

# Thanet District Council

## **Environmental Health Public Protection Team - Food Service Plan & Enforcement Policy**

**Prepared July 2018**

**Review April 2020**



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## Introduction

This Service Plan sets out how the Council intends to provide an effective food safety service that meets the requirements of the Food Standards Agency (FSA) Framework Agreement. It covers the functions carried out by authorised officers of the Public Protection Team under the provisions of the Food Safety Act 1990, the Food Safety & Hygiene (England) Regulations 2013 and relevant regulations made under the European Communities Act. Duties are statutory unless otherwise stated.

The 2018/20 service plan will be under constant review and will continue to be developed to include improving the use of social media and the internet to maintain an up to date database, and to gather local intelligence. An internal auditing regime continues to be implemented in order to ensure consistency and maintain standards of service delivery and accuracy. The team has made excellent progress and is now a well-functioning and organised unit achieving 100% accuracy of data in the 2016/17 LAEMS return.

Traditional ways of working by the Public Protection Team in the future will be heavily influenced and affected from March 2019 by two main factors, one being 'BREXIT' and the second being the Food Standards Agency's Transformation plan 'REGULATING OUR FUTURE' (ROF).

## BREXIT

On 30<sup>th</sup> March 2019 under Article 50 of the Treaty on European Union the UK will cease to be a member of the EU. The decision by the UK to leave the EU will have implications for the regulatory regime for food safety in the UK.

Food law throughout the current EU members largely consists of directly applicable EU legislation. The Withdrawal Bill will seek to ensure that The FSA has a statute book that works on day one after exit, it is presumed that we will adopt the current EU legislation, although information is not currently available on this.

There are many 'unknowns' at the current time particularly regarding food that after Brexit may be classed as imported from the EU into UK ports and there is a substantial volume of export trade from the UK to EU member states and beyond which may no longer be able to rely on the current EU systems and procedures for traceability, documented evidence trails, customs checks and import duties etc., all statutory functions which may require additional qualified and competent officers, training, resources and accommodation at designated ports in Thanet. Manston airport became a DPE (Designated Point of Entry) in January 2013, but has been closed since May 2014, we currently do not have activities at the airport.

Port health (imported food) and shellfish activities (whelks) through Ramsgate Harbour are included in our duties, the registration of shellfish (whelks) landed through Ramsgate is regulated and monitored by officers and registration documents are recorded onto a database system, currently we are unsure if the EU traceability system for whelks will remain as it is.

Imported food through Ramsgate harbour is not currently active but is monitored on a regular basis through the Harbour office, where we liaise regarding shipping movements where food may be imported.

We do not currently carry out shellfish sampling for cockles/pacific oysters etc., as our beds are not active, but they may become active at any time via CEFAS (Government Centre for Environment

Fisheries & Aquaculture Science) and local fishermen, at which time extra resources would be required, we have no information on how commercial fishing will be regulated after Brexit, this may include new duties for local authorities being statutory.

## **Regulating our future**

The Food Standards Agency (FSA), the regulators for UK food safety, have published a controversial strategic plan for the period 2015-2020 to coincide with Brexit. The plan will lead to a major programme of regulatory change (ROF) through which the FSA is seeking to modernise comprehensively, the delivery and enforcement of its regulatory regime regarding food businesses. The FSA need to move ahead with this programme before March 2019 and are beginning with the central registration of food businesses known as 'Enhanced Registration'.

Following this centralisation of an enhanced registration process, the idea is that in the future the FSA will 'risk assess' businesses according to the details given and then inform the local authorities which need to be inspected, the details of this are not currently clear to local authorities and have been challenged by local authorities as well as the Chartered Institute of Environmental Health.

The registration of food businesses has always been managed at local authority level, with registration forms on the council's website as well as available by post or email. Premises are tracked locally by the Public Protection Team through social media, street auditing, liaison with the planning and licensing departments as well as local intelligence. The FSA have suggested that this role may be expanded by local authorities to include liaising with solicitors, conveyancers, citizens advice etc., but further detail has not yet been made available, so we are unable to predict resource requirements.

According to current codes of practice, all premises must be inspected so that they can be accurately rated and included in the Food Hygiene Rating Scheme (FHRS) and then published on the National database, we are presuming that this will continue to 2020 so resources are predicted on the current food premises register of 1359 food businesses and this plan estimates this to be approx. 50% of officer time.

We have no information regarding new FSA IT systems and their compatibility with local systems regarding ROF, this has been questioned but no clarification has been provided. The FSA system of central registration of food businesses will begin with the development of their online service, testing is taking place from May – September 2018 with further testing September – February 2019 with a view to being launched by March 2019. The suggested system by the FSA has been questioned and challenged at various forums and meetings that the FSA have held but there are still a large number of unknowns.

ROF also plans to change who is able to conduct food safety inspections in the UK in the future, which is also extremely controversial, and there may be a proposal to transfer responsibility for many food safety inspections and audits to private commercial firms by 2020, we have no further details at the current time.

The FSA also intend to step up the regime on Primary Authorities/National Inspection strategies (NIS), this will be published by the FSA, following pathfinding trials with six partnerships to test the concept of NIS in practice. The first version of FSA standards for Primary Authorities (PA) will be published in Summer 2018. These will then be tested in practice and partnerships with LA's in late 2018 and throughout 2019.

## Primary Authorities (PA)

Basically this means that any food business or chain of food businesses can apply to have a 'Primary Authority'. Primary Authority is based on legal partnerships between businesses and an individual local authority of their choosing. Primary authorities provide advice to businesses that all other local authorities must respect, they can also produce their own inspection plan. Outside local authorities cannot take enforcement action against businesses who are signed up, registered and paid members of the scheme without extensive consultation, for example Co-Op have a Primary Authority which is Manchester City Council. We are unable to progress enforcement without following stringent time scales and rules.

## National Inspection Strategies (NIS)

NIS is a negotiated agreement 'inspection strategy/form' between the PA (local authority) and the business, for example Co-Op. Local authorities are then only allowed to inspect the pre-agreed parts of the business/paperwork etc., whereas Thanet currently conduct full inspections on any high risk businesses in the Thanet area, particularly those with a 'history', the NIS does not take poor history into account or previous enforcement actions. We have no further details or timescales on the issue of NIS.

## TDC Public Protection staffing levels

Staffing levels remain at 4 Officers. The Public Protection Manager (EHO) role involves carrying out all of the duties the team are responsible for and also focuses on the auditing of officers work, ensuring accuracy and consistency leading to an accurate LAEMS return to the FSA, as dictated in the FSA external and internal audits.

## Public Protection Auditing

Public Protection Officers work is audited 100% on inspections and this will continue in order to ensure consistency of scoring and to maintain standards of service delivery. Other duties are audited monthly, but as the team have progressed through audit feedback this auditing has been relaxed. All food officer's now have the NEBOSH Health and Safety Diploma and carry out limited health and safety duties.

## Food Officer training 2018-2020

In 2016 the baseline qualification for Food Safety Officers was changed by the Food Standards Agency to include 'food standards' and 'food identification' modules which have never been required previously. A conversion course was designed for holders of the Higher Certificate in Food Premises Inspection (our officers have this) by the University of Birmingham. The new qualification is called The Higher Certificate in Food Control. Thanet Public Protection Officers managed to secure three of the very limited places for the first part of the course which was only provided by Birmingham University, they are awaiting the exam results. There is a second part still to be sourced, funded and completed.

## Health and Safety at Work Enforcement/RIDDOR

Local authorities are responsible for statutory Health and Safety at Work duties according to the Health and Safety (Enforcing Authority) Regulations 1998, specific duties are divided between local authorities and the Health and Safety Executive.

