



Oadby & Wigston
BOROUGH COUNCIL

FOOD SAFETY ENFORCEMENT POLICY (FEBRUARY 2019)

Version Control

	Date	Circulated:	Notes
1.	22.11.18		Draft
2.			Committee
3.			Amended by Committee

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1.0 Introduction

This policy sets out what businesses and others who are regulated by Oadby and Wigston Borough Council can expect from our enforcement service. It commits us to:

- Protecting the public, the environment and groups such as consumers and workers
- Equitable and consistent enforcement actions
- Allowing and encouraging economic progress in our borough
- Taking care to help businesses and others meet their legal obligations
- Reducing unnecessary burdens on businesses
- Responding proportionately to regulatory breaches, including those of criminal behaviour which would have a damaging effect on legitimate business
- Taking firm action, including prosecution where appropriate, against those who persistently flout the law or act irresponsibly

By delivering these commitments, we believe we shall help to maintain a fair and safe trading environment and to promote the local economy.

We recognise that most businesses want to comply with the law and it is our commitment to help and encourage them to do so.

1.1 The Council's Vision and Corporate Plan Priorities

Our vision – We want to deliver a Stronger Borough Together

We want to create a positive image of the Borough which supports people, businesses and investment in the area, and improves confidence, pride and dignity so that everyone can enjoy a good quality of life in their neighbourhood.

Our values – The way we will work **Accountability, Respect, Teamwork, Innovation, Customer Focus**

Three of Oadby and Wigston Borough Council's Corporate Priorities which relate to the food safety enforcement work undertaken by the Environmental Health and Licensing Teams are:

Effective Service Provision

Well Being for All

Balanced Economic Environment

1.2 **Scope of the Policy**

The aim of this policy is to ensure that all enforcement action we take is proportionate, consistent, transparent, targeted and accountable.

In applying this policy we will –

- Enforce only within our areas of responsibility
- Work with employers, businesses and/or proprietors to achieve compliance with the law through education, the provision of advice and information and inspection
- Apply a risk based approach that is proportionate, targeted and flexible
- Adopt the principles of good enforcement (see Appendix A)
- Set clear guidance for officers to follow
- Provide adequate resources to enable the policy to be carried out

2.0 Regulatory Framework

All enforcement activity will be undertaken with due regard to the provisions of the relevant legislation as may be amended by statute:

Food Safety Act 1999

Food Safety & Hygiene (England) Regulations 2013

Regulation (EC) No. 852/2004

Regulation (EC) No. 178/2002 as applied by the General Food Regulations 2004

3.0 Equalities Statement

At Oadby and Wigston Borough Council we are committed to equality and diversity in everything we do and this policy will be administered in accordance with this.

The Council strives to provide the best possible services to the diverse communities of Oadby and Wigston Borough. We aim to be a community leader and an effective corporate body which recognises and responds to the different needs of our community - those who visit, live or work in our district. To meet those needs we aim to develop and maintain a safe and sustainable community for everyone.

Oadby and Wigston Borough Council uses the Equality Framework for Local Government as a tool; to ensure its continuous development in providing fair and equitable services and also meet its legal duty under the Equality Act 2010

The Corporate Equality and Inclusion policy states that the Council is committed to ensuring that individuals and groups representative of the 'Protected Characteristics' are not discriminated against and that there is equality of opportunity for all people taking into account their individual needs.

4.0 The Enforcement Concordat - General Principles

The Enforcement Concordat has been written and developed in accordance with the Cabinet Office, Enforcement Concordat (1998).

4.1 The Enforcement Concordat

The National Enforcement Concordat seeks to disseminate good practice and the principles of good enforcement. It is, therefore, incumbent upon any enforcing officer or agency to adopt these principles during all enforcement actions.

A summary of the provisions are as follows:-

4.2 Standards

In consultation with the three citizen's panels, community groups, partners and other interested parties, we will draw up clear standards setting out the level of service and performance that the public and businesses can expect to receive. We will publish these standards and our annual performance against our service plan.

