

Food Safety Enforcement and Prosecution Policy

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Food Law Enforcement Objective

This policy should be read in conjunction with Gravesham Borough Council’s overarching Common Enforcement Policy and the Regulators’ Code. It is this Council’s policy to strive to ensure that food and drink intended for sale 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.

The aim of this policy

- To ensure a consistent approach to food related enforcement within the district
- To provide officers with guidelines to enable them to make decisions in the field, consistent with current Government advice
- To inform the public and food businesses of the principles by which enforcement action is taken.
- To enable regulators to carry out their enforcement activities in a way that supports and encourages business growth

Principles of Enforcement

Enforcement needs to be fair but firm and effective. Risk should be considered at every stage of the decision-making process. The following principles underpin this approach:

- Agreed standards and procedures
- Helpfulness
- Openness
- Transparency
- Proportionality
- Consistency
- Targeting
- Complaints procedure

Standards and Procedures

The Council produces standards and procedures in respect of the level of service and performance to be expected across the range of environmental health issues. Such standards are produced following consultation with relevant parties. The Council publishes its performance against the standards. The standards and procedures are readily available to businesses and others who are regulated. The standards and procedures are regularly reviewed.

Helpfulness

The Council will deal courteously and efficiently with all individuals, organisations and businesses that it comes into contact with. Staff will identify themselves by name, and contact details will be made available. The council will ensure that they provide simple and straightforward ways for businesses to engage and air their views. Electronic means of communication (for example, by e-mail) will be facilitated wherever possible. Translation services will be made available where practicable to assist customers who do not have English as their first language.

Openness

The council will carry out its activities in a way that supports businesses. It will ensure that clear information, guidance and advice is made available to help businesses meet their responsibilities to comply. Details of charges etc. will be made readily available. We will work with colleagues in other departments if necessary to share information about businesses. We will follow the principle "collect once, use many times".

Transparency

Transparency is important in maintaining public confidence in the Council's regulatory capability. The Council will help those being regulated and others to understand what they need to do and how it may be achieved. The Council will also make its own role in the matter clear. The Council will explain carefully (and, if necessary, in writing) why the action is necessary, who must carry it out, and by what date it must be carried out. A clear distinction will be made between legal requirement, a request, and best practice and the impact of the request will be considered so that it does not impose unnecessary burdens upon the business. The Council will give every reasonable opportunity for discussion before formal enforcement action is taken, unless urgent action is considered necessary. In such circumstances, the Council will give a written explanation of its reasons for taking immediate action and this will be done as soon as practicable after the event. The Council will give written notice of any rights of appeal against enforcement action at the time that the action is taken.

Proportionality

Proportionality means relating enforcement action to the risks. Enforcement action will be proportional to the degree of harm/risk, the seriousness of any breach and to the particular circumstances of the case. In taking enforcement action, the Council will attempt to avoid unnecessary regulatory burdens and minimise compliance costs. It recognises that small businesses and voluntary and community groups frequently have to achieve compliance at minimal cost.

Consistency

The Council will carry out enforcement in a fair, equitable, and consistent manner in accordance with its policies and procedures. Similar approaches will be taken in similar circumstances to achieve similar ends. However, consistency does not mean uniformity. Officers will make professional decisions that take account of a wide variety of situations and circumstances. In these circumstances the Officer will provide documented evidence as to why they deviated from the policy. Officers are also expected to take account of local and national standards and guidance and be aware of this policy. The attitude of the person or organisation subject to enforcement action will also be considered in deciding how enforcement action should proceed.

Targeting

Enforcement effort will be targeted on a risk assessed basis to focus on problem businesses. Reactive work which will be complaint and intelligence lead. Businesses and individuals who persistently break regulations will be dealt with using the full range of powers and sanctions available.

Complaints Procedure

The Council has a [formal complaints procedure](#), although initially complaints against service may be dealt with directly by a senior manager within the Regulatory Services Department. The Local Government Ombudsman hears complaints regarding local government maladministration. Details of this service are available from Customer Services.

Enforcement

Purpose of food hygiene inspections

- To establish whether food is being handled and produced hygienically.
- To establish whether food is, or will be having regard to further processing, safe to eat;
- To identify foreseeable incidences of food poisoning or injury because of consumption of food
- The identification of breaches in hygiene or processing legislation will be incidental to the above aims.
- Provision of advice, education and information to food business proprietors and food handlers.

