



Barrow Borough Council

Public Protection Services - Food Safety Enforcement Policy

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Issue: 1	Approved – Full Council	15 October 2014
Review Date: 2019	Amended For Department & Manager Name Changes, updated FLCoP and Guidance to 2017 and reformatted.	November 2019
Issue: 2	Approved Full Council	21 st January 2020
Review Date: 2023		

1. Purpose

This document establishes the Food Safety Enforcement Policy of Barrow-in-Furness Borough Council.

2. Application

This policy will be implemented and supported by Authorised Officers within Public Protection Services

3. References

- Food Law Code of Practice
- Food Law Practice Guidance
- Regulators Code
- Legislative and Regulatory Reform Act 2006
- Food Safety Act 1990
- Food Safety and Hygiene (England) Regulations 2013
- Barrow Borough Council Food Procedures

4. Policy

Barrow-in-Furness Borough Council has a statutory objective to protect public health and consumers' other interests in relation to food and drink. However, we are aware that excessive or unclear regulations can place a burden on business and civil society groups (such voluntary groups, charities and not for profit organisations) and so hinder effective delivery of the intended benefits. The aim of this policy is:

- To ensure a consistent approach to food related enforcement within the district;
- To provide officers with guidelines to enable them to make decisions in the field, consistent with current Government advice;
- To inform the public and food businesses of the principles by which enforcement action is taken.

5. Procedures

In relation to Food Safety it is the Council's aim to protect the general public from the health risks associated with poor food hygiene and also the sale of food which fails to meet food safety requirements. It will achieve this by education, providing advice and by regulating the activities of food business operators¹ to manage and control risks effectively. An important part of this is to use the full range of enforcement powers to secure compliance with legal requirements.

Enforcement applies to all dealings between enforcing authorities and those upon whom the law places duties.

The purpose of enforcement is to:

- Ensure that food business operators take action to deal immediately with serious risks,
- Promote and achieve sustained compliance with the law,
- Ensure that food business operators who breach food safety requirements, and directors or managers who fail in their responsibilities may be held to account, which may include bringing alleged offenders before the courts.

Intervene to assess, promote and ensure compliance with the law, to deal immediately with serious risk.

Investigate after an incident to identify underlying causes and the lessons to be learned, prevent recurrence, detect breaches and take appropriate action.

¹ A food business operator, as defined by Regulation (EC) 178/2002, is the natural or legal person responsible for ensuring that the requirements of food law are met within the food business under their control. (Food Law Code of Practice – March 2017)

Approval to ensure that appropriate Approvals are in place where the law requires close control of those activities where the potential for significant health impairment is high.

Taking Action to ensure that action is taken that is proportionate to the risk.

The term enforcement has a wide meaning and applies to all dealings between the Council and those upon whom food safety legislation places duties.

Authorised officers seek to secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer food business operators advice and support, both face to face and in writing. This may include warning a food business operator that in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may serve Hygiene improvement Notices, Emergency Hygiene Prohibition Notices, or Remedial Action Notices, in addition they may detain and/or seize food. Further action may involve the issue simple cautions or prosecution.

The appropriate use of enforcement powers 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 failure to maintain appropriate food safety standards.

Authorised officers, when judging compliance with the law, take into account relevant case law, codes and guidance, use sensible judgement about the extent of the food safety risks and the effort that has been applied to prevent them.

6. The Principles of Enforcement

The Council believes in firm but fair enforcement of food safety legislation. We shall follow the principle of proportionality in applying the law, securing compliance, and will be consistent in approach and targeting of enforcement action.

We operate in a transparent manner and are accountable for our actions.

6.1 Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those upon whom it places duties expect that action taken by enforcing authorities to achieve compliance or bring food business operators to account for non-compliance should be proportionate to any risks to food safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

We will take particular account of how far the food business operator has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Where published guidance exists we will expect that guidance to be followed. Where guidance is not followed, or where guidance does not exist we will expect the food business operator to be following procedures based on independent robust scientific data.

As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action, in effect how far the food business operator has fallen short of what the law requires and the extent of the risks to people arising from the breach.

