

<b>Cabinet</b> 26 September 2018	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Acting Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Food Law Enforcement Service Plan 2018/2019</b>	

<b>Lead Member</b>	<b>Councillor David Edgar, Cabinet Member for Environment</b>
<b>Originating Officer(s)</b>	David Tolley - Head of Trading Standards and Environmental Health
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	17 July 2018
<b>Reason for Key Decision</b>	To approve the regulatory food law plan
<b>Tower Hamlets Plan Theme</b>	<b>Better health and wellbeing</b>

### Executive Summary

This report sets out the Council's annual plan for effective enforcement of food safety legislation. The objective of the plan is to ensure that food is produced and sold under hygienic conditions, is without risk to health and is of the quality expected by consumers.

The Food Standards Agency requires Local Authorities to have in place a Food Law Enforcement Service Plan. The plan will form a significant part of the criteria against which Local Authorities will be audited by the Agency to assess their effectiveness in ensuring food safety.

### Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the Tower Hamlets Food Law Enforcement Service Plan 2018//2019 and Food Sampling Policy attached at Appendix One of the report.
2. To delegate the sign off of the Food Law Enforcement Service Plan to the Corporate Director in consultation with the lead Member. The findings and recommendations within the annual review will be included in the strategic plan.
3. To agree the Food Law Enforcement Service Plan will be published on the

Councils website.

**1. REASONS FOR THE DECISIONS**

- 1.1 Under the powers given to it by the Food Standards Act 1999 the Food Standards Agency (FSA) oversees and monitors how Local Authorities enforce food safety legislation. The FSA require all Local Authorities to produce and approve an annual plan that sets out how they are going to discharge their responsibilities. The annual plan is at Appendix One.

**2. ALTERNATIVE OPTIONS**

- 2.1 If the Council takes no action the FSA has the power to remove food safety responsibilities and engage another authority to deliver the service. The likely scenario would be for a neighbouring local authority to be seconded to provide this service. If this did happen the Council would still have to fund the service but would lose Member and management control of it.

**3. DETAILS OF REPORT**

- 3.1 The Plan incorporates the Council's objectives as set out in the Community Plan and the Environmental Health and Trading Standards Service Plan. It is particularly relevant to the quality of life and health and wellbeing of residents and visitors to the Borough. The Plan is there to encourage businesses to maintain high standards and help protect customers. It is particularly important in maintaining the reputation of the Borough as a safe place to eat and buy food products and promote regeneration. The standard format of the plan will allow easier comparisons with other authorities.
- 3.2 The plan is divided between reactive and proactive work. Reactive work includes consumer complaints and requests for advice or information from the business community, residents, employees in the Borough and tourists. Proactive work comprises mainly the achievement of routine inspection targets. Tower Hamlets at the time of writing has 2,989 food premises which require inspection. The frequency of such inspections is determined by a nationally agreed risk based inspection rating scheme.
- 3.3 The national "Food Hygiene Rating Scheme" sponsored by the Food Standards Agency allows Local Authorities to publish, using rating criteria, an assessment of the hygiene standards of food premises. The Food Hygiene Rating Scheme has a direct link to the Broadly Compliant indicator. A rating of three or above indicates that the food premises are broadly compliant.
- 3.4 The main indicator used to assess the Council's performance is the proportion of food establishments in the Borough which are broadly compliant with food hygiene law.
- 3.5 Last year the Food Safety Team achieved 84% of all food premises being broadly compliant with food safety legislation. This is a slight increase of 3% compared to last year.

3.6 A range of interventions has been developed aimed at increasing and sustaining this compliance rate. The broadly compliant rate should also be seen within the context of the high turnover rate of food businesses in the Borough and the advanced age of much of the commercial premises. As the rates of compliance become higher the rate of year on year improvement has tapered off as the residual businesses present the biggest challenges either from a premises age /condition perspective, or from a business engagement and proficiency perspective.

3.7 The plan at Appendix One also covers the wider remit of food safety work including complaints and enquiries, sampling, food hazard warnings, outbreak control, health promotion, training and publicity. These tasks remain relatively constant year on year.

3.8 The plan also highlights some of the major successes during 2017/18. Some notable examples are:-

- 100% of all A rated high risk premises were inspected for food hygiene/standards
- 100% of all B rated food hygiene premises were inspected
- 97% of all A-C rated Food Hygiene premises inspected
- 89 food samples were taken as part of the surveillance programme
- 33 new and 32 renewed Food For Health Awards were issued

3.9 The Food Standards Agency requires details of the assessment of resources for all functions within the plan. The resource analysis estimates the gap to be 1.45 full time equivalents for 2018/19. This is the identified resource gap when providing a full inspection and sampling programme. This resource gap has reduced since last year due to an additional one off £100,000 being awarded to the team. This additional funding is due to cease in 2019/20. This funding has been spent on additional agency staff to supplement the shortfalls identified last year.

