

Bolsover District Council

Executive

24th February 2020

Service Planning and Charging for Commercial Team Support Services in Environmental Health

Report of the Portfolio Holder - Environment

This report is public

Purpose of the Report

- To present to the Executive the 2019/20 Service Plans for Food Safety and Health and Safety Law Enforcement.
- To advise on the need to ensure appropriate charges are in place for re-scoring of food hygiene and animal licensing inspections.
- To recommend introducing charging for inspection re-scores available through the Food Hygiene Rating Scheme and the Animal Activity Licensing inspection regime.

1 Report Details

1.1 Food and Safety Service Plans

1.2 The Council is responsible for delivering official food hygiene and safety controls in food businesses within the district as well as Health and Safety law enforcement at a range of retail and service industries. The Food Standards Agency (FSA) and Health and Safety Executive (HSE) are regulating bodies in respect of these duties and require the Council to keep performance and its intervention plans under review, and that elected Members are made aware of those service plans. The Food Safety Service Plan can be found at Appendix 1 and the Health and Safety Law Enforcement Service Plan is attached at Appendix 2 of this report.

1.3 The Food Safety Service Plan details the inspection programme the Authority is required to complete, any national and local initiatives which relate to food safety which the Council will work to deliver and the resources available for the regulatory activity. The service plan provides assurance to the FSA that the Council is delivering upon its statutory duties and is a requirement of the Framework Agreement on Local Authority Food Controls¹.

1.4 In the current financial year, the Council has been required by the FSA to also ensure a backlog of very low risk food businesses are inspected. This backlog of work had resulted from problems recruiting and retaining suitably qualified inspectors. As

¹ [The Framework Agreement on Official Feed and Food Controls by Local Authorities, Food Standards Agency](#)

discussed in the service plan, the inspection programme is on target to be met by the end of the financial year through the use of external agency staffing. A full review of the Joint Environmental Health Service is underway to ensure that the service has the resources and skills it needs to ensure this and other elements of the service become high performing and deliver statutory duties effectively.

- 1.5 The Health and Safety Law Enforcement Service Plan similarly provides assurance to the HSE that the Council is delivering upon its obligations under the Health and Safety at Work etc. Act 1974. It also sets out how the Council will meet the requirements of the HSE's National Local Authority Enforcement Code² which specifies how Councils should meet their legal obligations including having a transparent, risk based service plan.
- 1.6 The service plans should be prepared at the beginning of the financial year to review the previous year's performance and present the plans for the forthcoming year. Due to pressures within the Joint Environmental Health Service, these plans have not been prepared as frequently as required. Each service plan will be renewed annually for Executive to consider from May 2020.
- 1.7 These service plans also provide a basis for future enhancements to service delivery, enabling more joined up working within the service and with partners. For example, identifying early where intervention plans will take food and safety inspectors, will enable other teams to contribute to low risk interventions or to work closely on other matters such as business waste duty of care and environmental enforcement activity. They also enable the Corporate Enforcement Group to facilitate further joined up enforcement services between the different regulating services and maximising potential income streams from business support and development services.
- 1.8 Regulatory re-scoring to support businesses
- 1.9 As part of the food safety inspection programme, each business is awarded a 0-5 star rating as part of the Food Standard Agency's national Food Hygiene Rating System (FHRS), formerly known as 'Scores on the Doors'. This rating scheme provides for a food business operator to request a re-visit and re-scoring to recognise any improvements it has made since the official inspection. It should also be noted that the re-scoring may result in no change to the original score or the score could also fall.
- 1.10 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 have made significant changes to the regulatory framework for regulating various commercial activities with animals, with a new licensing regime linked to a scoring system, similar to the FHRS. This also allows for an unlimited number of re-score requests, which is currently not accounted for in the licensing fees. The licensing fees the Council set in 2018 are based on a full cost recovery model for the licensing and in relation to some, enforcement action. It has not accounted for the additional re-visits which may be requested by a business which is likely to place a significant additional burden on the Council, which would be funded by existing revenue budgets.

² [National Local Authority Enforcement Code, Health and Safety Executive](#)

