

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF
REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JANUARY 2020
ALL WARDS

FOOD SAFETY RECOVERY PLAN 2020

1. Summary

- 1.1 The Local Government Act 2000 requires each Food Authority to identify its strategy and the resources required to fulfil its Food Safety function each year in the form of a Food Law Enforcement Plan.
- 1.2 The Food Law Enforcement Plan was submitted to the July 2019 Committee identifying that there was a shortfall in resources to deliver the inspection programme.
- 1.3 This report identifies the steps being taken to bring the inspection programme up to date through a Food Safety Recovery Plan agreed by the Chief Executive and Leader and to be delivered by Environmental Health.

2. Recommendation

- 2.1 That the report be noted, and the Food Safety Recovery Plan be endorsed.

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3. Background

- 3.1 The Food Law Enforcement Plan (FLEP) sets out the City's commitment to Food Safety Enforcement for the year ahead. It specifies the number of food hygiene and food standards interventions which will be predicted to be required. It also identifies those areas of work which are considered essential to protecting food safety in Birmingham.
- 3.2 The activities identified in the FLEP are a statutory requirement under EC Regulation 882/2004 Article 3, and the requirements of the food authority are defined in Article 4. This includes carrying out effective and appropriate official controls and having sufficient numbers of suitably qualified and experienced staff.
- 3.3 The FLEP identified that there is an increasing demand for interventions and these are primarily from:
- i. An increased number of new registrations per annum. In the last 10 years this has increased from approximately 300 per annum to over 1400 per annum.
 - ii. The increased work around food standards, this includes compositional standards, food information and allergen work. The allergen work is detailed in a separate committee report to this committee.
 - iii. The back log of inspections that has built up over the last few years.
 - iv. There is an estimated shortfall of 12 officers to deliver the statutory programme.
- 3.4 The Food Standards Agency (FSA) is responsible for overseeing that the official controls to ensure food safety are delivered. They have identified that this is not occurring in Birmingham due to the underperformance in inspections and the shortfall in qualified officers. The Chief Executive of the FSA has written to Birmingham's Chief Executive requesting assurances this will be rectified. This is the 3rd step in a 4-stage escalation process that the FSA uses.
- 3.5 Birmingham's Chief Executive has worked with the Interim Assistant Director of Regulation and Enforcement to address these concerns and to produce a recovery plan.

4. Food Safety Recovery Plan

- 4.1 Appendix 1 contains the text of the verbal briefing read out to committee by the Head of Environmental Health at the December Committee.
- 4.2 Appendix 2 has a copy of the Food Safety Recovery Plan. The figures within this plan are changing daily as inspections are completed. An updated table of inspections is within Appendix 3 which was compiled for the Council's publication of this report on CMIS.
- 4.3 The recovery plan has been shared with the Food Standards Agency and identifies that monies are being made available to increase resourcing to meet demand.

- 4.4 Appendix 4 and 5 contain the latest letter from the FSA and response.
- 4.5 In addition to the actions and steps taken in appendix 1, the Head of Environmental Health has reprioritised the Inspection programme above all other work. At this stage this means that around 24 full time equivalent Environmental Health Officers are fully engaged in food inspections. This leaves 8.5 Environmental Health Officers and Enforcement Officers to undertake responses to all other complaints across the city. This will slow down the response times to these complaints but will enable the prioritising of those complaints that pose the greatest risk to health.
- 4.6 As the recruitment is undertaken and further officers come into position, we will consolidate the recovery of the inspection programme and then work to regain the ground lost on requests for assistance. By and large the trend has always been that requests for assistance always drop around the new year and build to a peak in the late summer. This approach in January and February may be sustainable but requests for assistance will fall behind unless recruitment is successful.

5. Consultation

- 5.1 This matter covers the delivery of statutory duties and as such is not for public consultation. Committee is being asked to endorse the prioritisation of Food Enforcement work over and above requests for assistance whilst recruitment is underway.

6. Implications for Resources

- 6.1 Approval has been given to recruit £300k of officers and a further application has been made for additional £275k (plus £25k of training budget). This should enable the recruitment of 12 to 14 officers depending on grade.

7. Implications for Policy Priorities

- 7.1 Safe food is not only crucial to the health and safety of citizens and visitors to the City but the work which is referred to in the Food Law Enforcement Plan is also consistent with other policy priorities including economic success, staying safe and being healthy. The reduction in food safety activity will have a direct impact on these priorities.

8. Public Sector Equality Duty

- 8.1 Equality issues are accounted for during food safety activities carried out by officers.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:

Birmingham City Council – Food Safety Service

This is a short verbal briefing to advise committee that the Chief Executive of the Food Standards Agency has made representations to the Chief Executive of Birmingham Council over the compliance with the statutory food inspection programme.

