



Portsmouth
CITY COUNCIL

Health and Safety Intervention Plan 2016 / 2017

Regulatory Services - Business Support Team

Contents

Chapter	Title
1	Introduction
2	Overall Aim of the Service
3	Foreword
4	Statutory Function
5	Key Service Drivers
6	Objectives
7	The National Enforcement Priorities
8	Local priorities
9	Intervention Programme
10	Service Analysis 2015/2016
11	Government Response
12	Primary Authority
13	Regulators Code
14	Open for Business: A Shared Vision for local regulation
15	Communications
16	Working with Local Authority Partners
17	Staff Training
18	Concluding Summary
Annex 1	References

1 Introduction

- 1.1 This Business Plan has been developed to outline the key proposed work streams of Portsmouth City Council's (PCC) Regulatory Services Business Support team (BST) with regard to health and safety for the period of the 1 April 2016 to the 31 March 2017.
- 1.2 The Service is currently staffed by four Environmental Health Officers (2 x 0.2 and 2 x 0.1 FTE) and 2 x Environmental Health Practitioners (2 x 0.05 FTE). Total: 0.7 FTE

2 Overall Aim of the Service

“To work with others to protect people's health and safety by ensuring risks in the changing workplace are managed properly.”

3 Foreword

- 3.1 The BST, together with colleagues, from all the services provided by local authorities, clearly recognises that the current challenges faced by the public sector are very demanding and challenging indeed.
- 3.2 Our common and primary purpose in meeting all our planned objectives is to benefit Portsmouth, which primarily involves providing long term benefits to the businesses and consumers, which the BST is empowered by a wide range of statutory legislation to advise and protect.
- 3.3 These policy documents include:
- Decentralisation and the Localism Bill: an essential guide
 - Open Public Services White Paper
- 3.4 We will continue to adapt any strategies and related policies it implements around various key documents as developed by national bodies and organisations. These policy documents include:
- Priority Regulatory Outcomes - A New Approach to Refreshing the National Enforcement Priorities for Local Authority Regulatory Services
 - No Stone Unturned - In Pursuit of Growth
 - The Public Health Outcomes Framework for England, 2013 / 2016
 - Open for Business - A Shared Vision for Regulation
 - Reclaiming health and safety for all - An independent review of health and safety legislation
 - Regulators Code
 - Helping Great Britain Work Well
 - Health and Safety Executive Business Service Plan 2016 / 2017
 - Cutting Red Tape
- 3.5 We will continue to adapt any strategies and related policies it implements around various key documents as developed by PCC. These policy documents include:

- The Portsmouth Plan
 - Regeneration Strategy - Shaping Portsmouth
- 3.6 The BST also remains committed to adapt its role accordingly to new developments and respond appropriately to these new challenges, as and when they may arise and from whichever direction they may come from.

4 Statutory functions

- 4.1 Section 18 of the Health and Safety at Work etc. Act 1974 (HSWA) places a duty on the Health and Safety Executive (HSE) and PCC to make adequate arrangements for health and safety enforcement.
- 4.2 In his report *"Reclaiming health & safety for all: An independent review of health and safety legislation"* Professor Ragnar Löfstedt recommended that HSE be given a stronger role in directing local authority health and safety inspection and enforcement activity.
- 4.3 The new health and safety strategy, *"Helping Great Britain Work Well"* was published on 29 February 2016. This sets out six strategic themes for the whole of the national health and safety system. Local authority workplace health and safety regulators are a key part of that system, to play their role in:
- encouraging and recognising improvements, being increasingly joined up to deliver improved outcomes and minimise unnecessary burdens on businesses
 - continuing to promote the risk-based, goal-setting regulatory regime that has served health and safety so well
 - working with partners in the system to make workplaces safer and healthier, providing a level playing field for responsible employers with regulators and co-regulators, by advising, promoting, and where necessary, enforcing good standards of risk control
 - using proportionate, risk-based regulation to support better outcomes, innovation and the safe use of new technologies
 - developing services and products that contribute to improved management and control of risks, sharing our knowledge, and
 - continuing the dialogue and conversation with stakeholders to make the system better, always looking to provide simple, pragmatic advice and support
- 4.4 The National Local Authority Enforcement Code (the Code) has been developed as an outcome of the Red Tape Challenge on health and safety. It is designed to ensure that local authority health and safety regulators take a more consistent and proportionate approach to enforcement.
- 4.5 Whilst the primary responsibility for managing health and safety risks lies with the business who creates the risk, local authority health and safety regulators have an important role in ensuring the effective and proportionate management of risks, supporting business, protecting their communities and contributing to a wider public health agenda.
- 4.6 Local authority regulators are competent professionals granted powers and duties to deliver proportionate and targeted enforcement. The service takes

