

Title of meeting:	Environment and Community Safety Portfolio Decision Meeting
Date of meeting:	13 th July 2017
Subject:	Food Safety Operating Plan 2017 / 2018
Report by:	Director of Culture and City Development
Wards affected:	All
Key decision:	No
Full Council decision:	No

1 Purpose of report

1.1 The purpose of this report is to:

- update the Cabinet Member for Environment and Community Safety on the current level of food business hygiene compliance in Portsmouth
- define the scope of the Food Safety Service and demands made on it
- provide an analysis of service delivery in 2016 / 2017
- summarise the key service activities identified for 2017 / 2018

2 Recommendations

2.1 That the Cabinet Member for Environment and Community Safety:

- a) approves the continuation of a risk-based approach to the statutory and regulatory inspection and enforcement of food business operators and acknowledges the increased demands upon available resource**
- b) acknowledges the key performance areas of the food safety team, the levels of service provided in 2016 / 2017 and the levels of resource available**
- c) approves, in its entirety, the 2017 / 2018 Food Operating Plan attached as Appendix 1**

3 Reasons for recommendations

3.1 To protect public health and contribute to a healthy community in Portsmouth by ensuring the safety, wholesomeness and quality of food through education and appropriate intervention.

4 Background

4.1 The Business Support Team (BST) has statutory responsibilities to enforce the relevant statutory provisions and provide advice and education in order that duty

holders are able to achieve and maintain a good standard of food hygiene throughout the 2000 or so premises in the City.

- 4.2 The food safety activities extend far beyond inspection of food premises, including responsibilities for:
- food standards (e.g. food allergens and labelling)
 - food sampling (microbiological and compositional)
 - complaint investigation and food alert responses
 - certification of exported and imported food
 - issuing approvals to high risk businesses
 - contributing to controlling the spread of infectious disease by carrying out investigative work on outbreaks and individual cases
 - responding to food related aspects of civil emergencies
- 4.3 Food businesses are inspected by means of a risk-based program. The frequency of inspection is prescribed by the statutory Food Law Code of Practice (FLCofP / the Code).
- 4.4 The FLCofP gives statutory guidance to which we must have regard when engaged in the enforcement of food law. We must follow and implement the relevant provisions of the Code. The Food Standards Agency (FSA) published a revised FLCofP for England on 30 March 2017, which came into force on that date.
- 4.5 The changes to the Code published in March 2017 included:
- facilitating consistent interpretation and approach by local authority officers delivering official controls, specifically in relation to risk scoring, by updating advice and clarifying the risk descriptors used in the food establishment intervention rating schemes
 - providing additional guidance on the communication of food incidents and hazards, and addressing food criminality
 - further clarifying qualification and competency requirements of local authority officers since the implementation of the previous Code revision in April 2016
- 4.6 Since 2011 the BST has implemented the national 'Food Hygiene Rating Scheme' (FHRS) which is run in partnership with the FSA.
- 4.7 The FHRS is intended to offer guidance to consumers in choosing where to eat out or shop for food by giving them an enhanced level of information about the hygiene standards in restaurants, cafés, takeaways, hotels and food shops. The FHRS is also intended to actively encourage businesses to improve their hygiene standards.
- 4.8 Under the FHRS, officers from the BST inspect food businesses to ensure that they meet the requirements of food hygiene law. Subsequently these officers risk rate the hygiene standards found at the time of inspection. At the bottom of the scale is '0' which means the standards require urgent improvement. At the top of the scale is '5' which means the hygiene standards are very good.

4.9 The following elements of the 'food hygiene intervention rating scheme' are relevant to calculating the food hygiene rating:

- level of (current) compliance with food hygiene and safety procedures (including food handling practices and procedures, and temperature control)
- level of (current) compliance with structural requirements (including cleanliness, layout, condition of structure, lighting, ventilation, facilities etc.) and
- confidence in management/control procedures

5 How do inspections work?

5.1 One of the key requirements of the law is that the FBO must be able to show that they make or sell food that is safe to eat and have this demonstrated by written food safety management procedures.

5.2 A FBO must put in place food safety management procedures based on the principles of the HACCP system (hazard analysis and critical control point) and also keep up-to-date documents and records relating their procedures. The regulations are designed to be flexible, so these procedures can be in proportion to the size of the business and the type of food produced / prepared. This means that many small businesses will have very simple procedures and records.

5.3 HACCP is a way of managing food safety. It is based on putting in place procedures to control hazards. It involves looking closely at what the operators do in their business and what could go wrong. It identifies the 'critical control points' - these are the places the business needs to focus on to prevent hazards or reduce them to an acceptable level. The business must decide what action needs to be taken if something goes wrong and keep appropriate records to show that procedures are working.

