

**EAST CAMBRIDGESHIRE  
DISTRICT COUNCIL**

**FOOD SAFETY ENFORCEMENT  
POLICY STATEMENT**

**2015**

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**Copies of the policy can be provided in an alternative format. Please contact East Cambridgeshire District Council on 01353 665555 to request the format you require, or email [foodandsafety@eastcambs.gov.uk](mailto:foodandsafety@eastcambs.gov.uk) or write to Commercial Team, Environmental Services, East Cambridgeshire District Council, The Grange, Nutholt Lane, Ely, CB7 4EE**

# **EAST CAMBRIDGESHIRE DISTRICT COUNCIL**

## **FOOD SAFETY ENFORCEMENT POLICY STATEMENT**

### **1. INTRODUCTION**

- 1.1** The purpose of this policy statement is to express the commitment and intentions of East Cambridgeshire District Council (“the Council”) to the principles of consistent and effective enforcement of food safety legislation in accordance with the Regulators Code..
- 1.2** The Council has a Corporate Enforcement Policy which outlines the general approach the Council take when considering enforcement action. This policy builds on the Corporate Enforcement Policy and outlines in detail the approach taken by the Environmental Health Team in relation to food safety enforcement
- 1.3** In allocating resources, the Council should have regard to the principles of this policy.
- 1.4** The officers who carry out the enforcement of food safety legislation are Council staff or contractors who are authorised in writing to enforce delegated tasks and duties in accordance with the Council’s scheme of delegation. In some instances, external staff may be similarly authorised to enforce such powers and duties on behalf of the Council on a temporary basis.

### **2. STATEMENT OF INTENT**

- 2.1** It is the Council’s policy to strive to ensure that food intended for sale for human consumption, which is produced, stored, distributed, handled, purchased or consumed within the authority, is without risk to the public health or safety of the consumer.
- 2.2** In order to achieve this objective enforcement action will be proportionate to the risk(s) presented, or the seriousness of the contravention of legislation and in accordance with the guidelines of this policy.
- 2.3** In the first instance officers will adopt an educative approach to those responsible for securing compliance with relevant food safety legislation. In the second instance officers will enforce the law by using a range of enforcement options including: verbal and written warnings, use of statutory notices, simple cautions and prosecution. Prosecution will not

normally constitute a punitive response to minor contraventions of food safety legislation.

- 2.4** This policy recognises and gives support to the specific guidelines and enforcement action contained in the statutory Food Standards Agency (FSA) Code of Practice issued under Section 40 of the Food Safety Act 1990 (the Act) and the Government's Local Better Regulation Delivery Office (BRDO) and Primary Authority scheme.
- 2.5** All authorised officers shall have regard to this policy and scheme when carrying out their assigned duties.
- 2.6** Where a significant risk to public health is identified, departures from these policy guidelines will be the exception and only following consultation with the Senior Environmental Health Officer (SEHO) or in his/her absence in consultation with the Environmental Services Manager (ESM).

### **3. GENERAL PRINCIPLES**

- 3.1** The Council aims to secure full compliance with all relevant food safety legislation that it is responsible for enforcing. Most of its dealings with those responsible for complying with such legislation involves informal action and authorised officers will seek to offer relevant information and advice in person as well as in writing. The Council's authorised officers will deal with anyone subject to the enforcement process in a courteous, fair and objective manner, and taking into account its policy on equal opportunities and the Council's Corporate Enforcement Protocol.
- 3.2** Authorised officers will assist businesses and individuals to understand legal requirements and the obligations imposed by the relevant legislation. They will seek to encourage good practice by businesses in line with that which is contained in the relevant guides to industry, food business codes of practice and relevant legislation. Officers will be sensitive to the needs of business including its requirements for prompt responses, of action and the imposition of minimum burdens consistent with regulatory confines.
- 3.3** It should also be noted that from time to time advice or instructions may be given to the Council from the Food Standards Agency (FSA) when it specifies a particular type of enforcement approach for specific legal requirements. In such instances, the Council will adhere to such instructions where it is appropriate to do so.
- 3.4** Authorised officers will also use formal enforcement measures set out in the relevant food safety legislation including the issuing of statutory notices, simple cautions and by taking prosecutions.
- 3.5** It is accepted that there should be a quick and effective response to serious

breaches of legislation as distinct from an efficient and effective enforcement approach to other breaches. In considering whether good practice has been adopted, the Council's authorised officers will take account of relevant guidance using professional judgement about the extent of the risks and the effort that may have been applied to counter them.

