##### Food Hygiene

### Statement of Enforcement Policy

**Introduction**

1. The responsibility for complying with Food Safety legislation lies with those who create the risks, the ‘Duty Holders,’ persons running a food business and persons employed to manage food. Food business operators need to recognise their responsibility for managing food safety and employees need to recognise their legal duties, primarily about their personal hygiene and preventing any risk of contamination of food. The term ‘enforcement’ has a wide meaning, and this statement applies to all dealings, both formal and informal between Inspectors and duty Holders.

2. The purpose of enforcement is to:

- ensure that Duty Holders take action to deal immediately with serious risks.

- promote and achieve sustained compliance with the law.

- ensure that Duty Holders who breach food safety law may be held to account

- protect public health and safety

- ensure a fair-trading environment for local businesses.

3. The principal legislation in this respect are EC Regulations 852/2004, 853/2004 and 178/2002, The Food Safety and Hygiene (England) Regulations 2013, Food Safety Act 1990, and The General Food Regulations 2004. The Council endorses and participates in Principal and in all cases where a Company participates in the LBRO Primary Authority scheme no action will be taking without first consulting the Primary Authority except in cases where there is an imminent risk to public health or safety.

4. The Council has assorted options to be considered when conducting food safety enforcement, including advice, guidance, information, action by means of letter, formal action by means of hygiene improvement notices and emergency prohibition notices, simple cautions, and prosecutions. The Council must also use educative measures to improve the level of understanding of food safety.

**Enforcement Principles**

5. The aim of the Council in enforcing food safety legislation is to strive to ensure that food and drink intended for human consumption, and which is produced, stored, distributed, handled or consumed within the Borough is without risk to the health or safety of the consumer and meets food safety requirements. Except where circumstances indicate a significant risk, officers will operate a graduated and educative approach only moving on to formal action where informal does not achieve the desired effect.

6. When making decisions as to the options to be considered in enforcement, authorised officers follow the guidance laid down in the Statutory Food Law Code of Practice and associated practice guidance issued by the FSA and in the absence of any specified guidance have regard to the advice contained in guidance notes issued by the Local Authorities Co-ordinating Body on Regulatory Services (LGR), the Code for Crown Prosecutors, The Regulators’ Code 2014 and regulatory principles required under the Legislative and Regulatory Reform Act 2006.

The Council’s authorisation and internal monitoring procedures for Officers will ensure that only Officers who are competent as defined in the Code of Practice will enforce food safety legislation.

7. Authorised officers also have additional powers including the taking of samples, photographs, and the examination of documents.

8. **Proportionality**

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties can expect the Council to act in a manner proportionate to any risks to food safety, and to the seriousness of any breach.

Deciding what is reasonably practicable to control risks involves the exercise of judgement by Duty Holders and discretion by enforcers. When Duty Holders and the Council cannot reach agreement, final determination on what is reasonably practicable circumstances will be made by the Courts.

Where the law requires that risks should be controlled as far as is reasonably practicable, the Council in considering protective measures to be taken by Duty Holders will consider the cost as well as the degree of risk involved. However, the Council will expect that relevant good practice has been followed.

Some risks may be so serious that they cannot be permitted irrespective of the economic consequences, but in general, risk reducing measures will be weighed by the Council against the associated costs. If there is a significant risk, the Duty Holder must take measures to either eliminate it or where elimination is impossible, minimise it, unless the cost of taking actions is clearly excessive compared with the benefit derived.

9. **Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Wherever possible, the Council will adopt a consistent approach in its use of enforcement powers. However, consistency is not a simple matter and Inspectors are faced with many variables including the degree of risk, the attitude and competence of Duty Holders, any history of incidents or breaches involving the Duty Holder, previous enforcement action and the seriousness of any breach. The Council recognises that enforcement action is a matter of judgement and discretion in each case. The Council’s Inspectors will endeavour to promote consistency in the exercise of both their judgement and discretion.

The Council has liaison arrangements with the other District Councils in Warwickshire and Coventry City Council to ensure a common approach in relation to food safety.

10. **Transparency**

Transparency means helping Duty Holders to understand what is expected of them, and what they should expect from the Council. It also means making it clear to Duty Holders, not only what they have to do, but, where this is relevant, what they do not have to do. In pursuance of the aim of transparency, the Council’s Inspectors will distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory. All advice will be confirmed in writing. In the case of hygiene improvement notices the Inspector will discuss the notice and, if possible, resolve the matter before serving it. The notice will say what needs to be done, why, and by when and that in the Inspector’s opinion a breach of the law has been committed. In the case of an emergency prohibition notice the notice will explain why the prohibition is necessary.

Complaints procedures are set out on the Council’s website.

11. **Targeting**

Targeting means making sure that an inspection is targeted primarily on those whose activities give rise to the most serious risk, or where the hazards are least well controlled. Council Inspectors will focus on Duty Holders who are responsible for the risk and who are best placed to control it whether as employers, manufacturers, suppliers, or others.

Any enforcement action will be directed against Duty Holders responsible for a breach. Where several Duty Holders have responsibilities, the Council may act against more than one when it is appropriate to do so in accordance with this policy.

12. **Investigation**

Investigations are undertaken to determine.

* + causes
  + whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law.
  + lessons to be learnt and to influence the law and guidance.
  + what response is appropriate to a breach of the law.

