

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**15 JUNE 2016**  
**ALL WARDS**

**PROPOSAL PAPER FOR THE CHARGING OF  
FOOD HYGIENE RATING REVISITS**

1. Summary

- 1.1 This paper sets out the potential for charging for food hygiene revisits where these have been requested by the food business. Currently there is no charge set, and there are no specific provisions within the Food Hygiene Rating Scheme (FHRS) for the recovery of charges. There is also nothing that explicitly prohibits the charging for revisits.

2. Recommendation

- 2.1 That Committee agree to the recharging for food hygiene rating revisits on a cost recovery basis.

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### 3. Background

- 3.1 The Local Government Act 2003 introduced a general power to charge for the provision of any discretionary service delivered by the council. The charging power is available to 'best value authorities' as defined in Section 1 of The Local Government Act 1999. This includes all councils (County, Unitary Authorities, London Boroughs, Metropolitan Boroughs, and Districts Councils) who can, therefore, utilise this power.
- 3.2 The charging powers do not apply to services which an authority is mandated or has a duty to provide. However, councils can charge for discretionary services, those services they have power to provide but are not obliged or have a duty to provide by law.
- 3.3 The recipient of the discretionary service must be fully advised of the charge and have agreed to pay for the provision of the service before it is delivered.
- 3.4 The 2003 Act powers can only be used where no other control is specified i.e. it cannot be used where charging is prohibited or where another specific charging regime applies.
- 3.5 There is an additional Act that covers re-charging provisions, the Localism Act 2011. The General Power of Competence (GPC) within the Localism Act states that: "A Local Authority has power do anything that individuals generally may do". The 2011 Act follows very closely the requirements of the 2003 Act.

### 4. Food Hygiene Rating Scheme

- 4.1 FHRS also known as "scores on the doors" is the national scheme operated by the Food Standards Agency to publically reflect the rating of a food business following an unannounced inspection by your officers. The scores range from 0 to 5, zero being the worst score and five being the best.
- 4.2 The only way a score can be assigned to a business is via the food inspection programmes undertaken by local authorities. Under the scheme food business owners may appeal a score within 21 days of an inspection. In addition where a lower score than a business may aspire to has been correctly awarded, a Food Business Operator may request an unannounced inspection 3 months after the rating was correctly given. Annually your officers receive in excess of 100 of these requests per annum. Currently these inspections are undertaken without charge in addition to the annual inspection programme. This report is asking Committee to consider recharging for these discretionary inspections.

## 5. Matters for Consideration

- 5.1 Whilst the 2011 Act appears the most recent and relevant power to utilise, discussions with Legal Services indicate reservations in relation to the General Powers of Competency definition within this Act. This appears to suggest that a Local Authority can trade or charge for a service that could be provided by others. Whilst FHRS revisits are discretionary, it would not be something that another person could carry out. In essence it is closed business, only we can check on the works that we have asked for, and only we can reissue a rating to the food business.
- 5.2 We, therefore, propose to rely on the powers in the 2003 Act if Committee are minded to approve charging a re-inspection fee based on cost recovery. In principle we meet the requirements specified in that:
- We are not mandated to provide the service.
  - We have the power to carry out the service.
  - In principle, following notification of the charge, the business once submitting an application for a revisit will have agreed to pay.
  - There are no prohibitions within the scheme to impose a charge.
- 5.3 It is worth noting that the Secretary of State has the power within the 2003 Act to dis-apply the charging power, although it is not clear if this is a general rule across the country, or if it could be applied to an individual Local Authority and a specific charge. The Secretary of State has also been requested to implement a national scheme to enable cost recovery by local authorities for this work by this Committee, without success.
- 5.4 We estimate that a general cost of £150 would be within the criteria of cost recovery, on the basis that we receive in excess of 100 revisit requests per year this could result in receipts of at least £15,000.

## 6. Consultation

- 6.1 This report has been circulated to the Food Standards Agency and other metropolitan local authorities in the region.

## 7. Implications for Resources

- 7.1 The additional work for re-inspections is estimated to be in the region of 1/3<sup>rd</sup> of a full time equivalent Environmental Health Officer per year.

## 8. Implications for Policy Priorities

- 8.1 The recommendations are in accordance with Financial Regulations, budget requirements and the Corporate Charging Policy.

9. Public Sector Equality Duty

9.1 There are no specific implications identified.

**ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background papers: nil