

Title of meeting: Environment and Community Safety Portfolio Decision Meeting

Date of meeting: 20th September 2018

Subject: Food Safety Operating Plan 2018 / 2019

Report by: Director of Culture and City Development

Wards affected: All

Key decision: No

Full Council decision: No

1 Purpose of report

- 1.1 To provide clarity in respect to Portsmouth City Council's (the Council) Food Safety Plan for 2018 / 2019 by providing:
- a summary of the statutory duties placed upon the Council and food business operators (FBO) within Portsmouth;
 - the scope of the Food Safety Service (FSS) and highlighting the demands made on it;
 - a profile of food businesses in Portsmouth;
 - the business priorities of the Council and FSS relating to food safety;
 - a summary of the 2017 / 2018 service delivery in terms of food premises inspections;
 - a review key FSS activities identified for 2018 / 2019;
 - how FBOs are likely to be regulated in the future.

2 Recommendations

- 2.1 **It is RECOMMENDED that the Cabinet Member for Environment and Community Safety:**
- a) **acknowledges the increasing food related demands placed available resources as set out in Section 8 and 15, and the impact of forthcoming changes to governmental regulatory requirements as set out within Section 9;**
 - b) **approves the continuation of a risk-based approach to the statutory and regulatory inspection and enforcement of food business operators as set out in Section 11;**
 - c) **approves the 2018 / 2019 Food Safety 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 Legal background - the Council

- 4.1 Portsmouth's FSS is delivered in accordance with the Food Law Code of Practice (the Code), the latest version of which was released in March 2017.
- 4.2 The Code is issued by the Food Standards Agency (FSA) and governs the manner in which the Council enforces relevant food safety legislation and delivers official controls to secure food law compliance.
- 4.3 The Code is issued under the Food Safety Act 1990 (the Act) and has statutory force. If the Council does not have regard to its provisions our decisions or actions could be successfully challenged. Additionally, evidence gathered during criminal investigations could be ruled inadmissible by a court.
- 4.4 The FSA audits the Council's activities against their minimum prescriptive standards of performance and publishes the results.

5 Current scope of the Food Safety Service

- 5.1 Food safety activities currently undertaken by the Council include:
- Programmed inspections and interventions at food businesses (fixed or mobile) at a frequency set out in the Code risk rating scheme;
 - Revisits to premises following programmed inspections to secure compliance with legal requirements;
 - Assessing food hygiene and food standards issues (e.g. food allergens and 'use by' date labelling) during premises inspections;
 - Carrying out assessments and updating data for the National Food Hygiene Rating Scheme (FHRS);
 - Food microbiological and compositional sampling which is either intelligence-led or forms part of national sampling programmes;
 - Investigating complaints about the standard of hygiene in food businesses in Portsmouth;
 - Investigating complaints about food that has been produced and/or sold in Portsmouth;
 - Monitoring of live bivalve molluscs and water for microbiological and bio-toxin contamination;
 - Investigating food poisoning and food borne infectious disease cases;
 - Responding to national Food Safety Alerts and Incidents issued by the FSA;
 - Promoting food safety by education, training and business support and working with other organisations to assist FBOs;
 - Carrying out documentary and identity checks of consignments of imported food;
 - Providing Health Certificates for food to be exported and, where appropriate, certificates confirming imported fruit is of organic origin;

- Issuing specific approvals to high risk food businesses subject to that requirement;
- Issuing Ship Sanitation Certificates;
- Sampling of potable water supplies on vessels.

6 Legal background - food businesses operators

6.1 Food businesses must ensure that they comply with the Act by not:

- rendering food injurious to health;
- selling food which is not of the nature or substance or quality demanded to the purchasers prejudice;
- falsely describing or presenting food.

6.2 Anyone who prepares and/or sells food is required to make sure it is safe to eat. The ingredients used, the premises in which the products are made, the method of production and the person making the food all have an impact on the safety and quality of the final product.

6.3 Additionally, the law requires all businesses to have a food safety management system based on the principles of HACCP (Hazard Analysis and Critical Control Point). This is a way of managing food safety 'hazards'. HACCP procedures and records must be appropriate for the nature and size of the business and must be kept up to date.

