

Title of meeting:	Community Safety Portfolio Decision Meeting
Date of meeting:	31 st July 2019
Subject:	Food Safety Operating Plan 2019 / 2020
Report by:	Director of Culture, Leisure and Regulatory Services
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 Operating Plan (the Plan) for 2019 / 2020 by providing:
- a profile of food businesses in Portsmouth
 - the scope of the Food Safety Service and demands made on it
 - the delivery of the service in terms of food premises inspections
 - operational procedures to ensure compliance with legislative requirements and consistency of approach
 - a review of performance in 2018 / 2019 and a summary of key activities identified for 2019 / 2020.

2 Recommendations

2.1 RECOMMENDED that the Cabinet Member for Community Safety:

Approves the 2019 / 2020 Food Operating Plan attached as Appendix 1.

3 Reasons for recommendations

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

4 Legal background - the Council

- 4.1 This Food Safety Operating Plan has been produced in accordance with the Food Standards Agency (FSA) 'Framework Agreement on Official Feed and Food Controls by Local Authorities'. Its purpose is to demonstrate that the Council, as the designated 'Competent Authority', has in place adequate and effective arrangements to meet its statutory obligations in respect of food safety.

- 4.2 There is a wide range of EU-derived legislation that governs the safety of food in the UK at all stages of the production and distribution chain including a number of general principles of food safety and food law which food businesses must comply with.
- 4.3 The Plan sets out how business are regulated and advised and how relevant legislation is enforced to minimise the food safety risks to the health and well-being of those living and working in Portsmouth and also visitors to the City.
- 4.4 The FSA continues to consult on its 'Regulating Our Future' (ROF) programme which is the future national delivery model intended to modernise how food businesses are regulated by introducing a system that is fit for purpose in a global market and can adapt as circumstances change and technology develops in the future. The full impact of the changes and when they will be introduced remain to be confirmed but the principal changes are likely to concern:
- A new digital food business registration scheme which includes the provision of online advice tailored to a particular business type
 - Changes to how businesses are risk assessed to determine the nature and frequency of regulatory interventions
 - Making the display of Food Hygiene Rating Scheme (FHRS) scores mandatory.
- 4.5 Although the UK will be leaving the EU during 2019, it is anticipated that all relevant food safety law will remain consolidated into UK law by enabling legislation. It is not anticipated that EU exit will immediately change the legal requirements relating to food safety or the Council's enforcement priorities. However, the extent of the checks and controls delivered at the Port may be significantly increased depending on the terms of the exit and its impact on the trading relationship between the UK and the rest of the EU.

5 Service Objectives

- 5.1 The aim of the service is to ensure that food and drink that is produced, stored, distributed and consumed in Portsmouth is safe. To support this aim, there are several key service objectives:
- i. Ensure by education and enforcement that food intended for human consumption which is produced and / or sold in Portsmouth is safe to eat and complies with food safety requirements
 - ii. Deliver a programme of inspections and interventions in relation to primary producers and food businesses, on a risk-based frequency
 - iii. Provide support to help businesses comply with their legal obligations

- iv. Investigate and take appropriate action concerning complaints about food and food premises to protect public health
- v. Take enforcement action when necessary in a consistent, transparent and proportionate basis
- vi. Carry out targeted and reactive environmental and food microbiological sampling
- vii. Prevent the spread of specified infectious and food borne diseases
- viii. Advise and educate consumers and service users on food safety matters
- ix. Deliver Port Health Authority functions, including those relating to the sanitary condition of vessels, food imports or exports and the monitoring of shellfish / harvesting within the Council's area of jurisdiction
- x. Maintain and improve dialogue with stakeholders and customers to improve the manner in which the service is delivered to them
- xi. Provide appropriate business support through Primary Authority relationships.

