

ABERDEEN CITY COUNCIL

COMMITTEE	Communities, Housing and Public Protection Committee
DATE	16 May 2023
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Food Standards Scotland Audit of Local Authority implementation of interventions Food Law Code of Practice (Scotland)
REPORT NUMBER	RES/23/133
DIRECTOR	Steven Whyte
CHIEF OFFICER	Mark Reilly
REPORT AUTHOR	Andrea Carson
TERMS OF REFERENCE	2.3

1. PURPOSE OF REPORT

- 1.1 This report presents the findings of the recent Food Standards Scotland's Audit, at Aberdeen City Council (ACC), of the Local Authority implementation of Interventions Food Law Code of Practice (Scotland) Food Law Enforcement Services and details the actions for Protective Services to address through their audit recommendations.

2. RECOMMENDATION(S)

That the Committee: -

- 2.1 Note the Audit report findings and the associated Action Plan as set out in Appendix A
- 2.2 Note the update on current progress following the Audit report findings detailed in Appendix B
- 2.3 Instructs the Chief Officer – Operations and Protective Services to provide the Committee with a progress update of the audit “Action Plan” on 5 September 2023 detailed in Appendix B.
- 2.4 Instructs the Chief Officer – Operations and Protective Services to report back to the Committee with the “Annual Service Plan” report that details future service delivery, for Food law interventions, considering the Food Standards Scotland Audit findings.

3. CURRENT SITUATION

3.1 Food Standards Scotland Audits

Audits of Local Authorities food law enforcement services are part of Food Standards Scotland's (FSS) arrangements to maintain and improve consumer protection and confidence in relation to food by ensuring that Local Authorities are providing an effective food law enforcement service. Provision of this service is a statutory duty. These arrangements recognise that the enforcement of UK food law relating to food safety, hygiene, composition, and labelling, is largely the responsibility of Local Authorities. These Local Authority regulatory functions are principally delivered through the Environmental Health Commercial Team in Protective Services.

- 3.1.1 Local Authorities are chosen at random for audit and are only given a few weeks' notice. The Service was advised on the 8th November 2022 that the audit would take place on the 6th and 7th December 2022.

The purpose of the audit was to verify and validate the implementation by ACC of the following planned arrangement "The Interventions – Food Law Code of Practice (Scotland) 2019" (hereafter referred to as the Interventions Code 2019). The resulting Audit Report is contained in Appendix A. The Audit scheme also provides the opportunity to identify and disseminate good practice and provide information, between Local Authorities and Food Standards Scotland and to inform Food Standards Scotland policy on food safety, standards and feeding stuffs.

- 3.1.2 Specifically, this audit aimed to:

- Verify that "the Interventions Code 2019" had been implemented and all applicable food establishments had been transferred to a food law risk rating.
- Verify the application and adherence to the "Interventions Code 2019".
- Identify and disseminate good practice applied by Local Authorities.
- Identify information, evidence, and potential recommendations to aid future Food Standards Scotland's policy and operational development.

3.1.3 Outcome of Audit

The overall outcome of the Audit determined that there was "Insufficient Assurance and that there are significant weaknesses in the current risk, governance, and control procedures to the extent that the delivery of objectives is at risk. Exposure to the weaknesses is sizeable and requires urgent mitigating action."

- 3.1.4 This means that the Audit determined service delivery levels were not as should be expected. An inadequate number of inspections are being undertaken, meaning that assurance cannot be provided that a robust control of food safety law is in place.

- 3.1.5 Eleven recommended points of action were highlighted. The two main areas of concern were that staffing levels to meet the required number of inspections are not adequate, and therefore, the required number of inspections are not being allocated and completed in line with the “Local Authority Recovery Project” (refer to section 3.2) and within the frequencies outlined in “the Interventions Code 2019”.
- 3.1.6 Positive points raised at audit included the standard of inspection letters which auditors found to be well formatted and very easy for food businesses to follow and understand. In addition, two reality check visits were carried out during the audit where officers from the Service were accompanied by FSS Auditors. It was determined that these verification checks were carried out professionally and in accordance with the Interventions Code 2019 and Food Law Code of Practice (Scotland) 2019.