5.4 The areas HACCP focuses on are:

- the premises as a whole (all areas including out buildings / stores and mobile premises etc.)
- equipment the business uses
- management of food waste
- water supplies (hot and cold)
- personal hygiene of staff
- the food itself (cooking practices, temperature controls, defrosting procedures, wrapping and packing, and cross contamination controls)
- staff training
- pest control

6 FBO compliance with food law

6.1 In line with previous years, in 2016 / 2017 the overall level of food hygiene compliance was high. However, there were a number of businesses which failed to comply with food law requirements. The reasons for this remain similar to our previous experiences and include the following:

- consider it to be more profitable not to comply than to do so
- comply because it is seen as the 'right thing to do' or because the regulations fit with their own reading of the law
- not necessarily see that there is anything wrong in the way that they operate despite the fact that they are not complying with the law
- misunderstand their legal duties or resort to opportunistic conduct and react negatively to control where the regulations are perceived as illogical or wrong
- experience particular difficulties complying with legal obligations as a result of insufficient resources (financial or technical) to understand what the law requires of them
- equate compliance only to what they are told during an inspection
- be ignorant of the risks associated with their activities
- not understand that poor standards and enforcement impacts upon a business's reputation

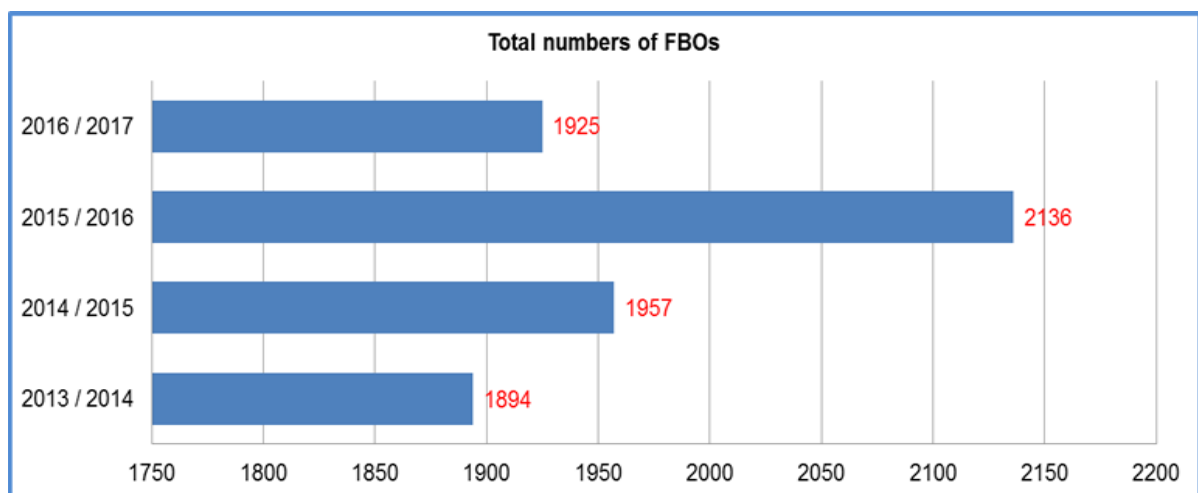
- 6.2 The BST is integral in food safety regulation. Our approach does not take enforcement of the law to simply refer to legal action; it permits a wide array of informal enforcement techniques such as education, advice, explanation, persuasion and negotiation.
- 6.3 Securing food which is safe to eat is our main objective, both through the remedy of existing problems and the prevention of others. Our preferred methods to achieve these ends are co-operative and conciliatory.
- 6.4 Where compliance is poor and there is good reason for it being so, persuasion, negotiation and education are the primary enforcement methods. Accordingly, compliance is not necessarily regarded as being immediately achievable; rather it may be seen as a long-term aim.
- 6.5 The use of formal legal methods, especially prosecution, is regarded as a last resort, only to be taken when all else fails to secure compliance.
- 6.6 The BST enforcement style is focused around our relationship with FBOs. Through offering support and advice we are attempting to be integrated with the business community. Our officers endeavour to be familiar with those they regulate, as we hope that in so doing we will be better able to assist and advise rather than regulate. Rapport building is however time consuming and requires suitable resources to be available.
- 6.7 Food safety regulation, like all other risk regulation, is subject to a variety of tensions and contradictions which are not unique to this domain, but which may be exacerbated by the nature of the retail and hospitality sectors and by some features of the legal and institutional arrangements for food safety. The inspections of FBOs are considered to be a priority in terms of public confidence in the local authority, the reputational standing of the authority and in terms of public health benefit.
- 6.8 A survey published by the FSA in April 2017 demonstrated that when shown a list of factors which might influence the public's decision on where to eat out, 72% of respondents reported that the cleanliness and hygiene of the establishment was

important to them; overall a third (30%) of respondents who ate out considered this the most important factor.