4.3 Openness

We will provide accessible information and advice, in plain language, on the legislation that we enforce. We will be open about how we set about our work, consulting local residents, business, community groups, partners and other interested parties.

4.4 Helpfulness

We believe that education plays a big part in the work that we do; we will actively work with local schools, community groups and 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 offer a contact point and telephone number to encourage further liaison. Requests for service, enquiries and complaints will be dealt with efficiently and promptly. We will strive to ensure that wherever practicable, our activities are effectively co-ordinated to avoid unnecessary overlaps and/or delays.

4.5 Complaints about Service

We will maintain our informal and formal complaints procedures, which are easily accessible to all service users, and which explain all rights of complaint and appeal, including the likely time-scales involved.

4.6 Proportionality

We will take into account the costs of compliance, by way of offering restorative justice, We will, as far as the law allows, work with businesses so that they can meet their legal obligations, without unnecessary expense. We will also gauge our activities to reflect the proportionality principles of the Corporate Enforcement Policy.

4.7 Consistency

We will carry out our duties in a fair, equitable and consistent manner. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

5.0 Who does the Policy apply to?

This policy applies to any Authorised Food Officer of Oadby and Wigston Borough Council.

6.0 Authorisation of Officers

It is the policy of the Council that enforcement action under the Food Safety Act 1990, and associated legislation, should be initiated by suitably qualified, experienced and competent enforcement officers who have been duly appointed in accordance with the Food Standards Agency Codes of Practice and the Council's current Constitution.

The Council recognises varying levels of complexity and intricacy in food safety enforcement and may vary the powers conferred upon appointed officers, depending on their experience, qualifications and competency.

7.0 Indemnification

The Council will indemnify authorised officers against the whole of any damages and costs or expenses which may be involved, if it is satisfied that the officer honestly believed that the act complained of was within their powers and that their duty as an officer entitled them to do it.

Indemnification does not include any officer acting wilfully or illegally against instructions or legislation.

8.0 Competence of Food Law Enforcement Officers

The criteria used to assess the competence of these officers will be those detailed in Council policy documents and specific requirements demanded by any statutory Codes of Practice and any other considerations which are believed to be relevant in the case.

In this respect we shall pay particular attention to the Food Standards Agency Framework Agreement with local authorities and the current editions of the FSA Code of Practice. The assessment of competence will apply to all officers employed to undertake food safety enforcement in the borough, regardless of their employment status.

Where the competency of officers falls below the standards necessary to enforce the full range of food safety legislation, authorisation to act under the Food Safety Act 1990 will be in accordance with the level of competency.

9.0 Training

In order to maintain, develop and improve the competency of its officers for food safety work, the council will support and resource the continuing professional development that is necessary to enable its officers to deliver this policy within the law and the guidance that applies.

It is the responsibility of individual officers to keep a record of their own training and professional development and this will form part of the authority's record of ongoing training.

10.0 THE REGULATORS CODE

The Regulators Compliance Code came into force April 2014. This is a statutory code of practice for regulators which we must have regard to. It does not replace the Enforcement Concordat, which is a voluntary code, which applies to all areas of the council's work. The Regulators Code (referred to as 'the Code' in the remainder of this note) only applies to the enforcement of certain pieces of legislation, a large proportion of which is enforced by Environmental Health.

The Code is central to the Governments Better Regulation agenda. Its purpose is

"To promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third sector and other regulated entities"

The code stresses the need for regulators to adopt a positive and proactive approach towards ensuring compliance by:

- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily
- Responding proportionally to breaches.

The main elements of the code are detailed below. The code does not apply directly to the work of individuals in individual cases. However we must take into account the provisions of the Code and give them due weight when developing policies, procedures or in setting standards and giving guidance. The enforcement policy may be amended as the provisions of the Code become more familiar.

Specific Obligations of the Code

Economic Progress

- We must consider the impact regulatory interventions may have on economic progress. We should only adopt a particular approach if the benefits justify the costs

- We should make reasonable attempts to ensure that the burdens of our interventions fall fairly and proportionately on small regulated entities by giving consideration to their size.

Risk Assessment

We should ensure that the allocation of our regulatory efforts and resources are targeted where they would be most effective.

