

CITY AND COUNTY OF CARDIFF FOOD SAFETY ENFORCEMENT POLICY

INTRODUCTION

The aim of the Food Law Enforcement Service is to strive to ensure that all food and drink intended for human consumption which is produced, manufactured, stored, distributed, handled, retailed, or consumed within the Cardiff Boundary, is of acceptable nature, substance and quality and not potentially injurious to the health or safety of the consumer. This document outlines the area of work covered by the Food Safety Service in Cardiff and sets out our current approach to law enforcement. This approach is based upon the principles of good enforcement functions. Cardiff County Council has signed the Enforcement Concordat. Regard is also taken of the Council's corporate enforcement policy and the Strategic Planning & Environment Business Plan. This policy has been developed in conjunction with the Cardiff Business Partnership.

Areas of Responsibility

Cardiff Food Safety Service has responsibilities to enforce all major food legislation along with secondary and European legislation. These areas of responsibility are summarised in the table below.

Food Premises Inspection	Inspecting all categories of food premises for compliance with appropriate food legislation. (including all local authority run premises)
Food Complaints	To investigate every food complaint brought to the attention of the food service and to determine the most appropriate course of action to be taken.
Food Hazard Warnings	To deal with all food hazard warnings in accordance with Food Safety Act Code of Practice & Practice Guidance and to take action in accordance with the recommendations of the Food Standards Agency.
Food Sampling	To undertake food sampling to ascertain the bacteriological content of food and to partake in the sampling programme for Welsh Authorities as organised by the Welsh Food Microbiological Forum by way of the all Wales Shopping Basket Survey. Participation in national and targeted surveys as required.
Education and Advice	To provide free advice to all in respect of matters relating to the Food Safety Act 1990, all other associated legislation and good food hygiene practice. To provide basic food hygiene\Food Safety Management\HACCP training for businesses and other organisations.
Food Inspection	To provide a service for businesses to inspect and advise on the fitness of food. To supervise the safe destruction of unsafe food.
Food Law Enforcement	To take the appropriate enforcement action in line with this policy to remedy contraventions of food legislation.
Port Health	To visit vessels arriving at the Port to prevent the ingress of disease and to monitor the health of crew and passengers. To monitor food hygiene arrangements on board and take appropriate action for crew and passenger safety.
Imported Food Control	To inspect and sample consignments of imported food for fitness and compliance with appropriate food legislation. To seize and destroy imported food which fails to meet food safety requirements.
Food Poisoning Investigation and Outbreak Control	To investigate all cases of food poisoning occurring within the City and to monitor and control any outbreaks of food borne disease.

In some areas we recognise the need for a liaison role with agencies such as the Food Standards Agency, Department of Environment, Food and Rural Affairs (DEFRA) and other agencies. Wherever such issues arise the Food Safety Service has put in place liaison arrangements to ensure the law is administered effectively and efficiently.

ENFORCING THE LAW

We aim to provide a quick and effective response to flagrant breaches of the law and operate a discriminating and efficient approach to any other breaches of food legislation.

To achieve this aim, the enforcement of food law in Cardiff follows these essential principles:

- ***Openness***
- ***Consistency***
- ***Targeting***
- ***Proportionality***
- ***Accountability***

OPENNESS

Openness means helping business to understand what we expect of them and what they should expect from us.

Business needs to know what to expect when an Environmental Health Officer calls and what rights of complaint are open to them. Our officers are instructed to explain fully the reason for their visits and to offer advice and guidance on request on any aspect of our work.

CONSISTENCY

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Businesses managing similar risks have a right to expect consistency from enforcing authorities be it in the advice tendered; the use of enforcement notices, approvals etc. and on decisions to prosecute.

In practice, consistency is not a simple matter; Officers are faced with many variables;

- The level of risk;
- The effect of the non compliance on others
- The attitude and competence of management
- Public opinion.

The decision on enforcement action is a matter of judgement and officers must exercise their discretion as individual circumstances dictate. The Food Safety Service has put arrangements in place to promote consistency in the exercise of that discretion, including effective arrangements for liaison with other enforcing authorities via the LACORS mechanism.

TARGETING

Targeting means making sure that inspection is targeted primarily on those whose activities give rise to greatest concern.

The Food Safety Service has systems for prioritising visits according to the risks posed by a business's operations. They take account of hazards and the nature and extent of the risks involved. The approach is set out in another document, Food Safety Act Code of Practice and Practice Guidance.

Where contraventions of food legislation are detected, we will take all possible enforcement action to minimise the effects of those contraventions upon the community.

PROPORTIONALITY

Proportionality means relating enforcement action to the risks posed. Any action taken by Environmental Health Officers to achieve compliance will be proportionate to the seriousness of any breach.

