

Food product and food premises complaints policy

1.0 Background

- 1.1 The Food Standards Agency Framework Agreement on Local Authority Food Law Enforcement requires that:

“The Authority shall set up, maintain and implement a documented policy and procedure(s) in relation to food and feeding stuffs complaints that originate within the UK, and those foods and feeding stuffs originating from other EU member states, or from third countries and in relation to complaints against food premises.”

2.0 Purpose

- 2.1 The purpose of this Policy is to set out how the Council will handle and investigate food complaints (arising from food sold from businesses in the district, whether the food originated within the UK, another EU member state, or a third country) and complaints about food premises in the district.
- 2.2 In implementing the Policy, the Council recognises that the main aims and objectives of investigating food and food premises complaints are as below.
- 2.2.1 To identify contraventions of food legislation.
- 2.2.2 To protect the consumer through the enforcement of legislation.
- 2.2.3 To help determine whether advice or enforcement action is appropriate where it is suspected that poor practices and procedures exist at a food business.
- 2.2.4 To give advice and guidance, where appropriate, on food hygiene matters to food businesses and consumers.

3.0 Scope

- 3.1 With respect to food complaints, the scope of this Policy only covers the investigation of complaints arising from food sold from businesses in the district, whether the food originated within the UK, another EU member state, or a third country.
- 3.2 More specifically, the scope covers the investigation of food complaints involving contamination by:
- microorganisms or their toxins;

- microbiological quality;
- chemical contamination where there are hygiene implications and/or a possible imminent risk to health;
- mould or foreign matter;
- cross contamination with any ingredient or processing aid listed in Annex II REGULATION (EU) No 1169/2011 on the provision of food information to consumers or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product where the consumer should be informed to enable them, particularly those suffering from a food allergy or intolerance, to make informed choices which are safe for them.

3.3 The Policy does not cover food complaints that are the responsibility of Devon, Somerset and Torbay Trading Standards Service to investigate including: chemical contamination where there are no hygiene implications/imminent risk to health; compositional offences; advertisement; presentation and labelling of food including labelling of certain substances or products causing allergies or intolerances in prepacked foods; adulteration; and misleading claims.

3.4 With respect to food premises complaints, the scope only extends to the investigation of food premises in the Council's district.

3.5 The scope of the Policy does not cover feeding stuffs because the Council does not have enforcement responsibility in this area.

4.0 Corporate Links

4.1 The Council Strategy programmes relevant to this Policy are Health at the Heart and Going to Town.

4.2 Relevant to the above priority, the overall aim of the food law enforcement service is to:

“Prevent food borne disease and contaminated food arising from food businesses in the district; ensure food arising from businesses in the district is safe to eat; and ensure compliance with legislation.”

4.3 The other plans and Policies developed by the Food, Health and Safety Team relevant to this Policy have been identified.

4.3.1 Food, Health and Safety Business Plan and Food Law Service Plan

4.3.2 Enforcement Policy

5.0 Resources for Investigating Complaints

5.1 Personnel

- 5.1.1 Only those Environmental Health Food, Health and Safety officers who have been authorised in accordance with the internal procedure on Authorisation of Officers may investigate food and food premises complaints. Where the investigation leads to the inspection of a food premises in the district, the Officer must be authorised in accordance with the aforementioned procedure to inspect that category of premises.

5.2 Budgetary Provision

- 5.2.1 Provision is made within the Environmental Health budget for the investigation of food and food premises complaints, including for scientific investigation where necessary.

5.3 Recovery of Costs Following Legal Action

- 5.3.1 Following successful legal action, the Council will seek to recover all investigation costs reasonably incurred in bringing the case.

6.0 Receipt of Complaints

6.1 Transfer to another Enforcement Authority

6.1.1 Food Complaints

On receipt of a food complaint it will not be suggested to the complainant that he/she should travel to the offices of another enforcement authority if the food was actually bought in their area. Instead, the Council will offer to accept the food complaint and make arrangements to transfer it by the quickest possible means to the correct enforcement authority as soon as is reasonably practical, where possible the next working day.

6.1.2 Food Premises Complaints

If the premises being complained about is not within the Council's district, the complainant will be given the contact details of the correct local authority.

6.1.3 Handling Anonymous Reports and Persons Requesting Anonymity

Anonymous complaints will be investigated, with the level of investigation determined by the Officer in accordance with the criteria in 9.0.

Requests to remain anonymous from persons making a complaint will be respected wherever possible. If the Officer suspects that this will hinder an appropriate level of investigation, this must be discussed with the person prior to beginning or continuing the investigation.

6.2 Initial Action upon Receipt

6.2.1 Food Complaints

The initial recipient will accept the complaint in accordance with the procedure on 'Food and Food Premises Complaints', ensuring in particular that the complaint item (whether brought to the Council offices or collected from the complainant) is accepted in such a way that there is continuity of evidence should the item be needed for legal proceedings. The complaint will be allocated to an appropriately authorised officer, based upon the allocated district who will determine the level of investigation appropriate in accordance with the criteria in 9.0. In their absence the complaint will be re-allocated by the Technical Support team to another appropriately authorised officer.