- 1.11 Under these rating schemes, the scores each business receives are placed in the public domain through public registers which the Council and FSA have a duty to maintain and in relation to food hygiene, have been subject to significant local and media interest in the past. Businesses prefer to receive high scores and often will request re-scores where they feel they have improved ahead of the next routine inspection. In 2018/19 the Council fulfilled 18 requests for a re-score from food businesses. In 2019/20 the service has received 8 requests in the first seven months of the financial year with a projection of 12-15 rescoring requests as the year comes to a close. Although this has not happened as yet with Animal Activity licensing, there is likely to be a significant interest in re-scores as the regime matures with businesses recognising the potential loss to their business by not being rated as 5 star.
- 1.12 Currently, all this is offered free of charge but this has a direct impact on the productivity of the statutory services the Council offers. Income received for these rescoring activities would be reinvested in food hygiene inspection programmes to pay for new technologies to enable the service to be more efficient and to cover the costs associated with additional inspection and food sampling activity.
- 1.13 Part 1 of the Localism Act 2011 provides Councils with the power to charge on a full cost recovery basis where there is no statutory requirement to provide a service. In 2017, the FSA formally recognised under the Brand Standard³ for the FHRS that a charge can be made under the Localism Act 2011 on a full cost recovery basis for the re-visit and associated re-score for the premises. The Guidance to Local Authorities for Animal Activity Licensing⁴ makes reference to the ability to charge for re-scoring inspections.
- 1.14 For Food businesses, where fees for re-inspections upon request are introduced, the Council will be required to meet tighter timescales for re-visits and re-assessment. Normally the Council has six months to carry out the unannounced re-inspection, but where a charging scheme is in place that inspection must be completed within 3 months. Additionally, the Council are required to offer multiple re-visits if requested where a charging scheme is in place, whereas without charging only one request can be made.
- 1.15 In relation to Animal Activity licences, businesses can request an unlimited number of re-visits and re-scores. This additional level of re-inspection activity will not be achievable without ensuring the costs are recovered. Without additional resources, statutory services may be put at risk of failure. With a clear charging structure the demand for additional inspection activity will be managed.
- 1.16 The length of time a re-scoring process takes will vary, depending on the nature and size of the business and the complexity of the operation. For example, a large food retailer will require a greater depth of reassessment than a small sandwich shop. Likewise a large horse riding establishment will also require a greater level of reassessment than a small home dog boarding establishment. For this reason there

³ [The Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation - the Brand Standard. 2017](#)

⁴ [The Animal Welfare \(Licensing of Activities Involving Animals\) \(England\) Regulations 2018: Procedural guidance notes for local authorities](#)

needs to be flexibility built into the charging scheme, based on the time that would be required to carry out the assessment.

1.17 Proposed Scale of Charges – Food Hygiene re-inspection/scoring

- 1.18 Each re-scoring requires an assessment of the previous inspection and consideration of the reasons and evidence the business has put forward. Prior to any re-scoring being agreed a further inspection of the business would also need to take place.
- 1.19 Due to the wide variety of food businesses the Council regulates, it is not possible to define a scale of charges based on complexity or size of the business. Therefore, a single charge for each re-score has been calculated on the basis that each rescoring exercise will take approximately 5 hours to consider the application, review the previous inspection, carry out a further re-inspection and complete the inspection report. Locally charges range from £150 across South Yorkshire and between £155 and £175 in the authorities in Derbyshire who currently charge for re-scoring.

Local Authority	Food Safety Re-scoring Charge
Derby City Council	£155
Erewash Borough Council	£175
Chesterfield Borough Council	£170
Amber Valley Borough Council	£160
Rotherham Metropolitan Borough Council	£150
Barnsley Metropolitan Borough Council	£150
Sheffield City Council	£150

- 1.20 A charge of £170 for each accepted application would be consistent with the Council's full cost recovery rates for the Environmental Health Officers who would be carrying out the re-scoring. These fees will be reviewed annually to ensure they are appropriate given the actual time taken to re-score premises.

1.21 Proposed Scale of Charges - Animal Activity Licensing

- 1.22 Animal activity licences cover a wide range of activities and some are more complex than others due to the number of and type of animals and the complexity of the premises and the standard conditions.
- 1.23 For boarding and day care establishments, breeding of dogs and selling animals a charge covering an average of 5 hours work would be appropriate for the assessment of the application, inspection and post inspection report.
- 1.24 In relation to Horse Riding Establishments, hiring of horses, a rate of £250 would likely cover the costs of the re-inspection and assessment activity. This would account for one full day of activity.
- 1.25 In relation to licensed zoos, a charge of £250 for the first day, and £34 per hour (or part of an hour) thereafter would be chargeable, with the full rate confirmed before the application is accepted.

- 1.26 Any additional costs for vet fees (where required for inspections by the guidance) would be paid separately by the establishment. These fees will be reviewed annually to ensure they are appropriate given the actual time taken to re-assess licences.
- 1.27 The Council is not able to make a profit on these services. In addition to the hourly rate charges for each activity there are other development costs and support costs involved in managing and maintaining the systems, documentation, materials and equipment the service requires. These charges will be reviewed annually to ensure they can meet the costs of delivering the service.

