

1. INTRODUCTION

1.1. Purpose

This procedure describes the various stages of this Authority's Food Safety Enforcement Policy and where appropriate the necessary quality monitoring activities that are carried out to maintain consistency and quality.

1.2. Introduction

It is this 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 this district is without risk to the health or safety of the consumer.

Any enforcement action taken by the Food Safety Section be it verbal warnings, the issue of written warning or statutory notices, or prosecution, will be primarily based upon an assessment of risk to public health. Any actions taken will where appropriate follow specific guidance on enforcement contained in Statutory Codes of Practice issued under Section 40 of the Food Safety Act 1990 and LACOTS guidance.

All enforcement action will also follow the principles of good enforcement laid down in the Enforcement Concordant adopted by this Authority.

All enforcement action is taken in accordance with the Code for Crown Prosecutors, especially in relation to satisfying the evidential test and the Public Interest test before proceedings are taken.

1.3. Shared Enforcement Role

Circumstances arise from time to time which involve a shared enforcement role.

If there is any doubt over enforcement responsibility or if there is clearly a shared role, close liaison with all of the parties involved is essential. The most likely partners in shared enforcement activities are Other Local Authority Environmental Health Departments, Lincolnshire Trading Standards Dept., the Police, the Independent Inspection Unit and the Food Standards Agency.

1.4. Provisions for the Particular Interests of Consumers

1.4.1. Within East Lindsey there are numerous food premises, predominantly catering that only operate outside "normal working hours". Officers are where required to visit businesses at times they are operating. This frequently requires evening and late night inspection.

1.4.2. On occasions where the first language of the food business proprietor is not English and it is clear that difficulties of understanding exist, interpreters can be made available.

All authorised officers when making enforcement decisions should abide by this policy. Any departure from this policy must be exceptional, capable of justification and be fully considered by the Food Safety Manager before the decision is taken, unless it is considered that there is a significant risk to the public in delaying the decision.

2. AUTHORISATION

2.1. Purpose

This procedure describes the main enforcement areas of the Food Safety Section and identifies the level of authorisation for each.

2.2. Informal Actions

All officers authorised to carry out programmed food safety and health and safety inspections are authorised to take informal action as a direct result of these inspections. These informal actions may take the form of verbal warnings, which may be made at the time of the inspection or if appropriate, written warnings may be given following the inspection. See Section 2, item 1,1.9.3, and Section 2, item 2, 1.6.1). All written warnings issued by Technical Officers are scrutinised and signed by the Food Safety Manager or his deputy. Where technical officers identify contraventions which may be dealt with informally but involve major structural work or expense, there must be close consultation with the Environmental Health Officer in whose area the premises are situated.

2.3. Statutory Notices

Only the EHOs and technical officers with the necessary qualifications and experience within the Food Safety Section can be authorised to serve Improvement Notices or Emergency Prohibition Notices.

Officers that are new to the Food Safety Section will only be authorised to serve statutory notices when they are deemed to be competent to do so by the Food Safety Manager.

2.4. Prosecution and Formal Cautions

Authorisation to take the decision to prosecute or issue a formal caution has been delegated to the Director of Environmental Services and the Assistant Director Housing and Environmental.

2.5. Competency

It is vital that all officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified and have relevant and adequate experience in food safety enforcement.

Where appropriate training, instruction and supervision will be provided to all staff to ensure that a high standard of competency is maintained.

3. ENFORCEMENT OPTIONS

3.1. Purpose

This procedure describes the various enforcement options that are available. It provides guidance on and emphasises the importance of achieving consistent, balanced and fair enforcement.

3.2. Options

Before coming to any decision in respect of enforcement it is necessary to consider many criteria. These include:-

- The seriousness of the offence.
- The enterprise's past history.
- Confidence in the management.
- The consequences of non compliance.
- The likely effectiveness of the various enforcement options.

Having considered all relevant information and evidence the options for action are:-

- To take no action.
- To take informal action.
- To use statutory notices.
- To use formal cautions.
- To prosecute.

Whenever formal action is considered, a meeting is held between the officers involved, the food safety manager and the Assistant Director, Housing and Health. At this meeting all of the evidence is considered and the FOOD SAFETY FORMAL ACTIONS MATRIX is completed to assist in the decision making process.

The following items provide detailed guidance in respect of these enforcement options.

