



EHTS FOOD SAFETY		
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London Borough of Southwark Food Safety Enforcement Policy

1. Introduction

This policy sets out the principles and practices which officers of the Council will apply when securing compliance with the relevant legislation for which the Council has enforcement responsibilities.

- 1.1 It is our aim to secure and improve the health, safety welfare and well being of people who live in, work in or visit Southwark by ensuring that they are able to buy food which is prepared in hygienic conditions, protected from contamination and which is safe and wholesome. We also aim to secure and preserve consumer protection by ensuring food is properly labelled and that the consumer is not misled as to its nature, substance or quality.
- 1.2 Officers from this authority will follow the available guidance on enforcement actions contained in Statutory Codes of Practice issued under Section 40 of the Food Safety Act 1990 and publications issued by the Food Standards Agency (FSA), Department of Health (DoH) and, Department for environment, food and rural affairs (Defra). Officers will also have regard to advice from central government; the Regulators Compliance Code, BiS, BRDO and the Code for Crown Prosecutors and guidance issued by the Home Office on the cautioning and questioning of offenders. Officers will also follow any other related procedure or policy on these matters.
- 1.3 In undertaking their duties officers will at all times act in accordance with the Human Rights Act 1998, the Police and Criminal Evidence Act 1984 as amended, where appropriate, the Regulation of Investigatory Powers Act 2000 and the Criminal Procedure and Investigations Act 1996 .
- 1.4 We will endeavour to utilise the complete range of enforcement tools as appropriate, to secure and maintain satisfactory compliance with

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food law requirements and infectious disease control. In doing so, we aim to deliver an improved regulatory compliant environment through:

- Education – to promote good practices, support training initiatives, and offer advice
- Planned or proactive official interventions - inspections, monitoring, surveillance, verification, audit or sampling visits.
- Responding to complaints – our responses will be prioritised according to the assessed risk and the seriousness of the alleged offence.

2.0 Principles of Enforcement

The Council has recognised and endorsed the Enforcement Concordat which it has adopted and will comply with the principles contained there in. This policy is developed within the broad framework of the Enforcement Concordat and is intended to inform enforcement approach in the discharge of its regulatory functions in food law enforcement and infectious disease control.

2.1 Standards


We will consult with business and other relevant partners and will draw up clear standards setting out the level of service and performance that the public can expect to receive. We will publish these standards and our performance against them.

2.2 Openness

We will publish information and advice about the rules that we apply. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives as necessary. We will discuss compliance issues with anyone experiencing difficulties.

2.3 Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and

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medium sized 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 provide contact details for further contact with us and we will encourage business to seek advice / information from us. However we will not provide a full business consultancy service.

2.4 Complaints about the Service

We will comply with the Council's published complaints procedure. In cases where disputes cannot be resolved, any rights of complaint or appeal will be explained, with details of the process and the likely time-scales involved.


2.5 Proportionality

We will ensure that any action we require is proportionate to the risks and seriousness of the breach. As far as the law allows, we will take account of the circumstances and the attitude of the offending person when considering action. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable. All enforcement decisions will be based on an assessment of the risks posed by the breach,

2.6 Consistency

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency with other authorities and enforcement agencies. In particular, we will consult and liaise with enforcement authorities with special responsibility for policy and decision making for a food business operator/company (Home Authority /Primary Authority Partnership) or the source of an offending product or service (Originating Authority).

3.0 Enforcement Options

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3.1 Enforcement action will include one or more of the following:

- take no action
- take informal action
- take formal action which may comprise the following
 - service of statutory notices
 - use seizure/detention procedures
 - use Hygiene Emergency Prohibition procedures
 - prosecute or issue a Simple Caution


3.2 Before making a decision as to the appropriate type of action officers will consider a number of factors including:

- The seriousness of the offence
- Previous compliance history of the individual or company concerned
- The consequences of non-compliance
- The confidence in management
- The likely effectiveness of the various enforcement options-
- The advice of Primary Authority or the Home Authority as appropriate
- The Code for Crown Prosecutors
- The availability of other effective remedies such as voluntary surrender of product.

4.0 No Action

4.1 This is appropriate in the following circumstances:

- Where no breaches of legislation were identified at the time of a routine programmed inspection - but paragraph 5.3 below applies
- Where insufficient initial evidence of the alleged offence is available to proceed with an investigation
- Where other remedies have already been applied e.g. product recalls.
- Where results from food or environmental sampling are satisfactory
- Where the Primary Authority has given advice and there is an inspection plan or national strategy in place to address this

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- Where senior management has identified the issue as one of low risk and low priority which is not considered actionable.
- Minor contravention which can be clearly regarded not to have any adverse impact on food safety and overall hygiene good hygiene practices.