7 The food hygiene rating scheme

7.1 Through a preplanned inspection program the Council administers the FSAs FHRS. Ratings are a qualitative snapshot of the standards of food hygiene found the time of inspection. The standards include:

- handling of food;
- how food is stored;
- how food is prepared;
- cleanliness of facilities;
- how food safety is managed.

7.2 The scheme gives businesses a rating from 5 to 0 which is can displayed at their premises and online so the public can make more informed choices about where to buy and eat food. The scores mean the following:

- 5 – hygiene standards are very good
- 4 – hygiene standards are good
- 3 – hygiene standards are generally satisfactory
- 2 – some improvement is necessary
- 1 – major improvement is necessary
- 0 – urgent improvement is required

8 Food business profile and compliance

8.1 The profile of the registered food businesses in Portsmouth by category, as 1st April 2018, is shown in Table 1. The city is characterised by a high level of

food business 'churn', i.e. the rate at which businesses cease trading and others are established. In 2017/18, 322 new food businesses registered with the Council and 405 were known to cease trading.

- 8.2 The number of new businesses represented a churn rate of 17% in the year. This is significant for the Council as it introduces an additional inspection burden to the programmed inspections of existing businesses prescribed by the Code.

Table 1 - A profile of the registered food businesses in Portsmouth.

Category	No of premises
Manufacturers and packers	16
Importers / exporters	2
Distributors / transporters	14
Retailers	386
Restaurants and caterers	1454
Total	1872

- 8.3 Demands on the service continue to be high with over 1000 programmed interventions achieved in food businesses and 160 reactive service requests dealt with in 2017 / 2018. The focus remains on poorly performing and high risk food businesses which has led to a significant level of enforcement activity during the year.
- 8.4 Food businesses are risk-rated according to prescribed criteria relating food type, method of processing, customers at risk and level of compliance. Businesses are then inspected on the basis of an intervention risk rating which determines the frequency of inspection. Inspection frequencies are set out in the Code.
- 8.5 Of the 1074 food hygiene interventions achieved in 2017 / 2018, 987 were premises inspections, 3 were surveillance visits, 63 related to information / intelligence gathering and 21 involved education and business support. During the majority of these, a food standards assessment was also made.
- 8.6 It is policy that proportionate action will be taken against any business with a rating below 3 ('generally satisfactory') to ensure it improves its compliance with food law. The action taken depends on the issue identified and the risk it presents to the public. In 2017 / 2018, 67 food safety warning letters and 17 Hygiene Improvement Notices were issued, 6 premises were closed due to imminent health risk concerns, 2 businesses were prosecuted and 1 formal caution was issued for food safety offences. This level of enforcement activity, whilst significant, represents only 1% of the total number of registered food businesses in the City.
- 8.7 The risk profile of food businesses in Portsmouth, as at 1st April 2018, is shown in Table 2. The number of high and medium risk premises is currently stable, the number of very low risk business has declined and the significant business churn has led to a number of premises awaiting inspection at the year end.

Table 2 - The risk profile of food businesses in Portsmouth.

Rating category	Intervention risk rating	Minimum inspection frequency	Number	+/- change since 2016/17
A	92 or higher	6 monthly	1	-
B	72-91	12 monthly	62	+3%
C	52-71	18 monthly	386	-
D	31-51	2 yearly	715	+13%
E	0-30	3 yearly or Alternative Enforcement Strategy	629	-20%
Unrated		Awaiting inspection	79	+14%
Total			1872	-3%

- 8.8 The current FHRS profile of the registered food businesses in Portsmouth as at 7th July 2018 is shown in Table 3.

Table 3 - FHRS profile of the registered food businesses in Portsmouth.

FH Rating	Descriptor	Number of premises
0	Urgent improvement necessary	3
1	Major improvement necessary	43
2	Improvement necessary	41
3	Generally satisfactory	181
4	Good	288
5	Very good	1201
Unrated	-	43
Total number of rated premises		1800

- 8.9 At the beginning of July 2018, 95% of premises were broadly compliant (those premises rated '3', '4' or '5') which has remained static from 2017 / 2018. All businesses whose rating falls below 3 receive an appropriate intervention to ensure necessary improvements are made to secure food safety.
- 8.10 The number of food hygiene interventions carried out in 2017 / 2018 is shown in Table 4. It shows that due to resource constraints, it was not possible to complete all of the 'due inspections' by the year end. Priority is given to the highest risk businesses (A, B and non-compliant Cs). Due interventions outstanding at the year-end was down to 143. This represented a significant fall of 30% from the previous year and the lowest level for 5 years.

