

Eastbourne Borough Council
Environmental Health Division
Food Safety Enforcement Policy

INTRODUCTION

The Council's approach to the enforcement of Food Safety reflects the responsibilities placed upon it by the Food Safety Act 1990, Food Hygiene (England) Regulations 2006, General Food Regulations 2004, the Official Feed and Food Control (England) Regulations 2006 and other regulations. The Authority's approach will also comply with the statutory Code of Practice issued by the Food Standards Agency (FSA) and the guidance produced by the Local Authorities' Co-ordinating Body on Regulatory Services (LACORS). It will also reflect the principles of the Enforcement Concordat, which has been adopted by the Council.

The Authority's key objective in terms of food safety is:-

"It is the Council's policy to strive to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within the Borough is without risk to the health or safety of the consumer, as far as is reasonably practicable"

The primary responsibility for ensuring food safety lies with the food handlers that produce or handle the food, and in particular food business operators must recognise their responsibilities for ensuring food safety.

Depending on particular circumstances, the Council will use a variety of means to ensure food safety. Enforcement action may take the form of verbal warnings, written warnings, statutory notices or prosecution. The choice of course of action will be primarily based upon an assessment of the risk to public health (i.e. the probability of harm to health occurring due to non compliance with food safety law). Formal action will not be used to address minor technical contraventions that pose little or no risk to health.

All officers authorised by the Council under the Food Safety Act 1990, Food Hygiene (England) Regulations 2006, General Food Regulations 2004, the Official Feed and Food Control (England) Regulations 2006 and other regulations will adhere to this policy and divisional Food Safety Procedures. Any departure from the policy and procedures must be exceptional, capable of justification and be fully considered by senior management before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).

All authorised officers should acquaint themselves fully with the requirements of this policy, departmental food safety procedures, statutory Codes of Practice and guidance from LACORS.

Officers will be authorised in accordance with the statutory Code of Practice. The authorisation of officers by designation and the limits of their authorisation will be set out in the Authorisations FS1 and Induction and Competency of New Food Officers Procedure FSQM2 and subject to regular review. All food officers have their own copy of these procedures and a master copy will be retained.

PRINCIPLES OF GOOD ENFORCEMENT

The Council has signed up to the Government's 1998 Enforcement Concordat – Principles of Good Enforcement. The Concordat sets out what business and others being regulated can expect from enforcement officers.

The aim of the policy is to ensure that all enforcement actions comply with the following 3 principles:

- **Consistency**
- **Proportionality**
- **Openness**

Consistency means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, the history of compliance and the attitude and actions of those involved.

Proportionality means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.

Openness means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements (what must be done) and advice or guidance (what is desirable).

ENFORCEMENT OPTIONS

The Council's primary concern is the prevention of food poisoning or ill health caused by food. To achieve this, officers will encourage the effective management of food safety in local food businesses. Officers will seek to help businesses improve their management of food safety by giving guidance on prevention and acting as a source of information and support as to how best maintain good standards and conform with the law.

Authorised officers will exercise discretion when approaching individual employees. The Council acknowledges that most food business operators are keen to comply with the law and that a growing number recognise the economic benefits of good food safety management. In such cases enforcement officers will guide, advise and support the business. If enforcement officers, in carrying out their functions, find evidence that the law is being broken they may exercise a range of powers, and will respond according to the particular circumstances of the case. They may instruct or warn verbally or by letter, or they may issue a Hygiene Improvement Notice requiring compliance within a specified time. Should circumstances warrant it, they may issue a Hygiene Emergency Prohibition Notice requiring immediate action, or prosecute without any prior warning and without any recourse to alternative sanctions.

In Approved Premises (premises which require approval to trade due to the high risk nature of the undertaking) only they may also consider the use of Remedial Action Notices (a prohibition notice not requiring Court attendance designed to provide a

higher level of consumer protection), and officers will only initiate procedures to suspend or withdraw a business's approval if all other enforcement options have been considered. Any recommendation for suspension or withdrawal will be brought before the Council's Licensing Committee who will decide the matter.

Enforcement Officers investigating breaches of the law will consider the potential to cause harm as well as any harm actually caused. The Council may, therefore, seek prosecution if a breach has significant potential for harm, regardless of whether it actually caused an injury or not.

No direct action will be taken where the action is outside the legal duties and responsibilities of the Council, or where upon investigation any relevant allegations are not substantiated.

Enforcement decisions shall be consistent, balanced and fair, and relate to common standards that ensure the public, businesses, employees and the environment are adequately protected.

The factors to be considered in coming to a decision about the type of action to take include:

- The seriousness of the offence.
- The past history of the offender.
- The confidence in management and the degree of wilfulness involved.
- The consequence of non-compliance.
- The likely effectiveness of the various enforcement options.
- The impact on resources and public relations.

