

Local Authority Cost-Recovery, Initial Findings and Proposed Way Ahead

FSA 25/03/06 - Report by Nathan Barnhouse

1 Summary

1.1 In September 2024, the FSA Board requested that officials undertake exploratory work on the idea that local authorities might recover costs for the delivery of official controls from businesses. This paper seeks to inform the Board of our findings and to recommend next steps. It also proposes a set of guiding principles to steer the outcomes of this work.

1.2 This paper largely focuses on reporting the findings of our engagement to date, mainly with public protection teams in local authorities (LAs). We heard strong support from LAs in England and Wales to progress a cost recovery workstream, but a different position from the Chair of the Northern Ireland Food Managers Group. It will be equally important for us to engage with businesses and industry to understand their perspectives in the next steps.

1.3 The Board is asked to:

- Consider the findings of our initial engagement
- Consider and comment on the proposed next steps
- Provide input into, and endorse, the proposed guiding principles to steer this work

2 Introduction

2.1 In September 2024, the Board asked officials to undertake initial engagement with LAs to understand more around the opportunities and risks associated with charging for the delivery of official controls. The Board emphasised the need to take a sensitive and cautious approach due to the complexity of the issue.

2.2 We have carried out extensive engagement with LAs across England, Northern Ireland (NI) and Wales. This built on work undertaken prior to the COVID-19 pandemic. We also had early conversations with other regulators, Food Standards Scotland (FSS), the Ministry of Housing, Communities and Local Government (MHCLG), the Department for Environment, Food & Rural Affairs (Defra) and Welsh Government local government finance policy. They were all interested in keeping in touch as our work progresses. MHCLG had a live consultation on LA reform which will steer their future thinking.

2.3 At this point, we have not engaged with industry on this matter, since we started by establishing whether there is any desire for cost recovery within local authorities themselves. We would expect businesses to have views on any cost-recovery mechanism that may be implemented, and it will be important to gather and consider these views ahead of any decisions.

2.4 Below, we outline the findings of our engagement across the three nations we are responsible for and an update from Scotland. For illustrative purposes we outline some of the models that LAs discussed with us. We provide analysis of the current situation, before making recommendations for next steps and guiding principles for the work.

3 Findings from LAs

Appetite, drivers and opportunities

3.1 In England and Wales there was very strong support from LAs for a cost-recovery model that would allow food services to build their financial resilience. We heard clearly that there were various models that could be explored and that LAs would want to work in co-production with the FSA and with businesses to consider the various options in detail and understand the impact of these.

3.2 In Northern Ireland, we spoke to the Chair of the NI Food Managers' Group who discussed a different operating context with different pressures from those experienced by LAs in England and Wales. They indicated that there was no appetite to introduce cost-recovery in NI particularly in the absence of a legislative mechanism to do so. They indicated that the statutory nature of FHRS had largely protected food teams and their funding.

3.3 We heard from FSS that they are investigating the potential to centrally recover and administer annual business registration fees from food businesses across Scotland to reinvest in food law enforcement to support a sustainable function and enable an investment approach that supports both industry and regulators.

3.4 LAs in England and Wales told us that LA budget setting is an increasingly competitive environment, due to the wide range of demands on their services. Food teams are concerned about the impact this has already had and are concerned that they will see their budgets continue to reduce, which will impact on their ability to deliver their service. In England, food teams specifically outlined how LA services that can recover costs or generate income are protected in the budget setting process, to a degree, by their ability to self-sustain.

3.5 In England, LAs also told us that workforce sustainability was a key issue for them. We were told that sustainable funding would help to improve resilience by allowing long-term workforce development and planning. We were provided with examples where, despite progress in recruiting and training apprentices, budget uncertainty made it difficult to plan to offer employment once training had been completed. We were also told that sustainable funding was only one part of the picture, and that in order to address workforce challenges, consideration needed to be given to more flexible routes into the profession and attracting more people into food safety roles.

3.6 In England and Wales, we heard repeatedly that LA food teams saw their role as one that primarily protects public health, but which simultaneously helps responsible businesses in their local economy to thrive and grow. We heard that regulatory services are at the heart of an LA's approach to economic growth.

3.7 With the right resource levels, LA food teams were better able to build a regulatory relationship that reduced compliance issues later. We heard multiple anecdotes where LA teams had saved businesses significant amounts of money through early advice and guidance. This

underlines the need to engage further with businesses as we progress this work.

3.8 In England, where food service budgets were under pressure, LAs had to reduce advisory services and prioritise official controls at higher risk businesses. This is contributing both to backlogs of newly registered businesses 'awaiting inspection' and to the backlogs in interventions at lower-risk businesses. The combination of these two things increases unknown risk in the system.

