

## **Gateshead Council Food Control Enforcement Policy**

### **PART ONE - GENERAL ENFORCEMENT POLICY**

#### **PURPOSE**

The purpose of this document is to state the authority's general policy with respect to food law enforcement.

#### **THE GENERAL POLICY**

This authority is committed to ensuring that food and drink intended 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 and satisfies their consumer rights.

The emphasis of enforcement will be primarily based upon risk to public health, or the seriousness of the contravention of food standards.

The authority requires officer support for and compliance with the various parts of this document.

The policy will be documented, regularly reviewed and developed.

This authority states its commitment to supporting the statutory Codes of Practice, LACORS guidance and the Home Authority Principle.

Training will be given to Food Enforcement Officers, as necessary.

Any departure from the policy will be exceptional, capable of justification and be fully considered by relevant local managers before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.

Each case is unique and must be considered on its own merits. There are, however, general principles that apply in the way each case must be approached. These are laid out in this policy and in the Enforcement Concordat to which the Council has signed up.

The Enforcement Concordat sets out good practice principles and procedures for consistent enforcement of regulations in a way that is fair, practical and that emphasises prevention over cure. The Environmental Health and Trading Standards Manager examines all proposed prosecution and proposed formal caution files to ensure that the action meets the principles of the Enforcement Concordat.

This policy fully takes into account the Code for Crown Prosecutors.

The service will comply with the requirements of the Human Rights Act 1998 and in particular we will not act in such a way as to infringe Article 6 and Article 8 rights

without proper justification. We will also comply with the requirements of the Regulation of Investigatory Procedures Act 2000.

The services works closely with enforcement and other agencies, including the Food Standards Agency, Lacors, Police, Office of Fair Trading, the Fire Brigade and Home Authorities.

## **PART TWO - AUTHORISATIONS**

### **PURPOSE**

The purpose of this document is to state the authority's policy with respect to:

- Identification of the designation of the persons who may authorise a prosecution under the Food Safety Act 1990.
- Identification of the limits of delegations for Food Enforcement Officers.

### **AUTHORISATIONS**

The Audit Commission has stated that Elected Members should decide in general terms what attitude an authority should take to breaches of food law.

The decision to prosecute in individual cases should however be left to a named Officer of the Council.

Enforcement action under the Food Safety Act 1990 should be initiated by suitably qualified, experienced and competent Enforcement Officers without further reference to either a committee, a designated elected Member or a first/second tier officer.

### **THE POLICY**

It is the policy of this authority that:

Where, as a result of adherence to the principles outlined in the policy document, a prosecution is necessary, only the following officers may authorise that particular course of action;

- Environmental Health and Trading Standards Manager

The following designated officer should be consulted as part of the prosecution decision-making process;

- Head of Litigation

All designated officers who are responsible for authorising a prosecution will be aware of the limits of their delegated power by reference to statutory Codes of Practice and any other relevant consideration, including the principles set out in this policy.

In the majority of cases Environmental Health Officers will instigate food safety enforcement action.

The criteria to be used to assess the competence of Food Enforcement Officers will be those detailed in the service quality system as well as any specific requirements demanded by statutory Codes of Practice.

Gateshead Council employees involved in the enforcement of food control must be fair, independent and objective. They must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.

Each case is unique and must be considered on its own merits. There are however general principles that apply in the way each case must be approached. These are laid out in this policy and in the Enforcement Concordat to which the Council has signed up.

This policy can be found on the Council's website [www.Gateshead.Gov.Uk](http://www.Gateshead.Gov.Uk) and is available in hardcopy from the Food Control Team, Regulatory Services, Gateshead Council, Regent Street, Gateshead, NE8 1HH (telephone number: 0191 433 3000). A copy of the Enforcement Concordat is available through these channels. On request, the policy may be made available on tape, in Braille, large type, or in a language other than English.

## **PART THREE - ENFORCEMENT OPTIONS**

### **PURPOSE**

The purpose of this document is to state the authority's policy with respect to:

- Achieving and maintaining consistency of approach in making decisions concerning food safety and food standards enforcement action
- Ensuring commitment to an approach in all enforcement decisions that is fair and balanced and relates to common standards that protect the public

### **ENFORCEMENT OPTIONS**

Enforcement options that are available, having considered all relevant information and evidence are:

- To take no action
- To take informal action
- To issue statutory notices
- To issue simple cautions
- To prosecute

### **THE POLICY**

It is the policy of this authority that:

- Where an inspection or investigation reveals full compliance with the relevant Food Safety and Food Standards legislation/Codes of Practice no further action may be required, other than to issue a post inspection report as recommended in the Food Safety Act Code of Practice.