- 3.6** Some food safety legislation is prescriptive, for example the need for certain types of food operations to be Approved under relevant legislation and meet required standards. Prescriptive law requires that both the operator and enforcer meet its requirements precisely and this removes the opportunity for discretionary interpretation.
- 3.7** Where necessary, the Council will use its powers to visit food businesses in other local authority areas to investigate potential offences that have arisen within its own area. This will be carried out in accordance with the Code of Practice issued under the Act.
- 3.8** Where appropriate, the Council reserves its rights to carry out covert surveillance of individuals or organisations. In doing so, officers will comply with the Regulation of Investigatory Powers Act 2000 ('RIPA'), human rights legislation and associated guidance in existence at the time along with any internal policies and procedures.
- 3.9** The Council will ensure that its officers are suitably qualified, experienced and competent with respect to the enforcement duties that they have been authorised to carry out. Such authorisations shall be in accordance with that which is laid down in the Code of Practice issued under the Act and Officers shall only in accordance with authorizations issued under the Council's Constitution. The Council shall also ensure that each officer receives suitable and sufficient structured training that is managed, assessed and recorded on an ongoing basis.
- 3.10** Where resources permit it, the Council will aim to provide suitable information, for example about compliance with new or emerging legislation to the food trade and associated businesses designed to encourage compliance with the law. This will be particularly relevant where an initial educative approach is appropriate and encouraged by the FSA. Efforts will be made to provide it in languages other than English where there is a demand and where resources facilitate this.

#### **4. PRINCIPLES OF ENFORCEMENT**

The enforcement of food safety legislation should be guided by the principles that are contained within the Enforcement Concordat that has been formally adopted by the Council, in addition to the Code for Crown prosecutors and the Regulators Code. These documents provide a framework for local authorities to work to by committing them to good enforcement policies and procedures. The principles of the Enforcement Concordat are as follows:

##### **4.1 Standards**

The Council remains accountable to central government, the FSA and local taxpayer for its actions and omissions. This means that it must have clear policies and standards against which it can be judged. The Council will consult with businesses and other relevant interested parties, including technical experts where appropriate and draw up these standards setting out the level of service and performance the public and business can expect to receive. These standards will then be made available to those who are regulated.

##### **4.2 Openness**

The Council will provide information and advice in plain language on the law that it enforces and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities. Officers will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

##### **4.3 Helpfulness**

The Council believes that prevention is better than cure and that its role therefore involves actively working with businesses, especially small and medium sized businesses, to advise and assist on compliance. It will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point and telephone number for further dealings with the Council and will encourage businesses to seek advice/information from them. Applications for Approval of establishments, will be dealt with efficiently and promptly. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays.

##### **4.4 Complaints about Service**

The Council will provide well publicised, effective and timely complaints procedures easily accessible to businesses, the public, employees and

consumer groups. In cases where disputes cannot be resolved, any rights of complaint or appeal will be explained by the officer, with details of the process and the time-scales involved.

## **4.5 Proportionality**

**4.5.1** Proportionality means relating enforcement action to the risks and costs. Both those whom the law protects and those in whom it places a duty expect that action taken by the Council to achieve compliance should be proportionate to the food safety risks posed to consumers and to the seriousness of any breach of the legislation or relevant licensing conditions.

**4.5.2** Some legal requirements are mandatory i.e. there is no room for discretion or individual interpretation. However, others require action in line with the principles of “reasonableness” or “appropriateness” and the regulatory system often includes the concept of proportionality through such principles. Deciding what is reasonable or appropriate to control risks involves the exercise of judgement by businesses and, when the law permits, discretion by enforcers based on sound professional judgement. Where a food business operator and the Council cannot reach agreement, the final determination of what is reasonable in particular circumstances may ultimately be made by the Courts. In other instances, it may be appropriate for enforcers to consult with the FSA, or other authorities, such as Local Authorities or Public Health England, to seek clarification.

**4.5.3** Some risks may be so serious that they cannot be permitted irrespective of the economic consequences, whilst at the other extreme, some items may be so trivial that it may not be worth spending more to reduce them. In general, risk-reducing measures must be weighted against the associated costs of the proprietor taking appropriate remediating measures, unless the cost of a particular action is excessive compared with the benefit of the risk reduction in terms of its magnitude of probability.

**4.5.4** Although not precisely defined, cost effectiveness is an implicit element of practicality when determining ‘due diligence defences.’ Authorised officers must have regard to costs and benefits when determining whether a company has “taken all reasonable precautions and exercised all due diligence” to prevent an offence occurring.

## **4.6 Consistency**

**4.6.1** Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. Food businesses managing similar risks expect a consistent approach from enforcing officers in the advice provided, the use of powers, issuing of approvals, decisions on appropriate enforcement action and response to

food-related incidents.

**4.6.2** The Council recognises that in practice consistency is not a simple matter. Authorised officers are faced with many variables such as the severity of the hazard, the attitude and competence of management and the associated history of compliance. Each may vary between businesses which otherwise appear similar. Decisions on enforcement are a matter of sound professional judgement when the Council, through its officers, will exercise discretion. It will continue to develop arrangements – including standard procedures in line with national audit requirements – to promote consistency in the exercise of discretions. These will include effective arrangements for liaison with other enforcing authorities through the County Food Liaison Group, consultations with the FSA, Primary and Home Authorities.