Table 4 - The number of food hygiene interventions carried out in 2017 / 2018.

Interventions	Achieved	Due and outstanding
A	2	0
B	67	0
C	250	5
D	216	78
E	202	60
Unrated	337	0
Total	1074	143

- 8.11 There is significant food business activity associated with the port:

- Portsmouth International Ferry Port serves freight and ferry routes to France, Spain and the Channel Islands and, as a 'Designated Point of Entry', receives food imports from the European Union (EU). A key importer of bananas from the Caribbean was lost from the port during 2018;
- The naval base contains several large food businesses catering for naval personnel and civilian trade;
- A significant number of cruise vessels are subject to boarding and sanitation inspections (42 cruise ships are expected in 2018).

- 8.12 In 2017 / 2018, over 20,000 of food consignments entered the Port. Several key interventions were undertaken to ensure food imported from the EU and third countries did not present a safety risk. Of the consignments entering, 100% of vessel manifests were checked, 1200 specific documentary checks were made, 165 physical checks and 87 identity checks were carried out based on intelligence received, and 71 consignments were condemned as being unfit for human consumption.
- 8.13 The Council has responsibility for monitoring the classification and bacteriological quality of the shellfish beds in Portsmouth and Langstone Harbours and also the bio-toxin levels in marine waters. Although the ongoing costs of bio-toxin analysis are met by the FSA, the sampling of shellfish and associated analytical costs are delivered within the service budget. In 2017 / 2018, 149 shellfish samples were taken. Positive results enabled the Authority to classify two new harvesting areas in Fareham Lake. It is anticipated that the level of sampling required in order to maintain the classification of our bivalve mollusc production areas will remain high in 2018 / 2019 - consequently drawing significant levels of resource from other service delivery areas.
- 8.14 Food safety inspections are carried out by appropriately qualified and authorised environmental health practitioners. The officers deliver a single 'environmental health service' to a diverse customer base which, in addition to food safety, covers health and safety in the workplace, infectious disease control, animal health and port health. As a consequence, the maximum resource that is available to deal with food safety is approximately 2.0 FTE officers.

9 Regulating our future

- 9.1 "Regulating Our Future" (ROF) is a new programme being developed by the FSA to update its current inflexible and outdated regulatory model. It is likely that ROF will be introduced in 2020.
- 9.2 ROF will revolve around core principles set by the FSA:
- Businesses are responsible for producing food that is safe and what it says it is, and should be able to demonstrate that they do so;
 - Consumers have a right to information to help them make informed choices about the food they buy – businesses have a responsibility to be transparent and honest in their provision of that information;

- FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of UK food businesses;
- The regulator should take into account all available sources of information;
- Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not;
- Businesses should meet the costs of regulation, which should be no more than they need to be.

9.3 ROF will include the following:

- Compliance standards: The FSA will set new standards for food businesses and clarify the requirements for compliance to those standards.
- Enhanced registration: FBOs will be required to undergo “Enhanced Registration”, where there will be an expectation that operators comply with safety and standards regulations before they start trading. A new centralised food business database will be created.
- Segmentation: The FSA will analyse a larger range of parameters relating to food safety and authenticity, factors not just related to the product type and volumes, but also to the performance and compliance of the operator themselves. This will allow for a flexible approach to inspection and intervention, with priorities being assigned commensurate to the risks posed to the consumer.
- Assurance: Providing flexibility in how businesses prove their compliance with food law, for example allowing the use of private auditing schemes and digitally enabled technologies to provide assurance data. The intent is to reduce the amount of duplication in checks and inspections, lower the regulatory burden on good performers and enable local authorities to re-allocate resources to tackle poor performing businesses.
- Intervention: The FSA intends that local authorities will still take action locally against non-compliant businesses, as well as providing support to new businesses. However the FSA will also use other sources of information to undertake surveillance and horizon scanning, including that from an expanded role for the National Food Crime Unit and better use of intelligence from industry and international partners.
- Potential impacts: Food business operators will need to be proactive in ensuring compliance earlier and choosing assurance options; good operators may be rewarded with a lower cost of compliance, while poor performers may see increases in costs.