7 Analysis of service delivery

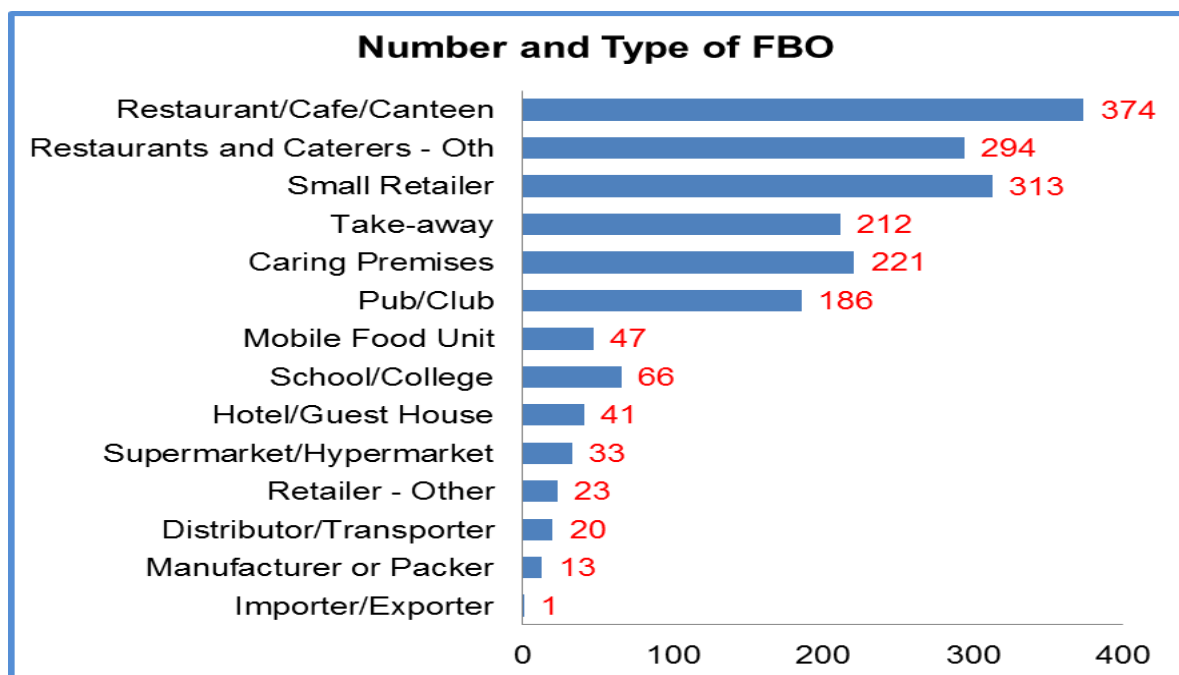
7.1 The number of FBOs registered with the BST since 2012 / 2013 is depicted within **figure 1**.

Figure 1



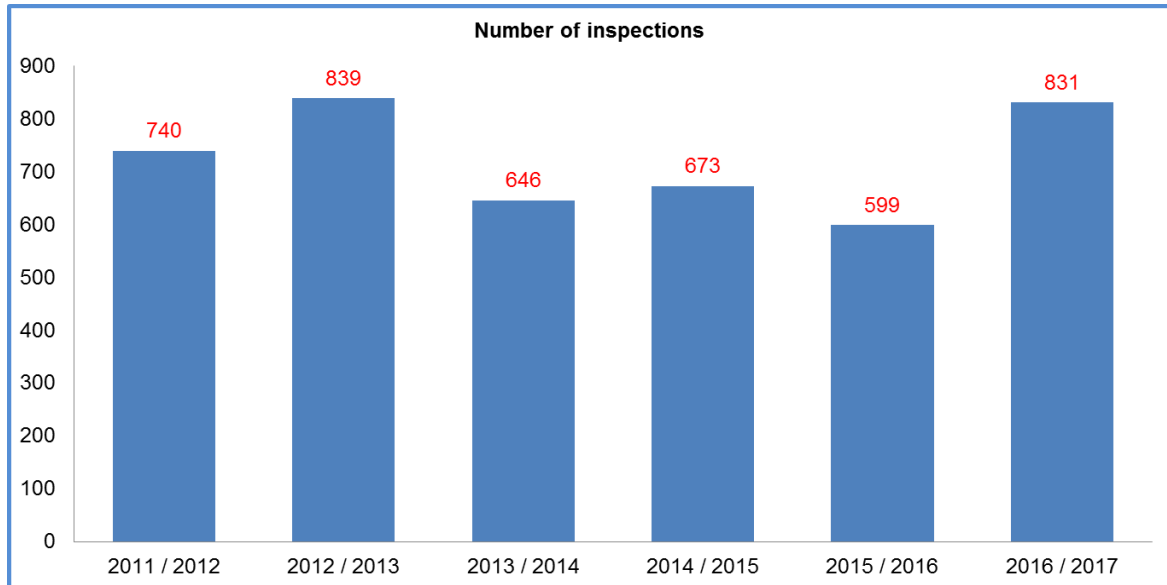
7.2 The number and type of FBOs in 2016 / 2017 are depicted in **figure 2**. Of these, 81 premises are awaiting inspection / rating.

Figure 2



7.3 The total number of inspections carried out in the last six years is shown in **figure 3**. The numbers of inspections carried out in 2016 / 2017 was the second highest over this period, being 38.73% higher than in 2015 / 2016.

