were now at a level which reflected a considered prediction of the actual cost of financing this function going forward.

The evidence outlined in the report showed that a differential in charges levied on hackney carriage and private hire licence fees had been allowed to continue over a period of years, despite the justification for the fee arrangement arguably ceasing to exist. There had however been no increase in fees to either arm of the trade since 2001.

The report made the Committee aware that the fees levied against hackney carriage proprietors in previous years were in any event lower than the fees levied by other neighbouring authorities. Furthermore the new flat rate of £150 across both arms was comfortably the lowest in the County. The Council's fees up to April 2014 were £187 for hackney carriage drivers and £95 for private hire drivers. Given that the lowest charge elsewhere in the County was currently £180, it may be considered that even the differential rate levied on the hackney carriage trade was low compared with neighbouring authorities.

Whilst acknowledging that differential charges should not have been levied on the two arms of the trade, once the rationale for doing so had ceased to exist, the evidence of other authority charge levels showed 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. The new £150 charge had resulted in a significant reduction in charge to hackney carriage proprietors and a significant increase in charge to private hire vehicle proprietors. Importantly, the new fees set had achieved fairness and high value in the charging regime for both arms of the trade and compared favourably with the fees set by neighbouring authorities.

Mr Paul Culshaw, Hackney Carriage Proprietor, addressed the Committee and made reference to 6.2 of the report regarding human rights in respect of the setting of fees. The setting of fees for a legitimate purpose had ended for the unmet demand survey charge by 2008. He also advised that the hackney carriage proprietor fee was not necessary and proportionate and had been discriminatory since 2008.

He made reference to the comparison with neighbouring authorities which he felt was incorrect as the Committee were not comparing like for like. The Council were charged to recover costs without generating a profit and Mr Culshaw argued that Eastbourne may be providing a poorer service to the trade than neighbouring authorities as if it were not the fees would be more comparable.

Mr Culshaw then made reference to appendix 5 and the breakdown of the hackney carriage and private hire licensing budget since 2005. He advised the Committee that the figures displayed between 2008-2011, without any fee review or increase, showed that the licensing budget surplus had been inflated by irregular unmet demand survey charges.

Mr Culshaw concluded that Eastbourne must be considered in its own entirety and judged solely on fairness to be self-financing and reclaim expenses for the function in an even and proportionate manner.

Mr Peter Smith, UNITE Hackney Carriage trade addressed the Committee and referenced the Officers report which showed that since the requirement to fund unmet demand surveys ceased to be necessary, hackney carriage proprietors had paid additional monies of £92 to meet this survey and thus had been charged erroneously. He believed it was morally wrong to draw a line under the issue and recommended that the Committee decide to refund those hackney carriage proprietors fees that had been overcharged.

Councillor Shuttleworth thanked Mr Culshaw and Mr Smith for their representations. He referenced key information contained in the report for the Committee to consider during the debate. This included the fact that there had been no increase in fees since 2001 and although insufficient financial data existed to make a definitive statement, up to 2011 support charges may have been set too low and led to the hackney carriage and private hire budget being subsidised by the central Council budget to fund service delivery. Councillor Shuttleworth also referenced section 4.4 of the report which demonstrated that the fees levied, even in past years, were lower compared to neighbouring authorities.

Councillor Shuttleworth concluded by referencing section 4.5 of the report which noted that the situation could be viewed as one of historic undercharge to the private hire trade rather than an overcharge for the hackney carriage trade. He supported the fact that the issue had been reviewed and discussed at Scrutiny Committee. He suggested that for the Council to move forward, it should draw a line under the issue, now that the fees had been set which had achieved fairness and high value in the charging regime for both arms of the trade, moreover at a level which was not excessive compared with the fees set by other authorities.

Following a question from Councillor Ungar, the Monitoring Officer addressed the legal aspect of refunding the differential of the fees charged to hackney carriage proprietors between 2009 and 2014. As the costs of the hackney carriage and private hire licensing functions were met from a ring-fenced account, the cost of any refund would have to come from this account. Given the sums involved, this would result in an increase in fees for the whole trade in order to raise the funds. This created the possibility of a claim being submitted by those licence holders who would not benefit from a refund but would be funding it. She advised the Committee that in her view the comparative risk of a successful challenge to the historic fees levied was unlikely.

