

<b>REPORT TO:</b>	<b>General Purposes and Audit Committee 26 March 2018</b>
<b>SUBJECT:</b>	<b>Cost recovery for re-inspection under the National Food Hygiene Rating Scheme</b>
<b>LEAD OFFICER:</b>	<b>Shifa Mustafa, Executive Director, Place Andy Opie, Director of Safety</b>
<b>CABINET MEMBER:</b>	<b>Councillor Hamida Ali, Cabinet Member for Communities, Safety and Justice</b>
<b>WARDS:</b>	<b>All</b>
<p><b>CORPORATE PRIORITY</b></p> <p>The recommendations in this report accord with Croydon Council's Corporate Plan 2015-18 priorities, namely:</p> <ul style="list-style-type: none"> <li>• To create a place where people and businesses want to be.</li> <li>• To help families be healthy and resilient and able to maximize their life chances and independence.</li> <li>• To create a place that communities are proud of and want to look after as their neighbourhood.</li> <li>• To be innovative and enterprising in using available resources to change lives for the better</li> <li>• To drive fairness for all communities, people and places.</li> <li>• A place where people feel safe and are safe.</li> </ul> <p><b>Managing demand</b> - demand for council services is increasing, but funding is decreasing. By managing demand we can ensure that we concentrate on reducing resources in the most effective way in order to achieve the best possible outcomes for Croydon. Introducing a charge for a re-inspection will help alleviate this demand.</p>	
<p><b>FINANCIAL IMPACT:</b></p> <p>The introduction of this charge will ensure that Croydon Food and Safety Team can continue to administer the popular national Food Hygiene Rating Scheme without incurring the additional resource costs associated with re-inspections and rescoreing. These proposals will ensure that the costs for non-statutory inspections are recovered and that the council is no longer subsidising activity that is in the commercial interests of food businesses.</p> <p>No profit can be made from the charging of re-inspections and the money received will only be used to cover off existing costs for this activity. An annual review will be completed by the Food and Safety Team manager and Finance to ensure the cost recovery of the service is calculated only to cover the services completed, and to ensure officer time and costs are reviewed and calculated year on year for the process of food hygiene rescores.</p> <p>There is no financial risk as the service will only take place once we have received confirmation of payment.</p>	
<b>KEY DECISION REFERENCE NO: N/A</b>	

## **1. RECOMMENDATIONS**

The Committee is asked to

- 1.1 Note this report and basis for the proposed changes to the operation of FHRS in the borough.
- 1.2 Adopt the revised FHRS scheme (Brand Standard Revision 6 June 2017) as published by the FSA.
- 1.3 Approve the introduction of a flat fee charge of £180 for re-rating inspection visits on a full-cost recovery basis, with effect from 1 April 2018 in accordance with the calculations at Appendix 1.
- 1.4 Delegate to the Executive Director Place, in consultation with the Cabinet Member for Communities, Safety and Justice, the authority to annually review the flat fees and the recovery basis to ensure that year on year the authority is not making a surplus from such fees, such authority to include the ability to either increase or decrease such fees in accordance with the actual cost of re-inspections.

## **2. EXECUTIVE SUMMARY**

- 2.1 The purpose of the report is to outline the new charging system which can be implemented to enable a fee to be levied for a request for a re-score under the Food Hygiene Rating Scheme. The recommendations seek approval of the proposed introduction of a flat fee charge for re-inspection visits as detailed below.

## **3. DETAIL**

- 3.1 The Food Hygiene Rating Scheme (FHRS) was developed by the Food Standards Agency (FSA) to enable food consumers to compare the hygiene standards within different food outlets. A rating of 5 indicates a very good standard and Zero indicates that urgent improvement is necessary. The scheme is popular amongst consumers with a survey conducted by the FSA revealing that 40% of respondents would definitely base their decision to eat out somewhere on the Food Hygiene Rating Score.
- 3.2 FHRS is seen as a key element of improving food safety. The Scheme, which operates in England, Wales and Northern Ireland, provides transparency about hygiene standards in food businesses at the time they are inspected to check their compliance with food safety legislation. Croydon Food and Safety team have been successfully administering the FHRS since 2012.
- 3.3 The Food Standards Agency (FSA) consider FHRS to be a good example of using incentives to drive businesses to behave in ways that benefit consumers, and FSA research demonstrates that it is working and driving up food hygiene standards.