Public Protection Officers have Health and Safety duties included within their core hours. The Public Protection Manager, as an EHO, is the lead on Health and Safety, in addition one officer spends 20% of their time on Health and Safety and the other two FTE's spend 10% of their time on health and safety complaint work and investigating RIDDOR reports.

## Licensing of Caravan Parks

Public Protection Officers duties include health and safety inspections of local caravan sites for licensing purposes. A report has been produced regarding caravan sites in Thanet considering their characterisation/planning consent and comparing that information as to whether they actually meet the criteria as genuinely residential or non-residential sites. Residential site owners are afforded greater protection under The Mobile Homes Act 2013 and the residential sites are subject to fees for inspection by the Housing teams. A number of 'residential sites' have now been passed to the Housing team, but an in depth investigation has shown obvious anomalies, for example 'non residential sites' owners paying council tax. Unfortunately to progress this investigation further is proving difficult because legislation is not clear, or supporting of change or challenge. We will continue to monitor this situation and investigate the correct categories for these sites.

Public Protection intends to produce a Health and Safety Service Plan for 2018 – 2020 but the resources are food team resources and the document is planned to be completed by the end of 2018.

## 1. Service Aims Objectives & Priorities

### 1.1 Aims Objectives and Priorities

#### Aims

- The overall aim of the Food Safety Service is to ensure that food intended for human consumption produced, stored, distributed, handled or purchased within Thanet is without risk to public health and safety of the consumer.
- To encourage good practice amongst those responsible for preparing, handling and cooking food intended for human consumption, and to ensure they comply with their statutory obligations.
- To rate all premises under the Food Hygiene Rating Scheme (FHRS) enabling Thanet consumers to make informed decisions about where they consume food.

#### Objectives

- To fulfil the statutory duty imposed on the Council under the Food Safety Act 1990 as 'The Food Authority' and ensure the effective implementation of Government Strategy on food safety issues, having regard to the most recent Food Law Code of Practice Issued by the Food Standards Agency and other practice guidance issued by government organisations.
- Protect the public as far as reasonably practicable by delivering a complimentary programme of education and enforcement which endeavours to ensure that food businesses are conversant with the law, understand the principles of hygiene and are operated and maintained at a standard that complies with relevant legislation.

- To satisfy statutory requirements and have effective documented and procedural systems to enable accurate returns to the Government, ensuring these are reviewed and updated with key legislative changes.
- To take appropriate enforcement action using an educative approach where appropriate, but closing premises through either voluntary means or Magistrates' Court where an imminent risk to health is found.
- To achieve the above objectives, the following priorities for the two year period 2018 – 2020 have been identified. The Food Service plan will be reviewed annually or more frequently if appropriate.

## Priorities

Thanet District Council priorities, response work and service improvements are listed below. The consequences of not satisfying statutory obligations can lead to Central Government putting in 'measures' to manage the 'The Food Authority', to enable statutory functions to be carried out and recharging the local authority the costs.

### 1.2 Links to corporate objectives and priorities

The service plans in TDC link and support each other as shown below:

Corporate Plan to 2015-2019

Safer Neighbourhoods Service Plan to 2020

Food Service Plan 2018/20

Aims, Objectives and Priorities as set out

#### Priority 2 – Supporting Neighbourhoods

We will work with partner agencies through the Thanet Health and Wellbeing Board to support people to make better lifestyle choices and operationally through our range of services provided directly to residents.

#### Priority 3 – Promoting Inward Investment and Job Creation

Encourage new and existing businesses which support growth in the local and visitor economy.

### 1.2.1 Programmed work

- Effectively deliver a comprehensive risk assessed inspection programme for all higher risk premises (Rated A, B and C).
- All food premises are considered as 'approved premises' on routine inspections and effective recording and monitoring system is put in place, both documentary and on the councils computer system for any premises that need approval. We currently have no 'approved premises' that fit the FSA criteria. For example a dairy farm.



- Develop and implement an alternative intervention programme including education, questionnaires and use of intelligence for some lower risk premises (Rated D and E).
- Carry out food hygiene rating re-rating inspections when requested by food business operators who have scored less than 5 at routine inspection.
- Carry out compliance re-visits and follow up visits to premises that have historical and/or ongoing compliance issues found during an intervention.
- Regularly review and update the Food Safety Procedure Manual. Develop and provide officers with guidelines/checklists to enable them to make consistent decisions in the field in line with current Government advice.
- Deliver a food sampling programme in accordance with County or National-wide programmes and sampling priorities.
- Monitor seaports for landing of third country imported foods, and ensure that landings of fish/shellfish are monitored and correctly registered in accordance with EU Legislation.
- Carry out a 100% audit of the inspections/revisits/complaint work carried out by the food team to ensure consistency, accuracy and efficiency.
- Carry out monthly checks of the LAEMS reports to ensure accuracy.
- Routine checks of the FHRS website for accuracy of published scoring and other information shown online compared to current data held.
- Routinely monitor the M3 database entries for local food businesses for accuracy and regularly carry out checks to cross-reference information against tourism websites/yellow pages/internal databases
- Implement the National Food Hygiene Rating Scheme as accurately and consistently as possible and using the Food Standards Agency Brand Standard when carrying out food hygiene rating inspections.

#### 1.2.2 Response work

- Provide an effective response service able to deal proportionately with complaints regarding food hygiene
- Provide an effective service for new business enquiries, to include providing new businesses with written advice and guidance to help achieve compliance and drive up standards in the district.
- Provide an effective response service able to deal proportionately with incidents or outbreaks of food poisoning or other notifiable diseases.

- Ensure all new and emerging food businesses are registered and are assessed and receive a full initial inspection.
- Respond within appropriate timescales to FSA food alerts and withdrawals.
- Provide other advice and information to both the public and businesses within available resource.

### 1.2.3 Service improvements

- Expand on officer training as appropriate to ensure a consistent approach to food related enforcement within the district.
- Carrying out peer review and consistency exercises with all food team members as required by the Food Standards Agency.
- Put procedures in place to improve the consistency and accuracy of data held on the M3 data base.
- Seek to improve the safe and effective sharing of information within the Council and with external agencies, according to the Data Protection Act 2018 and General Data Protection Regulations 2018.
- Expand the intelligence based checking of food businesses visiting from outside the local authority area and show a presence at small and large scale public events. Share information and intelligence with other local authorities.

Continue monthly accountability meetings with the Head of Safer Neighbourhoods to improve performance and management of food team activities.

Ensure that out of hours inspections are up to date and carried out at a frequency stated in the Food Law Code of Practice.

Take a proactive approach to any imported food duties and accurately recording those activities for the LAEMS return.

Promote food safety and monitor food businesses through the use of social media. To improve and make best use of online presence through the new Thanet Council website and using the Food Team Facebook page.

### 1.2.4 Service Reviews

Review, update and then maintain officer training programmes, internal e-Learning courses to assist with the competency of Food Enforcement Officers who must achieve a minimum CPD of 20 Hours per annum.

Review the procedure manual in full during 2018 to ensure that all references to documentation, practice guidance and other material is up to date and accurate.

Carry out monthly 1:1 meetings as well as team meetings between Public Protection Manager and Public Protection Officers to ensure consistency.

Review the work required in relation to the Port of Ramsgate for ferry and cargo services ensuring any requirements under the Food Law Code of Practice are met.

Review the procedures in relation to the principles of Regulatory Delivery and Primary Authority as set out in the Regulatory Enforcement and Sanctions Act 2008 to ensure that requirements are being met.

