

Committee: Joint Regulatory Committee

Date: 4 October 2016

Wards: All

Subject: Charging for Regulatory Services

Lead officer: Chris Lee, Director for Environment and Regeneration

Lead member: Cllr Ross Garrod, Cabinet Member for Street Cleanliness and Parking (LB Merton); Cllr Nick Draper, Cabinet Member for Community and Culture (LB Merton), Cllr Pamela Fleming, Strategic Cabinet Member for Environment, Business and Community (LB Richmond – Chair); Cllr Rita Palmer (LB Richmond)

Contact officer: Paul Foster, Head of the Regulatory Services Partnership

Recommendations:

A. Members to note and comment on the report.

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 To inform members of the potential income generating opportunities associated with chargeable regulatory business advice

2. EXECUTIVE SUMMARY

2.1 Local Government is facing an increasingly challenging financial situation with funding significantly cut in recent years. London in particular has been hit hard partly due to demographic pressures and the high cost of accommodation. Councils have already made substantial savings through efficiencies but the extent of the cuts now requires more fundamental shifts in how services are delivered and a much greater emphasis on income generation.

2.2 Changes introduced in the Localism Act 2011 such as the General Power of Competence have given councils greater powers but there are still substantial constraints on their ability to generate “profit”. Many local authorities are working in innovative ways to protect services to residents including setting up wholly owned companies and trading arms. Cultural shifts to more commercial methods are becoming increasingly common and strategies increasingly developed with an ideology of protecting services by cutting costs, promoting full cost recovery and changing behaviour within councils to be more focused on profit and quality of service delivery.

2.3 This report explores a range of potential charging options for the Regulatory Services Partnership together with an assessment of (a) how such initiatives might impact on the day to day business of the Partnership and (b) whether there is any risk to the achievement of suggested income targets.

3. DETAIL

- 3.1 Regulatory Services comprise Environmental Health¹, Trading Standards and Licensing functions. All of the services are statutory and performance is closely monitored by both internal and external agencies.
- 3.2 The Regulatory Services Partnership (RSP) between the London Boroughs of Merton and Richmond was established in August 2014 and since that time it has undergone two restructures saving approximately £500,000. The service generates approximately £800,000 in income, the vast majority of which comes from licensing.
- 3.3 However, a major barrier regarding the setting of fees and charges remains regulation. Many regulatory services fees and charges can only be charged on the basis of cost recovery, offering no scope for generating a profit. Westminster City Council recently faced a legal challenge against the fees it charged for licensing sex establishments. The Court of Appeal ruled that the fees must not exceed the costs of administering the licensing regime. This meant that the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees. Westminster City Council has appealed the decision but a final determination is still to be made.
- 3.4 Aside from licensing, the RSP does currently charge for a small number of permits and activities (see Appendix 1) but demand for these services is small and the total amount of income generated is relatively insignificant. However, there are a number of activities (see Appendix 2) currently provided by the RSP to local businesses free of charge, where it is considered that we provide a service well in excess of the statutory minimum and for which we may be able to charge a commercial rate. The Department for Business, Enterprise and Regulatory Reform estimates that small/medium enterprises spend approximately £1.4 billion annually seeking business advice with businesses reporting that they find regulations complex and desire support from local authorities to “cut through the red tape”. All of this points to an opportunity for regulators to support local businesses whilst bringing in much needed funding into the partnership.

4. POTENTIAL CHARGING OPPORTUNITIES

Licensing Pre-Application Service

- 4.1 Currently, applicants wishing to submit a premises licence application to sell alcohol or provide regulated entertainment have to submit a 20 page form to the local authority and also send copies to a number of “responsible authorities” (e.g. police, fire, planning, environmental health, trading standards). There are strict deadlines attached to the application and if these are not adhered to, the application can be delayed or refused. Owing to the complexity of the process, many applicants approach a solicitor or licensing agent to submit the application on their behalf but the cost can be very expensive and much more than the local authority would charge.