6.2 Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Food business operators managing similar risks expect a consistent approach from enforcing authorities in the advice tendered, the use of enforcement notices, approvals etc., and decisions on whether to prosecute and in the response to complaints.

We recognise that in practice consistency is not a simple matter. 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 food business operator, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer.

The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

6.3 Transparency

Transparency means helping food business operators to understand what is expected of them and what they should expect from enforcing authorities. It also means making clear to food business operators not only what they have to do but also, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

6.4 Targeting

Targeting means making sure that interventions are targeted primarily on those whose activities give rise to the most serious risks to food safety, or where risks are the least well controlled; and that action is focused on the food business operators who are responsible for the risk and who are best placed to control it.

The Council have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a food business operator's operations.

The confidence in the food business operator's management is important, because a site that present a lower food safety hazard but poorly managed can entail greater risk to the public than a higher hazard site where proper and adequate risk control measures are in place.

Any enforcement action will be directed against the food business operator. Where several food business operators have responsibilities, such as shared facilities, the Council may take action against more than one when it is appropriate to do so in accordance with this policy.

When officers issue Food Hygiene notices, issue simple cautions or prosecute, we will ensure that a senior officer of the food business operator concerned, at board level, is also notified.

The Council follows a national priority rating system for inspections and interventions, and guidance issued by the Food Standards Agency (Food Law Practice Guidance, 2017) and by the Government (Food Law Code of Practice, 2017).

6.5 Accountability

The Council is accountable to central government, the Food Standards Agency and the public for their actions. The Council has policies, service plans, procedures and service standards against which it can be judged, and an effective accessible mechanism for dealing with comments and complaints.

7. Enforcement Options

The Council authorises officers to carry out the inspections and investigations it has decided they are trained and competent to do. Current legislation and technical guidance will be available for reference.

The council will use its discretion in deciding whether food safety complaints or alleged cases of ill health should be investigated. This is detailed in our departmental plan.

We investigate to determine:

- Causes
- Whether action has been taken or needs to be taken to prevent recurrence and to secure compliance with the law
- Lessons to be learnt and to influence the law and guidance
- What response is appropriate to any breach of the law.

7.1 Food Safety Enforcement

An officer will consider the most appropriate course of action during routine inspections or following a food complaint.

In line with this policy the officer will use his judgement on what action to take that is namely:

- No action
- To give verbal and written warnings
- Serve hygiene improvement notices
- Serve emergency hygiene prohibition notices
- To detain or seize any food
- Any combination of the above
- Serve a simple caution
- To prosecute

7.2 No Action

There will be occasions when it is appropriate to take no further action on completion of an inspection or investigation. A report of the inspection will be left on-site or sent soon after the inspection highlighting that the standards of compliance are satisfactory.

7.3 Verbal Advice and Letters

The circumstances when it is appropriate to use verbal advice and written warnings are: -

- The risk gap is minor

- The act or omission is not serious enough to warrant formal action
- From the individuals/business previous compliance it can be reasonably expected that the warning will achieve compliance
- There is no deliberate economic advantage being sought
- Confidence in the management is high
- The consequence of non-compliance will not pose a significant risk to health and safety
- Even where some of the above criteria are not met, there may be circumstances in which a warning will be more effective than a formal approach

The officer will tell the Food Business Operator what to do to comply with the law, explain why and distinguish legal requirements from best practice.

The officer will agree a timescale for compliance.

A written inspection report will be left at the premises detailing any verbal warnings. The premises will be written to confirming any warnings given and the steps required to achieve compliance.

7.4 Hygiene Improvement Notices

Hygiene Improvement Notices may be appropriate in any of the following circumstances or a combination thereof:

- There are significant contraventions of the legislation.
- There is a lack of confidence that the Food Business Operator will respond to an informal approach.
- There is a history of non-compliance with informal action or formal letters and
- Standards are generally poor with little management awareness of the statutory requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Effective action needs to be taken as quickly as possible to remedy conditions, which are serious, or deteriorating, even though it is intended to prosecute.