- 3.4 Displaying an FHRS sticker enables consumers to make an informed choice about where they choose to eat or shop for food. Widespread display of FHRS ratings gives consumers an instant indication of a food business's hygiene standards in comparison to its neighbours and peers.
- 3.5 The devolved Governments in Wales and Northern Ireland have already enacted legislation making the previously voluntary FHRS display scheme in their administration mandatory for all food businesses. Wales has been operating this way since November 2013 and Northern Ireland commenced in 2016.
- 3.6 The FSA has expressed an intention to extend mandatory display to England and they continue to build the case using evidence from Wales, where there has been a positive impact on hygiene standards compared with England since mandatory display was introduced. Increasing numbers of consumers use the scheme to help them make informed choices.
- 3.7 One of the key differences between the current English voluntary scheme and the two mandatory schemes is that both mandatory schemes enable a charge to be made for re-rating inspections whereas, until recently no provision was made in the English voluntary scheme for such charging.
- 3.8 The Brand Standard is the FSA's guidance for the operation of the FHRS in England and the council is required to apply this guidance in full in operation of the scheme. Following legal advice and a successful trial of charging for FHRS re-inspections the FSA has revised the national scheme conditions (the Brand Standard) for the FHRS and these were re-issued in March 2017. The change now allows local authorities in England to charge for a revisit to a food business to reassess them under the FHRS, when a request is received by a Food Business Operator between their regular routine inspections. The guidance makes clear that it is for each local authority to decide whether to use these charging powers and if so, to set the charge in line with their costs.
- 3.9 Any business that has obtained a rating of less than 5 can request a follow up re-rating inspection once they have made any improvements brought to their attention following the first inspection. The purpose of the re-rating is to establish if a higher rating can be obtained and thence displayed to the public. Without this, there would be no opportunity for another rating to be given to an improved business until the next planned full inspection.
- 3.10 The frequency of planned food safety inspections varies from every six months to three years. The frequency of inspection is determined by the risks posed by the food business and uses the national Food Law Code of Practice's scoring process to calculate this risk and any follow-up required. It is important to distinguish a re-rating inspection from other official control revisits that might be conducted as part of officer's usual food safety work.
- 3.11 Croydon has over 3500 food businesses, with 2539 businesses; pubs and clubs, newsagents, retailers, restaurants and takeaways, included within the Food Hygiene Rating Scheme. To date the current spread of ratings are shown below:

Food Hygiene Rating	Number of food establishments
0	26
1	286
2	62
3	349
4	452
5	1364

3.12 For business that do not achieve the highest level 5 rating there are three possible options open to them which are known as safeguards.

- Appeal, if they do not agree with the score;
- Submit a right to reply, if they believe there were extenuating or mitigating circumstances;
- Request a rescore once they have made improvements in the hope of an improved score on the second visit. Within the FHRS Brand Standard, 3 months must have elapsed from the initial inspection to consider the application and to arrange a revisit.

3.13 It is in the commercial interests of a food business to have a good rating so there is an incentive for them to want to improve hygiene following a poor inspection and request a rescore visit. However, rescore visits create an additional capacity demand and therefore have financial cost for the local authority. This is not a service that the local authority has a statutory duty to provide but the function is necessary in order to comply with the FSA Brand Standard. Whilst a business in England can still choose whether they wish to display a rating sticker in their premises or not under the current voluntary scheme, it is worth emphasising that all ratings are already published by the FSA on their ratings website, so consumers can easily view all the ratings throughout the UK via a PC, tablet or even on a smartphone.

3.14 The proposed fee will only apply to re-rating inspections and not if the Authority decide to conduct an official control revisit - e.g. to check on essential work / improvements we have required. Consequently, cost recovery from businesses would occur only where they request a re-rating inspection.

3.15 The introduction of charging for the revisit inspections will mean that businesses can request a re-inspection at any time – there will no longer be a three month “standstill” period during which they may not request such an inspection and the business can request any number of re-inspections. However, for each request for a re-inspection, the Council would be able to charge the agreed fee, if Members are minded to agree the recommendations in this report and the fee would be sought in advance of any re-inspection work.

- 3.16 Approval is sought to introduce to food businesses a fixed fee for re-inspection and associated re-score under the Food Hygiene Rating Scheme. The fee charged is based upon a cost recovery calculation.
- 3.17 The proposal to commence charging for re-scoring on a cost recovery basis will enable existing resources to be targeted towards the high risk food hygiene inspection programme. Finance have calculated that the initial re-inspection cost will be £180 using a total of 5 hours of officer time for each revisit. The calculation are shown in Appendix A

#### **4. CONSULTATION**

- 4.1 Specific consultation has not been carried out regarding the information in this paper.

#### **5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 5.1 These proposals will ensure that costs for non-statutory re-inspections are recovered and that the council is no longer subsidising activity that is in the commercial interests of food businesses. Under the Localism Act we are not able to profit from the inspections but we are allowed to charge for the cost of the service. The money received will only be used to cover the existing costs for this activity. An annual review will be completed by the Food and Safety Team manager and Finance to ensure the cost recovery of the service is calculated only to cover the services completed, and to ensure officer time and costs are reviewed and calculated year on year for the process of food hygiene rescores.
- 5.2 In the short term these charges will only generate a modest income given the number of re-inspections that the team are currently asked to undertake. However, it is anticipated that these requests may increase in the future, particularly as there is a recommendation by the Food Standards Agency that the display of scores becomes mandatory as it is currently in Wales and Northern Ireland.
- 5.3 There is no financial risk as the service will only take place once we have received confirmation of payment.