## **4.7 Transparency**

**4.7.1** Transparency means helping businesses and the public to understand what is expected of them and what they should expect from the Council. It means making it clear to businesses not only what they have to do but, where this is relevant, what they don't. This means distinguishing between what is a legal requirement and what is recommended (but is not compulsory) through advice or guidance. It also means making clear why an officer intends to or has taken a particular course of action.

**4.7.2** This document sets out the general policy framework within which the Council will operate. Businesses need to know what to expect when an authorised officer visits and what rights of complaint are open to them.

- in the case of informal enforcement action the officer will tell the business what to do to comply with the law, explain why, and distinguish legal requirements from best practice advice. Officers will, normally confirm any advice in writing. Letters will identify the SEHO (or service manager where the SEHO has carried out the inspection) as being the initial point of contact if businesses wish to query an officer's findings or are unhappy about the standard of service received;
- ~~✗~~ in the case of Hygiene Improvement Notices and Remedial Action Notices, the authorised officer will normally 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. Details will also be given of the formal appeal procedure at the same time;
- ~~✗~~ in the case of an Hygiene Emergency Prohibition Notice (HEPN), the notice will explain why the prohibition is necessary.

## **4.8 Targeting**



- 4.8.1** Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks, or whether hazards are least well controlled: and that action is focused on the businesses who are responsible for the risk and who are best placed to control it.
- 4.8.2** The Council will prioritise inspections in accordance with the guidance laid down in Codes of Practice made under the Act. The priorities for interventions in response to complaints from the public about food business activities and food poisoning incidents will take into account the nature and severity of the allegations.
- 4.8.3** Where formal enforcement action is necessary, it will be directed against those who are responsible for preventing the offence from occurring or for carrying out the remedial work. In the case of a Hygiene Improvement Notice, this will be served on the food business operator of the business. Where several individuals share responsibility, the Council will take action against those who can be shown to be in breach.

## **5. SPECIFIC ENFORCEMENT AREAS**

### **5.1 Inspections and Interventions.**

- 5.1.1** Under normal circumstances, inspections and interventions at food premises will be made without prior warning. In instances where it is appropriate to do so, appointments may be advisable e.g. where it is prudent that the proprietor or manager is on site in order to discuss particular issues or matters arising from a previous visit.
- 5.1.2** Officers will identify themselves at the premises at the time of entry unless for operational reasons the purpose of the visit is for surveillance purposes or to make a 'silent' test purchase. Officers will show their authorisation.
- 5.1.3** The main purpose of a food hygiene inspection is to: establish if the food is being handled or produced hygienically, establish if it is safe to eat having regard to further processing, and to identify foreseeable incidences of food poisoning or injury as a consequence of consuming the food.
- 5.1.4** The officer will state the purpose of the inspection at the start of the visit with the person in charge at that time. Inspections can involve discussions with all or some of the food handlers working at the premises at that time. At the conclusion of all programmed inspections, the officer will offer to discuss their findings and will normally give to the person in charge a completed report of visit form (see section 6.3.7 below) or where one is not left on site, the officer will write to the food business operator confirming their visit

**5.1.5** Officers will offer to supply any relevant leaflets or guidance notes at the time of inspection if they have them or send them later, if requested. Letters can be translated into other languages if requested and interpreters can be used if necessary. Where issues of interpretation or inconsistency arise, the authority will liaise with the FSA, Primary Authority, Home authority, or other authorities.

**5.1.6** Generally, enforcement will be undertaken in a graduated approach. In the first instance, a discussion of requirements will take place with the proprietor or his representative. When considering formal enforcement, account will be taken as to whether there is evidence of significant breaches of food hygiene requirements. Poor compliance with the requirement to have written food safety management systems in line with HACCP ('hazard analysis and critical control points') and lack of food handler hygiene training would likely lead to other contraventions which are significant. In the absence of other significant breaches, the officer may consider a formal approach where:

- there is a significant risk to public health
- breaches of the requirement to have written food safety management systems in relation to HACCP and training etc. would likely lead to significant breaches of other requirements in the hygiene regulations if not remedied and in doing so gives rise to an unacceptable risk to food safety; or
- the business has already failed to respond to an informal, educative approach.

**5.1.7** Offences of a minor nature may be dealt with by way of advice, verbal warning, a follow up letter and a report of visit form, or any combination of these. The type of offence liable to this approach would include the failure to register the food business within the prescribed legal time limit.

**5.1.8** If contraventions of poor hygiene practices are found, where resources permit, the authority will arrange for a further visit to be carried out. In the case of compliance issues for Article 5 of EC Regulation 852/2004 (the HACCP requirement) then officers will take a graduated approach to enforcement depending upon the nature, size and risk posed by that business.

