

Taunton Deane Borough Council

Corporate Governance Committee - 4 February 2013

Report on objection to license fees to the Hackney Carriage and Private Hire Trade

Report of the Acting Environmental Health Lead

(This matter is the responsibility of Executive Councillor Hayward)

1. Executive Summary

This report updates members on the progress of the objection to license fees to the Hackney Carriage and Private Hire Trade, highlighted to Members in the meeting of 10 December 2012 within the item on the Annual Audit Letter.

2. Background

A local elector has submitted an objection to Messrs Grant Thornton on 26 September 2012. Grant Thornton is Taunton Deane Borough Council's external auditor.

This Notice of Objection relates to the Licence Fees to the Hackney Carriage and Private Hire Trade levied for 2011-12 because in the elector's view "the Council has levied licence fees in excess of its own calculation of 'reasonable costs', and the Council's 'reasonable costs' are excessive".

The elector has been in protracted conversation with Taunton Deane Borough Council ('the Council') since at least 2010 in relation to the fees charged in respect of taxi licensing. This has included email correspondence and meetings with officers, advice from the Finance and Legal teams and elected member involvement from the elected ward Member to the Taxi Forum and the Licensing Committee.

The Auditor has requested a submission in response to the Notice of Objection and clarification on a number of matters raised by the elector. This response was submitted in line with the Auditor's deadline on the 29 January 2013.

In summary of the response, the Council believes that it has acted entirely

within the law and within the spirit of the law. Further, that contrary to the elector's view that he has not had opportunity to raise his concerns, he has had several in depth meetings with officers, including a visit to his place of work to understand better the workings of his business, as well as several opportunities to raise items at the Taxi Forum and other public meetings which the Council holds. He has also engaged with his elected ward member who has made great effort to understand the position of both sides.

The Council has responded to the elector's requests by going into unprecedented levels of detail which are quite above and beyond that which the legislation requires. The requirement is only to set and recoup fees based on the reasonable costs of running the service. These must also be accounted for separately for each charging regime. However, to ensure robust Corporate Governance, the Council had decided to investigate as fully as it could the costs and income associated with each part of the process.

This new level of detail has informed fee setting for 2013/14. It has also been extrapolated back to provide a rough calculation as to whether 2011/12 fees would have met this model. Notwithstanding the fact that there is not a 'like for like' comparison between 2011-12 and how the Council has set fees for 2013-14, the figures do show that although there is some variation, fees were broadly correct. These fees would therefore have passed the 'reasonable' test.

3. Finance Comments

This paper relates to the proper and appropriate spend of public funds.

Licence fees cannot be 'lumped together'. Each charging regime must be separately accounted for. The Council must also set fees for each Licence type that are reasonable and proportionate to cover the costs of the service and must be cost neutral, neither making a profit nor loss. Therefore any surplus or deficit must be carried forward. It should be noted that some Licences carry no fee. Therefore the Council should expect a small loss in the service.

The Finance team has been involved since early in 2012 in providing information to the Licensing Manager to inform the model for fee setting.

The Financial Services Manager has also met with the elector on three separate occasions with other officers to try to ensure a mutual understanding of the issues at hand.

It should be noted that in accordance with the Audit Commission Act 1998 and the annual letter on fees published by the Audit Commission, the cost of deciding the objection (comprising the auditor's time, that of his colleagues and the cost of any specialist advice) falls on the Council and is in addition to the normal audit fee.

4. Legal Comments

This paper relates to the proper and appropriate spend of public funds.

The power to set fees for Hackney Carriage and Private Hire is covered within the Local Government (Miscellaneous Provisions) Act 1976 sections 53(2) for Drivers Licence Fees and 70(1) for Vehicles and Operators' Licences.

The Council believes that it has set fees in accordance with the legislation above as well as the relevant case law. Fees are set in the autumn and winter of each year in a budget setting process and historically are discussed in full by the relevant service managers (Environmental Health Lead and Health and Housing Manager) prior to recommendations going to Committee where they are then the subject of democratic process. The previous year's fees and income are used to set the precedent for future budgets, therefore historic precedent has been important in setting the fees.

Recent case law (Hemmings vs Westminster City Council) indicates that the Council "does not have to adjust the Licence fee every year to reflect any previous deficit or surplus so long as it 'all comes out in the wash' eventually... The adjustment does not have to be precise: a rough and ready calculation which is broadly correct will do."

The Legal and Democratic Services Manager has been consulted during the process, both prior to the objection being lodged and subsequently and is supportive of the Council's position.

5. Links to Corporate Aims (Please refer to the current edition of the Corporate Strategy)

There are no direct links to the Corporate Aims, however, the matter relates to the proper governance of the Council.

6. Environmental Implications

There are no environmental implications from this report.

7. Community Safety Implications (if appropriate, such as measures to combat anti-social behaviour)

There are no community safety implications from this report.

8. Equalities Impact

This report relates to the levying of taxi fees, specifically during 2011-12 but with broader implications for the Council. It is unlikely that the fee setting process will have specific impacts on those with protected characteristics.

9. Risk Management

There is a reputational risk to the Council should the Auditor find in the elector's favour. However, this will be mitigated through the work in

progress to set fees for 2013-14 and plans to roll this out across the Licensing regime. It will be further mitigated by the Council taking such steps as the Auditor deems fit, should that come to pass.

There is a financial risk to the Council should the Auditor find in the elector's favour. The financial risk cannot be accurately measured at this stage. However, the objection relates to fees levied for drivers, vehicles and operators. There were 202 driver applications, 186 vehicle applications and 16 operator applications in 2011-12, totalling 404 applications. The calculated budget surplus for this part of the service in 2011-12 was just under £5,000. If the Auditor finds in favour of the elector, he may use either of those facts to determine what was a reasonable fee and therefore if the Council has a (re)payment to make.

10. Partnership Implications (if any)

There are no partnership implications from this report.

11. Next steps

A further report will be brought to Committee after the external auditors have reported findings or in the event of significant interim occurrences.

There is no given timescale for the Auditor's report.

12. Recommendations

Councillors are requested to note the contents of the report.

Contact: Scott Weetch
Acting Environmental Health Lead
01823 356317
s.weetch@tauntondeane.gov.uk