

## **Charging Food Businesses for Food Hygiene Rating Scheme Rescore Inspections**

<b>Final Decision-Maker</b>	Cabinet
<b>Portfolio Holder(s)</b>	Councillor Dr Ronen Basu – Portfolio Holder for Sustainability
<b>Lead Director</b>	Paul Taylor – Director of Change and Communities
<b>Head of Service</b>	Gary Stevenson – Head of Environment and Street Scene
<b>Lead Officer/Author</b>	Tracey Beattie – Mid Kent Environmental Health Manager
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All

**This report makes the following recommendations to the final decision-maker:**

That the introduction of a charge for Food Hygiene Rating Scheme inspections for rescoring from the 1 July 2018 be approved.

**This report relates to the following Five Year Plan Key Objectives:**

- A Prosperous Borough

<b>Timetable</b>	
<b><i>Meeting</i></b>	<b><i>Date</i></b>
Management Board	9 May 2018
Cabinet Advisory Board	30 May 2018
Cabinet	21 June 2018

# Charging Food Businesses for Food Hygiene Rating Scheme Rescore Inspections

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The national Food Hygiene Rating Scheme (FHRS) was introduced in Tunbridge Wells in 2010 and has been successful in promoting good food hygiene standards in businesses in the borough. This report presents the considerations surrounding the introduction of a charge for re-inspection under the scheme for both businesses and the authority. Currently the re-inspection is free but the authority has up to six months to complete the re-inspection.
  - 1.2 The fee has been set to cover the cost of re-inspection and allows food businesses the opportunity of reducing the current inspection period to no more than three months once the request and fee are received.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 In 2010 the Food Standards Agency (FSA) introduced a national Food Hygiene Rating Scheme to make public the food business' compliance with food hygiene standards. The scores are published on a national website and through local authorities issuing certificates for businesses to display in their premises. The scores range from five (best) to zero (worst).
- 2.2 The scheme has two review mechanisms for businesses, one where they are not satisfied with the score they have been issued (anything below 5), or where they have completed the work required by the inspecting food officer. In the first example the businesses can appeal to the authority and have a 'right to reply' on the Food Standards Agency website. In the second, the businesses can request a re-inspection after a mandatory three month gap between the initial inspection (and initial score) and the re-inspection and rescore. The authority has up to a further three months to carry out the re-inspection which can lead to a potential six months at a low FHRS score.
- 2.3 The FSA have recently enabled local authorities to charge businesses the cost of undertaking these rescoring inspection visits under the Localism Act 2011 on a cost recovery basis. In such circumstances they have also approved the waver for the mandatory three month gap.

### **Current Process**

- 2.4 The FSA's Brand Standard provides local authorities in England with advice and guidance on all aspects of implementation and operation of the Food Hygiene Rating Scheme. All authorities must adhere to the process and guidance.
- 2.5 Following a food hygiene inspection a business is advised of its hygiene rating and how it has been derived. Both the written report left with the food business and any letter sent to them clearly state the process for appeals, 'right to reply'

mechanism or requests for re-inspection and rescore. The score is published on the FSA website (<http://ratings.food.gov.uk/>) 29 days after the inspection with a 'right of reply' offered to all businesses.

- 2.6 Should a business request a re-inspection they need to demonstrate that they have improved the hygiene conditions since the original inspection. There is a maximum wait of 6 months before the rescore occurs, consisting of an initial mandatory three month 'standstill' period followed by a three month period for the local authority to undertake the re-inspection. The re-inspection is unannounced and the business is informed that their rating may go up, down or remain the same dependent on what is seen at the re-inspection.
- 2.7 An appeal against a FHRs score has a different process. These may occur when a business does not agree with the score given to them by the inspecting officer and must be made within 21 days of the inspection with the appeal decision made by both MKEH Food & Safety Team Leaders.

### **Proposed Arrangement**

- 2.8 The proposed changes are in line with the FSA Brand Standard guidance for the Food Hygiene Rating Scheme with the following benefits and changes identified below.
  - 2.9 Introducing a charge for the re- inspection will allow businesses to apply for a re-inspection before the three month 'standstill' period. The re-inspection must be carried out within three months of receipt of the request and fee. There is no limit on the number of requests for re-inspection a business can make, but a fee will apply to each one. The local authority has the discretion of agreeing to such a request.
  - 2.10 Where conditions warrant a more formal process officers will continue to undertake enforcement re-visits to food businesses to check food hygiene standards for public safety, these are part of our statutory duties in accordance with the Food Law Code of Practice. Such cases may lead to more formal action being undertaken (hygiene improvement notices, prosecutions).
  - 2.11 Cost recovery for the re-inspection visits have been in place in Wales for some time and a number of English local authorities including; Sevenoaks & Dartford, Medway, Canterbury, Dover and Tonbridge & Malling. Swale and Maidstone have adopted the charge from 1 April 2018. The FSA have produced guidance for setting cost recovery and it is proposed that the fee should be £160, which is consistent with the majority of other authorities adopting the charge facility. This fee has been approved by the Fees and Charges Report in November 2017 and should the proposal be approved by the Cabinet the fee will be subject to annual review.
  - 2.12 Since 2015 the Mid Kent Environmental Health Service has seen an increase in requests for re-inspection as businesses become more aware of the impact that publicity of having FHRs scores of 0 – 2 have in local media and an associated public awareness of the FHRs. Based on information from 2016/17 and 2017/18 requests appear to average at 20 per year per authority.
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### **3. AVAILABLE OPTIONS**