3.3. Consistency

When considering taking enforcement action which may be inconsistent with that adopted by other authorities or contrary to any advice issued by LACOTS. These matters will be discussed at the Lincolnshire Food Group.

3.4. Home Authority Principle

When considering taking enforcement action which may be contrary to any advice given by the relevant Home and/or Originating Authority. These matters must be discussed with the relevant authorities before taking action. Where enforcement action may impact upon aspects of an enterprises policy which has been agreed centrally by the decision making base of the enterprise, the reference to the Home Authority is essential.

4. NO ACTION/INFORMAL ACTION

4.1. Purpose

This procedure describes the circumstances that surround the taking of no action or informal action.

4.2. No Action

There are very few circumstances where no action is appropriate. All programmed inspections will generate the standard inspection report, even if this simply states that all was satisfactory at the time of the inspection.

The main situations which could dictate the need for no action include a visit in connection with an unsubstantiated complaint or a minor re-inspection to monitor progress. Although these may need no further action in respect of the proprietor of the food business, they do need to be followed up in terms of inputting onto FLARE EHS to ensure that the system contains up to date information.

4.3. Informal Action

4.3.1. Definition

Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of food hygiene inspection reports.

4.3.2. The circumstances that would normally generate the use of informal action include:

- The act or omission is not serious enough to warrant formal action.
- From past history it can be reasonably expected that informal action will achieve compliance.
- Confidence in the management is high.
- The consequences of non-compliance will not pose a risk to public health.
- Other circumstances, where it is deemed that informal action is more appropriate. This may be appropriate for example with voluntary organisations using volunteers. The choice of this route should only be taken after consultation with the Food Safety Manager.

4.3.3. The detailed procedure surrounding the actions following inspections in respect of generating correspondence is described in Section 2, item 1 – Programmed Food Hygiene Inspections.

The main issues being that written inspection reports will be issued following all programmed inspections and that officers must clearly differentiate between legal requirements and recommendations of good hygiene practice.

5. STATUTORY NOTICES

5.1. Purpose

This procedure describes the circumstances that surround the service of statutory notices.

5.2. Improvement Notices

Section 10 of the Food Safety Act, 1990 provides the power to authorised officers to serve Improvement Notices. Consideration should be given to the service of such a notice if:

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

5.2.1. If conditions are seen to satisfy the above an Improvement Notice should be served upon the proprietor of the food business. This effectively provides them with a minimum of 14 days to comply with the contents.

Prior to service the format and content is checked by the Food Safety Manager or the Senior Environmental Health Officer (Food Safety) in respect of notices served by the Food Safety Manager.

5.2.2. At the same time as serving the Improvement Notice a formal Requisition for Information in relation to the premises involved is also served. This will ensure that any subsequent proceedings are taken against the correct person.

It is important that realistic time limits are placed on the notice (preferably agreed with the proprietor as attainable and appropriate).

5.2.3. The detailed procedure surrounding the actions following inspections in respect of generating correspondence is described in Section 2, item 1 – Programmed Food Hygiene Inspection.

Prior to service the format and content is checked by the Food Safety Manager or the SEHO (Food Safety).

5.2.4. Upon expiry of the time limit set for the Improvement Notice a further inspection is carried out to monitor compliance. If the works have been satisfactory carried out the notice is cancelled. If any works are outstanding then consideration is given to instituting legal proceedings as described under item 7.

5.2.5. An extension to the time limit on the Notice can be agreed if this is made in writing and the reasons for the application are satisfactory.

5.3. Monitoring of Improvement Notices

Visits to food premises to monitor compliance with Improvement Notices are not programmed inspections. Because there are grounds for suspecting that an offence has been committed, the visit is essentially a search to establish evidence to the offence. As a consequence, a “**PACE CODE B NOTICE OF POWERS AND RIGHTS**” must be served upon the proprietor or person in charge. The procedure followed must be in accordance with the steps outlined below:-

- (i) On arrival at the premises show identification and ask to speak to the person in charge.
- (ii) Explain the reason for the visit and that an offence is suspected.
- (iii) Complete the “Notice of Powers and Rights”
- (iv) Indicate the Acts that you consider to be appropriate for the visit being carried out by ticking the boxes provided. Tick more than one box if necessary.
- (v) Give notice to the person in charge.