Details of the fact that no enforcement action has been taken will be recorded in the premises file.

Informal action may be given in the form of:

- Advice
- Verbal warnings
- Requests for action by the use of letters

Informal action will be taken in the following circumstances:

- Where an act or omission is not serious enough to warrant formal action.
- A previous history of the organisation, enterprise or individual suggests that informal action will achieve compliance.
- Confidence in the organisation, enterprise or individual is high.

Informal action will only be considered where the consequences of non-compliance will not pose a significant risk to public health or serious infringement of consumer rights

- Following a food safety, food hygiene or food standards inspection, an Enforcement Officer will issue an inspection report.
- Where informal action is taken, legal requirements and recommendations must be clearly differentiated.
- Infringements of legal requirements and measures to be taken to enable compliance must be clear to allow them to be understood by the organisation, enterprise or individual receiving the communication.
- Where it appears that enforcement action is inconsistent with that adopted by another authority or contrary to LACORS guidance, the matter will be raised at the next meeting of the Tyne and Wear Food Liaison Group.

The policies for statutory notices, formal cautions and prosecutions are stated in Parts 4, 5 and 6 of the Policy Document.

## **PART FOUR - STATUTORY NOTICES**

### **PURPOSE**

This policy details the matters to be considered in the issue of Formal Statutory Notices.

### **THE POLICY**

#### **Improvement Notices**

Improvement Notices shall only be issued when one or more of the criteria below apply:

- There are significant contraventions of food safety or food standards 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 and management has little awareness of requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Effective action needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.

Improvement Notices will relate to the risk to health and shall not be issued for minor technical contraventions.

Improvement Notices may only be issued by officers who have been properly authorised to do so. They shall only be signed by an authorised officer who has personally witnessed the contravention.

Authorised Officers must follow all relevant Codes of Practice and LACORS guidance on the use of Statutory Notices.

Authorised Officers must place realistic time limits on Statutory Notices, preferably agreed with the proprietor where appropriate.

Where possible the Authorised Officer will discuss with the proprietor the works that will be specified and fully consider the availability of options.

Failure to comply with an Improvement Notice, in general, will result in the institution of court proceedings. Authorised Officers must therefore have sufficient evidence available to justify their issue, be prepared to pursue non-compliance in the courts and be satisfied that proceedings are likely to succeed.

Consideration shall be given to other bodies that should be notified of any formal action taken and its outcome. This may include “Home” and “Originating” authorities.

### **Emergency Prohibition Notices**

An Emergency prohibition Notice shall only be considered in one or more of the following circumstances:

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- An imminent risk of injury can be demonstrated, which may include evidence from experts such as a Food Analyst or Food Examiner.

- The guidance criteria specified in the relevant Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
- Where a proprietor volunteers to close premises or cease to use any equipment, process or treatment, but where there is either:
  - no confidence in the integrity of the proprietor, or
  - the proprietor is unwilling to confirm in writing his/her offer of a voluntary prohibition.

Emergency Prohibition Notices must only be signed by authorised, competent officers, holding appropriate qualifications, with relevant experience and who have witnessed the matters to which the notice relates.

An application for an Emergency Prohibition Order must be made to the Magistrates Court within 3 days of the issue of an Emergency Prohibition Notice.

Consideration should be given to other bodies, which should be notified, of any formal action taken and its outcome.

## **PART FIVE - DETERMINATION OF PROSECUTION OF OFFENCES**

### **PURPOSE**

This policy details the criteria on which a decision to prosecute should be based.

### **PROSECUTIONS**

The Local Authority always has the discretion whether or not to prosecute for an offence and the decision to prosecute should be based on the circumstances of each case. The criteria for prosecution must, in general, be related to risk or the seriousness of a food standards offence, rather than being a punitive response to minor technical regulatory transgressions. All relevant factors in the Food Safety Act Code of Practice and the Code for Crown Prosecutors must be taken into account.

### **THE POLICY**

Each case is considered on its merits but the circumstances that are likely to warrant prosecution may be characterised by one of the following criteria.

