

Title of meeting:	Environment and Community Safety Portfolio Decision Meeting
Date of meeting:	6 th July 2016
Subject:	Food Premises Inspection Plan 2016 / 2017
Report by:	Director of Regulatory Services and Community Safety
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;
- set out the programme of inspection during 2016 / 2017;
- highlight service risks and non-compliances with the Food Law Code of Practice (FLCofP).

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;**
- b) acknowledges the reasons for the increasing levels of enforcement and reduction in inspection rates, and the public health importance of this service;**
- c) approves the Food Operating Plan 2016 / 2017 as described in Appendix 1 of this report;**
- d) approves the revisit inspection regime as detailed within section 7.35 and section 7.36.**

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 enforcement.

4 Background

- 4.1 Food businesses are inspected by means of a risk-based programme. The frequency of inspection is prescribed by the statutory FLCofP.
- 4.2 The FLCofP sets out the framework under which the Environmental Health Business Support Team (BST) must carry out its statutory functions to protect the public in respect to food hygiene and food safety. It requires every local authority to have a Food Operating Plan and prescribes the manner in which it is formatted.
- 4.3 The BST is required under legislation to have regard to the FLCofP when discharging its duties. Should the BST fail to have regard to relevant provisions of this Code, decisions and actions of the team are likely to be successfully challenged, with evidence gathered during a criminal investigation being ruled inadmissible by a court and formal action being instigated against the city council by the Food Standards Agency (FSA).
- 4.4 Since 2011 the BST has implemented the national 'Food Hygiene Rating Scheme' (FHRS) which is run in partnership with the FSA.
- 4.5 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.
- 4.6 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.
- 4.7 The 2016 / 2017 Food Operating Plan outlines how food safety will be monitored and controlled. The service plan covers a wide range of topics including:
- food team aims and objectives;
 - authority background;
 - service delivery;
 - resources;
 - enforcement protocols;
 - quality assessment;
 - service plan and operational plan review;
 - approved premises controls at approved premises; and
 - food sampling.

5 Key characteristics of enforced self-regulation and risk-based approaches to food law enforcement - what are these and how do they work?

- 5.1 Hazard Analysis and Critical Control Point (HACCP) is an amalgam of enforced self-regulation and risk-based approaches (RBAs). HACCP forms the foundation of how Food Business Operators (FBOs) demonstrate the effective management of

delivering food which is safe to eat. It is a preventative risk-based approach to food safety which seeks to minimise risks but cannot eliminate them.

- 5.2 The HACCP approach requires that FBOs plan what needs to be done to maintain food safety, to write this down, to follow the plan and to monitor and verify that the plan has been followed. HACCP systems only work when the FBO and the workforce are fully committed to their implementation. Adequate training is of fundamental importance for effective HACCP programmes.
- 5.3 RBAs to food safety regulation seek to ensure that greater emphasis is placed upon FBOs managing their own risks, and in so doing reserve our attention for the worst offenders. This approach does however make assumptions about the capacity of businesses to appreciate and manage attendant risks, which we have found can be particularly difficult for smaller businesses.
- 5.4 RBAs attempt to minimise the regulatory burden on businesses through cost justifications and comply with the UK Government's 'better regulation' agenda, namely transparency, accountability, targeting, consistency and proportionality.
- 5.5 The only means the BST has to establish compliance levels is through inspection. Such inspections are the only way to advise and educate small businesses in relation to food law and good practice. The importance of timely regular inspections is therefore of some critical importance, as the less time we spend with FBOs the greater the likelihood of falling standards, non-compliance with the law and an increased need for more in-depth education and enforcement - all of which has a negative impact upon resource.
- 5.6 The focus of responsibility is on FBOs to manage the risks generated, and ours is to intervene only where businesses clearly fail to do this. Our experiences over the last four years suggests that, despite our interventions, not all businesses are equipped to manage their own risks, and more recently, as a result of available resource, we are less able to identify and assist FBOs and act preventively in a timely manner.

6 FBO compliance with food law

- 6.1 Overall the level of food hygiene compliance within Portsmouth is good. However there are a significant number of businesses which fail to comply with food law requirements. The reasons for this are complex and may include any of 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 or be misguided in their understanding of 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.

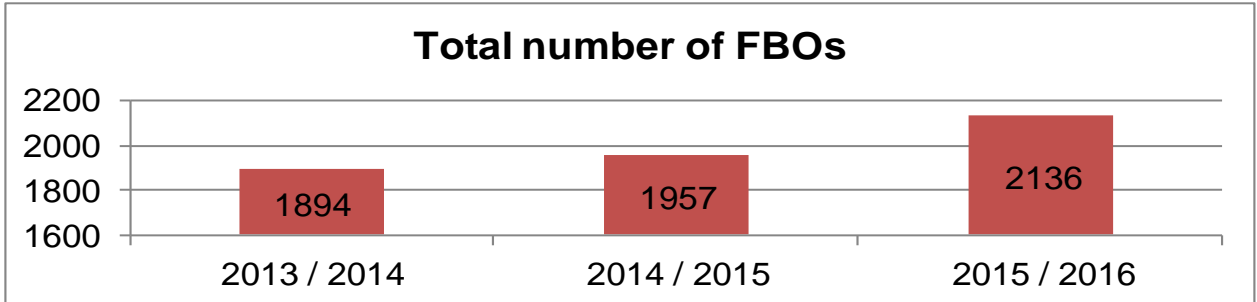
- 6.2 The BST is integral in food safety regulation. Our approach does not take enforcement of the law to simply refer to legal action; it permits a wide array of informal enforcement techniques such as education, advice, explanation, persuasion and negotiation.
- 6.3 Securing food which is safe to eat 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, something to be avoided unless 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 With enforced self-regulation, RBAs and better regulation there may be a temptation to use these initiatives to reduce resources. The BST is however directed by the FSA's statutory and informal guidance and is subject to their audit. The FSA has authority to set performance standards, monitor performance, demand information from us and inspect our food enforcement resources.
- 6.8 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.