Factors influencing the enforcement approach

- An authorised officer has a range of options available in seeking to ensure the above aims are met. These range from the giving of advice and verbal warnings to the service of statutory notices, and/or prosecution and/or closure of premises.
- In accordance with the Regulators code, Gravesham Borough Council will ordinarily take a graduated approach to enforcement. Initial steps towards securing compliance will typically be educative and informal.
- The Food Law Code of Practice (England) gives guidance on the appropriate use of the available procedures.
- This authority also strictly follows advice and guidance issued by The Food Standards Agency and other published guidance where appropriate.
- Authorised officers are required to follow this enforcement policy.
- Departures from this policy must be exceptional and the reasons must be discussed with the Head of Community Protection and fully documented.
- Enforcement action will be proportionate to the risk to public health arising from the contraventions identified. Combinations of formal notice and informal advice may be appropriate.

- Decisions on enforcement action will primarily be risk based. Other factors such as the history of compliance by the Food Business Operator and their willingness to remedy contraventions will also be considered.
- This authority will work closely, where necessary, with other regulatory bodies. These include the Food Standards Agency and will take advice and guidance from Home Authorities and Primary Authorities before giving detailed advice or taking enforcement action.
- Before taking action that the authority believes may be inconsistent with that taken by other food authorities, or with FSA advice, it will first discuss the area of difficulty with those bodies through the Kent Food Technical Group.

Qualification and Authorisation of Officers

- No officer will carry out food hygiene inspections and enforcement duties unless suitably trained, experienced and authorised in writing.
- High risk premises (categories A and B), all food manufacturers and processors classified as substantial and premises approved under assimilated Regulation (EC) No. 853/2004 will only be inspected by qualified environmental health officers, or food safety officers holding the Higher Certificate in Food Premises Inspection.
- Officers will be authorised to sign hygiene improvement notices only for premises within the categories for which they are qualified.
- Only officers holding specific food inspection qualifications will be authorised to inspect, detain or seize foodstuffs.
- Hygiene emergency prohibition notices, remedial action notices and detention notices will only be signed by specifically trained, competent and authorised environmental health officers. They will have a minimum of two years post-qualification experience of food safety enforcement and be currently involved in food safety enforcement.
- Newly qualified officers will only be authorised after a minimum of 6 months of structured practical training in enforcement procedures at the appropriate level.
- Food safety officers will have continuous professional development. They will be aware of changes in legislation and to meet the requirements of the Code of Practice.
- Officers will be fully acquainted with the requirements of this Enforcement and Prosecution Policy upon appointment and with any revisions as they arise.

The informal approach

- The existing procedure of giving advice and informing of minor contraventions by informal letters is accepted and understood by Gravesham's food businesses. Officers will use this approach as long as they believe that this will achieve compliance with food safety legislation within a timescale that will protect the public and ensure safe food production.
- An authorised officer will be prepared to offer advice where this is requested by the Food Business Operator of an existing or new food business, and will seek to encourage food businesses to adopt good food hygiene practice through this approach.

- This informal approach will be consistent with the Code of Practice.
- Officers will clearly differentiate between legal requirements and recommendations of good hygiene practice in both verbal and written communications.

The use of Hygiene Improvement Notices

A hygiene improvement notice is a legal document issued under regulation 6 of The Food Safety and Hygiene (England) Regulations 2013 and section 10 of the Food Safety Act 1990. It details contraventions of the hygiene legislation, the works required to correct the contraventions and a timescale for completion. Failure to comply with the notice is an offence. The hygiene improvement notice procedure will be used where major contraventions of food hygiene or food processing regulations are found and where any of the following conditions are satisfied:

- where formal action is proportionate to the risk to public health;
- there is a documented history of non-compliance with food safety legislation;
- an informal approach has been tried but has not been successful, or the authorised officer has reason to believe that informal action will not be successful;
- in the case of a new business or requirements, where the authorised officer assesses that the food business operator is unwilling or unlikely to comply, for whatever reason;
- where there is a breakdown of controls critical for food safety, or where no such controls exist.

A hygiene improvement notice will not be used where:

- the contravention is minor and presents no risk to public health;
- the contravention is a continuing one, e.g. cleanliness or temperature control, and a notice would only secure an improvement at one point in time. (prosecution may be the only option);
- swift action is required, such as at a one day event where there exists a risk to public health.

Once the authorised officer has discussed all options and requirements have been met with the food business operator, the procedure will then be implemented. The food business operator will be offered the opportunity for the matter to be referred to the officer's manager in the event of a dispute.

