

OADBY & WIGSTON BOROUGH COUNCIL

FOOD SAFETY ENFORCEMENT POLICY



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Oadby & Wigston
BOROUGH COUNCIL

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GENERAL ENFORCEMENT

1. Introduction

This document sets out what business and others being regulated can expect from Oadby & Wigston Borough Council's enforcement officers. It builds upon and should be read in conjunction with the Corporate Enforcement Policy adopted by the Council in 2018. The Corporate Enforcement Policy is based on the principles of good enforcement contained in the Regulators Code (April 2014) produced by the Better Regulation Delivery Office (now the Office for Product Safety & Standards). Whilst following the corporate approach, this policy will provide information in greater detail on how food safety legislation is applied.

This policy demonstrates our commitment to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006, the Enforcement Concordat and the Regulators Code. By adopting the Concordat, we commit ourselves to policies and procedures which contribute to best value and will provide information to show that we are observing them.

The Council also takes into account advice contained in the Code for Crown Prosecutors, and endeavours to ensure that it supplements the advice outlined in specific enforcement guidance from other sources, including the Codes of Practice made under Section 40 of the Food Safety Act 1990.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Oadby & Wigston Borough Council is committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance by those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while only intervening where there is a clear case for protection. All citizens will reap the benefits of this policy through better information, choice and safety.

There are many instances where the enforcement responsibilities of the authority are shared by, or are complementary to, those of other agencies. Where these shared responsibilities exist, we will endeavour to set up, or join, liaison groups or working parties to ensure cost effective and efficient service delivery. Where situations occur in which shared enforcement with other agencies is appropriate, then a full exchange of information between those agencies will be implemented.

2. Equality Impact Assessment

In preparing this policy, due consideration has been given to the needs of diverse community groups within the Borough of Oadby & Wigston. This has been borne in mind when considering the roles and responsibilities of enforcement officers in promoting fairness, equality and diversity in the delivery of service.

3. Standards - General Enforcement Policy

Where enforcement action is necessary, officers of the Council will take appropriate action dependent upon the seriousness of the breach of the law.

The Council will consult with businesses and other interested parties on the development of clear standards which set out levels of service and performance that residents of, businesses within and visitors to the Borough can expect to receive. Performance against these standards will be published annually.

Decisions on the course of action to be undertaken will consider the principles of good enforcement as set out in the Enforcement Concordat namely:

3.1 Openness

The Council will provide information and advice in plain language on the rules that we apply. We will disseminate it as widely as possible. We will be open about how we set about our work including any charges we set, consulting with businesses, voluntary sectors, other organisations and residents of the Borough. We will discuss general issues, specific compliance factors or problems with anyone experiencing difficulties.

3.2 Helpfulness

The Council believes that prevention is the best approach and that our role therefore involves actively working with businesses, especially small and medium sized businesses, to advise on and assist with compliance. We also believe in taking the same approach in our dealings with residents of, and visitors to, the Borough.

The Council will provide a courteous and efficient service. Our staff will identify themselves by name. We will provide a contact point and telephone number for future dealings with the Council. We will encourage all those who have dealings with us to ask us for advice and information.

We will deal efficiently and promptly with applications for approvals, licenses, registrations etc. Wherever possible, we will ensure that our enforcement services are effectively organised to avoid unnecessary overlaps and time delays.

3.3 Proportionality

The Council will make compliance as straightforward as possible by ensuring that any action we require is proportionate to the risks and to the seriousness

of the breach. Resolution will be sought at the lowest level of intervention as appropriate to the case, considering the circumstances and the attitude of those subject to regulation when considering what action to take.

We will take particular care to work with small business, community and voluntary groups and individual residents so that they can meet their legal obligations without unnecessary expense where applicable.

3.4 Consistency

The Council will carry out its duties in a fair, equitable and consistent manner.

Officers are expected to exercise their professional judgment in individual cases, but we will have arrangements in place to promote consistency, including effective liaison with other authorities locally, countywide, and nationally.

3.5 Transparency

The Council will ensure all regulatory requirements as well as changes to those requirements are promptly communicated to relevant businesses.

The Council will provide clear and reliable advice and guidance to make it easier for businesses to understand and meet their regulatory obligations.

