

Sevenoaks District Council Food Safety Enforcement Policy

Scope

This policy document is intended to establish a framework for Food Safety enforcement in the Sevenoaks District Council area.

It is based on and should be read in conjunction with LACORS Guidance on Food Safety Enforcement Policies (February 1994).

It also takes into account the enforcement concordat, which the Council signed in 1998, and advice from the Crown Prosecution Service, the Home Office and Codes of Practice made under the Food Safety Act 1990.

Aims

It is this Council's aim to ensure that:

1. Food and drink which is produced, stored, distributed, handled or sold for human consumption within this District is fit for its purpose and without undue risk to the health or safety of the consumer due to non compliance with Food Safety law.
2. Any member of the public approaching this Authority with a request for service or a request for information in respect of food or food premises receives a prompt, helpful and comprehensive reply. Action taken by SDC will be in proportion to the risk presented by the situation.

3. Businesses are given assistance in terms of information and advice, to help them ensure that they comply with the Food Safety law and minimise risk to the health or safety of their customers, whilst recognising their commercial needs and aspirations.

4. The Food Safety enforcement role of the authority is carried out in a way which ensures openness, effectiveness, efficiency, proportionality, uniformity and quality.

5. The Food Safety Enforcement Policy of Sevenoaks District Council adheres to the requirements of the Codes of Practice made under the Food Safety Act 1990, and complies with guidance given by LACORS wherever possible.

6. The public and businesses are aware of the level of service and performance they can expect to receive, details of which will be published.

Objectives

1. Inspect food premises for which the Sevenoaks District Council has enforcement responsibility on a routine and programmed basis and in accordance with the current policy on inspection levels approved by members.
2. To review the information held regarding premises in the Sevenoaks District Council area and ensure all appropriate food premises are registered, risk assessed and included in the inspection programme.
3. To assess and investigate where appropriate all complaints made to Sevenoaks District Council regarding food or food premises and to provide a response within the

response times set out in the Sevenoaks District Council policy on complaints about food and food businesses.

4. To offer assistance in terms of help and advice where requested.
5. To review the leaflets and other documents available from this Authority for businesses in light of any new legislation.
6. To review the Food Safety Enforcement Policy annually, or as necessary, to ensure it conforms with Codes of Practice made under the Food Safety Act 1990 and any LACORS guidance.
7. To carry out training for all food safety enforcement officers as necessary to achieve consistency of approach and to ensure that they are fully aware of the Food Safety Enforcement Policy of Sevenoaks District Council, and the food safety legislation.
8. To liaise with other authorities to ensure, so far as is practicable, uniformity and compliance with the Codes of Practice, and to seek the views of local businesses to ensure the enforcement procedures meet the needs of businesses wherever possible.
9. To provide a well-publicised, effective and timely procedure for complaints against the Council, easily accessible to the public, businesses, 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 timescales involved.

The Policy

Sevenoaks District Council aims to protect public health by ensuring compliance with the relevant legislation. The protection of public health will be paramount when enforcing the law, but the difficulties food businesses have with interpreting legal requirements will also be given due consideration. This will apply particularly to smaller businesses who do not have the specialist advisors that are available to larger companies. All enforcement action taken will be proportional to the risk any situation presents and will always be in accordance with statutory Codes of Practice, council procedures and official guidance from central and local government bodies. Every effort will be made to ensure compliance with the law by a process of advice, education and provision of information. Formal action will be considered in the following circumstances:

- Where there is a serious risk to public health and
- Either where there is a blatant or deliberate contravention of the law or
- Where there is a history of noncompliance, or co-operation for an informal approach is not forthcoming or
- Where food businesses fail to take action in the timescales agreed within an informal process.

Officers must bear in mind the requirements of the Regulation of Investigatory Powers Act, in that any surveillance must be approved by the Community Services Director, or other officer who has delegated powers for this approval, as listed in the Constitution and Handbook.

Verbal Advice

Verbal action may be taken where:

- There is no serious or imminent risk to health.
- There is a good history of compliance and/or the work required is already planned by the proprietor.
- The infringements are of a very minor nature making more formal action inappropriate.

