



Environmental Health (Commercial)

Food Safety
Enforcement Policy Statement

December 2009

(This document has been updated to account for changes to legislation)

Introduction

1. New Forest District Council's aim is to work to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled, sold or consumed within the District is without risk to the health and safety of any potential customer.
2. This Enforcement Policy Statement sets out the general principles and approach which New Forest District Council will follow when considering enforcement action.
3. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard food safety and public health.

The Purpose and Method of Enforcement

4. Enforcement action will be based on an assessment of the risk¹ to public health and will not be used as a punitive response to minor technical contraventions of the legislation.
5. The Council will be guided by the statutory Codes of Practice issued under Section 40 of the Food Safety Act 1990, regulation 24 of the Food Hygiene (England) Regulations 2006, Regulation 6 of the Official Feed and Food Controls (England) Regulations 2009, and guidance produced by the Local Authorities Coordinators Of Regulatory Services (LACORS) and any guidance produced by the Food Standards Agency (FSA).
6. All officers when making enforcement decisions shall abide by this policy. Any departure from this policy must be exceptional, capable of justification, recorded and approved by the Environmental Health Manager (Commercial).
7. The purpose of enforcement is to:
 - ensure that duty holders take action to deal immediately with serious risks;
 - promote and achieve sustained compliance with the law, and;
 - ensure that duty holders who breach food safety requirements are held to account, which may include bringing alleged offenders before the courts.
8. New Forest District Council has a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Authorised officers may offer duty holders information, and advice, both face to face and in writing. This may include warning a food business

¹ *In this Policy 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.*

operator that in the opinion of the officer, they are failing to comply with the law. Where appropriate, authorised officers may also serve formal notices and issue simple cautions, and they may prosecute.

9. The service of hygiene improvement notices or hygiene emergency prohibition notices and other notices under food safety law are the main means which authorised officers use to achieve the broad aim of dealing with serious risks, securing compliance with food safety law and protecting public health.
10. Every hygiene improvement notice contains a statement that in the opinion of an officer an offence has been committed. Hygiene improvement notices and hygiene emergency prohibition notices, and correspondence, may be used in court proceedings.
11. Simple cautions and prosecutions are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, New Forest District Council will use one of these measures in addition to issuing hygiene improvement notices or hygiene emergency prohibition notices.
12. Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, New Forest District Council will have regard to the principles of enforcement set out in this statement and the guidance published in the FSA "Framework Agreement on Local Authority Food Law Enforcement".

Decision Making

13. Inspecting officers will discuss potential prosecutions with the Environmental Health Manager (Commercial) who may seek advice from the Head of Legal and Democratic Services prior to any recommendation for prosecution being made.
14. Authority to serve hygiene improvement notices, hygiene emergency prohibition notices and other formal notices shall only be granted to Environmental Health Officers, and persons qualified to a level specified in the Food Law Code of Practice and associated Practice Guidance for England.
15. The Environmental Health Service will reserve the right to use discretion in deciding when to investigate or what enforcement action may be appropriate. New Forest District Council will enforce food safety law in accordance with the *Enforcement Concordat* and this food safety enforcement policy.

The Principles of Enforcement

16. When the Environmental Health Service makes decisions about enforcement it will apply the following principles of *proportionality* in applying the law and securing compliance; *consistency* of approach; *targeting* of enforcement action;

transparency about how the regulator operates and what those regulated may expect; and *accountability* for the regulator's actions.

Proportionality

17. Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by New Forest District Council to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to food safety and the public's health, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.
18. In practice, applying the principle of proportionality means that New Forest District Council will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to the public arising from the breach.

Targeting

19. Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled.
20. New Forest District Council have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks/hazards posed by a duty holder's operations.

Consistency

21. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
22. Duty holders managing similar risks can expect a consistent approach from New Forest District Council in the advice tendered; the use of enforcement notices; decisions on whether to prosecute; and in the response to incidents.
23. New Forest District Council recognises that in practice consistency is not a simple matter. Authorised Officers are faced with many variables, including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm to food safety and/or the public health arising from a breach of the law. Decisions on enforcement action are discretionary involving judgement by the enforcer. New Forest District Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

Transparency

24. Transparency means helping duty holders to understand what is expected of them and what they should expect from New Forest District Council. It also

means making clear to duty holders not only what they have to do but, where this is relevant, what they do not. That means distinguishing between statutory requirements and advice or recommendations about what is desirable but not compulsory.