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 sells food is required to make sure the food they supply 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 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'. Procedures and records need to be appropriate for the nature and size of businesses 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 snapshot of the standards of food hygiene found at the time of inspection. It is the responsibility of the business to comply with food hygiene law at all times. This includes:

- 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 displayed at their premises and online so you can make more informed choices about where to buy and eat food:

- 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 Understanding the ratings

8.1 The rating shows how well the business is doing overall, based on standards found at the time of inspection. The ratings can be found online and on stickers which may be displayed at business premises. The back of the sticker and the online rating will also show the date of the inspection by the local authority's food safety officer.

8.2 A food safety officer from Regulatory Services inspects a business to check that it follows food hygiene law so that the food is safe to eat. At the inspection, the officer will check the following three elements:

- how hygienically the food is handled - how it is prepared, cooked, re-heated, cooled and stored
- the physical condition of the business - including cleanliness, layout, lighting, ventilation, pest control and other facilities
- how the business manages ways of keeping food safe, looking at processes, training and systems to ensure good hygiene is maintained. The officer can then assess the level of confidence in standards being maintained in the future.

9 Service demand and delivery

9.1 Demands on the service continued to be high in 2018 / 2019 with 1046 interventions achieved in food businesses and 188 reactive service requests dealt with. The priority remains on poorly performing and high risk food businesses which leads to significant enforcement activity year on year.

9.2 Portsmouth has a number of food business owners whose first language is not English. A specialist translation and interpretation service is used to assist food business operators by providing access to appropriate verbal and written advice in the appropriate language. This includes providing information on legal requirements and supporting proprietors at formal interviews when criminal investigations have been commenced.

9.3 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. These frequencies are set out in the "Food Law Code of Practice" (FLCoP).

- 9.4 The risk profile of food businesses in Portsmouth, as at 1st April 2019, is shown in **Table 1**. The total number of food businesses remains fairly stable although the risk profile has changed since 2018 / 2019 chiefly by an increase in B-rated premises arising from better targeting of intervention activity on poorly performing businesses and the use of a contractor to reduce the number of lower risk businesses that required inspection.
- 9.5 This change in risk rate profile has placed an additional pressure on Regulatory Services as more inspections are required in respect to the "same number of premises".

Table 1

Rating category	Intervention risk rating	Minimum inspection frequency	Number	+/- change since 2018/19
A	92 or higher	6 monthly	1	-
B	72-91	12 monthly	75	+20%
C	52-71	18 monthly	373	-3%
D	31-51	2 yearly	729	-17%
E	0-30	3 yearly or Alternative Enforcement Strategy	578	-45%
Unrated		Awaiting inspection	85	-10%
Total			1844	-1%

- 9.6 E-rated low or minimal risk food businesses are dealt with through an Alternative Enforcement Strategy (self-assessment or inspection on an alternate cycle). Follow-up inspections following self-assessment will only be carried out if deemed necessary i.e. the risk profile of the business has increased since the last assessment.

10 Food Hygiene Rating profile

- 10.1 After each inspection a food business is rated under the national Food Hygiene Rating Scheme (FHRS).
- 10.2 The FHRS profile of the registered and rated food businesses in Portsmouth as at 4th June 2019 is shown in **Table 2**. 94% of rated premises were broadly compliant (those premises rated 3, 4 or 5) which is largely unchanged from 2018 / 2019. A total of 78 businesses were awaiting an inspection and rating assessment.

Table 2

FH Rating	Descriptor	Number of businesses (% of rated premises)
0	Urgent improvement necessary	3 (1%)
1	Major improvement necessary	53 (3%)
2	Improvement necessary	48 (3%)
3	Generally satisfactory	154 (9%)

4	Good	277 (15%)
5	Very good	1244 (70%)
	Not yet rated	78
Total number of rated premises		1857

- 10.3 Any businesses whose rating falls below 3 receives an appropriate intervention to ensure necessary improvements are made to ensure compliance with food safety requirements.
- 10.4 The FHRS contains several safeguards for businesses which include an appeal provision and a 'right to reply' in which the proprietor can give an explanation why the condition of the business might have been unsatisfactory at the time of the inspection and what measures have been undertaken since to address any issues of concern.
- 10.5 A business can also request a re-visit to reassess the rating, subject to certain conditions being met. In November 2018, in common with many Hampshire local authorities, the Council introduced a charge of £205 to recover the cost of these inspections. Between 19th November 2018 and 5th April 2019, 13 businesses applied to have their rating re-assessed after improving their performance and all achieved a new rating of 4 'good' or 5 'very good'.

