

Title of meeting: Cabinet Member for Environment and Community Safety Portfolio Decision Meeting

Date of meeting 11 November 2015

Subject: Inspection plan of food business operators 2015 / 2016

Report by: Director of Regulatory Services, Community Safety and Troubled Families

Wards affected: All

Key decision: No

1. Purpose of report

1.1 The purpose of this report is to update the Cabinet Member for Environment and Community Safety on the current level of food business hygiene compliance in Portsmouth and to set out the programme of inspection during 2015 / 2016.

2 Recommendation

2.1 That the Cabinet Member for Environment and Community Safety:

- a) approves the continuation of a risk-based approach to the statutory and regulatory inspection and enforcement of food business operators;
- b) acknowledges the level of hygiene compliance in food businesses in Portsmouth and the public health importance of this service;
- c) approves the Food Operating Plan 2015 / 2016 as described in Appendix 1 of this report.

3 Statement of purpose

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 enforcement.

3.2 Our priorities are the public and businesses. We support the following objectives of the Food Standards Agency as outlined in their Strategic Plan to 2015; Safer food for the nation, namely:

- Food produced or sold in the UK is safe to eat;
- Imported food is safe to eat;
- Enforcement is effective, consistent, risk-based, proportionate and is focused on improving public health.

4. Background

- 4.1 Since 2011 the Environment Health Business Support Team (BST) has implemented the national 'Food Hygiene Rating Scheme' (FHRS) which is run in partnership with the Food Standards Agency (FSA). In the subsequent four years various Cabinet Members have endorsed revised risk based inspection and enforcement plans devised to target resources upon businesses where the lowest acceptable level of hygiene is being maintained.
- 4.2 The FHRS is intended to offer guidance to consumers in choosing where to eat out or shop for food by giving them an enhanced level of information about the hygiene standards in restaurants, cafés, takeaways, hotels and food shops. The FHRS is also intended to actively encourage businesses to improve their hygiene standards.
- 4.3. Under the FHRS, officers from the BST inspect food businesses to ensure that they meet the requirements of food hygiene law. Subsequently these officers rate the hygiene standards found at the time of inspection. At the bottom of the scale is '0' which requires urgent improvement. At the top of the scale is '5' which means the hygiene standards are very good.
- 4.4 The Food Law Code of Practice (FLCofP) sets out the framework under which the BST must carry out its statutory functions to protect the public in respect to food hygiene and food safety. It requires every local authority to have a Food Operating Plan and prescribes the manner in which it is formatted.
- 4.5 The BST is required under legislation to have regard to the FLCofP when discharging its duties. Should the BST fail to have regard to relevant provisions of this Code, decisions and actions of the team are likely to be successfully challenged, and evidence gathered during a criminal investigation being ruled inadmissible by a court and formal action being instigated against the city council by the FSA.
- 4.6. The 2015 / 2016 plan outlines how food safety will be monitored and controlled. The service plan covers a wide range of topics including:
- food team aims and objectives;
 - authority background;
 - service delivery;
 - resources;
 - quality assessment;
 - service plan and operational plan review;
 - approved premises controls at approved premises; and
 - food sampling.

