

Food Hygiene Rating Scores - Proposals for Re-Inspection

Community Services Committee Thursday, 10 November 2022

Report of: Executive Head of Communities

Purpose: For decision

Publication status: Unrestricted

Wards affected: All

Executive summary:

The Food Standards Agency (FSA) has overall responsibility for the official control of food law enforcement in England. The FSA runs the Food Hygiene Rating Scheme (FHRS) in England, Wales and Northern Ireland.

The FHRS is also widely known as 'Scores on the Doors' referring to the stickers depicting the rating awarded further to a food hygiene inspection being displayed on the door or window of the food business concerned.

In partnership with the FSA, Environmental Health & Licensing participates in the delivery of the national FHRS. Businesses are rated between 0 (urgent improvement necessary) and 5 (Very Good).

A trial of charging for requested FHRS re-inspections received from food business operators with a view to achieving a better rating than that awarded at their food business's priority-based programmed inspection was undertaken by the FSA with some local authorities in England in 2016/17. As a result and having sought legal advice, the FSA confirmed a change in policy allowing use of existing powers in the Localism Act 2011 by local authorities in England to introduce fees on a cost recovery basis for FHRS re-inspections.

The purpose of this report is to outline a new charging system, which can be implemented to enable a fee to be levied following receipt of a request from a food business operator for a re-inspection with a view to achieving an improved rating under the FHRS, albeit that this is not guaranteed as the rating may remain the same or be lower based on the standards of food hygiene observed by the inspecting officer at the time.

The recommendation seeks approval of the proposed introduction of a flat fee charge of £246 for re-inspection visits, as detailed in 2.0 entitled 'Fee Calculation' below.

This report supports the Council's priority of: Building a better Council/
Supporting economic recovery in Tandridge

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Recommendation to Committee:

- A. Agree to introduce a charge for requested food hygiene rating re-inspections under the FHRS on a cost recovery basis.

Tandridge District Council's constitution delegates power to the Community Services Committee to be responsible for formulating and reviewing the Council's policies in respect of environmental health, which includes food safety.

Reason for recommendation:

It is recommended that the Committee agrees Option A that the Council adopts the fee for requested FHRS re-inspections by food business operators. This option ensures that any food business operator requesting a re-inspection is charged the appropriate fee that recovers the cost incurred by the Council.

A commitment to investigate and ultimately (where recommended) to prepare this report for the Committee's consideration in order to introduce this charge was set down in the Food Work Plan 2022-2023 at Appendix B to the Environmental Health & Licensing Food Service Plan 2022-2023, agreed at the meeting of the Joint Partnership Board on 24th March 2022.

The revenue income generated by the new fees will support the service in achieving its budgetary requirements. In addition to this, based on the experience of local authority food enforcement services having already adopted and implemented a policy of charging for FHRS re-inspections, it will assist in driving the standards of food hygiene achieved by food businesses up.

This proposal is relevant to Tandridge District Council's vision to be "Aspirational for our people, our place and ourselves" and key priorities:

- *Providing high quality, customer focused services.*
- *Making a difference in our community by supporting those who need support most.*
- *Creating a thriving economy whilst protecting the local environment.*
- *Working in partnership with the community and other public services to create opportunities for all.*
- *Improving the quality of our residents' lives, including by enabling access to decent and affordable homes.*
- *Being a proactive, flexible learning environment.*

1.0 Introduction and background

- 1.1 The FSA has overall responsibility for the official control of food law enforcement in England. The FSA runs the FHRS in England, Wales and Northern Ireland.
- 1.2 In partnership with the FSA, Environmental Health & Licensing participate in the delivery of the national FHRS. The scheme, which has been in place in Tandridge since 2011, encourages businesses to improve hygiene standards and assists consumers in making informed choices about where they eat.
- 1.3 The FSA considers 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.
- 1.4 Based on the FSA's guidance to local authority food enforcement services on the delivery of their priority-based inspection programme set down in the Food Law Code of Practice (England) and the related Practice Guidance, the frequency of planned food safety inspections varies from every six months to three years.
- 1.5 In accordance with this guidance, the frequency of inspection is determined by the risk posed by a food business and is based on a scoring process to calculate this risk, which in turn determines any follow-up enforcement action required, together with the timing of the next programmed inspection. The Code of Practice (England) clearly distinguishes a re-rating inspection from other official control revisits that might need to be conducted, as part of the Environmental Health and Licensing service's usual follow-up work to ensure a food business operates in accordance with key legal requirements and so does not pose a risk to the consumer.
- 1.6 The FHRS then translates the scoring allocated as a result of a programmed inspection into a rating in accordance with the FSA's related guidance to local authority food enforcement services, known as - 'The Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation - the Brand Standard' - generally referred

to as the 'FHRS Brand Standard'.

