



Portsmouth
CITY COUNCIL

Health and Safety Intervention Plan 2017 / 2020

Regulatory Services - Business Support Team

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1 Introduction

- 1.1 The enduring principle of health and safety law in Great Britain is that those who create risks are best placed to control them, and they should do so in a proportionate and practicable way.
- 1.2 The primary function of Portsmouth City Council Regulated Services Business Support Team (the *BST*) in respect to the regulation of health and safety is the *investigation of failures of controls put in place to manage risk*.
- 1.3 This Intervention Plan (IP) has been developed to outline the manner in which the BST deliver its health and safety responsibilities for the period of the 1st April 2017 to the 31st March 2020.
- 1.4 Following the creation of this IP, in order to maximise officer resource, the BST does not propose to undertake a further formal review of service delivery until 2020 unless there is a material change either in national or local health and safety delivery principals / protocols or a significant increase in demand.
- 1.5 A report detailing the demand for services will however continue to take place annually and presented to Members for their information through the Members Information Service.

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 Statutory obligation

- 3.1 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 Service resource

- 4.1 The health and safety function 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*. This level of resource is considered to be the minimum necessary to deliver the requirements of the HWSA.
- 4.2 As with the delivery of any statutory function, there are dangers in services being limited in terms of resource without proper guidance on what an inadequate arrangement of delivery might actually look like.
- 4.3 The BST needs to think carefully as to the manner in which it delivers its health and safety responsibilities and retaining this minimum level of resource, as the threat of legal challenge for not meeting its statutory requirements is tangible.

- 4.4 Any failure to resource its health and safety responsibilities will by definition lead to potential claims being placed at the door of the Authority based upon a failure to act concomitantly with a Statutory Duty (direct civil claim) or acting as a reasonable Authority would do (potential review of a decision and declaration).

5 Service delivery initiatives

- 5.1 The plans and initiatives to which the service will have regard which delivery its statutory obligations are:
- The HSE's strategy "Help Great Britain Work Well"
 - The Council's Corporate Plan
 - The HSE's National Local Authority Enforcement Code
 - Local Authority Circular (LAC) 67/2 (Revision 6)
 - The Regulators' Code

6 Delivery objectives

- 6.1 The BST will continue 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 in regard to health and safety 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 Delivery methods

- 7.1 In line with previous years, the BST will deliver a mixture of proactive and reactive interventions which will be consistent with our service delivery initiative and objectives.
- 7.2 In practice this will comprise, as necessary, of a very limited programme of proactive inspections of the highest risk workplaces alongside targeted projects aligned with LAC 67/2. These will be supplemented only where appropriate with risk-based reactive interventions in response to reported accidents, work-related diseases, dangerous occurrences and complaints.

- 7.3 According to the National Code the high risk sectors which are suitable for proactive inspections include:
- Open farms and animal visitor attractions
 - Premises with buried metal LPG pipework
 - High volume warehousing and distribution
 - Industrial retail / wholesale premises
 - Large scale public events
 - Commercial catering premises that use solid fuel cooking equipment
 - Premises with vulnerable working conditions (e.g. lone working)
- 7.4 LAC 67/2 also identifies specific topic areas that should be addressed during the course of routine visits. These include:
- Falls from height – work on or adjacent to fragile roofs/materials
 - Duty to manage asbestos
 - Beverage gases in the hospitality industry
 - Welfare facilities for delivery drivers
- 7.5 LAC 67/2 identifies several other intervention types which can be used as an alternative to unannounced proactive inspections. These include the following:
- Visits by appointment
 - The provision of advice and information
 - Sector-specific initiatives which target local problems
 - Responding to “local intelligence” which gives cause for concern
 - Dealing with serious matters as they are observed or brought to an inspector’s attention during advisory or other interventions
 - These include Matters of Evident Concern (MECs) - issues that create a risk of serious personal injury or ill-health; and Matters of Potential Major Concern (MPMCs) - those with a realistic potential to cause either multiple fatalities or multiple cases of acute or chronic ill-health
- 7.6 The HSE "Helping Great Britain Work Well" strategy sets out the priority themes for the effective regulation of health and safety in the workplace. Local authorities play a part in delivering the strategy with particular reference to the following:
- Tackling ill health - managing risk well - simplifying risk management and helping businesses to grow
 - Supporting small employers - giving SMEs simple advice so they know what they have to do
- 7.7 The HSE’s detailed plans are contained in their Health and Work Strategy and in 19 sector-specific strategies under their control which are based on industry type and risk profile. These sectors include commercial consumer services, logistics / transport and sports and leisure and businesses areas as diverse as beauty, retail, hospitality, catering, distribution centres, children’s play,

swimming and thrill-seeking activities such as bungee jumping and motorised leisure pursuits.