- The alleged offence involves a breach of law such that public health, safety or well-being is put at risk, or there is a serious offence under food standards legislation.
- The alleged offence involves a failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to comply.
- The offence involves a failure to comply in full or part with the requirements of a Statutory Notice.
- There is a history of similar offences related to risk to the public or food standards offences.

Before a prosecution proceeds the appropriate officer must be satisfied that the case is supported by sufficient relevant evidence, which is admissible, substantial and reliable.

There must be a reasonable prospect of conviction and it should be in the public's interest to prosecute.

The guidance contained in the Code of Practice must be followed and all the following factors taken into account:

- The seriousness of the alleged offence.
- The previous history of the party concerned.
- The likelihood that a due diligence defence can be established.
- The ability of important witnesses and their willingness to co-operate.
- Willingness of the party to prevent recurrence of the problem.
- Probable public benefit of prosecution.
- Whether a Caution, Improvement Notice or imposing a prohibition might be more appropriate.
- Any explanation offered by the offender.

Investigation and decision-making should not be unduly prolonged or delayed and witnesses, complainants or other parties should be kept informed as to the progress of the case.

Once a decision to instigate a prosecution has been taken, the matter should be referred without undue delay to the Local Authority Solicitor or other such officer as appropriate, who is authorised to conduct legal proceedings. The procedure for the submission of case reports should be followed.

Following a successful prosecution, a Prohibition Order may be imposed by the Court where it considers that the premises, equipment or process put public health at risk. The Court may also, at its discretion, ban the proprietor or manager from managing a food business. If it is the intention of the authority to seek a Prohibition Order once a conviction has been secured, it must be able to satisfy the Court that the health risk condition is fulfilled.

Where the Local Authority intend to seek a prohibition under Section 11 of the Food Safety Act 1990, they must, prior to the hearing:

- Ensure that the proprietor or his representative has been warned, in writing or orally, of the intention to seek a Prohibition Order and any evidence should be disclosed, in advance.
- The Office of Fair Trading should be contacted for evidence of previous convictions or warnings.

Any officer principally involved in the case should attend court in person, even when a guilty plea has been lodged, in order that further evidence can be given should the Court require it before granting a Prohibition Order.

## **NOTIFICATION OF LEGAL PROCEEDINGS**

The Office of Fair Trading should always be advised of every conviction and Prohibition Order, in sufficient detail for other authorities to make use of the system.

The Home Authority and/or the Originating Authority as appropriate should be advised of prosecutions taken and their outcome, in accordance with LACORS guidance.

With respect to complaints, the complainant should always be advised of the outcome of the case.

## **PART SIX - SIMPLE CAUTIONS**

### **PURPOSE**

The purpose of this document is to state the authority's policy with respect to:

- Identification of circumstances when it is appropriate to use a caution.
- Confirmation that the use of Simple Cautions (formerly known as a Formal Caution) will be in accordance with the Home Office Circular 30/2005 and LACORS guidance given in the paper "LACORS Guidance on Cautioning of Offenders".
- Confirmation that in making decisions to issue a Simple Caution regard will be had to the Enforcement Concordat and the Code for Crown Prosecutors.
- Identification of the "Cautioning Officer" by designation.
- Course of action to be taken when a person declines the offer of a Simple Caution.
- Other bodies or authorities to be notified, if appropriate.

It is intended that the policy will ensure a consistent application of cautioning decisions.

In the remainder of the text to this policy a "Simple Caution" is called a "Caution".

### **THE AIM OF CAUTIONING**

The aim of a Caution is to:

- Deal quickly and simply with less serious offenders
- Divert offenders where appropriate, from appearing in the criminal courts.
- Reduce the chances of their re-offending.

### **THE POLICY**

It is the policy of this authority that:

- A person will only receive a Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 30/2005.
- The Caution will only be administered by the “Cautioning Officer” who is the Head of Regulatory services. The caution may be administered in person by the “Cautioning Officer”.
- The offender will be advised in writing of the proposal to issue a Caution.
- The Caution will be in writing. Two copies will be signed by the person receiving the caution; each copy will then be signed by the person administering the caution. One of the copies will then be issued to the person receiving the caution.
- Where the offender refuses to accept a caution or fails to return the signed copies within 14 days, consideration will be given to the institution of legal proceedings.

## **RECORDING OFFENCES**

The circumstances of the offence will be recorded in the appropriate premises file and in a caution file.