**5.1.9** Where it is inappropriate for offences to be dealt with by an informal approach, then matters will be discussed between the officer and their line manager. A decision will then be taken as to what course of action to take. These situations might include:-

- where there is an imminent risk to health;
- exposure for sale of food which is unfit for human consumption;
- failure to comply with a Hygiene Improvement Notice;
- failure to comply with a Remedial Action Notice
- failure to comply with a previous informal letter to remedy breaches of legislation;
- a cumulative breaches of food hygiene legislation creating a risk of contamination;
- an act of obstruction.

## **5.2 Food sampling**

The Council's food sampling policy is attached as Appendix A. It outlines the approach that the authority will take when undertaking food sampling that is line with the relevant Code of Practice and legislation issued under the Act.

## **5.3 Investigations**

**5.3.1** The Council will respond to, and where appropriate, investigate all complaints about food, food premises, food handling practices etc. with initial contact being made within 3 working days. The response may vary according to the nature of the allegation and its severity. In most cases, it will be appropriate to inform the business that a complaint has been received and the nature of the allegation. Where it is necessary to protect the identity of the complainant e.g. where there may be intimidation, then advice would be sought from the legal team before releasing the complainant's personal details may be withheld pending legal advice.

**5.3.2** The Council will respond to all reports of food poisoning received from the Public Health England (PHE) where a food business has been implicated. The response itself and the time taken to respond may vary according to the nature of the allegation, and in most instances where the problem is likely to be ongoing or recent, a visit will be made the same day. Where the business premises is located outside the Council's area, then the relevant authority will be notified.

**5.3.3** In responding to complaints from whatever source, the investigating officer will liaise, where necessary, with the originating authority for the food in question. Where resources allow and where necessary, the complainant will be kept informed of the progress of the investigation and notified of the eventual outcome. Sometimes complaints are anonymous in these instances the complainant will not be able to be kept informed.

**5.3.4** Where complaints have been received, the food business operator

responsible for any offence shall be notified as soon as is reasonably practicable unless it is not appropriate to do so e.g. where it might hinder a separate investigation. The investigating officers will, and in any event when requested, keep the food business operator informed of the progress of the investigation. At the end of the investigation, they will be informed of the outcome and any further action to be taken by the Council.

#### **5.4 Powers of entry, search and seizure: Human Rights Act 1998/ Police and Criminal Evidence Act 1984 (PACE)**

**5.4.1** The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure will be fully justified and recorded before use, and officers would consider if the necessary objectives can be met by less intrusive means. Section 32(4) of the Food Safety Act 1990 and regulation 16(5) of the Food Safety and Hygiene (England) Regulations 2013 permit an authorised officer to take such other persons they consider necessary. The Council will seek assistance from suitably competent and experienced persons to help advise where appropriate.

### **6. ENFORCEMENT OPTIONS**

**6.1** There are a number of enforcement options available to the authorised officers where they have identified contraventions of the law. The options include: -

- taking informal action;
- using statutory notices e.g. Hygiene Improvement, Remedial Action and Detention Notices;
- using simple cautions;
- suspending, revoking or refusing to renew an Approval;
- prosecution (which can be taken as well as issuing notices).

**6.2** This part of this policy provides detailed guidance on when each of these options may be considered. In each situation, the officer will need to assess the degree of risk, the seriousness of the offence, the technical means of remedying the situation along with the history of compliance and the potential for a successful conviction.

**6.3** The decision as to which type of enforcement action is appropriate must always be governed by the particular circumstances of the case. Where appropriate, a staged approach to enforcement should be adopted and in the first instance businesses should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required.

## **6.3 Informal Action**

**6.3.1** Informal action may consist of any or all of the following:

- giving advice and offering general assistance and guidance;
- issuing verbal warnings of contraventions;
- writing to the business requiring action.

**6.3.2** Authorised Officers will use informal procedures as long as they believe such procedures will secure compliance with the law within a time scale that is reasonable in the circumstances. However, the Codes of Practice issued under the Act dictate that certain formal procedures shall be taken in particular situations e.g. where there is an imminent risk to health. These procedures are outlined in the appropriate sections below.

**6.3.3** If the officer decides not to use formal procedures (Notices, cautions or prosecution), but prefers to use informal methods such as giving written advice, this should not produce a lower standard of compliance with the Act and ancillary legislation than would be achieved by the use of formal legal procedures.

**6.3.4** While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers in the following circumstances informal action may be appropriate:-

- 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;
- confidence in the business management involved is reasonably high.

**6.3.5** 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 may include the serving of a Hygiene Improvement Notice subject to any guidance laid down in the Codes of Practice issued under the Act.