3.10 During 17/18 the Team achieved:

- £95,300 in fines and costs
- 83% of premises broadly compliant with food law
- 8% of samples found to be unsatisfactory and required follow up
- Service Requests and number of food premises remained static

The following trend in complaints has also been identified:

Year	Premises	Service Requests	Allergy Alerts	Food Alerts	Food Poisoning
2013/14	2636	1036	47	36	113
2014/15	2797	1171	65	35	123
2015/16	2964	1328	94	53	124
2016/17	2977	1532	123	53	222

2017/18	2989	1521	90	53	217
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- 3.11 The estimated resource gap identified in the report is calculated based on the activity carried out in the previous year. With the increase in food premises the Food Team will therefore have to reduce inspection activity in the lower risk food premises and carry out a lower level response into the service requests received. During 18/19 the additional one-off £100,000 funding has reduced this gap.
- 3.12 In addition the Environmental Health and Trading Standards Service has entered into a bursary scheme whereby students that have completed their academic studies join the Service for one year to complete their professional portfolios to enable them to become Food Safety Officers/Environmental Health Officers. We currently support two individuals who are receiving a £10,000 bursary.
- 3.13 From 2009-18 funding was received from the Healthy Cities initiative and Public Health budgets to develop a Food for Health Award, which aims to create a culture of healthy food choices for residents/workers in the Borough. The scheme resulted in a further 33 new awards being achieved and 32 renewals last year.
- 3.14 A benchmarking exercise has been carried out using two sets on data (Appendix Two ) The first set of data compares key information with our neighbouring authorities in North East London in 2017/18, whereby we demonstrate that we have a low number of unrated premises yet to be inspected but a higher number of high risk activity premises (denoted by the risk category A and B). In addition the annual Which? survey of Local Authority performance in 2016/17 puts us as 363 out of 389 – this has not taken into account the one off- additional funding provided in 18/19. In order to increase our performance standing from the Which? survey an additional growth bid will be submitted to sustain the one off funding received in 18/19.
- 3.15 An Equalities Impact Assessment checklist has been carried out at Appendix Three .
- 3.16 Cabinet can consider if they wish to continue to receive this annual report or delegate approval to the Corporate Director and lead Member. *The Frame Work Agreement on Official Feed and Food Controls by Local Authorities* created by the Food Standards Agency, the monitoring and auditing body for food safety requires that the Food Law Enforcement Service Plan is formally approved the Council.
- 3.17 Local Authorities have the flexibility to decide whether or not this plan should be approved at Member level. To help ensure local transparency and accountability, Food Law Enforcement plans and performance reviews should be approved at the relevant level established for the Council, whether that is Member, Cabinet or other suitable delegated senior Officer. The approval process needs to be recorded to show that the Food Law Enforcement Plan have received appropriate approval. The FSA do have an auditing role and

therefore a suitable approval process should be clearly outlined to demonstrate the Councils commitment to ensuring food safety within its area.

- 3.18 It is therefore recommended to delegate the sign off of the Food Law Enforcement Service Plan to the Corporate Director in consultation with the lead Member. The findings and recommendations within the annual review will be included in the strategic plan.

#### **4. EQUALITIES IMPLICATIONS**

- 4.1 The equality analysis checklist has been reviewed in respect of this plan and no adverse issues have been identified

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 Best Value implications: The Council is fulfilling its best value duty by ensuring that staff resources are targeting the higher risk food premises as determined by the national rating scheme. The report details how this targeting is maintaining the current broadly compliant rate across the food premises in the Borough. Officers are using a range of interventions to seek compliance, as detailed in the plan.
- 5.2 Environmental considerations: There are no environmental impacts with regards to this plan
- 5.3 Crime reduction: There are no crime and disorder reduction implications with this report.
- 5.4 Safeguarding: There are no safeguarding implications with this report
- 5.5 Risk management implications: the Council as a Food Authority is required to carry out statutory functions in relation to food safety. The annual plan sets out how the Council will fulfil its obligations under this legislation. Failure to ensure that the Council discharges its responsibilities can have serious consequences for the Council and these are set out below.
- 5.6 Should the Council not exercise its duties and provide a food safety service there is the potential that both unsafe and unscrupulous activities would go unchecked and un-enforced, which may lead to serious food borne illness or disadvantage to the residents, consumers and businesses within the borough.
- 5.7 The Food Standards Agency are charged with overseeing the activities of Food Authorities and may carry out audits of the authority to ensure it is meeting the requirements of The Standard for Food Services set out in the Framework Agreement and its statutory functions.
- 5.8 Should the Council not fulfil its obligations as specified above, the Food Standards Agency may use its powers to take away the functions of the authority and place them with another authority to exercise them on its behalf.