When offering compliance advice, the Council will distinguish between statutory requirements and advice and guidance aimed at improvements above the minimum standards.

The Council will provide appropriate means to ensure that businesses can reasonably seek advice from us without triggering enforcement action.

3.6 Accountability

The Council will create effective consultation and feedback with businesses. Enforcement activities will be open to public scrutiny, with clear and accessible policies and a fair and efficient complaints procedure.

3.7 Targeted

Enforcement will be primarily directed towards those activities that are likely to give rise to the greatest risks and most serious breaches of legislation, reflecting local and corporate priorities. Risk assessment will inform all aspects of our approach to regulatory activity and be based on all available relevant and good quality data.

3.8 Economic Progress

In addition to the principles of the Concordat the Councils' approach to enforcement will have regard to the Compliance Code which is based on recommendations of the Hampton Report. The Council will therefore consider the impact regulatory interventions may have on economic progress. We will only adopt a particular approach if the benefits justify the costs.

The Council will make reasonable attempts to ensure that the burdens of our interventions fall fairly and proportionately on small businesses by considering their size. This Council will allow for reasonable variations to standards to meet local priorities.

THE FOOD SAFETY ENFORCEMENT POLICY

4. Framework Agreement on Local Authority Food Law Enforcement

The Authority shall set up, maintain and implement a documented enforcement policy in accordance with the relevant Food Safety Codes of Practice, the Enforcement Concordat and other official guidance, approved by the relevant Local Authority Member forum.

The enforcement policy or an accurate summary should be readily available to the public and food businesses in the Authority's area.

The Authority shall set up, maintain and implement documented procedures for follow up & enforcement actions in accordance with the relevant Food Safety Act Codes of Practice and official guidance

The Authority shall carry out food law enforcement in line with the relevant Food Safety Act Codes of Practice.

All decisions on enforcement action shall be made following consideration of the Authority's enforcement policy. The reasons for any departure from the criteria set out in the enforcement policy shall be documented.

5. Scope of the document

This document applies to the Environmental Health department food safety functions.

The purpose of this document is to state the Authority's general policy with respect to food law enforcement; following the principles of good enforcement contained in the Enforcement Concordat, Regulator's Code and guidance issued by the Food Standards Agency.

This policy builds upon the principles of good enforcement set out in the Council's Corporate Enforcement Policy in relation to food safety law enforcement.

6. General Food Safety Enforcement Policy Statement

This Council is committed by action through education, training and enforcement to ensuring that food and drink intended for human consumption,

which is produced, stored, distributed, handled or consumed within the district is without risk to the health or safety of the consumer and satisfies the requirements of the Food Safety Act 1990 & other relevant legislation.

Enforcement action will be based upon risk to public health, or the seriousness of the non-compliance with food safety law.

It is the Council's aim to achieve and maintain consistency in its approach to enforcement. It is therefore committed to supporting the Government Statutory Code of Practice issued under Section 40 of the Food Safety Act 1990 and to such other guidance and industry codes as may be issued by recognised and authoritative bodies on food and food related matters.

If an enforcement matter is professionally contentious, or appears to be of national significance, or it is felt that existing guidance has not adequately taken account of the legal provision, Case Law, relevant research or other evidence, the matter will be put to the Leicestershire Food Hygiene Liaison Group for consideration and possible referral to national bodies in order to ensure consistent enforcement.

Only suitably trained officers will be employed by the Council on food law enforcement activities, with initial and refresher training consistent with those required in the Section 40 Code of Practice and departmental policies.

Officers will be fully equated with, and abide by, the policy when making enforcement decisions. Any departure from the policy will be exceptional, capable of justification and be fully considered by senior managers within the Law and Democracy Service Area before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.

The policy shall be reviewed regularly or in the light of new legislation or guidance with any developments incorporated.

7. Complaints Policy

We are committed to providing ready access to those wishing to appeal or complain about enforcement action, in accordance with the Council's corporate complaints procedure. However, areas where there is a formal right of appeal or a legal remedy must be resolved through the legal process.

Should anyone wish to complain informally, initial contact should be made with the Lead Food Officer to discuss the issues of concern. This may be in person, by telephone, writing or email.