6.2.2 Food Premises Complaints

The initial recipient will accept the complaint in accordance with the internal procedure on 'Food and Food Premises Complaints'. The complaint will be allocated to an appropriately authorised officer, based upon the allocated district who will determine the level of investigation appropriate in accordance with the criteria in 9.0. In their absence the complaint will be re-allocated by the Technical Support team to another appropriately authorised officer.

6.3 Database Record Keeping

6.3.1 All food and food premises complaints will be entered upon the complaints module of the UNI-form database system initially by the Technical Support Officer or via an online form. The investigation records will be completed by the authorised officer.

7.0 Notifying the Food Standards Agency

7.1 Serious Localised Food Hazards and Non-Localised Food Hazards

7.1.1 If at any stage of the investigation it is suspected that either the circumstances of a food or food premises complaint suggests that there may be a serious localised food hazard or a non-localised food hazard, the Food Standards Agency will be notified in accordance with the Food Law Code of Practice (England).

7.2 Malicious (Deliberate) Tampering

7.1.2 If at any stage of the investigation malicious tampering of a food complaint is suspected, Devon and Cornwall Police will be notified immediately to discuss the course of action. As soon as possible afterwards, the Food Standards Agency will be notified in accordance with the Food Law Code of Practice (England).

8.0 Liaison with Other Organisations

8.1 At any stage of the investigation the Officer may decide it is necessary to liaise with other relevant organisations which may include one or more of the below.

8.1.1 Other local authorities

- 8.1.2 Food Standards Agency
- 8.1.3 Originating, Home Authority or Primary Authority for the business
- 8.1.4 Devon, Cornwall and Isles Scilly Food Liaison group members
- 8.1.5 Devon, Somerset and Torbay Trading Standards Service
- 8.1.6 Local Authorities Lead Officers
- 8.1.7 Food Examiner and/or Public Analyst, or other scientific body as appropriate
- 8.1.8 Public Health England Consultant in Communicable Disease Control or equivalent

8.2 The purpose of any liaison may be various and include one or more of the points below.

- 8.2.1 Transferring an investigation to another enforcement authority.
- 8.2.2 Gathering of technical expertise and advice.
- 8.2.3 Checking for similar experiences with the business being investigated.
- 8.2.4 Checking for consistency of enforcement with other authorities.
- 8.2.5 Arranging a joint investigation.

9.0 Criteria and Timescales for Investigating Food and Food Premises Complaints

9.1 General Criteria

All food and food premises complaints will be investigated. The level of investigation required will vary depending on the circumstances and take into account the general criteria below.

- 9.1.1 Actual and potential severity of the event.
- 9.1.2 Seriousness of the potential breach of food safety legislation.
- 9.1.3 History of compliance of the food business operator.
- 9.1.4 Enforcement priorities, political factors, and where there is a high degree of public concern.
- 9.1.5 Practicality of achieving results.
- 9.1.6 Relevance of the event to a wider range of premises.
- 9.1.7 Legal factors including the availability of evidence.

- 9.1.8 Resource constraints within the Food, Health and Safety Team
- 9.1.9 Any ongoing local or national survey or campaign (including current Food Standards Agency priorities).

9.2 **Specific Criteria**

The level of investigation deemed appropriate by the Officer will be greatest in the below circumstances.

- 9.2.1 Complaints appearing to involve a serious breach of food safety legislation.
- 9.2.2 Complaints involving young persons, children, or any other group deemed vulnerable.
- 9.2.3 Complaints which indicate a general management failure.
- 9.2.4 Complaints for which there is a high degree of public concern.
- 9.2.5 Complaints involving a new process, technique or item of plant.
- 9.2.6 Complaints relevant to any ongoing local or national survey or campaign (including current Food Standards Agency priorities).

Timescale: All investigations of food and food premises complaints will be begun no later than 3 working days from the complaint being made (with day 1 being the day of receipt).

10.0 **Complaint Investigation**

10.1 **Initial Inspection**

The initial inspection of any food complaint will be undertaken with the minimum disturbance in case it needs to be submitted for scientific investigation.

Initial contact with a food premises subject to a complaint should generally be by unannounced visit.

Where, after the initial inspection and/or discussion with the complainant it is clear to the Officer that the complaint is unjustified, or that no offence has been committed, the complainant will be advised either verbally or in writing no later than 5 working days from the decision being made. The reason/s for taking no action will be clearly recorded on the complaint investigation form.

10.2 **Interviewing the Complainant**

It is at the Officer's discretion whether to conduct a formal interview with the complainant at any stage to allow the preparation of a Statement of Witness. Factors that may be taken into account in this decision should include the below.

10.2.1 The nature and seriousness of the complaint.

10.2.2 The willingness of the complainant.

10.2.3 The history of the premises the food was bought from.

10.2.4 Whether it is part of a serious localised food hazard or non-localised food hazard.

10.3 Initial Contact with Supplier/Manufacturer/Importer

The supplier/manufacturer/importer of the food will be informed of the existence and nature of the food complaint by the quickest possible means. Other potential defendants will be similarly notified as they emerge.