7 Analysis of service delivery

- 7.1 The number of FBOs registered with PCC since 2012 / 2013 is depicted within **graph 1**. The increase equates to a 13% rise in food businesses over this three year period.

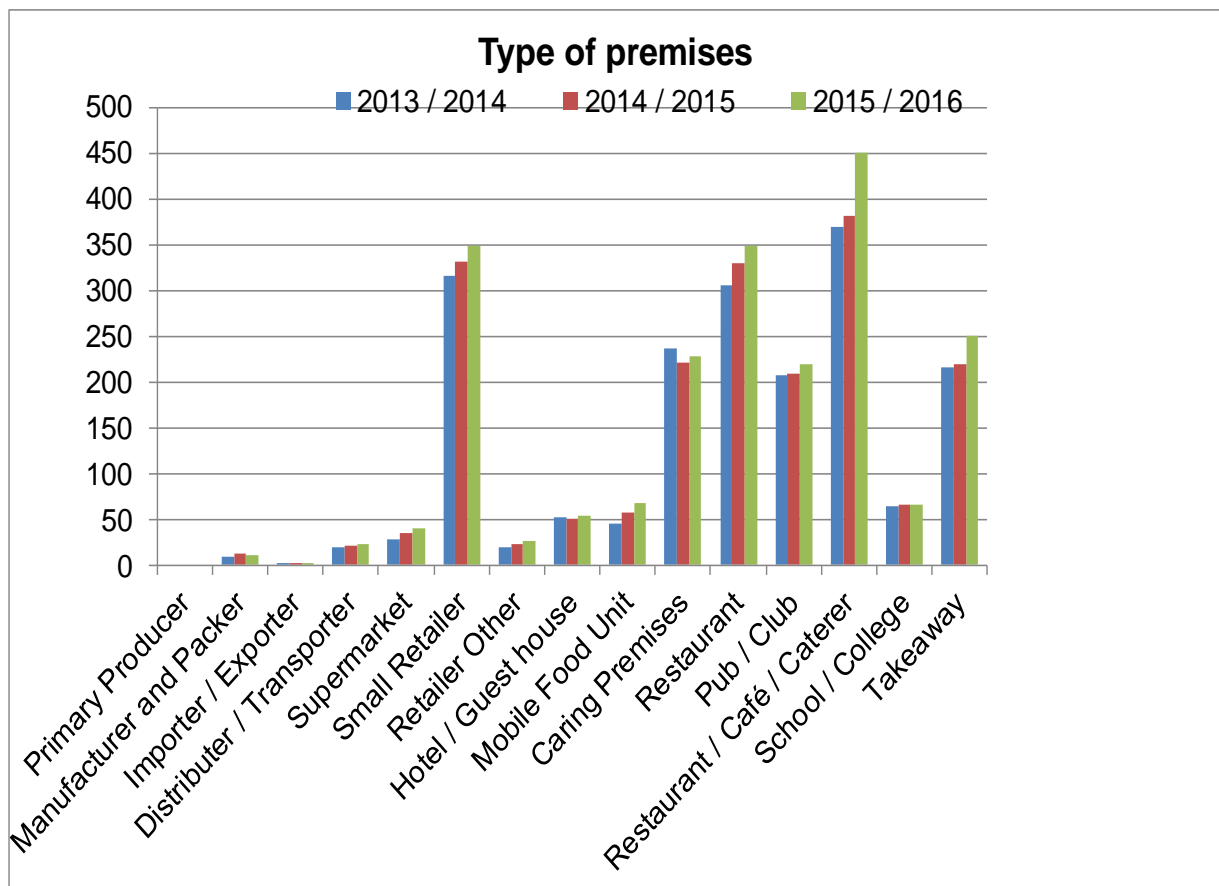
7.2 The impact of such an increase in terms of service compliance within the prescriptive FSA inspection timetables, whilst resources over the same period have decreased, is considered significant.

