

Regulatory Services Partnership, (RSP) -Food Safety Enforcement Policy

- References– *Food Law Code of Practice- March 2017*
Food Law Practice Guidance November 2017
Code for Crown Prosecutors
<https://www.cps.gov.uk/publication/code-crown-prosecutors>
Ministry of Justice -Simple Cautions for Adult Offenders April 2013
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708595/cautions-guidance-2015.pdf

1.0 **Purpose of Policy**

1.1 The main aim of the service is to ensure food hygiene and food standards requirements are met within the London Boroughs of Wandsworth, Merton and Richmond upon Thames. 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. This Policy will be compatible with the principles set out in the General RSP Enforcement Policy.

2.0 **What we will do.**

2.1 The Food and Safety Team will place emphasis on those matters presenting the greatest risks to public health and food safety, within the communities that it serves.

2.2 This service will respond to requests for information and assistance and to allegations of infringement of food legislation, promptly, efficiently, and courteously.

2.3 This service will provide general advice and guidance to enable businesses based within the boroughs to comply with food legislation, having regard to guidance issued by the Food Standards Agency. Tailored advice may be available through a chargeable service.

2.4 This service will ensure all officers will meet the baseline qualifications outlined in the Food Law Code of Practice, (FLCoP) and FL Practice Guidance. Furthermore officers will maintain continuous professional development in accordance with the recommendations of the

- 2.5 In respect of food hazards occurring within the boroughs, will carry out action in accordance with the FLCoP and FL Practice Guidance and liaise as necessary with the Food Standards Agency without delay.
- 2.6 Any departure from this policy will be decided by the Food and Safety Managers in conjunction with the Commercial Services Manager where necessary, 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 Food and Safety Manager.
- 2.7 Any enforcement action being considered under this policy will be discussed with the relevant 'primary authority' of the business concerned, before being undertaken.
- 2.8 Any requests for Primary Authority Partnerships, (PAP) will be considered by the Food and Safety Managers. Among the considerations before embarking on a PAP will be available resources and the fit between the RSP and its potential partner business.

3.0 **Authorisation of Officers**

- 3.1 Only officers deemed competent by the relevant Director or Chief Executive of The London Boroughs of Merton, Wandsworth and Richmond upon Thames will be authorised to undertake enforcement actions for the service.
- 3.2 A list of the current officer authorisations across the boroughs is held by the Food and Safety Managers.
- 3.3 Enforcement actions involving the investigation of alleged food and public health offences, will be in accordance with the appropriate provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Data Protection Act 2018, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act 2000.

4.0 **Decision to take Enforcement Action**

- 4.1 In making decisions about enforcement action, this service will exercise its responsibility to further its main aim, which is to maintain food hygiene and food standards requirements within the boroughs of Wandsworth, Merton and Richmond upon Thames.
- 4.2 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 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 “Due Diligence” 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;
- Any explanation offered by the alleged offender, and their willingness to prevent a recurrence of any alleged infringement.

5.0 **Options for enforcement action**

5.1 **No action** – e.g. where no infringements noted or it is not considered in the public interest to take any further action

5.2 **Informal action** - Informal enforcement action includes offering verbal advice, issuing advisory letters and informal written warnings. Informal enforcement action is appropriate when an officer is satisfied that,

- The alleged infringement does not involve a significant risk to public health; and
- Where the food business operator, (FBO) has not been made aware of the infringement previously
- It can be reasonably assumed that the action taken will achieve compliance.

Verbal and written warnings and advice will clearly differentiate between legal contraventions and recommendations of good practice.

Where appropriate, officers will lay out the nature of the legal infringement; the legislation it breached; the action required to remedy the breach; the timescale for the remedy to be employed.

5.3 **Statutory Action**- This section includes the service of Improvement Notices, Hygiene Improvement Notices, Remedial Action Notices, Emergency Prohibition Notices and Hygiene Emergency Prohibition Notices. It also covers Detention and Seizure of foods. Notices will follow the templates contained in the FLCoP. In the case of every Notice served, rights of appeal and consequences of non-compliance will be made clear.

5.3.1. *Hygiene Improvement and Improvement Notices* may be served on the FBO where –

- There are significant infringements of food legislation;
- A health risk condition does not exist
- 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.

5.3.2 *Remedial Action Notices* may be served on the FBO of Approved Premises where

- There are significant breaches of the Hygiene Regulations
- The Inspection is being hampered
- A health risk condition does not exist
- 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.

Remedial Action Notices could have the effect of all or any of the following:-

- prohibiting the use of any equipment or any part of the establishment specified in the notice;
- impose conditions upon or prohibit the carrying out of any process; or
- require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.

5.3.3 *Hygiene Emergency Prohibition, (HEPNs) and Emergency Prohibition Notices, (EPNs)* may be served on FBOs where

- 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.

HEPNs and EPNs can have the effect of closing down, premises, processes and equipment. The service of these Notices will be followed by an application for an order from the Magistrates Court to

keep the Notice in place until the Health risk condition has been removed.

5.3.4 *Detention Notices* may be served on the FBO where

- Food needs to be detained for examination
- The consequences of not detaining the food would be unacceptable for public health;
- There is no confidence that the food will not be tampered with or kept in accordance with the instructions of the inspecting officer.

5.3.5. *Seizure of Food.* The Officer can seize foods which has not been produced, processed or distributed in accordance with the Hygiene Regulations or fails to meet the Food Standards requirements or is unfit for human consumption. The Food will be brought in front of Magistrates to issue a Condemnation Notice.

This option may be used where:-

- There is no confidence that the FBO will remove and destroy unsafe food from the food chain and/or food that has not been processed in accordance with food safety legislation.
- The consequences of not seizing and having the food condemned would be unacceptable for public health.

6.0 **Simple Caution**

6.1 When considering whether or not to prosecute, the Food and Safety Manager may consider issuing a simple caution, which is administered by letter, in the format approved by the Ministry of Justice guidance, 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.

6.2 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.

6.3 Before issuing a simple caution, the Food and Safety Manager in conjunction with the Commercial Services Manager 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 in writing; 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.

7.0 **Prosecution**

7.1 When a decision whether or not to prosecute an alleged offender is being made by the Food and Safety Manager, the following criteria are considered together with the Code for Crown Prosecutors,

- 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 or animal health.
 - 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 statutory notice.
- 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 committing similar infringements.
- Where the offence involved an element of wilfulness or was committed for economic gain.
- 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 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.
- Where relevant the victim's views should be taken into account in any decision of the most appropriate course of action.

7.2 Decisions to prosecute will be made by the Food and Safety Manager in conjunction with the Commercial Services Manager, who will sign off cases before being passed to Legal Services.