¹ The RSP excludes private sector housing

4.2 The LB Kensington & Chelsea² offer a chargeable pre-application advice service that is considered to be a model that the RSP could replicate. The fee (see Appendix 3) charged varies depending on the complexity of the application and ranges from £99 for 1 hours advice up to £1,245 for 21 hours advice for an event with a capacity of 5,000 people. The benefits to applicants of using such a service are seen as being:

- Advice and assistance with completing application forms;
- Advice on appropriate conditions taking into account the type and style of the operation intended at the premises, its location and in consultation with Environmental Health Officers;
- Advice on drawing up plans to accompany the application in accordance with the relevant regulations;
- Advice on nominating an appropriate designated premises supervisor;
- Assistance with completing the statutory notices and advertisements;
- On-site visit(s) to ensure plans are compliant with Regulations and the appropriate statutory notices are correctly on display; and
- Matters they may need to consider to assess possible noise transmission to neighbouring properties, dependent on the type of operation proposed for the premises.

Processing licence applications on behalf of other local authorities

4.3 A number of councils process licence applications on behalf of other local authorities. Sevenoaks Council processes licence applications in respect of Maidstone, Tonbridge & Malling and Tunbridge Wells. East Northamptonshire Council provides a licensing processing service on behalf of Corby, Daventry, Kettering, Wellingborough and South Northamptonshire councils. In each model, the host council acts as a central administration unit which charges client councils on the number of licence applications received and the time taken to process them. In the Sevenoaks model, enforcement is also carried out by the lead authority. As with all shared services the benefits are seen as being:

- Financial savings resulting from the economies of scale
- Enhanced customer service
- Greater resilience
- Flexible enforcement, using a larger pool of licensing officers
- Uniformity with all people working from the same procedures
- Consolidated invoicing

Business Advice

4.4 Whilst the RSP enforces relevant regulations across its remit, it could also offer a regulatory business advice service offering a single point of contact for bespoke business support. A number of local authorities³ are starting to provide chargeable business advice. The primary advantage to local businesses is that it makes it much quicker and easier for them to get expert regulatory advice

² <https://www.rbkc.gov.uk/licensing-information/applicants-and-businesses/licensing-pre-application-advice>

³ <http://www.publicprotectioncornwall.co.uk/services/business-advice/business-regulatory-support/>
<https://www.wigan.gov.uk/Business/Business-Support/Regulatory-advice-and-guidance/Business-regulatory-advice-and-guidance.aspx>

when they need it saving them time and money. The service generally includes free signposting as well as business support packages, charged at cost price. The service is suitable for all businesses whether they are pre-start, start-up or an established business.

4.5 Primary Authority agreements are another type of chargeable business advice service whereby a local authority provides assured advice not only for premises within its district but for all of the businesses' outlets across the UK. This simplifies regulatory processes and reduces the cost of compliance by providing businesses with a single point of access for regulatory matters. The advantages to businesses are seen as being:

- It saves them money by reducing their compliance costs.
- It reduces their risk.
- It improves standards.
- It results in fewer inspections, information requests and checks on businesses nationally.
- It helps businesses manage relationships with Local Authorities across the UK.

The RSP currently has a couple of Primary Authority agreements with a number of local businesses⁴ that provide assured Trading Standards advice but the concept can be extended to other service areas like food safety and health & safety at work. We currently charge each company approximately £1,000 per annum for a Primary Authority agreement.

Environmental Consultancy

4.6 The RSP's Pollution team can offer a range of chargeable environmental consultancy services to members of the public, businesses and property developers. These include:

- Construction logistics
- Contaminated land: assessments, reports, provision of information on commercial searches and property transactions.
- Air quality: air quality monitoring both indoor (occupational health and safety monitoring) and outdoor, modelling air pollution for developments and transport.
- Impact assessments of noise, odour, light and dust.
- Technical planning advice in relation to potentially contaminated land, air quality and acoustic assessment.

