



CASTLE POINT BOROUGH COUNCIL

ENVIRONMENTAL HEALTH SERVICES

FOOD SAFETY

ADDITIONAL STATEMENT OF ENFORCEMENT POLICY

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1.0 Statement of Objective

- 1.1 It is the policy of the Castle Point Borough Council to strive to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within this Borough is without risk to the health and safety of the consumer. Risk - being the probability of harm to health occurring due to non-compliance with the Food Safety legislation.
- 1.2 This Additional Statement of Enforcement Policy represents the correct approach to be taken in the delivery of the food safety service and the organizational arrangements in place to achieve them.
- 1.3 In formulating its enforcement policies, a Local Authority must have regard to any legal or statutory provisions relating to food safety. Similarly this document is in line with the Environmental Health Enforcement Policy, the Regulators Code and the Council's Corporate Enforcement Policies, which together promote better regulation and set out principles of good enforcement practice.
- 1.4 It will be the duty of the Council and its authorized officers to act in accordance with the Council Wide Enforcement Policy and this Additional Statement of Enforcement Policy.
- 1.5 Enforcement decisions will be made in accordance with the principles set out in the Council Wide Enforcement Policy as follows: -

- **Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

- **Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

- **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- **Complaints about service**

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

- **Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. 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. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

- **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies.

- **Procedures**

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice. Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed). Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most

- 1.6 The Council will have regard to advice provided by Central Government Agencies including DWP, LACORS, the Offices of the Surveillance Commissioners that seek to provide guidance and instructions on local authority law enforcement issues
- 1.7 This document will be made freely available to businesses and individuals who are regulated by this legislation and to anyone who has an interest in this area of Environmental Health Work.

2.0 Scope

- 2.1 The food enforcement work of Environmental Services includes:

- Food hygiene inspections
- Food complaints
- Food sampling
- Food Alerts
- Investigation of food poisoning notifications and outbreak control
- Advice to food businesses and consumers
- Inland imported food control

- 2.2 All authorized officers should abide by this Additional Statement of Enforcement Policy when making enforcement decisions and any departure should be capable of justification and fully considered by line Managers.

- 2.3 Officers authorized to initiate enforcement action will be suitably qualified and have relevant experience as detailed in Food Law Code of Practice Chapter 4 – Qualifications and Experience.

- 2.4 Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

2.5 Environmental Health Services aim to promote proportionality through the following means:

- Giving due consideration to advice contained within relevant industry guides and government circulars.
- Attendance and participation at regular County wide food liaison group meetings to discuss proportionality issues.
- Regular Team Meetings where proportionality issues can be discussed.

2.6 Environmental Health Services aim to promote consistency through the following means:

- Giving due consideration to advice contained within relevant industry guides and government circulars.
- Use of standard phrases in post-inspection reports where appropriate.

- Attendance and participation at regular County wide food liaison group meetings to discuss consistency issues
- Team meetings where consistency issues can be discussed.
- Development and implementation of team procedure notes.
- External auditing from external agencies such as the food standards agency

2.7 Environmental Health Services aim to promote openness through the following means:

- The provision of advice and information on request either verbally or in writing, except where such provision is ethically or commercially sensitive.
- Use of standard formats and standard phrases in post-inspection reports where this is appropriate, that distinguish what is a legal requirement from what is current good practice.
- Team meetings where transparency issues can be discussed.

2.8 Environmental Health Services aim to target and focus its work on areas of highest risk through the following means:

- Using Food Standards Agency approved risk- rating systems to prioritise proactive food inspections
- Using national and local statistics to identify issues of importance.
- Adopting a complaints policy and procedure to determine the resources that are needed for certain categories of complaint and request for service.

Our Approach

3.0 Prevention

- 3.1 We believe that the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. We are happy to discuss and explain food safety requirements.

4.0 Inspections

- 4.1 Officers carry out inspections of premises in order to:

- Ensure that food business operators are carrying out their duties under food legislation including imported food controls.

- Help businesses improve their management of food issues by giving guidance and advice
- Investigate food hygiene and food safety complaints.
- Investigate premises implicated in food poisoning outbreaks.

4.2 The frequency of visits depends on the reason for the visit and the type of food business. Therefore some businesses will be visited more frequently than others. Generally, those which involve more serious food risks, where the risks are higher and where they have in the past been poorly controlled, are visited more often.

4.3 We determine the food hygiene primary inspection frequencies by using the risk assessment criteria in annex 5 of the Food Law Code of Practice to determine our planned inspection programme. The highest risk category A being inspected every 6 months, risk category B every 12 months, Risk category C every eighteen months and risk category D every 2 years.

5.0 Timing of Inspections

5.1 Food premises will be inspected when they are open for business. The information obtained at the time of inspection will determine if a premise is only open at night or at the weekend. Once due for inspection arrangements will be made to have these premises inspected during their opening hours. Therefore businesses that only open at night or weekends will be inspected at that time

6.0 Alternative Inspection enforcement strategies

6.1 Businesses presenting little or no risk to public health or safety for food hygiene purposes (Category E) need not be subject to primary inspections.