Risk assessment must precede and inform all aspects of our approach to regulatory activity

Risk assessment should be based on all available relevant and good quality data and should include explicit consideration of the combined effect of

- The potential impact of non-compliance on regulatory outcomes and
- The likelihood of non-compliance

Advice and Guidance

We must ensure all regulatory requirements as well as changes to those requirements are promptly communicated to relevant regulated entities

We should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations

We should provide targeted and practical advice that meets the needs of regulated entities

When offering compliance advice we should distinguish between statutory requirements and advice and guidance aimed at improvements above the minimum standards.

We should provide appropriate means to ensure that regulated entities can reasonably seek advice from us without triggering enforcement action

Inspection and Other Visits

Inspections should only take place in line with risk assessment or where we are acting on other intelligence

We should focus our greatest inspection effort where risk assessment shows that both

- A compliance breach would pose a serious risk to a regulatory outcome and
- There is a high likelihood of non-compliance

We should give positive feedback to encourage and reinforce good practice. We should share information about good practice amongst other regulated entities and other regulators.

We should have arrangements with other regulators for collaboration to minimise the burdens on business through joint or co-ordinated inspections and data sharing.

Information Requirements

When asking for data from regulated entities we should have consideration of the costs and the benefits to the business.

Compliance and Enforcement actions

We should reward regulated entities that have consistently achieved good levels of compliance through positive incentives such as a lighter touch.

When considering taking enforcement action we should discuss the circumstances with those suspected of the breach and take these into consideration when deciding the best approach. This does not apply where immediate action is required.

We must give clear reasons for any formal enforcement action to the person or entity against whom the action is being taken at the time the action is taken. These reasons should be confirmed in writing.

We must ensure that we interpret and apply legal requirements and our enforcement policy consistently and fairly

Accountability

We should create effective consultation and feedback with regulated entities.

We should provide courteous and efficient services to regulated entities.

11.0 Partnerships and Communication

Oadby & Wigston Borough Council believes that its policy on food safety enforcement is most effectively delivered in partnership and communication with other organisations which have an interest in, and/or are affected by, food safety law.

Therefore, we will make arrangements for developing and maintaining effective and efficient communication channels and working links with the following:-

- Businesses.
- Other regulated entities
- Statutory bodies.
- Trade organisations/associations.
- Professional institutions.
- The Food Standards Agency
- Accredited laboratories serving Leicestershire local authorities
- Other local authorities in Leicestershire and the Midlands

11.1 Delivering our Partnerships and Communication Commitment

To put our commitment into practice, we will:-

Provide businesses with clear and jargon-free information and advice on how to comply with current food safety legislation and standards. By doing this, we show how we put into practice the principles of transparency and openness.

Support the roles of the Food Standards Agency (FSA), and the Local Better Regulation Office (LBRO) to ensure that a co-ordinated and progressive approach to food safety takes place.

Support the Chartered Institute of Environmental Health, Leicestershire Food and Technical Sub-Committee and its role as a forum for:-

- Developing consistency of enforcement.
- Organising training initiatives.
- Providing a co-ordinated approach to health and safety issues in the county.

Support local and national initiatives aimed at securing food safety compliance, where we believe our resources input justifies the benefit to our business community and our residents.

Pay particular attention to raising food safety standards in small firms by identifying information from local and national initiatives, which will be of value to them and making sure they receive and understand it, and put it into practice.

Work to achieve consistent enforcement standards by working with:-

- The FSA.
- The Department for Business, Enterprise and Regulatory Reform (BERR).
- Local Better Regulation Office (LBRO)
- Any local authorities that are partnering a business in a Primary Authority Partnership (Regulatory Enforcement and Sanctions Act 2008)
- Any home or lead authorities designated under a recognised home or lead authority scheme.
- Local authorities in Leicestershire and the Midlands Region.

Keep all interested parties informed of information relating to our enforcement and regulatory work (except where this may prejudice the success of action we are considering)

11.2 Communication with Regulated Entities

Where we request information from businesses or organisations that we regulate, we will consider the costs and benefits this information will bring to those bodies.