3.9 LAs identified an interdependency between cost-recovery and registration. They outlined to us that any system of cost-recovery would require a process of registration that made it very clear who was legally accountable for payment. LAs told us that pursuing a cost-recovery model that was specifically tied to a process of registration would likely assist in dealing with issues caused by current registration processes which create unnecessary pressure on their services.

3.10 These issues range from businesses that register but never begin to trade, to those who re-register under the name of a new food business operator to avoid a low FHRs score and reinspection fee, to those who register businesses under multiple trading names for different purposes. It was considered that introducing a fee at the point of registration would act as a deterrent for these behaviours.

3.11 It was apparent that any future work on cost-recovery will require registration to be considered as an interdependency.

Potential models for cost-recovery

3.12 LAs and other regulators discussed different models for recovering costs. It was noted in all cases that these models would need to be tailored specifically for food. Detailed options appraisal is required to understand the advantages, disadvantages and impacts of each. The models discussed included:

- A fee for intervention model - calculated on the basis of the actual costs of each individual official control activity and applied to all businesses. This could mean fees are based on the Food Law Code of Practice intervention frequency and therefore linked to the degree of risk that business presents, and potentially scalable to their size. This could be similar to how the FSA charges for official controls in meat establishments, or the provisions in Wales for LAs to charge for FHRs re-inspections.
- A fee for registration model - charging a flat fee or set of flat fees at the point when a food business registers that is based on the size and scale of the business and which covers the cost of delivery of official controls over a set time frame which is determined by inherent risk and compliance levels.
- A permit to trade/ licensing approach - charging a fee at the point of registration subject to a business meeting licensing criteria. The LA would issue a 'permit to trade.' The business would need to be able to demonstrate ongoing compliance with the terms of the license to continue trading. Various examples of licensing schemes were shared with us for illustrative purposes. Stakeholders noted that any licensing scheme would need to be developed for the appropriate context. Please see annex 2 for further detail.
- A fee for fault model - similar to the Health and Safety Executive. Non-compliant businesses are charged for the time and expertise it takes to address non-compliance with the law or where they are at fault. This model would mean that only businesses who were

non-compliant or 'at fault' would be charged.

3.13 Amongst LAs in England, there is strong support for a mechanism that allows for cost-recovery, with preferences to include a fee for registration or extension to a licensing model.

3.14 In Wales there is a strong preference for a fee linked to registration. We heard a preference for a scheme similar to the Butcher's Shop License, which ceased in 2006 due to EU regulations for food hygiene being introduced.

3.15 In England, there were mixed perspectives on a 'fee for fault' model. It was widely recognised that a fee for fault model could not work as a 'standalone' mechanism for charging; some representatives we spoke to could see value in this model operating alongside a model tied to registration. Others entirely opposed a fee for fault model fearing that it would not reap the intended benefits and had the potential to drive unintended consequences. LAs in Wales opposed a 'fee for fault' model.

3.16 LAs communicated that a fee for fault model was unlikely to secure funding certainty for food services, both because services would be unable to predict their income in advance and because struggling businesses may not be able to pay. They told us that where businesses are deliberately flouting the law, they were unlikely to be concerned with paying charges even if they were found to be 'at fault.' On the other hand, there were ethical concerns with LAs issuing charges on businesses who are genuinely trying to do the right thing but are struggling. There were also concerns that a 'fee for fault' model might lead businesses to perceive that regulatory activity was more about income generation than protecting public health.

Features of a cost-recovery model

3.17 There were mixed views about how or whether thresholds for cost-recovery should be set. Some LAs were in favour of a national framework that was tailored to the size and scale of businesses or was clustered to the demographics across regions, while other LAs felt that they should have the power to set fees locally based on their costs. In all instances, there was recognition that LAs would have to explain their cost-recovery if required.

3.18 We heard that calculating the potential costs to businesses is highly dependent on the cost-recovery model used. Some LAs with experience of charging for regulatory support services indicated that any charge, when linked to intervention activity, was not a significant additional burden on viable businesses when compared to other costs and was broadly similar to what businesses were prepared to pay for non-statutory advisory services or re-inspections.

3.19 Generally, most LAs already had infrastructure in place to recover costs. Some LAs were concerned that it could take some up-front investment and changes in ways of working to set up systems to recover costs that link into their finance departments.

Wider feedback

3.20 LAs report that sustainable funding is only one part of a system that needs additional reform. LAs generally saw that workforce resilience, registration and cost-recovery needed to be considered as a package of work rather than as isolated workstreams. They asked us to consider integrating workstreams that would give them the right toolkit to improve compliance, particularly relating to improved use of enforcement powers and a broader scope to use Fixed Penalty Notices (FPNs) to deliver a system wide reform that would improve their regulatory functions. FHRS continues to receive widespread support, with calls to make this mandatory in England – it is viewed very positively by LAs.

