

COMMUNITY POLICY DEVELOPMENT GROUP

19 MARCH 2019

ENVIRONMENTAL HEALTH FEES AND CHARGES

Cabinet Member: Cllrs Colin Slade and Margaret Squires
Responsible Officer: Simon Newcombe, Group Manager for Public Health & Regulatory Services

Reason for Report: To provide members with the revised fees and charges for statutory and discretionary functions within the Public Health & Regulatory Services Commercial Team.

RECOMMENDATION:

- (1) That Cabinet approve the revised fees and charges as set out in Annex 1.

Relationship to the Corporate Plan: Priority Area Community - Promoting physical activity, health and wellbeing. The statutory functions of the Commercial Team directly protect the health and wellbeing of residents, workers and visitors across Mid Devon.

Financial Implications: The revised fees and charges are set out in Annex1 of the report. The fees have been updated to reflect current service delivery costs.

Legal Implications: The Council cannot charge for the performance of its statutory duties unless permitted by legislation. It can, however, charge for discretionary services, provided such charges are made on a cost recovery basis i.e. that the charge levied reflects the overall cost to the Council in the delivery of the service. The cost can include overheads i.e. it is not simply an hourly rate based on the cost of employing the officer. Charges above cost recovery i.e. which result in a profit are not permissible – the Council would have to establish a trading company and that is not proposed in this report.

Risk Assessment: There are no major risks. A failure to update the relevant fees and charges could mean we are not able to adequately recover costs where we are able to do so.

Equality Impact Assessment: A full assessment is not necessary for this report. The charges are set and applicable to the service being provided and do not disadvantage any protected characteristics or specific groups.

1.0 Introduction

- 1.1 A review of fees and charges is necessary to offset or cover the costs incurred by this authority in carrying its duties.
- 1.2 As the pressure on Council budgets increases, service areas are having to re-examine the functions offered and, in addition to key statutory functions, provide discretionary functions in a way that does not present an undue cost

to the authority. An innovative approach has also been taken to off-set the cost through the commercialisation of some discretionary services, wherever possible and permissible.

- 1.3 A new cost of charging for missed appointments is introduced to reflect the corporate risk function now carried out by the Commercial Team on behalf of Building Services, in particular Council housing but can apply to corporate commercial property, though instances of missed appointments are much less common in the latter. This change mirrors the adopted recharges policy currently carried out by Building Services.

2.0 Changes to the fees and charges

- 2.1 A breakdown of the Council's current and proposed charges in respect of the environmental health functions is set out in Annex 1.

Private Water Supplies

- 2.2 The Commercial Team within Public Health and Regulatory Services carries out duties to ensure that private water supplies are safe and drinking water quality is acceptable to consumers under the Private Water Supplies (England) Regulations 2016. This includes the risk assessment of water supplies, the taking of and the analysis of water samples, and the investigation into the reasons why the results of some tests breach the regulatory standards.
- 2.3 On the basis of the number of tests and assessments carried out in previous years, the Council can expect to achieve an income in the region of £35,000 for 2019/20.
- 2.4 Local Authorities can make reasonable charges to cover the costs of carrying out the duties in relation to private water supplies, as set out in the Private Water Supplies (England) Regulations 2016.

Environmental Testing Services

- 2.5 In relation to the testing of swimming pool and hot tubs it is important that operators carry out bacteriological monitoring on a regular basis to ensure that the pool water is being adequately disinfected and that no person is being exposed to any harmful bacteria in the pool. Public Health offers the discretionary service of pool water sampling visits and provides advice given in the event of any failures.
- 2.6 The testing of water quality for legionella may, in future, be offered to third parties complementary to the corporate risk work currently being carried out and outside of the hours paid for by corporate risk client services (Corporate Property, Building Services and Leisure). As part of the employer's responsibilities to manage legionella this service would initially be offered to MDDC owned tenanted sites on a trial basis and include advice in the event of any unsatisfactory results. In the future, this work could be delivered to commercial/social housing clients or to other local government clients within or outside of the district.

