

Business Regulation Service Delivery Plans 2022/23	
<b>Title of Report</b>	Business Regulation Service Delivery Plans 2022/23
<b>For Consideration By</b>	Corporate Committee
<b>Meeting Date</b>	28th June 2022
<b>Classification</b>	Open
<b><u>Ward(s) Affected</u></b>	All
<b><u>Strategic Director</u></b>	Aled Richards

## 1. **Introduction**

1.1. This report relates to the service delivery plans for 2022/23 for the Business Regulation Teams that sit within the Community Safety, Enforcement and Business Regulation Service.

1.2 The Business Regulation Division consists of the following areas:

- Environmental Health : Food Safety
- Environmental Health : Occupational Health & Safety
- Environmental Protection (noise and other nuisance)
- Trading Standards
- Licensing

1.3 This report relates to service delivery plans for three of these areas:

- Environmental Health Service: Food Safety
- Environmental Health Service: Occupational Health & Safety
- Trading Standards

1.4 The service delivery plan for the Environmental Protection is within the Enforcement Service Delivery Plan Report.

### **Environmental Health Service: Food Safety**

1.5 The Food Law Enforcement Service Plan (FLESP) is a statutory plan which sets out how the Council will undertake enforcement of food safety legislation.

- 1.6 The Plan is prepared in accordance with the Food Standards Agency's (FSA) Framework Agreement template April 2010, and is an important part of the process to ensure that national food safety priorities and standards are addressed and delivered locally. It also focuses on key deliverables; provides an essential link with financial planning; provides objectives for the future including identifying major issues that cross service boundaries; and provides a means of managing performance and making performance comparisons.
- 1.7 The Food Law Enforcement Service Plan sets out the objectives of the service and demonstrates how they are linked to the Mayor's Priorities and Hackney's Sustainable Community Strategy. It also sets out the key areas of food law enforcement, the management arrangements, the resources that have been allocated for this work by the local authority and the key targets.
- 1.8 The performance of the Food Safety Service is measured against its fulfilment of the Plan and the percentage of broadly compliant premises within the Borough. The FSA continues to monitor the performance of the Service through the annual enforcement data returns made to the FSA via the Local Authority Enforcement Monitoring System (LAEMS).
- 1.9 With regard to Health and Safety, responsibility for the enforcement of Health and Safety law is split between the Health and Safety Executive (HSE) and the Council, depending on the activity being undertaken by the duty holder. Officers in Hackney ensure that duty holders manage their workplaces with due regard to the health and safety of their workforce and those affected by their work activities.
- 1.10 Hackney is an enforcing authority in its own right, and must make adequate provision for enforcement. The Local Authority National Enforcement Code introduced in May 2013 sets out the principles the Council should follow in a consistent, proportionate and targeted approach to regulation based on risk.
- 1.11 The Health and Safety Service Delivery Plan fulfils the Council's obligations under s18 of the Health and Safety at Work etc. Act 1974 and the Enforcement Code. The format and content of the Plan provides the basis upon which the service operates in order to ensure that it is providing an effective service to protect those working in Hackney.
- 1.12 The HSE collects and publishes data annually on the enforcement activities of all local authorities.

#### Trading Standards

- 1.13 In relation to Trading Standards, the Plan sets out the objectives of the service and demonstrates how they are linked to the Mayor's Priorities and Hackney's Sustainable Community Strategy. It also sets out the key areas of law enforcement, the management arrangements, the resources that have

been allocated for this work by the local authority and the key targets for the Team

- 1.14 In fulfilling its duties, the service provides support to individuals, communities and businesses in the borough to enable people to buy goods and services with confidence and security, and by offering advice to businesses to help them to comply with the law.
- 1.15 The Service also fulfils an important role in relation to public safety and health, for example through ensuring safe storage of dangerous items and by preventing the sale of dangerous products including the supply of age-restricted products to minors.
- 1.16 The Service also seeks to ensure there is a fair trading environment and helps businesses comply with legislation in order to protect consumers from unfair trading practices.