Councillor Ungar advised that the General Licensing Committee was a quasi-judicial body which had a responsibility to act within the law. He supported Councillor Shuttleworth's recommendation of drawing a line under the issue as he did not want to give hackney carriage proprietors false expectations by refunding them money only for them to be required to pay it back, due to an increase in fee. He concluded by advising that the good service provided by the authority could be put in jeopardy by refunding the money.

Councillor Cooke enquired further about the possibility of a legal challenge. The Monitoring Officer noted that while an accurate prediction of the likelihood of potential future challenges was difficult to make, an increase in fees now in the terms proposed in order to fund a refund could result in legal challenge by means of judicial review. She continued that it was comparatively less likely civil claims with regard to historic fees levied over time would be successful. Councillor Cooke made reference to the predicted surplus of £20,787 at the end of this financial year and asked whether it was possible to make a refund in this sum without raising the fees. Councillor Shuttleworth clarified comments made by the Monitoring Officer

that any steps taken by the Council to make a refund in respect of historic fees could be open to legal challenge.

Councillor Warner addressed the Committee and made reference to when the issue was originally agreed to be discussed at Scrutiny Committee. He stated that it was taken to Scrutiny Committee in the hope that the right thing could be done and he expected that as the Council had incorrectly levied charges at hackney carriage proprietors, an apology should be made and funds should be returned to those that had been overcharged.

Councillor Murray addressed the Committee and made reference to the suggestion made by Mr Culshaw that the Council were providing a poorer service which was why the fees were not comparable with neighbouring authorities. The Senior Specialist Advisor responded that he had hoped that the trade would be of the opinion that the licensing authority provide a good service in terms of the quality of drivers and value of service with the budget that is provided.

Councillor Murray then enquired about taxi drivers who sold their plates and whether any debts owed would be carried over to the owner. He asked whether this would negate problems in the future with people making claims. The Senior Specialist Advisor responded that a proprietor had to inform the Licensing Authority within 14 days of a transfer of a plate. Nothing in the statute made reference to the transfer of money for a plate and any debt therefore was out of the Council's remit. He advised the Committee to not consider this when making their decision. The Monitoring Officer clarified that any claims could potentially still come from taxi drivers who had sold on their plates but considered that they had paid too much to the authority prior to that, but reiterated her view as to the likelihood of success of such claims.

Councillor Ansell addressed the Committee and made reference to the discussions around what the safest option was for the Council and the potential for legal challenge. She made reference to the debate held at Scrutiny Committee on the 2nd June 2014 which centred on whether there was a middle option as opposed to either refunding in full and adding £30,000 in surplus to the account or drawing a line under the issue. She expressed disappointment that the debate tonight did not seem to consider a middle option and reiterated that the historic overcharge to hackney carriage proprietors had not been fair or right. She advised that there were funds available to potentially refund drivers and hoped that the Committee consider this when moving forward.

Councillor Murdoch addressed the Committee and made reference to the breakdown of the hackney carriage and private hire licensing budget since 2005, outlined in Appendix 5. He enquired whether the 2013/14 provisional budget both for total expenditure and income were at the current rate for what the authority charged. The Financial Services Manager responded that it would have reflected the rates relevant at the time. She added by referencing the 2014/15 budget and total income level, which was set in November 2013 and advised that the figure of £84,550 was a prudent figure and was likely to increase once the financial year ended. In a response to a question from Councillor Murdoch regarding achieving a surplus, the Financial Services Manager advised that the account was

looked at over a 3 year period to ensure it broke even and there would be no immediate knee jerk reaction in terms of increasing the fees should a deficit appear in year one, although the overall aim would be to balance the books.

Councillor Cooke reiterated that there had been unfairness practiced on the hackney carriage trade and suggested that the Committee look at some way of showing understanding of the situation. He suggested that the Committee could perhaps look at the option of identifying those hackney carriage proprietors that had been overcharged historically and potentially have their fee waived over a period of time.

Councillor Ungar reiterated that it was unfair to give false expectations to the trade and made reference to the fact that the report had stated that the private hire trade had underpaid historically. If the Committee chose to refund those hackney carriage proprietors, it would be unfair to claim the money back from the private hire trade. It was important for the Council to do the right thing for all parties involved and he reiterated that the Council, whilst acknowledging the historic issue, should draw a line under the issue having set a new fee structure and continue to provide a good service.