The officer will advise the Primary Authority, where one exists, of any actions intended and seek written agreement.

The use of Hygiene Improvement Notices will be related to the risk to health and they will not be used for minor contraventions of the legislation. They will not be used where the contraventions might be a continuing one or in transient situations.

Officers issuing Hygiene Improvement Notices will discuss with the food business operator the works to be undertaken and the realistic time limits for the completion of the works. The Officer shall consider alternative solutions of equal effect put forward by the food business operator.

Failure to comply with Hygiene Improvement Notice will generally result in the instigation of legal proceedings.

The Officer will consider all reasonable written requests for an extension of time of the Notice where these are made within the existing time scale.

7.5 Hygiene Emergency Prohibition Procedures

Hygiene Emergency Prohibition Procedures should be used if an authorised officer has evidence that the health risk condition is fulfilled. They may be used to prohibit the use of premises (or part of), equipment, or processes.

If the appropriate evidence is found, a Hygiene Emergency Prohibition Notice may be served on the food business operator, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order.

The following are examples of circumstances that may show that the health risk condition exists i.e. there is an imminent risk of injury to health, and where an authorised officer may therefore consider the use of such prohibition powers. These examples are not exhaustive and are for illustrative purposes only.

- Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination
- Very poor structural condition and poor equipment and/or poor maintenance, or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter, resulting in the actual contamination of food or a significant risk of food contamination.
- Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food, or a significant risk of food contamination.
- Premises or practices which seriously contravene food law and have been, or are implicated, in an outbreak of food poisoning.
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

Health risk conditions where the prohibition of equipment may be appropriate

- Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature.
- Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.
- Dual use of complex equipment , such as vacuum packers, slicers and mincers for raw and ready – to – eat foods
- Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

Health risk conditions where prohibition of a process may be appropriate

- Serious risk of cross contamination.
- Failure to achieve sufficiently high processing temperatures.
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply.
- The use of a process for a product for which it is inappropriate.

Once a Hygiene Emergency Prohibition Notice has been served the Officer will make application to the Magistrate's Court to have a Hygiene Emergency Prohibition Order issued.

If it is satisfied that the health risk condition no longer exists the Food Authority should issue a certificate to the food business operator within three days rescinding any Hygiene Emergency Prohibition Notices or subsequent Orders.

If the food business operator applies for such a certificate, the Council will determine the position as soon as is reasonably practicable and within fourteen days.

7.6 Voluntary Closure

There may be occasion where an authorised officer is satisfied that grounds for Hygiene Emergency Prohibition Notice exist, but where the proprietor of the food business offers to close voluntarily until the health risk is removed.

Such an offer will only be accepted if the authorised officer is satisfied that there is no likelihood of the premises being used as a food business, or of the use of equipment, or of a process without the express agreement of the food authority.

When considering such an offer it shall be ensured that the person making the offer is aware that in closing voluntarily they are relinquishing the rights to compensation for unjustified action contained in formal Hygiene Emergency Prohibition Notice procedure.

7.7 Detention and Condemnation of Food

Authorised Officers will use powers to inspect, detain, seize, and arrange for the condemnation of food if they have reasonable grounds that the food does not comply with the Food Safety Requirements in the Food Safety Act 1990 and EC Regulation 178/2002 Article 14.

The procedure for detaining, seizing and arranging for the condemnation of food will be in accordance with the Food Law Code of Practice [March 2017] and practical guidance.

A person in charge of food that has been detained or seized for the purpose of condemnation by a Magistrate may be eligible for compensation if:

- The detention of food Notice is withdrawn;
- The Magistrate fails to condemn the food;
- And the food had deteriorated in value resulting from the action.

8. Action by the Courts

The Food Safety Act and supporting regulations gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences.

The Council when appropriate during a prosecution will draw the court's attention to the Court of Appeals guidance on the factors which should inform sentencing in Food Safety cases, that fines must be large enough to reflect the seriousness of the offence.

Where the case is of sufficient seriousness, the Council will indicate to the magistrates that the offence is so serious that they may refer it to be heard or sentenced in the higher court where higher penalties can be imposed. We will have regard to the Court of Appeal guidance before asking for a referral.