- 2.7 The sampling of material suspected of containing asbestos may, in future, be offered to third parties. This would also be a complementary to the asbestos surveys currently being undertaken on Council owned housing stock by the team.
- 2.8 An ultraviolet light box and hand gel is available as a 'wash and glow' training solution to educate both children and adults in correct hand-washing techniques. A hire charge is introduced to cover the costs of hire although this may be waived where it forms part of an 'official control' or public health function.

Charges for Food Hygiene Rating Scheme Revisits

- 2.9 The Commercial Team participate in the delivery of the national Food Hygiene Rating Scheme where food businesses are rated between 0 (*urgent improvement necessary*) and 5 (*very good*). As a food business operator with a food hygiene rating of 4 or below there is a right to request a revisit from a food hygiene officer to re-rate the business providing action has been taken to improve any issues found during the original inspection.
- 2.10 A cost recovery fee for food hygiene rating scheme re-rating inspections is to be introduced. Legal advice received by the Food Standards Agency indicates that powers available to local authorities in England under the Localism Act 2011 allow for the recovery of costs for re-inspection requested by businesses to re-assess their food hygiene rating. This is because early re-rating assessment visits as set out below are a discretionary service rather than a statutory duty.
- 2.11 Currently a food business operator can only request one re-rating inspection between due periodic inspections, ranging from six months to three years. The re-rating inspection is carried out unannounced and is typically carried out between three to six months of the initial inspection. Under the fee paying scheme, all requested revisits will be carried out within three months of the fee being paid and there is no limit on the number of requests a business can make.
- 2.12 There is no prescribed fee for undertaking this work and Food Standards Agency guidance indicates local authorities must set a fee having regard to HM Treasury 'managing public money' and other relevant guidance. The fee set therefore covers the cost of delivery for re-rating inspections only.

Charges for Food Safety Advice to Businesses

- 2.13 The Commercial Team is responsible for carrying out inspections of all food businesses in Mid Devon and have a range of enforcement powers to ensure they meet the requirements of food hygiene law. The provision of advice to individual businesses is one such part of our successful strategy to change behaviour and increase compliance rates in food businesses.
- 2.14 The demand for professional food safety advice, particularly from new businesses, is threatened by the competing demands for resources as part of

our primary aim of regulating businesses for the protection of the public. While it is recognised that timely advice can have a greater impact on securing compliance over enforcement action there is now a point where the provision of advice goes over and above what is deemed statutory and places undue cost on the service at the expense of other functions.

- 2.15 Section 93 of the Local Government Act 2003 contains powers for all local authorities to levy charges for 'discretionary services' i.e. where the authority has a choice whether or not to undertake the service and the recipient has a choice whether or not to receive the service. A significant proportion of the food safety advice provided by the Commercial Team is discretionary. No fee is permitted to be charged for the inspection of food businesses which is carried out as part of the Council's statutory duties.
- 2.16 Businesses will continue to be given sufficient information or advice free of charge so that they are clear as to the legal obligations placed upon them. A pre-agreed charge on a cost recovery basis will however be introduced for certain aspects of the advisory work currently undertaken including:
- all advisory visits
 - where "considerable" assistance to start-up a new food business is required
 - where help is required to produce and implement a food safety management system
 - where tailored advice specific to the businesses needs is requested
 - requested visits, advice or guidance carried out in advance of a Food Hygiene Rating Scheme visit

Charging for other Food Related Activities

- 2.17 The Commercial Team issue food export certification where a food business wishes to commercially export food outside the European Union. Food export certificates are issued to satisfy the particular requirements of each importing country that may require a detailed inspection of the consignment and processing requirements or simple documentation that the premises are subject to inspection by the local authority.
- 2.18 In the event of a no-deal Brexit there will likely be an increase in the number of export certificates which local authorities need to issue to producers exporting to the European Union.
- 2.19 A food condemnation certificate may be issued where a food business has food that is no longer fit for purpose (for example freezer breakdown, out of date food, damaged stock). Environmental Health Officers will visit and certify the quantity of unfit food (often required for insurance purposes) and ensure that it is appropriately disposed of.
- 2.20 There is no legal obligation on the part of the local authority to issue health certificates or food condemnation certificates and therefore this remains a discretionary service.