We aim to enforce the law sensibly and impartially. We will not prosecute or serve warning notices where non-compliance can be resolved by means of discussion. However, when we cannot reach agreement with a business, to determine what is reasonable in particular circumstance, a decision may need to be made by an appellate body such as LACORS or the courts.

ACCOUNTABILITY

When things go wrong there will be reasonable accountability without resorting to unfair retribution.

The Food Safety Service carries out a wide range of legislative duties across the business spectrum. In dealing with all of these different enterprises, we aim to meet our "customers" requirements when things go wrong and the expectations of our service users are not met. The Council has put in place a mechanism to objectively analyse these failings and develop systems for continuous improvement. All complaints are viewed as learning opportunities and are NOT used as a reason to penalise any of the parties involved, unless there has been evidence of misconduct.

APPEALS

Where there is a right of appeal against formal action, advice on appeal mechanisms will be clearly set out in writing at the time the action is taken. Whenever possible this advice will be issued with any enforcement notice.

TAKING REMEDIAL ACTION

Much of today's law is goal setting - setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goal is often set out in Codes of practice, and in a variety of advisory materials describing good practice. However sometimes the law is prescriptive - spelling out in detail what must be done. Prescriptive law limits the discretion of the duty holder and the enforcement officer.

The Food Safety Service seeks to secure compliance with the law in a variety of ways. Whilst contravention of the Food Safety Act and Regulations made thereunder are an absolute offence, some of our dealings with business are informal and our officers offer information, advice and support, both face to face and in writing. Officers may also use formal enforcement mechanisms.

If there is evidence that a food business proprietor is failing to comply with the Food Safety Regulations, the following courses of action will be considered, the most appropriate selected and implemented in accordance with relevant procedural documents:

- a) take informal action
- b) use statutory notices
- c) use simple caution
- d) prosecution
- e) apply for Prohibition Order
- f) seizure and detention

Informal advice should be given when matters are identified which do not constitute a breach of Regulations but which nevertheless do not represent best practice.

INFORMAL ACTION

It is the policy of Cardiff Council to utilise informal action as an option to secure compliance with legislation. Such informal action will include the offering of advice, the issuing of verbal warnings and requirements for action by the use of informal letters and food hygiene inspection reports.

The following circumstances have been identified as appropriate for the use of informal action to secure compliance with the requirements of food safety legislation or good practice within a reasonable time scale: -

- a) Circumstances where the consequence of non-compliance with the contravention identified will not pose a significant risk to public health;
- b) Acts or omissions which concern only minor matters or technical breaches which are not serious enough to warrant formal action;
- c) From the proprietors past history and/or willingness to undertake the necessary work it can be reasonably expected that informal action will result in compliance;

- d) Confidence in the management of the business is high;
- e) Initial breaches that do not give rise to an imminent risk to public health and which apply to food businesses associated with voluntary organisations using volunteers;
- f) Relevant informal action will be used in all circumstances where formal action is deemed inappropriate by this policy;
- g) Where matters are identified which do not constitute a breach of regulations or where Industry Guides have not been followed.

Written correspondence shall be sent to the proprietor on each occasion and this shall clearly differentiate between legal requirements and matters recommended as good practice. Written correspondence shall be sent within set timescales.

THE FOOD SAFETY HAZARD ANALYSIS REQUIREMENT

Regulation 4(3) of the Food Safety (General Food Hygiene) Regulations 1995 (Food Safety Hazard Analysis Requirement).

The above regulation is particularly important to the enforcement approach to the food hygiene standards of businesses. To that end, it is important to be clear about the enforcement approach required in differing circumstances.

With reference to the requirements contained within Regulations, the following two broad approaches should be applied:-

- i) Informal action should normally be considered where it can be demonstrated that there are effective controls being implemented regardless of whether the requirements in Regulation 4(3) have been met.
- ii) Formal action, including Hygiene Improvement Notices, Hygiene Emergency Prohibition Notices, Prosecutions or Simple Cautions should normally be considered where no effective controls are in place regardless of whether or not the requirements in Regulation 4(3) have been met.

STATUTORY NOTICES

It is the policy of Cardiff Council to use Statutory Notices as an option to secure compliance with legislation. Such formal action will include the issuing of appropriate Statutory Notices including Hygiene Improvement Notices under Section 10 of the Food Safety Act 1990 and Hygiene Emergency Prohibition Notices under Section 12 of the Food Safety Act 1990.

HYGIENE IMPROVEMENT NOTICES

The following circumstances have been identified as appropriate for the use of Hygiene Improvement Notices to secure compliance with Food Safety Regulations within a reasonable time scale.