- 1.7 Further to a programmed food hygiene inspection, businesses are rated between 0 (urgent improvement necessary) and 5 (Very Good), based on the FHRS Brand Standard.
- 1.8 For businesses that do not achieve the highest level 5 rating there are currently three possible options open to them, known as safeguards and these are as follows: - .
 - Appeal, if they do not agree with the score;
 - Submit a right to reply, if they believe there were extenuating or mitigating circumstances at the time of inspection;
 - Submit a request for a re-visit with a view to achieving a better rating once they have made the improvements identified as being necessary at the time of the original programmed inspection. Within the FHRS Brand Standard, apart from very specific circumstances relating to structural defects, three months must have elapsed from the initial inspection to consider the request for a re-visit and to arrange such a re-visit, which is known as the "standstill" period.
- 1.9 It is in the commercial interests of a food business to have a good rating, so there is an incentive for food businesses 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 a financial cost implication for a local authority food enforcement service. 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. Currently there is no charge levied by the Environmental Health and Licensing service when these additional rescore visits are undertaken. Whilst a business in England can still choose, whether they wish to display a rating sticker 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 on a smartphone.
- 1.10 Following a trial of charging for requested FHRS re-rating inspections with some local authorities in England using existing powers in the Localism Act 2011, the Food Standards Agency confirmed a change in policy allowing use of these powers by local authorities in England to introduce fees on a cost recovery basis only for re-rating inspections.
- 1.11 The FSA subsequently re-issued its guidance (the Brand Standard) for the FHRS in March 2017 and wrote to all local authorities to advise them that the legal advice received by the FSA indicated that powers available to local authorities in England under the Localism Act 2011 allow for the recovery of costs of re-inspection made at the request of the food business operator to reassess the food hygiene rating where there is no statutory requirement to provide that re-inspection. The decision as to whether to use these powers and set a charge for the provision of such a

re-inspection service in line with their costs was left for each local authority to decide.

- 1.12 The proposed fee will only apply to re-rating inspections and not if the food enforcement service decides to conduct an official control revisit, for example to check on essential work / improvements required as a result of the original programmed inspection. Consequently cost recovery from businesses would occur only where they request a re-rating inspection.
- 1.13 The introduction of charging for the revisit inspections will mean that businesses can request a re-inspection at any time and there will no longer be a three-month "standstill" period during which they may not request such an inspection. 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 the Committee is minded to agree the recommendation in this report, the fee would be sought in advance of any re-inspection work.

2.0 Fee Calculation

- 2.1 The fee proposed in this report of £246 for charging for requested re-inspections is based on the calculation as to the cost of the time typically spent by officers in carrying out food safety inspections and related follow-up activities, including post-inspection correspondence and support provided to food businesses and associated updating of the service's food premises database. As this is a new process for Environmental Health & Licensing, this calculation is based on our current experience and knowledge of other similar processes. Therefore, it may transpire that the time apportioned for the activities concerned has been under or overestimated and this will be taken into consideration when the fees are reviewed.
- 2.2 If the fees are introduced, the actual time taken to perform the re-rating inspection and any associated administration time will be monitored and recorded, so as to establish an accurate record of officer time spent on each re-inspection request. The fee calculation will be reviewed annually and at the first review, the fee structure may need to be amended to take account of the findings of the recorded activities.
- 2.3 The following elements have been considered when calculating the proposed fee: -
 - Dealing with re-inspection-related enquiries;
 - Inspecting the food business operation/premises;
 - Report and post-inspection letter writing;
 - Updating computer records; and,
 - Processing the fee.A full break-even analysis is provided in Appendix 'A' to this report.
- 2.4 Appendix 'B' to this report shows the current fees being charged by

other Surrey Authorities already charging for FHRS re-inspections.

