

## **Full Cabinet – Thursday 13<sup>th</sup> February 2020**

### **Agenda Item 9 – Budget and Medium Term Financial Strategy 2020/21 – 2022/23**

At the Stronger Communities and Neighbourhood Services Scrutiny Board meeting on 16<sup>th</sup> January 2020, members resolved to:

*Invite Full Cabinet, as part of their deliberations on 13<sup>th</sup> February 2020, to consider the questions within the Deputation in respect of the use of income from Licensing Fees and Charges.*

The full details of the Deputation are set out below. Cabinet is advised that this matter is dealt with in the Medium Term Financial Strategy and Budget report to this Thursday's Cabinet meeting, as follows:

#### **Recommendation 2.2**

*Approve the creation of new reserves and contributions as outlined at paragraphs 3.21 to 3.25.*

#### **Paragraph 3.23**

*As part of the annual review of reserves through the budget process, the need for a reserve to fund future investment in the licensing function was identified and endorsed by the BSG. Approval is therefore sought from Full Cabinet to contribute any surplus generated on vehicle licensing from 2019/20 onwards to a new licensing reserve, to be used to fund future pressures in the service.*

#### **The Deputation was as follows:**

To all Elected Members, Stronger Communities and Neighbourhood Services Scrutiny Board

At your meeting on 16 January you will be considering a report on the budget framework for the department, including proposed fees and charges.

FoI requests by me and others show large year on year surpluses from locally set licence fees going back several years but there is nothing in the report about these surpluses or how this money has been spent. It is a long standing legal principle that local authorities cannot use licence fees as a way to raise general income or cross subsidise different licensing regimes; surplus in any particular scheme should be used to reduce fees in following years.

The Local Government Association says "Councils that divert fees income from the relevant licensing scheme to fund other licensing work, or to fund other council activities, will be breaking the law".

Officers at a senior level were made aware of concerns about this in March 2018 as was the Cabinet Portfolio Holder in September 2019.

You may therefore wish to ask officers for more details on this before you approve the report as SMBC appears at risk of knowingly breaking the law, with associated financial and reputational risk.

A couple of points to note:

Officers may refer to guidance from the LGA that there is some legal duty to secure full cost recovery from all licensing schemes. A recent judgement against Wakefield Council confirms that this is not the case – councils can only charge for those things specified in each particular Act or Regulation that a licensing scheme exists under and this is why they must keep detailed accounts for each individual scheme.

The focus of licences and fees always falls on the Licensing Department but other departments such as Highways also set licence fees and they will be subject to the same requirements.

Dealing with this problem will be difficult and challenging but doing so now would be less painful than could waste money on legal costs if claims are made against SMBC and the reputational damage that would go with it.

Links to sites with information on some of the relevant cases are at

<https://www.stjohnschambers.co.uk/cases/r-on-the-application-of-carl-cummings-and-others-v-the-county-council-of-the-city-of-cardiff-2014-ewhc-2544-admin>

<https://www.google.com/amp/s/www.cholland.com/single-post/2019/12/10/R-Rehman-v-Wakefield-City-Council---Court-of-Appeal-on-taxi-licensing-fees>

[https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.taxi-driver.co.uk/Manchester%20CC%20%25BR%25D%20v%20King%20%255BHC%20QBD%25D%201991.pdf&ved=2ahUKEwj8rY\\_m1YXnAhUhtHEKHeN4DxQQFjABegQIBBAB&usq=AOvVaw3q2fZoxM21Y-kVRRf9qfAa&cshid=1579093583552](https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.taxi-driver.co.uk/Manchester%20CC%20%25BR%25D%20v%20King%20%255BHC%20QBD%25D%201991.pdf&ved=2ahUKEwj8rY_m1YXnAhUhtHEKHeN4DxQQFjABegQIBBAB&usq=AOvVaw3q2fZoxM21Y-kVRRf9qfAa&cshid=1579093583552)

Various parts of Hemmings v Westminster are also applicable and are referred to in the LGA guidance at

<https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>