We will actively consider reducing costs to businesses and organisations by –

- Varying data requirements according to risk
- Limiting collection of data to specific regulated bodies, sectors or sub sectors.
- Reducing the frequency of data collection.
- Obtaining data from another source
- Allowing electronic submissions.
- Requesting only data that is justified by risk assessment.

We will pay particular attention to the impact our regulatory interventions have on small regulated bodies and to the ensuring that any regulatory burden is fair and proportionate, given their size and the nature of their activities.

11.3 Communication with Other Regulators

The Council will coordinate its Food Safety Enforcement Activity with the work of other regulatory bodies and enforcement agencies, where this is appropriate to the effective delivery of this policy.

Where the Council requires information or holds information that another regulator has or needs, we will share this information on a reciprocal basis where the law permits.

We will create effective consultation and feedback opportunities to maintain co-operative relationships between those we regulate and other interested parties.

Where an enforcement activity affects a geographical area beyond that of Oadby and Wigston, or involves enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of the activity as soon as possible and all enforcement activity co-ordinated with them

Oadby and Wigston Borough Council may pass to or share information relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include:

- Government agencies (e.g. Food Standards Agency)
- Police authorities
- Fire authorities
- Public Health England
- Statutory undertakers, such as Severn Trent Water
- Other local authorities

In order to avoid duplication of collection, where we hold information from a regulated entity and this information is needed by another regulator, we will share the information we hold, where this is practicable, beneficial and cost effective. In return we expect this to be a reciprocal arrangement with other regulators.

With regard to application of The Data Protection Act 2018, we note the advice from the Information Commissioner on the avoidance of unnecessary restriction of data sharing.

Where appropriate and practical, we will collect data from regulated bodies in a way that is compatible with the processes they already use, and those of other regulators who collect similar data.

Where wider regulatory matters can be more effectively addressed through joint working, Oadby and Wigston Borough Council will consider entering into formal enforcement liaison policies, including Memoranda of Understanding, in appropriate cases.

Effective communication with regulated entities, other regulators and interested parties will be achieved by providing courteous and efficient services and taking account of feedback comments about the behaviour and activity of our enforcement officers.

11.4 Comparing with Others

The Council is committed to comparing its services with those of others and in particular with better performing authorities.

To achieve this, we will take part in local and national benchmarking (including Inter-Authority auditing) where we believe the resources needed to do this will be reflected in the improvements we are able to secure as a result.

12.0 Use of Risk Assessment in Food Safety Enforcement

The Council is committed to the use of comprehensive risk assessment in all its regulatory work, to ensure that resources are concentrated in areas that most need them.

We will ensure that enforcement officers are familiar with the following principle of risk assessment:

Risk assessment involves identifying and measuring the potential to cause harm and where that potential exists, evaluating the likelihood and extent of harm occurring.

We use this principal to assess the risks of our regulatory outcomes and to target our resources to where they will be most effective and where risk is highest.

The risk assessment process precedes and informs all aspects of our approaches to regulatory activity, including –

- Data collection and other information requirements.
- Inspection programmes.
- Advice and support programmes.
- Enforcement and sanctions.
- Accounting for the combined effect of the potential impact of non-compliance and the likelihood of non-compliance.

When we consider the likelihood of non-compliance we shall take account of –

- Past compliance records and potential future risks.
- The quality of systems for managing risks.
- Evidence of recognised external accreditation.
- Confidence in management and willingness to comply.

We shall consider ways of consulting and involving regulated bodies and other interested parties when designing our risk methodologies, and publish details of methodologies.

Our risk methodologies will be reviewed regularly and improved where evidence suggests improvement can be achieved. Reviews will take account of feedback from those we regulate, our regulatory partners, official guidance and any other source that can inform and improve the risk assessment process.