the view that it remains vital that the regulatory resource is used consistently and to best effect by targeting specific risks or focussing on specific outcomes. The BST will continue to use the full range of regulatory interventions available to influence behaviours and the management of risk with proactive inspection utilised only for premises with higher risks or where intelligence suggests that risks are not being effectively managed.

- 4.7 Notified accidents and complaints will be dealt with according to the incident selection criteria issued by HSE and LAC number 22/13 (Revision 1) The Code provides direction to all local authorities on meeting these requirements, and reporting on compliance.
- 4.8 The Code is given legal effect as HSE guidance to local authorities under Section 18(4) (b) of the HSWA.
- 4.9 In line with Government expectation, businesses operating in comparatively lower risk premises should not be subject to proactive, unannounced inspections, unless there is reason to suspect poor performance.
- 4.10 In order to assess how local authorities are meeting the requirements of the Code, HSE will monitor data returns. Where there is a lack of information or where the information prompts questions, HSE will work with the local authority in question to assist their implementation and compliance with the Code. In addition, it is expected that via the inter authority peer review process that local authorities will support each other in implementing and complying with the code and providing assurance that they have done so.
- 4.11 HSE will annually publish a report detailing how local authorities are complying with this Code to provide transparency on regulatory activity carried out by local authorities.
- 4.12 Where business considers that they operate in a lower risk sector and have been unreasonably subject to a proactive health and safety inspection by a local authority, they can complain to the Independent Regulatory Challenge Panel whose members have the competence and experience to assess regulatory matters. They will look into the complaint and the outcome of their deliberations will be made publically available on the HSE website.
- 4.13 Where a complaint is upheld by the Panel, HSE will work with the local authority to provide advice and assistance to improve and enable their implementation and compliance with the Code.
- 4.14 The focus of local authorities is often broader than specific health and safety outcomes as they can also have an impact on wider public health outcomes/health inequalities. The BST will use the list of national priorities for proactive inspection as well as local information and advice provided by primary authorities to determine the key risks of serious workplace accidents, injuries and ill-health and will develop local intervention plans for poorly performing businesses; we will then target our resources more effectively using the whole range of available interventions to influence behaviours and improve the management of health and safety risks.

5 Key service drivers

5.1 The BST key service drivers are to:

- ensure that all premises where people work, visit or are entertained are safe for the purpose and without risk to health
- improve the overall health and safety management standards within regulated businesses by providing a comprehensive risk based intervention strategy that targets resource at higher risk activities or where there is a history of poor compliance
- provide a comprehensive health and safety enforcement and advisory service to business and other stakeholders
- work in partnership with the HSE, other local authorities and interested bodies to promote a positive health and safety culture
- respond to and investigate accidents, dangerous occurrences and diseases reported to the City Council in accordance with the criteria in HELA Circular LAC 22/13
- investigate complaints in line with the HSE and PCC's procedure on complaints about workplaces, taking appropriate action as necessary
- act as primary authority for The Southern Co-operative and Clarendon Amazing Venues
- react to 100% of all notifications made under the Lifting Operations and Lifting Equipment Regulations 1998
- react to 100% asbestos (ASB5) notifications
- register premises and practitioners and enforce laws relating to tattooing, electrolysis, acupuncture, cosmetic piercing and semi-permanent skin colouring.
- maintain registers required by law