## 2. **Recommendations**

- 2.1 **Corporate Committee is recommended to review and agree the contents of the Food Law Enforcement Service Plan for 2022/23.**

**There are no further recommendations set out in this report, but Corporate Committee can also:**

- 2.2 **Consider the level and scope of work being carried out to meet the requirements of the plan.**
- 2.3 **Note the level and scope of work being carried out to meet the requirements of the Health and Safety and Trading Standards Service Delivery Plans.**

## 3. **Reason(s) for decision**

- 3.1 The Food Standards Agency recommends that food service plans are submitted for Member approval to ensure local transparency and accountability.
- 3.2 The Health and Safety Plan ensures that there is a programme of health and safety enforcement activity undertaken in order to instil confidence that the Council protects those employed in the Borough.
- 3.3 Trading Standards have a duty to ensure consumer protection law is enforced fairly and proportionately.

## 4. **Background**

### Policy Context

- 4.1 **Food Safety:** The Food Safety Service Delivery Plan is prepared in accordance with the Food Standards Agency's (FSA) Framework Agreement

(2010). The FSA requires all local authorities to produce and approve an annual plan that sets out how it is going to discharge its responsibilities.

- 4.2 The performance of the Food Safety Service is measured against its fulfilment of the Plan.
- 4.3 The Food Law Enforcement Service Plan (FLESP), sets out the inspection programme for the Borough's food premises for 2021/22. This year's programme currently (as of 1<sup>st</sup> April 2022) has 1074 food hygiene and food standards interventions due. The number of inspections is based on the premises risk rating and which is determined at a primary inspection.
- 4.4 The service has prioritised the highest risk category inspection (category A and B), with 100% of category A and B premises due for inspection within 28 days of the due date, along with 95% of service requests and consumer complaints about food and other businesses actioned within 10 working days and 100% of new premises registered with the Council inspected within 28 days excluding those not yet trading.
- 4.5 The 2021/2022 FLESP identified a staff resource deficit of 2.3 FTE at the beginning of the reporting period. This, coupled with long term staff sickness (some related to covid-19) and the relevant inactivity during the lockdown periods, due in the main to the direction issued by the Regulators, has resulted in a considerable backlog of food hygiene and food standards inspections.
- 4.6 The FSA obtained government permission to temporarily deviate from the inspection programme and suspend all routine food hygiene inspections to reduce footfall within food businesses permitted to remain open. This decision was also taken to recognise local authority environmental health departments may need to divert human resources to public health functions to cope with the demands of the pandemic.
- 4.7 Directions issued by the FSA placed emphasis on three key priority areas:

High priority

- Ongoing surveillance to identify businesses trading and change of ownership or activities.
- Interventions of establishments with a known history of non compliance.
- Urgent reactive work including food incidences, food poisoning outbreaks, serious complaint investigations.
- Overdue enforcement visits (service of Hygiene Improvement Notice, follow ups of Hygiene Emergency Prohibition Notices etc).

Medium priority

- All category A, B and non complaint category C rated premises.
- Newly registered food businesses.

- Establishments applying social distancing which may impact food safety or the ability for LA to conduct a physical visit (care homes, voluntary organisations).