**6.3.6** Where an officer offers advice following an inspection, they will normally confirm that advice in writing. Copies of correspondence and inspection reports will be sent to the registered office of a limited company, the head office for an unlimited company and for a sole trader the premises visited or home address depending on the circumstances, especially in respect of small businesses. Correspondence will sometimes be sent by email if

an email address is provided by the food business operator .

**6.3.7** Inspection reports must be issued following all programmed inspections. This applies even in those circumstances where conditions at the time of inspection are satisfactory. The minimum details which must be included in post inspection reports include: the date and time of inspection, the type of premises, name of the food business operator, address of the premises, persons seen/interviewed, areas inspected, records examined, details of samples procured and a summary of action to be taken by the authority.

**6.3.8** All letters sent to businesses following food hygiene inspections will distinguish a legal requirement from a recommendation, give a time scale for compliance and may state the regulation being contravened. It will also give the contact details for the manager and the officer who carried out the inspection and where to write to Informal post inspection letters will normally be sent out within 10 working days of the inspection.

#### **6.4 Hygiene Improvement Notices**

**6.4.1** Authorised officers should consider the issue of Hygiene Improvement Notices in accordance with the guidance in the Code of Practice issued under the Act. Hygiene Improvement Notices would normally be appropriate in the following circumstances:

- where formal action is proportionate to the risk to public health;
- where there is a record of non-compliance with breaches of food hygiene or food processing regulations;
- where the authorised officer has reason to believe that an informal approach will not be successful.

**6.4.2** The use of Hygiene Improvement Notices would not be appropriate in the following instances:

- where the contravention was an ongoing one e.g. cleaning, personal hygiene and food handling practices;
- in transient situations e.g. one day events where the service of emergency prohibition notices might be appropriate;
- for recommendations as to good practice that go beyond the basic legal minimum standard;
- where there is an imminent risk of injury to health.

The examples given in paragraphs 6.4.1 and 6.4.2 are not exhaustive.

**6.4.3** Failure to comply with a Hygiene Improvement Notice will normally result in

prosecution. In deciding whether a prosecution shall follow, consideration shall be given to the following:

- any explanation consequently offered by the proprietor;
- the nature and extent of any work that has been carried out as well the likely completion time for the remainder of the work;
- where the notice incorporates a schedule containing more than one contravention, what proportion of the works have been completed and if the outstanding works pose a risk to food safety;
- whether other action, such as issuing a simple caution in accordance with the relevant Home Office circular would be not appropriate or effective.

**6.4.4** Where possible, officers will try and agree a reasonable time limit for compliance with a Hygiene Improvement Notice with the food business operator. Once the Notice has been served any requests for extensions of time of time for compliance will need to be made in writing to the officer concerned **before** the notice expires and will only be granted in exceptional circumstances. Officers will normally revisit the premises the next working day after the notice has expired to check compliance.

## **6.5 Use of Detention Notices and Seizure Powers**

**6.5.1** The use of the detention and seizure powers under Section 9 of the Act and other regulations made under it, will be used following the guidance outlined in the Codes of Practice issued under the Act. These will be normally be prompted where the authorised officer believes that the food fails to comply with the food safety requirements and has not been produced, processed or distributed in compliance with 'Hygiene Regulations' as defined in regulation 2 of the Food Hygiene (England) Regulations 2006 but it may be as a result of other regulations made under the Act.

**6.5.2** Under normal circumstances, food will be formally detained using a Detention Notice where it has been implicated in a food poisoning or food contamination incident, or where 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 or analysis. In these instances, the food will be submitted for examination or analysis and the Detention Notice will remain in force until the examiner/analyst reports that it meets food safety requirements. Once the examiner/analysis has reported, the Detention Notice will be lifted by advising to the owner of that food that it can be used or appropriate action needs to be taken to remove it from the food chain as soon as is reasonably practicable. Chemical analysis is conducted by the Public Analyst who will sometimes carry out microbiological examination.

The Public Health England London Food Water and Environmental Laboratory Services carry out microbiological examination of food and water.

- 6.5.3** Food may be seized following an adverse report from the food examiner or public analyst following formal detention or where it appears to the authorised officer that it is clearly unfit for human consumption e.g. a meat pie covered in mould growth. Where food is seized then the officer will deal with it in accordance with the Act and relevant codes of practice i.e. take it before a Justice of the Peace to obtain an order for the destruction of the food.
- 6.5.4** Where food has been formally seized and declared unfit by a Justice Of The Peace, then consideration will be given to the commencement of legal proceedings for an offence under the Act and if appropriate, regulations made under it. Before commencing a prosecution, consideration will be given to those matters outlined in the Council's Corporate Enforcement Protocol.
- 6.5.5** It has been accepted practice for food businesses 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 food business operator or person in charge of the food at the time or as the result of a suggestion by the officer. This practice may have some benefits in saving time and avoiding the need to go through the formal seizure process, whilst protecting public health. This informal procedure remains acceptable if the officer has no intention of taking formal action against the food business operator 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.