Graph 1



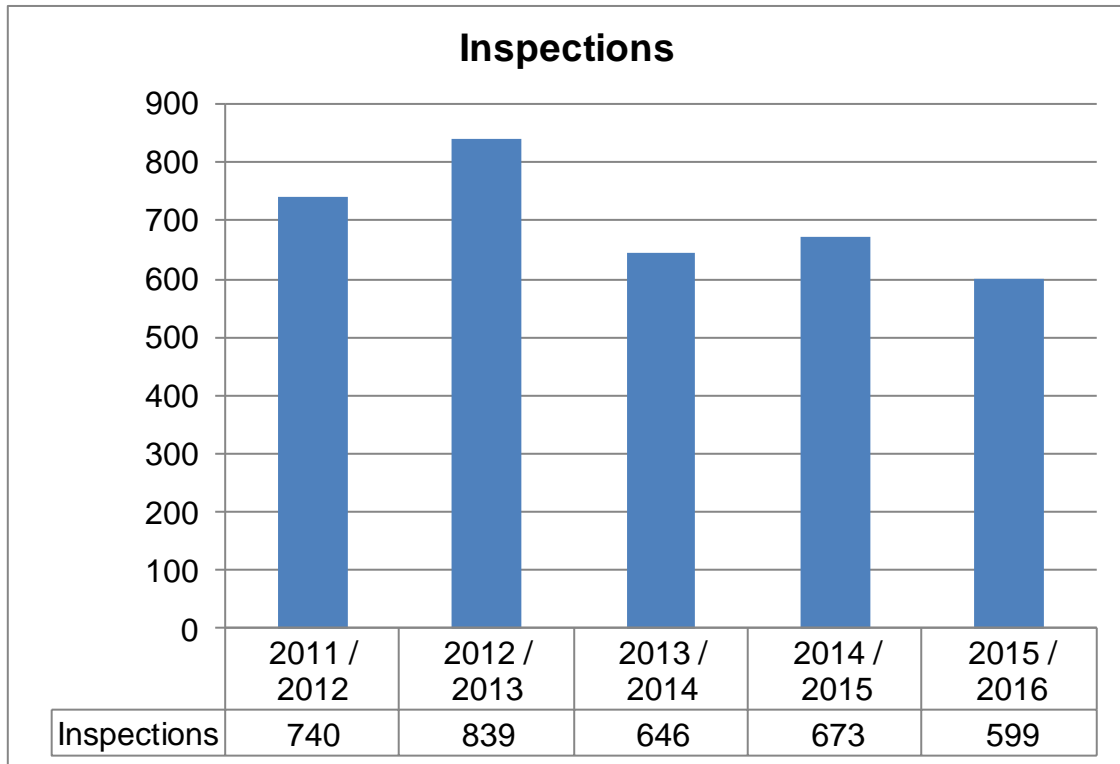
7.3 The number and type of FBOs over the last three years is depicted in **graph 2**. The category 'restaurant / café / caterer' recorded the highest increase at 21%.

Graph 2



7.4 The total number of inspections carried out in the last three years is shown in **graph 3**.

Graph 3

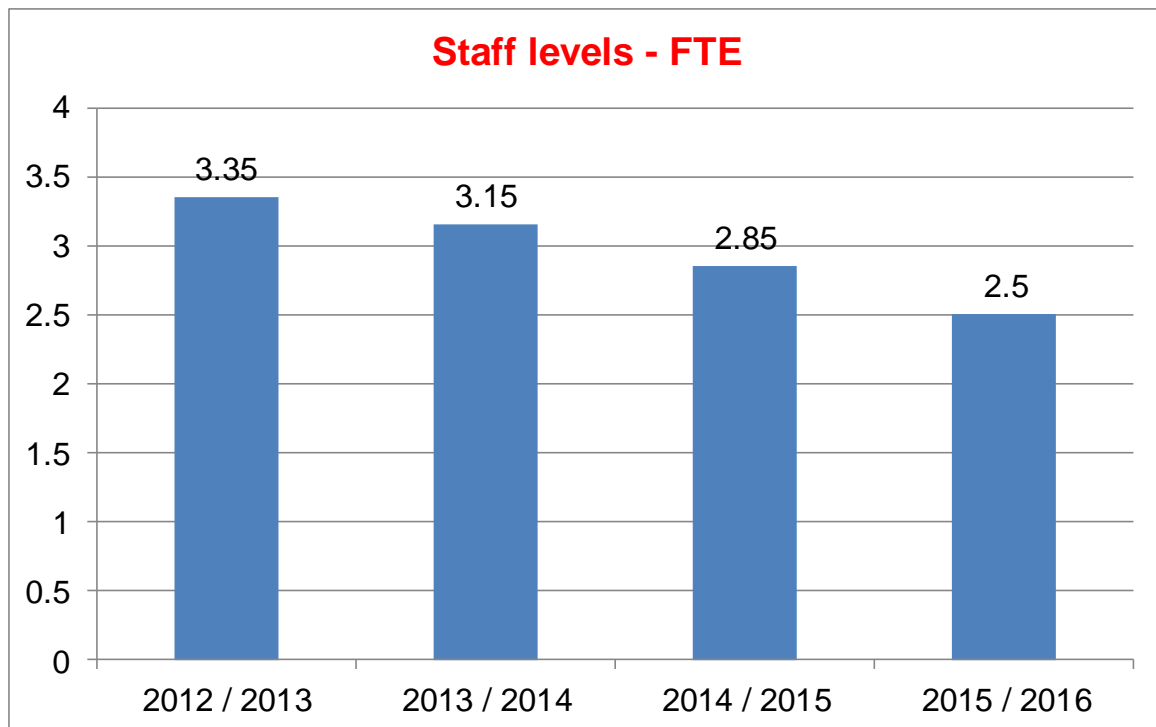


7.5 In 2015 / 2016 the inspection rate was the lowest recorded, being 28% lower than the highest achieved in 2012 / 2013.