3.21 LAs who had experience of charging for other regulatory or discretionary services acknowledged that implementing a cost-recovery model requires a culture shift amongst officers who are used to delivering their services free of charge. This takes time to achieve but was ultimately seen as positive for the individuals involved in terms of recognising their professional expertise.

4 Legal Basis for Cost-Recovery

4.1 LAs in England and Wales are currently unable to recover costs for most official food and feed controls and other official activities under the assimilated Official Control Regulation 2017/625. Separate legislation applies in Northern Ireland.

4.2 There are some complexities to the legal position. During our initial exploratory work, we have identified a potential opportunity to enable some form of cost-recovery for delivery of official controls within the assimilated regulation, however this is a complex area and requires further discussion with relevant government departments to understand what is possible. Failing that, any proposals for cost recovery would require legislation in some form. Depending on the option chosen, it may be possible to use existing powers as well as those in the Retained EU Law (Revocation and Reform) Act 2023 to make necessary amendments before these powers expire in June 2026. Some options would involve more substantial reform to the current system than others; for example, a move to a licensing model would likely involve much more complex reform than simply introducing the ability to charge for registration.

4.3 As we develop options further, we will continue to explore the statutory position and identify any changes needed. Of course, any legislative change would ultimately be a decision for ministers.

5 Conclusion

5.1 We have heard from our engagement that enabling cost-recovery would support LAs to build their resilience and sustainability, in a way that protects public health and supports business growth. We believe that this is an idea worth developing further, through engagement with wider stakeholders (particularly businesses) and working up options for the Board to consider. These options will need to take account for potential divergence in Northern Ireland. We anticipate, based on our engagement, that we are likely to rule out a 'fee for fault' model.

5.2 Over the last couple of years, we have discussed with the Board some of the possible building blocks for the future regulatory system, and in [December last year](#), we proposed to the Board that we hold a series of discussions with representations of consumers and businesses as well as the regulatory community across the UK to explore the system-wide challenges that require attention and to discuss potential solutions. We said that this could cover areas like the registration process, cost recovery, enforcement tools and mandatory display of FHRS, as well as national level regulation. The engagement with local authorities described in this paper is an early part of that process, and we think it gives us a good base to build on. As the feedback above demonstrates, there are many interdependencies between the different areas for potential reform.

6 Next Steps

6.1 We recommend that the Board agree to prioritise and progress work on cost-recovery. Immediate next steps would involve:

- Considering cost-recovery in the context of work on the future building blocks for regulatory system change
- Identifying interdependencies and reprioritising existing work to deliver the cost-recovery work
- Engaging with a wider group of stakeholders, specifically businesses, to understand their views
- Discussing the legislative position in more detail with other government departments (OGDs) to understand what is achievable.
- Returning to the Board for a further steer when we have undertaken further engagement and developed options in consultation with stakeholders and in consideration of any impacts on Northern Ireland if divergence is necessary

6.2 If the Board agrees with these next steps, we propose that it is taken forward with the following guiding principles:

- Work will be co-produced and consulted on with relevant stakeholders taking into account organisational capacity
- Decisions made around cost-recovery should be driven primarily by consideration of consumer safety, in keeping with the FSA's role as a safety regulator
- Any solution should consider proportionality of costs, particularly for small and micro businesses and must give due consideration to the government's economic growth mission
- Any solution should support LAs to tackle their workforce and financial sustainability issues
- Any solution must be operationally practical for LAs and the FSA and be consistent with regulatory responsibilities
- Any solution should not have a detrimental impact on the Food Hygiene Rating Scheme (FHRS)

6.3 The Board is asked to:

- Consider the findings of our initial engagement
- Consider and comment on the proposed next steps

- Provide input into the proposed guiding principles to steer this work

Annex 1: List of stakeholders engaged

Consulted:?

Association of Chief Environmental Health Officers?

Association of Chief Trading Standards Officers?

Buckinghamshire and Surrey Trading Standards Service?

Cornwall Council?

Directors of Public Protection Wales?

Greater Manchester Business Compliance Hub?

Local Authority Reference Panel (Heads of Service)?

National Food Hygiene Focus Group?

National Food Standards Focus Group (LA representatives)?

Northern Ireland Food Managers Group?(Chair)

South Kesteven District Council?

London Borough of Waltham Forest?

Informed for early visibility of work:

Chartered Institute of Environmental Health?

Chartered Institute of Trading Standards?

Department for Business and Trade?

Ministry of Housing, Communities and Local Government

Food Standards Scotland?

Health & Safety Executive?

Local Government Association?

Welsh Government Local Government Finance Policy

Annex 2: Non-exhaustive list of licensing schemes shared with us as examples of where cost-recovery is associated with licensing

[Dog Kennel Boarding licensing](#)

[Cat Boarding licensing](#)

Alcohol [licensing](#)

[Driver licences for taxis and private hire vehicles](#)

[Licensing for acupuncture, body piercing, electrolysis and tattooing \(Wales\)](#)