

# Policy Committee – 18th July 2017

## NON STATUTORY FOOD HYGIENE RATING RE-SCORE VISITS



Report of the Director of Services

Lead Member Cllr C Lis

Ward(s) affected: All

### 1. Purpose of Report

- 1.1 To propose the introduction of a fee to recover the costs associated with undertaking non statutory Food Hygiene Rating re-score visits to food businesses.

### 2. Recommendations – Members are recommended to –

- 2.1 Approve the introduction of a flat rate charge of £180 for re-score inspection requests received from food businesses with immediate effect, reviewed in line with the fees and charges policy annually thereafter.
- 2.2 Approve a supplementary income estimate of £1,800 as a result of introducing the charge.
- 2.3 Approve that the annual review of the non-statutory food hygiene rating re-score visit fee be delegated to the Environmental Services & Housing Manager in consultation with lead member.

### 3. Background

- 3.1. The Food Standards Agency (FSA), Food Hygiene Rating Scheme (FHRS) is a key element of improving food safety. This is the scoring scheme that awards food businesses a rating following a planned risk rated inspection. Ratings range from zero (urgent improvement necessary) to 5 (very good).
- 3.2 The FSA consider the 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.
- 3.3 Displaying the 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.

<sup>1</sup> Legislative and Regulatory Reform Act 2006, section 21

- 3.4 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-inspection is to establish if a higher score can be obtained and hence displayed to the public. Without this, there would be no opportunity for another score to be given to an improved business until the next planned full inspection.
- 3.5 The frequency of planned food safety inspection varies from every six months to three years. The frequency 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.
- 3.6 Whilst a business in England can still choose whether they wish to display a rating sticker in their premises or not under the current scheme, it is worth emphasising that all ratings are published by the FSA on their ratings website, so consumers can easily view all the ratings throughout the UK via a PC, tablet or on a smartphone.
- 3.7 The Food Standards Agency announced on the 13th March 2017 that Local Authorities in England may introduce a charging regime using existing powers available to the Council under the Localism Act to make a charge for requests received for a FHRS re-rating inspection.
- 3.8 Following the FSA trial of charging for requested FHRS re-inspections within some local authorities in England, using existing powers in the Localism Act 2011, the FSA have now confirmed a change in their policy which will allow the use of these powers by local authorities in England to introduce full cost recovery for requested FHRS re-inspections.
- 3.9 The Food Hygiene Rating Scheme (FHRS) has been in place in Craven since 2012. Currently all visits made to premises are conducted at no cost to the business, which includes requested second visits to the business for the sole purpose of assessing their rating, which is to their businesses benefit.
- 3.10 There are safeguards built into the rating system. Craven District Council is statutorily obliged to visit premises to assess food safety on the basis of risk. Those posing a higher risk are inspected more frequently and will be subject to formal enforcement action being taken.
- 3.11 Additionally, visits are conducted in accordance with the FHRS Brand Standard to ensure that businesses receive the correct rating at the time of the initial inspection. Craven District Council is obliged to provide visits to premises to assess safety and standards under the Food Safety Act 1990. Once the rating has been confirmed and any works completed the business can request a re-rating visit. There will be differences from the existing FHRS scheme as set out below.
- a) A food business can only make one request for a re-rating visit following each planned statutory food inspection. This can be made at any time provided that any required improvements have been made; and
  - b) Businesses provide detail of the improvements they have made along with their re-rating request, and if it is considered that sufficient evidence has been

provided, there is a three month 'stand still' period. An unannounced visit will then normally take place within three months from the end of the 'stand still' period.

3.12 Under the proposed charging regime:

- a) There is no limit on the number of requests that can be made by individual business; and
- b) The 'stand-still' period will not be applied and the re-rating inspection must be carried out within three months of the receipt of the request and payment of the fee.

3.13 The business would not need to provide evidence as to the current position, however, if the work is not carried out there will be no change to the rating but there will be a charge regardless. It is entirely in the interest of the business to demonstrate an increase in their published rating, as it gives the public confidence that their food is prepared safely in accordance with the necessary legislation.

3.14 It is necessary, therefore to consider whether the circumstances in which the Act allows local authorities to charge for things done under the general power are satisfied. Broadly speaking, the circumstances are that:

- A service is provided on a non-commercial basis by the local authority to a person who has agreed to the service being provided;
- The service is or could be done using the new general power;
- The local authority is not under any statutory duty to provide the service; and
- The local authority does not have any other power to charge for the service.

3.15 The Agency considers that each of these circumstances apply to re-inspections because:

- A re-inspection can be properly described as a service which a local authority provides on a non-commercial basis to a food business operator with that food business operator's agreement;
- The FHRS is a non-statutory scheme in England, meaning that the local authority is under no statutory duty to perform a re-inspection; and
- For the reasons set out in the Agency's publication of September 2010, the local authority does not have any other power to charge a food business operator for a re-inspection.

3.16 In order to ensure a self-sustaining Council we should where legally possible ensure services are charged on the basis that full cost recovery is achieved.

#### **4. Charging Rate**

4.1 In the last year we received 20 applications for a re-score visit. It is expected that this number is likely to reduce initially should a charge be introduced for this service but it is reasonable to assume that around 10 applications would be received in the first year.

4.2 Based on 10 applications per annum, an income of £1,750 could be received for FHRS re-score visits (charged at £175 per visit + VAT (including all overheads), based on officer hourly rate for an average 3 hour visit).

## **5. Implications**

### **5.1 Financial and Value for Money (vfm) Implications -**

An income of £1,800.00 is anticipated based on the assumption of 10 applications for re-score visits. The fee has been set to ensure the council's costs in providing the service are fully recovered.

Businesses will be invoiced prior to the inspection being carried out. A new income code will need to be established for income monitoring purposes. It is anticipated that the scheme will be available immediately on approval.

### **5.2 Legal Implications –**

Legal advice provided to Local Authorities by the FSA in August 2016 supports the introduction of fees for re-score visits under the FHRS.

Section 1 of the Localism Act 2011 gives Local Authorities the power to charge for a service which is not a statutory function.

### **5.3 Contribution to Council Priorities -**

The proposal directly contributes to the priorities of 'Enterprising Craven', 'Resilient Communities' and 'Financial Sustainability'.

## **6 Risk Management -**

There are no strategic risk management issues arising from the report other than sufficient capacity within the Team. Should there be capacity issues we would use the generated income to pay for additional capacity.

## **7 Equality Analysis -**

There are no equalities implications associated with this report.

## **8 Consultations with Others -**

Director of Services, Strategic Manager – Financial Services (s151 Officer), Legal Services Manager.

## **9 Access to Information: Background Documents – Nil**

## **10 Author of the Report -**

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Note : Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

11 **Appendices -**

None