## **6.6 Hygiene Emergency Prohibition Notices (HEPNs)**

- 6.6.1** Authorised officers should consider the issue of HEPNs where the use of a premises, a process, a treatment or a piece of equipment represents or involves an imminent risk of injury to health. Regulation 8 of the Food Hygiene (England) Regulations 2006 and the Codes of Practice issued under the Act specify the steps that have to be taken when using HEPNs with the latter giving guidance on the circumstances when they might be appropriate. In considering the use of such notices, the prime consideration should be to protect public health.
- 6.6.2** The following instances are examples of where an HEPN might be appropriate in respect of premises use:



- where there is serious infestations by rats, mice, cockroaches or other vermin resulting in actual food contamination or a real risk of food contamination;
- serious drainage defects or flooding of the premises leading to actual food contamination or a real risk of food contamination;
- lack of a suitable and sufficient water supply;
- very poor structural condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in a real risk of food contamination.

This list is not exhaustive.

**6.6.3** In certain circumstances, the use of HEPNs would not be appropriate even though the food business was creating an imminent risk of injury to health. An example would be where the risk was discovered at the end of normal trading hours and the food business operator had given assurances that they would be getting a team of cleaners in to improve the position before it re-opened. Under such circumstances the officer would normally revisit before the premises re-opened.

**6.6.4** In deciding whether to accept a voluntary offer to close the premises by the food business operator, the officer should obtain confirmation of the undertaking in writing and confirm with the food business operator that they would be relinquishing their rights to compensation.

## **6.7 Use of Remedial Action and Detention Notices**

**6.7.1** Remedial Action Notices (RAN) may be served on establishments subject to Approval under Article 4(2) of Regulation 853/2004 where any of the requirements of hygiene regulations are being breached and/or where an inspection under the hygiene regulations is being hampered. Officers will consider graduated approaches to enforcement and Hygiene Improvement Notice provisions before commencing with a RAN or Detention Notice according to FSA guidance.

**6.7.2** Circumstances which may lead to the issue of a RAN include

- Failure of any equipment or part of an establishment to comply with the requirements of the 'Hygiene Regulations' as defined by Regulation 2 of the Food Hygiene (England) Regulations 2006
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection in accordance with the Hygiene Regulations; and

- Where the rate of operation of the business is detrimental to its ability to comply with the Hygiene Regulations.

Circumstances which might lead to the issue of a Detention Notice include;

- Where there are indications or evidence of food being unsafe at an establishment, therefore examination/ analysis is necessary, including the taking of samples.

**6.7.3** Remedial Action Notices shall be served as soon as practicable stating why the Notice is being served and the Notice will also specify the breach and action needed to remedy it.

**6.7.4** As soon as the authorised officer who served the original Remedial Action Notice is satisfied that the action required in the notice has been taken, the notice will be withdrawn by a further notice in writing.

**6.7.5** An authorised Officer may at an establishment subject to Approval under Article 4 (2) of regulation 853/2004, serve a Detention Notice on the relevant food business operator or his duly authorised representative a requiring the detention of any food for the purposes of examination/analysis (including the taking of samples)

**6.7.6** As soon as the authorised officer who served the original Detention Notice is satisfied that the food need no longer be detained, a further Notice in writing will be served to withdraw the original Detention Notice.

**6.7.7** Any person who fails to comply with a Remedial Action Notice or a Detention Notice is guilty of an offence; and legal action will be taken.

## **6.8 Simple Cautions**

**6.8.1** The Council may consider issuing a simple caution, in appropriate cases, as an alternative to a prosecution. In doing so, reference will be made to the appropriate Home Office Circular and to the Council's Corporate Enforcement Protocol including the public interest test to determine the most suitable course of action. Under normal circumstances, the purpose of a simple caution is to:-

- deal quickly and simply with less serious first time offences;
- divert less serious offences away from the Courts;
- reduce the chance of repeat offences.

**6.8.2** When a simple caution is under consideration, the following conditions must

be fulfilled before it is offered: -

- There is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted.
- the offender is 18 years of age or over
- the offender admits that they committed the crime and has not raised a defence
- the offender agrees to be given a caution

**6.8.3** Where a person declines to accept a simple caution, it will be necessary to consider taking alternative enforcement action. This could include prosecution in accordance with the criteria laid down in the Council's Corporate Enforcement Protocol, the Code for Crown Prosecutors and relevant Home Office guidance.

## **6.9 Prosecution**

Prosecution is only one of a number of enforcement options available to the Council. Each case needs to be judged on its own merits and in accordance with the Council's Corporate Enforcement Protocol and policies and any deviation from policy must be discussed with Senior Managers and or the Legal team and recorded. The prosecution process is attached in Appendix B.

