

FOOD SAFETY AND STANDARDS ENFORCEMENT POLICY

Introduction

The food enforcement work includes:

- food hygiene inspections
- food standards including composition and labelling
- food complaints
- food sampling including imported foods and feeding stuffs
- food hazard warnings
- investigation of food poisoning notifications and outbreak control
- advice to food businesses and consumers
- imported food including the operation of a Border Inspection Post at Manchester Airport

All enforcement to be carried out in a fair, open and transparent manner by officers who are expert in their field and always take action proportionate to the risks involved.

Our Role

Our role is to protect public health and bio security by promoting effective enforcement of food safety and standards.

To achieve this in a way which is responsive to the needs of the residents of and visitors to the city who may be affected by poor food safety or standards, and to provide an effective and efficient enforcement programme to ensure that food safety standards are improved and maintained.

Our objectives are to:

- achieve consistency of enforcement, ensuring that different businesses in similar circumstances are treated in a similar way
- ensure fairness in the way that legislation is applied to business
- explain how we have decided upon a particular course of action

Principles of Enforcement

Manchester City Council has formally adopted the central and local government Concordat on Good Enforcement. This means that we will be open, helpful and fair, to ensure that any enforcement action is proportionate to the risks.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

Our Approach

Prevention

We believe that the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. We provide written guidance on aspects of the law and are happy to discuss and explain food safety and standards requirements.

Inspection

Officers also carry out inspections of premises, in order to:

- ensure that proprietors of food businesses are carrying out their duties under food legislation including imported food and food standards
- help businesses improve their management of food issues by giving guidance and advice
- investigate food hygiene and food safety and standards complaints
- investigate premises implicated in food poisoning outbreaks

We are concerned to help duty holders do what is reasonably practicable, but where it is necessary we will use the legal powers available to us to achieve compliance.

Inspection Frequency

The frequency of visits depends very much on the reason for the visit and the type of food business, so some businesses will be visited more frequently than others.

Generally, those that involve more serious food risks; where the risks are higher and where they have in the past been poorly controlled, are visited more often. We often call unannounced and will want to talk to the proprietor or manager.

We will want to look around premises, look at food and examine relevant documentation such as training records, temperature records, pest control treatment records, food labels and stock control systems, and take samples to check on composition and labelling etc.

After The Inspection

Inspectors have a duty under the Food Safety Act 1990 to communicate the outcome of the inspection with the proprietor or manager of food businesses and to leave with them a record of the inspection.

Businesses will be given advice or guidance during the visit and will be told what - if any - further action is going to be taken.

We prefer Informal Action

We will use our best efforts to resolve any issues where the law may have been broken without issuing formal notices, or referring the matter to the courts. This will be our first option when the circumstances indicate that minor offences may have been committed and we are confident that appropriate corrective action will be taken.

During inspections or after investigations about specific complaints:

- minor breaches of food legislation will be dealt with by the officer giving information, advice or guidance
- only in the most serious or exceptional circumstances will one or other of the formal actions be taken

Whenever possible, or requested, advice or guidance will be given in writing with a distinction made between legal requirements and recommendations. An opportunity will be provided to discuss the matter and any rights of appeal will be explained.

We sometimes have to give legal notice

The legislation that we enforce provides for the service of formal notices on individuals, businesses or organisations requiring them to meet specific legal requirements.

- Hygiene Improvement Notices require that remedial steps be taken within a certain time. The time allowed will usually be discussed with the employer;
- A Hygiene Emergency Prohibition Notice may be served where there is an imminent risk of injury to health;
- A Remedial Action Notice and Detention Notice may be served but only on establishments subject to approval under Article 4(2) of Regulation 853/2004 made under the European Communities Act 1972;

Failure to comply with notices is likely to lead to prosecution. Notices can be appealed against to the Magistrates Court and information on how to do this is provided when the notices are issued.

The final resort is prosecution

Where the circumstances warrant it, and the alternative actions mentioned previously in this policy are considered inappropriate, prosecution may result.

Prosecutions are more likely if:

- a deliberate breach of legislation has taken place
- the offence is a serious one
- the attitude of the offender towards the offence and the offender's history of previous behaviour warrants action to be taken
- there is apparent reckless disregard of standards or repeated breaches

- there has been blatant disregard of information, advice or guidance
- the standards of the offender's activities falls significantly below that imposed by legislation and that generally prevailing in the particular business sector

Prosecution will, in the public interest, also be considered where:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by the law, and conviction may deter others from similar failures to comply with the law.

It should also be noted that the Courts can impose Prohibition Orders following conviction.

To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute takes account of the Code for Crown Prosecutors by having regard to the weight of evidence and public interest.

The Human Rights Act 1998 introduced an obligation on public authorities to act consistently with the Articles of the European Convention on Human Rights. These articles confer rights on an individual if, for example, it confers a right of respect for a person's home, land and/or business assets, however, the Council's use of enforcement powers under the Food Safety Act is a justified interference with these rights if it is in accordance with the law, in the public interest, and proportionate to the objective of remedying the breach of Food legislation.

In certain circumstances a Simple Caution (previously Formal Caution) may be an accepted alternative to prosecution.

Enforcement in City Council Food Businesses

The Local Authority is still the enforcing authority for food operations of the city council. Where minor breaches of legislation are observed the outcome will follow that described above for Informal Advice. Should more serious breaches be observed, a report will be sent to the appropriate Head of Service with a copy to the facility manager. The most serious breaches will be reported to the Chief Executive with a copy to the Head of Service and the facility manager.

A Consistent Approach

All our staff will:-

- be courteous, open, fair and consistent in enforcing the law
- show their official identification or give a business card when they visit
- give their name when speaking on the telephone
- answer enquiries as promptly as they can
- advise if they are going to write following a visit: sometimes staff need to consult colleagues or others, seek further advice, or conduct further investigations

We will be consistent in our approach by following the criteria and guidance set down in relevant legislation and codes of practice. We will ensure that before considering prosecution, the case will be subject to independent review by a Senior Manager and the City Solicitor.

Every effort is made to ensure consistent enforcement standards between local authorities although local circumstances may preclude an entirely uniform approach on all issues.

In some instances the Service may have shared responsibilities with another enforcement agency. In these circumstances we will liaise with that other agency to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offences.