If a complainant wishes to make a formal complaint, or the complainant is not satisfied with the informal response, an initial formal complaint can be made in writing, by telephone or email, in person or by completion of the Council's complaints form. The Council's Corporate Complaints Procedure is available on our website and if complaints cannot be resolved informally, the complaint will be referred through this process.

At this point all the stages of the Council's Complaints Procedure will have been initiated and should have resolved the problem satisfactorily. If still dissatisfied, the complainant can approach the Local Government Ombudsman for adjudication.

8. Authorisation

No officer will carry out a food hygiene inspection and enforcement duties unless suitably trained, experienced and authorised by the Head of Law and Democracy.

The purpose of this section is to state the Council's constitutional framework with respect to:

- a) Designating the officers who may authorise a prosecution under the Food Safety legislation.
- b) Identifying the limits of powers delegated to Food Enforcement Officers.
- c) Identifying the competencies necessary for Food Enforcement Officers to be authorised to undertake enforcement action.

Authorisation to prosecute in individual cases will be in accordance with the Council's current Constitution.

Enforcement action under the Food Safety Act 1990 or related legislation will be initiated by qualified, experienced and competent Enforcement Officers.

8.1 The Delegation Framework

- a) Where, through upholding the principles outlined in the policy document, a prosecution is necessary, the following officer may authorise such action – Head of Law and Democracy or any other legal qualified person authorised by him.
- b) The following designated Officers will also be consulted as part of the prosecution decision making process – Lead Food Officer (Environmental Health).

Other officers may be consulted in addition to external advisors / experts where appropriate.

The designated Officers who are responsible for authorising a prosecution will be aware of the limits of their delegated powers by reference to the Councils Constitution, Statutory Codes of Practice and any other forms of guidance, including the principles set out in this policy.

Only officers who have been authorised by the Council to issue Hygiene Improvement Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.

Only officers who have been authorised by the Council to issue Remedial Action Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.

Only officers who have been authorised by the Council to issue Hygiene Emergency Prohibition Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.

8.2 Training

The criteria used to assess the competence of Food Enforcement Officers are those detailed in Council policy documents as well as specific requirements demanded in section 40 Statutory Code of Practice competency framework.

In addition, the Council will provide appropriate initial and updated training to Food Enforcement Officers as is deemed necessary to enable them to carry out their duties efficiently and effectively. This will include the following:

- (a) Minimum update training of 20 hours per year for continual professional training of which 10 hours will be on core food matters.
- (b) Minimum of 15 hours revision training for authorised officers returning to food law enforcement.
- (c) Minimum of three months monitoring of newly qualified officers or Officers returning to food law enforcement duties after an absence of more than 3 years.

In most instances, food safety enforcement action other than prosecution will be instigated by Environmental Health Officers and Technical Officers.

9. Primary Authority Notification

Section 28 of the Regulatory Enforcement and Sanctions Act 2008 requires enforcing authorities that wish to take enforcement action against a business which has a Primary Authority, to first notify the primary Authority of the proposed action. Enforcement action is widely defined for the purposes of the Act by the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended.

Statutory guidance on the scheme requires the notification of proposed enforcement action by the enforcing authority:

- Should be made via the Primary Authority Register;
- Should be itemised, where multiple enforcement actions are being proposed; and
- Should include specific details set out in the statutory guidance and in the notification template on the Primary Authority Register.

The statutory guidance also requires that, when making a notification, an enforcing authority should ensure that during the five working days following the notification, it is able to respond to requests from the primary authority for further information or clarification.

The Primary Authority has five working days to decide if it objects or not to the proposed enforcement action. If the Primary Authority or Regulated Business objects, they are entitled to refer the matter to the Office for Product Safety & Standards for consideration within 28 days. OPSS determinations must be adhered to.

The legislation acknowledges that there will be times when the need to act swiftly is critical and it allows for notification to the Primary Authority to be retrospective in certain defined circumstances. This applies to:

- Hygiene Emergency Prohibition Notices
- Enforcement action that is required urgently to avoid significant risk of harm to human health.

In their enforcement activities, all officers employed by Oadby & Wigston Borough Council will have due regard to the Primary Authority principles.