Having considered all relevant information and evidence, the Council may decide to pursue one of the following:

- 1. No Action**
- 2. Informal Action**
- 3. Formal Caution**
- 4. Hygiene Improvement Notices**
- 5. Hygiene Emergency Prohibition Notices**
- 6. Prosecution**

1. No Action

No direct action will be taken where:

- The subject is outside the legal duties and responsibilities of the Council and the Health and Environment Team.
- Upon investigation any relevant allegations are not substantiated.
- Any relevant allegations are withdrawn prior to investigation.

2. Informal Action

Informal action through the provision of advice and guidance in verbal or written form will usually be the first enforcement option except where official guidance recommends formal action. Circumstances that indicate that informal action is appropriate include:

- the act or omission is not serious enough to warrant formal action;
- from the past history it can be reasonably expected that informal action will achieve compliance with the legislation;
- there is confidence in the management of the business or individual to act upon the advice given and remedy the breach of the legislation or abate the nuisance in a reasonable timescale;
- the consequence of non-compliance will not pose a significant or unacceptable risk to the environment or public health or safety.
- the nature of the undertaking is such that formal action in the first instance would be inappropriate for example with voluntary organisations and charitable groups who are using volunteers to run their operation. None the less this must be considered with the factors outlined above and does not rule out formal action in certain circumstances.

When such an approach is used to secure compliance with legislation then any written documentation issued will:

- 1) specify the legislation that has been contravened;
- 2) specify what remedial action is required, together with the reasons;
- 3) ensure that any recommended areas of good practice, which are above the minimum levels required by statute, are clearly differentiated within the document;

Where examples are given of how compliance may be achieved, it will be made clear that alternative means of compliance may also be acceptable.

On Site Inspection Reports will be issued after every programmed food safety inspection even where the conditions at the time of inspection are satisfactory. Such reports will comply with the requirements of the statutory Codes of Practice.

Officers will also ensure that they clearly differentiate between legal requirements and recommendations of good hygiene practice even if only giving verbal advice.

Where a client's first language is not English and there appears to be some difficulty in an officer making him/herself understood, the officer will make every effort to communicate with the client in their first language. Methods used may include using a close relative to translate, using the services of an approved translator, or translating the written content of a letter with the help of a translator or with a free internet service such as AltaVista Babelfish. If a third party is involved the need for confidentiality should be emphasised.

3. Formal Caution

Formal cautions will be issued in accordance with the current Home Office guidance, and will be considered against the criteria listed below. A properly administered formal caution may be cited at a future court hearing provided that the caution was administered for an offence committed within 3 years of the offence for which the prosecution is brought.

In cases where there is sufficient evidence to warrant a prosecution but the public interest would not benefit from such a course of action, then a formal caution may well be appropriate.

Formal cautioning will not be used as an alternative to a weak prosecution case.

Formal cautions will be issued to: -

- Deal quickly and simply with less serious offences;
- Divert less serious offences away from the courts;
- Reduce the chances of repeat offences.

To safeguard the suspected offender's interest, the following conditions should be fulfilled before a caution is administered:

- There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction;
- The suspected offender must admit the offence;
- The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned;

4. Hygiene Improvement Notices

Hygiene Improvement Notices may be appropriate where one or more of the following criteria apply:-

- There are significant contraventions of legislation.
- There is a lack of confidence in the proprietor or business to respond to an informal approach.
- There is a history of non-compliance with informal action.
- Standards are generally poor with little management awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

The use of Hygiene Improvement Notices will be related to the potential risk to health.

Hygiene Improvement Notices will only be issued by officers specifically authorised to do so in accordance with the statutory Code of Practice. Hygiene Improvement Notices will not be signed by authorised officers on behalf of other officers unless the authorised officer has witnessed the contravention and is satisfied that it is significant and that any other appropriate criteria are satisfied.

Failure to comply with a Hygiene Improvement Notice will generally result in prosecution.

5. Hygiene Emergency Prohibition Notices

Hygiene Emergency Prohibition Notices will be issued where in the opinion of the authorised officer there is an imminent risk of injury to health. It should only be necessary to consider the use of Hygiene Emergency Prohibition Notices in one or more of the following circumstances:-

- An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner.
- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- The guidance criteria, specified in the relevant statutory Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
- There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close premises or cease the use of any equipment, process or treatment associated with the imminent risk.
- A proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

6. Prosecution

The Council recognises that the decision to prosecute is a very significant one and could have far-reaching consequences on the defendant. Prosecutions will be restricted to those persons who blatantly disregard the law, refuse to achieve even the most basic minimum legal requirements, often following previous contact with the Authority, and who put the public at serious risk.