7.6 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 (3.35 FTE). This equated to approximately 180 inspections being carried out by each officer each year. Since 2013 the FTE posts engaged in this specific inspection activity has fallen to 2.5, with the general cause of this decline being increasing demands made on staff resource in other service functions. Whilst difficult to precisely explain, the decline in inspection rates is highly likely to be reflected in the growth of FBO inspections of restaurants / caterers which generally take longer than businesses of lower risk, such as retailers.

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

Graph 4

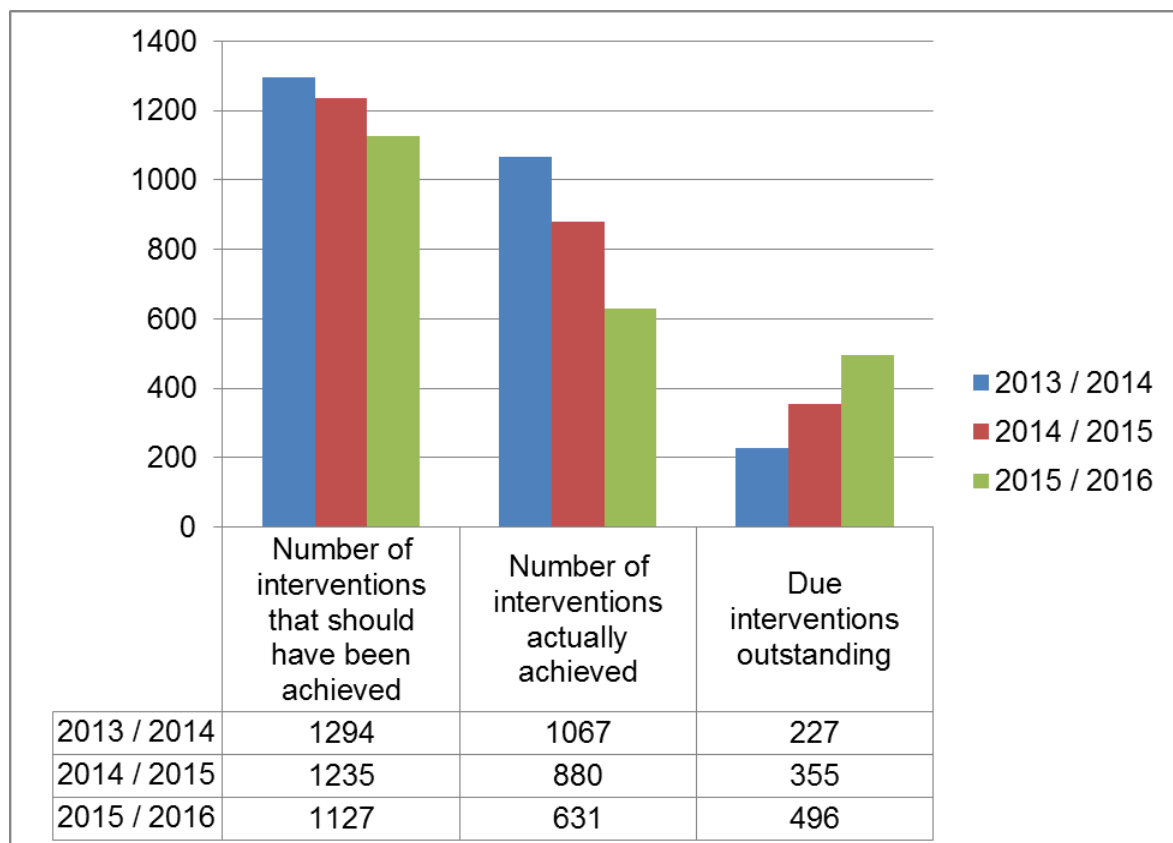


- 7.8 In 2015 / 2016 the level of staffing resource available for inspections would, with reference to the 2013 FSA criteria, equate to approximately 450 inspections being undertaken. The level of inspection actually achieved, 599, although falling, therefore remains higher than that envisaged by the FSA with the level of resource available. This level of inspection has been achieved through various means, including effective management of the function, and streamlining delivery processes and support to officers.
- 7.9 The falling level of inspection has resulted in non-compliance with the FLCofP. Intervention performance is shown within **graph 5**. The service has failed to deliver interventions in accordance with the FLCofP prescriptive timetable. Whilst intervention compliance has been a concern in previous years, the level of compliance in 2015 / 2016 has risen to a very high risk and has been identified as an area to which resources should be provided.
- 7.10 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.
- 7.11 For clarity, interventions include: inspections; monitoring; surveillance; verification; audit; and sampling where the analysis / examination is to be carried out by an Official Laboratory.
- 7.12 The problems in keeping pace with the levels of intervention as required have occurred as a direct result of an increased level of the BST staff resource being

assigned to areas which have not resulted in direct inspection work. The most obvious examples are our enforcement activities, compliance with other areas of the FLCofP, and food sampling requirements. Statutory functions of the team, in relation to animal welfare, infectious disease control, port health and health and safety have however undoubtedly contributed to the backlog in visits.