10 Enforcement Options

The purpose of this section is to state the authority's policy with respect to:

- (a) Achieving and maintaining consistency of approach in deciding on enforcement action concerning food safety.
- (b) Ensuring commitment to an approach in all enforcement decisions that is fair and balanced and based on common standards to protect the public.

Enforcement options available, after consideration of all relevant information and evidence, are:

- (a) Take no action
- (b) Take informal action
- (c) Issue Statutory Notices
- (d) Prosecution
- (e) Issue Simple Cautions
- (f) Take prohibition action
- (g) Suspension or withdrawal of approvals

The policy of this Council is as follows:

10.1 No Action

Where an intervention or investigation reveals full compliance with the relevant Food Safety and Food Standards Legislation / Codes of Practice, no further action is required, apart from issuing a post intervention report as required in Section 40 Code of Practice. The results of the inspection will be recorded in the premises file.

10.2 Informal Action

Informal action to secure compliance with legislation may be given in the form of:

- Verbal Advice
- Written advice
- Written warnings

In deciding to take informal enforcement action many criteria will be considered, including:

- (i) Whether the act or omission is serious enough to warrant formal action.
- (ii) Whether past compliance history indicates that informal action can be expected to achieve full compliance.
- (iii) Whether officers' confidence in the management of the premises is high.
- (i) Whether the consequences of non-compliance will pose a significant risk to public health.
- (v) Whether, even when some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.
- (vi) The availability of a due diligence defence (acting with reasonable care).

Following a food hygiene inspection an Enforcement Officer will issue an intervention report as prescribed in the Section 40 Code of Practice. The report will confirm all matters discussed at the closing meeting with a Food Business Operator and confirm any verbal advice given at that time. The report will be sent to the Food Business Operator of the business and will contain equivalent details to those prescribed in Annex 6 – Food Business establishment/food premises intervention report:

- (i) Outline the regulations being contravened.
- (ii) Contain all the information necessary to understand what work (if any) is required and why it is necessary.
- (iii) Clearly indicate measures which are recommendations of good hygiene practice and which are legal requirements.
- (iv) Indicate the time allowed for meeting any legal requirements.

Revisits to premises following an intervention will be made where significant

contraventions of food hygiene or processing regulations and/or poor hygiene practices are found.

10.3 Hygiene Improvement Notices

The use of Hygiene Improvement Notices will, in general, be related to a risk to health. They will not be issued for minor technical infringements of the law, hence they may be appropriate in any of the following circumstances or a combination thereof:

- Formal action is proportionate to the risk to public health;
- There is a record of non-compliance with breaches of the food hygiene regulations; and
- The authorised officer has reason to believe that an informal approach will not be successful.

Authorised officers will follow the relevant Section 40 Code of Practice and guidance on the issue of Hygiene Improvement Notices, including the placement of realistic time limits for compliance, preferably agreed with the Food Business Operator, although the final decision will rest with the Officer. The authorised Officer will also discuss with the Food Business Operator what must be done and will consider all the options available.

Consideration for an extension of time to comply with a Hygiene Improvement Notice will be viewed favourably if the Food Business Operator has a genuine reason for requesting one. When deciding on a request for an extension the following will be considered:

- (i) the risk to public health associated with the fault if an extension was granted;
- (ii) the reason for the request;
- (iii) the remedy involved;
- (iv) the past record of co-operation of the Food Business Operator;
- (v) Any temporary action which the Food Business Operator proposes to take to remedy the defect.

The Food Business Operator will be advised at the time of service of the notice that any request for an extension of the time limit should be made in writing before the expiry date of the notice.

Once the request for an extension of time has been considered the Food Business Operator will be advised, in writing, as to whether the request was adjudged reasonable or otherwise. The reasons for that decision will be explained and any new time limits reconfirmed.

Failure to comply with a Hygiene Improvement Notice will, in general, result in legal

proceedings being instigated.

We will notify other appropriate bodies of any Hygiene Improvement Notice served and its outcome where necessary. This will include any other appropriate enforcement authorities.

10.4 Remedial Action Notices/Detention Notices

Powers to issue Remedial Action Notices and Detention Notices in respect of establishments subject to approval under Regulation 853/2004 are provided by regulation 9 of the Food Safety and Hygiene (England) Regulations 2013.

