

WARWICK DISTRICT COUNCIL'S FOOD SAFETY ENFORCEMENT POLICY

6th Revision (2008)



1. Background

1.1 As a 'food authority' in the terms of the Food Safety Act 1990, Warwick District Council has a duty to enforce food safety legislation, and a responsibility to follow associated Codes of Practice under the Act. It is required to enforce the legislation in pursuit of the particular interests of consumers within the authority's area including members of the public, employees and business owners by:

- protecting public health, and
- ensuring a fair trading environment for local businesses.

1.2 It is the aim of this policy to provide for situations where efforts by the Food Safety Team to promote and encourage **compliance with food legislation have not met with a dutiful response, or duty holders have not been diligent to ensure food safety, and appropriate enforcement action is required.**

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

- 1.3 Hygiene inspections are targeted in accordance with the risk assessment parameters¹ set by the Food Standards Agency and the corresponding inspection frequencies.
- 1.4 Food safety and quality is determined on inspection or sampling and by the investigation of complaints made to the Department.
- 1.5 This policy should be read in conjunction with the publications listed in the endnotes to this document. The requirements laid out in the Section 40, Food Safety Act 1990 Code of Practice form part of this policy. Regard will be had to Local Authorities Regulators of Regulatory Services (LACORS) advice.

¹Section 40, Food Safety Act 1990. Code of Practice (England) 2006

- 1.6 All actions will be taken only by duly authorised officers in accordance with the Council's Scheme of Delegation.
- 1.7 The Council has a shared enforcement role with the County Council in respect of food labelling requirements. This situation is managed by case by case communication between the two authorities and by regular meetings of the Warwickshire & Coventry Food Liaison Group.

2. Investigation

- 2.1 All investigations will be carried out in accordance with, and having regard to, the Police and Criminal Evidence Act 1984, the Criminal Justice Act 1988, the Criminal Justice and Public Order Act 1994, the Criminal Procedures and Investigations Act 1996, the Magistrates' Courts (Advance Notice of Expert Evidence) Rules 1997, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, the Food Safety Act 1990 and any associated Codes of Practice, the European Communities Act 1972 and relevant Regulations made thereunder.
- 2.2 All duty holders suspected to have committed an offence, when legal proceedings are envisaged, will be invited to an interview at the Council offices. **This is their opportunity to provide any information which will assist the Council in coming to a view as to the likelihood of a 'due diligence' defence (see 6.5 para. 3 below) to any prima facie offence established.** It also provides the duty holder with an opportunity to admit the offence(s) alleged in cases where a Simple Caution might be a more appropriate remedy to that of a prosecution (see 6.5 para. 7, 7.1 para. 2 below).
- 2.2 The relevant procedures will enshrine the principles of properly authorised and conducted investigation and surveillance, and the appropriate disclosure of evidence gathered.

3. Enforcement Options

- 3.1 The choices for action are as follows:
 1. No action.
 2. Issue of informal advice.
 3. Service of Statutory Notices.
 4. Acceptance of an undertaking that the operation will be closed until food safety is restored.
 5. Issue of a Simple Caution.
 6. Prosecution.
 7. Revocation of Approvals.
- 3.2 Hygiene Improvement Notices (INs) and Hygiene Emergency Prohibition Notices

(EPNs) will be served only by authorised Food Safety Team Environmental Health Officers as delegated by the Council².

3.3 In making a choice of action, the guidance of any Code of Practice under Section 40, Food Safety Act 1990 will be followed, LACORS advice will be considered, and the views of any Home Authority for the affected company will be sought.

3.4 Any significant choice of action which might be considered to be inconsistent with such guidance, advice and views will be made in consultation with the Warwickshire & Coventry Food Liaison Group, LACORS, the Food Standards Agency and the Home Authority. It is recognised, however, that only the Courts can make decisions on matters of legal judgement.

3.5 No action will be taken where the offending circumstance has been occasioned by inadvertence and is in the process of being remedied.

3.6 The Council's Executive (Environment and Social) adopted the Cabinet Office's Enforcement Concordat on 16 October 2000. The Concordat is based on the principles that businesses should:

- receive clear explanations from enforcers of what they need to do and by when;
- have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
- receive an explanation of their rights of appeal.

4. Informal Action

4.1 A hand-completed inspection report will be issued after each visit summarising the main points discussed.

4.2 Informal action is the issue of verbal advice (always confirmed in writing on the visit report or by letter), written advice with no date for action requested, written advice with a date specified for completion, and written warnings that future offences may result in prosecution.

4.3 Informal action will be taken when:

1. There are no "improvements" (such as the installation of a wash-hand basin), to be made. The works required are repairs and cleaning of a minor or transitory nature.
2. Recommendations are necessary in order to assist the duty holder in taking all reasonable precautions and exercising all due diligence to avoid offences. Such recommendations will be clearly differentiated from legal requirements which will be identified by statute and regulation or section number.

5. Statutory Notices

²Warwick District Council Constitution

5.1 Hygiene Improvement Notices will in general be served in circumstances related to risk to health, in accord with Code of Practice and LACORS guidance, in one or more of the following circumstances:

1. There are such significant contraventions of the legislation that it is anticipated that a prosecution would be successful in the Magistrates' Court if the evidence were placed before them.
2. There is a justifiable lack of confidence in the duty holder to respond to an informal approach.
3. There is a history of non-compliance with informal action.
4. Standards are generally poor with little duty holder awareness of statutory requirements.
5. The consequences of non-compliance could have negative implications for public health or fair trading.
6. Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy continuing contraventions.