Circumstances where the Authorised Officer is satisfied that there has been a contravention of Food Safety Legislation but the contravention does not pose an imminent risk to health and: -

- a) Having considered the risk to public health, where the consequences of non-compliance with the contraventions identified could be potentially serious to public health; or
- b) Where there are significant contraventions of Food Safety Legislation; or
- c) Where there is a lack of confidence in the proprietor to respond to an informal approach; or
- d) Where there is a history of non-compliance following the use of an informal approach; or
- e) Where standards are generally poor with little management awareness of statutory requirements; or
- f) Where there is an intention to prosecute but where effective action also needs to be taken speedily to remedy conditions that are serious or deteriorating.

The following circumstances have been identified as inappropriate for the use of Hygiene Improvement Notices. Circumstances where: -

- a) The contravention presents no risk to public health; or
- b) The contravention might be a continuing one and an Improvement Notice would only secure an improvement at one point in time; or
- c) In transient situations, where breaches exist which pose a potentially serious risk to public health and where it is considered that swift enforcement action is needed e.g. at a one day festival or similar event; or
- d) Where routine cleaning of premises and equipment is required and swift enforcement action is needed; or
- e) It would be more appropriate and in the best interests of public health to use an informal approach.

Hygiene Improvement Notices shall only be signed and served by those officers who have been appropriately authorised. An Authorised Officer shall not sign a Hygiene Improvement Notice unless the contraventions have been witnessed and the relevant criteria satisfied.

All Hygiene Improvement Notices shall be issued in accordance with Food Safety Act 1990 Code of Practice and Practice Guidance and LACORS Guidance.

Single Hygiene Improvement Notices with suitable numbers of schedules attached shall be served unless the Authorised Officer is satisfied that: -

1. There is likely to be an appeal against one or more items contained in the schedule, which may suspend the whole notice.
2. Separate time limits are more appropriate for different items contained in the schedule.

In such circumstances suitable numbers of separate notices with individual schedules attached shall be served.

Failure to comply with a Hygiene Improvement Notice within the period specified is an offence and will result in the matter being referred to the Chief Strategic Planning & Environment Officer for consideration for prosecution.

Requests for an extension of time will only be considered if made in writing and recipients of notices will be advised of this policy at the time of service.

Before considering taking any enforcement action and in furtherance of the LACORS Home Authority principal the matter will be discussed with any relevant home or originating authority where appropriate.

HYGIENE EMERGENCY PROHIBITION NOTICES

The following circumstances have been identified as appropriate for the use of Hygiene Emergency Prohibition Notices following the identification of an imminent risk of injury to health: -

- a) The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- b) An imminent risk of injury to health can be demonstrated, including evidence from relevant experts such as a Food Analyst or Food Examiner.
- c) The guidance criteria specified in the relevant Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
- d) There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close the premises or cease the use of any equipment, process, or treatment associated with the imminent risk.

- e) The proprietor is unwilling to confirm in writing any unprompted offer of a voluntarily prohibition.

Hygiene Emergency Prohibition Notices shall only be signed and served by those officers who have been appropriately authorised following discussion with the Group Leader and/or a similarly authorised officer unless this would result in undue delay. An Authorised Officer shall not sign a Hygiene Emergency Prohibition Notices unless the situation has been witnessed and the relevant criteria satisfied.

All Hygiene Emergency Prohibition Notices shall be issued in accordance with Food Safety Act 1990 Codes of Practice and Practice Guidance and LACORS Guidance.

Failure to comply with a Hygiene Emergency Prohibition Notice is an offence and will result in the matter being referred to the Chief Strategic Planning & Environment Officer for consideration for prosecution.

In appropriate circumstances Cardiff Council will notify other appropriate enforcement bodies and other relevant interested parties of its action.

SIMPLE CAUTIONS

It is the policy of Cardiff Council to use simple cautions as an enforcement option.

The following circumstances have been identified as appropriate for the use of simple cautions as an enforcement option and they shall be utilised in accordance with Home Office Circular 18/1994 and LACORS Guidance.

- a) Where there is admissible, substantial and reliable evidence that a criminal offence has been committed by an identifiable person or company and where the offence has not been carried out wilfully or maliciously; there is no previous history of similar offences and there is a positive attitude to rectify and prevent further offences.
- b) Where legal proceedings are not in the public interest given the seriousness of the offence.
- c) The suspected offender must admit the offence and understand the significance of a simple caution and give an informed consent to being cautioned.