Approach to enforcement.

Authorised officers will, wherever possible seek to remedy non-compliance in establishments subject to approval under Regulation 853/2004 by a graduated approach to enforcement. When necessary, the option to issue Hygiene Improvement Notices should be considered. Authorised officers should consider these options before commencing any other enforcement action. However, Remedial Action Notices and/or Detention Notices may be used, when appropriate.

Authorised officers may serve a Remedial Action Notice if any of the requirements of the "Hygiene Regulations", as defined by regulation 2 of the Food Safety and Hygiene (England) Regulations 2013, are being breached or an inspection under the "Hygiene Regulations" is being hampered. More specifically, this provision provides, through the service of a Remedial Action Notice, for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or, stopped completely.

Regulation 9 also includes the provision for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:

- the 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 Safety and Hygiene (England) Regulations 2013;
- 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 Regulations; and
- where the rate of operation of the business is detrimental to its ability to comply with the Regulations.

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

- where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary, including the taking of samples.

Such action should be proportionate to the risk to public health and where immediate action is required to ensure food safety. A Remedial Action Notice may be used if a continuing offence requires urgent action owing to a risk to food safety or when corrective measures have been ignored by the food business operator and there is a risk to public health. As soon as the authorised officer is satisfied that the action specified in a Remedial Action Notice has been taken, the notice must be withdrawn by means of a further notice in writing. Similarly, in respect of a Food Detention Notice, if the authorised officer is satisfied that the food need no longer be detained, the relevant notice must also be withdrawn by means of a further notice in writing.

10.5 Hygiene Emergency Prohibition Notices

The serving of a Hygiene Emergency Prohibition Notice to close premises or a part of the premises, to require a discontinuation of use of equipment or a process, is an action which will not be entered into lightly. A Hygiene Emergency Prohibition Notice will only be considered if an authorised Officer has evidence that a health risk condition is fulfilled i.e. there is an imminent risk of injury to health. Examples of health risk conditions which may warrant prohibition, which are not prescriptive or exhaustive, include:

Health risk conditions where prohibition of premises may be appropriate

- 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.
- General failure to implement the FSA Guidance: Controlling the Risk of Cross-Contamination from E. coli O157 which presents an imminent risk to public health.
- 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, include:

- 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. For example, the dual use of complex equipment, such as vacuum packers, for both raw and ready to eat foods without verification and HACCP procedures to ensure effective cleaning and disinfection is in place. (With regard to the FSA Guidance: Controlling the Risk of Cross-Contamination from E. coli O157)
- 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.

Where a Food Business Operator volunteers to close a premise or cease to use any equipment, process or treatment, but where there is either:

- (1) No confidence in the integrity of the Food Business Operator; or
- (2) The Food Business Operator is unwilling to confirm in writing his/her offer of a Voluntary prohibition.

An application for a Hygiene Emergency Prohibition Order will be made to the Magistrates Court within 72 hours of the issue of a Hygiene Emergency Prohibition Notice.

Officers will notify other appropriate bodies of any Hygiene Emergency Prohibition Orders served and its outcome where necessary. This will include any other appropriate enforcement authorities.

10.6 Voluntary Prohibition

Should a voluntary offer to close a premise or cease the use of any equipment, process or treatment be accepted the Officer will explain to the Food Business Operator that, by making the offer to close, he is relinquishing the rights to compensation if a court subsequently declines to make a hygiene emergency prohibition order.

If an authorised officer is minded to accept any voluntary offer from a Food Business Operator the officer will:

- (i) determine whether the nature and extent of the offer would have at least the equivalent effect of the service of a Hygiene Emergency Prohibition Notice.
- (ii) require an offer document signed and dated by the Food Business Operator setting out the nature and extent of the offer & countersigned by the authorised officer.

11 Food Safety Prosecution Policy

This section details the Council's criteria on which a decision is made whether to prosecute.

The Council always has the discretion of whether or not to prosecute for an offence. The decision to prosecute is a very significant one and is not taken lightly and is based on the circumstances of each case laid out in the policy below.