(Note: There is no requirement to get their signature because you are not seeking consent.
- (vi) Allow the person a reasonable amount of time to read the Notice and be prepared to answer questions or give clarification. You may need to explain in a little detail the purpose of the Notice, try the following:-

“It is to give the occupier some information regarding our powers whilst carrying out an inspection and also to make them more aware of their rights as regards the conduct of the inspection”.
- (vii) Carry out the inspection as you would normally.
- (viii) If, during the visit, you suspect an offence may have been committed and you wish to exercise powers of seizure, then explain to the occupier what is being seized and why.

A receipt for the seized items should be forwarded to the occupier as soon as possible after the visit. See Procedure 2, Item 7.

- (ix) If, during the visit you wish to carry out a formal PACE interview, or simply ask certain questions about the alleged offence, the person being interviewed must be cautioned as follows:-

“YOU DO NOT HAVE TO SAY ANYTHING BUT IT MAY HARM YOUR DEFENCE IF YOU DO NOT MENTION WHEN QUESTIONED SOMETHING WHICH YOU MAY LATER RELY ON IN COURT. ANYTHING YOU DO SAY MAY BE GIVEN IN EVIDENCE.”

The recipient of the Caution must be asked if he understands its meaning, and advised that he is not under arrest and that he has the right to legal representation.

- (x) If the main person responsible is not available or further clarification is needed the person can be invited to attend a taped interview under caution in accordance with PACE Code E; detailed procedure shown in appendix.

5.4. Emergency Prohibition Notices

In accordance with Food Safety Act Code of Practice No. 4 the following matters must be considered when identifying what constitutes imminent risk of injury to health in respect of the service of Emergency Prohibition Notices:

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- 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 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.

5.4.1. Within three days of serving the **Emergency Prohibition Notice** an application is made to the Magistrates Court for the issue of an **Emergency Prohibition Order**. Once issued the premises are monitored to ensure compliance, when all necessary works have been carried out a notice indicating that there is no longer a risk to health is served on the proprietor and a copy for information is sent to the Magistrates Court.

5.4.2. Should the necessary works be carried out before the date of the court hearing a notice indicating that there is no longer any risk to health is served. The proprietor of the business is requested to sign **standard letter EPN1** agreeing that there is no need to proceed with the application to the Magistrates Court and waiving any claim to compensation. **Standard letter EPN2** is then sent to the Magistrates to advise them that the Notice has been complied with.

5.4.3. When it is apparent that Emergency Prohibition is the appropriate course of action the proprietor or person responsible for running the food business is advised of their right to remain silent through the official PACE caution. Any statements made after the caution

being carefully recorded. At the conclusion of the inspection the proprietor or person running the food business is invited to sign the officer's notebook after reading and agreeing the recorded notes.

5.4.4. If the main person responsible is not available or further clarification is needed the person can be invited to attend a taped interview under caution in accordance with PACE Code E; detailed procedure shown in appendix.

5.4.5. It may be necessary to collect evidence in the form of physical or microbiological samples. These are handled in accordance with the procedure outlined in Section 2, Item 5 – Food Safety Surveillance/Sampling. These are submitted to the Public Health Laboratory or Public Analyst in accordance with the formal sampling practices.

5.4.6. Detailed photographic evidence is taken in all cases to clearly demonstrate why the formal action is being taken.

6. FORMAL CAUTIONS

6.1. Purpose

This procedure describes the circumstances that surround the issue of formal cautions.

6.2. The purpose of formal cautions is stated in Home Office Circular 59/1990 as being:

- a means to deal quickly and simply with less serious offences.
- to divert less serious offences away from the courts.
- to reduce the chances of repeat offences.

6.3. The Assistant Director Health and Housing has been authorised as the cautioning officer. Local offenders will normally be sent **standard letter 'Caution 1'** requesting them to attend a cautioning interview at Tedder Hall in the presence of the Assistant Director.

Offenders from further afield may be cautioned by post by sending **standard letter 'Caution 2'**, including the **Standard Caution Form** for an individual or company as appropriate.

6.4. The circumstances where it would be appropriate to use a formal caution include:-

- where there is evidence of the suspected offenders guilt sufficient to give a realistic prospect of conviction
- where the suspected offender admits the offence
- where the suspected offender demonstrates that he/she understands the significance of a formal caution and gives an informed consent to being cautioned.

6.5. Formal cautions cannot be used if there is insufficient evidence to consider taking a prosecution. It would also be inappropriate to use a formal caution where the suspected offender does not make a clear and reliable admission of the offence.