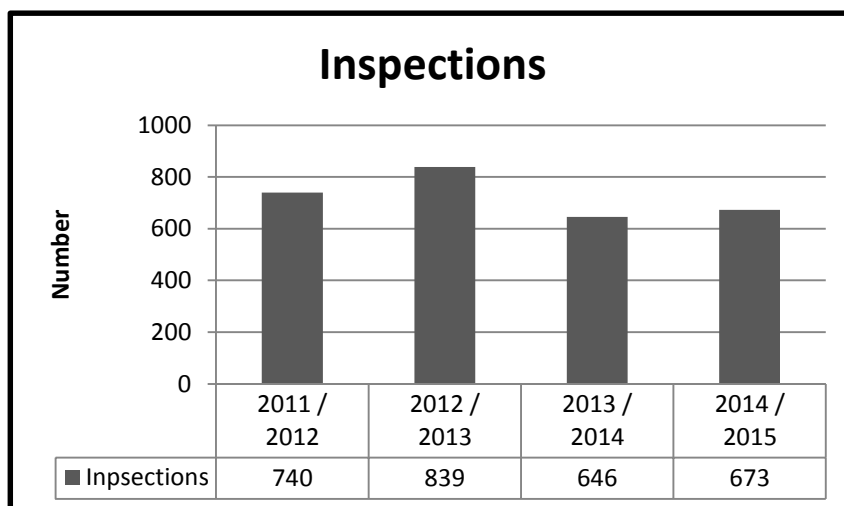
5. Analysis of service delivery

- 5.1. The number and type of Food Business Operators (FBO) on the 13th June 2015 is shown in table 1. The number in brackets is the change in premises number within each category as from 1st April 2015).

Table 1

| | | | |
|------------------------------------|-----------|------------------------------|-----------|
| Primary Producer | 0 (-) | Restaurant / Caterers | |
| Manufacturer and Packer | 13 (+4) | Hotel/Guest House | 51 (-1) |
| Importer / Exporter | 3 (+2) | Mobile Food Unit | 58 (+10) |
| Distributor / Transporter | 22 (+3) | Caring Premises | 222 (-14) |
| Retailers: | | Restaurant and Caterer | 320 (+14) |
| Supermarket / Hypermarket | 35 (+6) | Pub/Club | 210 (+3) |
| Small Retailer | 332 (+16) | Restaurant / Café / Caterer | 381 (+11) |
| Retailer Other | 24 (+4) | School / College | 66 (+1) |
| | | Takeaway | 220 (+4) |
| Total Premises - 1957 (+63) | | | |

5.2. The total number of inspections carried out in last three years is shown in **graph 1** below.

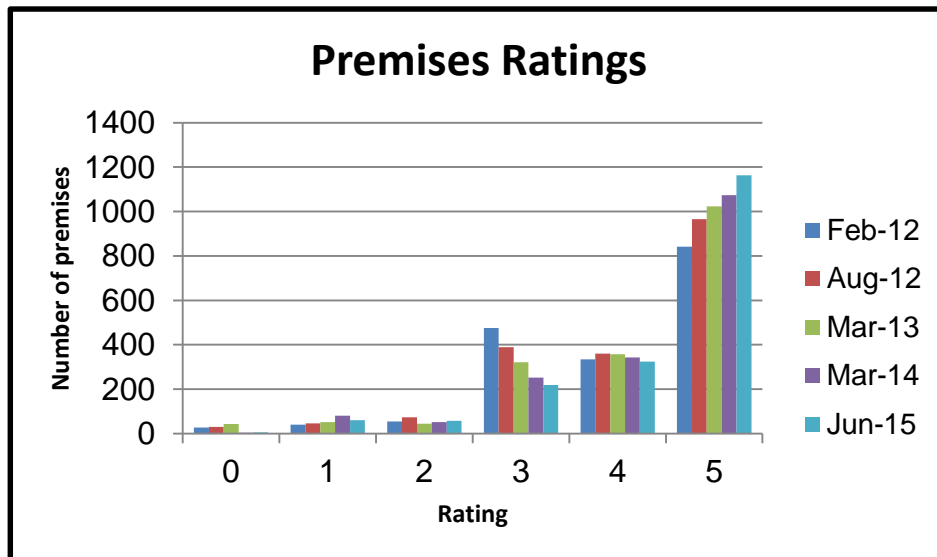
Graph 1


5.3 In 2014 / 2015 the inspection rate was lower than that achieved in previous years, but in line with that projected. A 4% increase in visits over 2013 / 2014 was obtained. Estimates made following an audit of our processes by the FSA in 2013 suggest that an inspection rate of 600 per annum could be achieved. The 2014 / 2015 is therefore an improvement on that projection.

5.4 The level of inspection performance in 2013 was based around the number of full time equivalent (FTE) officers available at that time (3.35) and the number of food business operators in the city (approximately 1900). These figures have slightly changed in 2014 / 2015 as staff available engaged in this specific activity over the past 12 months has been impacted by staff illness. The current level of resource stands at 2.85 FTE.

