

MEETING:	AUDIT AND GOVERNANCE COMMITTEE
DATE:	16 APRIL 2013
TITLE OF REPORT:	INTERNAL AUDIT 2012/13 FOOD HYGIENE - FORMAL WRITTEN RESPONSE
REPORT BY:	HEAD OF CONSUMER & BUSINESS PROTECTION

1. Classification

Open.

2. Key Decision

This is not a key decision.

3. Wards Affected

None.

4. Purpose

The purpose of this report is to update Members formally on the actions and improvements undertaken by the Environmental Health and Trading Standards Service in response to the KPMG audit report dated 2012 (ref 104/2012-13), regarding implementation of the Food Standards Agency (FSA) Food Law Code of Practice (England) (April 2012), in relation to undertaking Food Hygiene Inspections.

5. Recommendations

THAT:

- (a) **Subject to any comments the Audit and Governance Committee wish to make, the report be noted; and**
- (b) **The Committee supports and endorses the actions proposed in order to raise the Corporate Assurance Grading with respect to adherence to the FSA's Food Law Code of Practice (England) (April 2012).**

6. Key Points Summary

6.1 In exercising their functions and in particular, undertaking the Council's annual programme of planned food hygiene inspections, local food authorities must have regard to the requirements of the statutory Food Law Code of Practice (England) (April 2012) which requires that:-

- the registering of food premises is carried out in accordance with relevant legislation,

statutory Codes of Practice and centrally issued guidance;

- food hygiene inspections are being carried out in accordance with relevant legislation, statutory Codes of Practice and centrally issued guidance (e.g. there is a robust programme of inspections, there is clear methodology behind its compilation etc.);
- the food hygiene inspections are being undertaken appropriately and are being properly recorded and reported;
- complaints made by members of the general public and which relate to the standard of hygiene at food premises are properly recorded and investigated, and that this is done in a timely manner;
- internal policies and procedures are up-to-date and reflective of the relevant legislation, statutory Codes of Practice and centrally issued guidance; and
- performance management and data quality arrangements are adequate.

7. Alternative Options

- 7.1
- a) Full implementation of the FSA's Code of Practice could be undertaken if additional resource was corporately provided to the Environmental Health and Trading Standards Service. This may however, have an adverse effect on other service areas within Herefordshire Council.
 - b) Prioritising work within EH & TS solely for the implementation of the FSA's Code of Practice. This would have a severe detrimental effect on the implementation of other key areas of statutory work such as consumer safety, consumer protection, health and safety, and infectious disease control etc.

8. Reasons for Recommendations

- 8.1 The Audit and Governance Committee should be aware of the improvements made already and to maintain an overview of actions required to raise the corporate assurance level in relation to implementation of Food Law Code of Practice (England) (April 2012) within the food authority (Herefordshire Council), and thus protecting the organisation from possible reputational damage and statutory intervention by the FSA.

9. Introduction and Background

- 9.1 This report addresses the request from the Audit and Governance Committee for a written response to the initial presentation by KPMG of their audit report findings, following an internal audit on food law enforcement within Herefordshire Council that specifically relates to food hygiene undertaken as part Herefordshire Council's internal audit plan for 2012/13. It also gives context to the internal audit report findings and highlights the remedial action already undertaken, as well as, identifying any further remedial action that is planned.

10. Key Considerations

Summary of progress against the recommendations of the internal audit report Food Hygiene (Ref 104/2012-13).

10.1 **The Annual Programme of Inspections (1)**

10.2 The Food Law Code of Practice (England) (April 2012) states that Food Authorities that are responsible for enforcing food hygiene law are required to determine the food hygiene intervention rating and intervention frequency of establishments in their area using the risk assessment criteria as laid out in Annex 5 of the Code; this will then determine their planned food hygiene intervention programmes.

10.3 **Recommendation (1)** - Where a decision is taken by (senior) management to deviate from the requirements of the above named Code, specifically in terms of how the annual programme of food hygiene inspections is carried out, this should be formally documented in writing with acknowledgement of the risk that the Authority is willing to accept. Such decisions should be communicated to the relevant Cabinet member and / or to the Regulatory Committee.