9.4 Success will be judged on a number of outcome criteria that are yet to be articulated precisely but will include measures relating to public health, public and business confidence in food and the performance of the regulatory bodies.

10 A contrary view of ROF

- 10.1 An opposing assessment of ROF is that the FSA's proposals will result in the deterioration of food safety standards and generate more work for local authorities.
- 10.2 Opponents argue that local authorities must be provided with sufficient resources to conduct sufficient unannounced inspections and audits to prevent food safety standards from falling to unacceptable levels. It has been referenced that leaving under-resourced local authorities to cope with all of the challenges they currently face in delivering ROF, plus receiving huge amounts of new data, the completeness and reliability of which cannot be checked, is not a recipe for maintaining, let alone raising, food safety standards.

11 Service delivery priorities in 2018 / 2019

- 11.1 Service delivery priorities in 2018 / 2019 include:
- Target inspection resources to food businesses that present the highest risk to public safety;
 - Take appropriate action against poorly performing businesses (rated 0, 1 or 2) including proportionate enforcement measures in line with enforcement policies;
 - Manage the planned inspection programme to achieve a 100% inspection rate for higher risk Category A, B and non-compliant C premises that are due an intervention during the year;
 - Inspect Category D premises (lower risk) at a rate determined by available resource levels;
 - Deal with Category E premises (lowest risk) by means of an alternative enforcement strategy in lieu of inspections (which may include telephone surveys and questionnaires) to determine current activity and whether an intervention is required;
 - Introduce charging for FHRS re-visits when requested by the business;
 - Track and consider the impact of proposals to change food law delivery currently under review by the FSA in its ROF strategy. Examine the implications of EU exit for the delivery of the food safety controls at the Port;
 - Continue the shellfish sampling programme in consultation with the FSA with ongoing review of bed classifications in Portsmouth and Langstone harbours.

12 Equality impact assessment

- 12.1 The inspection criteria have been subject to a preliminary 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.

13 Legal implications

- 13.1 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.
- 13.2 Legal Services has also previously confirmed that the Code 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 FSA acknowledges 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.

14 Director of Finance's comments

- 14.1 The activities proposed within the Food Operating Plan 2018 / 2019 and summarised in section 8 of this report will be funded from the existing service portfolio budgets, as approved by Full Council.

15 Service Director remarks

- 15.1 The FSS Food Operating Plan is an expression of the Councils' continuing commitment to the delivery of food safety in Portsmouth.
- 15.2 The FSS service is of huge value to Portsmouth, ensuring that food is prepared and served in a manner which protects the public, supporting businesses and seeking to ensure that the safety criteria applied to food in Portsmouth delivers food of a 'high' or 'very high' hygiene standard.
- 15.3 Maintaining high quality food is essential. Not only because of the health benefits but because food shapes our street scene environment, underpins our economy, helps build resilient communities and is at the heart of our culture and society.
- 15.4 Our officers work extremely hard to support FBOs in maintaining and improving their hygiene rating and developing their businesses. However as Local Government continues to undergo far reaching changes we recognise that we must prepare to adapt to the unknown challenges and financial implications presented by the new and evolving regulatory landscape whilst continuing to protect the true value of the FSS and its significant contribution to Portsmouth.
- 15.5 The FSS has identified significant service risks relating to the range, depth and number of demands placed upon it and the resources assigned to it. Whilst the FSS develop appropriate protocols to maintain the level of skills needed within the team to deliver our responsibilities in the future the levels of resourcing assigned to it is of significant concern.

- 15.6 Resources are considered to be critical when considering the minimum requirements currently prescribed by the government. Furthermore we predict that as we begin to implement the ROF programme the situation may deteriorate further. Public confidence in food is vital for Portsmouth and the Council must continue to ensure that the FSS is suitably resourced to ensure that all food in Portsmouth is safe for consumption.

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

Appendices:

Appendix 1: Food Safety Operating Plan 2018 / 2019

Appendix 2: Preliminary 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
Food Standards Agency - Regulating Our Future July 2017	https://www.food.gov.uk/sites/default/files/media/document/rof-paper-july2017_0.pdf

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 20th September 2018.

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Signed by: Councillor Dave Ashmore, Cabinet Member for Environment and Community Safety