Requests for Statements and Information

- 2.21 In certain circumstances, such as an accident investigation, a request can be made by a third party to provide a 'witness of fact statement'. Officers may produce a full report or they may provide all the information in the form of a statement whilst having due regard to any photographs, plans, calculations, analyses, measurements, survey reports or other similar documents. A charge will be levied on all such requests.
- 2.22 All food premises used for storing, selling, distributing or preparing food must register with the local authority as a food business establishment. Registration is free and enables environmental health to keep an up-to-date list of all premises operating in Mid Devon. The name and address of the food business and the nature of the food business will be held on the Public Register. A copy of the list or any entry on it may be provided to anyone who makes a request for such information under Article 31(1)(b) of Regulation 882/2004.

Charging for Missed Appointments

- 2.23 A newly assigned function of the Commercial Team is to carry out Legionella sampling and asbestos surveys on Council properties as part of the statutory corporate risk obligations for Building Services. Where a Tenant has had suitable notice and refused access for the Council to carry out this monitoring, the Council will recharge the Tenant for any costs incurred with the aborted visit and any subsequent attempts to gain access. This will include lost officer time, travel costs, administration fees, and legal/court costs where applicable.
- 2.24 If a Tenant is out or does not answer the door when we visit for a pre-arranged repair appointment, the Council will recharge the Tenant for any costs incurred with the aborted visit.
- 2.25 As regulators for private water supplies, where the owner or person responsible for the supply has had suitable notice and refused access for the Council to carry out its statutory duties, the Council will recharge the responsible person for any costs incurred with the aborted visit and any subsequent attempts to gain access. This will include lost officer time, travel costs, administration fees, and legal/court costs where applicable.

3.0 Summary

- 3.1 A review has been carried out of fees and charges and is necessary to offset or cover the costs incurred by this authority in carrying out its statutory duties under the Private Water Supplies (England) Regulations 2016 and for those discretionary services offered by the service as outlined above.
- 3.2 The 2019-20 fees and charges are set out in Annex 1. In order to compare fee structures, a range of local authority service charges are benchmarked from published information as detailed in Annex 2.

3.3 The charges for our discretionary services are on a cost recovery basis only in order to comply with legal limitations on charging.

Contact for more Information: Jeremy Pritchard, Team Leader (Commercial Team) on 01884 244614 or jpritchard@middevon.gov.uk or Simon Newcombe, Group Manager for Public Health and Regulatory Services 01884 244615 or snewcombe@middevon.gov.uk.

Circulation of the Report:

Cllrs Colin Slade and Margaret Squires, Cabinet Member for Community Well-being and Public Health respectively
Members of the Community PDG
Leadership Team
Financial Services
Legal Services
Group Manager for Performance, Governance and Data Security

Annex 1

Mid Devon District Council Public Health & Regulatory Services Commercial Team Charges 2019/20

| PRIVATE WATER SUPPLIES | | | |
|-------------------------------|--|--|--|
| Activity | Current charge | Proposed charge | Comments |
| Risk Assessment | £220 for up to 2 hrs + £40 hr thereafter | £200 for up to 2 hrs on-site + £40 hr thereafter | A risk assessment is required for all private water supplies except for single domestic dwellings |
| Risk Assessment Report | Included with above fee | £70 | Includes up to 2 hours write-up |
| Sampling visit | £80 | £100 | Sampling visit only, does not include analysis costs |
| Investigation | £100 | £50 | An investigation must be carried out to determine the cause of a failure including service of notice |
| Authorisation | £100 | £100 | Issued for a temporary basis whilst remedial work is carried out to improve the supply |