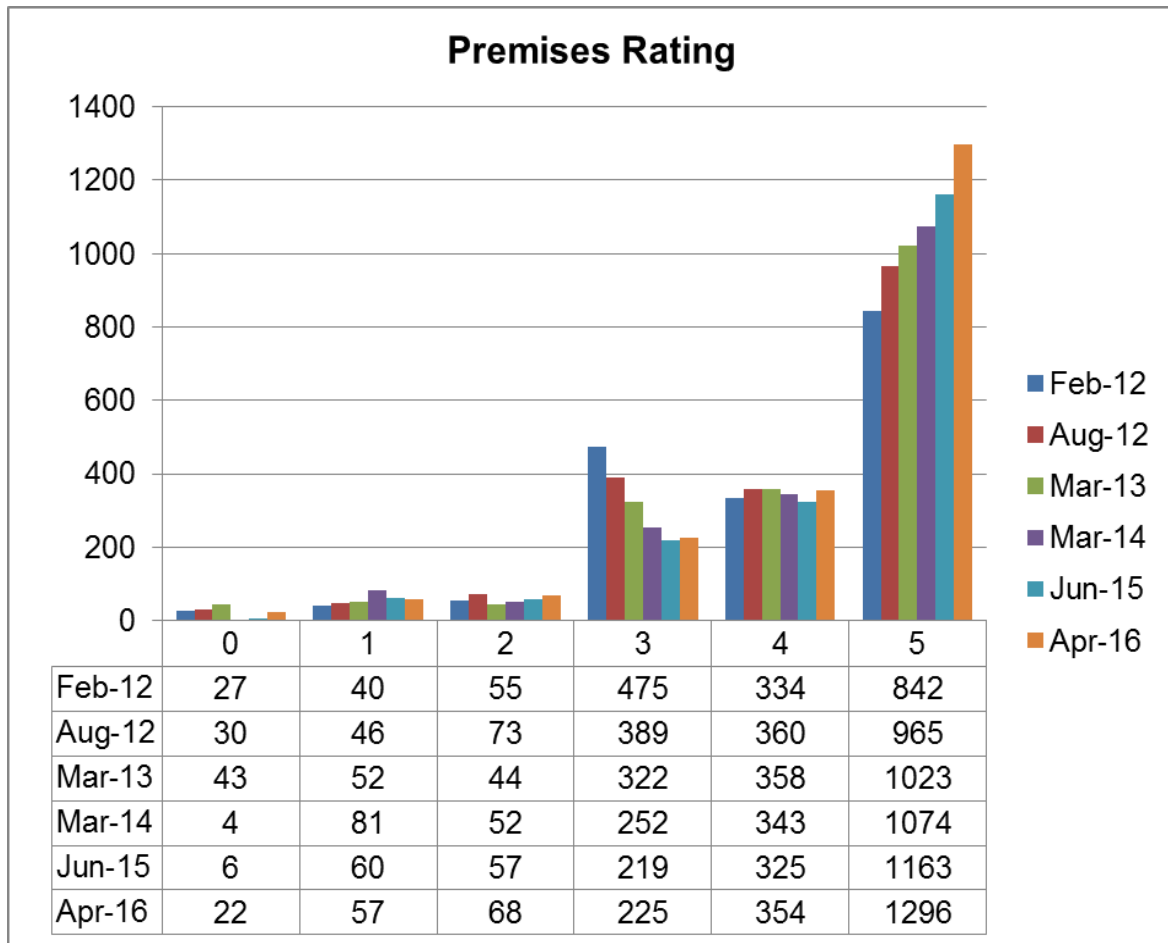
- 7.13 Despite assigning nearly 40% of all available resource to the food inspection function (2.5 FTE of 6.5 FTE) the service is not meeting its targets for inspection compliance.

Graph 5



- 7.14 The numbers of premises rated '0', '1', '2', '3', '4', or '5' as of February and August 2012, March 2013, March 2014, June 2015 and April 2016 are highlighted in **graph 6**.
- 7.15 Although the number of interventions has gone down, 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.
- 7.16 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 approach. The time necessary to prepare a prosecution case and present the matter in court is extremely resource-intensive.