6 Objectives

6.1 The BST always continues to seek to conduct its affairs in adherence with the principles of better regulation and the various legislative requirements relating thereto. In particular:

- Transparency
- Accountability
- Consistency
- Proportionality
- Utilising Intelligence led targeting

6.2 In pursuit of these principles the primary objectives of the BST are as follows:

- Delivering improved regulatory outcomes
- Reducing unnecessary burdens on business
- Maintaining a common approach to enforcement policies
- Building safer, healthier and stronger local communities
- Achieving consistency in advice and enforcement

7 National enforcement priorities

- 7.1 The priorities of the BST for 2016 / 2017 have been determined in line with and paying all due regard to the National Enforcement Priorities. These priorities are as set out in the document published in November 2011 by the Local Better Regulation Office of *“Priority Regulatory Outcomes: A New Approach to Refreshing the National Enforcement Priorities for Local Authority Regulatory Services”*.
- 7.2 The service priorities have been primarily focussed around following two of the five key national priority areas:
- National Priority One: support economic growth, especially in small businesses by ensuring a fair, responsible and competitive trading environment
 - National Priority Four: help people to live healthier lives by preventing ill health and harm and promoting public health
- 7.3 The BST continues to clearly recognise that as an enforcement body, it plays a key role in the delivery of key aspects of the public health agenda. One of the key documents that outlines the role of local authority services within the delivery of the public health agenda is the Public Health Outcomes Framework for England 2013 / 2016.
- 7.4 The BST intends to continue to strive to deliver effective support for legitimate business and consumers alike. The service clearly recognises that our key role is particularly important during the particular difficult economic period that is affecting the whole global economy.

8 Targeted interventions - national priorities

8.1 *Falls from height – work on/adjacent to fragile roofs/materials*

Fragile roofs/skylights etc. can be found at many premises that fall to the BST for enforcement. Where identified during visits, we will discuss the associated risks to ensure that prospective clients are aware of their duties under the construction (Design and Management) Regulations 2015 (24) in respect of repairs and maintenance (owner or building user) and the precautions needed, referring them to the appropriate guidance.

- 8.1.1 On occasions, the BST may come across work on a fragile roof that is underway at the premises being visited (typically, small-scale repairs / maintenance such as gutter cleaning). The risks may give rise to a matter of evident concern (MEC), in which case, poor standards should be addressed with all duty holders – client, designers and contractors, and any enforcement action taken in accordance with the Health and Safety (Enforcing Authority) Regulations 1998 and in collaboration with HSE where appropriate and using normal channels.

8.2 *Duty to manage asbestos*

- 8.2.1 In premises likely to contain asbestos (i.e. built before 2000) the BST will draw duty holders' attention to their duty to manage and the relevant HSE

guidance/webpages. On occasions, failure to manage the risks from asbestos (e.g. failure to maintain in a safe condition or minor construction work that breaches the fabric of the building without proper surveys, controls or planning) may need to be dealt with immediately as a MEC. Where management of asbestos risks arises as a MEC and standards are particularly poor, we should take appropriate enforcement action, collaborating with HSE where necessary and using normal channels.

8.3 Visitor attractions to prevent or control ill health arising from animal contact

8.3.1 Where events in the city that feature animals likely to spread bacteria via human contact are identified the BST will liaise, as necessary, with the council events team and work with the organisers to ensure that suitable precautions are in place to prevent an incident or outbreak arising from the lack of such measures.

8.4 Proactive visits as part of a Home Office led cross agency operation to tackle labour exploitation

8.4.1 The Home Office Immigration Enforcement's (HOIE) Operation Magnify will run throughout 2016 with planned weeks of activity across England, Wales and Scotland. The initiative will target businesses across the UK that employ illegal migrant workers. The BST will, where possible, assist in this operation.

9 Local priorities

9.1 Local information will also be used by us to determine the key risks of serious workplace accidents, injuries and ill-health to identify their priorities.

9.2 MECs are defined as those that create a risk of serious personal injury or ill-health and which are observed (i.e. self-evident) or brought to the inspector's attention. Matters of Potential Major Concern (MPMCs) are those which have a realistic potential to cause either multiple fatalities or multiple cases of acute or chronic ill-health.

