

Enforcement Policy

1. Introduction

- 1.1 This policy is intended to provide guidance for officers employed by this service, and for all potential users of the service. It has been developed to reflect the principles of good enforcement contained within the central and local government Concordat on Good Enforcement and the Code for Crown Prosecutors, and endeavours to be consistent, fair, objective, proportional and transparent. It does not impinge on the discretion of the Chief Executive to take action in any circumstances where it is deemed to be in the public interest to take legal proceedings.

2. Purpose

- 2.1 The main aim of the service is to maintain food hygiene and standards within the borough of Camden. The principal objective of this enforcement policy is to ensure that the service carries out its enforcement actions in a fair and consistent manner, thereby ensuring that businesses comply with food legislation and that the interests of consumers are safeguarded.

3. Principles

- 3.1 This service will place emphasis on those matters presenting the greatest risks to public health or safety, of the community of the borough of Camden.
- 3.2 This service will respond to requests for information and assistance and to allegations of infringement of food legislation, promptly, efficiently, and courteously.
- 3.3 This service will provide advice and guidance to enable businesses based within the borough of Camden to comply with food legislation, having regard to nationally agreed practices.
- 3.4 This service will publish criteria by which it identifies the appropriate course of enforcement action to address individual alleged infringements of food legislation.

- 3.5 This service will provide the appropriate training to all officers, whenever necessary, to ensure enforcement actions are carried out competently, and in accordance with all relevant legislation.
- 3.6 If a widespread food hazard occurs, the service will refer the matter to the Food Standards Agency.
- 3.7 Any departure from this policy will be decided by the Regulatory Services Manager based on the available evidence, unless it can be shown that there is a significant risk to public health in delaying the decision. All departures from this policy will be capable of justification and will be recorded by the Regulatory Services Manager.
- 3.8 Any enforcement action being considered under this policy will be discussed with the relevant 'primary authority' of the business concerned, before being undertaken.
- 3.9 In principle the Council cannot legally enforce against itself. Where infringements of food legislation are found on Council premises or at Council organised events, the matter will be notified in writing to the appropriate Assistant Director. If the alleged infringements are the responsibility of contractors employed by the Council, appropriate enforcement action will be taken against the contractor in exactly the same way as cases where the Council is not involved.
- 3.10 This service will welcome any comments from its potential users about this enforcement policy, and will try to incorporate any suggestions which assist it to meet its main aim.

4. Authorisation of Officers

- 4.1 Only officers who are deemed competent by the Director of Culture and Environment Department, by means of appropriate qualifications, training and/or experience will be authorised to undertake enforcement actions for the service.
- 4.2 A list of the current officer authorisations is held by the Operations Manager - Trading Standards and Food Safety.
- 4.3 Officers who undertake enforcement actions involving the investigation of alleged criminal offences, will be fully conversant with the applicability of the appropriate provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Data Protection Act 1998, the Human

Rights Act 1998, and the Regulation of Investigatory Powers Act 2000, to said investigations.

5. Enforcement Action

5.1 In making decisions about enforcement action, this service will exercise its responsibility to further its main aim, which is to maintain food hygiene and standards within the borough of Camden.

5.2 Any decision regarding the appropriate enforcement action for the circumstances being considered, will be impartial and will not be influenced by the ethnic background, gender, political or religious beliefs, or sexual orientation, of any alleged offender, victim, or witness. Such decisions will be based on the following criteria :-

- The nature of the alleged infringement;
- The seriousness of the alleged infringement;
- The status, circumstances, and previous history of the alleged offender;
- The reliability and scope of the evidence collected;
- The likelihood of the alleged offender being able to establish a statutory defence to the alleged infringement;
- The desirability, in terms of the benefit to the community at large, of a particular course of action;
- Regard to any comments made by the alleged offender's 'home authority' or 'primary authority' food safety service (i.e. the food safety service which covers the area where the alleged offender's principal place of business is);
- Regard to authoritative advice, guidelines and recommendations; and
- Any explanation offered by the alleged offender, and their willingness to prevent a recurrence of any alleged infringement.

The options for enforcement action are as follows, no significance should be drawn from the order in which they appear.

6. No Action

- 6.1 An inspection that reveals no contraventions of food legislation and excellent practices and management controls will result in no action.

7. Informal Action

- 7.1 Informal enforcement action includes offering verbal advice, issuing a non-statutory notice, and sending advisory letters. Informal enforcement action is appropriate when an officer is satisfied that,

- The alleged infringement does not involve a significant risk to public health; and
- It can be reasonably assumed that the action taken will achieve compliance.

- 7.2 Any verbal advice given by an officer will clearly differentiate between legal requirements and best practice recommendations.

- 7.3 Non-statutory notices (usually issued by officers whilst carrying out inspections of businesses), and advisory letters will,

- State the legislation allegedly infringed;
- State the date and place of any inspection that led to the discovery of the alleged infringement;
- State the name of the person in charge of the business at the time of the inspection (if known);
- State the name and address of the owner of the business (if known);
- State the name of the officer who carried out the inspection;
- Describe in sufficient detail, the nature of any alleged infringement;
- Describe in sufficient detail, the action needed to be taken to avoid any further alleged infringement, clearly differentiating between any legal requirements and best practice recommendations;

- State contact details for further advice and information; and
- State the method of appeal against any informal enforcement action taken.