The following are a guide to circumstances when a caution should not be considered:-

- a) Where evidence does not meet the required standard;
- b) Where the suspected offender does not make a clear and reliable admission of the offence;

- c) When a caution in relation to a similar offence has previously been administered unless the subsequent offence is trivial or where there has been sufficient lapse of time since the first caution to suggest that it had some affect;
- d) The offence relates to a minor contravention that poses no significant risk to health;
- e) The matter could just as effectively be dealt with by informal action.

Simple cautions shall only be issued by the Authorised Cautioning Officer.

Where a person declines a simple caution alternative enforcement action namely prosecution will be instigated unless circumstances suggest that a written warning would be more appropriate e.g., where public interest criteria suggest that prosecution is not necessary.

In appropriate circumstances Cardiff Council will notify other appropriate enforcement bodies and other relevant interested parties of its action.

Notice of all simple cautions will be sent to the Office of Fair Trading.

PROSECUTION

It is the policy of Cardiff Council to use prosecution as an enforcement option.

Prosecution will be used as an enforcement option to secure compliance with the relevant legislation. The decision to prosecute will be related to risk and not merely as a punitive response to minor breaches of legislation. 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.

Once circumstances have been identified which may warrant prosecution, an objective decision as to whether to proceed will be made after considering all relevant evidence and information including the Food Safety Act 1990 Code of Practice and Practice Guidance. The final decision to proceed will be taken by the Chief Strategic Planning & Environment Officer after consultation with the Chief Legal & Democratic Services Officer.

The decision to prosecute also takes account of the criteria contained in the Code for Crown Prosecutors. These criteria include:

Status and history of the accused

- What position does the accused hold in the community?
- What relationship does the accused have with the council?
- What confidence does the service have in the management of the enterprise?
- Is the offence a one off event?
- What has been the response to previous advice?

- Does the company have any previous convictions?

Nature and gravity of the non compliance

- What has been the effect on consumers of the product or service?
- What has been the effect on other suppliers of similar goods or services?
- What were the risks associated with the non-compliance?
- Have any explanations been offered for the non-compliance?
- Has there been any injury or loss of life due to the non-compliance?
- Was there any financial advantage from the non-compliance?
- Were there any circumstances causing public concern?

Availability of solutions

- Are there any other effective alternatives other than prosecution?
- Has there been any remuneration to affected parties?

Evidential tests

- Is there sufficient reliable evidence to obtain a successful prosecution?
- Is the accused able to show that any reasonable precautions were taken or due diligence exercised?
- Can the evidence be used in court?

Public interest criteria

- Will a conviction result in a significant sentence?
- Is there evidence that the offence was premeditated?
- Was the victim(s) a vulnerable member of society?
- Does the offender have any previous convictions or cautions relevant to the present offence?
- Is the offence likely to be continued or repeated?
- Was the offence, while not serious in itself, widespread in the area where it was committed?

The following circumstances have been identified as those, which are likely to warrant prosecution: -

- a) 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;
- b) 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 a statutory notice;
- c) Where the offence involves a failure to comply in full or part with the requirements of a statutory notice;

- d) Where there is a history of similar offences related to food risks to public health.

PROHIBITION ORDERS

Section 11 of the Food Safety Act 1990 requires a court to impose a Prohibition Order following certain successful prosecutions if it is satisfied that there is a risk of injury to health. If the authority is satisfied following such a prosecution that a health risk condition as defined in Section 11(2) is fulfilled, the necessary actions will be followed by Authorised Officers to enable the court to come to an appropriate decision.

ENFORCEMENT WITHIN LOCAL AUTHORITY-RUN PREMISES

Where the Council has an interest in the premises in question it will carry out its enforcement duties in exactly the same way that it does in other premises in which it does not have an interest.

Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.

The Food Safety Act 1990 Code of Practice requires that food authorities and their authorised officers are impartial and free from any conflict of interest, and that:-

“Any breaches of food law that may be detected in such establishments should be brought to the attention of the Chief Executive without delay”.

The following procedure is to be adopted where the authority itself is the proprietor of a food business and contraventions of food legislation have been identified:-

Procedure

- (i) Authorised food safety officers will inspect premises where the local authority is the proprietor in accordance with the Food Standards Agency Framework Agreement risk rating scheme which determines the frequency of inspection. Inspection reports indicating statutory contraventions will be submitted to the Operational Manager for the service area concerned in order for factual detail to be checked;
- (ii) Five working days will be allowed for the service area to report errors of fact;
- (iii) The final report will then be simultaneously submitted to the Chief Officer and Corporate Director for the service area involved and to the Chief Executive;
- (iv) The responsible service area will utilise the Cardiff Improvement System to record identified contraventions and monitor progress and compliance via Business Improvement Meetings;

- (v) Strategic Planning & Environment will monitor council premises by way of follow up visits as prescribed for private food premises. The Chief Executive will be informed of continued non-compliance.