11.1 The Policy

A breach of law will not automatically result in legal proceedings. The circumstances which are likely to warrant prosecution may be characterised by one or more of the following criteria:

- (a) There is a flagrant breach of law such that public health, safety or well-being is put at risk, or there is a serious offence under food standards legislation.
- (b) A failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to do so.
- (c) A failure to comply in full or part with a Statutory Notice, approval or registration.
- (d) There is a history of similar offences related to risk to the public or food standards offences.
- (e) A Simple Caution has previously been issued for a similar offence.

Before a prosecution proceeds, the enforcement officer will need to be satisfied that the case is in the public interest and is supported by sufficient relevant evidence which is:

- (a) Admissible
- (b) Substantial
- (c) Reliable

The guidance contained in Section 40 and the Code for Crown Prosecutors will be followed and all the following factors taken into account:

- (a) The seriousness of the alleged offence.
- (b) The previous history of the party concerned.
- (c) The likelihood that a defence of due diligence (acting with reasonable care) can be established.

- (d) Whether important witnesses are willing and able to co-operate.
- (e) Willingness of the party to prevent the problem recurring.
- (f) Whether prosecution would be of public benefit.
- (g) Whether a Simple Caution, Hygiene Improvement or Hygiene Prohibition Notice might be more appropriate.
- (h) Any explanation offered by the party concerned.

In addition to the above criteria authorised Officers will have regard to the Statutory Code of Practice for Regulators

Investigation and decision making will not be unduly prolonged or delayed. It will be in accordance with principles laid out in the:

- (i) Human Rights Act 1998
- (ii) Police and Criminal Evidence Act 1984
- (iii) Regulation of Investigatory Powers Act 2000

We will keep witnesses, complainants or other parties informed as to the progress of the case.

The final decision whether to prosecute or not is matter for the Head of Law and Democracy or any other legally qualified person appointed by him.

Following a successful prosecution, a Hygiene Prohibition Order may be imposed by the Court where it considers that the premises, equipment or process put the public health at risk. The Court may also ban the Food Business Operator, and/or manager, from managing a food business. Where the Council intend to seek a Hygiene Prohibition Order under Section 11 of the Food Safety Act 1990 it will:

- (a) Ensure that it can satisfy the Court that there was a public risk.
- (b) Prior to the hearing notify the Food Business Operator, or their representative, in writing or orally of its intentions to seek a Hygiene Prohibition Order, and consequently any evidence which will be disclosed in advance.
- (c) Make enquires for evidence of previous convictions or warnings.

The Officer principally involved in the case will attend court in person even when a guilty plea has been lodged, so they can give further evidence, should the court require it before granting a Hygiene Prohibition Order, and note any mitigating evidence submitted.

11.2 Post Prosecution

Following a successful prosecution, the Council will:

- (a) Notify any relevant authority of the conviction and any Hygiene Prohibition Orders in sufficient detail for other authorities to make use of the intelligence.
- (b) Notify other appropriate enforcement authorities.
- (c) With respect to complaints, notify the complainant of the outcome of the case.

12 Simple Cautioning

This section details the Council's procedures with respect to Simple Cautions, viz:

- (a) When it is appropriate to use a Simple Caution.
- (b) That the use of Simple Cautions will be in accordance with the Ministry of Justice Guidance Simple Cautioning of Adult Offenders (April 2015).
- (c) The designation of the Cautioning Officer.
- (d) What to do when a person declines the offer of a Simple Caution.
- (e) Notifying other bodies or authorities, if appropriate.

The procedure aims to ensure consistency in using cautions.

12.1 The Aims of Cautioning

The aim of a Simple Caution is to:

- deal quickly and simply with offences
- divert offenders where appropriate from appearing in the criminal courts; and
- reduce the likelihood of re-offending

12.2 The Criteria for Cautions

A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in Home Office Circular 016/2008 or any replacement thereof and therefore there must be:

- (i) Sufficient evidence of the offenders' guilt to make a conviction a realistic prospect;
- (ii) A clear & reliable admission of guilt by the offender; and

- (iii) It is in the public interest to use a Simple Caution taking into account the public interest principles set out in the Code for Crown Prosecutors

Factors which will be taken into account on whether to issue a Simple Caution include:

- (a) The nature and seriousness of the offence
- (b) The likely penalty
- (c) Previous offence history and attitude to the offence for which a simple caution is contemplated.