7.4 An officer will undertake a subsequent inspection, within a specified time, to ensure that the appropriate action has been taken to prevent any further alleged infringements.

8. Statutory Action

This includes the serving of statutory notices and the seizure of food.

8.1 Statutory Notices

Hygiene Improvement Notices are used to require food business operators to rectify food legislation contraventions within a reasonable time. Hygiene Prohibition Notices are used to stop activities that contravene food legislation that pose an imminent risk to health. The notices will,

- Describe in sufficient detail, the nature of the alleged infringement(s);
- Describe in sufficient detail, the action needed to be taken to achieve compliance with the legislation, clearly differentiating between any legal requirements and best practice recommendations;
- Describe the legal consequences of not taking the above action; and
- State the method of appeal against the notice.

a) Hygiene Improvement Notice This will be issued and signed by a properly authorised officer who has witnessed any infringements of food legislation, when one or more of the following criteria is met,

- Any infringements of food legislation are significant;
- There is a lack of confidence in the business owner responding to an informal approach;
- There is a history of non-compliance with informal action;

- The consequence of non-compliance could be serious to public health; or
- Effective action is needed to remedy conditions that are serious or deteriorating.

When deciding on the time period in which the notice must be complied with, the officer will try to agree with the premises' food business operator (or his representative) on a suitable period. If agreement cannot be reached, then the officer must consider,

- The ease of remedying the contraventions;
- The cost of the works required to be carried out; and
- The availability of suitable equipment.

before determining the period for compliance. Extension of this time period should not normally be necessary, but may be granted on receipt of a written request for an extension from, and after consultation with, the business owner.

b) Hygiene Emergency Prohibition Notice This notice has the effect of immediately closing a food business and prohibiting the use of equipment or a process where there is an imminent risk to public health. It will be issued and signed by a properly authorised officer who has witnessed any infringements of food legislation, when one or more of the following criteria is met,

- The consequences of not taking immediate action to protect public health would be unacceptable;
- The conditions where prohibition may be appropriate, specified in the relevant statutory Code of Practice have been met;
- There is no confidence in the integrity of the offer by the business owner to voluntarily close the premises or cease the use of any equipment, process or treatment associated with the imminent risk to public health; or
- The business owner is unwilling to confirm in writing their offer of a voluntary closure.

8.2 Seizure of Food

This service can seize food available for human consumption which infringes food legislation requirements, resulting in a serious risk to public health. Food will be seized by a properly authorised officer, who will leave the food business operator (or his representative) a written notice stating,

- The legislation allegedly infringed and the powers that legislation gives an officer to seize items;
- The date and place of any inspection that led to the discovery of the alleged infringement;
- The name of the person in charge of the business at the time of the inspection (if known);
- The name and address of the owner of the business (if known);
- The name of the officer who carried out the inspection;
- In sufficient detail, the nature of any alleged infringement and the reason why the items were seized;
- In sufficient detail, the items seized;
- Contact details for further information; and
- The method of appeal against any seizure undertaken.

9. Voluntary Closure

9.1 Where any premises, process, treatment or equipment involves an imminent risk to public health and emergency prohibition action is being considered, the business owner may offer to close the premises voluntarily. However, this action should never be prompted by any officer of the service. Voluntary closure does not preclude the service's right to commence legal proceedings for infringements of food legislation found during the course of the inspection

9.2 Before accepting an offer of voluntary closure. The properly authorised officer considering emergency prohibition action must,

- Be satisfied that there is no risk of the premises being reopened without their knowledge and/or agreement;

- Explain to the owner that by making the offer to voluntarily close the premises, they may be losing their right to compensation; and
- Inform the business owner that they must put their offer to voluntarily close the premises and to undertake not to reopen without specific permission from the service, in writing, to the officer as soon as possible.

10. Informal Written Caution

- 10.1 When considering whether or not to prosecute, the Operations Manager - Trading Standards and Food Safety may consider issuing an informal written caution, as a viable alternative to prosecution. An informal written warning will be recorded on the alleged offender's records held by this service, and may be used to influence any decision as to whether or not to prosecute, if further alleged infringements arise.
- 10.2 Before issuing an informal written caution, the Operations Manager - Trading Standards and Food Safety must be satisfied that,
- There is sufficient evidence of an alleged infringement for there to be a realistic prospect of a conviction;
 - The alleged infringement does not constitute a significant risk to public health; and
 - It can be reasonably assumed that the issuing of an informal written caution will be the principal means of achieving compliance
- 10.3 An informal written caution will,
- State the name and address of the owner of the business;
 - State the name and address of the business (if different from the above);
 - State the legislation allegedly infringed;
 - State the date and place of any inspection that led to the discovery of the alleged infringement;

- Describe in sufficient detail, the nature of any alleged infringement, the measures needed to be taken to comply, and that other means of achieving compliance may be chosen. Any recommendations of good hygiene practice will clearly indicate they are not a legal requirement;
- Include where appropriate a schedule of works containing all the information necessary to understand why the works are needed and when they need to be completed;
- State contact details for further information and advice;
- State that a record of the informal written caution will be held by this service;
- State that should similar alleged infringements be discovered in the future, it may result in legal proceedings being instituted; and
- State the method of appeal against the issuing of an informal written caution.