25. This statement sets out the general policy framework within which New Forest District Council should operate. Duty holders, their representatives and others also need to know what to expect when an officer calls and what rights of complaint are open to them. Food business operators and their representatives can expect the following when an authorised food safety officer calls to inspect their business:

- When authorised officers offer food business operators information, or advice, face to face or in writing, including any warning, authorised officers will tell the duty holder what to do to comply with the law, and explain why. Authorised officers will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice: i.e. recommendations;
- In the case of hygiene improvement notices the officer will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and in the officer's opinion what breach of the law has been committed; and
- In the case of a hygiene emergency prohibition notice the notice will explain why the emergency prohibition is necessary.

Accountability

26. Regulators are accountable to the public for their actions. This means that New Forest District Council has policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

27. New Forest District Council has procedures for dealing with comments and handling complaints which are available from New Forest District Council. In particular, they:

- describe a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and
- explain about the right of appeal to the Local Magistrates Court against the service of a hygiene improvement notice or refusal by the local authority to lift a hygiene emergency prohibition order made earlier by the Court.

Investigation

28. As with prosecution, New Forest District Council uses discretion in deciding whether food related incidents, cases of food poisoning, or complaints should be investigated. This is detailed in New Forest District Council's Food Service Plan.

29. Investigations are undertaken in order to determine:
- causes;
 - whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
 - lessons to be learnt and to influence the law and guidance, and;
 - what response is appropriate to a breach of the law.
30. To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. New Forest District Council recognises that it is neither possible nor necessary for the purposes of the legislation to investigate all issues of non-compliance with the law which are uncovered in the course of preventative inspection, or in the investigation of reported events.
31. In selecting which food related incidents, cases of food poisoning or complaints to investigate and in deciding the level of resources to be used, New Forest District Council will take account of the following factors:
- The severity and scale of potential or actual harm to food safety and/or the public's health;
 - The seriousness of any potential breach of the law;
 - Knowledge of the duty holder's past food safety performance;
 - The enforcement priorities;
 - The practicality of achieving results, and;
 - The wider relevance of the event, including serious public concern.

Enforcement Options

32. There are a number of enforcement options available where contraventions of the law have been identified. The options include:
- No action necessary;
 - Informal action (written warning or verbal advice);
 - Use of statutory notices, e.g. hygiene improvement notices, hygiene emergency prohibition notices, detention and seizure notices, remedial action notices;
 - use of simple cautions;
 - suspend, revoke or refuse to renew a license or approval;
 - prosecute (can be taken in addition to service of notices);
 - voluntary closure;
 - service of Regulation 27 certificates;
 - specific powers relating to imported foods, i.e. sampling, seizure and detention.
33. Where enforcement action is being contemplated which is inconsistent with local and national documented advice or guidance then the matter will be referred to the Hampshire and Isle of Wight Branch Food Advisory Committee to consider the issue and ensure consistent enforcement.

34. Where enforcement action impacts upon aspects of a business' policy that has been agreed centrally by the decision making base of the business, then the matter will be referred to the Home Authority for consideration. Additionally, where applicable the Primary Authority principle will be adhered to.
35. Following a food safety inspection an authorised officer will confirm in writing what action he/she proposes to take, if any.

No Action Necessary

36. Where an inspection or investigation reveals that, at the time of the visit, full compliance with all relevant Food Safety Legislation has been achieved, no further action will be required.
37. In exceptional circumstances, contraventions may not warrant any action. This is likely to be when the cost of compliance to the offender outweighs the impact of the offence. A decision of no action may also be taken when a trader has ceased to trade. The decision to take no action will be recorded detailing the decision making process.

Informal Action

38. Initially Officers will always consider informal action which may consist of written warnings and/or advice.
39. Authorised officers will use informal procedures as long as they believe such procedures will secure compliance with legal requirements within a time scale that is reasonable in the circumstances. Where an officer offers advice following an inspection, then they will always confirm that advice in writing if requested.
40. While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only the Council considers the following circumstances would be suited to an informal approach:
 - The offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk to health;
 - from the past history, it can reasonably be expected that informal action will achieve compliance;
 - there is confidence in the management of the business.
 - Standards are generally good, suggesting a high level of awareness of statutory responsibilities, and;
 - The consequences of non-compliance will not pose a significant risk to public health.
41. Where informal action has already been adopted in relation to the same food business operator but without success, officers will consider using a more formal approach in the first instance. This is likely to be the service of a hygiene improvement notice.