Figure 3

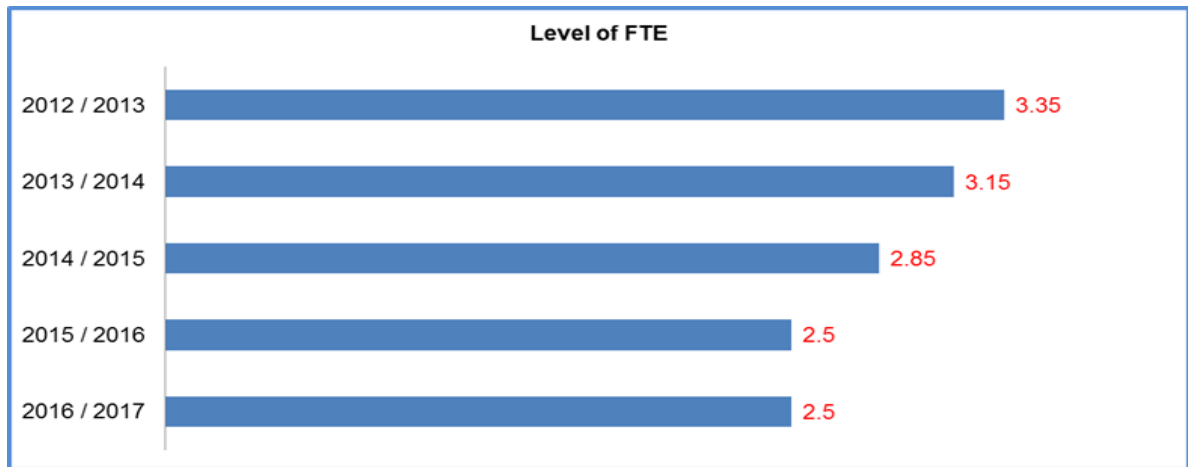


7.4 It is worth noting that estimates made following an audit of our processes by the FSA in 2013 suggested that an inspection rate of 600 per annum could be achieved with the level of resource available at that time, which stood at 3.35 FTE. This equated to approximately 180 inspections being carried out by each officer each year.

7.5 Since 2013 the FTE posts engaged in this specific inspection activity has fallen, but remained steady over the period 2015 / 2017 at 2.5 FTE. Whilst it is difficult to precisely explain, the improvement in inspection rates is highly likely to be reflected by the manner in which the inspection regime has been managed and implemented by the Food Lead (FL). This role was formally created during the amalgamation of the BST into Regulatory Services in October 2016. The FL has been instrumental in delivering changes to allocation and investigation monitoring protocols from April 2016.

7.6 The levels of staff resource available to inspect food businesses since 2012 / 2013 are demonstrated in **figure 4**. The reduction equates to a 25% decrease in staff in this area over this period.

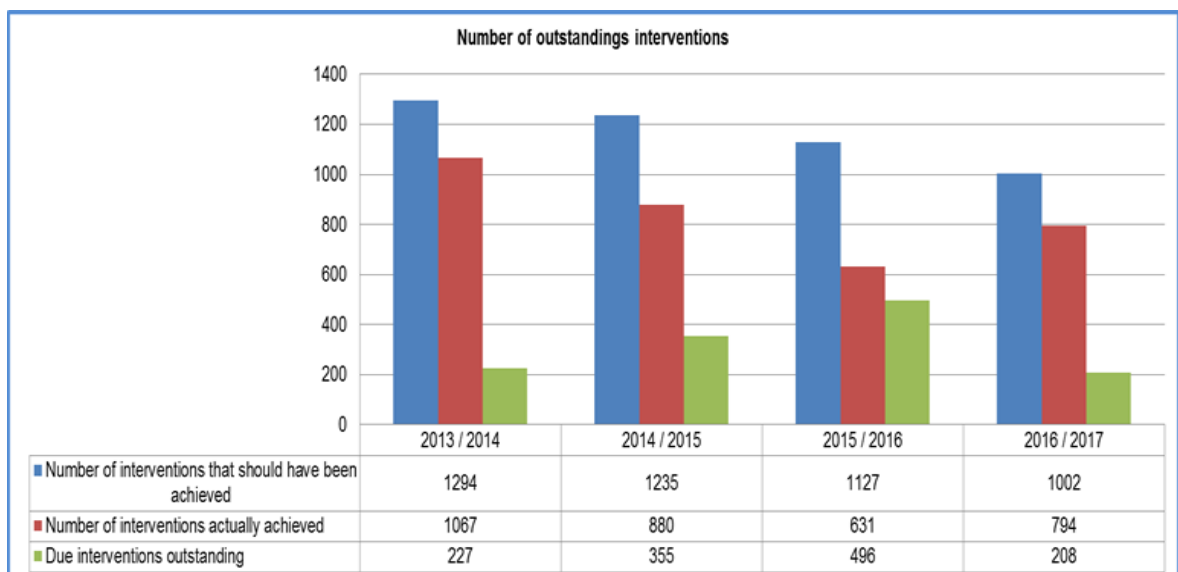
Figure 4



7.8 In 2016 / 2017 the level of staffing resource available for inspections would, with reference to the 2013 FSA criteria, equate to approximately 240 inspections being undertaken by each officer. The 320 inspection actually achieved therefore remains higher than that envisaged by the FSA with the level of resource available and a reflection of the dedication of existing staff and the competence and success of the FL.