3.2 **Staffing Challenges**

Following Covid, during which inspections were paused, the “Local Authority Recovery Process Guidance” (“the guidance”) was issued by FSS to assist authorities to restart their food premises inspection programmes. This detailed the risk priorities for scheduling inspections and subsequently “the guidance” increased the number of high priority inspections required to be undertaken. ACC followed the guidance and prioritised planned inspections. However, “the guidance” did not take into account individual local authorities’ staffing resources.

During the pandemic several Environmental Health Officers had left the authority, and the Service has been unable to recruit qualified staff due to the national shortage of qualified staff. Due to these reduced staffing levels it was and is not possible to allocate and undertake the number of inspections that are required by “the guidance” each month.

There is presently a national shortage of qualified enforcement staff who can be authorised to carry out food related work. This has been raised at a FSS Board Meeting in June 2022 and was also highlighted to the Public Protection Committee (OPE/ 22/154) when the Protective Services Food Law Service Plan was presented on 5 October 2022.

- 3.2.1 There are currently 7.6 full time equivalent (FTE) field officers in post who spend approximately 75 % of their time involved with food related activities. The full establishment number of field officer (FTE) posts for the service is 14.5. The resource calculation (contained in “the guidance”) indicated that there was a staffing resource FTE deficit of 4.78 for food related work. This indicates that full establishment is currently required by the service to deliver its statutory duties.

Due to these reasons the service is unable to allocate all the food law interventions that are expected to be carried out every month. “The guidance” states that 89 inspections should be allocated and carried out on average each month by ACC. However, the current resource levels are only averaging 22 inspections per month.

3.2.2 In addition the team which carries out food inspections (which includes all Environmental Health Officers and Authorised Officers) carry out other statutory functions. These include:

- a) Accident investigations in SME's , on behalf of the Health and Safety Executive; these can be minor to serious or fatal accidents often resulting in enforcement action or reports to the Crown Office and Procurator Fiscal Service.
- b) Port health work which includes , ship sanitation inspections and, food export health certificates. These generate revenue and support the local economy
- c) Licensing, and animal health activities.

Not carrying out these other statutory functions would increase risks for the council. Therefore the service prioritises work on a risk assessed basis.

Setting aside this work to allow current staff resources to focus on food inspections could have a significant impact on public health and the wellbeing of the City's population with respect. to work place health and safety; public health; animal welfare and general licensing enforcement.

3.3 Addressing Staffing Issues

There is ongoing work both locally and nationally to address the staffing shortfall.

3.3.1 Recommendations 1 and 2 of the Audit Report detail ongoing work towards addressing the current staff resource deficit. In the short to medium term this will not completely resolve the issue and there will continue to be more inspections required than resources available. The action points associated with these recommendations are actions that the Service had commenced prior to the audit, and it's the services intention to continue with this strategy.

3.3.2 A compliance officer was appointed and commenced in post on 3rd of April 2023. This officer will focus of low-risk premises allowing the fully qualified officers to focus on higher risk premises.

A trainee authorised officer has also been engaged and will join the team in August 2023. Other recruitment strategies and exploring entry to the profession. This will assist in recruiting appropriate individuals who can undertake inspections.

3.3.3 The Royal Environmental Health Institute of Scotland acknowledges the lack of availability of qualified staff and recruitment issues across the sector in Scotland and have recently introduced updated access routes to the profession. Historically there was a set of pre-requisite qualifications that allowed applicants to register with the Institute and undertake the required additional qualifications to allow them to become an Authorised Officer that could undertake Food Law inspections and related work.

Applicants are now being assessed on a case-by-case basis where consideration is being given to previous experience. Any academic knowledge

gaps are then identified, and the applicant is provided with suggestions of how these can be addressed. Once the knowledge gaps have been addressed the applicant will then register with the Institute to sit the necessary the qualifications. (The Trainee Authorised Officer post has been created due to these changes). Additionally, links have been established with a variety of tertiary education providers to promote opportunities in Environmental Health careers.

3.3.4 The FSS also recognises the shortage of qualified officers and are currently consulting with all local authorities on implementing a new approach to food law delivery (Scottish Authority Food Enforcement Re-Build- SAFER). Officers have already attended two working groups regarding the SAFER programme. Information about the SAFER programme has also been shared with The Society of Local Authority Chief Executives and Senior Managers (SOLACE). The SAFER project is presently in the scoping phase and the intention is that it will reduce the current inspection burden on local authorities. More information on the project can be found in Appendix C.