To maintain a proportionate response, most resources available for investigation will be devoted to the more serious circumstances. It is neither possible nor necessary to investigate all issues on noncompliance which are uncovered during preventative inspections or in the investigation of reported events. However, the Council will conduct a site investigation where there has been a serious incident or major breach of legislative requirements.

13. **Enforcement Options**

Informal Action

Informal Action (i.e., verbal advice, written advice, or informal written warning) will be considered where:

* any contravention or omission is not serious enough to warrant immediate formal action (e.g., small areas of cleaning, minor repairs, inconsistent record keeping etc), or
* history of the premises indicates that informal action can be expected to achieve compliance and there is sufficient confidence in the management, or
* voluntary organisations are running businesses who, although not satisfying the above criteria, are more likely to respond effectively to an informal and educative approach.

In the case of informal action, correspondence will be issued to persons running a food business detailing requirements necessary to comply with the Regulations and clearly indicating any recommendations of good hygiene and practice.

Formal action

Hygiene Improvement Notices will be issued in accordance with the detailed requirements of the Code of Practice and where any of the following apply:

* there are significant contraventions of the legislation.
* there is a lack of confidence in the management of the business to respond to an informal approach.
* there is a history of non-compliance.
* standards are poor with little food safety awareness.
* the consequences of non-compliance could be potentially serious to public health, and
* effective means are needed to remedy serious contravention.

Failure to comply with a Hygiene Improvement Notice will result in legal proceedings being instituted. Only mitigating information becoming known concerning factors outside the control of the Duty Holder will justify a variation of this policy.

Hygiene Emergency Prohibition Notices will be issued in accordance with and the detailed requirements of the Code of Practice and where the following circumstances apply:

* the consequence of not taking immediate and decisive action to protect public health would be unacceptable,
* an imminent risk of injury to health can be demonstrated,
* the relevant Code of Practice criteria concerning the conditions when prohibition may be appropriate, are fulfilled,
* there is no confidence that a voluntary closure agreement would be effective.

Failure to comply with an Emergency Prohibition Notice will result in legal proceedings being instituted. Only mitigating information becoming known concerning factors outside the control of the Duty Holder will justify a variation of this policy.

Remedial Action Notices/Detention Notices will be issued in respect of previous approval under Regulation (EC) 853/2004 in accordance with the guidance in the Code of Practice and where:

* any of the requirements of the “Hygiene Regulations” as defined by Regulation 2 of the Food Safety & Hygiene (England) Regulations 2013 are being breached.
* an inspection under the Hygiene Regulations is being hampered.
* where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary including the taking of samples.

Seizure and Detention

Where food has not been produced, processed, or distributed in compliance with the “Hygiene Regulations” authorised officers may use powers to detain or seize food in accordance with the procedure contained in the Code of Practice.

Simple Caution

The following conditions must be fulfilled before a caution is issued:

* there must be evidence of the suspected offenders guilt sufficient to give a realistic prospect of conviction,
* the suspected offender must admit the offence, and
* the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

A simple caution will be issued in the following circumstances:

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

If a Duty Holder refuses the offer of a simple caution, then a prosecution will be instituted.

Prosecution:

The Council’s Inspectors and the Solicitor to the Council will consider prosecution when one or more of the following apply:

* It is appropriate in the circumstances to maintain public confidence in the law and the maintenance of standards, especially where there would be a normal expectation that a prosecution will be taken, or, where, through the conviction of offenders, others may be deterred from similar failures to comply with the law.
* There has been, or the potential for, considerable harm to public health, safety or wellbeing arising from a breach.
* The gravity of the breach, or the general record of the approach of the Duty Holder warrants prosecution, e.g., apparent reckless disregard for standards, blatant disregard for the law, failure to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer, repeated breaches, or persistent poor standards;
* Where the offence involved failure to comply in full or in part with the requirements of a statutory notice
* False information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk.
* Officers have been intentionally obstructed or assaulted in the lawful course of their duties.

The decision to prosecute will also take account of the criteria set down in the Code for Crown Prosecutors and the Regulators Compliance Code. No prosecution may go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

A decision to prosecute must consider.

* the seriousness of the alleged offence
* the previous history of the party concerned.
* the likelihood of the defendant being able to establish a due diligence defence.
* that the prosecution is in the public interest
* that there is sufficient evidence to provide a realistic prospect of conviction

Interviewing Of Suspects

All Duty Holders suspected of having committed an offence where legal proceedings are under consideration will be offered an interview. This is their opportunity to provide any information which will assist the Council in deciding whether further action is appropriate. It also provides the Duty Holder with an opportunity to admit the offence(s) alleged in cases where a simple caution may be a more appropriate remedy than a prosecution. All interviews will be conducted in accordance with the requirements of PACE.

14. **Publicity And Sharing Of Information**

We will publicise any conviction which could serve to draw attention to the need to comply with the law or deter anyone tempted to act in an analogous manner. Details of such cases will also be published on our website.

We will share intelligence and information secured in the ordinary course of our business with other statutory enforcement bodies and relevant partners in accordance with information sharing protocols signed by the Council and our duties under the Crime and Disorder Act 1988.

Food business hygiene inspection scores will be published on the Food Standards Agency’s National Food Hygiene Rating Scheme website.

Information will be made available in public registers where the legislation requires it. These will be freely available for the public to view on our website [www.northwarks.gov.uk](http://www.northwarks.gov.uk) or during normal office hours.