8 On-going inspection regime

8.1 New business enquiries and inspections

8.1.1 Health and safety legislation does not require new businesses to notify the Council when they start up. Our experience is that only a tiny percentage of businesses ask for proactive assistance in respect to starting up or seeking assistance with finding appropriate guidance in respect to their specific health and safety needs.

8.2 Health and safety complaints and requests for service

8.2.1 These fall into one of the following broad categories, and will be investigated in accordance with internal procedures and central guidance:

- Complaints about unsafe working conditions, practices or equipment
- Complaints about welfare-related issues such as working hours and meal breaks
- Complaints about the lack of suitable training, supervision or instruction for employees
- Adverse Inspection Reports about lifting equipment and pressure vessels

8.3 Notifiable accidents, injuries, diseases and dangerous occurrences (RIDDORS)

8.3.1 These investigations are carried out in accordance with relevant guidance and procedures.

8.4 Formal notifications

8.4.1 The Council receives formal notifications from specialist engineers relating to lifting equipment; work with asbestos; pressure systems and location of cooling towers. Follow-up work is regularly required in all these areas to ensure that safe working practices are in place. Such work is generally office based and does not form part of the demand analysis statistics as provided in Table 1.

9 Intervention programme

9.1 The BST will:

- only carry out proactive inspections at premises where higher risk activities are being undertaken and at premises where there is intelligence showing that the risks are not being effectively managed
- only carry out intervention visits to premises where accidents have occurred and where other interventions have highlighted risks in these premises

- record details of interventions in all premises recorded on the City Council's database
- 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
- continue to check compliance with the Portsmouth byelaws on tattooing, acupuncture, electrolysis and cosmetic piercing of registered premises
- where appropriate visit nail bars to ensure that employees are not put at risk from exposure from chemicals used on site
- continue to administer the Portsmouth Tattooing Hygiene Rating Scheme. This scheme 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>
- continue to 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
- continue to implement the findings of the Lofstedt review and guidance issued by the HSE to local authorities
- continue to 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
- 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
- visit or carry out other interventions at premises where a risk from legionella has been identified.

10 Service analysis 2016 / 2017

10.1 The BST 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	2016 / 2017
Proactive inspections	0	0	0	0
Non-inspection visits	4	4	48	41
RIDDORS processed	161	153	127	137
Reactive visits in relation to incidents	1	10	12	0
Reactive visits in relation to complaints	14	8	1	7
Reactive visits following requests from businesses	0	0	2	0
Revisit following earlier intervention	1	12	4	1

10.3 Enforcement action 2016 / 2017 considered of the following:

- 2 formal improvement notices
- 0 immediate prohibition notices
- 0 investigations are currently ongoing
- 0 premises has legal action pending
- No prosecutions were taken

11 Government response

11.1 The BST continues to acknowledge the government's overall intention to develop "*a different and more mature relationship with business*" by:

- continuing to apply the principles of "*earned recognition*"
- establishing a presumption that regulators should help businesses comply with the law
- clarifying that no business should face a sanction for simply asking a regulator for advice
- implementing 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
- upon request, working with businesses and local authorities through Local Enterprise Partnerships to promote better local regulation

- continuing to deliver the Primary Authority (PA) scheme to improve the coherence, accountability and transparency of local regulation
- retaining the Regulator's Code, placing it at the heart of the reviews of regulators and ensuring that it is understood by customers

12 Primary authority

- 12.1 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 PA relationships enable business to form a legally recognised partnership with a single local authority, which is called its "*primary authority*". The PA 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, PA 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 PA 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 one PA partnership relating to health and safety, with the Southern Co-operative.
- 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

13 Regulators code

- 13.1 The BST carefully notes the publication of the "*Regulators Code*" (the Code) by Better regulation Delivery Officer in 2013. The Code came into statutory effect in 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 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 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 Code.

14 Open for business: a shared vision for local regulation

- 14.1 At the Local Government Association conference held in 2013 the strategy document "*Open for Business: A Shared Vision for Local Regulation*" was launched.
- 14.2 The BST continues to support the statements made in this document and in particular the following sentiment: that the 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. The BST 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 Additionally, the BST continues to acknowledge the premise that 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 and that the provision of a clear framework for the behaviour of firms, with boundaries. We support the view that some regulations create new markets and deliver jobs, and that that good regulation strikes a proper balance.

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

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