3.3.5 The service has also completed a time management study following a request by FSS to all Local Authorities. The intention is to identify what resources are required to deliver the required inspections of food premises to meet the requirements of the Food Law Code of Practice Scotland. The preliminary work that has been done has shown that there is approximately a 50% short fall of qualified officers nationally.

3.4 **Audit Action Plan**

The recommendations in the Service's Audit Action Plan will be addressed in line with the target dates set. An update of current progress is contained in Appendix B. As the SAFER programme develops any recommendations will be integrated into the services service delivery plan.

3.5 **Service Challenges**

The issues facing the Service are challenging and inspections will continue to be prioritised on a risk basis. During the COVID 19 pandemic all food law inspections were suspended by FSS. Following the recovery from lockdown and subsequent business restrictions the service re-programmed inspections commencing in September 2021.

Whilst the level of compliance is relatively good some businesses are requiring greater attention to allow them to progress compliance with the regulations.

Additionally, there are new food businesses which opened and registered with the service while food law inspections were paused. These inspections were prioritised and are currently being carried out. There has been an increase in new food businesses registering with the service since 2021 from what was historically experienced.

Food business pre-Covid were subject to programmed inspections, and these were prioritised in accordance with high-risk activities and to those with poor compliance.

Consequently, although some statutory enforcement action has been necessary at times this has been relatively low in relation to the number of food businesses visited since September 2021, the Food Hygiene Information Scheme is available online for the public to view and details whether a food business has received a pass or improvement required rating.

- 3.5.1 Businesses that are high risk are prioritised and where there is improvement identified officers will work with the business to improve the levels of compliance. Prioritisation is based on the business's activities i.e., those which process food; food business serving both raw and ready to eat foods; or those which have a history of poor compliance.

Due to the number of businesses awaiting first inspection or those that did not receive a visit or inspection during the pause the service has altered how these visits and inspection are prioritised, it is therefore assumed that they will all fall into the higher risk category and inspections prioritised accordingly.

This prioritisation is in line with FSS guidance for the recovery plan. For those businesses that are deemed to be low risk by their activities i.e., corner shops with prepacked foods or those that have a satisfactory level of compliance, an alternative enforcement strategy is being developed. This will be the use of non-qualified food enforcement officers to carry out initial visits. Appropriately qualified officers will then visit the premise should enforcement action be deemed to be required.

- 3.5.2 First inspections will continue to be programmed for newly registered food businesses in order that an assessment of their compliance with food law can be established. These are treated as a priority and in doing so these premises are captured and added to the Food law Inspection programme. Those premises identified as high risk or which have shown to historically having lower compliance are treated as priority in the food law inspection programme.
- 3.5.3 The service continues to investigate complaints relating to food premises and takes action where necessary. Where a complaint relates to a newly registered premises that has not yet been inspected or one that is awaiting inspection due to the COVID 19 pause a full inspection will be carried out at the same time, this will again ensure that additional premises are being visited and appropriately risk rated as per the food law rating scheme.
- 3.5.4 Whilst there is a national shortage of suitably qualified officers, the Service is taking steps locally to encourage recruitment into the profession. This includes attending career events and giving information talks to various university courses regarding a career in Environmental Health. Strong links have also been formed with Robert Gordon University Food Nutrition and Health course to further promote the profession.

4. FINANCIAL IMPLICATIONS

- 4.1 The proposed action plan can be achieved within the existing service budget.

5. LEGAL IMPLICATIONS

- 5.1 The power to set standards, monitor and audit the performance of enforcement authorities was conferred on FSS by Sections 3 and 25 of the Food (Scotland) Act 2015 and Regulation 7 of the Official Feed and Food Controls (Scotland) Regulations 2009. FSS has established external audit arrangements intended to ensure competent authorities are providing an effective and consistent service for the delivery of official controls and are meeting the general criteria laid out in retained EU Regulation (EC) 2017/625.
- 5.2 Food Authorities are required to have regard to the Codes of Practice when discharging duties and comply with any direction which is given and to take any specified steps in order to comply with such a code. (Food Safety Act 1990, s. 40 (2) (a) and (b)).
- 5.2.1 FSS has powers, following consultation with Ministers, to issue a Direction to a local authority requiring it to take specified steps to comply with the Code of Practice issued. Directions are enforceable through Court of Session Orders. Although there is the potential for FSS to issue a Direction, and this is the ultimate sanction, this power has never been used and it would be unlikely to be applied. It is however an important legal implication. If a Direction were issued requiring the Service to employ more qualified staff to ensure inspection targets could be met this would currently be impossible to fulfil – of which colleagues in FSS are acutely aware.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no direct environmental implications arising from the recommendations of this report.