| FOOD SAFETY | | | |
|---|-----------------------|------------------------|---|
| Activity | Current charge | Proposed charge | Comments |
| Food Condemnation Certificate | £100 | £100 | Customer to arrange for removal of condemned food by approved contractor (includes first hour plus £40 per hour thereafter) |
| Food Export Certificate | £50 | £100 | Includes a site visit. Additional certificate(s) £30 each |
| Food Export Certificate | £23 each | £30 each | No site visit. Certificates sent through post |
| Training course in Food Safety in Catering | £15 per person | £15 per person | 2-hour food hygiene (refresher) training course |
| UV light box hire | - | £40 | (includes a minimum 1 x 200ml UV cream) |
| 1 hour regulatory business advice at our office | - | £53 | (£40 per hour thereafter) |
| 1 hour regulatory business advice site visit | - | £99 | (£40 per hour thereafter) |
| Safer Food Better Business pack | - | £30 | (an additional £4.95 for postage) |
| Food Hygiene Rating Scheme re-inspection charge | - | £155 | |

| ENVIRONMENTAL SAMPLING/TESTING | | | |
|--|-----------------------|---|--|
| Activity | Current charge | Proposed charge | Comments |
| Swimming pool and hot tubs sampling* | - | £140 | (Includes bacteriological analysis) Additional samples £50 each |
| Legionella sampling | - | £120 | Additional samples £40 each |
| Asbestos sampling | - | £150 | Additional samples £50 each |
| <i>*includes sampling for Leisure Services</i> | | | |
| REQUESTS FOR STATEMENTS/INFORMATION | | | |
| Issue of Factual Statement | - | £200 | Includes up to 4 hours work |
| Individual copy of Food Premises Registration form | £12 | £15 | Paper copy |
| Entire copy of Food Premises Registration Forms | £550 | £550 | Paper copy |
| | £110 | £110 | Electronic copy |
| PRIMARY AUTHORITY PARTNERSHIP | | | |
| Initial set-up fee | - | £550 | |
| 1 hour business advice at our office | - | £53 | (from £40 per hour thereafter) |
| 1 hour business advice site visit (within Mid Devon) | - | £99 | (from £40 per hour thereafter) |
| FIXED PENALTY NOTICES | | | |
| Smoking in a smoke free designated area or vehicle | £50 | £50 | Reduced to £30 if paid within 15 days of being issued |
| Failing to display smoke free signage | £200 | £200 | Reduced to £150 if paid within 15 days of issue |
| MISSED APPOINTMENTS | | | |
| Missed appointment | - | £15 | |
| Refused access | - | Officer time, travel costs, administration and court costs where applicable | |

Annex 2

Benchmarking Local Authority Charges

| PRIVATE WATER SUPPLY CHARGES | | | |
|-------------------------------------|---|---|--|
| Local authority | Activity | Charge | MDDC Charge |
| Cornwall Council | Sampling visit | £100 | £100 |
| | Risk Assessment | £317 (2 hrs + £52 per hr) & £126 report (1.5 hrs) | £200 (2 hrs + £40 hour & £70 report 2 hrs) |
| North Devon District Council | Sampling visit (programmed) | £100 (single request) | £100 |
| | Risk Assessment | £204 | £200 (2 hrs + £40 hour & £70 report 2 hrs) |
| | Investigation | £100 | £50 |
| | Authorisation | £100 | £100 |
| FOOD SAFETY CHARGES | | | |
| Cornwall Council | Food Condemnation Certificate | £84 (per hour) | £100 |
| | Food Export Certificates (site visit) | £122 | £100 |
| | Food Export Certificate (signing only) | £61 | £30 |
| | Food Hygiene Rating Scheme re-inspection charge | £175 | £155 |
| North Devon District Council | Food Condemnation Certificate | £50 (per hour) | £100 |
| | Food Export Certificates (site visit) | £50 | £50 |
| | Food Export Certificate (signing only) | £50 | £23 |
| Teignbridge District Council | Food Hygiene Rating Scheme re-inspection charge | £160 | £155 |
| OTHER CHARGES | | | |
| Cornwall Council | Issue of Factual Statement | £336 | £200 |
| | Primary Authority Partnership | £672 (set-up) and advice from £84 hr | £450 (set-up) and advice from £40 hr |
| | Regulatory business advice | From £84 | From £53 |
| Teignbridge District Council | Issue of Factual Statement | £150 | £200 |