The circumstances which are likely to warrant prosecution are characterised by one or more of the following:-

- Where the alleged offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk.
- Where the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- Where there is a history of similar offences related to risk to public health.

Before a prosecution proceeds the Lead Officer (Food Safety) will be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction, a bare prima facie case will not be enough. With insufficient evidence to prosecute a formal caution will not be an alternative.

In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction there must be a positive decision, based on relevant criteria, that it is in the public's interest to prosecute. The criteria set out in The Code for

Crown Prosecutors, issued by the Crown Prosecution Service shall be taken into account. (The general guidance in the Code is that the graver the offence, the less the likelihood will be that the public interest will allow anything other than a prosecution.) Other factors to be considered will include:-

The seriousness of the alleged offence

- The risk or harm to public health.
- Identifiable victims.
- Failure to comply with a statutory notice served for a significant breach of legislation.
- Disregard of public health for financial reward.

The previous history of the party concerned.

- Offences following a history of similar offences.
- Failure to respond positively to past warnings.
- Failure to comply with statutory notices.
- The likelihood of the defendant being able to establish a due diligence defence.
- The ability of any important witnesses and their willingness to co-operate.
- The willingness on the part of the defendant to prevent a recurrence of the problem.
- The probable public benefit of a prosecution and the importance of the case - e.g., whether it might establish a legal precedent.
- Whether other action, such as issuing a formal caution in accordance with Home Office guidance, a Hygiene Improvement Notice or imposing a prohibition, would be more appropriate or effective.

Once a decision to instigate legal proceedings has been made the Investigating officer should refer the matter to Legal Services without undue delay, and in any case within four months after the offence.

HUMAN RIGHTS ACT 1998

Before instigating a prosecution or withdrawing an approval or licence the human rights implications of that action must be considered. A Human Rights Act form is included in the prosecution procedure and must be completed in these cases.

GENERAL ISSUES

Enforcement options will be considered in line with this policy, based on the facts of the case, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

The Council adopted the Enforcement Concordat in January 2001. This policy reflects the principles of good enforcement set out in the Concordat.

Officers will comply with Codes B, C and E of the Police and Criminal Evidence Act 1984 as it relates to local authority enforcement.

In conducting inspections, officers will ensure proportionality by matching enforcement action to the degree of risk, taking into account what is reasonably practicable, and

thereby ensuring that widely accepted good practice is applied throughout any activity. Officers will also exercise discretion in what matters are tackled, targeting important issues, and avoiding confusion with trivial issues. Officers will ensure that enforcement decisions are consistent, balanced and fair and that the public is adequately protected.

Where any enforcement action considered is believed to be inconsistent with that adopted by other Authorities or is contrary to any advice from LACORS, the matter will be referred to the East Sussex Food Liaison Group for discussion. If a reasonable, consensus view of the Group cannot be achieved, or the issue appears to be of national significance, or it is felt that existing guidance has not taken adequately account of the legal provisions, case law, research or other evidence, the Liaison Group will ask LACORS, through its national Food Safety Panel, to consider the issue to ensure consistent enforcement.

Where enforcement action proposed is contrary to any advice issued by the relevant Home and/or Originating Authorities, the matter will be discussed with them before taking action. Reference to the Home Authority will always be made where enforcement action impacts on aspects of a business policy which has been agreed centrally by the decision making base of the business.

This policy will be subject to review at regular periods or as a result of changes in legislation, statutory Codes of Practice or guidance from the FSA or LACORS.

COMPLAINTS

If you are dissatisfied with the service you have received, please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to do this. We will deal with any complaint you have in strict confidence.

Wherever possible we will attempt to resolve your complaint informally through the case officer or the Health and Environment Manager. If we cannot do this, we aim to respond in writing to you within 10 working days of receiving your complaint. We will keep you regularly updated of progress until your complaint is resolved.

If you are still unhappy with the outcome, please tell us and we will make sure your complaint is brought to the attention of the management who will arrange for the case to be reviewed. Our Corporate Complaints procedure is available on request.

If you think that you have been unfairly treated by us, you can ask the Local Government Ombudsman to investigate.

HOW TO CONTACT US

You can use the telephone number given on any correspondence we have sent you, or you can contact the Food Safety Team on 01323 415374.

In person at 1 Grove Road, Eastbourne, East Sussex, BN21 4TW

By writing to the Food Safety Team, Environmental Health, 1 Grove Road, Eastbourne, East Sussex, BN21 4TW

On line at [**www.eastbourne.gov.uk/business/food**](http://www.eastbourne.gov.uk/business/food)
CONFIDENTIALITY

The Council will at all times strive to maintain the confidentiality of persons requesting our service. However, in the case of prosecution and witness statements, it may be required to reveal the names and addresses of both parties involved in a food safety complaint.