

Harlow Council

Environmental Health Services

Food Safety Enforcement Policy

Introduction

Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Harlow. Even in a minor case a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. The Environmental Health Service applies this policy so that it can make fair and consistent decisions about enforcement.

The Policy is also designed to make sure that everyone knows the principles that the Environmental Health Service applies when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively.

Enforcement Policy Statement

It is the Council's aim to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within the district of Harlow, is without avoidable risk to the health or safety of the consumer.

The Council will help businesses to achieve legislative compliance, through inspection, education and the provision of informal advice. Formal enforcement proceedings may, however, be taken in justifiable circumstances.

Officers will strive to provide a consistent enforcement approach and will have due regard to the potential risk when deciding upon the method of enforcement. When contemplating formal action, account will be taken of the assessment of risk, the past record of compliance, the seriousness of the contravention and the public interest.

When deciding upon the best course of action the Council will have regard to specific guidance on enforcement action contained in the various Codes of Practice issued under Section 40 of the Food Safety Act 1990; guidance issued by the Food Standards Agency, the Local Authority Coordinators of Regulatory Services (LACORS) and the Crown Prosecution Service Code for Crown Prosecutors.

The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions that concern enforcement action, including prosecution. Each case is unique and must be considered on its own merits. There are, however, general principles which apply to the way each case is approached. These are laid out in this policy and in the Government's Enforcement Concordat to which the Council is a signatory.

The Council and its officers will make it clear to businesses and individuals what their responsibilities and duties are, and what can be expected of enforcement officers. A written report will follow each full food hygiene inspection, and will clearly distinguish mandatory requirements from recommendations on good practice.

Approval

This policy was approved by the Environment Committee of Harlow District Council on 11th June 2002

Access to the Policy

This policy is available on the Council's web site (www.harlow.gov.uk) and in hardcopy from the Environmental Health Services offices in the Town Hall. It can be ordered by telephoning (01279) 446111, emailing (env.health@harlow.gov.uk) or by writing to Environmental Health Services, Harlow District Council, Town Hall, Harlow, CM20 1HJ. The Cabinet Office's Enforcement Concordat is also available through the same channels.

Harlow District Council believes in continuous improvement, and you are therefore invited to submit any comments or suggestions regarding this policy to the Head of Environmental Health Services as detailed above.

Service Requests

Complaints received, which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in the following paragraph. During the progression of enforcement action that business or individual will be further notified of progress and any new information.

In circumstances where notification could impede enforcement action, notification will not take place until those circumstances no longer exist.

Deciding the Level of Action to Take

This can be one, or a number, of the following.

- A. Prosecution
- B. Revocation of Licence
- C. Emergency Prohibition
- D. Seizure
- E. Formal Caution
- F. Formal Notice
- G. Written Warning and Advice
- H. Revisit of Premises
- I. No Action

A. Prosecution

In order to take forward a prosecution, the individual or organisation must have met one or more of the following criteria

- Engaged in fraudulent activity
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well being of people,
- Obstructed an officer whilst undertaking his or her duties.

B. Revocation of Licence

In order to warrant revocation of a licence, the individual or organisation must have met one or more of the following criteria

- Engaged in fraudulent activity,
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well being of people,
- Obstructed an officer whilst undertaking his or her duties.

C. Emergency Prohibition

The service of an **Emergency Prohibition Notice** will be considered in one or more of the following circumstances

- The officer has identified an imminent risk of injury to health.
- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner.
- The guidance criteria, specified in the relevant statutory Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
- There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close premises or cease the use of any equipment, process or treatment associated with the imminent risk.
- A proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

D. Seizure

We have legislative powers to seize unfit, unwholesome or contaminated food, to prevent it causing harm to consumers. When food is seized, we will give the person from whom the food is taken an appropriate receipt. The food will then be taken before a Magistrate as soon as possible for them to confirm the seizure and consider the food unfit. If the Magistrate does not condemn the food, we will return it to the owner who will be entitled to compensation for any loss suffered. We always give full details of our actions to the offender when we exercise this power.