Prohibition Orders

A hygiene prohibition order is made under regulation 7 of The Food Safety and Hygiene (England) Regulations 2013 or section 11 of the Food Safety Act 1990. This may be imposed by the courts following a conviction for a food hygiene offence, if the contravention has not been corrected and there still exists a risk of injury to health. The hygiene prohibition order may prohibit the use of a process, the use of premises or equipment, or the participation in a food business by a convicted food business operator.

- An application for a hygiene prohibition order will be made if an inspection of premises, prior to a court hearing to consider a food hygiene offence, reveals that the contravention is continuing and there is a risk of injury to health.

Emergency Prohibition

A hygiene emergency prohibition notice is made under regulation 8 of The Food Safety and Hygiene (England) Regulations 2013 or section 12 of the Food Safety Act 1990. This has the effect of immediately closing a food business or prohibiting the use of equipment or a process where there is an imminent risk of injury to health.

Conditions where prohibition of premises may be appropriate:

- Premises which contravene food safety legislation and have been or are involved in an outbreak of food poisoning or present an imminent risk of one;
- Serious infestation of vermin resulting in actual or imminent risk of contamination of food;
- Poor structural conditions, equipment and maintenance of cleaning can result in actual or imminent risk of food contamination. This also includes a build up of refuse, filth and other extraneous matter;
- Equipment or a process may be prohibited where there is a risk of cross contamination of ready to eat food. This can also occur where there is a failure to achieve a critical control criteria such as minimum cooking, pasteurisation temperatures or use of a process which is inappropriate;
- Serious drainage defects or flooding of the premises leading to actual or imminent risk of food contamination;
- Any combination of the above or any cumulative effect of contraventions which together represent an imminent risk of injury to health.

This notice will only be signed by specifically trained, competent and authorised environmental health officers. They will have a minimum of two years post-qualification experience of food safety enforcement and who are currently involved in food safety enforcement.

Outside, expert advice will be sought where the process or treatment under consideration requires specialist knowledge or qualifications to establish that the health risk conditions above are met.

Voluntary Closure

There may be an occasion where:

- Grounds for an emergency prohibition exist but the officer suggests that the food business operator voluntarily closes to instigate remedial action. The food business operator may also offer to close voluntarily until the health risk is removed.

- Once the authorised officer is satisfied, an offer may be accepted. This is conditional to the premises not being further used as food business including the use of equipment.
- Such an offer will only be accepted if the offer to close and its acceptance are fully documented and signed by the food business operator and signed and approved by specifically authorised officers.
- When considering such an offer, great care will be taken to ensure that the person making the offer is aware that in closing voluntarily they are relinquishing the rights to compensation for unjustified action contained in formal hygiene emergency prohibition notice procedures.

Remedial Action Notice (RAN) & Detention Notices

- Remedial action notices and detention notices are used in respect of establishments subject to approval under assimilated Regulation 853/2004. These are provided by Regulation 9 and 10 of the Food Safety & Hygiene (England) Regulations 2013.
- Authorised officers must seek to remedy non-compliance in approved establishments by a graduated approach to enforcement.
- When necessary, the hygiene improvement notice provisions in Regulation 6 must be considered.
- Conditions where a RAN may be appropriate:-
 - The failure of any equipment or part of an establishment to comply with the requirements of the “hygiene regulations” as defined in Regulation 2 of the Food Safety & Hygiene (England) Regulations 2013
 - The need to impose conditions upon or prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection.
 - Where the rate of operation of the business is detrimental to its ability to comply with the regulations.
- Indications or suspicions that food is unsafe is a circumstance where a detention notice may be issued.

Follow up visits

Where significant breaches of hygiene regulations have been identified during an inspection, a revisit will be carried out to check on progress towards compliance. The revisit will be undertaken by the same officer who carried out the original inspection.

Prosecution

The decision to prosecute

Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the above enforcement procedures. When considering whether to prosecute for food safety offences an authorised officer will, amongst other matters, have regard to this policy. Additionally, the authorised officer will apply the Evidential Test and Food Safety Enforcement and Prosecution Policy Gravesham Borough Council

Public Interest Test as described in the Crown Prosecution Service Code for Crown Prosecutors. In all cases, the decision to prosecute will be ratified by Head of Community Protection after careful consideration of a report from the inspecting officer. Prosecution papers will be passed to the Council's legal department for consultation before summonses are issued. Home and Primary Authorities will be consulted where prosecutions are planned and due regard will be paid to the opinion of that authority. Such authorities will be notified of the outcome of prosecutions taken.