Hygiene Improvement Notices and Hygiene Emergency Prohibition Notices

42. Hygiene improvement notices are served to require food business operators to rectify contraventions within a reasonable time. Hygiene emergency prohibition notices are served to require food business operators to cease contravening activities which pose an imminent risk of injury to health.
43. The service of a hygiene improvement notice will be considered by New Forest District Council in the following circumstances, where:
 - there are significant contraventions of legislation;
 - there is a lack of confidence in the proprietor of the undertaking;
 - there is a history of non-compliance with informal action, or;
 - the consequence of non-compliance could be potentially serious.
44. A Hygiene improvement notice shall only be signed by a properly authorised officer who has witnessed the contraventions and is satisfied that the foregoing criteria are met.
45. When deciding upon the time period in which the hygiene improvement notice must be complied with, the officer will discuss with the food business operator or his/her representative to seek agreement on a suitable period. If agreement cannot be reached then the officer must consider the cost of the works required, the ease of remedying the non-compliance and the availability of suitable equipment before determining the period for compliance.
46. Failure to comply with a hygiene improvement notice will in general result in prosecution.
47. The service of a hygiene emergency prohibition notice will be considered by New Forest District Council where there is an imminent risk of injury to health and food safety and immediate action needs to be taken in the public interest to protect public health and food safety.
48. When considering the service of a hygiene emergency prohibition notice the inspecting officer must initially seek assistance from the Environmental Health Manager (Commercial).
49. Consideration must be given to the consequences of not taking immediate and decisive action, that an imminent risk of injury to health can be demonstrated and that there would be no confidence in the integrity of an unprompted offer made by the food business operator voluntarily to close the premises or cease an operation.
50. Any accepted voluntary closure must be confirmed in writing by the food business operator and in the knowledge that the voluntary closure will stay in effect until the officer is satisfied that the premises no longer present a serious risk to public health or food safety.

Use of Seizure and Detention Notices

51. The use of detention and seizure powers under Section 9 of the Food Safety Act 1990 will only be initiated in accordance with the guidance outlined in the Food Law Code of Practice. Action will be prompted where the authorised officer believes that food fails to comply with food safety requirements in Article 14 of Regulation EC 178/2002.
52. Under normal circumstances, food will be formally detained using a Detention Notice when it has been implicated in a food poisoning incident or when an instruction or action request has been given to the Council from an official source, e.g. the FSA, to formally detain it pending examination. In these instances, the food will be submitted for examination and the notice will remain in force until the examiner reports that it is fit or unfit for human consumption. Once the examiner has reported, the Notice will be lifted by giving notice to the owner that the food can be used or appropriate action taken to remove it from the food chain as soon as is reasonably practicable.
53. Food will normally be seized either following formal detention and a subsequent adverse report from the food examiner or public analyst or where it appears to the authorised officer that it is clearly unfit for human consumption. Where food is seized then the officer will take it before a Magistrate in accordance with the Food Law Code of Practice.
54. Where food has been formally seized and declared unfit by a Magistrate legal proceedings may follow.
55. Where appropriate, the food business operator may offer to voluntarily surrender food for destruction or offer to destroy the unfit/potentially unfit food without the officer having to resort to formal seizure. This may be at the instigation of the owner or the result of a suggestion by the officer. The practice may have some benefits in saving time and avoiding the need to go through the formal seizure process. This informal procedure remains acceptable if the officer has no intentions of taking formal action against the proprietor for having the food in his possession for sale. The decision of the officer may be influenced by the general standards of hygiene at the premises, its previous compliance record and the confidence in the management involved.