13.0 Determining Appropriate Enforcement Action

In addition to the principles of good enforcement and the Regulators' Compliance Code, the following shall be considered in the determination of appropriate food safety enforcement action

- Current codes of practice issued under food legislation
- Industry guides for particular sectors of the food industry
- Advice issued by independent bodies such as Local Authorities Coordinators of Regulatory Services or Chartered Institute of Environmental Health
- Application within a food business of food safety management procedures based on Hazard Analysis of Critical Control Points principles (a requirement of European Union Regulation 852/2004), including any subsequent food safety management procedures designed to improve the management of food safety within the food industry.
- Any Principal Authority Partnership between the business and another local authority, made under The Regulatory Enforcement and Sanctions Act 2008 and administered by the Local Better Regulation Office
- Current guidance applying to any 'lead', 'home' or 'principal' authority schemes, partnerships or principals in place at the time

Guidance will be issued to enforcement officers to help achieve proportionate and consistent decision making and service delivery

The Council believes it should achieve and maintain a consistency of approach in the decisions it makes about food safety and food standards enforcement action.

This approach should be free from unfair or illegal discrimination.

Our approach includes working with other agencies where there is a shared or complimentary enforcement role.

14.0 Enforcement Options

The Council recognises the following enforcement options –

1. Informal Action
2. Issuing of Statutory Notices
 - a. Hygiene Improvement Notice
 - b. Hygiene Emergency Prohibition Notices
3. Issuing of Simple Cautions
4. Prosecution
5. Prohibiting of persons

The council also recognises the following as options to deal with particular circumstances –

6. Voluntary closure /Surrender
7. Forfeiture proceedings

8. Seizure and detention of food and records
9. Court injunctions
10. Refusal, suspension or withdrawal of licences or approvals
11. Remedial Action Notices

Where we consider that the Regulators Code is either irrelevant or outweighed by another relevant consideration, we may choose not to follow one or more of its provisions. However, such a departure will only be where it is properly reasoned and based on material evidence, and with approval of the Head of Law and Governance.

Where the business in question is part of a formal Primary Authority Partnership, any decision we take with regard to an enforcement option will be consistent with and in compliance with the legislation and good practice guidance governing and informing such a partnership.

Any decision we take with regard to an enforcement option will be consistent with recommendations of the Macrory Review

14.1 Informal Action

The purpose of informal action is to help the food business proprietor to ensure the business complies with food safety law. Informal action may be taken at the discretion of an authorised officer.

Informal action may take the form of:

- advice, assistance or information
- education
- requests for action
- warnings

This action may be oral or in writing (either by letter, e mail or written report).

The provision of advice, assistance, information and education will be used to meet some of the specific requirements of the Regulators Code, notably

- stimulating economic progress
- placing greater emphasis on support and advice
- passing on relevant information to businesses by information packs rather than a visit for inspection.
- rewarding regulated entities that have consistently achieved good levels of compliance by lighter inspections and reduced reporting requirements, where justified by risk assessment.
- assisting in particular small and medium sized enterprises by explaining in simple terms the food safety requirements of their business.
- demonstrating accountability and transparency by encouraging feedback opportunities that will foster an active consultation by creating ongoing co-operative relationship with regulated entities and other interested parties.

Advisory services will normally be provided free of charge but we reserve the right to charge a reasonable fee for services beyond basic advice and guidance, where this is necessary to help ensure compliance.

In considering whether a fee might be appropriate, we shall take account of the needs and circumstances of smaller businesses and organisations that we regulate.

We will take informal action where one or more of the following apply –

- an act, omission or contravention is not serious enough to warrant formal action
- the consequences of non-compliance will not pose a significant risk to public health
- our previous history of the organisation, enterprise or individual suggests that informal action is likely to achieve compliance
- confidence in the individual/enterprise's management is high
- other significant circumstances apply, e.g. the business is associated with a voluntary organisation

14.1.1 Reinspections under Food Hygiene Rating Scheme

The Council will undertake a rescoring of food hygiene premises that have not achieved the highest rating in line with the food safety Code of Practice. The Council will charge an appropriate amount to cover the costs of the inspectors time in line with the principle of the

A food business operator may request a food hygiene rating rescore. They must provide details of the improvements made to rectify the problems identified at their last inspection with, where possible, supporting information.