10.4 **Action (1)** - The work plan is risk based and current resourcing issues have led to the decision to accept that the Code of Practice cannot be met and therefore to target resource accordingly i.e. higher risk premises. Regulatory Committee have been informed of this decision and a report outlining the revised food hygiene inspection programme for 2013/14 and the risks associated with not complying with the FSA's Code of Practice is to be presented to the Committee at their next meeting on the 28 May 2013 for approval.

10.5 **Annual Reporting to the Regulatory Committee (2)**

10.6 The Regulatory Committee is responsible for overseeing the Council's functions and duties in relation to Environmental Health, Food Acts and related legislation, Trading Standards and Consumer Protection, Animal Health and Welfare, Licensing etc. In order to gain assurance that the Council is meeting its statutory obligations in these areas, the Committee receives annual reports that outline the activities of Environmental Health and Trading Standards, Health and Wellbeing for the previous financial year. The purpose of such reports is to enable the Committee to gain assurance that the Council is meeting its statutory obligations in these key areas. Reporting to this Committee is relatively new.

10.7 **Recommendation (2)** - The section of the annual report that is presented to the Regulatory Committee and which relates to the performance and activity of the Environmental Health (Commercial) Team needs to be reviewed for its adequacy and effectiveness in communicating the Authority's position in relation to meeting its statutory obligations in food law enforcement. Part of the review process should entail discussions with the Regulatory Committee as to their requirements, a look at similar reports of other local authorities, data quality etc.

10.8 **Action (2)** - Revised and improved reporting mechanisms have been introduced and incorporated into the corporate performance management reporting system P+. These will form the basis of a quarterly report to Regulatory Committee informing them of progress against meeting the agreed inspection programme and any deviations from it, including an explanatory note as to why any further deviations have had to be made. Discussions on format and presentation regarding data and commentary have been held with Regulatory Committee and any necessary requirements have been addressed.

10.9 **Management Monitoring of the Performance and Activity of the Environmental Health (Commercial) Team (3)**

10.10 The Framework Agreement on Official Food and Feed Controls by Local Authorities (Amendment 5, April 2010) (Chapter 2: The Standard) requires each Authority to verify its

conformity with the Standard and with relevant legislation, statutory Codes of Practice and centrally issued guidance.

- 10.11 **Recommendation (3)** - Management should develop and maintain documented procedures for monitoring the Environmental Health Commercial Team's conformity with Food Acts and related legislation, Codes of Practice etc. Such procedures should clearly state the names of the officers / posts responsible for performance monitoring, the quantitative and qualitative aspects of the service that will be monitored together with reasons for this, how management checks and how any corrective action taken in respect of non-conformity will be evidenced, the frequency with which management will review the adequacy and effectiveness of performance measures etc.
- 10.12 **Action (3)** - The food inspection procedure that formed part of the former EH & TS quality management system has been reviewed and revised to take the audit recommendations into account. This new procedure will establish specific work instructions relating to improved controls and monitoring by management. This will be implemented by 31 May 2013. A copy will be kept in a dedicated Food Hygiene Programme Audit Folder specifically set up for recording audit actions.
- 10.13 **Training and Training Records (4)**
- 10.14 The Food Law Code of Practice (England) (April 2012) states that Food Authorities should ensure that authorised officers receive relevant structured on-going training and that such training should explain new legislation and procedures and technological developments relevant to food businesses subject to their control. The minimum on-going training should be 10 hours per year based on the principles of continuing professional development. The Code requires Food Authorities to record on-going and revision training undertaken by their authorised officers.
- 10.15 **Recommendation (4)** - The Team Manager for Environmental Health Commercial should ensure that the Food Law Code of Practice (England) (April 2012)* is complied with in terms of continuing professional development and training records. All staff should receive a minimum of 10 hours on-going training per year based on the principles of continuing professional development; all on-going training should be recorded. * *Section 1: Administration; Chapter 1.2: Qualifications and Experience; Paragraph 1.2.4 & 5*
- 10.16 **Action (4)** - A new electronic folder to keep scanned food training records has been created on the shared drive and staff have been informed of this and have been reminded of the requirement to maintain their training record. The record of food training has been confirmed and will be reviewed more specifically at individual performance appraisal.
- 10.17 **Follow-Up Visits (5)**
- 10.18 It is the responsibility of the inspecting officer to decide whether it is necessary to schedule a follow-up visit as a result of the findings of the initial inspection of a food business establishment. The decision should be based on the level of risk that the food business establishment poses to the health and well-being of the general public.
- 10.19 **Recommendation (5)** - Where the findings from the initial inspection result in the Environmental Health Officer scheduling a follow-up visit, this should be undertaken by the agreed date. If circumstances prevent this from happening, the Environmental Health Officer should ensure that reasons for the delay in carrying out the follow-up inspection are recorded on APP Civica and / or on the manual file for the food establishment.