11 Food safety enforcement

- 11.1 Food safety enforcement is undertaken in a graduated manner and in accordance with the Council's Corporate Enforcement Policy and FSA guidance. Informal action, advice and persuasion are the preferred methods of achieving compliance but other enforcement measures are taken if the circumstances demand this. Any enforcement action likely to lead to court proceedings is subject to a formal process and scrutiny by senior officers.
- 11.2 It is PCC 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.
- 11.3 In 2018 / 2019, 86 food safety warning letters and 29 Hygiene Improvement Notices were issued, 8 premises were closed due to imminent health risk concerns (mainly infestation issues) and 7 businesses were prosecuted for food safety offences. This level of enforcement activity, whilst significant, represents less than 1% of the total number of registered food businesses in the City.

12 Food premises inspections

- 12.1 Food safety inspections and interventions are carried out in accordance with the FLCoP and the relevant Food Safety Inspection Standard Operating Procedures, and undertaken in accordance with frequencies described in section 9.5.
- 12.2 'Interventions' are defined in the FLCoP as activities intended to monitor, support and increase food law compliance within a food establishment. Of the food hygiene interventions achieved in 2018 / 2019, 912 were premises inspections and

enforcement re-visits, 3 were surveillance visits, 120 related to information / intelligence gathering and 11 involved education and business support. During the majority of these, a food standards assessment was also made.

12.3 The number of food hygiene interventions achieved and outstanding at the end of 2018 / 2019 are shown in **Table 3**.

12.4 Resource constraints prevented the completion of all 'due inspections' by the year end. Priority was given to the highest risk businesses (A, B and non-compliant Cs). Due interventions outstanding (as assessed under the FLCoP) at the year-end was 135 which represents an ongoing reduction achieved over the last six years.

Table 3

Interventions	Achieved	Due and outstanding
A	1	1
B	68	0
C	228	23
D	312	63
E	195	48
Unrated	242	0
Total	1046	135

13 Food complaints

13.1 Service requests are dealt with under the Standard Operating Procedure for complaints concerning food items or food premises.

13.2 In 2018 / 2019, 188 complaints about food items and food premises were investigated. The majority were found to be justified and action was taken on the basis of risk presented to the public.

14 Key activities during 2019 / 2020

14.1 Key activities scheduled for 2019 / 2020 are to:

- Target inspection resources to food businesses that present the highest risk to public safety.
- Take appropriate action against poorly performing businesses (FH rated 0, 1 or 2) including proportionate enforcement measures in line with EH and corporate enforcement policies.
- Manage the planned food business 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.

- Ensure that requests for service are subject to an initial assessment and response within 3 working days or sooner depending on the risk presented to the public.
- Ensure that all applications for premises approval under EC 853/2004 are determined within 28 days of receipt.
- Inspect lower risk Category D and E premises at a rate determined by available resource levels and by alternative interventions where appropriate
- Ensure business requests for FHRs re-visits are carried out within 6 weeks unless where a longer intervention period is deemed appropriate (subject to the FHR Brand Standard requirements)
- Review and update all food service policies and procedures as necessary to reflect any changes in legislation, FSA policy, FLCoP to ensure they remain fit for purpose.
- 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.
- Identify additional means to promote food safety standards and requirements to local businesses to improve compliance in key areas.
- Continue to participate in the Hants and IOW Food Advisory Group and TSSEL work programmes and meetings.
- Continue to participate in local, regional and national food sampling surveys concerning microbiological quality and food standards matters.
- Ensure that staff continue to receive appropriate and sufficient up to date training to meet the 20 hour CPD and competency requirements as defined in the FLCoP. Priority will be given to that CPD necessary to deliver the service priorities, to meet statutory and procedural requirements, and any training needs of new members of the team.
- Review and update as necessary competency assessments (hygiene and standards) for all staff engaged in food safety regulation.
- Engage with the organisers of key outdoor events to ensure that mobile food businesses trading in the City meet the necessary hygiene standards when trading.
- Continue to engage with organisations supporting minority ethnic groups to support food business operators whose first language is not English.