9.3 We will monitor MECs or MPMC's dealt with during advisory or other regulatory visits as well as complaints and incidents to identify any matters that may present a potential significant local issue.

10 Intervention programme

10.1 The BST will continue to:

- record details of interventions in all premises recorded on the City Council's database. We will decide on an appropriate risk based intervention for the business and will update the risk rating of the premises accordingly
- promote the proper management of asbestos within any premises where an issue has been identified. A stepped intervention approach will be taken and where advice has been previously given and the duty holder has failed to act, enforcement action will be taken. This intervention is based on evidence that asbestos is one of the greatest causes of workplace latent morbidity
- with visits to check compliance with the Portsmouth byelaws on tattooing, acupuncture, electrolysis and cosmetic piercing of registered premises

- review and update the detail and content held on the PCC website related to health and safety
- with the development of the policy on how the PCC regulates health and safety in the workplace by implementing the findings of the Lofstedt review and guidance issued by the HSE to local authorities
- recognise that health and safety is often incorrectly used as somewhat of a convenient excuse to stop what are essentially sensible activities going ahead. The service continues to make it clear that health and safety is about managing real risks properly, not being risk averse and stopping people getting on with their lives. Together with the HSE, the BST aims at dispelling the myths behind tabloid headlines concerning actions taken by businesses in the name of health and safety, thus changing attitudes and cultures towards health and safety
- carry out proactive inspections in accordance with the Code only at those premises with higher risk activities were justified, and at premises where there is intelligence showing that the risks are not being effectively managed
- will focus on specific safety concerns in catering premises in accordance with the Code, namely carbon monoxide poisoning and the risk of gas explosion due to lack of suitable ventilation, unsafe and poorly maintained appliances and poor work procedures
- recognise its responsibilities with PCC Licensing and Events services with respect to the safety issues associated with events. The service will liaise with colleagues and advise where appropriate on any events held on PCC land. The service cannot certify that a document, construction or practice meets legal requirements, unless it is specifically in a position to do so. If a conflict of interest is identified, the service will refer the matter immediately to the HSE
- carry out intervention visits to premises where accidents have occurred as a result of the provision of poorly maintained facilities such as steps and flooring and where other interventions have highlighted risks in these premises
- will focus on the prevention and the reduction in the number of falls from height in specific industry sectors such as tyre fitters and motor vehicle repairs (as part of car sales), theatres and large auditorium / places of entertainment, warehousing and steel stockholders. This may involve proactive inspections where risks are identified in the high risk sectors carrying out high risk activities or other interventions
- continue to administer the Portsmouth Tattooing Hygiene Rating Scheme. This is a relatively new scheme and involves all registered tattooing premises in Portsmouth. The scheme is voluntary. Visits are made to all those who wish to participate to assess them and give them a grading. Further details on the scheme can be found at: <https://www.portsmouth.gov.uk/ext/the-council/transparency/the-tattooing-hygiene-rating-scheme.aspx>
- visit nail bars to ensure that employees are not put at risk from exposure from chemicals used on site
- visit or carry out other interventions at premises where a risk from legionella has been identified. Legionellosis is the collective name given to the pneumonia-like illness caused by legionella bacteria. This includes the most serious legionnaires disease, as well as the similar but less serious conditions of Pontiac fever and Lochgoilhead fever. Legionnaires' disease is a potentially

fatal form of pneumonia and everyone is susceptible to infection. However, some people are at higher risk, including:

- people over 45 years of age
- smokers and heavy drinkers
- people suffering from chronic respiratory or kidney disease
- anyone with an impaired immune system
- duties under the HSWA extend to risks from legionella bacteria, which may arise from work activities. The Management of Health and Safety at Work Regulations 1999 (MHSWR) provide a broad framework for controlling health and safety at work and more specifically the Control of Substances Hazardous to Health Regulations 2002 (COSHH) provide a framework of duties designed to assess, prevent or control the risk from bacteria like Legionella and take suitable precautions

