



**FALMOUTH AND TRURO
PORT HEALTH AUTHORITY**

**FOOD SAFETY
ENFORCEMENT AND PROSECUTION
POLICY SUMMARY**



FOOD SAFETY

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ENFORCEMENT AND PROSECUTION POLICY (SUMMARY)

Food Law Enforcement Objective

It is this Authority's policy to strive to ensure that food and drink intended for the 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.

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 as a consequence of consumption of food;
- The identification of breaches in hygiene or processing legislation will be incidental to the above aims.

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, prosecution or closure of premises.
- As the first step towards securing compliance, an authorised officer will adopt an educative approach and discuss the requirements of the legislation with the proprietor.
- Codes of Practice issued under the Food Safety Act 1990 give guidance on the appropriate use of the available procedures. This authority strictly follows advice issued by central government and the Local Authorities Coordinating Body on Food and Trading Standards (LACORS). Authorised officers are required to follow this enforcement policy.
- 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 appropriate enforcement action will be taken based primarily on an assessment of risk to food safety and public health, but will also be influenced by the history of compliance by the proprietor with food safety legislation and his willingness to remedy contraventions.

Qualification and Authorisation of Officers

- No officer will carry out food hygiene inspection and enforcement duties unless suitably trained and experienced as well as being authorised by the Chief Port Health Officer.

The informal approach

- The existing procedure of giving advice and informing of minor contraventions by informal letters is accepted and understood locally. 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 health and ensure safe food production.
- An authorised officer will be prepared to offer advice where this is requested by the proprietor of an existing or new food business, and will seek to encourage food businesses to adopt good hygiene practice through this approach.
- Officers will clearly differentiate between legal requirements and recommendations of good hygiene practice in both verbal and written communications.

The use of Improvement Notices

An improvement notice is a legal document issued under 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.

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 new business requirements, where the authorised officer assesses that the proprietor 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.

Improvement notice procedure will only be implemented after the authorised officer has discussed the need for such action and its requirements with the proprietor informally and considered alternatives. The proprietor will be offered the opportunity for the matter to be referred to the Chief Port Health Officer in the event of a dispute.

Prohibition Orders

A prohibition order 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 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 proprietor.

- An application for a 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

An emergency prohibition notice 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 condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in an actual or imminent risk of food contamination;
- Serious drainage defects or flooding of the premises leading to an 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.

Voluntary Closure

- There may be occasion where an authorised officer is satisfied that grounds for Emergency Prohibition exist, but where the proprietor of the food business offers to close voluntarily until the health risk is removed.
- Such an offer will only be accepted if the authorised officer is satisfied that there is no likelihood of the premises being used as a food business, or of the use of equipment, or of a process without the express agreement of the food authority.

PROSECUTION

- Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the above enforcement procedures.
- In considering prosecution action for food safety offences an authorised officer will consider whether that course of action is proportionate to the risk presented to the public health by the contravention, using the principles outlined in the paragraph “Factors influencing the enforcement approach” above.
- Prosecution will only be instigated following review of the matter by the Chief Port Health Officer.

The decision to prosecute

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 formal caution, serving an improvement notice, or imposing a prohibition, would be more appropriate or effective;
- Any explanation offered by the food business.

** due diligence: The Food Safety Act 1990 provides 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.*

Food Complaints

The decision to prosecute for Food Safety Act 1990 offences relating to the sale of food unfit for human consumption, or not of the quality demanded by the purchaser, will be taken at the earliest opportunity to avoid unnecessary and time consuming investigations by both authorised officers and food businesses.

Prosecution will be indicated where:

- the offence has resulted in a 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.

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.

The initial response to contraventions that do not present a risk to public health will be written notification by informal or improvement notices.

Immediate prosecution action will be indicated where:

- conditions are found that present an immediate risk to public health, whether or not 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.

FORMAL CAUTIONS

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 formal caution as an alternative to prosecution. Circumstances where a formal 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.

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.