6.6. There is no legal obligation for any person to accept the offer of a formal caution and no pressure must be applied to the person to accept a caution.

6.7. If a person declines the offer of a formal caution it will be necessary to consider taking alternative enforcement action. Whilst this will probably mean taking a prosecution, this is not inevitable, it may be felt that a written warning would be appropriate.

6.8. Upon acceptance of the caution and signing the Caution Form a copy is sent to the central register of convictions within two weeks of the caution. The **Standard Caution Report Form** is used to make the notification.

7. PROSECUTION

7.1. Purpose

This procedure describes the circumstances that surround the decision to prosecute and the appropriate steps involved.

7.2. Introduction

The decision to prosecute is a very significant one. Prosecution will in general be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, often following previous contact with the Authority and who put the public at serious risk.

7.3. One or more of the following will be relevant in identifying the circumstances whereby prosecution would be the most appropriate course of action:

- 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 involved the failure 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.

7.4. When circumstances as outlined above have been identified which may warrant a prosecution, all relevant information and evidence must be considered to enable a consistent, fair and objective decision to be taken.

7.5. When it is apparent during the course of an inspection that Prosecution is likely to be the appropriate course of action the proprietor or person responsible for running the food business is advised of their right to remain silent through the official PACE caution. The recipient of the caution must be asked if he understands its meaning and advised that he is not under arrest and that he has the right to legal representation. Any statements made after the caution must be carefully recorded. At the conclusion of the inspection the proprietor or person running the food business is requested to sign the Officer's note book after reading and agreeing the recorded notes.

7.6. It may be necessary to collect evidence in the form of physical or microbiological samples. These are handled in accordance with the procedure outlined in Section 2, Item 5 – Food Safety Surveillance/Sampling. These are submitted to the Public Health Laboratory or Public Analyst in accordance with the formal sampling practices.

7.7. Detailed photographic evidence is taken in all cases to clearly demonstrate why the formal action is being taken.

7.8. Before a prosecution proceeds the Officer responsible, in association with the Food Safety Manager, Head of Environmental Health and Housing and a representative from the Legal Section, must be satisfied that there is a case to answer. There must be sufficient

relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company, in accordance with the code for Crown prosecutors. The main method used to assist in the decision-making process is the completion of the formal action matrix.

7.9. In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision that it is in the public's interest to prosecute. Factors that must be considered may include:

- (a) the seriousness of the alleged offence.
 - the risk of 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;
- (b) 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
- (c) the likelihood of the defendant being able to establish a due diligence defence;
- (d) the ability of any important witnesses and their willingness to co-operate;
- (e) the willingness of the party to prevent a recurrence of the problem;
- (f) the probable public benefit of a prosecution and the importance of the case – e.g. whether it might establish a legal precedent;
- (g) whether other action, such as issuing a formal caution in accordance with Home Office Circular 59/1990^{1°} or an Improvement Notice or imposing a prohibition, would be more appropriate or effective. (It is possible to prosecute as well as issue a notice; failure to comply with a notice would be an additional offence.)
- (h) any explanation offered by the company or the suspected offender:
 - suspected offenders should be invited to offer an explanation before prosecution decisions.
 - If the main person responsible is not available or further clarification is needed the person can be invited to attend a taped interview under caution in accordance with PACE Code E; detailed procedure shown in appendix.

7.10. Once a decision to instigate prosecution has been taken, the matter should be referred, without undue delay, to the local authority's solicitor to conduct legal proceedings. This would be done in the form of a memorandum requesting that the evidence be examined and legal proceedings be implemented if appropriate. In addition to the memorandum, the following should also be attached:-

- witness statements

- photographic evidence
- samples/analyst results
- Requisition for Information – re ownership
- summary of offences and relevant Section(s)/Regulation(s)

An accurate record of all time spent associated with the case must be kept on Prosecution Costs Record to allow costs to be recovered.

Records:-

1. Food Safety formal actions matrix
2. Improvement Notice
3. Notice of Powers and Rights – PACE Code B
4. Emergency Prohibition Notice
5. Emergency Prohibition Order
6. Standard Letter EPN1
7. Standard Letter EPN2
8. Standard Letter Caution 1
9. Standard Letter Caution 2
10. Standard Caution Form – Individual
11. Standard Caution Form – Company
12. Caution Report Form
13. Prosecution Costs Record
14. Procedure for taped Interviews under Code of PACE 1984