4.2 In the case of complaints, the decision to take no action will be recorded on the computer database and/or in file notes. A brief summary of the relevant matters will be annotated on file or on the database.

5.0 Informal Action


5.1 Informal action includes offering advice, verbal warnings and requests for action. Such requests may take the form of letters, written warnings or informal notices/schedules, summary inspection reports with action points, provision of guidance leaflets, signposting and provision of other useful relevant materials.

5.2 Informal action will be considered appropriate in one or more of the following circumstances:

- The act or omission is not serious enough to warrant formal action
- The consequences of non-compliance will not pose a significant public health risk
- From past history relating to the individual or company, it may be reasonable to expect that informal action will achieve compliance
- Confidence in management is high
- There is insufficient evidence available to support formal action
- Where the Primary Authority intends to take action to address the matters of non-compliance in a timely manner and there is no significant risk to health
- Where informal action may be more effective in achieving a speedy and satisfactory resolution compared to a formal approach. This may be relevant but not exclusive to food businesses associated with voluntary organisations using volunteers.

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- 5.3 Inspection reports will be issued following all programmed inspections irrespective of the conditions found at the time of inspection. The inspection report will contain the minimum content required by the Food Law Code of Practice and any related guidance documents.
- 5.4 Written documentation issued to Food Business Operators following an inspection or official intervention will:
- contain all the information necessary to enable the Food Business Operator to clearly understand what work is required and why it is necessary
 - identify the legislation contravened, the measures necessary to ensure compliance and advise that other means of achieving the same effect may be acceptable
 - identify recommendations of good practice in such a way that it is clear that they are not legal requirements
 - identify a reasonable time scale for completion of the required work. Timescales will be determined by the nature and level of complexity of the required works and where necessary, ease of securing skilled operatives to complete the improvements.
- 5.5 Revisits to premises, following programmed inspections where contraventions have been identified and notified to the Food Business Operator, will be carried out as soon as is reasonably practicable after expiry of the time given for compliance.
Premises rated as risk Category A will receive at least one revisit.
Premises rated as risk Category B will generally receive a revisit but in circumstances where, in the authorised officer's professional judgement a revisit is unnecessary, the reason for not revisiting will be recorded in the premises file or on the database.
Premises rated as risk Category C and below will receive revisits as deemed necessary by the authorised officer.
- 5.6 When giving advice officers will clearly differentiate between legal requirements and recommendations of good practice.

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5.7 A record of matters discussed including the enforcement action to be taken to resolve these matters will be left on site at the food business and recorded on the file and computer database.

6.0 Formal Actions

6.1 Statutory Notices


6.1.1 Hygiene Improvement Notices

6.1.2 The use of hygiene improvement notices will only be considered where one or more of the following criteria apply:


- there is a significant contravention of legislative provisions
- there is a lack of confidence in the proprietor's willingness to respond to informal action
- there is a history of non-compliance with informal action
- the standards are generally poor with little management awareness of statutory requirements
- the consequences of non-compliance could be potentially serious to public health
- the Primary Authority has not previously given advice on the contravention, it is not addressed in their Inspection Plans or national strategies (see 6.1.9)
- where there is the intention to prosecute but effective action needs to be taken to remedy conditions which are serious or deteriorating prior to the case being heard

6.1.3 The issue of hygiene improvement notices will not be considered for minor technical contraventions where the risk to health is negligible.

6.1.4 Hygiene improvement notices will only be signed by officers who are authorised to do so by Southwark Council and who fulfil the requirements of the Codes of Practice for such authorisation.

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- 6.1.5 An authorised officer may only sign an improvement notice if that officer has sufficient evidence, properly recorded, to justify the issue of the notice.
- 6.1.6 Prior to the issue of a notice the officer will have regard to all relevant guidance on the issue of such notices contained in Codes of Practice and any relevant guidance issued by the FSA, sector groups or a recognised advisory group dealing with related matters.
- 6.1.7 In particular, the time limits imposed by notices will be reasonable and realistic and, where possible, will have been discussed and agreed with the proprietor prior to the issue of the notice. The officer will discuss with the proprietor the nature of the required work and consider any alternative means of securing compliance proposed by the with the legislative requirements.
- 6.1.8 Reasonable requests for extension of time limits will be considered fairly in the light of the extent of the risk to public health and circumstances giving rise to the need for such extension. Any request for an extension of time must be received by the authorised officer in good time after the service of the notice and certainly prior to expiry. The acceptance or rejection of any requests will be communicated in writing.
- 6.1.9 Where it is intended to serve a hygiene improvement notice relating to inadequate company policy or procedures the officer will have due regard to any existing Primary Authority partnership, notify the Primary Authority of any intended formal action (except those requiring immediate action to prevent harm) and observe the related protocols. In regards to Home Authority agreement, the officer will liaise with the relevant contacts at the authority representing the company concerned prior to the issue of such notice.
- 6.1.10 A visit to assess compliance will be made promptly on expiry of the notice or at a reasonably practicable time afterwards.
- 6.1.11 Failure to comply with a hygiene improvement notice will generally result in court proceedings. Officers must be prepared to pursue non-