- 10.20 **Action (5)** - The team have now been re-trained in this aspect of reporting. Management checks will undertaken through the production of a 'Work in Progress' report produced quarterly and addressed through 1-2-1s with staff.
- 10.21 **Qualifications of Authorised Officers (6)**
- 10.22 The Food Law Code of Practice (England) (April 2012) requires that officers authorised to undertake food hygiene and food safety controls, with the exception of sampling, should hold one of the qualifications, or equivalent qualifications, as specified by the Code and that they should be competent to carry out these functions. In addition, it also requires Food Authorities to keep copies of certificates of registration and qualifications.
- 10.23 **Recommendation (6)** - In order to comply with the Food Law Code of Practice (England) (April 2012)*, the Team Manager for Environmental Health Commercial should ensure that certificates of registration and evidence of qualifications are retained on file for all authorised officers within the Team. This information should be easily accessible, particularly given that it can be subject to audit by external bodies such as the Food Standards Agency (FSA). * *Section 1: Administration; Chapter 1.2: Qualifications and Experience; Paragraph 1.2.5*
- 10.24 **Action (6)** - A new qualifications folder has been created to store certified copies of all officers' relevant certificates of registration.
- 10.25 **Duplication Checks - Food Establishments (7)**
- 10.26 APP Civica is used by a number of Council departments (e.g. Waste Management and Trade Services, Planning, Licensing, Community Protection, Pest Control etc) including Environmental Health and Trading Standards. Premises / trader records are shared across all of the users. There should only ever be one record per premises / trader; specific usage types are allocated to denote which Council departments have an interest in the premises (e.g. type 'F' denotes that Environmental Health has a particular interest in the premises; type 'G' denotes that Trading Standards has a particular interest in the premises and so on).
- 10.27 **Recommendation: 7** - In order to address the above control weaknesses, the following is recommended:-
- The Business Support Officer should evidence on the 'Application for Registration of a Food Business Establishment' form that a check of the system for existing premises / trader records has been undertaken.
 - The Environmental Health (Commercial) Team needs to liaise with the Trading Standards Team in order to confirm whether the six potential duplicate food premises records are in fact duplicates. Where this is found to be the case, the APP Support Team need to be contacted so that the records can be merged and that the data is moved across correctly.
 - The Team Manager for Environmental Health Commercial, in conjunction with Trading Standards, should run reports to identify any duplicate food premises records on APP Civica; this should be done at least annually.
- 10.28 **Action (7)** - Completed. An annual check forms part of the preparation of the annual food return to the FSA and a copy will be kept in the Food Hygiene Programme Audit Folder. A nominated officer will also be responsible for liaising between Environmental Health Commercial and Trading Standards to ensure that any duplicate premises records identified

are resolved and that the Business Support Officer has duly annotated the 'Application for Registration of a Food Business Establishment' form that a check of the system for existing premises / trader records has been undertaken.

10.29 Sign-off of Changes in the Intervention Rating / Risk Rating of a Food Business (8)

10.30 The Food Law Code of Practice (England) (April 2012) places specific conditions on a Food Authority in relation to the point at which the intervention rating of a business can be revised, how justification for the revision should be reached and how reasons for revising the rating should be recorded / evidenced. It also requires that the operation of the food hygiene intervention rating scheme within the Food Authority be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.