## **2. Background**

### 2.1 Profile of Thanet District Council

The District of Thanet comprises a mixture of rural and urban coastal resort communities with a population of approximately 143,941 in an area of 112 km sq. making it the second most densely populated district in Kent. Principal population areas are the resorts of Margate, Ramsgate and Broadstairs alongside a number of smaller villages. Thanet is one of 13 local authorities in Kent sharing some services with Dover and Canterbury Councils and is located on the South East Coast neighbouring the City of Canterbury to the West and the Port of Dover to the South West.

The area is recognised as deprived with low social mobility and an ageing population which is predicted to grow at a higher rate than elsewhere in the County. Six of the ten most deprived wards in Kent are in the Thanet area. This level of deprivation is evident in the significant difference in life expectancy of 11 years between the most affluent wards in Broadstairs and the most deprived ones in Central Margate.

The main industries were Ramsgate New Port, Kent International Airport, Manston, closed since 2014; light industry and tourism. The Port has been largely inoperative since 2013 however it is hoped that some services will resume in the future. There is a retail and food area at Westwood Cross on the borders of Broadstairs and Margate. Due to its history as a resort area, the district has an above average number of food premises; many of them meet the criteria for high risk which presents a challenge for the food safety enforcement function.

The Public Protection Team is based at:

Thanet District Council  
P O Box 9  
Cecil Street  
Margate  
Kent  
CT9 1XZ

Telephone number: 01843 577000

Environmental health: 01843 577423

E-mail: [environmental.health@thanet.gov.uk](mailto:environmental.health@thanet.gov.uk)

Thanet District Council can be contacted via telephone or at the Gateway offices as follows:

Mon – Fri 08:45am – 5:00pm

An out of hours contact is available 24 hours for emergency contact.

## 2.2 Organisational Structure

The Council operates on a Leader and Cabinet system with lead members delivering specific portfolios as follows:

Cllr. Robert W Bayford is Leader of the Council.

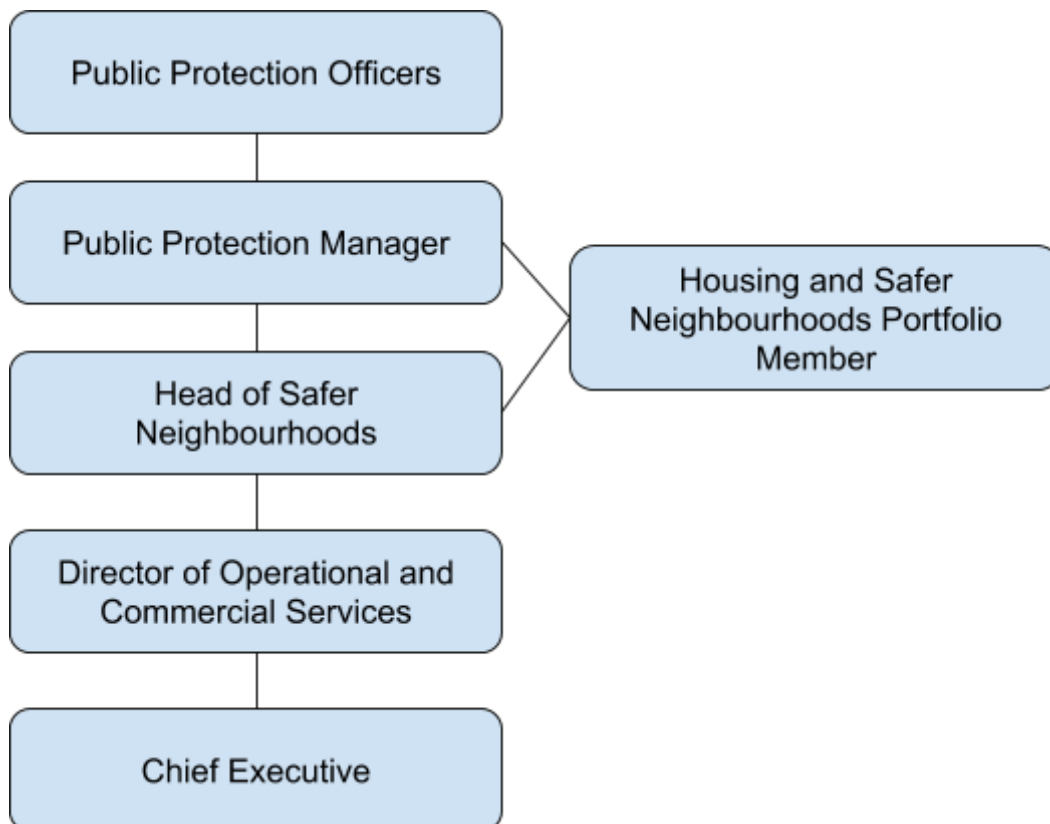
Cllr. Jason Savage is Deputy Leader.

The Cabinet posts for the council year 2018 are:

| Portfolio   | Cabinet Member       |
|---|----------------------|
| Cabinet Member for Housing and Safer Neighbourhoods             | Cllr Lesley Ann Game |
| Cabinet Member for Operational Services                         | Cllr Jason Savage    |
| Cabinet Member for Financial Services and Estates               | Cllr Ian Gregory     |
| Cabinet Member for Corporate Governance and Coastal Development | Cllr Ash Ashbee      |

The Food functions are considered to be part of Housing & Safer Neighbourhoods portfolio and Cllr Lesley Ann Game is the relevant portfolio member. Her main contact is with Penny Button, Head of Safer Neighbourhoods.

The key reporting lines for the flow of food safety/health and safety issues are:



## Specialist appointments

The food team are supported in delivery of their functions by the following specific appointments:

|  |                                  |  |
|--|----------------------------------|--|
| Public Health England<br>Infectious diseases | Directors of HPA                 | Kent Health Protection Unit<br>Kennington Road<br>Ashford<br>Kent                        |
| Public Analyst                               | General lab                      | Kent Scientific Services<br>8 Abbey wood Road<br>Kings Hill<br>West Malling<br>Kent      |
| Food Examiners                               | Government lab                   | FW&E Microbiology Lab<br>(Collindale) London,<br>61 Collindale Avenue<br>London NW9 5 EQ |
| Food Examiners                               | Shellfish<br>Port Health samples | CEFAS<br>Lowestoft Laboratory<br>Pakefield Road<br>Lowestoft<br>SUFFOLK                  |
| Fish Inspectors                              | Internal appointments            | Debbie Huckstep TDC  |

### 2.3 Scope of the Food Law Service Plan

The Public Protection Team are responsible for the following statutory duties:

- Implementing the proactive programme for food hygiene interventions and subsequent revisits for food premises
- Investigating the possibility of premises requiring 'Approval' at the time of inspection.
- Investigating reported cases of food poisoning and potential outbreaks in accordance with Public Health England (PHE) guidance and framework agreement
- Imported Food Controls at Ramsgate Port
- Investigating requests for service (complaints) regarding the hygiene of food premises, or food safety issues relating to foods purchased or produced in Thanet
- Registration of new food premises
- Responding to food alerts from the FSA
- Health and Safety enforcement duties (Health and Safety at Work Act 1974)
- Development and maintenance of partnerships and liaisons to the furtherance of the Food Service
- Providing the Food Standards Agency with statistical returns
- Carrying out enforcement of inland imported food/controls

And non-statutory duties:

- Provision of training, advice and support to existing and prospective food business operators and the users of the service
- Delivering a food sampling programme in line with national and regional programme and priorities
- Implementing projects and campaigns within available resources that promote good food hygiene
- Maintaining the database regarding food premises
- Delivering the National Food Hygiene Rating Scheme

## 2.4 Demands on the Food Service

As at April 2018 there are 1359 Food Premises in Thanet the District Council area. The following tables provide more detail regarding premises types and risks:

### 2.4.1 Establishment numbers by Groups (April 2018)

| <b>Description (MAFF Code)</b>    | <b>No. of premises</b> |
|-----------------------------------|------------------------|
| Producers (A)                     | 0                      |
| Manufacturers/Processors (C)      | 13                     |
| Importers/Exporters (E)           | 1                      |
| Distributors/Transporters (F)     | 13                     |
| Supermarket/Hypermarket (G01)     | 25                     |
| Smaller Retailers (G02)           | 179                    |
| Retailers Others (G03)            | 62                     |
| Restaurant/Canteen (H01)          | 360                    |
| Hotel/Guest House (H02)           | 46                     |
| Pub/Club (H03)                    | 158                    |
| Take-away (H04)                   | 135                    |
| Caring Establishment (HO5)        | 140                    |
| School/College (H06)              | 71                     |
| Mobile Food Unit (H07)            | 25                     |
| Restaurant/Caterer – others (H08) | 131                    |
| <b>GRAND TOTAL</b>                | <b>1359</b>            |

### 2.4.2 Establishment numbers by risk groups (April 2018)

| <b>Risk Rating</b> | <b>Number of premises</b> |
|--------------------|---------------------------|
| A                  | 2                         |
| B                  | 5                         |
| C                  | 152                       |
| D                  | 763                       |

|                 |             |
|-----------------|-------------|
| E               | 430         |
| F               | 0           |
| Not categorised | 7           |
| <b>TOTAL</b>    | <b>1359</b> |

#### 2.4.3 Inspection frequency

In accordance with 5.6 of Food Law Code of Practice the food hygiene intervention frequencies are as set out below:

| Category | Score        | Minimum intervention frequency   |
|----------|--------------|--|
| A        | 92 or higher | At least every 6 months  |
| B        | 72 to 91     | At least every 12 months   |
| C        | 52 to 71     | At least every 18 months   |
| D        | 31 to 51     | At least every 24 months   |
| E        | 0 to 30      | A programme of alternative enforcement strategies or interventions every 3 years |

#### 2.4.4 Inspections due per annum

| Category     | No of premises | Inspections per annum |
|--------------|----------------|-----------------------|
| A            | 2              | 4                     |
| B            | 5              | 5                     |
| C            | 152            | 101                   |
| D            | 763            | 382                   |
| E            | 430            | 143                   |
| No Cat       | 7              | 7                     |
| <b>Total</b> | <b>1359</b>    | <b>642</b>            |

#### 2.4.5 Inspections - Categories A-E

642 planned inspections per annum

(Total working days per year per FTE officer: 216 days; for time available see table 2.4.7)

Allocation of inspections to officers is by way of a rotating bi-annual geographical area, with an average of 165 inspections allocated per officer, per annum, the number of inspections fluctuates per season/per year. Officers split their time between inspections and non-inspection food responsibilities, with Category A and B food inspections being priority. Health and Safety work is split geographically and combined with food inspections where possible.

#### 2.4.6 Non inspection Food Responsibilities:

- Port Health function – monitoring of Ramsgate Port for imported food
- Shellfish monitoring and registration documentation (whelks)
- Monitoring of Thanet events for food traders
- Street auditing for premises changes
- Complaints regarding food premises
- Infectious disease notification work
- Projects and Campaigns
- Reviewing internet/social media sites for intelligence

#### (Health and Safety duties)

- Health and Safety inspections and complaints
- Attending inquests
- Caravan licensing inspections
- Health and Safety admin
- RIDDOR investigations

#### 2.4.7 Staffing Resource – Public Protection Team

EHO Environmental Health Officer x 0.8 from 1<sup>st</sup> April 2018

PPO Public Protection Officer x 3 from 1<sup>st</sup> April 2018

| Task   | PPM<br>EHO<br>x 80% FTE<br>DH | PPO<br>(Qualified)<br>x 1 FTE<br>MAK | PPO<br>(Qualified)<br>x 1 FTE<br>SH | PPO (Qualified)<br>x 1 FTE<br>EW |
|--|-------------------------------|--------------------------------------|-------------------------------------|----------------------------------|
| Deduction for Statutory Health and Safety Duties | 10%                           | 10%                                  | 20%                                 | 10%                              |
| Auditing officers work                           | 25%                           | -                                    | -                                   | -                                |
| HR/Occ health/pay                                | 10%                           | -                                    | -                                   | -                                |
| Allocation and monitoring of workload            | 20%                           | -                                    | -                                   | -                                |
| Inspections A-E                                  | 10%                           | 50%                                  | 45%                                 | 50%                              |



|                                       |          |          |          |          |
|---------------------------------------|----------|----------|----------|----------|
| Ramsgate port –<br>whelk traceability |          | 2.5%     | 2.5%     | 2.5%     |
| Events<br>Routine Sampling            | 2.5%     | 10%      | 2.5%     | 2.5%     |
| Street Auditing                       | 2.5%     | 5%       | 5%       | 5%       |
| Complaints                            | 10%      | 10%      | 10%      | 10%      |
| Caravan Parks                         |          | 5%       | 5%       | 10%      |
| Infectious Disease<br>work            | 5%       | 2.5%     | 5%       | 5%       |
| Training                              | 5%       | 5%       | 5%       | 5%       |
| TOTAL                                 | 1 x 100% | 1 x 100% | 1 x 100% | 1 x 100% |

## 2.5 Regulation Policy

The Council adopted the enforcement concordat for all appropriate services on 11<sup>th</sup> June 1998. The Food Law Enforcement Plan has been developed in line with best practice and advice/guidance from the Food Standards Agency (FSA) and LACORS.

## 3. Service Delivery

### 3.1 Food Premises interventions Statement (Statutory Duty)

The interventions programme for food premises on Categories A, B & C premises forms the core activity of the Food Safety Team. The programme of interventions which is detailed in Annexe 2 has been prepared to meet the aims, objectives and priorities summarised in paragraph 1.1 of this document in line with the Food Law Code of Practice (England).

#### 3.1.1 Intervention reports: (FSA Food Law Code of Practice FLCOP)

Checklists and aides-memoire are used at each inspection for consistency purposes, depending on high risk or low risk premises, and are used at the end of the inspection to produce a hand written report of the officer's findings. A copy of the handwritten report is left with the FBO so it is clear what they have to do and within a specified timescale. Where there are a number of serious contraventions, a holding report is left and a typed full inspection report is delivered/emailed/posted.

#### 3.1.2 Types of interventions: Full inspections/ Partial Inspections/ Audits. (Statutory duty)

The presumption is that enforcement officers in all cases will undertake full inspections of all parts of the premises. However, there are options available for partial inspections and audits. Officers, after researching the previous history of the premises, may decide to carry out a partial inspection. The options are considered in a little more detail below:

##### Full Inspection: (FLCOP)

This is a check on compliance with legal requirements in accordance with elements set out in the Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements.

##### Partial Inspection: (FLCOP)

An inspection that covers only certain elements of the inspection as laid down in Section 4.2.2 of the Code. Partial inspections have been tried but do not assist us in scoring for the FHRS, they are rarely appropriate in premises other than multi-nationals, where the documented system is generic, tried and tested.

#### Planned audits (FLCOP)

An audit may be undertaken instead of a partial or full inspection, where any food business operator, including those providing a high risk business has put in place an acceptable documented food safety management system (addressing Article 5 Regulation 852/2004). Details of the system will be required in advance of the audit so the Officer can plan the appropriate audit, these are rarely appropriate in our District.

The audit may include one or more of the following elements (FLCOP)

- Complete audit of the food safety management system
- Audit of selected elements of the food safety management system where the system is complex
- Partial Audit concentrating on a particular produce
- Operational audit concentrating on certain arrangements such as temperature monitoring.

