

## **1. ENFORCEMENT POLICY – Food Safety**

### **1.1 Purpose**

South Northants Council has signed the Enforcement Concordat. The Council regards prevention as better than cure. We offer information and advice to those we regulate and seek to secure co-operation avoiding bureaucracy or excessive cost. We encourage individuals and businesses to put food safety first and to integrate safe and hygienic practices into normal working methods

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

- 1.1.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect food and drink from contamination, the growth or survival of micro-organisms and to secure compliance with the regulatory system. The need for enforcement may stem from a lack of knowledge or a deliberate or negligent act. Although the Council seeks to obtain voluntary compliance with relevant legislative requirements, codes of practice and industry guidance notes, we will not hesitate to use our enforcement powers where necessary.
- 1.1.2 Where legislation is to be quoted, as a source of action taken by the Health Protection Team there must be a clear breach of the relevant legislation. Details of the breach must be recorded and the legislation identified in detail by the officer dealing with the matter prior to any action being taken.
- 1.1.3 This policy is to be used in conjunction with more detailed specific guidance issued by the Food Standards Agency (FSA), the Department of Health (DoH), the Department of Food and Rural Affairs (DEFRA), and the Local Authority Co-ordinating body on Regulatory Services (LACORS) or any other body referred to by the FSA.
- 1.1.4 The overriding consideration must be that any action taken in response to a breach of legislation must be in proportion to the nature of the breach.
- 1.1.5 There are cases where there is no evidence available of a contravention of legislation but the matter continues to be investigated in order to obtain further

information or because it is in the public interest. In these cases any advice given or recommendations made must be clearly and unambiguously identified as such and a clear statement made that recipients of the advice are free to make a decision not to take the advice.

1.1.6 Following investigations or inspections there are a number of possible outcomes, these include:

- Taking no action.
- Giving advice or making recommendations;
- Warnings that an offence has been committed;
- Service of Statutory Notices;
- The seizure of food or drink,
- Decision to issue, refuse or revoke a Licence to operate a Butchers Shop.
- Formal (Home Office) Cautions;
- Prosecution.

These courses of action are not mutually exclusive and a single enforcement action could, but does not have to, include a number of these actions.

1.1.7 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious injury or ill health. The Council's first response is to prevent harm to individuals from occurring or continuing. The enforcement action taken will be proportionate to the risks posed to the individual and to the seriousness of any breach of the law.

1.1.8 Where enforcement action is being contemplated which is inconsistent or seems to be inconsistent with local and national documented advice or guidance, then the matter will be referred to the Northamptonshire Food Liaison Group and Food Safety Panel of LACORS to consider the issue and ensure consistent enforcement.

1.1.9 Where enforcement action impacts upon aspects of a business' policy that has been agreed centrally by the decision making base of the business, then the matter will be referred to the Home Authority for consideration.

1.1.10 Persons subject to enforcement action have a right to expect that different officers will exercise similar enforcement judgements and take similar action in cases where the facts are comparable.

## **1.2 Prosecution**

1.2.1 Prosecution should only be considered in cases involving a major risk to the health or safety of the public or a matter of extreme prejudice to the public interest. These could include:

- a) A high hazard situation discovered on investigation or inspection; e.g. unfit food, very poor hygiene, etc., OR a serious breach of a major legislative

provision, particularly where the contravention concerned has existed for some time.

- b) A lesser hazard or non-compliance with legislation that has existed over a longer period of time and usually associated with previous warnings from the Health Protection Team.
- c) Failure to comply fully with statutory notices served by the Health Protection Team.
- d) Blatant non-compliance with legislative provisions in a situation where the contravention is likely to continue.
- e) Offences where the person responsible for the offence is transient and other forms of enforcement action would be ineffective.
- f) Cases where Formal Cautions have been offered but refused or where a previous Formal Caution has been given for a similar offence.
- g) Offences where Emergency Prohibition Notices or Prohibition Orders have been served.
- h) Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.
- i) Obstruction of Officers in carrying out their powers. The Council regards the obstruction of, or assaults on, its Officers while lawfully carrying out their duties as a serious matter.

### **1.3 Formal (Home Office) Cautions**

1.3.1 Cautions must only be considered in cases where the evidential criteria for prosecution are satisfied. A Formal Caution will only be given as an alternative to prosecution. **Under no circumstances should a Formal Caution be considered without sufficient evidence for a prosecution.**

1.3.2 Cautions would be indicated as an alternative to prosecution in the following circumstances:

- a) Offences that might be viewed as "technical" offences e.g. failure to register premises, make statutory reports etc.
- b) In cases of lesser risk e.g. individual and isolated date code offences, isolated individual cases of unfit food, or where it would be out of proportion to the offence to institute legal proceedings.
- c) When the person or company responsible for the offence had no knowledge of committing the offence or has (as far as can be professionally judged) taken immediate action to prevent a further breach. (In circumstances when

the individual or company has working management procedures and practices in place to keep them informed of company practice).