- 5.5 The numbers of premises rated '0', '1', '2', '3', '4', or '5' as of February / August 2012, March 2013, March 2014 and June 2015 are highlighted in **graph 2** below.

Graph 2



- 5.6 **Graph 2** demonstrates that the number of premises achieving the highest '5' rating is continuing to improve. Additionally, the number of premises within the lowest ratings '0', '1' and '2' remains low and static.
- 5.7 Each time a business is inspected a new rating is provided with the level of improvement or decline in hygiene standard dictating the new rating score. The frequency of inspection is determined by the risk to people's health. The greater the risks to health, the more frequent the inspection.
- 5.8 As the rating of each of the inspected premises may have changed (positively or negatively) following inspection it is difficult to provide direct comparisons with the level of improvement or decline in the quality of food being offered by the businesses in the city (i.e. it's not possible to say that the reduction in '3' rated premises directly reflects the increase in '5' rated premises), but it is clear that the general standard of premises is continuing to improve.
- 5.9 All current food business ratings are reported on the FSA's website, which is freely available to the public and business alike - no indication of the previous performance is necessary within the scheme. Businesses rated '0', '1' or '2' are given priority for action to secure improvement in hygiene standards. Irrespective of the original rating, if during inspection hygiene standards are very poor, or there is an imminent risk to health, appropriate enforcement action is taken to make sure that consumers are protected. This can include agreeing with the proprietor to voluntarily close the premises.
- 5.10 All FBOs are provided feedback following an inspection. Officers will provide improvement advice and how any problems identified can be avoided and rectified. Where improvements are required inspectors will issue a comprehensive written report clearly explaining precisely what is required to comply with the law. Where problems are acute or persistent, appropriate enforcement action is taken.

5.11 In 2013 / 2014 and 2014 / 2015 interventions compliance rating remained steady at approximately 85% as demonstrated by **table 2** below.

Table 2

| Year | Number of food businesses | Number of broadly compliant premises - premises rated '3' or above | % of 'broadly compliant' premises |
|-------------|---------------------------|--|-----------------------------------|
| 2013 / 2014 | 1894 | 1691 | 87 |
| 2014 / 2015 | 1959 | 1707 | 86 |

5.12 The number of enforcement actions taken during the last six years is recorded in **table 3** below.

Table 3

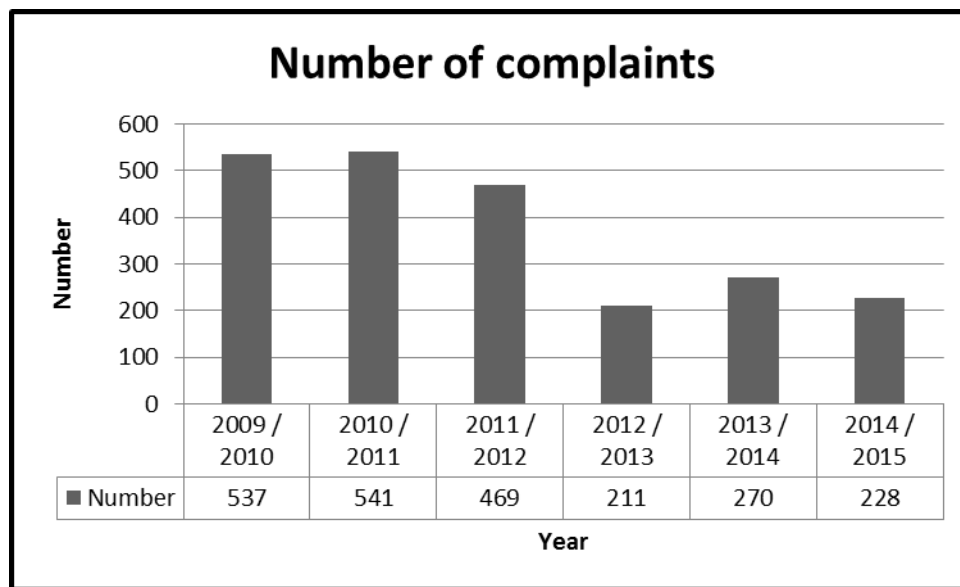
| Enforcement Type | 09 / 10 | 10 / 11 | 11 / 12 | 12 / 13 | 13 / 14 | 14 / 15 |
|--------------------|---------|---------|---------|---------|---------|---------|
| Improvement Notice | 4 | 3 | 12 | 47 | 60 | 26 |
| Closure | 1 | 1 | 2 | 8 | 5 | 8 |
| Prosecutions | 0 | 0 | 0 | 2 | 5 | 4 |