#### 3.1.3 Revision of intervention rating: (Statutory duty)

On completion of the food inspection, partial inspection or audit the officer will revise the intervention rating of the establishment in accordance with Annexe 5 FLCOP. The FHRS rating is also awarded based on this scoring, records of the inspection are left with the FBO at the conclusion of the inspection, the premises may be scored at the end of the inspection on site or may be scored once the officer has returned to the council offices, in the latter case the food business will be notified on the inspection report.

#### 3.1.4 New premises (FLCOP) (Statutory duty)

TDC responds positively and supportively to new food businesses which approach the authority prior to starting up. In response to initial enquiries they will receive as a minimum verbal advice, usually by telephone along with a registration form and advice on where to find the FSA 'starting up' booklet on the FSA website. The team are part of a Kent wide food group exercise to provide 'information packs' for new businesses. An initial advisory visit may be provided in exceptional circumstances, the preferred method is to visit the premises after a food registration has been received so that the advice given can be recorded on their entry on M3, which may avoid disputes on what was said at the time, if a pre-inspection visit does take place, a written record of what was agreed at the time is left with the FBO. There is an obligation to register the food premises 28 days before any food activities take place.

In all cases, new registrations will be recorded onto the M3 data base once received and then an initial full inspection will take place.

#### 3.1.5 Routine planned inspections – high risk premises (A and B rated) (FLCOP) (Statutory duty)

The preferred method for A and B premises is to carry out a full inspection, unless a partial one or audit has been decided after reviewing the premises history. All such interventions are identified as appropriate by the FLCOP.

### 3.1.6 Planned interventions medium risk (rated C) (Statutory duty) (FLCOP)

Until an establishment is considered to be 'broadly compliant' an intervention will comprise either a full inspection, partial inspection or audit as defined above at the frequency identified by Annexe 5 FLCOP.

Once it is considered to be broadly compliant, planned interventions may alternate between inspections, partial inspection or audits and other official controls as defined in the Food Law code of practice and listed below and defined in Annexe 3:

- Monitoring
- Surveillance
- Verification
- Audit
- Sampling for analysis (more than just a visit to collect a sample)

Broadly compliant is defined as:

*Either an establishment that has an intervention rating score of not more than 10 points under each of the following three parts of Annexe 5:*

*Part 1 – Hygiene & Safety*

*Part 2 - Structure*

*Part 3 - Confidence in Management*

### 3.1.7 Planned interventions low risk premises (rated D) (Statutory duty) (FLCOP)

Interventions can alternate between an official control and an intervention that is not an official control, (for example a questionnaire) the frequency will remain that established by the Food law Code of Practice Annexe 5. Category D establishments that are also rated 30 or 40 for 'type of food and method of handling' must be an inspection, partial inspection or audit. Interventions such as questionnaire, although a useful resource saving method, are often not appropriate because the premises cannot be rated for the FHRS without an inspection.

### 3.1.8 Planned Interventions low risk premises (rated E) (Statutory duty)

Premises in this category will be subject to alternative interventions at least once every three years in accordance with the Food law code of practice. These are not considered useful methods by TDC because the premises cannot be rated for the FHRS without an inspection

### 3.1.9 Alternative Enforcement Strategies (Statutory duty) (FLCOP)

Premises in this category (E) can be subject to alternative interventions at least once every three years in accordance with the Food law code of practice, unless the premises is subject to Approval. These are not considered useful methods by TDC because the premises cannot be rated for the FHRS without a full inspection

### 3.1.10 Large scale public events

To improve the prospects for Thanet, the Council is concentrating on regeneration and bringing in more investment. Alongside this a lot of emphasis is placed on putting on events to bring in

tourism. These will range from small and local events to major showcase events such as 'Broadstairs Food Festival'. There are between 50 – 100 events planned during the year which will have TDC involvement either because they are on Council land, or are arranged by Parish or Town Councils or have food businesses in attendance.

The Public Protection Team have a system in place to respond to such events and carry out risk based desktop assessments using the information requested from event organisers 28 days before the event take place. Some events are spot checked by food officers on a regular basis to match the desktop data against premises are on site.

### 3.2 Food complaints (Statutory duty)

All incoming complaints are directed to the Public Protection Manager to audit and passed to the officer who deals with the geographical area if it requires further action. The officer considers following key criteria:

- Implied or actual risk to public health – public health significance
- Justification/seriousness or likely impact of the complaint
- Likely recurrence in the future
- Number of complainants
- Number of people potentially at risk
- History of premises from which food was produced/purchased/consumed etc.
- Last inspection details if relevant
- Date of next scheduled inspection

All complaints will be considered and will have a response within 3 working days, dependant on resources. Anonymous complaints are not accepted. This may comprise a phone call or a letter or email dependant on the nature of the complaint and the outcome of the assessment.

Complaints regarding suspected food poisoning receive a standard letter which explains the onset times and the criteria of sampling through a GP or hospital to confirm food poisoning. The information provided in this letter is very comprehensive and educative.

Complaints are investigated according to risk and the information provided. If a visit is warranted, where possible the next inspection will be brought forward and carried out at the same time as the complaint visit. Complaints are dealt with by officers, and changes to inspection frequency are supervised by the Public Protection Manager. Complaints are part of the PPM's audit.

### 3.3 Primary Authority Scheme (Mandatory)

We recognise the Better Regulation Delivery Office 'Primary Authority Scheme'. Inspection plans will be followed where required and it is expected that contact will be made with Primary Authorities as explained in the introduction where advice or enforcement action is considered, before action is taken against those premises who have a Primary Authority.

Primary authority partnerships are available to any business that trades across two or more council boundaries, regardless of size. Primary Authority partnerships are legally nominated by the Better Regulation Delivery office and partnerships are automatically recognised by all local regulators.

### 3.4 Advice to business (mandatory & corporate plan)

The service is committed to ensuring that advice and support is available to all food businesses in the District when requested. The key ways this is provided is through

|                    |   |
|--------------------|---|
| TDC Website        | Reviewed quarterly to ensure accuracy and usefulness of data  |
| Leaflets/ Booklets | Use is made of FSA website, starting up booklet and SFBB booklets   |
| Verbal advice.     | This is absorbed into routine work and will take place either in the case of routine official interventions or resulting from business enquiries for new or changed premises  |
| Global advice      | TDC and Kent have developed factsheets for businesses which incorporate all of the departments and outside agencies that are involved in starting up a food business and explains their role. Most contact from businesses is regarding starting a new business or changes to an existing business. |

### 3.5 Food sampling

We take part in both the UK National sampling programme and shellfish sampling as appropriate.

#### Routine samples

Within resources, TDC will take samples to meet the UK and County wide sampling programme based normally on the priorities set by Public Health England and the Food Standards Agency.

#### Environmental Swabbing

Environmental swabbing of food premises is a proven, cost effective, enforcement tool. Swabs can be tested for *E Coli 0157* and other coliforms. The results can clearly demonstrate serious lapses in cross contamination control, personal hygiene and faecal contamination, all areas that can be difficult and time consuming to evaluate during routine inspections.

Following the FSA Audit in 2011, a sampling programme was said to be 'crucial in protecting public health', and Thanet have now been actively taking part in local and national sampling since January 2014. Procedures are based on the Kent Sampling procedures.

### 3.6 Infectious Diseases control and investigation (Statutory duty)

Officers investigate food related infectious disease notifications in accordance with the documented procedures, which are reviewed regularly. The primary objective of every investigation is to identify the cause of infection and prevent any further spread. One officer carries out the administration and investigation of notifications.

Response times and the nature of response are all set out in the procedures documented in the 'Public Health England South East Single Case Plan for Kent and Medway Environmental Health Teams and Ashford Health Protection Team'.

Officers liaise with Public Health England, a number of 'Proper Officers' are currently appointed under the Public Health Act 1984 and Section 47 of the National Assistance Act 1948 (as amended).