We will inform the offender in writing that we propose to issue a Simple Caution.

The Simple Caution will be administered in person by the Cautioning Officer, who is the Head of Law and Democracy or any other legally qualified person appointed by him..

The Simple Caution will be issued in writing. Two copies will be signed firstly by the person receiving and then the person administering the caution. One of the copies will then be given to the person receiving the caution.

If the offender refuses to accept a Caution or fails to return the signed copies within 14 days, we will consider taking legal proceedings.

12.3 Recording Offences

We will record details of the offence in the appropriate premises file.

12.4 Notifying Other Bodies

We will notify appropriate enforcing authorities of the Caution as soon as possible after its issue.

If the offence relates to a complaint, we will inform the complainant that a formal caution has been issued.

13 Suspension/Withdrawal of Approval/Conditional Approval

These enforcement options are available in establishments subject to approval under European Community Regulation No.853/2004.

Powers to withdraw and suspend an approval/conditional approval are provided by Article 31(2) of Regulation 882/2004

Any suspension or withdrawal of an approval takes immediate effect. As a result, the establishment must not be used for any activities which would render it subject to approval under regulation 853/2004.

On discovery of non-compliance in establishments subject to approval, this Council will explore the use of all other enforcement options to control the food hazards presented before considering suspension or withdrawal. Non-compliance will not necessarily be considered sufficient to justify the immediate suspension or withdrawal of an establishment's approval/conditional approval.

13.1 Suspension

Oadby & Wigston Borough Council will only initiate procedures to suspend an establishment's approval or conditional approval after other enforcement options have been considered.

13.2 Withdrawal

Oadby & Wigston Borough Council will only initiate procedures to withdraw an establishment's approval or conditional approval if other enforcement options have been considered, including suspension of the approval.

An establishment's approval or conditional approval will only be withdrawn in circumstances where the food business operator is unable to satisfy the Council to the extent that there is reasonable expectation that the identified deficiencies will be rectified, and an acceptable standard will be maintained in the future.

13.3 Notifications

Any decision to suspend or withdraw an establishment's approval/conditional approval will be notified in writing to the food business operator. The notice will give the reasons for the suspension or withdrawal, the matters necessary to satisfy the requirements of the Regulation, detail the right of appeal against the decision and make it clear that activities requiring approval cannot be undertaken.

The Council will notify the Food Standards Agency of the decision and retain a copy of the written notification on the premises file.

Appeal against decision to refuse/suspend/withdraw

Following an appeal against a decision of Oadby & Wigston Borough Council to refuse or withdraw an approval, the food business operator may continue to undertake activities requiring approval, pending the results of the appeal. This provision does not extend to appeals against the suspension of an approval.

If the Council considers that any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, the Council will consider the use of other relevant enforcement powers.

14 Relevant Documents

- 1) Food Safety Act 1990
- 2) Regulations made under the Food Safety Act 1990
- 3) Industry Guides to Good Hygiene Practice
- 4) Ministry of Justice – Cautioning of Adult Offenders
- 5) Police and Criminal Evidence Act 1984
- 6) Police and Criminal Evidence Act 1984, Codes of Practice
- 7) Crown Prosecution Service: The Code for Crown Prosecutors (January 2013)
- 8) Criminal Procedure and Investigations Act 1996 and Home Office Code of Practice
- 9) Food Standards Agency - Framework Agreement on Local Authority Food Law Enforcement
- 10) Human Rights Act 1998
- 11) Regulation of Investigatory Powers Act 2000
- 12) Statutory Code of Practice for Regulators (Compliance Code) produced by the Department for Business Enterprise & Regulatory Reform
- 13) Enforcement Concordat, produced by Central Government
- 14) Reducing administrative burdens: effective inspection & enforcement - Phillip Hampton March 2005
- 15) FSA Guidance: Controlling The Risk Of Cross-Contamination From E.coli O157 2011 and supplemented version 2013
- 16) Food Law Code of Practice (England) March 2021
- 17) Module 9 Primary Authority Handbook
- 18) The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (665)
- 19) Regulatory Enforcement and Sanctions Act 2008