This matter was first raised in the autumn of 2018, followed by a remedial action plan being submitted to the FSA in February 2019 by ourselves. A visit has now been made to the City Council by FSA compliance officers in October 2019.

The purpose of this brief is to advise committee of the steps that have occurred since February 2019.

- April 2019 – 5 EHOs transferred from Waste Enforcement Team to Environmental Health Team to undertake inspections
- April 2019- Draft Food Safety Plan produced and submitted to Foods Standard Agency. We have also employed Agency staff to undertake inspections of new premises that are registering as food businesses, and those that are registered and have not been inspected to date. This Agency work is still occurring and equates to approximately 4 full time equivalents for 2019-20
- July 2019- New Interim Assistant Director appointed and commenced at the City Council
- July 2019- Food Law Enforcement Plan adopted with the issue of shortfall in officers being notified to Members.
- July 2019- Budget process for 2020/2021 commenced. A budget bid for additional resources to supplement the Food Safety Service was put forward. (this is coupled with a proposal to modernise the service.)
- October 2019- the bid and modernisation proposal was approved in principal by the Cabinet/ Corporate Leadership Team
- October 2019- the FSA visit was escalated to Acting Chief Executive and Leader.
- November 2019- Acting Chief Executive requested the Interim Assistant Director to produce a recovery plan.
- November 2019 – The Head of Environmental Health was authorised to start the recruitment of 6 Officers. Those adverts are published as I speak, interview dates have been set for end of January 2020.
- December 2019 - Interim Assistant Director's contract has been extended with a focus on achieving the necessary improvements to the Food Safety Plan.
- December 2019 - A further draft recovery plan considered by the Leader, Deputy Leader, Acting Chief Executive and Assistant Chief Executive. This has been agreed to be placed as a draft recovery plan before Cabinet as soon as some questions have been clarified (date confirmed as 13th January 2020).

The draft recovery plan designed to address all shortfalls within a period of 2 years was sent to the FSA's compliance officers on the 13th December for comment and I am currently addressing clarifications following this. Action was taken prior to receipt of the latest letter from the FSA to appoint additional staff and a private sector provider was appointed to

provide an additional resource to tackle the outstanding new registrations. It is a significant factor that businesses appear to change hands or close when they receive a poor food hygiene rating and re-open overnight as a new business often with the same management. This means there is a consequent increase in new registrations is having a major and damaging impact on the rest of the food safety programme. We are currently expecting 1,400 of these new registrations per annum when a few years ago it was less than 300. Previously a business that was inspected and found to be non-complaint would receive a further unannounced inspection 6 months after that first inspection.

By changing the business name or putting new owners' names on the documentation these premises need to be re-inspected within 28 days and must be rescored. The overall inspection programme without new registrations used to be around 2,500 and in a very busy year, 3000. This shows that the demand of the further 1,400 inspections per annum, all to be carried out within the 28 days, not within the 6 months to a year for the As and Bs, is what is causing the pressure.

During the inspection in October, the FSA Team did acknowledge that the work quality of the work undertaken by the officers in tackling the problem premises, and the risks to health whether from food poisoning or allergen work, is very good. They do not want this qualitative work aspect to decrease but they do require that the number of inspections increase. The Chief Executive and the Leader have confirmed that the City Council is committed to meeting the statutory responsibilities and will use its best endeavours to do so. The Chief Executive is likely to accept an invite to meet the Chief Executive of the FSA.

Birmingham City Council
Regulation and Enforcement Division
Food Safety Plan: Recovery Plan

Introduction

As at 20 November 2019 the Council is failing to meet its programmed food inspection programme due to a backlog of inspections as set out in the table below (lines 1. 2. and 5.):-

Status	Category of Premises						Grand Total
	A	B	C	D	E	Unrated	
1. Overdue Pre 2019	8	13	90	382	28		521
2. Overdue 2019	39	70	214	98	97		518
3. Due 2019/20	46	257	287	644	2565		3799
4. Due Post 04.2020+	13	273	1104	1153	712		3255
5. Unrated						1255	1255
Total	106	613	1695	2277	3402	1255	9348

Projected year end out-turn

The Food Law Enforcement Plan for 2019/2020 identified that by the 31 March 2019, all the category A, B and C inspections would be carried out and that 10% of the D's and 1,000 unrated premises would be inspected.

This will therefore leave a back-log of 1979 inspections. This is based on 600 further inspections by agency inspectors and balanced against a forecast 400 new registrations being made between now and year end.