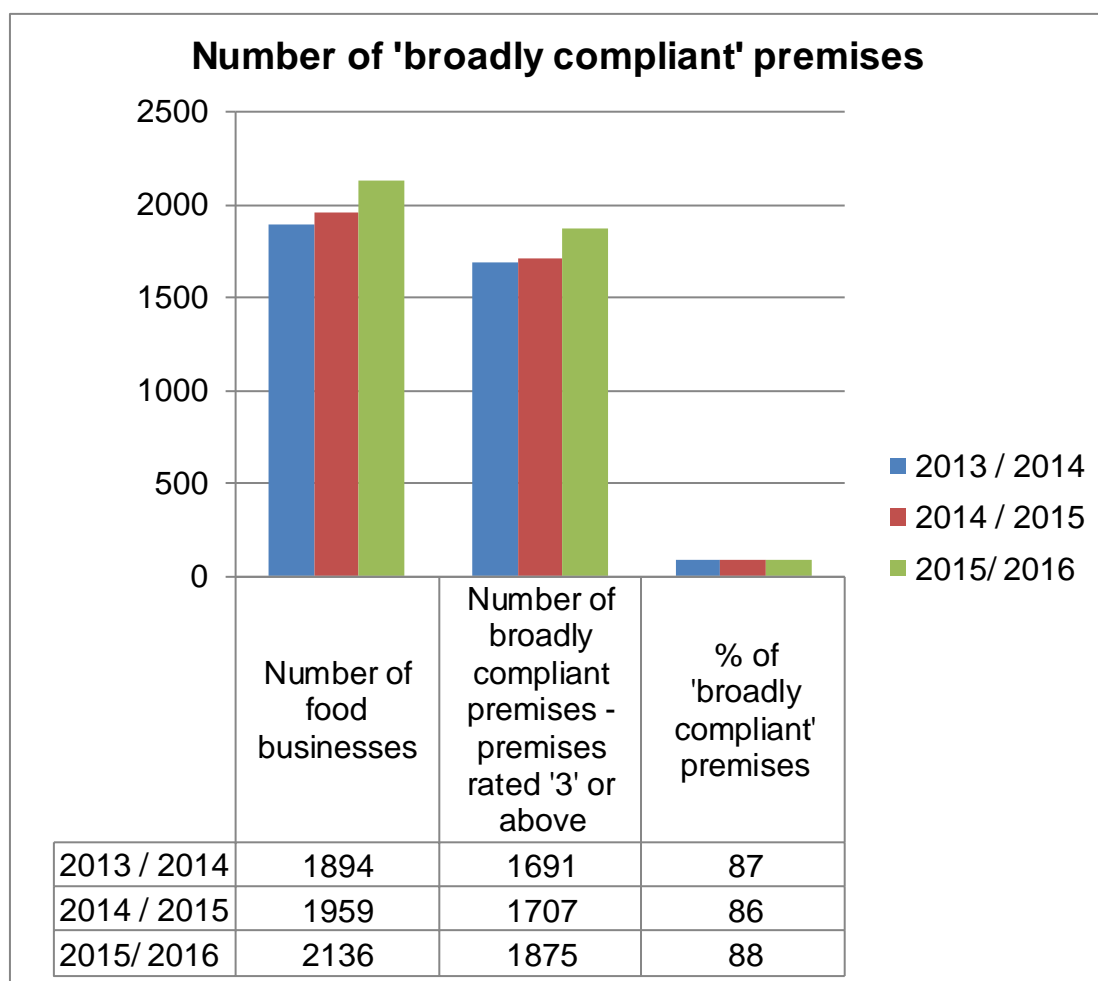
Graph 6



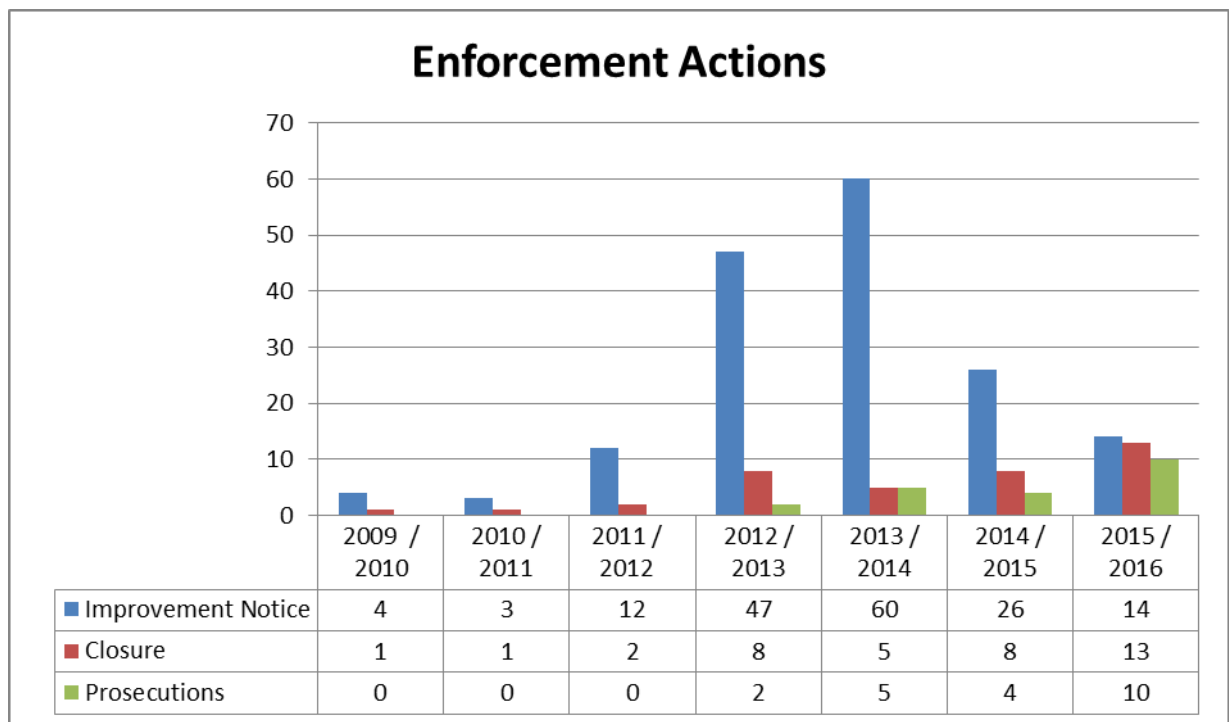
- 7.17 **Graph 6** demonstrates that the number of premises achieving the highest '5' rating is continuing to improve. Additionally, the number of premises within the lowest ratings '0', '1' and '2' remains low and static.
- 7.18 Each time a business is inspected a new rating is provided with the level 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.
- 7.19 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.
- 7.20 The number of 5 rated premises is 54% higher now than it was in February 2012. 61% of all registered premises are rated '5'.