## **NOTIFICATION TO OTHER BODIES**

The Office of Fair Trading will be notified of the caution as soon as possible. A signed copy of the caution letter should also be sent to:

Office of Fair Trading, Consumer Affairs Division  
Field House (Room 206) 15-25 Bream’s Building  
London, EC4A 1PR

The Home Authority will be notified of the details of the caution.

Where the offence relates to a complaint, the complainant will be notified that a caution has been issued.

The service will liaise with the Food Standards Agency over issues that are of regional and national significance and where there is a need for the agency to be involved.

## **PART SEVEN - HAZARD ANALYSIS**

### **INFORMAL APPROACH**

The General presumption in favour of informal approaches reflects the nature of Regulation 4(3). It represents a major culture change in the legal responsibilities of proprietors, and is considered a significant and important duty. Whilst informal action is a means of securing positive and lasting changes in the management of food businesses, it is dependent upon a proprietor’s willingness to respond to recommendations and advice. Officers faced with inadequate responses will need to consider appropriate enforcement options to secure compliance.

### **FORMAL APPROACH**

Where an informal approach fails it may then be appropriate to serve an improvement notice and/or initiate a prosecution for non-compliance with

Regulation 4(3). A decision to initiate a formal approach should be taken having regard to all relevant matters. These might include:-

- Risk(s) to public health associated with non-compliance;
- Response to informal approach to secure compliance (either generally and/or specifically with regard to Regulation 4(3));
- Any reasons offered by the proprietor for the failure to comply;
- Whether there has been a record of ineffective control of critical points; and
- Whether there has been a history of general non-compliance with food hygiene legislation.

## **GENERAL STRATEGIES**

Following inspections where non-compliance with Regulation 4(3) has been identified, a proprietor should know clearly what to do to ensure compliance, why the action is necessary and the measures available to achieve compliance. It is essential that proprietors are under no illusion as to the extent of their responsibilities. Discussions should be confirmed in writing.

The group support the adoption of the full range of HACCP principles including that of documenting the safety procedures identified and keeping written records of monitoring, which are not, at present, legal requirements under the Food Safety (General Food Hygiene) Regulations 1995.

Authorities will maintain appropriate records of any assessment of business hazard analysis. Records should include details of:

- Who was interviewed;
- The scope and relevant details of any discussions and inspection;
- Areas of compliance as well as non compliance that were noted;
- Records seen, if any;
- Matters identified as requiring further action.

## **ACTION**

The Tyne and Wear Food Enforcement Policy is amended to encompass the requirements of Regulation 4(3) having regard to LACORS Food Hazard Analysis document of July 1997.

### **NO HAZARD ANALYSIS UNDERTAKEN AND ABSENCE OF CONTROLS**

Where an officer is satisfied that no hazard analysis has been undertaken and there are no controls or monitoring systems in place then formal action will be undertaken.

### **NO HAZARD ANALYSIS UNDERTAKEN WITH SOME CONTROLS AND MONITORING IN PLACE**

In this situation there may be some key omissions in controls and monitoring. Where there is a history of compliance by informal means this method of approach should be continued. In other cases formal action should be considered.

### **NO HAZARD ANALYSIS BUT ALL CONTROLS IN PLACE**

An informal approach to compliance should be undertaken. If there is a continued inability to demonstrate a hazard analysis has been undertaken formal action will be considered, subject to the priorities of the department.

### **HAZARD ANALYSIS UNDERTAKEN BUT NO CONTROLS IN PLACE**

Formal action will normally be undertaken.

### **HAZARD ANALYSIS UNDERTAKEN WITH SOME CONTROLS AND MONITORING IN PLACE**

Where there is a history of compliance by informal means this method of approach should be continued. In other cases formal action should be considered.

### **PART EIGHT - RELEVANT DOCUMENTS TO BE CONSIDERED**

Food Safety Act 1990

Regulations made under the Food Safety Act 1990

Food Safety Act 1990 Code of Practice:

LACORS Guidance

Home Office Circular 30/2005 – The Cautioning of Offenders

Guidelines on Standard Defence of Due Diligence (Food and Drink Federation)

Code for Crown Prosecutors

A copy of this policy is available on request from the Environmental Health and Trading Standards Team, Regulatory Services, Gateshead Council, Civic Centre, Regent Street, Gateshead, Tyne and Wear, NE8 1HH (telephone number 0191 4333000), or via the Council website [www.gateshead.gov.uk](http://www.gateshead.gov.uk)