Count of LPI	Cat.					Unregistered Backlog	In year New registrations	Grand Total	
Status	A	B	C	D	E				
Overdue Pre 2019	8	13	90	382	28			521	
Overdue 2019	39	70	214	98	97			518	
Due 2019/20	46	257	287	644	2565			3799	
Due Post 04.2020+									
Unrated						1255		1255	
Grand Total	93	340	591	1124	2690	1255	400	6093	Agency
	0	0	0	1124	0	1255	400	2179	639
									600

Based on current resources (secondments, maternity, and vacancies) it would be prudent to advise that of the 591 Cat C inspections is likely to be missed by 150.

Predicted Programme for 2020/21

The predicted food programme is tabulated below based on average numbers of inspections by category over the last three years and those expected to be overdue from 2019/20 programme.

Count of LPI	Cat.							
Status	A	B	C	D	E	Unregistered Backlog	In year New Registrations	Grand Total
Inspections due 2020/21	130	272	1009	661	27		1400	3499
Overdue from 2019/20			150	1124		1055		2329
Total								5828

Note: The highlighted 1,124 overdue category “D” inspections have occurred due to a previous misapprehension that when the FSA stated LA’s could risk rate and prioritise inspections, that this would inevitably mean that some inspections of low risk food businesses would not be undertaken. It is clear now the methodology requires higher risk premises to be inspected on their due date rather than allow deferment.

It is proposed to recover the programme over a three year period. This is based on receiving additional resources as identified in the budget bid for 2020/2021 with a lead in time for new officers to achieve optimum performance.

Plan to tackle the backlog of outstanding premises.

The following actions have been identified with forecast impact on the backlog.

Action	Timescale	Anticipated Impact	Review
Recruit to 6 vacant posts to return EH to its substantive numbers- action undertaken to meet Division budget pressures. (This could be either all EHO’s or Enf’ Officers to free up inspectors or a combination of both).	Commence November 2019, it is unlikely that any officers will be in post before March 2020	Minimal in 2019/20 programme, but significant for subsequent years.	February 2020 and every month thereafter until achieved
Commission private sector	Additional inspections requested. 600 transferred to Osbourne Richardson.	600 inspections identified- with 400 premises forecast to register in Dec 2019 to Mar 2020- achieves a reduction of 200 in backlog 2019/2020. Commission limited to food hygiene inspections not food standards, so short	Monthly review starting December 2019.

Action	Timescale	Anticipated Impact	Review
		term solution.	
Recruit to new posts	As part of the modernising EH agenda extra funds are sought through the Council's budgetary process 2020/21.	Achieve existing programme plus reduce backlog in time. Recruitment delays used to commission private sector inspections.	Awaiting budget confirmation, but monthly after April 2020.
Commence modernisation programme	(Feb/ March 2020-ODP) 12 to 24 Months	Improved mobile ICT ODP training Review team structures and duties and reviewing priorities for other service demands-possible withdrawal from activities.	Quarterly
Increased performance management	April 2020	Re-instate monthly sharing of team and officer performance with officers Enhanced review officer performance in 1:1s	Monthly
Review of Events and support/inspections undertaken	End January 2020	To review all non-statutory or avoidable inspections in favour of those on the food programme.	End January 2020 and quarterly thereafter
Review administration support and data entry	End February 2020	To target business support to updating and processing the food database, increasing efficiency by reducing EHO time on this function	February 2020

Action	Timescale	Anticipated Impact	Review
Explore Apprenticeship Levy	March 2020	Determine whether an apprenticeship will enhance Environmental Health delivery	June 2020

Impact of Additional Resources

It is forecast using the existing budget to recruit six officers to existing vacancies, is sustainable with the current budget, but means less resource is available to meet other pressures across the Division and Directorate. The budget bid will be required to tackle the backlog and if this is successful then it is forecast to reduce the backlog by a third in the first year and 2/3rds in the second. Realistically this should enable the food programme and all other services to be delivered from 2022/23.

Work likely to review to reprioritise or cease

Potential work to be reviewed is mentioned in the table above. Initial thoughts have identified the following for consideration:-

- None of the outdoor events will be inspected for food safety or health and safety
- An increase in response times for complaint work.
- A review of project work such as leading on national changes to the licensing of Shisha premises
- Reduction in investigation and interventions around communicable diseases
- Reduction in sampling programme of public pools to prevent disease spread from recreational swimming
- Reduction in joint working with WM Police and Internal Departments on ASB and modern slavery. These matters will just be referred to most appropriate section.
- Reduction in threshold for enforcement action so that only the most serious matters are investigated and prosecuted.

It is emphasised these need to be discussed with members before confirmation.

Paul Lankester

Interim Assistant Director

29 November 2019

APPENDIX 3

Updated inspection figures

APPENDIX 4

FSA - Letter

APPENDIX 5

CX response FSA Letter