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compliance and must ensure that sufficient evidence is available to support prosecution. Any decision not to proceed with prosecution must be taken in liaison with a senior officer. The reasons for such a decision must be recorded on the computer database and/or the premises file.

6.2 Remedial Action Notices

6.2.1 These only apply in those premises that are subject to approval under Article 4(2) of Regulation (EC) No 853/2004.


6.2.2 Remedial action notices will only be signed by authorised officers who fulfil the requirements of the Codes of Practice for such authorisation. Where an authorised officer considers there is:

- non compliance with legislative provisions
 - a continuing offence causing a risk to food safety that requires urgent action
 - the food business operator has ignored corrective measures and there is a risk to public health or
 - the inspection is being hampered
- the Officer may serve a remedial action notice on the food business operator or one of his representatives.

6.2.3 Prior to the issue of a notice the officer will have regard to all relevant guidance on the issue of such notices contained in Codes of Practice and any relevant guidance issued by the FSA, sector groups or a recognised advisory group dealing with related matters. The notice may:-

- prohibit the use of any equipment
- prohibit the use of any part of the establishment
- impose conditions on, or prohibit the carrying out of any process
- require the rate of operation to be reduced or stopped

6.2.4 The remedial action notice shall be served as soon as practicable and shall have immediate effect. The notice remains in effect until action has been taken to remedy the situation. When the authorised officer is


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satisfied that the correction actions have been taken the Remedial Action Notice will be withdrawn by serving a notice of withdrawal.

- 6.2.5 It should be noted that the service of a remedial action notice does not preclude other enforcement action such as the service of a hygiene improvement notice, emergency prohibition procedures or prosecution and the Authorised Officer and these options should be discussed and agreed with

6.3 Seizure/Detention Notices/Procedures

- 6.3.1 Where a properly authorised officer suspects or is satisfied of the following, in respect of any food, the officer will detain or seize that food.
- food not produced or handled in accordance with hygiene rules: In these circumstances, the food will be first certified as such by the issuing the requisite certificate described in Regulation 27, Food Hygiene (England) Regulations 2006.
 - food which presents a risk to health
 - food which fails to meet food safety requirements as set out in Regulation (EC) No. 178/2002, Article 14(2)
 - foods where unsatisfactory sampling results show they fail food safety requirements
 - foods subject to Food Alerts for action, Product Withdrawal Information Notices and/or Product Recall Information Notices not acted upon by the Food Business Operator
 - imported food items subject to border controls and which have been introduced into the UK without the necessary checks or, not introduced via the requisite Border Inspection Posts.
- 6.3.2 In circumstances where the owner of the food wishes to surrender that food voluntarily, the officer may consider acceptance of the voluntary surrender as an alternative to detention or seizure. The officer will take into consideration the seriousness of the risk to public health and the extent of the contravention in deciding whether to accept voluntary surrender. If the officer decides to accept voluntary surrender a written request for the officer to remove the food must be obtained from the

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person in possession of the food prior to such acceptance. In no circumstances will the officer remove food without such a request. The officer will issue a receipt for any food that has been voluntarily surrendered.


- 6.3.3 Officers will have regard to, and act in accordance with the relevant Code of Practice when detaining or seizing food and any other available relevant guidance.
- 6.3.4 In circumstances where further investigation is necessary to establish whether food meets food safety requirements or not, irrespective of any risk to health, it would be appropriate to issue the appropriate notice in order to detain the food at the premises.
- 6.3.5 Where voluntary surrender or seizure of food is undertaken the officer concerned will advise the person in possession of the food that prosecution may also be considered for the contraventions which have been identified.
- 6.3.6 Authorised officers engaged in the seizure and detention of food will liaise, and share information with our regulatory partners and established stakeholders on matters related to the seizure or detention and circumstances surrounding these events.