- 3.1 **Option 1** – Not adopting this discretionary fee for re-inspections will leave the situation as it is with no charge for such visits. The cost of re-inspection will continue to be absorbed across the Mid Kent Food & Safety service. As such the process described in paragraphs 2.5 and 2.6 will remain in place. The disadvantage of this option is businesses will have to adhere to the three month ‘standstill’ period and continue to wait up to 6 months for a re-inspection and may only apply once. The authority will not be able to recover the cost of carrying out a re-inspection which is not essential for food safety reasons. There will also be a disparity with other neighbouring authorities and the other authorities in Mid Kent that have already taken the option to charge for re-inspections.
- 3.2 **Option 2** – Adopt the principle of charging for re-inspections. This places the cost of the request onto the non-complying food businesses who seek the confidence and marketing benefit of having a higher FHRs score (5) although this rating is not guaranteed at re-inspection. Under the recharge process food businesses have the opportunity to apply for multiple re-inspections subject to payment of a fee each time and receive the visit within three months of applying.

Introducing a charge will also provide businesses with a motivation to ensure that high standards are achieved at the initial inspection as many businesses within the borough already do, in order to avoid paying for a re-inspection. Additionally the authority benefits from reduced inspection frequencies.

- 3.3 The disadvantage of the charge is that it places additional demand on officers to respond to the request within the three month time period, which may impact on other routine work. However the demand for such requests is currently manageable and workloads should be able to accommodate this. Payment may deter some businesses from seeking a rescore which could have a financial impact on their business publicity

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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The preferred option is Option 2. To introduce a charge for re-inspection. This option establishes the principle of businesses paying for services that benefit them and are part of the Brand Standard process for FHRs but are not essential to protect public safety. Re inspecting and rescore benefits the business by avoiding negative publicity and increases public confidence.
- 4.2 Charging will encourage businesses to achieve a 5 score and ‘get it right’ the first time. It also gives the businesses the opportunity to have the re-inspections within a much shorter time frame and possibly repeat the process should this be necessary.
- 4.3 Businesses are likely to consider whether they apply for a request for re-inspections, as they will ensure that any work required by the first inspection is completed before the officer returns. This should result in more efficient use of officer time and improved public safety.
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## 5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 No consultation has been carried out for the report.

### RECOMMENDATION FROM CABINET ADVISORY BOARD

5.2 The Communities Cabinet Advisory Board was consulted on this decision on 30 May 2018 and agreed the following recommendation:

That the recommendation set out in the report be supported.

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## 6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 Prior to charges being introduced the Tunbridge Wells Borough Council website will be updated with the information. Reports and letters used in the inspection process will also be changed to reflect the new procedure and fee charge. A press release will also be arranged with the Communications Team

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## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Legal</b> including Human Rights Act	Powers are available to local authorities in England under the Localism Act 2011 allowing for the recovery of costs of re-inspections/re-visits made at the request of a Food Business Operator to re-assess their food hygiene rating. It is for each authority to decide to use these powers and 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.	Keith Trowell Interim Team Leader (Corporate Governance)
<b>Finance</b> and other resources	No additional resource is required this is currently a service we have to provide as part of our delivery of the FHRS. Implementing the fee may result in net extra income of £3,200. This income is above amounts already accounted within the Council's financial planning.	Tracey Beattie Mid Kent Environmental Health Manager
<b>Staffing establishment</b>	No implications identified	Tracey Beattie Mid Kent Environmental Health Manager
<b>Risk management</b>	An assessment of the risk impact of the preferred option indicates a minimal impact on the MKEH Service and Tunbridge Wells BC. The process of re-inspection will occur	Tracey Beattie Mid Kent Environmental Health Manager

	in both options and introducing a charge will have minimal effect on service delivery, reputation, and legal risks. There is no impact on environment and financial risk is reduced. The likelihood of this impact is assessed as being rare	
<b>Data Protection</b>	Accepting the recommendations will not increase the volume of data held by the Council. The data will be held and processed in accordance with the data protection principles contained in Schedule 1 to the Data Protection Act 1998.	Keith Trowell Interim Team Leader (Corporate Governance)
<b>Environment and sustainability</b>	No Implications identified	Tracey Beattie Mid Kent Environmental Health Manager
<b>Community safety</b>	No implications identified	
<b>Health and Safety</b>	No implications identified	
<b>Health and wellbeing</b>	No implications identified	
<b>Equalities</b>	The ability to charge for re- inspection, should the proposal be agreed, will result in a change of process. Whilst this is likely to be seen as an advantage to businesses as they will no longer have to wait a mandatory three months for a re-inspection, it is essential this change in process is communicated well. Any barriers to communications should be considered from an equalities perspective in respect of the protected characteristics.	

## 8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- None

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## 9. BACKGROUND PAPERS

- None