5.3 The time limit for compliance with the requirements of the notice will be made clear verbally with the duty holder, or appropriately negotiated. Regard will be had in the negotiations to consistency and feasibility. The duty holder will be advised that any unforeseen circumstances which arise in the time period, which may cause it to overrun, must be drawn immediately to the attention of the Food Safety Team. On written application, the originating officer will have regard to the following criteria in granting an extension of the time period, or otherwise:

1. The risk to public health associated with the fault if an extension was granted;
2. The reason for the request;
3. The remedy involved;
4. The past record of compliance of the duty holder; and
5. Any temporary action which the duty holder proposes to take to remedy the defect.

5.4 As a rule, failure to comply with a Hygiene Improvement Notice will be reported for prosecution. Only unavoidable circumstances, or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation of this policy.

5.5 When cautioned under the Police and Criminal Evidence Act, the duty holder will be warned that he will be committing separate offences for each day the premises are in contravention. Where the duty holder agrees that there is imminent risk of injury to health, voluntary closure might be prompted by the inspector. When it is offered, the appropriate Voluntary Closure form must be completed and signed by the duty

holder.

5.6 Hygiene Emergency Prohibition Notices will be served by authorised EHOs in one or more of the following circumstances:

1. He/she is satisfied that there is an imminent risk of injury to health.
2. Not taking immediate and decisive action to protect public health is unjustifiable.
3. There is no confidence in the integrity of an offer made by a duty holder to close the premises voluntarily and to keep the premises closed until the risk is removed.

5.7 Home and originating authorities will be notified of INs or EPNs served.

6. Prosecution

6.1 The decision to prosecute rests with the Council and is delegated jointly to the Head of Legal Services and Head of Environmental Health in consultation with the appropriate³ elected Member.

6.2 The recommendation to prosecute, based on the available evidence and professional judgement, comes from the Divisional Environmental Health Officer (Food Safety Team), by way of formal report to the Head of Environmental Health and in consultation with a Solicitor of the Legal Services Unit. The Divisional EHO (Food Team) is the Authorised Officer appointed with particular responsibility for food hygiene and safety matters in the terms of Section 5 of the Food Safety Act 1990 and its Code of Practice⁴.

6.3 Prosecutions will be related to risk and will not be used as a punitive response to minor breaches of legislation.

6.4 The objectives of any prosecution must be:

1. To concentrate the mind of the duty holder on the necessity to be duly diligent and to take all reasonable precautions to ensure food safety and hygiene;
2. To demonstrate to the public that their interests are being protected; and
3. To demonstrate to other duty holders that the law is being evenly applied.
4. To enable the Courts to decide the appropriate punishment.

6.5 Before deciding whether a prosecution should be taken the following factors will be considered⁵:

³Warwick District Council Constitution

⁴Section 40, Food Safety Act 1990. Code of Practice (England) 2006

⁵Section 40, Food Safety Act 1990. Code of Practice (England) 2006

1. The seriousness of the alleged offence.
2. The previous history of the party concerned.
3. The likelihood of the defendant being able to establish a due diligence defence (see 2.2 above).
4. The availability of any important witnesses and their willingness to cooperate.
5. The willingness of the party to prevent a recurrence of the problem.
6. The probable public benefit of a prosecution, the importance of the case (eg. whether it might establish a legal precedent) and satisfaction of the tests in the Code for Crown Prosecutors⁶.
7. Whether other action, such as issuing a simple caution in accordance with Home Office Circular 30/2005, or a hygiene improvement notice or imposing a prohibition, would be more appropriate or effective.
8. Any explanation offered by the affected company.

These considerations will be detailed in all reports recommending prosecution.

6.6 Before a decision is made to prosecute, the duty holder will be invited to an interview under the Police and Criminal Evidence Act 1984 in order to make any representations, with legal advice, before the matter is reported. **This is the duty holder's opportunity to present any facts or views he considers pertinent to the decision-making process.**

6.7 The circumstances where prosecution is warranted are one or more of the following:

1. The offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk, or fair trading is prejudiced.
2. The offence involves a failure to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with requirements.
3. The offence involves a failure to comply with a statutory notice.
4. There is a history of similar offences.

6.8 The file of evidence will be presented to the Head of Environmental Health with a Report by the Divisional EHO recommending prosecution. If the Head of Environmental Health endorses the Report in agreement, it will be presented to the Council's Solicitor for review, and, when the evidence is considered sufficient to prove the allegation beyond reasonable doubt, and the public interest test is

⁶ 2004. Code for Crown Prosecutors. Crown Prosecution Service.

satisfied, it will be endorsed as such by the Solicitor who will invoke the delegated powers procedure.

6.9 **Where there is a risk of injury to health the Solicitor will, in the course of the hearing, draw the Court's attention to its duty to impose a Prohibition Order.**

6.10 Home and originating authorities will be notified of the results of prosecutions, together with the Office of Fair Trading.

7. Simple Cautions

7.1 Simple Cautions in accordance with Home Office Circular 30/2005⁷ will only be issued by the Council in the following circumstances:

1. There is evidence sufficient to give a realistic prospect of conviction;
2. The duty holder admits the offence;
3. The duty holder understands the significance of the simple caution and gives informed consent; and
4. The conditions (see 6.7 above) for prosecution are not fully met. For example, in circumstances where the offence is serious but it would not be fully in the public interest to prosecute.

7.2 If a duty holder refuses the offer of a Simple Caution then a prosecution will be instituted.

7.3 Home and originating authorities will be notified of Simple Cautions issued, together with the Office of Fair Trading. The Caution will be cited in any subsequent proceedings as a previous offence.

8. Revocation of Approvals

8.1 Premises are approved by the Council in accordance with their inherent risk to food safety. The Council will exercise its power of revocation, in the circumstances dictated by the appropriate regulations, and where it has not been possible to secure compliance by less draconian means.

⁷ 2008. Cautioning of Adult Offenders. Home Office Circular 16/2008
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