

COUNCIL REPORT

30th March 2016

PROPOSED METHOD OF RESTITUTION FOR VEHICLE PROPRIETOR AND PRIVATE HIRE OPERATOR CHARGES.

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PURPOSE OF THE REPORT

1. To seek Council approval for the proposed method of making restitution to vehicle proprietors and private hire operators, following the unlawful cross-subsidy of drivers' fees.

BACKGROUND

2. The Local Government (Miscellaneous Provisions) Act 1976 provides that a District Council may charge for licensing vehicles and drivers engaged in the Private Hire or Hackney Carriage trade. Fees may also be charged for the licensing of Private Hire Operators. The legislation specifies which elements of the entire service can be taken into account when calculating the respective licence fees
3. In common with most Authorities, Middlesbrough Council's policy is to ensure that the Taxi Licensing function is self-funding. It therefore operates within a ring-fenced budget, enabling any surplus or deficit to be carried over.
4. In 2014 the Local Government Ombudsman found that the Council did not hold the data on which its original fees had been set, meaning that it could not with any certainty justify its then current taxi licensing charges. The Council therefore agreed to review its fees and also confirm what it would do with the money that had accrued in the account.
5. On 6th January 2016, Council approved a new fully costed taxi licensing fee structure. During the extended consultation however, an interested party questioned the Authority's previous practice of explicitly cross-subsidising drivers' fees (levied under Section 53 of the Local Government (Miscellaneous Provisions) Act 1976) by increasing the fees charged to vehicle proprietors and private hire operators (under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976).

6. The Authority sought legal opinion and received the following advice on the matter:
 - a. It is necessary to account for fees under the separate regimes separately.
 - b. It will be necessary to take into account accrued surpluses and deficits under each regime, even if, due to the prior practice of record keeping, it is necessary to make estimates of the accounting position. In carrying out that exercise it will be necessary to determine (or where necessary estimate) regime by regime, income received and costs permitted to be brought into account under section 53(2) and 70(1) of the Local Government (Miscellaneous Provisions) Act 1976 respectively.
 - c. It is not permissible to cross-finance deficits in one regime using surpluses from another regime.
 - d. The Council is entitled to retain a measure of liquidity within the accounts for each regime: such is responsible accounting practice.
7. As a consequence, any surplus accrued (plus any additional fee income received which has served to provide the driver subsidy) must be accounted for and reimbursed as appropriate.
8. As previously stated in the January 6th report to Council, the cross-subsidy was originally implemented to mitigate the effects of the licensing charge on drivers, who are generally of limited means. Therefore, whilst it would be possible to balance the refund to vehicle proprietors and operators with a “claw-back” of past subsidy from drivers, it is not proposed to do so. This decision is supported by a risk analysis concerning the likelihood of recovering the undercharged driver fees and the fact that the driver licence fee has now risen considerably to fully reflect the cost of administration.
9. In line with 6(d) above, an appropriate proportion of any future surpluses (equivalent to up to 10% of the total budget) that may accrue under the new fees structure will be retained.
10. **Calculation of proposed redress.** Acting on Counsel’s advice, the Capita Local Government fees calculation matrix, used to produce the reviewed 2015/2016 fees structure, has been employed to estimate the true state of account for private hire vehicles, hackney carriage vehicles and private hire operators for each year from 2012/2013 inclusive. It was advised that this date should be used as the starting point as it was the last time that fees were set unchallenged. The summary sheets showing the calculations for each year are produced as Appendix A.
11. The fee charges so produced reflect (insofar as records allow) the staffing structures, working practices and appropriate charges applicable to each type of licence for each year, divided by the annual number of each type of licence granted.
12. These figures have been incorporated into the tables attached as Appendix B. The data for each of the four years in question is produced in common form. Column 1 “Fees charged” represents the actual fee structure at the time, which remained constant for the period involved. Column 2 “Analysed charge” contains the best estimate fees for each year, reflecting differing operating conditions and staffing levels. Column 3 “Fee variance” indicates the value of refund applicable to each type of charge in each year (column 1 minus column 2). It will be noted that as the cost of

certain additional items/services such as replacement stickers and transfer fees are now incorporated into the overall cost of a licence, full reimbursement of these individual items is therefore due.

Column 4 provides the number of each type of licence application, which, when multiplied by the column 3 figure produces the total cost of refunds for each licence category and, when combined, an overall refund total for the year.

13. In summary therefore, the overall annual costs for refunds, assuming 100% take-up is likely to be:

2012/2013	2013/2014	2014/2015	2015/2016*
£151,800	£182,700	£208,200	£149,600

* to January fee change

14. The four year total of £692.3k is partially offset by the £286k surplus retained within the Taxi Licensing budget, providing a net figure of **£406.3k** to be returned from Council funds.
15. Counsel has advised that interest should be repaid on the above sums at the rate of 1% over base rate from January 2014 until the date of repayment. I.e. the surpluses for 2012/13, 2013/14 and 2014/15 should be aggregated, with interest paid on the total from January 2014. This is in line with the approach of the Court of Appeal in Hemming, whereby the Court overturned an order of the High Court effectively requiring interest to run from the first date when the surplus accrued, and instead imposed a later date for interest to start. The date selected here is half way between the date when fees were last set unchallenged and the present, and coincides with the year when the Ombudsman's findings were made.
16. Pending Council's decision on this matter, discussions have been held with other Authorities that have undertaken similar exercises and Tees Valley Audit and Assurance Services to determine how best to implement the refund process. As a result, work is currently underway cross-referencing licensees to issued receipts in order to calculate individual reimbursement figures.
17. As many licensees will be entitled to refunds over more than one year, it is proposed to complete this task for the entire four year period prior to commencing any ratified redistribution process.

IMPACT ASSESSMENT

18. A level 1 Impact Assessment has been undertaken, concluding that no relevant negative impact will result from the adoption of the measure proposed.

OPTION APPRAISAL

19. The adoption of an established template has assisted considerably in the calculation of the retrospective fees. Whilst discussion with representatives from other Authorities that have undertaken similar processes has resulted in the formulation of an administrative process which will minimise bureaucracy.

20. The overall fees review process provided clarity, effectively separating fee setting from the issue of the budgetary surplus and any other sums owed to particular areas of the trade.
21. A further option would have been to deplete the surplus for vehicle and operators' licences by reducing the fee for this year and in future, and to recoup the deficit in drivers' fees by increasing their fees. For the reasons given above, this option has not been recommended.

FINANCIAL CONSIDERATIONS

22. As stated in the previous report of 6th January, the decision not to claw back the subsidy previously conferred on drivers will result in the cost of the proposed restitution to proprietors and/or operators being in excess of the current surplus held within taxi accounts.

RECOMMENDATIONS

23. It is recommended that the Council -
 - a) Approves the rationale and parameters for providing restitution to vehicle proprietors and private hire operators as detailed in this report.
 - b) Notes and approves the reimbursement of licensing fees to the value outlined.

REASONS

24. Counsel's opinion has confirmed that however laudable the motive, the cross-subsidy of drivers' fees was not legally permissible.
25. The method of calculating the reimbursement is consistent with advice provided by Counsel.
26. The proposed action, in combination with the newly adopted fee structure affords the Authority the opportunity to retain a proportion of any further accruals within its licencing accounts in line with responsible accounting practice.

BACKGROUND PAPERS

The following background papers were used in the preparation of this report:

Previous reports to Council dated 16th September 2015 and 6th January 2016.
Fee calculation sheets produced in Appendix A.
Restitution calculations produced in Appendix B.

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