11. Simple Caution

- 11.1 When considering whether or not to prosecute, the Operations Manager - Trading Standards and Food Safety may consider issuing a simple caution, which is administered by letter, in the format approved by the Home Office, as a viable alternative to prosecution. A simple caution may be used to influence any decision as to whether or not to prosecute, if the alleged offender allegedly infringes again. It may also be referred to in court in any subsequent prosecutions against the alleged offender for a period of three years.
- 11.2 The purposes of a simple caution are to deal quickly and simply with less serious alleged infringements, thereby avoiding unnecessary appearances of alleged offenders in court, and to reduce the chances of further alleged infringements occurring in the future.
- 11.3 Before issuing a simple caution, the Operations Manager - Trading Standards and Food Safety must be satisfied that,
- There is sufficient evidence of an alleged infringement for there to be a realistic prospect of a conviction;

- The alleged offender has admitted the alleged infringement. (This is done by the alleged offender signing a written declaration admitting the alleged infringement.); and
- The alleged offender understands the significance of the simple caution, and has consented, after due consideration on their part, to receive a simple caution.

12. Injunctions

12.1 An injunction can be sought from the Courts, where the circumstances of any case cause a significant threat to public health and the normal process of law is likely to be ineffective because the alleged offender has shown careless disregard for previous similar requirements, or the process of law would take an unacceptable period of time given the circumstances. Failure to comply with such an injunction would be regarded as a contempt of court.

12.2 Before applying for an injunction, the Operations Manager - Trading Standards and Food Safety must be satisfied that,

- There is sufficient evidence of an alleged infringement for there to be a realistic prospect of a conviction;
- Continuation of the alleged infringement would cause a significant threat to public health;
- The person and/or business to be served with the injunction had been previously advised and/or warned about the conduct that led to the alleged infringement; and
- It can be reasonably assumed that the use of an injunction will be the principal means of achieving compliance.

12.3 If the Operations Manager - Trading Standards and Food Safety decides to apply for an injunction, the person and/or business against whom the injunction is sought, will be informed in writing, stating,

- The name and address of the person and/or business against whom the injunction is sought;
- The legislation allegedly infringed;
- In sufficient detail, the nature of the alleged infringement;

- In sufficient detail, the reason why an injunction is being sought;
- The date, time and place, where the court hearing regarding the application for the injunction will take place; and
- The method of appeal against a successful application for an injunction.

13. Prosecution

13.1 When a decision whether or not to prosecute an alleged offender is being made by the Operations Manager - Trading Standards and Food Safety, the following criteria are considered,

- Whether the standard of evidence presented is sufficient for there to be a realistic prospect of a conviction.
- Whether a prosecution is in the public interest.
- Whether the alleged infringement is such that it puts the safety, health, or economic welfare of members of the public at risk, which includes situations where,
 - a) There has been an element of fraud or intent by the alleged offender in committing the alleged infringement.
 - b) There has been gross negligence on behalf of the alleged offender.
 - c) There is an immediate serious risk to the public.
 - d) It is in the community interest to prosecute upon discovery of the alleged infringement.
- Whether the alleged infringement involves a failure to comply in full, or in part, with the requirements of a non-statutory or statutory notice.
- Whether the alleged offender, by action or inaction has increased the risk of the spread of animal disease.
- Whether the alleged infringement involves intentional obstruction or assault of an officer, failure to disclose information to an officer, or making a false statement to an officer, who is carrying out their authorised duties.
- Whether the alleged offender has a history of prior warnings as to their future conduct, which has failed to resolve the alleged or a related infringement.

- Whether the alleged offender has a history of committing similar infringements.
- Whether a conviction will result in a nominal penalty.
- Whether the loss or harm caused to the public by the alleged infringement was minor.
- Whether there has been undue delay in bringing the matter before the Operations Manager - Trading Standards and Food Safety, unless the delay was due to the alleged offender.
- Whether a prosecution is likely to have a detrimental effect on the alleged victim's mental and/or physical health.
- Whether the alleged victim is part of a vulnerable group within the community.
- Whether the alleged offender is elderly or a minor, or was suffering from significant mental or physical ill health at the time of the alleged infringement.

13.2 Once the decision to prosecute is made, the alleged infringements selected should adequately reflect the seriousness of the circumstances, thus enabling clear and concise presentation in court. The relevant documentation will then be forwarded without unnecessary delay to Legal Services for processing.

14. References

- 14.1 Concordat on Good Enforcement (Better Regulation Unit).
- 14.2 Code for Crown Prosecutors (Crown Prosecution Service).