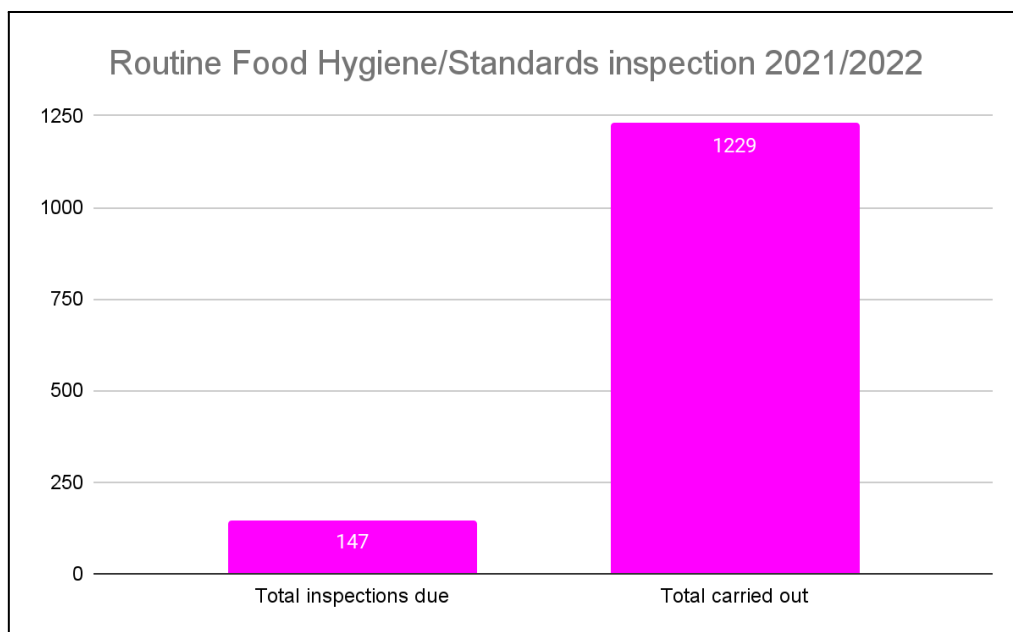
Low risk

- Compliant category C, all D and E for hygiene.
- Category B or C/ medium or low risk for standards.
- overdue/due interventions not already captured above.

4.8 The FSA stipulated that Officers were permitted to carry out remote inspections; however, they were prohibited from risk rating and scoring.

4.9 To comply with the FSA issued directions, Officers initially carried out remote inspections; however, the risk rating remained unchanged as the FSA stipulated ratings could not be awarded via remote inspection.

4.10 Officers undertook 1229 inspections in comparison to 147 allocated. This was due to the service concentrating on clearing the backlog of unrated premises inspections, completion of FHRS reinspections which were not deemed a priority in accordance with the FSA's Guidance and diversion of human resources to the Covid Response Team



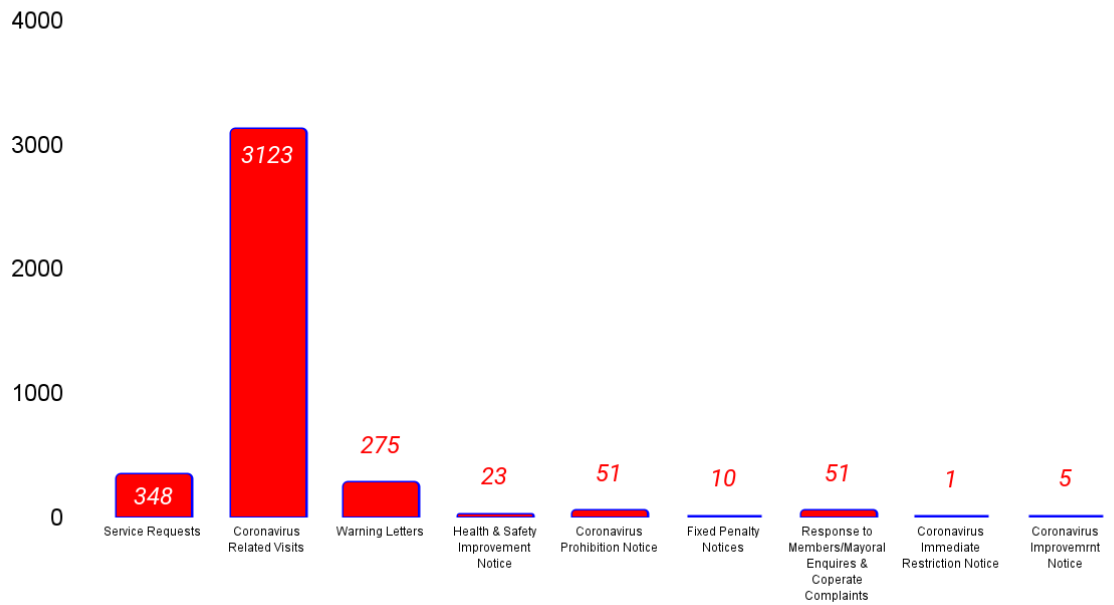
4.11 Local authorities across the North East London Sector have seen a substantial increase in newly registered businesses aiming to diversify their businesses' model and establish domestic catering businesses in a bid to remain open during government restrictions on businesses permitted to trade.