- 7.21 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.
- 7.22 All FBOs are given feedback following an inspection. Officers will provide improvement advice and 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.
- 7.23 The number of broadly compliant premises (those premises rated '3', '4' or '5') has remained static, as demonstrated within **graph 7**.

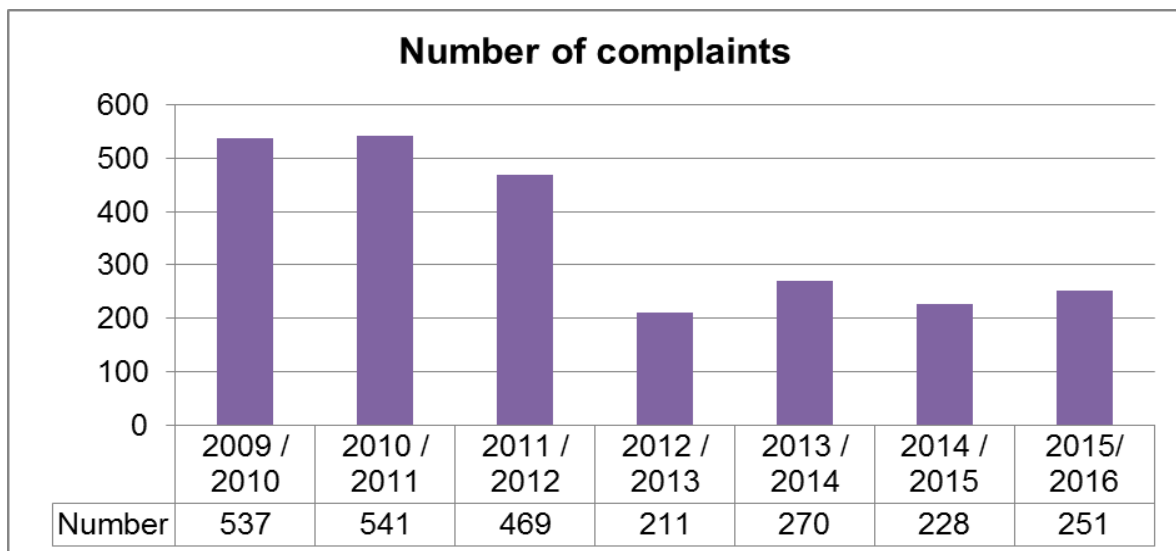
Graph 7



- 7.24 The number of enforcement actions taken during the last six years is recorded in **graph 8**.

Graph 8


- 7.25 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 dramatically increased.
- 7.26 The number of Improvement Notices has fallen since that time. However, the number of premises closed pending improvement as a result of an imminent risk to public health being identified during inspection, and the number of premises prosecuted for serious legislative breaches, has increased.
- 7.27 In 2015 / 2016 the levels of closure were the highest recorded, being 63% higher than in 2014 / 2015. The number of prosecutions has consequently increased.
- 7.28 We encourage customers to take an active role in reporting food businesses within Portsmouth that have poor food safety practices, and investigate issues raised by them 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.
- 7.29 The number of complaints received in 2015 / 2016 is consistent with the significant reduction (50%) achieved in 2012 / 2013 and 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 **graph 9**.

Graph 9


7.30 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 are inspected again. Premises are then rated and inspected according to the following **table 1**.

Table 1

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	Alternative enforcement strategy