7.9 The increased level of inspection has however resulted in a continued non-compliance with the FLCofP. Intervention performance is shown within **figure 5**. Restrictions on staff resources has meant that the service has been unable to deliver interventions at the frequencies prescribed in the FLCofP.

Figure 5

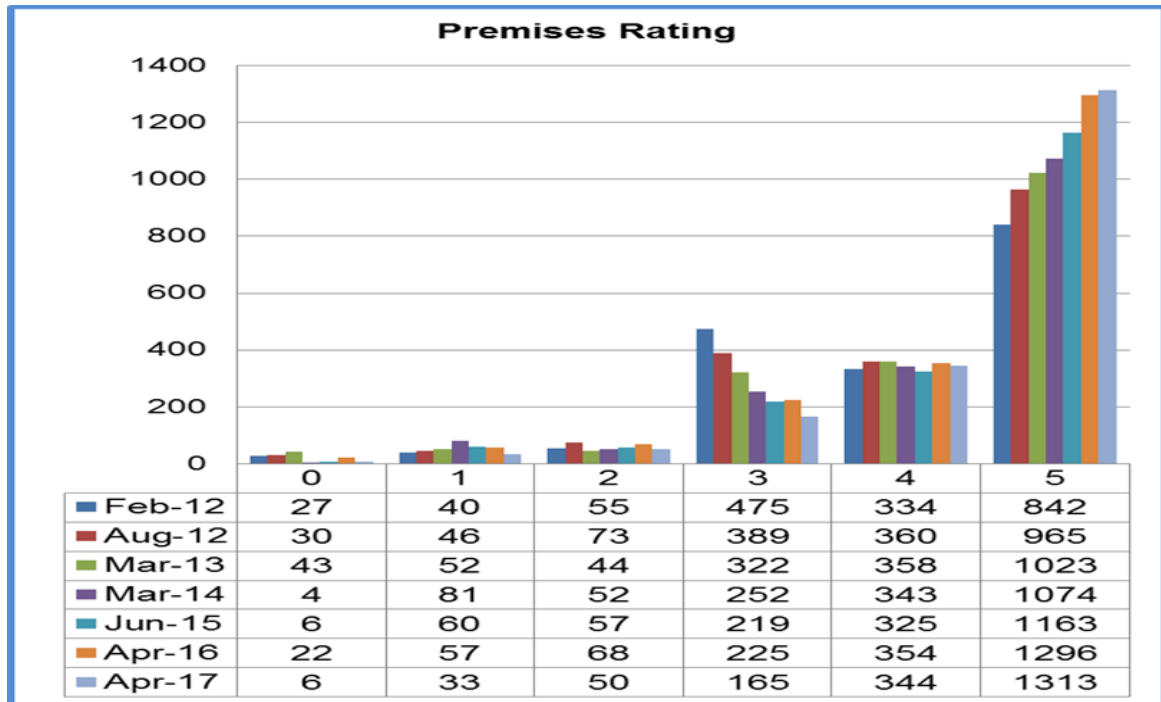


7.10 Although intervention compliance has been a concern in previous years particularly in the beginning of 2016 / 2017, and despite the rate of inspection being the best in 2016 / 2017 for 4 years, the level of compliance last year remains an area to which additional permanent resources should be provided.

- 7.11 Despite the number of businesses increasing it is interesting to note that the number of inspections required to be undertaken has reduced. This is primarily as a result of the improved rating of premises in that the higher the rating the less frequent the inspection requirements. Each time a business is inspected a new rating is provided with the level of improvement or decline in hygiene standards dictating the new rating score. The frequency of inspection is determined by the risk to people's health: the greater the risks to health, the more frequent the inspection.
- 7.12 In 2014 / 2015, 880 interventions, which equates to 71%, were delivered on time. This was a reduction of 11% on the 2013 / 2014 figure. In 2015 / 2016 this had fallen to 44% of inspections being delivered within the specified criteria set out within the FLCofP. This equates to a reduction of 27% in intervention performance since 2013 / 2014. In 2016 / 2017, 794 of 1002 inspections were delivered on time, which equates to nearly 80% of inspection being delivered on time and a 9% improvement on the previous best year in 2014 / 2015.
- 7.13 For clarity, interventions include: inspections, monitoring, surveillance, verification, audit, and sampling where the analysis / examination is to be carried out by an Official Laboratory.
- 7.14 The problems in keeping pace with the levels of intervention as required by the FLCofP are a direct reflection of resources available to the BST. Officers are regularly assigned to other services areas as priorities dictate. As reported last year, most obvious examples continue to be our enforcement activities, compliance with other areas of the FLCofP and our food sampling requirements. Statutory functions that the team has to deliver, in relation to animal welfare, infectious disease control, port health and health and safety have however undoubtedly contributed to the backlog in visits.
- 7.15 Despite maintaining nearly 40% of all available resource (2.5 FTE of 6.5 FTE) and improving internal procedures, the food inspection function is not meeting its targets for inspection compliance. It was hoped that this resource would increase from the resultant return of a qualified officer from maternity levels however this situation will recur in 2016 / 2017.
- 7.16 The staffing resource is likely to temporarily improve in the second half of 2016 / 2017 as an additional officer has been recruited to work alongside our Port Health Officer prior to the existing officers' retirement. Part of this officer's role will be to carry out food interventions.
- 7.17 The numbers of premises rated '0', '1', '2', '3', '4', or '5' as of February and August 2012, March 2013, March 2014, June 2015, April 2016 and May 2017 are highlighted in **figure 6**.
- 7.18 Although the number of interventions has gone down (because of the general improvement in the ratings), those that have been carried out have been targeted towards those of higher risk (A, B and non-compliant Cs) which are inevitably more time-consuming in terms of the inspections themselves and also in the follow up actions necessary to deal with poor performance and non-compliance.