6.2 Such businesses must however be subject to an alternative enforcement strategy not less than once in any 3 year period.

6.3 When a category E premises is due for inspection a decision will be made by the Team Leader / Environmental Health Operational Manager whether a physical inspection should be undertaken or to send out a letter and self-assessment questionnaire.

6.4 A spreadsheet will be kept on the Ocella system listing the premises that have been sent a questionnaire and their return will be monitored. If a form is not returned a reminder letter will be sent after 28 days.

6.5 The information provided on the completed questionnaire will be used to risk rate the premises.

6.6 A sample of the lower risk premises especially those that fail to return the questionnaire will be visited. We will also continue to visit premises when a complaint arises, where there is a significant change in the foods produced, or the food business proprietor requests a visit.

7.0 The Inspection

- 7.1 Inspectors will usually call unannounced and will want to talk to the food business operator and managers. We will view premises layout, physical condition and cleanliness, look at food and examine relevant documentation such as the food safety management system based on HACCP principles, training records, temperature records, pest control treatment records, examine food labels, stock control and take samples to check food/food products comply with food safety requirements.
- 7.2 Inspectors will communicate the outcome of the inspection with the food business operator/managers and will send a report of the inspection.
- 7.3 We will aim to assist food businesses with compliance with legislation, but where it is necessary, we will use legal powers available to us to achieve compliance.
- 7.4 The Human Rights Act introduced an obligation on public authorities to act consistently with the Articles of the European Convention on Human Rights. These articles confer rights on an individual. However the Council's use of enforcement powers under the Food Safety legislation is a justified interference with those rights if it is in accordance with the law, in the public interest and proportionate to the objective of remedying the breach of food legislation.

8.0 Enforcement

- 8.1 The criteria to be considered when taking enforcement action will be:
- The seriousness of the offence
 - The past history of the company
 - The confidence in the management
 - The consequences of non-compliance and
 - The likely effectiveness of the various enforcement options
- 8.2 The enforcement options are:
- Take no action
 - Take informal action
 - Use of Statutory Notices
 - Use of Formal Cautions
 - Use of Prosecution.
- 8.3 Discussions will be held with the relevant Home/Originating Authority and with Food Liaison Groups where the action taken impacts on the aspects of an enterprises policy that has been agreed centrally.

9.0 Informal Action

- 9.1 This includes giving advice, responding to requests for information, food hygiene inspection reports and the use of informal letters.
- 9.2 The circumstances when it is appropriate to use informal action are:
- When the act or omission is not serious
 - Past history shows that informal action will achieve compliance
 - The confidence in the management is high
 - The consequences of non-compliance will not pose a significant risk to public health
 - Where taking informal action is more effective.
- 9.3 Food hygiene inspection reports will be issued following all primary inspections in line with Food Law code of practice
- 9.4 Any written documentation will:
- Contain all necessary information to explain what work is necessary and why.
 - Indicate the regulations that have been contravened, the measures that will enable compliance and that other means of achieving the same affect may be chosen.
 - Clearly indicate any recommendations of good hygiene practice making clear that it is not a legal requirement.

10.0 Statutory Notices

Hygiene Improvement Notices

- 10.1 The Commercial team will follow Food Law Code of Practice Chapter 3:2 and relevant LACORS guidance regarding the use of hygiene improvement notices.
- 10.2 The circumstances when it is appropriate to issue hygiene improvement notices are:
- Significant contraventions of the legislation
 - Lack of confidence in the food business operator to respond to an informal approach
 - History of non-compliance with informal action
 - When standards are generally poor with little management awareness of statutory requirements.
 - The consequences of non-compliance are potentially serious to public health.
 - Effective action needs to be taken to remedy conditions as quickly as possible.
- 10.3 Only Officers that are suitably qualified and experienced in accordance with Food Law Code of Practice Chapter 1:2 will be authorised to issue hygiene improvement notices.
- 10.4 The Officer signing a Hygiene Improvement Notice must have witnessed the contravention and be satisfied that it is significant.

- 10.5 The Officer will place a realistic time limit for compliance on the Notice, as agreed with the food business operator, if attainable and appropriate.
- 10.6 The Officer will discuss the works to be specified and consider the availability of solutions with the food business operator and confirm that failure to comply with the Notice will in general result in Court proceedings.
- 10.7 The Officer will have sufficient evidence to justify the issue of the Notice, be prepared to pursue non-compliance in the Courts and be satisfied that they are likely to succeed.
- 10.8 The Officer will ensure that all interested parties are informed of the action being taken.

Hygiene Emergency Prohibition Notices

- 10.9 Authorised Officers will follow the Food Law Code of Practice Chapter 3:3 and relevant LACORS guidance regarding the use of Hygiene Emergency Prohibition Notices. The procedure should be used if there is evidence that the health risk condition is fulfilled.
- 10.10 The Circumstances when it is appropriate to issue Hygiene Emergency Prohibition Notices are:
 - Significant contraventions are identified that give rise to an imminent risk to injury to health.
 - The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
 - An imminent risk of injury to public health can be demonstrated. For example evidence from the food analyst or food examiner.
 - The guidance criteria in Food Law Code of Practice Chapter 3:3:2:2 are fulfilled.
 - There is no confidence in the integrity of an unprompted offer to voluntarily close or cease use of equipment, a process or treatment.
 - The proprietor is unwilling to confirm in writing an unprompted offer of a voluntary prohibition.
- 10.11 Only Environmental Health Officers shall be authorised for serving hygiene emergency prohibition notices who have two years post qualification experience in food safety matters.
- 10.12 Where chemical contamination is being considered, thought must be given to whether medical or other expert advice should be sought.
- 10.13 Application for a hygiene emergency prohibition order must be made to the Magistrates Court within three days.