Proceeds of Crime Act

4.7 The RSP's Trading Standards service employs an accredited financial investigator who conducts Proceeds of Crime Act investigations on behalf of the RSP as well as other local authorities. In respect of the latter, the RSP gets 50% of any financial award made to that particular local authority. The amount of

⁴ Bradford Exchange, Plastico and Truecall

money obtained by the RSP will depend on the size and value of the assets owned by the criminal enterprise and confiscated by the Court. Once an award is made it is shared out amongst a number of parties including the police and the local authority. It is difficult to predict how much money will be received from any POCA investigation because it is subject amongst other things to the trial process, the defendant's plea and the disposal of criminal assets which can all take time.

Food Safety/Health & Safety

- 4.8 The RSP currently provides a half-day, basic food hygiene course for local businesses. The fee is £65 and we currently provide approximately 82 courses a year bringing in £5,315 per year. We also issue a handful of Food Export Certificates to businesses at £37 each. However, there is potential to charge for bespoke advice to improve the Food Hygiene Rating System score for a food business. We could also provide a specialist consultancy service to those food businesses seeking EU Approved Premises certification.
- 4.9 We could provide a chargeable water sampling and analysis service to commercial operators (e.g. health clubs) in respect of swimming pools and hot tubs. We could also provide water sampling and analysis of private drinking water supplies (e.g. springs, bore holes etc.)

Charging Rates

- 4.9 A number of local authorities charge for business advice and support services. Examples include Surrey County Council which offers businesses one hour of free business advice and thereafter charge an hourly rate for any additional enquiries. They also offer Primary Authority Partnerships on a cost recovery basis. The standard hourly rate charged by Surrey Trading Standards is £67 per hour. Milton Keynes Council Trading Standards provides a Business One Stop Service. Businesses are required to register for this service. The registration fee is £75, which covers registration and the first hour of advice. From then on, an hourly rate of £56.63 per hour is charged. West Yorkshire Trading Standards Service has adopted a policy for the provision of Primary Authority Partnerships. Under this policy businesses engaged in partnerships are charged a fee to recover West Yorkshire's costs in supporting the partnership. The business is also charged a start-up fee for the partnership which includes 15 hours of advice.
- 4.10 For the RSP, it is proposed that the hourly rate to be charged will be set annually through the normal approval of fees and charges. Initially it is proposed that a charge of £50 per hour is applied which will cover the cost of the officer's time spent on the enquiry. Any additional costs incurred will also be charged to the business. Examples of these costs include travelling costs or the purchase of specialist materials required to provide the information requested

Single Charging Mechanism

- 4.11 Since the formation of the RSP in August 2014 both Merton and Richmond have been responsible for their own income and fee setting processes. We have looked at the possibility of combining licensing fees and charges across the partnership but discovered that each authority had significantly different levels of overheads meaning that the legitimate costs of administering and enforcing licences would also differ. Until such time as we harmonise budgets and agree apportionment costs it will be difficult to arrive at a single, uniform fee structure.

Impact on existing RSP Business

- 4.12 The RSP is a very lean organisation and any proposed diversion of resources from core business priorities will, in the short-term, impact adversely on current performance. In the medium to long term however, it is envisaged that income from charging will enable the business advice function to become self-financing.
- 4.13 Care will need to be taken to avoid a potential conflict of interest from regulatory enforcement staff carrying out business advice. To overcome any potential challenge, it is suggested that the two roles are kept separate and officers provide one function or the other.

Risk to income targets

- 4.14 Setting the right fee and attracting the right level of income will depend on a number of factors including the adequacy of any market research i.e. whether the market for these advice services is buoyant, stable or stagnant. Given that this is a new business venture for the RSP, caution should be exercised in setting too high an income target in case the demand for our services isn't there or if it is, not at the level we anticipated. With this in mind it may be prudent not to set a budgeted income target until such time as the service has had time to bed-in say, for the first 12-18 months.
- 4.15 Creating new commercial ventures will necessitate staff having the right sort of commercial/business skills and competencies. At present, commercial/business management skills in the shared service are relatively weak as most of the managers come from a local authority professional/technical regulatory services background and it will be necessary to either develop these skills in-house or commission them from internal/external providers.