7.19 The decline in intervention rates has also been caused by the increase in enforcement action against a significant number of businesses with poor hygiene histories which have not responded to our informal approaches. The time necessary to prepare a prosecution case and present the matter in court is extremely resource-intensive.

Figure 6



7.20 **Figure 6** demonstrates that the number of premises achieving the highest '5' rating is continuing to improve. Additionally, the number of premises within the lowest ratings '0', '1' and '2' remains low and static.

7.21 As the rating of each of the inspected premises may have changed (positively or negatively) following inspection, it is difficult to provide direct comparisons with the level of improvement or decline in the quality of food being offered by the businesses in the city (i.e. it's not possible to say that the reduction in '3' rated premises directly reflects the increase in '5' rated premises), but it is clear that the general standard of premises is continuing to improve.

7.22 The number of 5 rated premises is 56% higher now than it was in February 2012. 69% of all registered premises are currently rated '5', an increase of 8% on April 2016.

7.23 All current food business ratings are reported on the FSA's website, which is freely available to the public and businesses alike. No indication of the previous performance is necessary within the scheme. Businesses rated '0', '1' or '2' are given priority for action to secure improvement in hygiene standards. Irrespective of the original rating, if during inspection hygiene standards are very poor, or there is an imminent risk to health, appropriate enforcement action is taken to make sure that consumers are protected. This can include the proprietor agreeing to voluntarily close the premises with our advice.

- 7.24 All FBOs are given feedback following an inspection. Officers will provide improvement advice and explain how any problems identified can be avoided and rectified. Where improvements are required, inspectors will issue a comprehensive written report clearly explaining precisely what is required to comply with the law. Where problems are acute or persistent, appropriate enforcement action is taken.
- 7.25 The number of broadly compliant premises (those premises rated '3', '4' or '5') has remained relatively static. In 2016 / 2017 the percentage of broadly compliant premises from the total number of rated premises was 95%.
- 7.26 The number of enforcement actions taken during the last seven years is recorded in **table 1**.

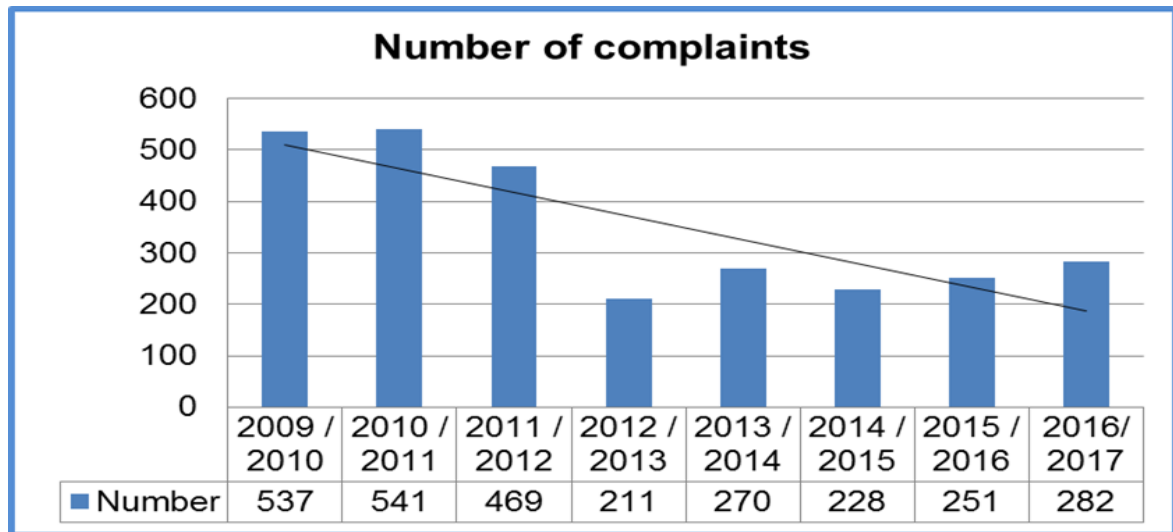
Table 1

	Improvement Notices	Closure	Prosecution
2009 / 2010	4	1	0
2010 / 2011	3	1	0
2011 / 2012	12	2	0
2012 / 2013	47	8	2
2013 / 2014	60	5	5
2014 / 2015	26	8	4
2015 / 2016	14	13	10
2016 / 2017	15	6	10