2 Conclusions and Reasons for Recommendation

- 2.1 The food and safety service plans are documents required to be produced by the Council's regulating bodies for food safety and health and safety law enforcement. These plans are required to be presented to elected members to ensure oversight of the work programmes and to ensure awareness of the Council's responsibilities at a senior decision making level. It also enables the Council to effectively prioritise resources to these statutory and essential public health and safety functions whilst maximising efficiency.
- 2.2 Charging for all re-assessment services is also preferred. The additional requirements to provide a re-assessment for businesses places a previously unrealised burden on the Council and revenue budgets are focussed on providing statutory services.
- 2.3 Charging may assist in managing demand whilst supporting businesses who wish to improve standards. The charges will cover the cost of providing these services, which can be invested in additional support staff and services. If the Council does not charge, statutory intervention and licensing programmes will be put at increased risk of future failure.

3 Consultation and Equality Impact

- 3.1 Legal Services have been consulted and have contributed to this report. The Portfolio Holder for the Environment has also been consulted on the service plans.

4 Alternative Options and Reasons for Rejection

- 4.1 The Council can maintain its current process of undertaking requested re-inspection visits without charging. With this option the re-inspection should not usually take place until three months have elapsed from the initial inspection, after which, the re-inspection must take place within three months. Consequently, the Council is allowed a maximum of six months to undertake the re-inspection.
- 4.2 This option is not recommended due to the potential to draw essential resources away from statutory services, which put them at risk of failure due to the potential high demand for re-assessment.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 The publication of a Food Safety and a Health and Safety Law Enforcement Service plan provides the Council, elected members and the public with a level of assurance as to the plans the Council has in place to protect public health. It also ensures the Council is compliant with its statutory obligations and that it can effectively performance manage the services. They are also a tool for ensuring continuous improvement within the Joint Environmental Health Service, and enable the Council to ensure value for money from the Joint service.
- 5.1.2 In terms of the cost recovery methods for re-scoring activity, although there is likely to be income related to this activity, this will be used to cover the cost of providing the services. There were 18 requests for a re-inspection for food hygiene in 2018/19 and a projection of at least 12 requests in 2019/20. The charging may deter some from applying, however if the number of applicants are reduced by 50% this will result in an additional £1,500 income to the service. The demand for Animal Activity Licence re-inspections is likely to be lower, due to the relatively small number of licensed premises, however lower scores may result in competition to improve, and a number may have lower scores simply due to the new uplifted licensing conditions of the new regulatory framework.
- 5.1.3 Although this is a small level of income compared with the overall cost of operating these services, this equates to an additional 25 inspections procured from an external agency, if such a resource is required if there are continuing staffing challenges within the service in the next financial year.
- 5.1.4 The same income could fund the costs to the Commercial Team of the mobile inspection software the service has started to use for food and safety inspections.
- 5.1.5 There is a risk that the move could be considered as not supporting businesses to improve, however these re-scoring inspections and follow up work are not currently funded within the revenue budget and there is an increasing number of food premises the Council is required to regulate. In addition, there are increasing levels of complexity in food inspection activity such as the recent shift to focus closely on the risks associated with allergens in food.

5.2 Legal Implications including Data Protection

- 5.2.1 Section 1 of the Localism Act 2011 confers on councils a general power of competence, which would allow them to carry out a re-inspection of a food business for re-rating purposes at the request of the operator. Section 3 of the 2011 Act would permit councils to charge a fee for that service as it is not a service councils are statutorily required to provide, as long as the recipient of the service has agreed to the service being provided.
- 5.2.2 In making a charge for this service, the Council has a duty to secure that in any given financial year, the charges should not exceed the costs of providing the service. In addition, it is important that once introduced that the scheme is managed in accordance with the Council's collection and debt recovery procedures and policies.

- 5.2.3 The FSA's revised Brand Standard guidance states:
"Legal advice received by the FSA indicates that powers available to local authorities in England under the Localism Act 2011 allows for the recovery of costs of reinspections/re-visits made at the request of the FBO [Food Business Operator] to re-assess the food hygiene rating. It is for each authority to decide to use these powers and set the charge in line with their costs."

5.3 **Human Resources Implications**

- 5.3.1 There are no human resource implications for these recommendations as these revisits and refreshed annual service plans would be made using existing resources.

6 **Recommendations**

- 6.1 That the Executive notes the content of the Food Safety Service Plan and the Health and Safety Law Enforcement Service Plan.
- 6.2 That the Executive approves the charges set out in this report for re-inspections and re-scoring under the Food Hygiene Rating System and in relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
- 6.3 That the proposed fees and charges be kept under review and any proposed changes considered during annual budget processes.

7 **Decision Information**

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: BDC: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> Please indicate which threshold applies	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	BDC – To be confirmed

8 Document Information

Appendix No	Title
1	Joint Food Safety Service Plan 2019/20
2	Joint Health and Safety Law Enforcement Service Plan 2019/20
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Matt Finn, Environmental Health Manager	01246 217848