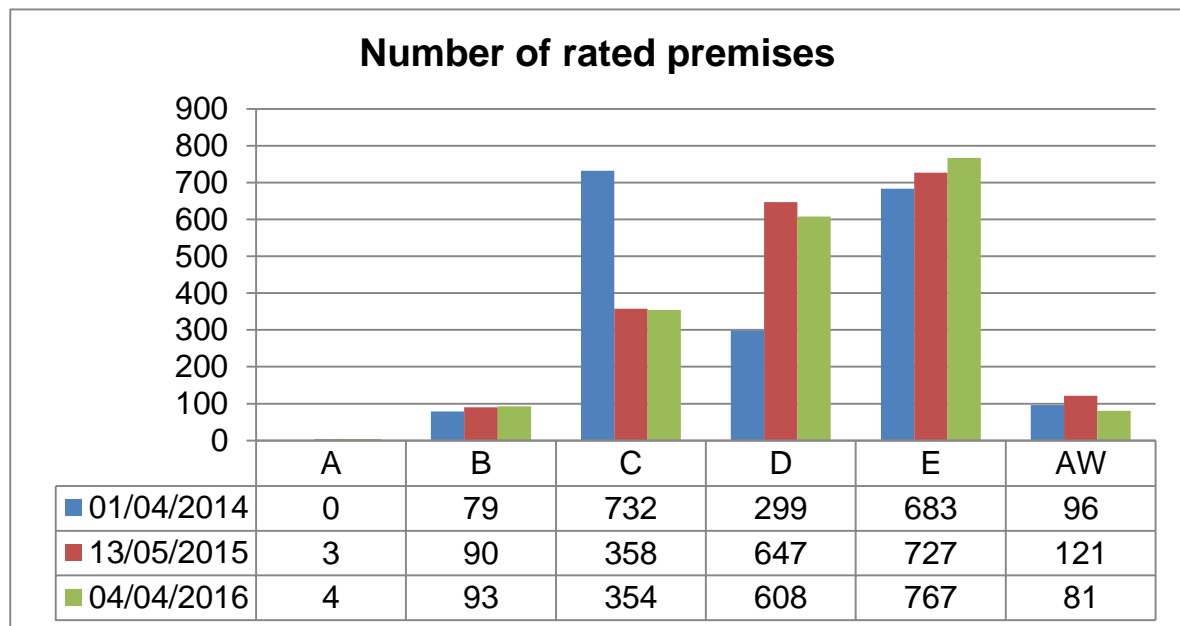
7.31 The risk rating system considers the type and size of business, the level of food safety management and conditions noted during the inspection. In addition, premises providing food to vulnerable groups, for example children or the elderly, are subject to an additional weighting which will result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

7.32 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.

7.33 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.

- 7.34 In previous years low risk category E businesses have been subject to an alternative enforcement strategy. When these premises are due for inspection, if the premises have been subject to a formal inspection within the previous inspection period, the FBO will be sent an appropriate initial letter together with a low risk self-assessment questionnaire to complete. On return of the completed questionnaire the information will be reviewed to determine whether there have been any changes to the business since the last inspection which may present an increased risk to food safety. If a questionnaire is not returned within the 28-day limit, the business will be contacted to establish if a further copy is required.. If the replacement questionnaire has not been received after a further 14 days, the food business may be subject to a food hygiene inspection.
- 7.35 Currently, in view of the demands placed upon officer time and the backlog of inspections, although we will aim to deliver this strategy for all E rated premises during 2016 / 2017, it is extremely unlikely that this will be achieved. Currently no regard is being given to E rated premises, even by means of alternative enforcement. This is unlikely to change unless additional resources can be found. This is considered to be a major non-compliance with the FLCofP and a high-risk strategy.
- 7.36 In 2016 / 2017 we are likely therefore to have no alternative but to deviate from the FLCofP concentrating on the inspection of the highest risk premises. We will achieve the following:
- 100% of A rated premises;
 - 100% of B rated premises;
 - 100% of C rated premises;
 - 100% of the initial inspections of all premises awaiting a rating;
 - D rated premises are unlikely to be routinely inspected;
 - E rated premises will only be inspected where resources allow.
- 7.37 The number of 'A' 'B' 'C' 'D' and 'E' rated premises as of 1 April 2014, 13 June 2015 and 4 April 2016 are shown in **graph 10**.
- 7.38 It is clear from graph 10 that there has been a significant improvement in the number of premises obtaining a lower (and therefore "safer") risk rating. The improvement is particularly noticeable within the premises rated D and E. The number of D rated premises has increased by 103% since 2014, with the number of E rated premises increasing by 12% during the same period.
- 7.39 The numbers of premises awaiting inspection (AW) having submitted a registration form is higher than would be preferred. This is a further reflection of the level of resource available in this service.

Graph 10


8 What do the FSA and the Chartered Institute of Environmental Health (CIEH) say about falling inspection rates?

- 8.1 Following an analysis of food law enforcement across the UK the FSA board is aware of the growing concern at the sharp decline in food safety interventions. Enforcement data for 2014/15 demonstrates that PCC is not alone in struggling to carry out interventions at the required frequencies against a background of increasing numbers of new businesses, consumer complaints and other service demands.
- 8.2 The CIEH has reported that food hygiene interventions have fallen by nearly 7% and food standards interventions have fallen by 6%. Budget restrictions have also affected the amount of staff tasked to inspect food law enforcement - staffing has fallen by 17%. Overall, this has contributed to a fall in food standards of 38% nationally.
- 8.3 Statistics show that there is a direct relationship between the fall in the number of interventions where there is suspected food crime, and the sudden rise there has been in complaints within the food supply chain and retail arena. Representatives at the FSA have stated that the matter is likely to worsen over the next few years as it is unlikely there will be sufficient available budget.

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 was to partly 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 2016 / 2017 and summarised in this report will be funded from the existing service portfolio budgets, as approved by Full Council.

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 Signed by: Rachael Dalby - Director of Regulatory Services and Community Safety

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 relied upon to a material extent by the author in preparing this report:

Title of Document	Location
NIL	NIL

The recommendations set out above in 2.1. above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for the Environment and Community Safety on 6th July 2016.

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