5.13 Immediately after the introduction of the revised risk based inspection programme in 2012, the number of Improvement Notices served upon premises requiring a prompt, timetabled, improvement in standards dramatically increased. The number of improvements notices in 2014 / 2015 however fell by 56%. The number of premises closed pending improvement and the number of premises prosecuted for serious legislative breaches of remains relatively constant over the last 3 years.

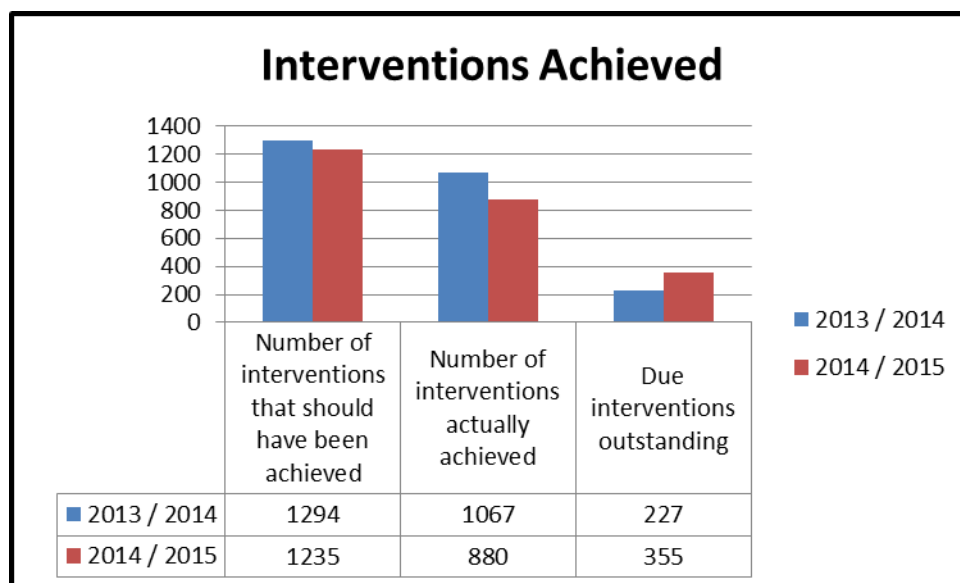
5.14 We encourage customers to take an active role in reporting food businesses within Portsmouth that have poor food safety practices and investigate issues raised by them in the appropriate manner. Complaints are typically received in relation to:

- Sighting of vermin or pests on food premises;
- Poor levels of cleanliness in kitchens, store rooms or preparation rooms;
- Poor food handling practices;
- Contaminated food e.g. food containing foreign bodies, or that is out of date.

5.15 The number of complaints received in 2014 / 2015 is consistent with the significant reduction (50%) achieved in 2012 / 2013 and is a further reflection of how standards of food businesses have improved. The number of complaints relating to food business operators are shown in **graph 3** overleaf.

Graph 3


5.16 In 2014 / 2015 a slightly lower number of 'interventions' were carried out than in 2013 / 2014. The number of interventions instigated and the number outstanding for 2013 / 2014 and 2014 / 2015 are set in **graph 4** below. Despite exploiting all the resources available, the long term sickness of a single member of staff has impacted upon service delivery. Consequently the service has been unable to deliver all interventions in accordance with the prescriptive timetable as required by the FLCofP. 880 interventions, which equates to 71%, were delivered on time. This is a reduction of 11% on 2013 / 2014 number. For clarity interventions include: inspections; monitoring; surveillance; verification; audit; and sampling where the analysis / examination is to be carried out by an Official Laboratory.