6.4 Hygiene Emergency Prohibition Notices/Procedures

- 6.4.1 An authorised officer shall consider the issue of a hygiene emergency prohibition notice when satisfied that the health risk condition is fulfilled, i.e. there is an imminent risk of injury to health.

The health risk condition is fulfilled if any of the following, involves a risk of injury to health.

- use of any process or treatment,
- the construction of the premises or use of any equipment and,
- the state or condition of the premises or equipment

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Should the situation arise which require a decision on whether to effect the formal hygiene emergency prohibition process, consideration must be given to one or all of the following circumstances:

- the consequences of not taking immediate and decisive action to protect public health would be unacceptable
- the guidance criteria specified in the Code of Practice are fulfilled
- officer awareness of previous history of serious contraventions
- the officer has no confidence in an unprompted offer to close the premises, or to cease using a piece of equipment
- the proprietor is unwilling to confirm in writing the offer/request made to deal with the matter voluntarily.


6.4.2 The officer will have regard to, and act in accordance with the relevant Code of Practice and the legal requirements of the Food Safety Act 1990 and the Food Hygiene (England) Regulations 2006.

6.4.3 When deciding whether to accept voluntary action the officer must bear in mind that the offer is not enforceable in the courts and gives no statutory control to the officer. The officer must consider the consequences of a failure to comply and the resultant risk to public health. Where there is any doubt that the offer will not be fully honoured then the statutory procedures must be followed.

6.4.4 When an emergency prohibition notice is served or a voluntary offer is accepted the proprietor should be advised that a prosecution may be considered for the contraventions which have been identified.

6.4.5 In circumstances necessitating formal closure action or prompting voluntary action the inspecting officer should always consider taking further legal proceedings for contraventions identified. These contraventions may include additional matters which have not contributed to the decision to close the premises.

6.3.6 In circumstances which involve chemical contamination, where the effects of the contamination are uncertain, the officer shall seek expert advice as set out in the Code of Practice.

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6.5 Prosecution or Simple Caution

6.5.1 The decision to prosecute is a very significant one and not taken lightly. Generally, prosecution will be restricted to those individuals or companies who blatantly and continually disregard the law and/or put the public at serious risk. Prosecutions will not be used as a punitive response to minor breaches of legislation.


6.5.2 The following circumstances are likely to warrant consideration of prosecution:

- where there has been a flagrant breach of the law such that public health, safety or wellbeing has been put at risk
- where there has been a failure to correct any identified serious potential risk to food safety having been given a reasonable opportunity to comply
- where there is a failure to comply with a statutory notice
- where there is a history of previous non-compliance with legislation
- where businesses are operating without the requisite approval having being previously advised of that requirement.

6.5.3 Where circumstances have been identified which may warrant prosecution, the officer will take into consideration all relevant evidence and information in order to enable a consistent, fair and objective decision to be made.

6.5.4 Before a prosecution proceeds the officer responsible will ensure that there is relevant, admissible, substantial and reliable evidence available to proceed with the action and a realistic prospect of conviction. If an essential witness is unwilling to be identified to the defendant and/or is unwilling to give evidence for the prosecution then it will not be possible to proceed.

6.5.5 The likelihood of a defendant being able to establish a defence of due diligence must be evaluated. Primary Authority partnerships, Home and/or Originating authorities must be consulted prior to the officer deciding whether to proceed with a case.

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6.5.6 When gathering evidence of an offence, where necessary, an individual or representative of a company, who may be subject to prosecution, will be cautioned in accordance with PACE. The caution may be communicated verbally or in writing. In circumstances where a formal interview is conducted this will be recorded in writing or by means of an audio recorder generally accepted as being designed for such use.


6.5.7 There must be a positive decision, based on relevant criteria that it is in the public's interest to prosecute. The officer will take into account the guidance issued by the Crown Prosecution Service in the Code for Crown Prosecutors. The officer will also have regard to the guidance contained in the Food Safety Code of Practice, case law and other relevant documents.

6.5.8 In considering whether prosecution is in the public interest the following factors should be taken into consideration in addition to those in 7.2 above:

- the likely penalty on conviction
- whether the offence was premeditated
- the need to positively influence the offender's future behaviour
- the effect on the offenders', or witnesses', physical or mental health balanced against the seriousness of the offence
- whether the offence was committed as a result of a genuine error or misunderstanding
- whether the offender has put right the harm caused

6.5.9 Other factors to be considered may include:

- a) the seriousness of the alleged offence
 - the risk or harm to public health
 - disregard of public health for financial reward
- b) the previous history of the party concerned
 - offences following a history of similar offences
 - failure to respond positively to past warnings

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- c) the willingness of the party to prevent recurrence of the problem
- d) any explanation offered by the company or individual concerned
- e) the importance of the case e.g. whether it might establish a legal precedent
- f) whether other action such as service of an improvement notice or issuing a formal caution would be more appropriate or effective.