- Continue the shellfish sampling programme in consultation with CEFAS / FSA with ongoing review of bed classifications in Portsmouth and Langstone harbours.

15 Equality impact assessment

- 15.1 The inspection criteria have been subject to an equality impact assessment, attached as **Appendix 2**.
- 15.2 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.
- 15.3 The way in which the service operates is largely determined by legislation and the standards and practices set by the FSA, which also controls training and provides much of the information given to customer, including explanatory documents in other languages. Where language difficulties do exist officers will provide assistance, translate documents or accept key documents in another language.
- 15.4 As a regulatory function of the Council the service's primary task is to ensure that food premises and the food they produce are safe for those who eat and work there and must apply the legislation to all food businesses. There is no evidence that food businesses owned or operated by people from any group are discriminated against (i.e. treated differently and unfairly) or that they are disadvantaged in any way which cannot be objectively justified by the need to enforce the legislation to protect the public and workers. Officers are, however, aware of the need for cultural sensitivity and the need to provide additional help to customers for whom English is not their first language.

16 Legal implications

- 16.1 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.
- 16.2 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 FSA has acknowledged that the aim of this revision is partly to ensure that resources are directed at those food businesses that present the greatest risk to public health and consumer protection.

17 Director of Finance's comments

- 17.1 The activities proposed within the Food Operating Plan 2019 / 2020 and summarised in this report will be funded from the existing service portfolio budgets, as approved by Full Council.

18 Service Director remarks

- 18.1 The Food Operating Plan is an expression of the Councils' continuing commitment to the delivery of food safety in Portsmouth.
- 18.2 Ensuring that food is prepared and served in a manner which protects the public, supports businesses and seeks to ensure that the safety criteria applied in Portsmouth delivers food of a 'high' or 'very high' hygiene standard remains critical. Additionally, ensuring that food contains the ingredients demanded by the consumer is crucial, particularly as a severe food allergy can cause a life-threatening reaction.
- 18.3 Our officers continue to work extremely hard to support FBOs in maintaining and improving their hygiene rating and developing their businesses so contributing to the success of Portsmouth. Generally businesses understand that improving and maintaining high standards of food safety is not a particularly difficult task and that our officers are there to help providing guidance and assistance to support businesses achieve basic standards of food hygiene.
- 18.4 While businesses in England do not have to display their ratings, those with good ratings do want to advertise it. Validating a high hygiene rating on the door of the business demonstrates the requirements of food hygiene law. A high rating is very good for business. Those with poor ratings are not helping their businesses but they cannot conceal the fact that they need to raise their standards, as ratings for every inspected establishment are available online. The food hygiene rating system allows customers to make an informed choice about where they eat or from where they order their food for home delivery.
- 18.5 During 2019 / 2020 Regulatory Services has identified significant service risks relating the range, depth and number of demands placed upon it and the resources assigned to it. Whilst the food safety team 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 remains a significant concern.
- 18.6 Resources are particularly problematic when considering the minimum requirements currently prescribed by the government. We continue to predict that the implementation of the ROF programme and dealing with the uncertainties of border impacts as a result of Brexit discussions will impact upon the service in the next 12 months and that the current resources assigned to the service will continue to be stretched as a result.

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Signed by: Stephen Baily, Director of Culture, Leisure and Regulatory Services
Development

Appendices:

Appendix 1: Food Operating Plan 2019 / 2020

Appendix 2: Equalities Impact Assessment

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

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

Title of Document	Location
Food Law Code of Practice	https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice
FSA's Regulating Our Future' strategy	https://www.food.gov.uk/regulating-our-future-key-documents

The recommendations set out in 2.1 above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for Community Safety on 31st July 2019

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 Signed by: Councillor Lee Hunt, Cabinet Member for Community Safety