Remedial Action Notices (RAN's)

56. Where a premises which is approved under Regulation (EC) No 853/2004 is found to be non-compliant with food hygiene regulations, and a graduated approach to enforcement options has proved unsuccessful (i.e. informal advice, formal letters and Hygiene Improvement Notices), authorised officers may issue a Remedial Action Notice (RAN) under Regulation 9 of The Food Hygiene (England) Regulations 2006. The service of a RAN has immediate effect and can be used:
 - If the establishment fails to comply with the 'Hygiene Regulations' as defined in Regulation 2 of The Food Hygiene (England) Regulations 2006;

- If the authorised officer is being hampered when carrying out the inspection, or;
 - If the rate of food production affects legal compliance and safety.
57. If a RAN is served, the authorised officer should also consider whether to use powers to detain food produced in the establishment if it can be proved that the food does not comply with Article 14 of Regulation EC 178/2002. When the officer is satisfied that the action specified in the RAN has been complied with, the Notice must be withdrawn. In certain circumstances a RAN may be served by an authorised officer in non approved premises.

Simple Cautions

58. Authorised Officers should consider the use of Simple Cautions as an alternative to prosecutions (having reference to Simple Cautions for Adult Offenders dated 8th April 2013 issued by The Ministry of Justice), to:
- deal quickly and simply with less serious offences;
 - divert less serious offences away from the courts, and;
 - reduce the chances of repeat offences.
59. To safeguard the suspected offenders interests, New Forest District Council will not consider administering a caution unless the following conditions are fulfilled:
- there is sufficient evidence to give a realistic prospect of securing a conviction;
 - the suspected offender has admitted the offence;
 - the suspected offender has agreed to be cautioned and understands the significance of the caution, and;
 - the offence has not been committed by the suspected offender before.
60. The persons authorised to issue cautions are the Head of Public Health and Community safety and the Environmental Health Manager (Commercial).

Prosecution

61. New Forest District Council will use discretion in deciding whether to bring a prosecution.
62. Prosecution will be restricted to 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.
63. The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors and the factors identified in Food Law Code of Practice for England.
64. New Forest District Council will normally prosecute, or recommend prosecution, where, following an inspection, investigation or other regulatory contact, one or more of the following circumstances apply:

- 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;
 - 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;
 - the offence involves a failure in full or part to comply with the requirements of a hygiene improvement notice, remedial action or detention notice, hygiene emergency prohibition notice or hygiene emergency prohibition order;
 - there is a history of similar offences related to risk to public health;
 - false information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to a serious potential risk to food safety, and;
 - authorised officers have been intentionally obstructed in the lawful course of their duties.
65. Where officers are assaulted, New Forest District Council will seek police assistance, with a view to seeking the prosecution of offenders.
66. When circumstances have been identified which may warrant a prosecution all relevant evidence and information will be considered to ensure a consistent, fair and objective decision is made. Suspected offenders will be invited to offer an explanation before proceedings are commenced.
67. When a food business operator has been convicted of an offence the court may prohibit them from the management of a food business. New Forest District Council as the prosecutor will draw the court's attention to this power where appropriate, and provide the necessary information and evidence to support this action. The circumstances which may lead to this action include repeated serious offences, blatant disregard for health risks or putting the public at risk by knowingly using unfit food. Where such action occurs the case officer will notify the relevant authorities in accordance with Food Law Code of Practice for England.
68. Before proceeding with a prosecution the investigating officer in conjunction with the Environmental Health Manager (Commercial) will ensure that there is relevant, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must also be a realistic prospect of conviction; a bare *prima facie* case is insufficient.
69. Once the decision to prosecute has been made the matter should be referred to the Head of Legal and Democratic Services without undue delay.

Voluntary Closure

70. Voluntary procedures to remove an imminent risk of injury to health may be used, at the instigation of either the food business operator or the manager of the business, when the food business operator or manager of the business agrees that an imminent risk of injury to health exists. An officer may suggest this option to the food business operator or manager, but not when they are unable to use Regulation 8 of The Food Hygiene (England) Regulations 2006.

71. Any voluntary closure agreement should be confirmed in writing by the food business operator or manager and the officer, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval. The officer will make sure that frequent checks are made on the premises to ensure that they have not re-opened.

Regulation 27 Certificate

72. When an officer believes that food has been produced or processed in premises which do not comply with food hygiene regulations, a certificate may be served under Regulation 27 of The Food Hygiene (England) Regulations 2006. Service of the certificate confirms that the food fails to meet the hygiene regulations and the food, is then dealt with using Seizure and Detention Powers under Section 9 of The Food Safety Act 1990.

Publicity

73. New Forest District Council will also consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial. New Forest District Council will also consider publicising any conviction which could serve to draw attention to the need to comply with food safety requirements, or deter anyone tempted to disregard their duties under food safety law.