8.1 Prosecution

While the primary purpose of the Council is to ensure that food business operators manage the food safety risks, prosecution is an essential part of enforcement.

The Council will use discretion in deciding whether to bring a prosecution. Where the circumstances warrant it and evidence to support a case is available, the Council may prosecute without prior warning and recourse to alternative sanctions.

The decision to prosecute must have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors. Prosecutions will only be considered when there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

Subject to these tests the Council will normally prosecute where one or more of the following apply: -

- There has been reckless disregard of the food safety requirements.
- There have been repeated breaches, which give rise to significant risk or persistent and significant poor compliance.
- There has been a failure to comply with Food Hygiene Notice or there has been a repetition of a breach that was subject to a simple caution.
- Inspectors have been intentionally obstructed in the lawful course of their duties.

Furthermore the Council will consider prosecution where, following an investigation or other regulatory contact, the following apply:

- The prosecution is a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- A breach which gives rise to significant risk has continued despite relevant warnings from employees or from others.
- Ill health or death was a direct result of a breach of the legislation.

Where authorised officers are threatened or assaulted police assistance will be required, with a view to the prosecution of offender. We may request the Police to arrest individuals for obstruction or perverting the course of justice in relation to an investigation.

Prosecution files will be considered by the Food Team Leader and Public Protection Manager who will issue the decision to proceed. Before such action due consideration will be given to any legal advice received.

8.2 Prosecution of an Individual

Subject to the above the Council will identify and prosecute individuals if they consider that a conviction is warranted and can be secured. We will consider the management chain and the role played by individual directors and managers and will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.

8.3 Simple Caution

A simple caution may be used in cases involving first time less serious offences where the public interest can be met by a caution.

We will consider whether a caution is appropriate to the offence and the offender, and whether a caution is likely to be effective in the circumstances.

Should a simple caution not be accepted by the offender then the case shall be authorised for prosecution and therefore the case will be suitable for prosecution in all other respects

9. Working with others

9.1 Regulators

There may be situations where deficiencies in food safety is regulated by other authorities. We will, in accordance with the Regulators Code and the regulatory principles required under the Legislative and Regulatory Reform Act (2006), try to ensure that, wherever practicable, enforcement action by food enforcing authorities is effectively co-ordinated with that of other, relevant enforcing authorities to minimize unnecessary overlaps and time delays.

9.2 Other agencies/stakeholders

We will liaise with and bring areas of concern to the most appropriate body for advice and/or enforcement. Such bodies may include the County Council, Food Standards Agency, Public Health England, Cumbria Police, OFSTED, Care Quality Commission, DEFRA.

We will also liaise with other Council departments such as Licensing, Planning, and Building Control as necessary.

Where there is a Primary Authority we will contact and liaise with them before taking formal enforcement action or considering prosecution against a participating organisation, except;

- Where there is clear evidence that food fails to meet to Food Safety Requirements
- After serving an Emergency Hygiene Prohibition Notice. However consultation will be undertaken as soon as is practicable after service.

10. Enforcement in Premises which the Council Own Under a Separate Food Business Operator

The council cannot take action against itself nor should it be called upon to do so. In respect of premises the Council owns, but within which there is a separate Food Business Operator, we shall:

- Carry out our enforcement policy and practice in exactly the same way we do in all our premises.
- Ensure that the attention received is in accordance with the criteria applied to other food business operators.
- Where there is a potential conflict of interest we will discuss the matter with the Food Standards Agency to determine the appropriate course of action.

11. Enforcement in Premises within which the Council is the Food Business Operator

The council cannot take action against itself nor should it be called upon to do so. In respect of premises within which the Council is the Food Business Operator, we shall:

- Carry out our enforcement policy and practice in exactly the same way we do in all our premises.
- Ensure that the attention received is in accordance with the criteria applied to other food business operators.

12. Reviewing the Policy

The Food Safety Enforcement Policy will be reviewed every 4 years or earlier if necessary.