6.5.10 Simple caution may not be considered where there is insufficient evidence to support a prosecution but, may be issued as an alternative to prosecution. Simple cautions must be issued in accordance with the relevant Home Office Circular/guidance and any other relevant guidance.

6.5.11 Simple caution may be used:


- to deal quickly and simply with less serious offences
- to divert less serious offences away from the courts
- to reduce the chances of repeat offences

6.5.12 To safeguard the suspected offender's interests the following conditions must be fulfilled before a caution is administered:

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction
- the suspected offender must admit the offence
- the suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

6.5.13 Simple caution may be appropriate where the offence is a minor offence and where there is no previous history of similar offences. It will not generally be appropriate for repeat offences or where the offence is considered to be particularly serious.

6.5.14 Pressure should not be applied on an offender to accept a simple caution. If a person declines an offer of a simple caution it will be necessary to consider taking alternative enforcement action. This


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would generally involve prosecution and decisions to take action other than to prosecute should be referred to a senior officer.

6.5.15 The Business Unit Manager is the officer responsible for issuing simple cautions and for approving recommendations for prosecution.

7.0 Food Businesses operated by the London Borough of Southwark

- 7.1 Food establishments within the Borough which are owned and operated by the London Borough of Southwark will be subject to official controls in the same way as any other food establishments using interventions set out in the Food Law Intervention policy.
- 7.2 It is not permitted for food law enforcement officers employed by the London Borough of Southwark, "the council", to initiate formal legal proceedings against itself in these matters. Therefore, enforcement approach in these establishments will be different from that taken for food establishments not operated by the Council as described elsewhere in this document.
- 7.3 Food law contraventions in these establishments will be addressed using the range of informal measures described in Part 5 above.
- 7.4 Upon inspection of these establishments, should it be considered that the health risk condition is fulfilled or, food exposed for sale fails to meet food safety requirements, in the case of the former, a voluntary closure agreement will be made and for the latter, a voluntary surrender.
- 7.5 For all situations requiring the actions described at 7.4 above, the head of service and strategic director of the division/department responsible for the food establishment as well as their counterparts in Environment and Leisure - Community Safety & Enforcement will be promptly notified via email or by direct contact. Full details of the inspection findings, action taken and improvements required will be provided in


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writing at that time or shortly afterwards. The matter will be brought to the attention of the attention of the Chief Executive.

- 7.6 All other enforcement matters will be first brought to the attention of the manager of the facility and a copy of relevant correspondences sent to the responsible link officer within the relevant division or department.

8.0 Monitoring

- 8.1 To ensure our enforcement activities take into account the better regulation agenda and principles of good regulation that is targeted, proportional, accountable, consistent and transparent, we undertake programmed, routine and ad hoc monitoring by:
- Ensuring our officers are suitably qualified, competent and authorised to enforce the relevant statutory provisions, including those for temporary Agency staff and that they maintain CPD training throughout the year as required by the Chartered Institute for Environmental Health. Records of the qualifications and training of all Food Officers are maintained on our database.
 - Providing learning and development objectives in our work planning activities for all officers
 - Undertaking programmed performance appraisals for all officers
 - Undertaking accompanied visits with the Team Leader accompanying Principal Officers on programmed inspections and Principal Officers providing training to less senior officers
 - Undertaking periodic reviews of our Notices file, case files and premises inspection records as necessary
 - Requiring Officers to detail improvements in businesses that have a reduction in their risk rating in writing and these records are kept on the premises file and our database
 - Carrying out detailed reviews by the Team Leader, Business Unit Manager and Head of Service for cases recommended by the officer for prosecution or a simple caution
 - Monitoring all prosecutions by quarterly reviews with our Legal Services.

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9.0 General

- 9.1 This policy will be reviewed and revised as necessary to reflect changes in legislation, codes of practice, relevant advice and guidance or in the light of operational experience.
- 9.2 All officers involved in enforcement shall have received appropriate training and be authorised in accordance with the Food Unit's policy on authorisation of officers.
- 9.3 Officers taking enforcement action shall have due regard to this policy as well as relevant Codes of Practice and guidance issued by the FSA and other relevant and recognised bodies.
- 9.4 Any departure from this policy must be exceptional, capable of justification and referred to a senior officer unless significant risk will arise as a result of any delay.
- 9.5 The policy shall be a public document and shall be freely publicised.