10 Service analysis 2015 / 2016

- 10.1 The Business Support Team will continue to respond to all enquiries and complaints as directed through to it. These enquiries and complaints typically come from a number of sources including the post, the services mailbox and from the HSE.
- 10.2 **Table 1** below details in previous years the service interventions following contacts from consumers and businesses:

Table 1

Intervention	2013 / 2014	2014 / 2015	2015/ 2016
Proactive inspections	0	0	0
Non-inspection visits	4	4	48
RIDDORS processed	161	153	127
Reactive visits in relation to incidents	1	10	12
Reactive visits in relation to complaints	14	8	1
Reactive visits following requests from businesses	0	0	2
Revisit following earlier intervention	1	12	4

- 10.3 Enforcement action 2015 / 2016 considered of the following:
- 5 formal improvement notices
 - 2 immediate prohibition notices
 - 2 investigations are currently ongoing
 - 1 premises has legal action pending
 - No prosecutions were taken

11 Government Response

- 11.1 In particular, the BST acknowledges the government's overall intention to develop "*a different and more mature relationship with business*".
- 11.2 The BST also acknowledges the government's intention to:
- review all regulators

- presume co-regulation
- make much more use of “*earned recognition*”
- work with businesses and local authorities through Local Enterprise Partnerships to promote better local regulation
- establish a presumption that regulators should help businesses comply with the law
- clarify that no business should face a sanction for simply asking a regulator for advice
- implement new partnership working between government, regulators and businesses at the heart of the new regulatory system, bringing the expertise of the Better Regulation Delivery Office into government
- extend the primary authority scheme to improve the coherence, accountability and transparency of local regulation
- strengthen inspection plans to deliver earned recognition for business
- allow more organisations to participate, within the primary authority scheme, benefiting small business
- include specific policy areas, which are currently out of scope, within the primary authority scheme
- retain the Regulator’s Code, giving it a higher profile, placing it at the heart of the reviews of regulators and ensuring that it is understood by customers

12 Primary authority

- 12.1 Primary authority (PA) is a statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008, that offers businesses operating across council boundaries the opportunity to be regulated in a new way. It was introduced by the government in 2009 to address concerns raised by businesses about how they are regulated by local authorities in areas such as environmental health, licensing and trading standards legislation. Business concerns included contradictory advice, unfocussed activity, duplicated efforts, and the lack of effective dispute resolution when councils disagree.
- 12.2 Primary authority relationships enable business to form a legally recognised partnership with a single local authority, which is called its “*primary authority*”. The primary authority can provide the business with robust and reliable regulatory advice which other local authorities must take into account in their dealings with the business. In this way, primary authority promotes consistency and fairness in the way that local councils enforce regulations. A primary authority is also able to guide the way that other local authorities carry out checks such as inspections, by developing an inspection plan.
- 12.3 The government is committed to developing primary authority agreements and sees the scheme as playing a key role in its work to improve the way that regulations are enforced.
- 12.4 PCC currently has two primary authority partnerships relating to health and safety, with the Southern Co-operative and Clarendo Amazing Venues.
- 12.5 The chief impacts of participating in the scheme for our partners include:
- reducing the costs of complying with regulations

- improving your confidence in the measures you are taking to comply; and
- reducing the costs associated with compliance failures

12.6 The table as set out in HSE LAC 67-2 Revision 4.1 identifies the list of activities / sectors that may be subject to proactive inspections by the BST.

13 Regulators Code

- 13.1 The BST carefully notes the publication of the "*Regulators Code*" by BRDO on the 23 July 2013. The Regulators Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006, replacing the Regulators Compliance Code. It provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.
- 13.2 In the Autumn Statement 2012 Government announced that it would introduce a package of measures to improve the way regulation is delivered at the frontline such as the Focus on Enforcement review of appeals, the proposed "*growth duty*" for non-economic regulators and the "*Accountability for Regulator Impact*".
- 13.3 The Government is committed to reducing regulatory burdens and supporting compliant business growth through the development of an open and constructive relationship between regulators and those they regulate. The Regulators' Code provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.
- 13.4 The government's expectation is that by clarifying the requirements contained in the previous Regulators Compliance Code, in a shorter and accessible format, the BST and the businesses we regulate will have a clear understanding of the services that can be expected and will feel able to challenge if these are not being fulfilled.
- 13.5 Regulators within scope of the Regulators Code are diverse but they share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective. This Code does not detract from these core purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.
- 13.6 Officers within the BST take into account the principles of good enforcement set out in the Code. PCC's general enforcement policies are compliant with the Compliance Code.