Persons under investigation will be given the opportunity to view the complaint. Officers will ensure such examination does not prejudice the proper storage, analysis, examination or evidential value of the food. A record of any such examination will be maintained.

Unless relevant to the nature of the complaint, the complainant's details will not normally be released until either completion of the investigation (and then only with the permission of the complainant), or as part of an interview with the food business operator under the Police and Criminal Evidence Act.

10.4 Involvement of Originating, Home and Primary Authorities

On receiving a substantive complaint the Officer will notify any relevant originating/home authority as soon as possible by telephone, fax, e-mail or letter. Unless detailed information is required from the originating/home authority, any written notification will state clearly that the referral is for information only with no reply necessary.

Any request for information from an originating/home authority will be specific and in writing and contain sufficient relevant information for them to respond. The use of open ended questions (such as whether the Company could put together a due diligence defence) will be avoided, but requests may include the below.

10.4.1 Specific questions relating to the business's policy relevant to the incident.

10.4.2 Specific questions about arrangements for monitoring and review of the policy.

10.4.3 Information on relevant past or current non-compliance and any enforcement action.

10.4.4 Comment on overall systems that might contribute to due diligence.

Requests on implementation of policies and procedures at manufacturing/food handling level will generally be directed to the originating authority and not the home authority.

Wherever possible the officer should send a photograph, copy of Analyst's or Food Examiner's report, or the food item (or representative sample of it) to assist the originating/home authority.

If the officer decides to exercise his/her powers under food legislation to visit premises outside the district, the originating/home authority will be invited to be present at the time of the meeting or interview beforehand. The exception to this will be where it is necessary to make such a visit in an emergency, when the originating/home authority will be informed as soon as possible thereafter.

10.5 Submitting Articles for Scientific Investigation

In deciding whether to submit a complaint item for scientific investigation, the authorised officer will decide whether this can be justified having regard to the nature and seriousness of the complaint, the necessity of the work, and the likelihood of any further evidence being produced.

The authorised officer must speak to the Food, Health and Safety Manager or in their absence, the Environmental Protection Manager and then the Public Analyst Scientific Services PASS Public Analyst or Food Examiner prior to submitting any sample to discuss the investigation that could be undertaken, the splitting of any item where both analysis and examination are required, costs, arrangements for continuity of evidence, and requirement for any Statements of Witness.

Samples will be sent in accordance with the 'Food, Water and Environmental Sampling Policy' and internal procedure on 'Food, Water and Environmental Sampling for Analysis and Examination' to maintain continuity of evidence and help sustain any formal action.

Where the Public Analyst/Food Examiner suggest that their investigation may involve destructive testing, the Officer must ensure that he/she has taken suitable photographic evidence beforehand.

10.5.1 Microbiological Examination of Food, Water and Environmental Samples

The Council has appointed the Public Health England as its Food Examiner for the microbiological examination of food, including water and environmental samples. This laboratory is accredited for this work under the United Kingdom Accreditation Service (UKAS) and appears on the list of official food control laboratories.

10.5.2 Analysis of Physical or Chemical Contamination of Food and Water Samples

The Council uses Public Analyst Scientific Services PASS for analysis of food and water where there is evidence of physical or chemical contamination. This laboratory is accredited for this work under UKAS and appears on the list of official food control laboratories.

10.5.3 Analysis and Examination of Private Water Supplies

The Council uses South West Water plc for analysis and examination of private water samples (i.e. boreholes, springs, wells etc.).

10.5.4 Other Examination and Analysis

In some cases it may be necessary to use an alternative to the appointed Food Examiner or Public Analyst. Where possible a laboratory will be sought that is accredited with UKAS and operates to standard or approved methodologies.

10.6 Requests for Detailed Information from another Member State

Where a food complaint investigation requires information from authorities in another Member State the referral will either be made direct, or via the Food Standards Agency.

Although no similar formal arrangement exists for third countries (i.e. non-EU), the Food Standards Agency may be approached in such circumstances to provide assistance.

11.0 Post Investigation Enforcement Action

11.1 All enforcement action will be determined in accordance with the Enforcement Policy.

11.2 All relevant parties will be informed of the outcome of the investigation, any action that the food business must take, and any further action that the Council proposes.

11.3 If formal action is proposed, this must first be agreed with the Environmental Health Food, Health and Safety Manager before proceeding further.

12.0 Out Of Hours Arrangements

12.1 Callers using the Council's out of hours emergency service "Home Safeguard" 01395 516854 will be put through to the Duty Standby Officer who will notify an appropriately authorised Food, Health and Safety officer authorised to undertake food law enforcement work. This authorised Officer will determine the level of investigation practicable in the circumstances in accordance with the Policy.

13.0 Publicising the Policy

13.1 The Policy will be published and made available to businesses and the public via the Council's web site.

14.0 Review

14.1 The Policy will be subject to a programmed review every five years. The review will be conducted by the Environmental Health Food, Health and Safety Manager.

14.2 The Environmental Health Food, Health and Safety Manager will also review the Policy in between programmed reviews, as necessary, if there are changes in legislation and/or guidance relevant to food and food premises complaint work.