Verbal action will generally be used in situations where revisits to ensure compliance will not be considered necessary. However, if a revisit is to be made, Officers must ensure that proprietors are aware of the timescale for compliance. If no revisit is planned, Officers should ensure that proprietors are aware that formal action is possible if infringements are not resolved at the time of the next routine inspection.

The purpose of verbal action is to assist proprietors to understand the steps they should take; therefore the advice given must be simple, clear and appropriate to the type and size of business concerned. The Officer must clearly distinguish between legal requirements and recommendations of good hygiene practice.

A carbon copy inspection form must be left with the proprietor/representative after every inspection even if conditions at the time of inspection are satisfactory.

Informal Notices

These are letters requesting work to be done. Informal notices should be used where:

- There is a specific contravention of the legislation and
- There is not an imminent risk to health and/or
- The matters requiring attention relate to practices that are of a continuing nature e.g. personal cleanliness of staff or relate to matters that are relatively minor.

Informal notices may be used in place of Improvement Notices where the Officer feels sure that an informal notice will be as effective as an Improvement Notice.

Informal notices must be used where verbal advice is deemed inappropriate due to the number and/or seriousness of the offences.

Informal notices should be clear, concise and legally correct, and should be written in a style that is appropriate for the type and size of businesses and the reading skills and language requirements of the proprietor (if known).

The informal notice should indicate the matters contravened, measures that will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen.

Legal requirements must be clearly distinguished from recommendations of good hygiene practice. Timescales for completion of the work should be included. These should be discussed and agreed with the proprietor if possible.

Based on history of the business and the seriousness and/or quantity of the matters contravened, a revisit should

be carried out to ensure that the necessary action has been taken.

The proprietor should be made aware of whether a revisit will take place or not. If there are any matters outstanding at the revisit the Officer must decide on one of the following options:

- To allow a further period of time for compliance.
- To carry out an inspection to obtain evidence for formal action.
- To serve a notice.
- To write off the outstanding matters.

Formal action

If formal action is required under the criteria listed on page 2 of this document, the following options are available according to the circumstances:

Improvement Notices

These are statutory notices used when a food business is failing to comply with food safety legislation. They require the necessary remedial action to be taken by the proprietor in a relatively short space of time (a minimum of 14 days). A realistic timescale is set for compliance with the Notice. The timescale should be discussed with the proprietor and agreed with them whenever possible taking into account the risk to public health and the relevant practicalities.

The Improvement Notice can be appealed against and an extension of time to comply with it can be requested if

there are legitimate reasons. Failure to comply with the Notice is an offence and would normally result in prosecution.

Improvement Notices may be used where:

- There is a specific contravention; and
- There is not an imminent risk to health and
- The work required is not of a continuing nature e.g. cleaning, personal cleanliness of staff; and
- The premises are permanent e.g. not a fair or carnival.

Improvement Notices should be used where the risk is significant enough to require formal action at the outset, where there is a history of non compliance or where the proprietor is unwilling to do the work required, and the above requirements are met.

Revisits to check compliance with improvement notices will be made and, so far as possible, will be made by the officer who served the notice.

Detention and Seizure

Food detention or seizure may be considered where:

- An inspection reveals food which appears to fail to comply with the food safety requirements set out in Section 8(2) of the Food Safety Act 1990 i.e.
- It has been rendered injurious to health.
- It is unfit for human consumption.

It is so contaminated that it would not be reasonable to expect it to be used for human consumption.

An Authorised Officer suspects that food does not meet the above requirements, and therefore requires it to be held or moved somewhere safe until the relevant tests are completed.

Information is received from another authority or organisation which suggests food is unfit.

Where food is clearly labelled as unfit, detention or seizure should not be necessary providing that the Officer is satisfied that the food will be properly disposed of.

The decision to detain or seize food must be taken on the basis of sound and reliable evidence with due regard to potential compensation claims.

Officers must carry out a full sensory examination of the food, noting all signs of unfitness in their notebooks for evidence.