A GCSX secure mailbox is used to ensure confidentiality of the health information being provided to TDC and is a requirement of the agreement between PHE and Local Authorities.

### 3.7 Food Alerts/Incidents (Statutory duty)

A food incident is considered to be any event where, based on the information available, there are concerns about actual or suspected threats to the safety or quality of food that could require intervention to protect consumers' interests. TDC received routine reports of Food Alerts which in most circumstances do not require additional input from the enforcement officers; they are dealt with as part of normal duties.

### 3.8 National Food Hygiene Rating Scheme

In April 2011, the Food Standards Agency made representations to all Local Authorities on the implementation of the National Food Hygiene Rating Scheme. TDC's Corporate Management Team made the decision that Thanet will implement the National Scheme as long as there was minimum cost to the LA.

The Food Hygiene Rating scheme makes it easier for consumers to choose places with good hygiene standards when they're eating out or shopping for food. The food hygiene rating tells them about the hygiene standards by awarding a 'star rating' which is shown by way of standard stickers. The same stickers are used across the whole of the UK, by participating local authorities.

Thanet's scheme was launched in April 2012, alongside most other Kent authorities. The scheme is working well in Thanet with a small number of businesses asking for re-rating visits.

### 3.9 Liaison with Other Organisations

The team works in partnership with other organisations to deliver services, some examples are given below:

#### External Partnerships/Liaisons

|  |   |
|--|---|
| Customs and Excise (HMRC) & UKBA                                       | Imported Foods and potential Fraud  |
| Association of Port Health Authorities (APHA)                          | Imported Food, air and sea port   |
| Kent Environmental Health Managers (KEHM) Food Technical Working Group | County-wide liaison group for all food safety issues with representatives from the Health Protection Agency and Trading Standards as well as local Authorities. |
| CEFAS  | Government Laboratories for Shellfish and Imported Food issues  |
| Thames Port (City of London)   | Port Health, advice and support   |
| Trading Standards  | Food complaints, Port Health  |
| Food Standards Agency  | Wide range of advice and support  |
| Public Health England (PHE)  | Outbreak control or advice  |
| Food Sampling Group and Labs   | Food sampling   |
| Kent Infection Control Committee                                       | Infectious disease investigations   |

|                             |   |
|-----------------------------|---|
| Kent Food Group             | Consistency meetings/Policy                 |
| Health and Safety Executive | RIDDOR/Gas Safety/Electricity at Work       |
| CIEH                        | Chartered Institute of Environmental Health |

## Internal Partnerships

External partnerships and liaisons are good; the sharing of information with internal partners is improving. Particularly important partnerships include the Events team, Licensing Department, Building Control, Estates Team and Planning Department who make the best use of shared intelligence, all within FOI and data protection criteria. Since 2016 partnership work with the Community Safety Unit has increased.

### 3.10 Promotional Work

The overall resources available to the Public Protection Team have reduced since 2016, all working practices have been frequently reviewed and in turn, this has streamlined activities like promotional work, which is now based on FSA promotions.

## 4. Resources

### 4.1 Financial Allocation

Following the March 2018 restructure, the budgets for the Food Safety function are managed by the Head of Safer Neighbourhoods.

### 4.2 Staffing Allocation

The resources for Food Safety are currently:

| Staff resource             | Number (FTE) |
|----------------------------|--------------|
| Public Protection Manager  | 0.8 FTE      |
| Public Protection Officers | 3 FTE        |
| Health and Safety Officer  | 0            |
| Support (admin)            | 0            |
| Total                      | 3.8 FTE      |

### 4.3 Qualifications and competence

From 6<sup>th</sup> April 2016 the non-EHO Qualifications and competency for food officers was changed by the FSA. As well as Lead Officers and Authorised officers possessing the baseline qualification (Higher Certificate in Food Premises Inspection) or equivalent Officers must now complete a 'bolt on course' which leads to the new qualification of 'Higher Certificate in Food Control'. In addition Managers must consider the relevant competencies needed for their roles and build that into their personal development and reporting cycle. (Food Law Code of Practice Chapter 4). All Food



Officers must also maintain 20 hours a year CPD, which is audited by the Chartered Institute of Environmental Health.

Annexe II of Regulation (EC) 882/2004 outlines the subject matters for the training of staff performing official controls. 10 hours of the core CPD must include at least one of the following elements:

- Different control techniques, such as auditing, sampling and inspection
- Control procedures
- Feed and Food law
- Different stages of production, processing and distribution and the possible risks to human health.
- Assessment for non-compliance
- Hazards in animal, feed and food production
- The evaluation of the application of HACCP procedures
- Management systems such as quality assurance programmes
- Official certification systems
- Contingency arrangements
- Legal proceedings
- Examination of written, documentary material and other records
- Any other area, including animal health and welfare

The qualifications required for types of establishment within the TDC area require the following officers/qualifications:

| <b>Establishment type or Action</b>   | <b>Officer/Qualification</b>  |
|---|---|
| All establishments requiring inspection at intervals of 12 months or less (A & B rated) | HCFC/ EHO or Officer with Higher Certificate in Food Premises Inspection with 1 years' experience.  |
| Approved premises – those requiring inspection under Regulation 853/2004                | HCFC/EHP or Higher Certificate in Food Premises Inspection <b>And</b> with detailed knowledge of enforcement in approved establishments. If no experience, must be accompanied by experienced officer |
| Service of Improvement Notices (Reg 6)  | HCFC/ EHP or Officer with Higher Certificate in Food Premises Inspection and one year's experience  |
| Service of Prohibition Notice (Regulation 8)  | HCFC/ EHP plus 2 years post qualification experience in food (only with PP Manager/Head of Safer Neighbourhoods agreement)  |
| Service of application for closure order to Magistrates Court                           | EHO Food Safety Specialist with 2 years experience (PPM)  |

Qualifications – Food Law Code of Practice



Higher Certificate in Food Control (Baseline):

- The Environmental Health registration Board (EHRB)
- The Scottish Food Safety Officers Registration Board (SFSORB)

Baseline Equivalent Qualifications (EHO or Diploma):

- Certificate of Registration of the Environmental Health registration Board (EHRB) or
- Diploma in Environmental Health (or its antecedents) awarded by EHRB or the Royal Environmental Health Institute of Scotland (REHIS)

The Higher Certificate in Food Premises Inspection may be awarded by one of the following:

- The Environmental Health registration Board (EHRB)
- The Scottish Food Safety Officers Registration Board (SFSORB)
- The Institute of Food Science and Technology (IFST)

The staffing establishment in April 2018 when this document was prepared, included the following officers whose qualifications are indicated in the table below:

| Officer   | Qualifications   | CPD notes                              |
|---|--|--|
| Deborah Huckstep,<br>Public Protection<br>Manager (EHO) | MSc Environmental Health 2009<br>NEBOSH: General Certificate 2009<br>FSA Official Fish Inspector March 2006<br><br>EHORB Registration 2009 | 20 hours<br>required p.a.<br>(10 core) |
| Mark Kennedy<br><br>Public Protection<br>Officer        | Higher Certificate in Food Premises<br>Inspection 1998<br>NEBOSH: National Certificate 2016<br><br>EHORB Registration 1998                 | 20 hours p.a.<br>(10 core)             |
| Simon Hogben<br><br>Public Protection<br>Officer        | Higher Certificate in Food Premises<br>Inspection 2014<br>NEBOSH: National Certificate 2016<br><br>EHORB Registration 2014                 | 20 hours p.a.<br>(10 core)             |
| Emily Whittaker<br><br>Public Protection<br>Officer     | Higher Certificate in Food Premises<br>Inspection 2015<br>NEBOSH: National Certificate 2017<br><br>EHORB Registration 2015                 | 20 hours p.a.<br>(10 core)             |

#### 4.4 Staff development plan

As at April 2018 the appraisal scheme has been changed and no longer incorporates the pay for contribution element. 3 Objectives are set annually and 1:1 meetings arranged monthly, together with monthly team meetings. The appraisal scheme includes new staff development plans, improved training plans and encourages meeting attendance. Documentation of training qualifications and training courses attended are now recorded and contribute to the issue of authorisations for officers, to consider competence.