Councillor Thompson addressed the Committee and echoed Councillor Ungar's comments that it would be impractical to chase those private hire drivers who had underpaid. He made reference to the fee comparison with neighbouring authorities and reiterated that Eastbourne Borough Council's new fee structure was comfortably the lowest in the County and supported the recommendations to draw a line under the issue.

Councillor Hearn addressed the Committee and reiterated that a refund to those hackney carriage proprietors would only result in an increase in licence fees in the future.

Councillor Liddiard advised the Committee that they should look at making a decision that was right and not necessarily what was the easiest option.

Councillor Ansell urged the Committee to look at the issue intelligently and expressed her disappointment that a compromise was not being sought.

Councillor Cooke reiterated that the Committee as a whole admit that the differential charges were wrong which represented a key issue in the debate and advised that the Committee should make a decision that was right rather than expedient.

Councillor Shuttleworth acknowledged and accepted both sides of the debate. He referenced the point noted earlier that the fees had been left at the same level from 2001-2014 and considered that it was legitimate to suggest that an undercharge occurred during this period rather than an overcharge. He suggested that it would be reasonable for the Committee to move on from this issue in a way that was economically sustainable for the future, as raised by Councillor Murdoch earlier.

Councillor Shuttleworth proposed and was seconded by Councillor Ungar that the best course of action moving forward was to draw a line under the

issue relating to the historic setting of fees. The evidence laid out in the report showed that the differential could be viewed as a historic under charge to the private hire, rather than an over-charge for the hackney carriage trade. The new fee structure of a blanket £150 charge that had been implemented achieved fairness and high value for both arms of the trade.

Councillor Warner requested that a named vote be recorded for the proposal suggested, which was agreed by the Chairman.

For: Councillors Shuttleworth, Hearn, Murray, Murdoch, Thompson and Ungar.

Against: Councillors Ansell, Cooke, Liddiard and Warner.

RESOLVED: (by 6 votes to 4) That the Committee agree to draw a line under the issue relating to historic fee setting now that the new fee structure had been implemented which achieved fairness and high value for both arms of the trade and compared favourably with those fee levels set at other Sussex authorities.

5 Street Trading Consent Income Associated with the Street Market.

The Committee considered the report of the Senior Specialist Advisor regarding the setting of fees for the Street Market.

At its meeting on 23rd April 2012, the General Licensing Committee agreed that the fee levied for consent at the street market would be £5 per pitch and this would be "used for managing the enforcement of the market". This fee had been collected by Eastbourne Street Market Company and subsequently the Chamber of Commerce and duly paid to Eastbourne Borough Council.

The Street Market Company (ESMC) who collected the consent fees ceased trading at the end of 2013. The Eastbourne Chamber of Commerce opted to continue running the street market via *ad hoc* applications to the Licensing Authority at Eastbourne Borough Council.

The street market had been running smoothly for two years now and a review of the current fee had been undertaken. It was determined that the current £5 per pitch fee had been set too high and had created a surplus which exceeded the cost to the Council of the administration and enforcement of the street market.

Eastbourne and District Enterprise Agency Limited (EDEAL) had been given a five year contract that would allow them to act on behalf of Eastbourne Borough Council, carrying out Town Centre Management services. This included allocating and distributing the relevant consents to and collecting the relevant consent fees from market stall holders for onward transmission to Eastbourne Borough Council.

Once Eastbourne Borough Council's funding ceased as intended, EDEAL would support the role through its economic efficiencies by 31st March

2015. The services agreement would end on 31st March 2018 at which point a separate arrangement regarding consents would have to be put in place.

It was considered appropriate that the determination of the fee associated with street market pitches be delegated to a designated Council Officer, who would exercise the delegation in consultation with the chair of General Licensing Committee. This would ensure that the fee could be set at a level which if necessary could be adjusted to ensure that a surplus was not created.

Initially it was proposed that a nominal fee of £1 be levied per pitch to cover associated administrative costs. Experience had indicated that this was a sufficient amount to cover costs and stimulate further interest by potential stall holders.

RESOLVED: (with 1 abstention) That the Committee delegate the setting of consent fees, in relation to the Street Market, to the Senior Head of Development in consultation with the Chairman of General Licensing Committee.

6 Member Training.

The Committee was advised that Member Training had been scheduled to take place on the 8 October 2014.

NOTED.

The meeting closed at 6.52 pm

Councillor Shuttleworth
(Chairman)