The Team Leader (Commercial) or in their absence the Service Manager (Environmental Health) or the Head of Environmental and Customer Services must be consulted, where possible, before any action is taken or if not available before, as soon as possible thereafter.

In the event of a food poisoning outbreak, or where it is thought food could cause food poisoning, advice should be sought from the Consultant in Communicable Disease Control (CCDC), the FSA and from the Public Health Laboratory Service (PHLS) as necessary.

In the event of food contamination other than microbiological contamination, advice may also be sought from the Public Analyst as necessary. Consultation with

CCDC, FSA, PHLS (examiner) or KSS (analyst) may not be necessary where the contamination is so apparent and gross that its unfitness is likely to be apparent to a Justice of the Peace without further supporting evidence.

Voluntary Closure

Voluntary closure or other voluntary action may be deemed suitable where:

There is a serious risk to health due to infringements of Food Safety Legislation; and

The proprietor admits the offence; and

The proprietor undertakes to carry out the necessary works; and

An undertaking in writing can be obtained; and

There is no reason to believe that the proprietor will fail to honour the undertaking.

In certain circumstances, action other than closure may be deemed suitable, e.g:

Undertakings not to use certain equipment.

Undertakings to clean/disinfect prior to premises re-opening in the normal way e.g. overnight.

Emergency Prohibition Notices and Orders

If an authorised officer considers that there is an imminent risk to health posed by a food premises or process they may serve an Emergency Prohibition Notice. This requires the immediate closure of the premises or stops a particular process. An application must then be made within 3 days to the Magistrates Court to have the Notice confirmed with an Emergency Prohibition Order.

If the Court is not satisfied that there was an imminent risk of injury to health at the time the Notice was served, compensation may be payable by the Council to the business concerned.

These procedures must only be used if there is an imminent risk to health. However, the injury might occur some time later (e.g. risk to an unborn child) or might not happen to everybody exposed to the risk. Advice from the Consultant in Communicable Disease or from the Public Health Laboratory Service or FSA should be sought in cases of contaminated food in order to confirm the extent of the risk.

Outside expertise must be considered where the process or treatment under consideration involves specialist knowledge or qualifications. Officers must, if possible, discuss the situation with the Team Leader (Commercial) or in her absence the Service Manager (Environmental Health) before deciding to instigate emergency prohibition procedures.

Conditions where Emergency Prohibition may be appropriate:

- Serious infestation by rodents, insects or birds leading to actual contamination of food or a real risk of contamination.
- Very poor structural condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth etc. resulting in a real risk of contamination.
- Serious drainage/flooding defects leading to actual contamination or a real risk of contamination.
- Serious contraventions of the appropriate food safety legislation and where the operation has been or is involved with an outbreak of food poisoning.
- Any combination of the above which together represent an imminent risk of injury to health.

Conditions when prohibition of equipment might be appropriate:

- Use of defective equipment.
- Use of equipment involving high-risk foods which has been inadequately cleaned or disinfected or which is obviously grossly contaminated and can no longer be properly cleaned.

Conditions when prohibition of a process might be appropriate:

- Serious risk of cross contamination.
- Inadequate temperature control e.g. inadequate cooking temperatures.
- Operation outside critical control criteria e.g. incorrect pH where botulism is possible.
- The use of a process which is inappropriate for the product.

Prosecution

In considering a prosecution, the following factors should be taken into account:

- Seriousness of the alleged offence.
- Previous history of the defendant.
- Due diligence defences and other mitigating factors.
- Ability and co-operation of witnesses.
- Willingness of the defendant to prevent a recurrence
- .
- Probable public benefit of a prosecution
- .
- Whether other action is appropriate
- .
- Any explanation by the defendant.

The seriousness of the alleged offence

Regard should be given to the following factors:

- Whether there was demonstrable risk of harm to public health.
- Whether there are identifiable victims.
- Whether there was a failure to comply with a statutory notice.
- Whether there was a disregard of public health for financial reward.