Approved by: Felicia Wright, Head of Finance (Place)

#### **6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

- 6.1 The general power of competence, conferred by section 1(1) of the Localism Act 2011 provides that “a local authority has power to do anything that individuals generally may do”. Section 3 of the Localism Act contains the charging powers and the limitations that apply. The general power confers a power to charge where:
- A local authority provides a service to a person other than for a commercial purpose
  - The service is provided to the person in exercise of the general power

- 6.2 The general power confers power to charge only if:
- The service is not one that a statutory provision requires the authority to provide to the person;
  - The person has agreed to the service being provided; and
  - Ignoring section 1(1) and section 93 of the Local Government Act 2003, the authority does not have the power to charge for providing the service.
- 6.3 Section 3 of the Localism Act 2011 provides that the general power is subject to a duty to secure that, taking one financial year with another, the income from charges does not exceed the cost of provision. Accordingly the Council will need to base its charges on the costs of providing the service. The fee will need to be reviewed annually taking into account the most recent data unless and until a mandatory national or regional fee is subsequently prescribed.
- 6.4 Approved by: Sandra Herbert, Head of Litigation and Corporate Law, for and on behalf of Jacqueline Harris-Baker, Director of Law and Monitoring Officer.

## **7. HUMAN RESOURCES IMPACT**

- 7.1 There are no immediate human resources issues identified, however if any arose these will be dealt with under Human Resources policies and procedures.

Approved by: Debbie Calliste, Head of HR (People Department), on behalf of the Director of Human Resources

## **8. EQUALITIES IMPACT**

- 8.1 An Equality Analysis was undertaken to assess the potential of an adverse positive or negative impact of charging for FHRS re-inspections on protected groups. It concluded that there would be no positive or adverse effect as a result of this policy change and recommended that no further detailed analysis was required.

## **9. ENVIRONMENTAL IMPACT**

- 9.1 There are no immediate environmental impact issues identified. If premises have improved standards of cleanliness and practices within their business, it could improve equipment efficiency and effectiveness, take less energy to run and therefore will use less resources.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

- 10.1 These changes to the Brand Standard intend to continue to raise awareness of the food hygiene rating of food businesses in the Borough. The scores are regularly uploaded to the FSA website. The ability for customers to be able to make a conscious decision where to purchase their food, could help improve general hygiene standards in Croydon's commercial districts.

## **11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

- 11.1 In the last couple of years the local authority has been asked to undertake 26 re-inspections. The local authority is obliged, by the Brand Standard, to provide a re-inspection service but re-inspections do not necessarily direct resources to the highest risk premises. Any business can request a rescore including compliant businesses achieving a Food Hygiene Rating of level 3 or 4.
- 11.2 The re-inspections presently divert resources away from the statutory inspection programme and, if the business is already compliant, away from the work needed to deal with non-compliant businesses. This would not be the case if costs for the re-inspections were recoverable as recommended within the report.

## **12. OPTIONS CONSIDERED AND REJECTED**

- 12.1 Do not approve the scheme for charging for FHRS resources and continue as we are using the current Brand Standard of 3 months rest period for re-inspections with no charge.
- 12.2 There is consideration of being unable to recover the cost of the FHRS rescore process. This is rejected as an annual review of the charges and the activity schedule will be undertaken to ensure it reflects the time taken to undertake the complete process, and in line with the current officer charges. Also the process will only start once the fee has been received.
- 12.3 To develop our own scheme which is similar to the FHRS and brand standard. This is rejected as the national food hygiene rating is implemented in every country in England, Scotland and Wales. It is a national scheme devised by the governing body Food Standard Agency. To deviate would be to go against the governing body.

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**CONTACT OFFICER:** Shayne Coulter, Head of Public Protection, 65631

**APPENDICES:** Appendix A – Cost recovery calculation

**BACKGROUND DOCUMENTS:** None

## Appendix A

### Calculating the costs

Process	Estimated time in minutes	officer level	hrly rate	COST £
Initial enquiry and supply of application forms or redirection to website. Scan form and send to MGMT	0.25	GRADE 6	20.00	5.00
Check validation of FHRS rescore request by management	0.25	MGMT grade 16	45.43	11.36
Input application onto database and allocate to officer	0.25	Grade 6	20.00	5.00
Receipt of fee	0.25	Grade 10/11	38.19	9.55
Liaison with Food business operator to confirm suitability of evidence and explain process/review case file of last inspection	0.25	Grade 10/11	38.19	9.55
Travel to and from business and parking or travel charges (average)	1	Grade 10/11	38.19	38.19
Re-inspection or partial re-inspection	1.5	Grade 10/11	38.19	57.29
Completion of inspection report	0.75	Grade 10/12	38.19	28.64
Management validation of new score /review	0.25	MGMT grade 16	45.43	11.36
Update of file records and database, sending of letter and sticker	0.25	Grade 6	20.00	5.00
	5 hours			<b>180.83</b>
	Average costing for officers Food safety officer and EHOs- both hourly rate added together and then divided by 2.			