## 4.5 Training and Development

There is no specific training budget for food team officers. Officers have the opportunity to apply for funding for specific courses that would aid their development, as well as ample time off and opportunity to attend FSA food courses. The Food Standards Agency had highlighted this issue and the consideration of a specific budget was considered and not agreed by TDC, the FSA have now withdrawn funding for training courses.

In 2018 Public Protection Officers will attend the University of Birmingham and undertake a conversion course which on successful completion will award them the Higher Certificate in Food Control (the new baseline qualification). This will enable better use of staff resources and allow officers to carry out a wider range of official controls.

Funding has not yet been agreed for the second part of the course.

## 5. Quality Assessment and internal monitoring

The team is placing considerable emphasis on its effectiveness and accuracy within its available resources. This makes 'getting it right first time' and 'Making every inspection count' particularly important (FSA).

Following the FSA Audit recommendations, an auditing regime based on the FSA document 'Making every inspection count' has been established and has been operational since January 2014. Carrying out the following audits:

- 100% desktop audit of the officers inspections recorded on a control sheet checked against the inspection report, completed inspection checklist, to ensure that the Annexe 5 scores, the FHRS scores and the chosen star rating agree and are correct, as well as the FHRS status and whether the premises should be included in the scheme. Consistency is considered with regards to the scores and compared against other officers scoring. This audit is signed off by the Public Protection Manager before the administration team input any information and scoring onto the database, hence the database scoring and FHRS scoring is correct, and the correct FHRS sticker is sent out, this gives protection to the database, as well as the resulting LAEMS return.
- The PPM's targeted auditing is documented and the results passed to the Head of Safer Neighbourhoods for review (**targeted auditing**) areas are prioritised according to the FSA audit and issues arising from daily activities.

PPM's general audit includes: 100% audit of all inspections within 48 hours of inspection and

- Inspections due and carried out within 28 days (**targeted auditing**)
- Intervention anomalies (**targeted auditing**)
- Complaints anomalies (**targeted auditing**)
- Premises scoring
- Premises risk group categories
- Evening visit arrangements
- Fortnightly upload of FHRS scores to FSA website
- Scores randomly checked on FSA website (**targeted auditing**)
- Correct risk ratings
- Contraventions identified correctly
- Written warnings annotated for input

- Port health – any imports (**targeted auditing**)
- Whelk documentation checks carried out (**targeted auditing**)
- Authorisations reviewed (monthly auditing)
- Revocations completed

## 6. Review Process

The Food Law Enforcement Plan is reviewed once per year but will be reviewed according to changes regarding BREXIT and ROF.

## Annexe 1: Food Service Enforcement Policy

### Food Law Enforcement Objective

It is council policy to strive to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within the district is without risk to the health or safety of the consumer.

### The Aim of this Policy

- To ensure a consistent approach to food related enforcement within the district;
- To provide officers with guidelines to enable them to make decisions in the field, consistent with current Government advice;
- To inform the public and food businesses of the principles by which enforcement action is taken.

### Enforcement

Purpose of food hygiene inspections

- To establish whether food is being handled and produced hygienically;
- To establish whether food is, or will be having regard to further processing, safe to eat;
- To identify foreseeable incidences of food poisoning or injury as a consequence of consumption of food;
- The identification of breaches in hygiene or processing legislation will be incidental to the above aims.

Factors influencing the enforcement approach

- An authorised officer has a range of options available in seeking to ensure the above aims are met. These range from the giving of advice and verbal warnings, to the service of statutory notices, or prosecution or closure of premises.
- This authority has signed the Enforcement Concordat and has adopted a graduated approach to enforcement as described in that document. As the first step towards securing compliance, an authorised officer will adopt an educative approach and discuss the requirements of the

legislation relating to hazard analysis and the supervision and instruction and/or training with the food business operator.

- This authority will have regard to the BRE Regulator Compliance Code of Practice (attached as Appendix 1) in the conduct of its enforcement work.
- The Food Law Code of Practice (England) gives guidance on the appropriate use of the available procedures. This authority strictly follows advice issued by central government departments and authorised officers are required to follow this enforcement policy.
- Departures from this policy must be exceptional and the reasons will be documented.
- Enforcement action will be proportionate to the risk to public health arising from the contraventions identified. Combinations of formal notice and informal advice may be appropriate.
- Decisions on appropriate enforcement action will be taken based primarily on an assessment of risk to food safety and public health, but will also be influenced by the history of compliance by the food business operator with food safety legislation and his willingness to remedy contraventions.
- This authority has regard to the Primary Authority Agreement principle and will consider whether a relevant Primary Authority should be consulted before giving detailed advice or taking enforcement action.
- This authority recognises that some organizations, including voluntary and charitable ones operated by volunteers will need help and guidance to understand food safety requirements and an informal approach will be used where public health is not compromised.
- This authority recognises that many businesses in the District are small and family run on a tight budget. Consideration will always be given to low-cost solutions to contraventions, as long as this does not present a threat to the public health.
- This authority recognises that many businesses are seasonal and operate out of normal office hours and will need inspection and advice during these trading hours.
- This authority recognises that English is not the first language of many traders in its area and will take care to ensure its enforcement actions are clearly understood in an appropriate language wherever possible.
- Where there is a shared or complimentary enforcement role this authority will consult with those other enforcement agencies to ensure that the proposed action is consistent with the policies and actions of that other authority. An example would be consultation with Trading Standards over sampling programmes or the labelling of foodstuffs.
- Enforcement action taken by this authority will take into account the requirements of other departments of the Council and of other teams within the Environmental Services department to ensure consistency of action.
- Before taking action that the authority believes may be inconsistent with that taken by other food authorities, it will first discuss the area of difficulty with those bodies through the Kent Technical Food Group.

### **Legal Safeguards influencing the Enforcement Approach**

- The Regulation of Investigatory Powers Act 2000 as amended by Investigatory Powers Act 2016

Any covert surveillance which is conducted as part of any investigation of any case which falls within this policy, will comply with the Regulation of Investigatory Powers Act 2000 (RIPA) & Investigatory Powers Act 2016, in that covert surveillance falling within RIPA will be authorised and conducted in accordance with the statutory framework and any Code or Codes made there under.

- The Human Rights Act 1998 and the European Convention on Human Rights

The Human Rights Act 1998 (HRA) makes it unlawful for a public authority to act in a way that is incompatible with the European Convention on Human Rights (ECHR). This policy will be implemented taking into account the legal and procedural implications of both the HRA and the ECHR.

#### Related Documents:

- The Code for Crown Prosecutors (available from: The Crown Prosecution Service, Information Branch, 50 Ludgate Hill, London, EC4M 7EX,
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Police & Criminal Evidence Act 1984 (PACE), and associated Codes
- Internal Procedure and Policy of TDC
- Statutory Code of Practice for Regulators, December 2007: Department of Business Enterprise and Regulatory Reform.