5. ALTERNATIVE OPTIONS

None for the purpose of this report.

6. CONSULTATION UNDERTAKEN OR PROPOSED

None for the purpose of this report.

7. TIMETABLE

None for the purpose of this report.

8. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 8.1 The RSP is a very lean organisation and any proposed diversion of resources from core business priorities will, in the short-term, impact adversely on current performance. In the medium to long term however, it is envisaged that income from charging will enable the business advice function to become self-financing.

9. LEGAL AND STATUTORY IMPLICATIONS

- 9.1 Changes introduced in the Localism Act 2011 such as the General Power of Competence have given councils greater powers but there are still substantial constraints on their ability to generate “profit”. One method of overcoming these constraints is for the local authority to set up wholly owned companies and trading arms.

10. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

None for the purposes of this report

11. CRIME AND DISORDER IMPLICATIONS

None for the purposes of this report

12. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

None for the purposes of this report

13. APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

Appendix 1 – Current Fees & Charges (excluding licensing)

Appendix 2 – List of suggested chargeable activities

Appendix 3 - LB Kensington & Chelsea – Licensing Pre-Application Service

14. BACKGROUND PAPERS

None for the purposes of this report

Appendix 1

Current fees and charges (excluding licensing)

Description	Fee (£)	Statutory/ Discretionary	Total Income (£)
Environmental Permit (Pollution)	166	Statutory	6,000
Food Safety Export Certificate	37	Discretionary	510
Weights & Measures Testing	60	Discretionary	1,641
Food Hygiene Training (Half-Day course)	65 (20 for a resit)	Discretionary	5,315

APPENDIX 2

List of suggested chargeable activities

1. Business advice and training

- Trading Standards (new business start-up advice and training, either face-to-face or on-line, e-commerce, Primary Authority)
- Food Safety (new business start-up advice, Food Hygiene Rating System, EU Approved Premises Certification, Primary Authority)

2. Pre - application advice for licensing applicants (see Appendix 3)

3. Licensing processing for other local authorities

4. Environmental consultancy (contaminated land, acoustic assessments, air quality) for developers

5. Proceeds of Crime Act investigations carried out on behalf of other local authorities

6. Internal charging mechanism for planning consultation. This could be an optional add-on to the existing fee schedule for the planning pre-application service provided by the Planning Department.

Appendix 3

LB Kensington & Chelsea – Licensing Pre-Application Service

Application Type	Service	Price (without VAT)	Price (with VAT)
Small	Up to one hour of advice regarding small licence applications, the effect of which would have a minimal environmental impact on neighbouring properties. We would deal with the licensing process, guidance on plans, possible conditions, etc.	£99	£118.80
Medium	Up to 2 hours advice for medium size applications including a site visit by an Environmental Health Officer and/or a Licensing Officer if required, a meeting and written report(s).	£154	£184.80
Large	Up to 4 hours advice for large applications including multiple (if necessary) site visits by an Environmental Health Officer, meetings with Environmental Health Officers and Licensing Officers and written report(s).	£262	£314.40
Extra large events - 5000 people or more	Category A - up to 7 hours advice for extra large public events includes the cost of specialist officers carrying out inspections, giving advice, providing written reports and the cost of a supervising officer monitoring any reports provided as	£415	£498

	part of this service		
Extra large events - 5000 people or more	Category B - up to 14 hours advice for extra large public events includes the cost of specialist officers carrying out inspections, giving advice, providing written reports and the cost of a supervising officer monitoring any reports provided as part of this service	£830	£996
Extra large events - 5000 people or more	Category C - up to 21 hours advice for extra large public events includes the cost of specialist officers carrying out inspections, giving advice, providing written reports and the cost of a supervising officer monitoring any reports provided as part of this service	£1,245	£1,494

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