Once the payment has been made, the Council will review the form and will revisit the business within three months if they have made progress to deal with the problems.

Should insufficient progress to deal the problems have been made, the Council may not carry out the revisit. We will inform the Food Business and arrange for a refund. If the revisit goes ahead, we will give a new food hygiene rating based on the findings at the time.

Food businesses should be aware the rating could go up, down or remain the same.

The cost of a rescoring revisit is will be set annually. There is no limit on the number of revisit request that may be made on receipt of the application fee.

14.2 Statutory Notices

14.2.1 Hygiene Improvement Notices (HIN)

The purpose of a Hygiene Improvement Notice is to specify in writing matters that are needed to help the food business proprietor ensure compliance with food safety law, and to indicate a time within which such matters should be completed.

An Improvement Notice may be served at the discretion of an Authorised Officer.

Before serving a Hygiene Improvement Notice, guidance in the current Code of Practice will be checked and the notice served only if one or more of the criteria are met. A Hygiene

Improvement Notice will not be served where the circumstances meet the inappropriate criteria in the current Code of Practice

A Hygiene Improvement Notice will relate to the risk to health and safety and will not be issued for minor, technical contraventions unless we think an informal approach is unlikely to ensure compliance.

A Hygiene Improvement Notices will be signed only by an Authorised Officer who has witnessed the contravention.

Realistic time limits will be given for compliance with an Improvement Notice and where possible, these will be agreed as attainable and appropriate with the food business proprietor.

The Authorised Officer will discuss with the proprietor the works that will be specified in the Notice and will explain the options that are available.

Failure to comply with a Hygiene Improvement Notice will normally result in legal proceedings, in which case the section of this policy dealing with prosecutions will be consulted.

The requirements of the enforcement policy relating to officer's conduct and use of plain language will be met.

The specific requirements of any policies and procedures contained in the Food Safety Documents Library will be met, where they apply to serving improvement notices.

The specific requirements of the relevant Codes of Practice and Guidance on the use of statutory notices will be met.

The Authorised Officer will discuss with the proprietor the works that will be specified in the Notice and will consider fully and then explain the options which are available.

The Authorised Officer will have regard to the most appropriate language to be used for an Improvement Notice and will seek to meet this need where it can be done without unduly prolonging any risk to public health.

We will notify other bodies of any formal action we take, or intend to take, where we believe it is appropriate to do so. Such bodies may include 'home' authorities, or similar, Food Standards Agency and other appropriate government offices. Where appropriate, notification will include the outcome of any action.

14.2.2 Hygiene Emergency Prohibition Notices

The purpose of serving a Hygiene Prohibition Notice is to address without delay a situation of imminent risk of injury to health.

A Hygiene Emergency Prohibition Notice may be served at the discretion of an Authorised Officer, with the agreement of the Environmental Health Team Leader or the Head of Law and Governance.

We will consider serving a Hygiene Prohibition Notice only where the following circumstances apply –

- Immediate and decisive action is needed to protect public health.
- An imminent risk of injury to health can be demonstrated
- The guidance criteria specified in the current code of practice are fulfilled
- There is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close the premises or cease the use of any equipment, process or treatment associated with the imminent risks. In cases where such offers are accepted, we will confirm the agreed criteria in writing as soon as is practicable after the visit resulting in the closure

A Hygiene Emergency Prohibition Notice will be signed only by authorised, competent officers holding appropriate qualifications and with relevant experience, and who have witnessed the matters to which the Notice relates.

The requirements of the council's general enforcement policy relating to officer's conduct and use of plain language will be met.

The specific requirements of any policies and procedures contained in the Food Safety Enforcement Documents Library will be met, where they apply to prohibition notices.

The specific requirements of relevant and current Codes of Practice and Guidance on the use of statutory notices will be met.

We will notify other bodies of any formal action we taken, or intend to take, where we believe it is appropriate to do so. Such bodies may include 'Home' authorities and the appropriate government offices. Where appropriate, notification will include the outcome of any action.