# Appendix A

## EAST CAMBRIDGESHIRE DISTRICT COUNCIL

### FOOD SAMPLING POLICY

1. This policy sets out the general principles and arrangements by which microbiological food sampling is carried out in order to gather information about the microbiological quality and possible presence of harmful micro-organisms in particular foods, food equipment or the food environment which in the District. There will be times when arrangements must be made for the chemical analysis of foods, food equipment or the environment.
2. Food/equipment/environmental sampling for microbiological examination or chemical analysis makes an important contribution to the protection of public health and food law enforcement. Microbiological samples will normally be submitted to the Health Protection Agency (HPA) that is United Kingdom Accreditation Service (UKAS) accredited. However, from time to time, other arrangements may need to be made for food to go other UKAS accredited food examiners. The Council appoints a Public Analyst (PA) who operates from a UKAS accredited laboratory. The PA may undertake microbiological examination but will normally undertake chemical analysis, for example regarding matters involving imported foods with chemical residues.
3. In procuring samples, it is acknowledged that Hazard Analysis Critical Control Point or HACCP has an important role to play in ensuring that food is handled in a way to reduce the risk of microbiological, chemical or physical contamination and that 'end product' testing provides a means of verification. In many cases, sampling takes place for surveillance purposes and as a way of providing confidence that food safety procedures are adequate.
4. The main aims and objectives of food sampling are to:
  - a) Examine high risk foods that pose a hazard to the consumer because they may contain significant levels of pathogenic bacteria; harmful chemicals or physical contaminants;
  - b) Evaluate temperature control, food handling and processing practices at food premises in relation to hazard analysis, including evaluating the efficiency and effectiveness of cleaning and disinfection;

- c) Help determine whether advice or enforcement action would be appropriate where it is suspected that poor practices and procedures exist;
  - d) Evaluate the effectiveness of stock rotation and control, and to assess the microbiological quality of food manufactured, distributed or retailed in the local area.
  - e) Identify contraventions of food safety legislation;
  - f) Act as a mechanism to improve hygiene standards through giving advice and guidance in feedback following sampling.
  - g) Investigation of food poisoning outbreaks or individual notifications of food-borne illness
5. In deciding whether to sample a particular food, consideration will be given to any further processing of that food by caterers or consumers that will reduce or eliminate micro-organisms prior to consumption.
6. The actual number of samples submitted for examination may differ from year to year, but the Council aims, where resources allow, to collect and submit samples to the PHE in accordance with an annually agreed sampling programmes.
7. The Council will participate in the following types of sampling:
- a) General and ad hoc local sampling for the following reasons:
    - general food surveillance to assess local food handling practices, local events and initiatives concerning issues particularly relevant within the authority's boundary;
    - in response to food contamination and food poisoning incidents;
    - in response to complaints;
    - in connection with home or originating authority responsibilities;
    - local projects e.g. those instigated by the local PHE ;
    - as part of a food hygiene inspection to help assess hygiene standards and procedures.
  - b) National sampling surveys i.e. participation in EU coordinated control programmes, PHE voluntary coordinated programmes, county or regional sampling programmes where specific foods are targeted.
  - c) Food sampling defined by statute e.g. dairy products and shellfish
8. Samples will be procured by taking a sufficient amount of the sample for examination, normally on the advice of the laboratory or protocol in use. ▸

Depending on the sampling survey being carried out, the sampling officer may purchase food as would a member of the public. At other times the sampling officer will declare themselves to the food business operator, their representative the person in charge of the food at the time. Where the quantity or frequency of sampling is likely to give rise to significant financial consequences, the officer will consider making a nominal payment if the samples are not purchased. There may be occasions when for legal reasons, full payment will be made for the sample. In any event, the officer should offer to give the food business operator, their representative or the person in charge of the food at the time a receipt for, or sign a record of all samples that they have taken or purchased.

9. When a food sample has been examined/analysed and the sampling officer has evidence that an alleged offence has been committed under the relevant regulations, they shall, as soon as is reasonably practicable notify the manufacturer/supplier or food business operator of the food in accordance with requirements of the relevant codes of practice issued under the Act.

# **Appendix B**

## **EAST CAMBRIDGESHIRE DISTRICT COUNCIL**

### **FOOD SAFETY PROSECUTION POLICY**

#### **1. Introduction**

1.1 Officers will have regard to the Corporate Enforcement Protocol and use discretion to determine the most appropriate course of action. The Council's Constitution determines who has delegated authority to make the decision to prosecute for food safety matters. As part of considering the case for the prosecution, the Environmental Services colleagues, expert professionals / witnesses and authorised officers will be consulted as part of the decision making process.