10.31 **Recommendation (8)** - In order to ensure that officers are complying with the requirements of the Food Law Code of Practice (England) (April 2012)* when revising the intervention rating of a food establishment, management should sign-off revisions as they see fit (e.g. sign-off all significant changes in rating and / or sign-off all changes in the rating of high risk food businesses etc); evidence of sign-off should be retained on the establishment file. * *Section 4: Interventions; Chapter 4.1: Interventions; Paragraph 4.1.5.2.5 and Annex 5: A5.2: Food Hygiene Intervention Rating Scheme. Further assurance on the correct and consistent use of the intervention rating scheme by officers could be obtained from periodic management review of establishment files - see Recommendation No. 3.*

10.32 **Action (8)** - The 'sign-off' checks have been incorporated into the APP action diary programme requiring a senior officer sign-off where there has been a change in risk from the highest risk category 'A' to 'B'. A quarterly check of sample ratings has been instituted and will be recorded in the Food Hygiene Programme Audit Folder.

10.33 Action on Receipt of a Food Registration Form (9)

10.34 Based on discussions with key staff within the Environmental Health (Commercial) Team and following testing on a sample of completed 'Application for Registration of a Food Business Establishment' forms, weaknesses were identified in relation to action taken by the Authority immediately following their receipt.

10.35 **Recommendation (9)** - In order to address the weaknesses as outlined above, the following is recommended:

- All completed food registration forms should be date stamped on receipt at the Authority as is a requirement of the Food Law Code of Practice* (England) (April 2012). * *Section 1: Administration; Chapter 1.5: Registration of Food Business Establishments; Paragraph 1.55: Action on Receipt of a Completed Registration Form*
- All completed food registration forms should be signed by the applicant in order to demonstrate that they are aware of the Provisions of Regulation (EC) No. 852/2004 on the hygiene of foodstuffs, Article 6(2). Where the form is completed on-line, the applicant / business operator should complete the declaration section. Where the form has not been signed / declaration section has not been completed, it should be returned to the applicant for action forthwith.
- The applicant should provide all of the information that is required of the Authority's registration form. If any of the information is omitted, the Authority should either make contact with the applicant to obtain the missing information or return the form to the applicant for full completion per the Food Law Code of Practice (England) (April 2012)*. * *Section 1: Administration; Chapter 1.5: Registration of Food Business Establishments; Paragraph 1.55: Action on Receipt of a Completed Registration Form*

- All of the information provided by the applicant on the registration form should be recorded on APP Civica.

10.36 **Action (9)** - Date stamping of incoming forms was instituted during the audit. The on-line form has been improved and now requires the declaration before it can be submitted. A work instruction is to be implemented by 31 May 2013 which requires the officer receiving the registration form to check it and to get the business operator to correct any omissions. Registrations forms will be scanned and stored in APP Civica.

11. Community Impact

11.1 Failure to comply with the code of practice on food law may have an adverse impact upon food hygiene standards within the county.

12. Equality and Human Rights

12.1 This report does not impact upon on this area.

13. Financial Implications

13.1 This report does not impact upon this area.

14. Legal Implications

14.1 Failure to deliver the planned programme of food hygiene inspections in accordance with legislation, regulation and statutory Codes of Practice could compromise the health and wellbeing of individuals, groups, the community as a whole etc. This could cause significant reputational damage and lead to the Food Standards Agency (FSA) taking over the responsibilities of food law enforcement from the Council.

15. Risk Management

15.1 In view of the Limited Assurance grading that has been issued in that the Council's annual programme of planned food hygiene inspections does not fully accord with the requirements of the Food Law Code of Practice (England) (April 2012), the risk of failing to fulfil relevant legislative requirements is to be noted in the Places and Communities Risk Register with reference RSK.EEC.35(EHTS) until such time as the Council's revised programme has been formally noted and agreed by the appropriate body or person.

16. Consultees

16.1 None.

17. Appendices

17.1 None.

18. Background Papers

18.1 None identified.