14.3 Simple Caution

The purpose of a Simple Caution is to offer an alternative to prosecution that will –

- deal quickly and simply with less serious offences
- divert such cases from unnecessary appearances in the criminal court
- reduce the chances of re-offending

The Council recognises that issuing a simple caution is legislative action in its own right and will not be used as an easy option to prosecution, but as a genuine option to achieve the above aims.

This policy authorises the following Senior Managers to issue simple cautions –

The Head of Law and Governance

We will consider issuing a Simple Caution when the circumstances of the offence meet the criteria identified in the Home Office circular 30 / 2005, or any circular that replaces it, and in accordance with current LBRO guidance.

We will ensure to our reasonable satisfaction that all the following conditions are met before a Simple Caution is administered –

- there is sufficient evidence of the alleged offender's guilt to give a realistic prospect of prosecution
- the alleged offender admits the offence
- the alleged offender understands the significance of a Simple Caution
- the alleged offender gives formal consent to being cautioned

We will not consider a Simple Caution where we feel there is insufficient evidence to consider a prosecution.

The requirements of the council's general enforcement policy relating to officer's conduct and use of plain language will be met.

The specific requirements of the policies and procedures contained in the Food Safety Enforcement Documents Library will be met, where they apply to Simple Cautions.

The specific requirements of guidance issued by the Home Office on the administering of Simple Cautions will be followed.

As there is no legal obligation for a person to accept a Simple Caution, when explaining their significance to a business proprietor, no officer shall apply pressure to that person to accept one.

However, where the offer of a Simple Caution is refused, a prosecution will normally be pursued.

14.4 Prosecution

14.4.1 Purpose

The purpose of prosecution is to deal with people or companies who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements and who put the public at serious risk or persistently and deliberately continue to contravene safety law.

Authorised Officers who believe the contraventions they are investigating are sufficient to warrant a prosecution will refer the details to Environmental Health Team Leader for a decision on whether to proceed with prosecution action.

Where an officer of the Council who is authorised to conduct legal proceedings has not been involved in the decision to prosecute, details will be referred to such an officer at the earliest possible opportunity.

Any decision to prosecute under this policy will be based on the circumstances of the case and with reference to our Enforcement Policy.

Criteria for prosecution will be related to risk(s) to public health and/or the seriousness of an offence.

- A breach of legislation will not automatically result in our instigating legal proceedings. However, a breach may warrant prosecution if one or more of the following apply to the alleged offence
- There is a flagrant breach of the law, such that public health is, or has been, and/or law-breakers gain substantial economic advantages and the law-abiding are placed at relative disadvantage.
- There is a history of similar offences related to risk to the public or food safety offences and the owner has been unable or unwilling to deal with them adequately or thoroughly.
- A particular offence has caused serious public concern.
- It involves a failure to correct a serious potential risk to food safety after a reasonable opportunity to correct the matter
- The offender fails to comply in full or in part with the requirements of one or more statutory notices, unless exceptional circumstances exist.
- A simple caution has previously been issued for a similar offence.

14.4.2 Notification of Legal Proceedings

- We will inform any authority acting as Home or Primary Authority, or similar, at that time of prosecutions taken and their outcome, and this will be done in accordance with LBRO guidance.
- We will also inform any government office or other body in a position to disseminate information that will be useful to other authorities, where this is good practice to do so.
- Where the prosecution occurs as a result of an investigation begun by a complaint made by a third party, we will always advise the complainant of the outcome of the case.

14.4.3 Factors to be considered

Before deciding to prosecute, the following factors will be considered:-

- The seriousness of the alleged offence
- The previous history of the party concerned
- The likelihood of the defendant being able to establish a due diligence defence.
- The ability of any important witnesses and their willingness to co-operate
- The willingness of the party to prevent a recurrence of the problem
- The probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent

- Whether other action, such as the issue of a formal caution or notice would be more appropriate or effective.
- Any explanation offered by the alleged defendant.
- The advice contained in the current edition of the Code for Crown Prosecutions.

14.4.4 The Evidential Test

The investigating officer(s) together with the Environmental Health Team Leader will satisfy themselves that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute the investigating officer(s) together with the Environmental Health Team Leader will also consider whether the evidence can be used and is reliable.