- 7.27 Immediately after the introduction of a revised risk-based inspection programme in 2012, the number of Improvement Notices served upon premises requiring a prompt and timetabled improvement in standards increased dramatically.
- 7.28 The number of Improvement Notices has fallen since that time. The number of premises closed pending improvement as a result of an imminent risk to public health being identified during inspection has fallen and is at its lowest level since 2014 / 2015. The number of premises prosecuted for serious legislative breaches have been steadily increasing, but in 2016 / 2017 remained static at ten per annum.
- 7.29 Customers take an active role in reporting food businesses within Portsmouth that they feel have poor food safety practices, and issues raised by them are investigated in the appropriate manner. Complaints are typically received in relation to:
- sighting of vermin or pests on food premises
 - poor levels of cleanliness in kitchens, store rooms or preparation rooms
 - poor food handling practices
 - contaminated food e.g. food containing foreign bodies or that is out of date
- 7.30 The number of complaints received fell significantly in 2012 / 2013 and has remained relatively static since which is a further reflection of how standards of food

businesses have improved since that time. The number of complaints relating to food businesses is shown in **figure 7**.

Figure 7



7.31 Following the 2013 FSA audit of the BST operating procedures, some changes were made to the intervention programme and its delivery. The BST is required to inspect all registered food premises within Portsmouth as part of a planned programme. How frequently officers routinely inspect will depend on the type of

business and its previous record; the better the record the greater the period between inspections. The rating given to premises after each inspection determines the length of time until the premises is inspected again. Premises are then rated and inspected according to the following **table 2**.

Table 2

Rating Category	Inspection Rating	Minimum Inspection frequency
A	92 or higher	6 monthly
B	72 - 91	12 monthly
C	52 - 71	18 monthly
D	31 - 51	2 yearly
E	0 - 30	3 years or an alternative enforcement strategy

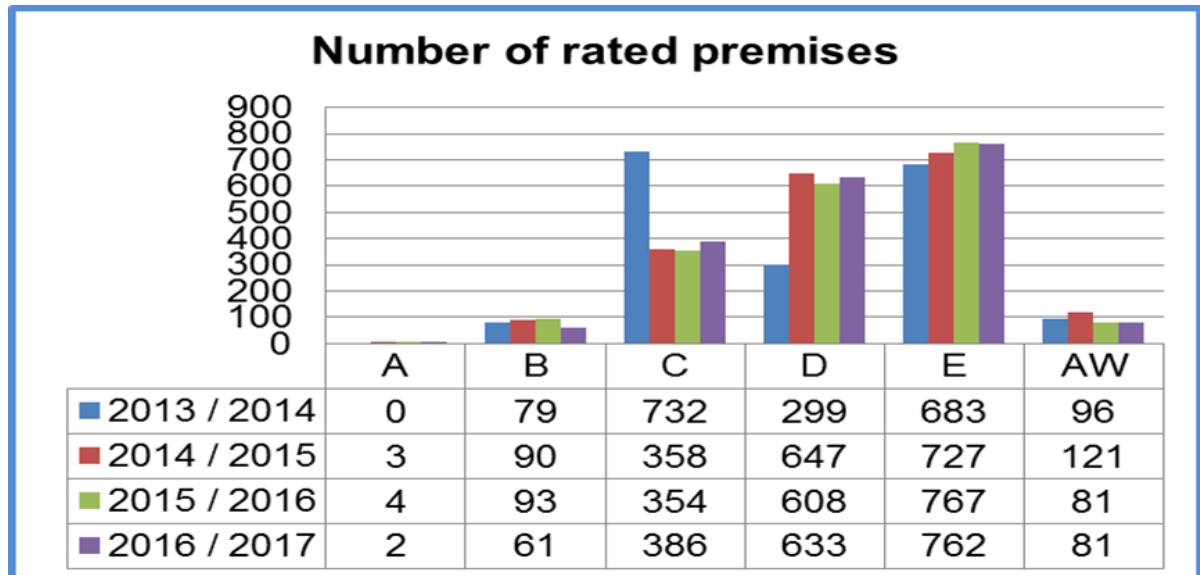
7.32 The risk rating system considers the type and size of business, the level of food safety management and conditions noted during the inspection. In addition, premises providing food to vulnerable groups, for example children or the elderly, are subject to an additional weighting which will result in more frequent visits.

7.33 Whilst it is not normal practice to give prior notification of inspection, some visits will be carried out by appointment, particularly if the visit is primarily to look at documentation or practices, or if discussions are required with a specific employee or the business proprietor. Officers have the right to enter and inspect food premises at all reasonable hours.