- 4.12 In the 2021/22 FLESP it was estimated the Service would receive 600 registration forms. The total number of registration forms received from 1st April 2021 to 31st March 2022 currently stands at 814, with 433 being inspected. It should be noted that whilst the actual inspection figure remains low in comparison to the figure of registration forms received, all newly registered businesses up to 1st October 2021 were contacted as part of the Food Standard Agency's (FSA) Recovery Plan-Phase to establish whether the businesses were ready to trade, the vast majority of which were not at the time of initial contact.
- 4.13 When contacted later, the vast majority of businesses had ceased trading. There was also an element of duplicated registration forms from businesses wishing to escalate their ratings appearing on the FSA's Food Hygiene Rating Scheme website. Businesses registered after 1st October 2021 were contacted in April 2022 to establish whether they are currently trading and those which are due to be inspected by the end of June 2022.
- 4.14 The increase in the number of registration forms is largely due to the conflicting advice issued by the government regarding the definition of essential and non-essential businesses permitted to remain open during lockdowns. Businesses with main activities which did not meet the loose definition of essential aimed to diversify to meet the criteria.
- 4.15 The Food Standards Agency is planning a fundamental review of the way that food safety is delivered within the UK, which will have a significant impact on all local authorities through the Regulating Our Future programme, and there may be significant implications for food law enforcement in the UK as a result of Brexit. Implementation of this has been delayed by the pandemic and may need to be reassessed in light of the backlog of inspections all local authorities will need to conduct in 2021/22 and beyond to get the inspection programmes back in cycle.
- 4.16 **Health and Safety:** In fulfilling the Health and Safety Service Delivery Plan Officers use a number of intervention approaches to regulate and influence businesses in the management of health and safety risks, including provision of advice and guidance to individual businesses or groups, proactive interventions including inspections and reactive interventions e.g. to investigate accidents or complaints.
- 4.17 Hackney Officers may use enforcement powers, including formal enforcement notices, to address occupational health and safety risks and secure compliance with the law. Prosecution action may be appropriate to hold duty-holders to account for failures to safeguard health and safety.
- 4.18 Proactive health and safety has diminished over the years in line with Government direction and guidance. Hackney has traditionally focused on food safety, whilst the health and safety service has been more reactive. However, with the introduction of the National Code, a clear set of priorities have been identified that allow a more strategic approach to tackling health