11.0 Prosecution

- 11.1 Prosecution is restricted to those who blatantly disregard the law; refuse to achieve even the basic minimum standards and who put the Public at serious risk.

11.2 Circumstances that are likely to warrant prosecution are:

- When the alleged offence involves the flagrant breach of the law such that public health, safety or wellbeing is or has been put at risk
- Where the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply.
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice
- Where there is a history of similar offences.

11.3 All relevant evidence and information must be considered to enable a consistent, fair and objective decision to be made. The evidence must be relevant, admissible, substantial and reliable against an identifiable person or Company.

11.4 There must be a realistic prospect of conviction.

11.5 To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute takes account of the Code for Crown Prosecutors by having regard to the weight of evidence and public interest: -

a) The Seriousness of the alleged offence.

- Is there a risk or harm to public health
- Are there identifiable victims
- Has there been a failure to comply with a statutory notice
- Has there been a disregard for public health for a financial award.

b) Previous History

- Have there been previous offences
- Is there evidence of a failure to respond to past warnings?
- Is there evidence of a failure to respond to statutory notices

c) Consider the likelihood of the defendant being able to establish a due diligence defence.

d) Consider the ability of important witnesses and their willingness to cooperate

e) Consider the willingness of the party to prevent a recurrence.

f) Consider the possible public benefit of a prosecution

g) Consider whether other action such as a formal caution, service of an improvement notice or service of a prohibition notice would be more appropriate or effective.

h) Consider any explanation offered by the company or suspected offender.

- 11.6 Environmental Health Officers are authorised to initiate enforcement action, but should discuss all aspects of the case with their line Managers and consult with the Borough Solicitor as appropriate. The Head of Environment or the Environmental Health Operational Manager will make the final decision concerning prosecution.
- 11.7 Once a decision to prosecute has been made the case should be referred to the Borough Solicitor without delay.
- 11.8 The Court must impose a **prohibition order** following certain prosecutions if satisfied that there is a risk of injury to health. Relevant circumstances may include repeated serious offences, blatant disregard for health risks, or putting the public at risk by knowingly using unfit food.
- 11.9 The Prosecution Officer should provide any information required enabling the Court to come to an appropriate decision. This may include the state of the premise at the time of the inspection and at the time of the revisit prior to the hearing and information concerning previous convictions or cautions.

12.0 Formal Cautions

- 12.1 A formal caution may be considered as an alternative to a prosecution.
- 12.2 The Purpose of a formal caution is:
- To deal quickly and simply with less serious offences.
 - To divert less serious offences away from the Courts.
 - To reduce the chances of repeat offences
- 12.3 The following circumstances should be fulfilled before a caution is administered:
- Evidence of the offender's guilt sufficient to give a realistic prospect of conviction.
 - The suspected offender must admit the offence.
 - The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.
- 12.4 Formal Cautions will be used in accordance with the Home Office Circular and relevant LACORS guidance.
- 12.5 The Castle Point Borough Council Officer authorised as the cautioning officer is the Head of Environment.
- 12.6 If a person declines the offer of a formal caution, it is necessary to take alternative action such as a prosecution or a written warning as appropriate. The decision made should be discussed with line Managers.

13.0 Complaints about the Service

- 13.1 In relation to complaints about the Service, complainants will be encouraged to discuss the complaint with the Officer's line manager in the first instance. All complaints will be dealt with in accordance with the Authorities established complaints procedure.
- 13.2 The Castle Point webpage www.castlepoint.gov.uk/complaints explains the complaints procedure in full and provides a form. The procedure allows for formal complaints against the service to be properly considered.

14.0 Enforcement in Premises in which CPBC may have an interest

- 14.1 On rare occasions there may be a perceived potential for a conflict of interest where the Council has ownership or management interests in premises normally enforced by their own inspectors. The Local Authority is still the enforcing authority for food operations of the borough council.
- 14.2 Clear internal boundaries exist between enforcement and other officers so that they are not explicitly or implicitly expected to act in a fashion that might cause a conflict of interest. The Council will ensure that the inspectors retain their independence of decision and objectivity. Where minor breaches of legislation are observed the outcome will follow that for informal advice.
- 14.3 Should more serious breaches be observed a report will be sent to the appropriate Head of Service with a copy to the facility manager. The most serious breaches will be reported to the Chief Executive with a copy to the Head of Service and the facility manager.

15.0 Appeals against enforcement action

- 15.1 Notices can be appealed against to the Magistrates Court and information on how to do this is provided when the notices are issued.