The previous history of the defendant

Regard should be given to the following factors:

- Whether there is a history of similar offences.
- Whether there was a failure to respond to past warnings.
- Whether there was a failure to comply with statutory notices.
- Whether the defendant was taking due diligence.

Officers should bear in mind that previous offences can not be brought to the attention of the court except when sentencing is to be considered.

Failure to comply with a statutory notice is an offence however and can, therefore, be the basis of a court case.

Previous history may influence decisions regarding due diligence but any normal action taken more than 5 years ago should be ignored.

References to previous history does not preclude taking action against a new business.

Due Diligence

Due diligence is accepted as a defence under the Food Safety Act 1990. Officers should however have regard to the following factors:

- It is for the defendant to prove due diligence. They must accordingly be offered every opportunity to do so.
- The due diligence defence must be comprehensive, in that all reasonable precautions have been taken in respect of a particular problem, not just some. The precautions deemed necessary should have been foreseeable, not judged necessary in hindsight.
- The due diligence must normally be in writing, with documentation showing that the system is operating correctly and checked regularly.
- The lack of expert knowledge is no defence if such knowledge may be readily obtained e.g. by submitting foods for analysis, or where reasonable steps may be taken without expert knowledge.
- Blanket assurances from a supplier should not be accepted without specific assurances based on testing etc.
- The steps deemed reasonable will depend on the size and nature of the business.

□ Due diligence must be taken by the person in charge or delegated to an appropriate person.

□ It is deemed reasonable that a company which sets up a proper system and makes arrangements to check the system should be able to depend on a due diligence defence where offences are committed by employees.

Ability and co-operation of witnesses

Regard should be given to the following factors:

- Whether witnesses are physically/mentally/emotionally able to appear in Court and their other commitments will allow them to attend.
- Whether witnesses are willing to co-operate. Where a specific problem prevents co-operation e.g. an employee giving evidence against an employer, legal advice should be sought concerning the use of witness statements in such circumstances.

Willingness of the defendant to prevent a recurrence.

Where a defendant did not have a due diligence defence in respect of a particular offence, but then introduced suitable systems after the offence occurred, officers may consider whether a formal caution is more appropriate having regard to the other factors involved.

Similarly, where work has been carried out once the decision to prosecute has been made, a formal caution may be considered.

In most instances however, the decision to prosecute should stand, in order to prevent a situation arising where proprietors refuse to act until court action is threatened.

Probable public benefit of a prosecution.

Regard should be given to the following factors:

- Whether the offence is considered grave.
- Whether the defendant has shown willingness to prevent a recurrence of the problem.
- Whether the case may set a legal precedent.
The attitude of the complainant should be borne in mind, and public benefit may be taken to include justice for the complainant.

Whether other action is appropriate.

Informal action could be considered where:

- The case is not serious and/or
- The previous history is good and/or
- The company is willing to prevent a recurrence and/or
- There is little public benefit in prosecution

Informal action must be considered where:

- There is a good likelihood of a due diligence defence being upheld.
- Witnesses are unable or unwilling to support formal action.

Formal cautions must only be considered where there is adequate evidence to support a prosecution. Formal cautions may be considered where the seriousness of the case warrants prosecution but: The previous history is good and/or

- The company is willing to prevent a recurrence and/or
- There is little public benefit in prosecution and
- The defendant admits the offence.

The nature of the evidence available

In addition to deciding whether a prosecution should be taken, Officers should decide whether a prosecution can be taken. Regard should be given to the following factors:

- Whether the evidence clearly identifies a person or company as having committed an offence.
- Whether that person or company is within this country's jurisdiction i.e. they are based in this country.
- Whether the evidence is relevant, admissible substantial and reliable, and in particular:
 - A clear chain of events has been established showing that the offence could not have occurred at some other time or place.
 - Any witness statements from the defendant have been obtained under caution where necessary. Officers must therefore have regard to 'PACE' procedures.

- Whether important witnesses are able or willing to cooperate.
- Whether there is a reasonable prospect of conviction.
- Whether the authority can be seen to have been reasonable in bringing the case and in the methods used to investigate the case.