E. Formal Caution

This procedure is used as a final warning. It derives from advice issued by the Home Office and has already been successfully used by this authority to deal with contraventions of food safety legislation. For a formal caution to be issued a number of criteria must be satisfied:

- (i) sufficient evidence must be available to prove the case;
- (ii) the offender must admit the offence;
- (iii) the offender must agree to be cautioned;
- (iv) the offence must not have been committed by the offender before.

A record of the Caution will be sent to the Office of Fair Trading, and will be kept on file for 3 years. If the offender commits a further offence, the Formal Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

F. Statutory Notice

Circumstances that indicate **Improvement Notice** procedures should be followed will include

- There are significant contraventions of legislation.
- There is a lack of confidence in the proprietor or enterprise to respond to an informal approach.
- There is a history of non-compliance with informal action.
- Standards are generally poor with little management awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Where it is intended to prosecute, and effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

Officers will only consider service of Notice where there is sufficient evidence to justify their issue. All relevant guidance in statutory Codes of Practice and guidance issued by the Government or co-ordinating bodies will be followed as appropriate.

The time allowed (at least 14 days), and any works required by a Notice must be reasonable, but must also take into account the food safety implications of the contravention.

G. Written Warning and Advice

For some contraventions we will send the offender a firm warning letter clearly identifying the contraventions, giving advice on how to put them right, and including a deadline by which this must be done. Failure to comply could result in a Notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the overall implications of the contravention.

H. Revisit of Premises

Following a formal notice or a written warning and advice, we will revisit the premises to check compliance has been achieved. For very minor contraventions we may advise that a check will be carried out at the next routine inspection.

I. No Action

In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade. A decision to take no action must be recorded and must take into account the overall implications of the contravention.

Determining Whether Formal Enforcement Action is Viable and Appropriate

The steps outlined in the Crown Prosecution Service (CPS), Code for Public Prosecutors will be followed during any formal enforcement action taken by the Environmental Health Service. The Code is on the CPS website: www.cps.gov.uk or can be requested by telephoning 0207 796 8442

Liaison

Where an enforcement matter affects a wide geographical area beyond the boundaries of Harlow, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

In particular the Council is committed to the Home Authority Principle and will seek to promote the Principle in accordance with the guidance issued by the Local Authority Coordinators of Regulatory Services (LACORS).

Training

Officers undertaking enforcement duties, will be suitably trained and qualified, so as to ensure that they are fully competent to undertake their enforcement activity. Continuing Professional Development training will be provided both in-house and externally, and will cover both the technical and legal aspects of the officer's duties.

Authorisations

Enforcement action is carried out by officers appointed and authorised by the Council under Section 5 of the Food Safety Act 1990, who are suitably trained and qualified in accordance with Code of Practice 19 of the same Act.

The final decision to prosecute will be taken by the Head of Environmental Health Services in consultation with the Legal Services Manager.

All authorised officers are issued with a written Authority specifying the provisions that they are entitled to exercise.

Management Systems

The Council will maintain management systems to monitor the quality and nature of enforcement activity undertaken so as to ensure, as far as is practicable, uniformity and consistency in approach and a quality service in general.

In addition to the comprehensive internal monitoring systems in place, the Council will also participate in inter-authority audits in relation to its food safety duties.

Departure from Policy

All authorised officers when making enforcement decisions shall abide by this policy, and refer to supporting documented operating procedures.

Any departure from policy will only be accepted in exceptional circumstances capable of justification, and only after full consideration and authorisation by the Head of Environmental Health Services or a designated alternative officer.

Appeals

If any person/business is unhappy with the action taken, or the information or advice given by the Council's environmental health staff, they will be given the opportunity of discussing the matter with the officer's line manager. This is without prejudice to any formal appeals mechanism.

Harlow Council also operates a corporate Customer Care and Complaints Procedure.