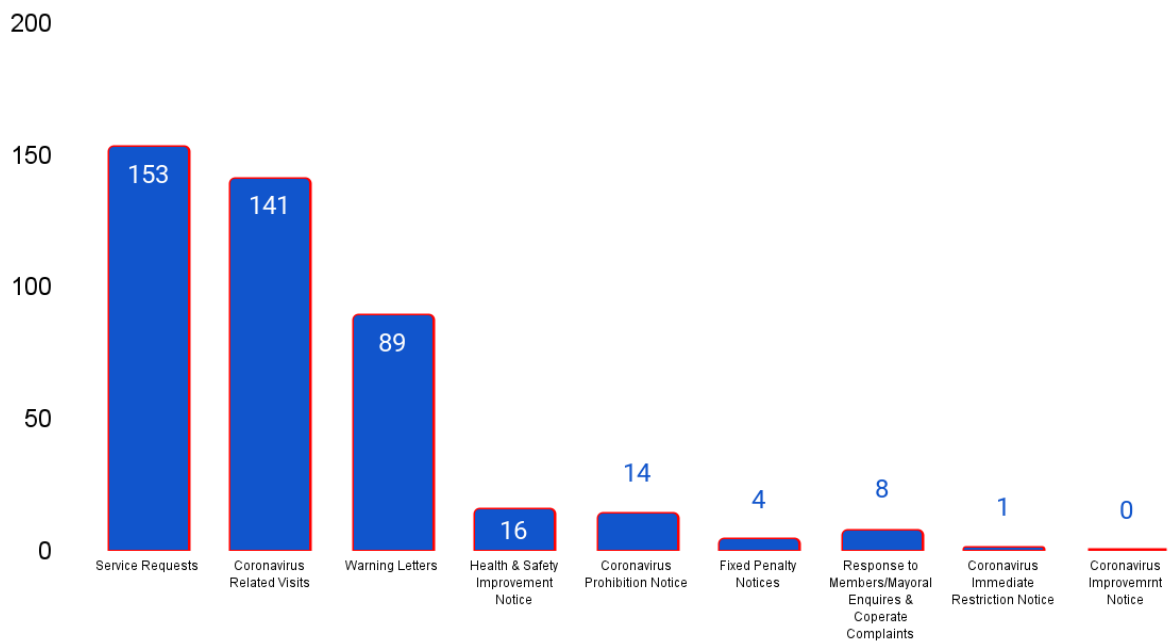
and safety issues in Hackney. As such the Health and Safety Service Delivery Plan is the Council's mandatory annual plan referring to the effective enforcement of health and safety legislation in Hackney.

- 4.19 Health and safety inspections are prioritised with the highest risk category (Category A) inspections to be undertaken. The risk rating for this is set out in a HSE Local Authority Circular - 67/2 (revision 11). For 2022/23 no high risk, category A, premises have yet been identified as the HSE has not published a revised circular. The Service will also take part in any projects initiated by the all London Boroughs Health and Safety Committee.
- 4.20 The work of the team, in relation to health and safety enforcement, has been severely disrupted due to two major events in 2020. The first is the global pandemic. Due to the volume of work created by the increased number of enquires and the reliance on other council services on the expertise of the environmental health staff, a Covid Response Team (CRT) was formed in July 2020. This team was staffed with three Environmental Health Officers, one Trading Standards Officer, one Environmental Protection Officer and one Senior Enforcement Officer.
- 4.21 This team has been very successful, with members of the team representing a wide range of internal and external meetings and taking the lead on educational and enforcement matters. The service has also forged an excellent partnership with the Metropolitan Police Service, working together on numerous joint action days. Some of the highlights are represented in the graphs below:

## CRT Statistics: July 2020 to March 2022



## CRT Statistics: April 2021 to March 2022





- 4.22 The second major factor has been the cyber attack which deleted the premises database and all historical information. This has had a detrimental effect on the service as proactive inspections have not been carried out in a timely manner. A new database is in the process of being implemented.
- 4.23 Trading Standards: In fulfilling the Trading Standards Service Delivery Plan Officers provide support to individuals, communities and businesses in the borough to enable people to buy goods and services with confidence and security, and by offering advice to businesses to help them to comply with the law.
- 4.24 The Team also fulfils an important role in relation to public safety and health, for example through ensuring safe storage of dangerous items and by preventing the sale of dangerous products including the supply of age-restricted products such as knives, alcohol, cigarettes and fireworks to minors.
- 4.25 The Team also seeks to ensure there is a fair trading environment and helps businesses comply with legislation in order to protect consumers from unfair trading practices.
- 4.26 The Team focuses on the highest risk premises, categorised as Upper and Upper Medium inspections. In 2021/22 there were 149 High Risk, 190 Upper medium Risk and 267 (37 by alternative enforcement action) Low Medium inspections undertaken. In 2022/23 163 high risk, 209 Upper Medium and 293 (73 by alternative enforcement action) Low Risk inspections due to be undertaken.