7. RISK

7.1 The assessment of risk contained in the table below is considered to be consistent with the Councils Risk Appetite Statement for Place

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) <small>*taking into account controls/control actions</small>	*Does Target Risk Level Match Appetite Set?
Strategic Risk	Unable to achieve intervention programme (recommendation 1 & 2 of audit report) due to FTE deficit	Reduce FTE deficit through recruitment strategies. (ref: planned action, Recommendations 1&2)	M	Yes
Compliance	ACC is bound by statute to deliver a food law enforcement service FSS may, after consulting with Scottish Ministers, direct a Food Authority requiring it to take any specified steps to comply with the requirements of food law or Food Law Code of Practice (Scotland). Reduced confidence in public health regulatory controls related to enforcement and assurance of business operations meeting food safety standards.	Action plan to address audit recommendations	M	Yes

Operational	Qualified officers not available to carry out interventions.	Only qualified officers undertake regulatory duties. Risk prioritisation of interventions when insufficient offices available.	M	Yes
Financial	<p>Failure to produce and deliver a service plan could contribute to default powers being exercised and the associated costs.</p> <p>FSS may, after consulting with Scottish Ministers, direct a Food Authority requiring it to take any specified steps to comply with the requirements of food law or Food Law Code of Practice (Scotland). FSS may recover any reasonable expenses incurred by them from the defaulting local authority.</p>	Action plan to address audit recommendations		Yes
Reputational	Failure to address audit report recommendations and continued assignment of insufficient assurance audit level	Action plan to address audit recommendations	M	Yes

Environment / Climate	No significant risks identified			

8. OUTCOMES

The proposals in this report have a positive impact on the Council's Delivery Plan.

<u>COUNCIL DELIVERY PLAN 2022-2023</u>	
	Impact of Report
Aberdeen City Council Policy Statement <u>Working in Partnership for Aberdeen</u>	<i>The proposals within this report support the delivery of the following aspects of the policy statement:-</i> A Prosperous City, delivering a interventions programme that assists stimulate sustainable economic development in the food business sector
<u>Aberdeen City Local Outcome Improvement Plan 2016-26</u>	
Prosperous Economy Stretch Outcomes	The proposals in this report support the delivery of LOIP Stretch Outcome 2 – 400 unemployed Aberdeen City residents supported into Fair work by 2026. Conducting an interventions programme that reduces the risk to food business and individuals to criminal proceedings and/or litigation and secures public protection.
Regional and City Strategies	The proposals within this report support the Regional Economic Strategy by assisting local businesses to thrive and prosper by providing advice to ensure compliance with relevant legislation.

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	Full impact assessment not required
Data Protection Impact Assessment	Not required
Other	None

10. BACKGROUND PAPERS

- 10.1 [Interventions Food Law Code of Practice \(Scotland\) 2019 1.pdf \(foodstandards.gov.scot\)](#)
- 10.2 Protective Services Food Regulatory Service Plan 2022/2023 presented to Committee October 2022
[\(Public Pack\)Agenda Document for Public Protection Committee, 05/10/2022 10:00 \(aberdeencity.gov.uk\)](#)
- 10.3 Local Authority Recovery Process Guidance
[FSS-ENF-20-011 - LA Recovery Process Guidance.pdf \(foodstandards.gov.scot\)](#)
- 10.4 FSS Board Paper 15 June 2022: Local Authority Delivery Current Situation
[09 - Board Meeting - 2022 June 15 - Local Authority Delivery Paper - 220609.pdf \(foodstandards.gov.scot\)](#)

11. APPENDICES

- 11.1 Appendix A- Food Standards Scotland Audit of Local Authority Implementation of Interventions Food Law Code of Practice (Scotland) – Aberdeen City Council
- 11.2 Appendix B- Update on current progress with Action Plan.
- 11.3 Appendix C- Information on the SAFER Programme

12. REPORT AUTHOR CONTACT DETAILS

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