Prosecution will be appropriate in a number of different circumstances, e.g

1. Where formal notices have not been complied with.
2. Where informal action has failed, either in the past or the present.
3. Where there has been negligence resulting in a contravention.
4. Where the risk presented by a situation is so significant or serious that informal action would be inadequate.
5. Where in addition to a formal notice, punitive action would be justified.
6. Where prosecution would provide a useful deterrent against a repeat of the offence.
7. Where prosecution would provide useful deterrent publicity.

6 and 7 would not be sufficient grounds for prosecution on their own. In the interests of consistency it is important that cases which might lead to prosecution are fully considered

by the Team Leader (Commercial), the Service Manager (Environmental Health), the Head of Environmental Services and the Legal Section.

Prior to authorising legal proceedings the holder of the Environment Portfolio and the local member(s) will be consulted.

The final decision as to whether a prosecution should proceed does not, however, rest with them but with the officers to whom it has been delegated.

Formal Cautions

A formal caution may be issued if:

- The seriousness of the case etc. warrants prosecution; and
- The evidence available would support prosecution; and
- There is a willingness to prevent a recurrence or work has been carried out since a decision to prosecute has been made and/or
- There is good reason to avoid giving the defendant a criminal record
- The previous history is good or
- There is little public benefit in prosecution or
- An approach has been made by the defendant requesting a formal caution.

Formal cautions will only be issued by the Head of Housing and Environmental Health or the Service Manager (Environmental Health). If a person declines the offer of a

formal caution, alternative enforcement action will be taken. In most cases this will be prosecution.

Food Safety Enforcement

Officers must ensure that they follow Sevenoaks District Council Enforcement Policy and the appropriate procedures when identifying and assessing risk and determining the appropriate enforcement action, in order to ensure uniformity of enforcement throughout the District.

Sevenoaks District Council will ensure that Officers are suitably trained and authorised before they carry out food safety enforcement tasks. Officers should therefore only carry out those tasks allotted to them by their line manager, and should seek further clarification and/or assistance if a food premises or complaint is found to be outside their normal range of experience.

Any departures from the Enforcement Policy or the procedures must be exceptional, capable of justification and be approved by the Head of Service. The reasons for the departure must be documented.

Liaison with other organisations

The Council is committed to ensuring that, as far as possible, food safety enforcement in the Sevenoaks District Council area is consistent with enforcement by other authorities locally and throughout the country.

The Council will have regard to the Home Authority Principle when considering taking enforcement action against companies with branches in different Local Authority areas.

Any departures from or queries arising under the Codes of Practice made under the Food Safety Act or from LACORS guidance notes should be notified to the Team Leader (Commercial) in order that it may be brought to the attention, where necessary, of the Kent Food Liaison Group or LACORS.

An officer from the Commercial Team will act as liaison officer with the Kent Food Liaison Group and LACORS. Liaison with other organisations will ensure that the Sevenoaks District Council Enforcement Policy does not significantly differ from enforcement carried out by neighbouring authorities.

Officers from the Commercial Team will also liaise with other enforcing authorities to ensure that, in cases where more than one body has enforcement responsibility, the most effective course of action is chosen.

This may involve, for example, agreement that one organisation should take the lead in the investigation and the other should assist or that each organisation should cover a separate aspect of the case.

Examples would be the situation where Trading Standards and Environmental Health can enforce the 'use by date' provisions of the Food Labelling Regulations 1996, or an investigation into some aspect of food safety which involved activities in more than one council's area.

Confidentiality and conflicts of interest

Officers enforcing the Sevenoaks District Council Enforcement Policy must bear in mind the need to:

1. Maintain confidentiality in respect of information obtained and action taken when enforcing this policy.

2. Avoid possible conflicts of interest or, where this is not possible, notify the Team Leader (Commercial) as appropriate. The possibility of another officer taking responsibility for a particular inspection or complaint must be considered where:
 - The Officer has a formal involvement or is active in an organisation (e.g. a club)

 - The Officer is a friend or relative of a person involved with a business, premises etc.

 - The Officer has an involvement in a similar line of business.

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