1.2 Dependant on the case in question, the following people may also need to be consulted as appropriate: -

- Fully authorised food safety enforcement officers;
- External professional/experts in connection with food safety issues e.g. food examiners and food analysts.

1.3 Officers will gather evidence and prepare the enforcement case. Officers will normally do this in consultation with the Senior Environmental Health Officer (SEHO) and, where appropriate, the Environmental Services Manager and the Council's legal services team. The decision to prosecute is kept under continuous review. This ensures that any new facts or circumstances, in support of or undermining the Council's case, are taken into account in the decision to continue or terminate the proceedings. Prosecutions must be authorised by the relevant Director or Service Lead and the decision on the action to be taken if any will be taken by the Principal Solicitor in consultation with the Environmental Health Department.

#### **2 The Prosecution Policy**

2.1 This part of this document outlines the prosecution policy of the Council and describes, in broad terms, the criteria and basis of taking matters before a court of law. In relation to food safety, the Council's Corporate Enforcement Protocol forms part of the overall strategy for enforcement and for dealing with offences. The Council conforms to the Regulators Code and Enforcement Concordat and this policy is consistent with these. The overall enforcement strategy of the food safety enforcement function is detailed within the remainder of this document.

2.2 This Council takes its obligations including those arising from human rights legislation seriously. It will endeavor at all times to act compatibly with this legislation and give due regard to the rights of the individual.

2.3 It is the policy of the Council when dealing with all offences to:

- ensure, consistency and evenhandedness;
- specify and to observe the criteria for alternative courses of action; and
- take action which assists the prevention of potential, continuing or recurring offences of a similar nature.

2.4 Enforcement action ranges from giving advice and issuing informal warnings, to cautioning and prosecution. Decisions on the type of action that will be taken in relation to a particular offence are based on the following criteria:

- the nature of the alleged offence;
- the seriousness of the alleged offence;
- the status, circumstances, previous history etc. of the alleged offender;
- the reliability and scope of the evidence, including the likelihood of the alleged offender being able to establish a statutory defence.
- the importance of the case, in terms of benefit to the community, of a particular course of action;
- the prevalence of the class of alleged offence and whether a prosecution could act as a deterrent and encourage compliance generally;
- regard to authoritative advice, guidelines and recommendations; any explanation offered by the alleged offender and their willingness to prevent a recurrence;
- any previous advice given to the alleged offender by this, or another authority;
- if a complainant or employee is involved, the effect (financial, physical, psychological etc.) which the offence creates and their willingness, or otherwise, to cooperate with an investigation.

2.5 The Council recognises that most businesses wish to comply with the law. However, there are occasions when action, including prosecution, will be considered against those who have flouted the law, or acted irresponsibly. Those matters that involve intentional, repeated or reckless acts and those concerned with public safety will be specifically reported and considered for prosecution.

2.6 In accordance with the Council's Corporate Enforcement Protocol when considering a prosecution, the Council will have regard to the Code for Crown Prosecutors. This means the following criteria will be considered: i)



whether the standard of evidence is sufficient for there to be a realistic prospect of conviction

ii) whether a prosecution is in the public interest:

Public interest factors include (but this is not an exhaustive list)

- The likely penalty, i.e. if the Court is likely to impose a very small or nominal penalty this is a factor against prosecution;
- Currency i.e. the time which has elapsed since the date of any alleged offence;
- Youth, whether the prosecution would have an adverse impact on his / her future prospects that is disproportionate to the seriousness of the offending
- Old age; infirmity, or other medical condition, in particular, whether the accused is fit to stand trial.

2.7 Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay and to select offences that:

- reflect the seriousness of the case;
- enable a court to exercise adequate sentencing powers; and
- permit the case to be presented in a clear and precise manner.

2.8 Once the prosecution has been determined by a court of law, the Council will contact its witnesses to tell them the outcome.

## APPENDIX C - GLOSSARY

Approved Premises	A product specific premises subject to the approval rules of Regulation EC No 853/2004
CCDC	Consultant in Communicable Disease Control
CIEH	The Chartered Institute of Environmental Health
HEPN	Hygiene emergency prohibition notice served under Regulation 8 of the Food Hygiene (England) Regulations 2006 requiring something to stop such as an activity or the use of a piece of equipment, part or all of a premises.
Hygiene Improvement Notice	A Notice issued under either Regulation 6 of the Food Hygiene (England) Regulations 2006 or Section 10 of the Food Safety Act 1990 stating what is contravened, what must be done to rectify the matters and giving a time period in which to put matters right.
PACE	Police and Criminal Evidence Act 1984
PHE	Public Health England
Primary Authority	A statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). It allows an eligible business to form a legally recognised partnership with a single local authority in relation to regulatory compliance.
Remedial Action Notice	RAN or Remedial Action Notice is served under Regulation 9 of Regulation EC No 853/2004 requiring compliance with food safety law in establishments subject to approval under those regulations.