Graph 4


5.17 Following the 2013 FSA audit of the BST operating procedures, some changes have been made to the intervention programme and its delivery. The BST is required to inspect all registered food premises within Portsmouth as part of a

planned programme. How frequently officers routinely inspect will depend on the type of business and its previous record. The better the record the greater the period between inspections. The rating given to premises after each inspection determines the length of time until the premises is inspected again. Premises are then rated and inspected according to the following **table 4** below.

Table 4

| Rating Category | Inspection Rating | Minimum Inspection frequency |
|-----------------|-------------------|----------------------------------|
| A | 92 - 196 | At least every 6 months |
| B | 72 - 91 | At least every 12 months |
| C | 52 - 71 | At least every 18 months |
| D | 31 - 51 | At least every 2 years |
| E | 0 - 30/td> | Alternative enforcement strategy |

- 5.18 The risk rating system considers the type and size of business, the level of food safety management and conditions noted during the inspection. In addition, premises providing food to vulnerable groups, for example children or the elderly, are subject to an additional weighting which will result in more frequent visits.
- 5.19 Whilst it is not normal practice to give prior notification of inspection, some visits will be carried out by appointment or with prior notification, particularly if the visit is primarily to look at documentation or practices, or if discussions are required with a specific employee or the business proprietor. Officers have the right to enter and inspect food premises at all reasonable hours.
- 5.20 The appropriate control for each premise will be considered on an individual basis by an appropriately qualified officer. The officer may decide to reclassify any premises that were the subject of an alternative enforcement strategy for a full inspection. For example, premises where the operation has changed significantly or catering is undertaken.
- 5.21 Low risk category E business will be subject to an alternative enforcement strategy. When these premises are due for inspection, if the premises has been subject to a formal inspection immediately previously, the FBO will be sent an appropriate initial letter together with a low risk self-assessment questionnaire to complete. On receipt of completed questionnaires the information will be reviewed to determine whether there have been any changes to the business since the last inspection which may present an increased risk to food safety.
- 5.22 If the questionnaire has not been returned within the 28-day period, the outstanding premises will be contacted with a reminder to establish if a further copy of the questionnaire needs to be dispatched. If the questionnaire has not been received after a further 14 days, the food business may be subject to a food hygiene inspection.
- 5.23 The number of 'A' 'B' 'C' 'D' and 'E' rated premises as of the 1st April 2014 and the 13th June 2015 are shown in **table 5** below. With 'A' being the highest risk and 'E' being the lowest.

- 5.24 It is clear from **table 5** that there has been a significant improvement in the number of premises obtaining a lower (and therefore "safer") risk rating. The improvement is particularly noticeable within the premises rated C and D. The % change is highlighted in bold. The numbers of premises waiting inspection and a rating having submitted a registration form is higher than would be preferred. This is potentially a reflection of the staff absence due to sickness.

Table 5

| Risk Category | Number of Premises |
|-----------------|---------------------------|
| A | 3 (+3) |
| B | 90 (-11) |
| C | 358 (-374) [-51%] |
| D | 649 (+350) [+117%] |
| E | 727 (+44) |
| Awaiting rating | 121 (+45) |

6. Equality impact assessment

- 6.1. The inspection criteria from 2015 / 2016 have been subject to a previous provisional equality impact assessment. 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 race or cuisine type.

7. Legal implications

- 7.1. 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.
- 7.2. Legal Services has also previously confirmed that the 'Food Law Code of Practice (England)' enables the replacement of the inspection focussed approach to food law enforcement with a more flexible one whereby local authorities can use a wider range of interventions to monitor support and increase business compliance. The Food Standards Agency has acknowledged that the aim of this revision was to partly ensure that resources are directed at those food businesses that present the greatest risk to public health and consumer protection.

8. Director of Finance's comments

- 8.1. The activities proposed within the Food Operating Plan 2015 / 2016 and summarised in this report, will be funded from the existing service portfolio budgets, as approved by Full Council.

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

Appendix 1: Food Operating Plan 2015 / 2016

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

| Title of Document | Location |
|--------------------------|-----------------|
| NIL | NIL |

The recommendations set out above in 2.1. above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for the Environment and Community Safety on 2nd October 2015

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