14 Open for business: a shared vision for local regulation

- 14.1 At the Local Government Association conference held in July 2013 in Manchester, the strategy document "*Open for Business: A Shared Vision for Local Regulation*" was launched.
- 14.2 The BST supports the statements made in this document and in particular the following:

"Our ambition is for local government to be able to work with business in a local area to understand risks and determine what level of regulation is appropriate. We believe that trading standards, environmental health and licensing services are well placed to free up businesses from unnecessary regulation and can design and operate a scheme which is right for business and right for their local communities, without central direction and prescription".

- 14.3 The BST continues to acknowledge the contents of the important report published by Lord Heseltine in October 2012: *"No Stone Unturned - In Pursuit of Growth."*

Specifically we note with interest the quote on page 105 of this report:

- *"I reject the premise that regulation itself hinders growth. Good, well designed regulation can stop the abuse of market power and improve the way markets work to the benefit of business, employees and consumers. A civilised society must provide a clear framework for the behaviour of firms, with boundaries. Some regulations actually create new markets and deliver jobs. For instance, the Motor Crash Helmet Act 1973 not only saved lives but created a new market in skid lids that is now thriving. The point is that good regulation strikes a proper balance. When such a balance is reached the most powerful result is seen - growth."*

15 Communications

- 15.1 The BST through delivering its key priorities clearly recognises the importance of continuing to develop its role in the communication to businesses and consumers of the work it becomes involved with.
- 15.2 This communication strategy will involve the continuing development of a number of key themes:
- The continuing development and updating of information on the web-pages assigned the health and safety service
 - The continuation of the general offer made to all businesses, associations, groups and organisations in the city for officers to provide talks and presentations to these groups when requested
 - The use of the media, including the local press, radio and television and the City Council's media sites to continue to promote the work of the BST

16 Working with local authority partners

- 16.1 The BST is represented on the South East Health and Safety Advisory Group (HESAG) comprising 17 local authorities. The panel shares knowledge and good practice across the region. The BST is also represented on the Hampshire and Isle of Wight Environmental Health Chief Officers Group where the above is undertaken at a strategic level.

17 Staff training

- 17.1 The BST in delivering its key priorities has, and continues to view the provision of training as fundamental to adding value to existing professional training and retaining competency levels for all officers against the background of change.
- 17.2 Therefore, as a direct consequence, the BST will continue to ensure every opportunity that presents itself will be taken to address identified skill gaps (subject to resources and capacity).

18 Concluding summary

- 18.1 The BST remains committed to the protection and well-being of the public whilst supporting the growth of business.
- 18.2 The BST will continue to deliver its work plan in partnership with governmental departments, key agencies and organisations within the consumer landscape together with legitimate businesses.
- 18.3 Local Government continues to undergo far reaching changes, the BST has recognised this and continues to adapt to the challenges presented by the new and evolving regulatory landscape.

Annex 1

References

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The Portsmouth Plan

Regeneration Strategy - Shaping Portsmouth

Health and Safety at Work Act 1974

National Enforcement Code - Health and Safety at Work - Health and Safety
Executive

HSE - LAC 22/13

Lifting Operations and Lifting Equipment Regulations 1998

ASB5 Notification of Asbestos Work

The Construction (Design and Management) Regulations 2015

The Health and Safety (Enforcing Authority) Regulations 1998

The Management of Health and Safety at Work Regulations 1999

The Control of Substances Hazardous to Health Regulations 2002

Regulatory Enforcement and Sanctions Act 2008