5.9 In delivering the Plan, the Food Safety Team is reliant on the Services of other key Teams such as Legal Services, Communications and Public Health to provide support to meet the objectives of the Plan.

## **6. COMMENTS OF THE CHIEF FINANCE OFFICER**

6.1 This report sets out the annual Food Law Enforcement Service Plan that the Food Standards Agency requires the Council to have in place. The plan is delivered through the Food Safety budget of £656,897 for 2018/19. The budget process for 2018/19 approved additional one-off resources to help manage the funding gap identified in the previous year's annual plan report. A total of £100,000 was made available to support 2 full time equivalents for one year to help manage the 3.59 FTE funding gap. A further sum of £30,000 supports a bursary scheme that enables graduates to complete their work based professional portfolios. The aim of the scheme is to encourage the attraction and retention of new applicants to the service.

6.2 Where additional revenue resources are required to support future Food Law Enforcement plans these will need to be considered along other competing priorities for the Council and included in the budget and Medium Term Financial Strategy process for the relevant years.

## **7. LEGAL COMMENTS**

7.1 The Food Safety Act 1990 ('the 1990 Act') designates the Borough as a food law enforcing authority and creates an obligation to enforce the Act, as such the London Borough of Tower Hamlets has statutory functions in respect of food safety.

7.2 The Food Standards Act 1999 gives powers to the Food Standards Agency (FSA) to oversee and monitor how Local Authorities enforce food safety legislation. The FSA acts as regulator for local authorities on Food Safety matters.

7.3 The Food Law Code of Practice, produced by the FSA, gives statutory guidance to which local authorities must have regard when engaged in the enforcement of food law. Local authorities must follow and implement the relevant provisions of the Code. The FSA published a revised Food Law Code of Practice (England) on 30 March 2017.

7.4 It is a requirement of the FSA under the 'Framework Agreement on Local Authority Food Law Enforcement' for Local Authorities to have Food Law Enforcement Service Plan. Chapter 5.1 of the Food Law Code of Practice sets out the requirements for Food Service Plans. The Plan must be subject to regular review and clearly state the period of time during which the Plan has effect.

7.5 The Council must have an up-to-date, documented Food Service Plan which

is readily available to food business operators and consumers. The Plan should reflect the requirements detailed in paragraph six of the Regulators' Code (produced by the Department for Business Innovations and Skills, April 2014), which provides as follows:

“Regulators should ensure that their approach to their regulatory activities is transparent

- 6.1 Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.
- 6.2 Regulators' published service standards should include clear information on:
  - a) how they communicate with those they regulate and how they can be contacted;
  - b) their approach to providing information, guidance and advice;
  - c) their approach to checks on compliance, including details of the risk assessment framework used to target those checks as well as protocols for their conduct, clearly setting out what those they regulate should expect;
  - d) their enforcement policy, explaining how they respond to non-compliance;
  - e) their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges; and
  - f) how to comment or complain about the service provided and routes to appeal.
- 6.3 Information published to meet the provisions of this Code should be easily accessible, including being available at a single point<sup>7</sup> on the regulator's website that is clearly signposted, and it should be kept up to date.
- 6.4 Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.
- 6.5 Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions”.
- 7.6 This report sets out the Council's annual Food Law Enforcement Service Plan

for 2018/2019 and includes benchmark data.

- 7.7 The proposed Plan is aligned with the Food Law Code of Practice, the Regulator's Code and the Council's enforcement policy. It covers all areas of food law that the Council has a duty to enforce and sets out how the Council intends to deliver Official Controls within its area as is also required.
- 7.8 Before adopting the Plan, the Council must have due regard to the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). An Equalities Impact Assessment has been done and a Checklist is at Appendix 3.
- 7.9 Para 3.16 and 3.17 of this report refers to the position of The Framework Agreement on Official Feed and Food Controls by Local Authorities in relation to Member approval i.e. local authorities have the flexibility to decide whether service plans are approved at Member level. There is no constitutional requirement for the plan to be approved at Member level.

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## **Linked Reports, Appendices and Background Documents**

**Linked Report**  
NONE

### **Appendices**

Appendix One – Food Law Enforcement Service Plan 2018/19  
Appendix Two - Benchmarking data  
Appendix Three - Equalities Action Checklist

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

None

**Officer contact details for documents:**  
David Tolley