Factors that will be considered before initiating prosecution procedures include:

- The seriousness of the alleged offence
- The previous compliance history of the food business
- The likelihood that a due diligence* defence could be established
- The ability of any important witness and their willingness to co-operate
- The willingness of the food business to prevent a recurrence of the contravention
- The probable public benefit of a prosecution and the importance of the case in establishing a precedent
- Whether other action, such as issuing a simple caution, serving a hygiene improvement notice, or imposing a prohibition, would be more appropriate or effective
- Any explanation offered by the food business.

*This is a defence for a person charged with an offence that he took all reasonable precautions and exercised all due diligence to avoid the offence. This requires that, not only are suitable precautions set up, but that these are adequately implemented and monitored to ensure their effectiveness.

Non-compliance with notices

Non-compliance with a hygiene improvement notice is a serious offence and will be considered to be grounds for prosecution with the following exceptions:

- Where the remaining contraventions detailed in the notice are minor and do not pose a risk to public health;
- Where the outstanding works are in hand, (confirmation from contractor or supplier required), and an extension of time to complete the works would have been granted, if requested.

Non-compliance with an informal notice will not be considered grounds for prosecution. The authorised officer will reconsider at this stage the enforcement options available to remedy the contravention using the criteria described above. The failure to respond in the first instance to an informal approach will influence that decision.

Food Complaints

You can prosecute for assimilated EC 178/2002 Article 14 or Food Safety Act 1990 section 7 or 14 offences relating to the sale of food injurious to health, unfit for human consumption or not of the nature, quality or substance demanded by the purchaser. This will be taken at the earliest opportunity to avoid unnecessary and time consuming investigations by both authorised officers and food businesses.

Prosecution will be undertaken where:

- the offence has resulted in significant risk to public health;
- there is evidence of negligence in failing to adopt basic food hygiene precautions;
- the food business has failed to respond to an informal approach to prevent a recurrence of the problem.

Particular regard will be paid to the possibility of establishing a due diligence defence. Only officers holding a relevant food inspection qualification will be authorised to consider whether food is fit for human consumption. Independent advice will be sought from the appointed food examiner or public analyst, or other expert, where appropriate.

In all cases where a prosecution is being considered, a report will be requested from the originating or home food authority as appropriate and particular regard will be paid to that report. The integrity and co-operation of a complainant in providing witness support is especially important. The wishes of the complainant regarding prosecution will be respected, unless it is in the public interest and there is sufficient evidence to proceed independently.

Food Hygiene Regulations

A decision to prosecute for offences under the food hygiene regulations will be taken based on the risk to public health presented by the contravention. It is not sufficient for there to be a technical breach of the regulations on a minor matter. The initial response to contraventions that do not present a risk to public health will be a written notification by informal or improvement notices.

Immediate prosecution action will be undertaken where:

- conditions are found that present an immediate risk to public health, regardless of whether prohibition action is also taken;
- there is a risk to public health presented either by the seriousness or
- number of contraventions and there is documented evidence that the food business has previously received warnings regarding such contraventions.

When a prosecution is prepared for food hygiene contraventions, a summonses will be issued for the offences. These represent the more serious contraventions and demonstrate the element of risk.

Simple Caution

There may be circumstances where evidence exists for a successful prosecution, but where mitigating circumstances are such that nothing is likely to be gained from such action. In such circumstances the authorised officer will consider the offer of a simple caution as an alternative to prosecution. Circumstances where a simple caution may be considered are:

- the contravention is minor and a first offence
- the contravention, although serious, has been speedily dealt with and steps taken to prevent a recurrence.
- the food business has since closed, or the food handler has ceased that occupation.
- the defendant would be unable to pay a fine, costs or compensation.

Simple caution will only be considered where there is sufficient evidence to give a realistic expectation of success if the case went to the courts. It will not be used as an alternative to prosecution where it is felt the prosecution case is weak. A caution can only be administered where the suspected offender is prepared to admit the offence. Care will be taken to ensure that the suspected offender understands the significance of the caution and is able to give an informed consent to being cautioned.

The decision to offer a simple caution will be taken by the Head of Community Protection in consultation with the legal department after consideration of a report from the inspecting officer. If the offer of a simple caution is declined, further enforcement action will be considered. This will usually be prosecution, but the option of a written warning will be considered. Home / Primary authorities will be notified of simple cautions issued by this authority where appropriate.

Review of Policy

This Enforcement and Prosecution Policy will be reviewed 3 years or when changes in legislation or centrally issued guidance make this necessary. It is available on Gravesham Borough Council's website and hard copies will be made available on request.