- 7.34 The appropriate control for each premises will be considered on an individual basis by an appropriately qualified officer. The officer may decide to reclassify any premises that were the subject of an alternative enforcement strategy for a full inspection, for example premises where the operation has changed significantly or catering is undertaken.
- 7.35 E-rated low or minimal risk food businesses are dealt with through an Alternative Enforcement Strategy (self-assessment or inspection on an alternate cycle). Follow up inspections will be carried out after self-assessment if deemed necessary i.e. the risk profile of the business has increased since the last assessment.
- 7.36 Although we were able to inspect a large number of E rated premises during the last 3 months of 2016 / 2017, in view of the demands placed upon officer time and the backlog of inspections, there is some doubt that this can be achieved again.
- 7.37 In 2017 / 2018 we are therefore likely to have no alternative but to deviate from the FLCofP and concentrate on the inspection of the highest risk premises. We will:
- continue to target inspection resources to the highest risk premises
 - continue to take appropriate action against poorly performing businesses (FH rated 0, 1 or 2) including proportionate enforcement measures in line with BST and corporate enforcement policies
 - continue to manage the planned inspection programme to achieve a 100% inspection rate for high risk Category A to C premises
 - ensure that 95% of newly registered businesses are inspected within 28 days of first registration
 - ensure that requests for service are subject to an initial response within 3 working days or sooner depending on the seriousness of the issue
 - ensure that all applications for premises approval under EC 853/2004 are determined within 28 days of receipt of application
 - continue to inspect Category D premises (lower risk) at a rate determined by available resource levels
 - continue to subject Category E premises (lowest risk) to an alternative enforcement strategy in lieu of inspections (which may include telephone surveys and questionnaires) to determine current activity and whether a BST intervention is required
 - increase awareness of FHR in business rated 0, 1 or 2 with a view to improving future compliance with food safety standards
- 7.38 The number of 'A' 'B' 'C' 'D' and 'E' rated premises as of 1 April 2014, 13 June 2015 and 4 April 2016 and 7 April 2017 are shown in **figure 8**.
- 7.39 **Figure 8** demonstrates that there has been a slight [4%], but encouraging, improvement in the number of premises obtaining a lower (and therefore "safer") risk rating.

7.40 The numbers of premises awaiting inspection (AW) having submitted a registration form, although at its equal lowest within the reported period, is higher than would be preferred. This is a further reflection of the level of resource available in this service.

Figure 8



8 Will the display of FHRs be compulsory in the near future? What is the FSA's opinion and what will be the likely impact upon the BST?

8.1 The FSA's strategy for 2015 to 2020 highlights that they favour extending mandatory display of food hygiene ratings at food outlets to England. They are currently gathering evidence to inform a case to present to the Government for consideration. They are also developing an impact assessment setting out the costs and potential benefits of introducing the new legislation that would be required.

8.2 The FSA's objective is to provide increased accessibility to food hygiene ratings by requiring mandatory display of ratings at food business premises as already happens in Wales and will do in Northern Ireland. They say that this will:

- strengthen the existing scheme
- increase transparency for consumers and thereby increase the push on businesses to raise their game
- create a level playing field and enable competition to drive the market
- provide a more effective and sustainable alternative to formal enforcement action and a basis for an increased focus on poorly performing businesses
- increase the scheme's potential to protect public health and contribute to reducing the economic burden of foodborne illness.

8.3 Despite the reported advantages of the mandatory scheme as highlighted above, the impact upon the BST in terms of resourcing the changes is likely to be significant. Any new scheme will result in amendments to the FLCofP particularly surrounding the introduction of mandatory scores including the:

- demand for re-rating premises
- handling of appeals in respect to the initial rating awarded following inspection
- enforcement protocols for non-display particularly the issuing of fixed penalty notices for non-compliance
- requirement for the inspection of new premises within 28 days of it registering or when we are made aware that it is trading.

8.4 The implications of any mandatory display of ratings will need to be carefully considered and the necessary additional resources made available to effect a universal and consistent approach to the changes.

9 Equality impact assessment

9.1 The inspection criteria have been subject to an equality impact assessment, attached as **Appendix 2**. Implementation will not affect the concept of fairness established under the adoption of the FHRS in 2011, which ensures that all food establishments are being inspected and enforced equally in all premises regardless of ethnicity or cuisine type. However further information in relation to the impact of services upon food businesses is required.

10 Legal implications

10.1 Legal Services has previously confirmed that the requirement to carry out periodic food inspections of food premises using a risk-based approach is derived from and in accordance with 'EC Regulation 882/2004' and the 'Framework Agreement on Food Law Enforcement' in respect of legislation relating to England and Wales.

10.2 Legal Services has also previously confirmed that the 'Food Law Code of Practice (England)' enables the replacement of the inspection-focussed approach to food law enforcement with a more flexible one, whereby local authorities can use a wider range of interventions to monitor, support and increase business compliance. The Food Standards Agency has acknowledged that the aim of this revision is partly to ensure that resources are directed at those food businesses that present the greatest risk to public health and consumer protection.

11 Director of Finance's comments

11.1 The activities proposed within the Food Operating Plan 2017 / 2018 and summarised in section 7.37 of this report will be funded from the existing service portfolio budgets, as approved by Full Council.

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Signed by: Stephen Bailey - Director of Culture and City Development

Appendices:

Appendix 1: Food Operating Plan 2016 / 2017

Appendix 2: Equalities Impact Assessment

Background list of documents: Section 100D of the Local Government Act 1972

The following list of documents discloses facts or matters which have been relied upon to a material extent by the author in preparing this report:

Title of Document	Location
NIL	NIL

The recommendations set out in 2.1. above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for the Environment and Community Safety on

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Signed by: Councillor Robert New, Cabinet Member for Environment and Community Safety