14.4.5 The Public Interest Test

The public interest will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors put to the court for consideration when sentence is being passed

The investigating officer(s) together with the Environmental Health Team Leader will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The following lists include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution

- a conviction is likely to result in a significant sentence;
- the evidence shows that the defendant was a ringleader or an organiser of the offence;
- there is evidence that the offence was premeditated
- the victim of the offence was vulnerable has been put in considerable fear, or suffered personal damage or disturbance;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;

- there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption.
- The defendant's previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

Some common public interest factors against prosecution

- the court is likely to impose a nominal penalty
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- there has been a long delay between the offence taking place and the date of the trial, unless;
 - the offence is serious
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), Environmental Health Team Leader, and the Head of Law and Governance, will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

14.5 Prohibiting a Person from Managing a Food Business

- (a) The purpose of prohibiting a person from managing a food business is to prevent the repeat of an offence(s) that involves risk of injury to health.
- (b) Where the proprietor of a food business is convicted of an offence under regulations relating to the Food Safety act 1990, the Local authority may apply to the Court for an order prohibiting the proprietor participating in the management of any food business.

Prohibition of persons will only be considered in serious cases, where there is a past history of non-compliance and the offence involves risk of injury to health.

Any decision to instigate prohibition action under this heading will be taken by the Head of Law and Governance in discussion with the Authorised Officer.

15.0 Other Enforcement Options

15.1 Seizure and Detention of Food and Records

The Food Safety Act 1990 provides for authorised officers to seize and detain food and seize and detain records. Receipts for all items will be given to any person from whom food and/or records are seized.

15.2 Enforcement Options in Approved Establishments

In all cases the Authorised Officer must consider the use of general enforcement powers first. When these will not secure an improvement the following powers are considered.

Regulation 9 of the Food Hygiene (England) Regulations 2006 provide for the service of a **Remedial Action Notice (RAN)** where one of the following circumstances exist:-

- The failure of any equipment or part of an establishment to comply with the requirements of the "Hygiene Regulations".
- The need to impose conditions upon or the prohibition of the carrying on of a process that breaches the requirements of the Regulations OR hampering adequate health inspection in accordance with the regulations.
- Where the rate of operation of the business is detrimental to its ability to comply with the regulations.

A RAN notice should be served where immediate action is required to ensure Food Safety. The notice will be served by hand within 24 hours and will specify what action must be taken

The Officer will satisfy themselves that the Remedial Action Notice is being complied with and when the public health risk has subsided, the Authorised Officer will withdraw the said notice.

In addition, regulation 9 allows food, at approved premises, to be detained for examination purposes (**Detention Notice**) where it has been necessary to serve a Remedial Action Notice. Where food is found to be unfit for human consumption, the food will be seized and presented to a Justice of the Peace for condemnation.

Where circumstances exist in accordance with Article 13 (2) (E) of Regulation 882/2004 the officer may use **Suspension** of the approval (or conditional Approval).

Where the FBO cannot satisfy the Food Authority (FA) that deficiencies will be rectified and maintained, the FA may **withdraw** the Approval

The Authorised Officer will notify the FBO in writing of any suspension or withdrawal making it clear that activities requiring approval must not be undertaken. This will be done within 3 working days of discovering the failings.

Where the approval is withdrawn (or refused) the rights of appeal will also be communicated.

The Authorised Officer will notify the FSA of suspensions and withdrawals within 10 working days.

For further guidance on enforcement options, the Food Safety Inspection Procedure (Ref FS 10.1) should be consulted.

16.0 The Primary Authority Partnership

Oadby and Wigston Borough Council recognises the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008, administered by the Local Better Regulation Office and which came into force on 6th April 2009.

When an enforcement action is being considered against a business that has a properly made Primary Authority Partnership with another local authority for the area of business in question, due regard will be had to the current guidance contained in the 'Primary Authority Guidance', published by LBRO.

In order to keep up to date with the development and status of the Primary Authority Partnerships, officers enforcing food safety legislation will have access to the password protected pages of the LBRO website.