- d) If an individual case is "minor" and does not warrant Prosecution but where in an officer's professional judgement there is a risk of re-offending and it would be prudent to have a Caution on file.
- e) In instances where an Individual or Company is of good character with no previous convictions.

## **1.4 Statutory Notices**

1.4.1 It must be emphasised that there has to be proof (acceptable as evidence in a Court of Law) available that an offence has been committed before a Notice is served.

1.4.2 Notices should be used in the following circumstances:

- a) Major breaches of legislative provisions or where legislation requires that a notice is served and there is sufficient proof.
- b) Where individuals or companies are reluctant to take action to comply with legislation, or have refused to accept an informal warning.
- c) When immediate action needs to be taken in the public interest or for public safety ("Emergency Prohibition" notices). Consideration must be given to the consequences of not taking immediate and decisive action. That an imminent risk of injury to health can be demonstrated and that there would be no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close the premises or cease an operation.  

Any accepted voluntary closure must be confirmed in writing by the proprietor and in the knowledge that the voluntary closure will stay in effect until the officer is satisfied that the premises no longer present a serious risk to public health or food safety.
- d) Instances where there are multiple breaches of legislation at one time.
- e) Instances where an informal warning has been previously given but no remedial action has been taken.
- f) Instances where an informal warning has been previously given and remedial action was taken but the offence has been recommitted. In such circumstances Notices should be considered after two informal warnings. However, there may be circumstances when Notices should be served sooner than this or, with very minor and isolated offences, where Notices would not be appropriate even for a continuing offence.

## **1.5 Informal Warning**

- 1.5.1 Informal warnings will be given in the following circumstances: -
- (i) Where the act or omission is not serious enough to warrant formal action.
  - (ii) Where past history indicates that informal action is likely to achieve compliance.
  - (iii) Where confidence in management is high.
  - (iv) The consequences of non-compliance will not pose a significant risk to public health.
- 1.5.2 An informal warning should be in writing and will usually take the form of a letter or letter and schedule. Warnings should only be used in cases where an offence has been committed or where evidence from inspection or investigation leads the officer involved to believe that an offence will be committed if remedial action is not taken.
- 1.5.3 Informal warnings must be given in all cases where an offence has been committed and Prosecution, Formal Caution or Notice action is not to be used.
- 1.5.4 Any such warning must identify the legislation under which the offence has been committed. This must include the full title of the Act or Regulations concerned and the particular Section(s) or Regulations(s) concerned. Clear understandable details of the offence or potential offence must be included with precise details of the remedial action to be taken. Time periods by which remedial work should be started or completed must also be given.

## **1.6 Recommendations/Advice**

- 1.6.1 In cases where no legal provision has been contravened but good practice is not being observed or where current poor practices or conditions could subsequently lead to a contravention, advice may be given. It is not acceptable to indicate advice by the substitution of "consider" by "should" or similar devices.

## **1.7 Procedures and Authority**

- 1.7.1 Health Protection Team procedures must be followed and action only taken by those authorised to do so. Regard must be had to the authority to act at an early stage of enforcement action.
- 1.7.2 The Cautioning Officer, who is the Head of Environment, must give formal Cautions in accordance with the Home Office Circular and guidance from LACORS.
- 1.7.3 The Decision to prosecute is delegated to the Head of Environment, who will be advised by the Health Protection Manager.
- 1.7.4 In reaching a decision as to whether to prosecute, regard will be had to the Food Safety Code of Practice and in particular to the following: -

- (i) The seriousness of the alleged breach.
- (ii) The previous history of the party concerned.
- (iii) The likelihood of the defendant being able to establish a defence of 'Due diligence'
- (iv) The ability of any important witnesses and their willingness to co-operate.
- (v) The probable public benefit of a prosecution and the importance of the case (e.g. whether it may establish a legal precedent).
- (vi) Whether any other action e.g. the issue of a Formal Caution or an Improvement Notice would be more effective or appropriate.
- (vii) Any explanation offered by the Company or individual concerned.

1.7.5 Relevant bodies e.g. Home Authority should be made aware of Formal Cautions issued, prosecutions taken and their outcome in accordance with LACORS Guidance on Home Authority Principle.

## **1.8 Prosecution Procedure**

1.8.1 Once an inspector believes that an investigation may lead to a prosecution they must retain all the paperwork that is relevant to the prosecution, including material already contained in operational files and all drafts of any reports, letters etc.

1.8.2 Once an investigation is completed a report must be prepared for the Head of Environment. The report must include the following sections.

- Introduction.
- Background material.
- Details of the alleged offence.
- Discussion of the legislation that applies and any defence that could be offered including due diligence.
- Justification of the recommendation against the enforcement policy and public interest.
- A recommendation including identification of the alleged defendant and legislation allegedly breached.

The Health Protection Manager will check that the recommendation is in accordance with this policy and that it is proportionate to the alleged offence.

1.8.3 Once signed by the Head of Environment, the papers will be forwarded without delay to the Head of Corporate Support.