#### Equality impact assessment

- 4.27 In undertaking any enforcement, all Officers need to comply with the requirements of the Public Sector Equality Duty, which was created by the Equality Act 2010.
- 4.28 The equality duty was developed in order to harmonise the equality duties and to extend it across the protected characteristics. It consists of a general equality duty, supported by specific duties which are imposed by secondary legislation. In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
- 4.29 A service-wide Enforcement Policy was approved by Cabinet on 21st January 2019.
- 4.30 Officers recognise that whilst businesses want to maximise margins, they also seek in most instances to comply with legal requirements, without incurring excessive expenditure and administrative burdens. In considering

enforcement action, Officers will assist businesses to meet their legal obligations in the first instance, whilst taking firm action that may include prosecution or other formal action, where appropriate, against those who knowingly disregard the law or act irresponsibly.

4.31 Officers are committed to the principles of good enforcement and take account of the principles of the Enforcement Concordat, the Regulator’s Code, and have regard to Crown Prosecution Service guidelines and Equality Impact issues. The service delivery plans allow the use of resources more effectively in assessing high risk activities whilst delivering benefits to low risk and compliant businesses.

4.32 A key element of the activities carried out by the Service is to facilitate and encourage economic growth and wherever possible the service will work in partnership with businesses, particularly small traders and the voluntary/community organisations to assist them with meeting their legal obligations without unnecessary expense.

Sustainability and climate change

N/A

Consultations

N/A

Risk assessment

4.33 The Business Regulation service delivery plans set out how its services will take actions that contribute to achieving corporate priorities and desired outcomes. Without these agreed, clearly stated priorities and this plan, the service will be at risk of not effectively focussing its work and efficiently directing limited resources.

Nature of risk	Consequences if realised	Likelihood of occurrence	Control measures
The Service Plan is not reviewed and agreed	The Council would receive a directive from the Food Standards Agency (FSA)	Low	Review and agree the Service Plan
The Service Plan involves the carrying out of statutory duties -failure to deliver the service plan	Increase risks: - to consumer safety and the most vulnerable consumers; - to public health and increased risks of spread of infectious diseases and food poisoning and;	Medium	Review and agree the Service Plan

	<ul style="list-style-type: none"> <li>- to employee and public safety with increased risks of incidents and fatal accidents</li> <li>- of failure to administer and regulate licensable activities and premises</li> </ul>		
Increasing reactive workload or other significant service incidents	The lack of available resource to deliver the plan	High	This will be carefully monitored.
Poor performance against the plan	Could potentially result in the reputational damage and directions to the Council from the National Measurement Office (NMO), Food Standards Agency and the Health and Safety Executive (HSE)	High	This will be carefully monitored.
Lack of resources	If additional resources are not assigned to the service, this could result in the service plan not being met, resulting in reputational damage and/or potential intervention by the Regulator.	Medium/High	This will be carefully monitored.

**5. Comments of the Group Director of Finance and Corporate Resources.**

5.1. This report seeks the Corporate Committee to review and agree the Food Law Enforcement Service Plan (FLESP) for 2022/23. The report notes the level and scope of work being carried out to meet the requirements of the FLESP and the Service Delivery Plans for Occupational Health and Safety and Trading Standards.

5.2 This report is for noting and has no direct financial implications. The aims and objectives described in the FLESP for 2022/23 will be delivered within the approved budget for Business Regulation.

**6. Comments of the Director of Legal, Democratic and Electoral Services**

6.1. The Food Law Enforcement Service Plan 2022/23 should contain information in accordance with the Food Standard Agency Codes of Practice and the Feed and Food Law Enforcement standard set out in the Framework Agreement on Official Feed and Food Controls by Local Authorities.

6.2 Within the Council's Constitution, the Corporate Committee is responsible for the following:

'To develop, review, monitor and maintain a strategic overview of the Council's regulatory function.'

And 'To consider the functions relating to health and safety under any relevant statutory provision within the meaning of Part 1 Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as an employer'.

6.3 There are no immediate legal implications arising from this report.

### **Appendices**

Appendix 1 - Food Safety Service Delivery Plan 2022/23

Appendix 2 - Health and Safety Service Delivery Plan 2022/23

Appendix 3- Trading Standards Service Delivery Plan 2022/23

### **Background documents**

None

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