3.0 Other options considered

3.1 Option A (Recommended)

Committee approves the charging of FHRS re-inspections requested by food business operators by formally adopting the fee structure proposed in Appendix 'A' to this report.

3.2 Option B

Committee does not approve the charging of FHRS re-inspections requested by food business operators and continues to carry out requested re-inspections at no charge to the food business operators.

3.3 Option A – Risks and Opportunities

Committee approves the charging of FHRS re-inspections requested by food business operators by formally adopting the fee structure proposed in Appendix 'A' to this report.

Risks

- Businesses may not wish to pay for a service that was previously provided free of charge.
- Businesses will be paying for this service, which may lead to an expectation that requesting a re- inspection will automatically result in their food businesses being awarded a better rating. This may not be the case as the rating could go down and this may lead to complaints.
- The ability to request more than one re-inspection may lead to an increase in the number of inspections required, as certain businesses may pay for repeated re-inspections with a view to improving their ratings. 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. The business can request any number of re-inspections.

Opportunities

- It should be explained to food business operators that the service is provided on a non-commercial basis and that cost recovery for requests to re-inspect has now been included in the FSA's 'FHRS Brand Standard'.
- More businesses may also request a re-inspection as the shorter timescale to inspection will motivate food business operators to act.

3.4 Option B – Risks and Opportunities

Committee does not approve the charging of FHRS re-inspections requested by food business operators and continues to carry out requested re-inspections at no charge to the food business operators.

Risks

- The Council will receive no fee income to help offset the cost of service delivery for this type of inspection. It will have to continue to offer this service when it could be focusing its resources elsewhere.

Opportunities

- There is no clear opportunity for the Council in continuing to deliver a free service for which it has the discretion to make a charge.
- Food business operators will continue to benefit from the provision of the existing service, whereby a food business can receive a maximum of one re-inspection between its planned programmed inspections, for which there is no charge.

4.0 Consultation

There is no requirement to carry out a public consultation in respect of the introduction of the fees proposed in this report.

Key implications

Comments of the Chief Finance Officer

The proposal will ensure that costs for non-statutory re-inspections are recovered and that the Council is not subsidising activity that is in the commercial interests of food businesses. Under the Localism Act 2011, we are not able to profit from the re-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 Environmental Health & Licensing to ensure that the cost recovery for this activity 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 requested re-inspections.

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, these requests may increase in the future, particularly as there is a recommendation by the FSA that the display of ratings issued under the FHRS becomes mandatory in England, as is currently the case in Wales and Northern Ireland.

There is no financial risk, as the re-inspection service will only be provided once confirmation of payment has been received following receipt of a request for a re-inspection.

Comments of the Head of Legal Services

Section 1 of the Localism Act 2011 gives local authorities the power to charge for a service which is not a statutory function. Re-inspections at the request of the food business operator to re-assess the food hygiene rating are not covered by the statutory duties i.e. planned interventions that the Council is required to undertake in accordance with the food law code of practice.

The Food Standards Agency has reviewed its guidance on charging a fee for requested re-inspections/re-visits to re-assess FHSR scores, in consideration of the general power under the Localism Act (2011). The Agency considers that providing a re-inspection upon request by a food business operator, in circumstances where there is no statutory requirement to provide that re-inspection, falls within the general power that allows for the recovery of costs.

Each authority can set the charge in line with their costs. When setting the charge the authority has a duty to ensure that taking one financial year with another, income does not exceed the costs of providing the service

It is considered that there are no data protection implications for the Committee to consider in respect of this report.

Equality

It is considered that there are no equality implications for the Committee to consider in respect of this report.

Climate change

There are no significant environmental / sustainability implications associated with this report.

Appendices

Appendix 'A' - Re-Rating Inspection – Fee Schedule

Appendix 'B' - Surrey Authorities' Charges for Re-Rating Inspections

Background papers

In compiling this report the following documents have been relied upon: -

Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation – the Brand Standard. Revision 7 – issued May 2021 ([NFHSR Brand Standard](#))

FSA's Food Law Code of Practice (England) March 2021 ([Food Law Code of Practice \(England\)](#))

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