#### Qualification and Authorisation of Officers

- No officer will carry out food hygiene inspection and enforcement duties unless suitably trained and experienced and authorised in writing by the Head of Safer Neighbourhoods.
- High risk premises (categories A and B), all food manufacturers and processors classified as substantial and premises approved under product specific legislation will only be inspected by qualified Environmental Health Officers, or Food Safety Officers holding the Higher Certificate in Food Premises Inspection/Food Control.
- Officers will be authorised to sign Hygiene Improvement Notices only for premises within the categories for which they are qualified.
- Hygiene Emergency Prohibition Notices and voluntary closure agreements will only be signed by specifically authorised officers, having a minimum of two years post-qualification experience of food safety enforcement and currently involved in food safety enforcement. Only officers holding specific food inspection qualifications will be authorised to inspect, detain or seize foodstuffs (EHO).
- Only officers holding specific food inspection qualifications and specific imported foods training will be authorised to inspect, detain or seize imported foodstuffs.
- Newly qualified officers will only be authorised after a minimum of 6 months of structured practical training in enforcement procedures at the appropriate level.
- Continuing professional development training will be provided for all food safety officers to enable them to keep abreast of changes in legislation and good practice and meet the requirements of the Food Law Code of Practice
- Officers will be fully acquainted with the requirements of this Enforcement upon appointment and with any revisions as they arise.

## The Informal Approach option

- The existing procedure of giving advice and informing of minor contraventions by informal letters is accepted and understood by Thanet's food businesses. Officers will use this approach as long as they believe that this will achieve compliance with food safety legislation within a time-scale that will protect the public health and ensure safe food production.
- An authorised officer will be prepared to offer advice where this is requested by the operator of an existing or new food business, and will seek to encourage food businesses to adopt good food hygiene practice through this approach.
- This informal approach will be consistent with the Food Law Code of Practice and Practice Guidance.
- Officers will clearly differentiate between legal requirements and recommendations of good hygiene practice in both verbal and written communications.

## The Use of Hygiene Improvement Notices

An improvement notice is a legal document issued under the Food Safety and Hygiene (England) Regulations 2013, Reg 6. It details contraventions of the EU Hygiene Regulations, the works required to correct the contraventions and a time-scale for completion. Failure to comply with the notice is an offence.

Improvement notice procedure will be used where major contraventions of food hygiene or food processing regulations are found and where any of the following conditions are satisfied:

- where formal action is proportionate to the risk to public health;
- there is a documented history of non-compliance with food safety legislation;
- an informal approach has been tried but has not been successful, or the authorised officer has reason to believe that informal action will not be successful;
- in the case of new business or requirements, where the authorised officer assesses that the operator is unwilling or unlikely to comply, for whatever reason;
- Where there is a breakdown of controls critical for food safety, or where no such controls exist.

An improvement notice will not be used where:

- the contravention is minor and presents no risk to public health;
- The contravention is a continuing one, e.g. cleanliness or temperature control, and a notice would only secure an improvement at one point in time. (prosecution may be the only option);
- Swift action is required, such as at a one day event where there exists a risk to public health.

Improvement notice procedure will only be implemented after the authorised officer has discussed the need for such action and its requirements with the food business operator informally and considered alternatives. The food business operator will be offered the opportunity for the matter to be referred to the officer's manager in the event of a dispute.

Only suitably qualified and experienced officers will be authorised by the Council to sign improvement notices.

## Non-Compliance with Notices

Non-compliance with an improvement notice is a serious offence and will be considered to be grounds for prosecution with the following exceptions:

- Where the remaining contraventions detailed in the notice are minor and do not pose a risk to public health;
- Where the outstanding works are in hand, (confirmation from contractor or supplier required), and an extension of time to complete the works would have been granted, if requested.

Non-compliance with an informal notice will not be considered grounds for prosecution, but the authorised officer will reconsider at this stage the enforcement options available to remedy the contravention using the criteria described above. The failure to respond in the first instance to an informal approach will influence that decision.

## The Use of Hygiene Prohibition Orders

A prohibition order may be imposed by the courts following a conviction for a food hygiene offence, if the contravention has not been corrected or there still exists a risk of injury to health. The prohibition order may prohibit the use of a process, the use of premises or equipment, or the participation in a food business by a convicted food business operator.

- An application for a prohibition order will be made if an inspection of premises, prior to a court hearing to consider a food hygiene offence, reveals that the contravention is continuing and there is a risk of injury to health.

## The Use of Hygiene Emergency Prohibition Notices

An emergency prohibition notice has the effect of immediately closing a food business or prohibiting the use of equipment or a process where there is an imminent risk of injury to health.

Conditions where prohibition of premises may be appropriate:

- Premises which contravene food safety legislation and have been or are involved in an outbreak of food poisoning or present an imminent risk of one;
- Serious infestation of vermin resulting in actual or imminent risk of contamination of food;
- Poor structural condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in actual or imminent risk of food contamination;
- Serious drainage defects or flooding of the premises leading to actual or imminent risk of food contamination;
- Any combination of the above or any cumulative effect of contraventions which together represent an imminent risk of injury to health.

Additionally, equipment or a process may be prohibited where there is a risk of cross contamination of ready to eat food or where there is a failure to achieve critical control criteria such as minimum cooking or pasteurisation temperatures or the use of a process which is inappropriate.



An emergency prohibition notice will only be signed by a specifically authorised officer being an Environmental Health Officer having a minimum of two years post qualification experience of food enforcement matters and being currently involved in food enforcement. Such actions will, additionally, have to be approved by the Public Protection Manager or other suitably qualified senior officer.

Outside, expert advice will be sought where the process or treatment under consideration requires specialist knowledge or qualifications to establish that the health risk conditions above are met.

### Voluntary Closure

- There may be occasion where an authorised officer is satisfied that grounds for Emergency Prohibition exist, but where the food business operator offers to close voluntarily until the health risk is removed.
- Such an offer will only be accepted if the authorised officer is satisfied that there is no likelihood of the premises being used as a food business, or of the use of equipment, or of a process without the express agreement of the food authority.
- Such an offer will only be accepted if the offer to close and its acceptance are fully documented and signed by the food business operator and by a specifically authorised officer, as for an emergency prohibition notice.
- When considering such an offer, great care will be taken to ensure that the food business operator is aware that in closing voluntarily they are relinquishing the rights to compensation for unjustified action contained in formal emergency prohibition notice procedure.

### Prosecution

- Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the above enforcement procedures.
- In considering prosecution action for food safety offences an authorised officer will consider whether that course of action is proportionate to the risk presented to the public health by the contravention, using the principles outlined in the paragraph “Factors influencing the enforcement approach” above.
- Primary authorities will be consulted where prosecutions are planned and due regard will be paid to opinion of that authority. Such authorities will be notified of the outcome of prosecutions taken.
- The recommendation to prosecute will be made by the Public Protection Manager after careful consideration of a written report from the inspecting officer.
- The decision to prosecute will be made by the Principal Solicitor, who will take account of the criteria set out in the Code for Crown Prosecutors, in particular the Evidential Test and the Public Interest Test.

Factors that will be considered before initiating prosecution procedures include:

- The seriousness of the alleged offence;
- The previous compliance history of the food business;
- The likelihood that a *due diligence*\* defence could be established;



- The ability of any important witness and their willingness to cooperate;
- The willingness of the food business operator to prevent a recurrence of the contravention;
- The probable public benefit of a prosecution and the importance of the case in establishing a precedent;
- Whether other action, such as issuing a formal caution, serving an improvement notice, or imposing a prohibition, would be more appropriate or effective;
- Any explanation offered by the food business.

*\* due diligence: The Food Safety Act 1990 provides a defence for a person charged with an offence that he took all reasonable precautions and exercised all due diligence to avoid the offence. This requires that, not only are suitable precautions set up, but that these are adequately implemented and monitored to ensure their effectiveness.*

## Unfit Food Prosecution

(LACORS Guidance on Food Complaints – second edition)

The decision to prosecute for Food Safety Act 1990 offences relating to the sale of food unfit for human consumption, or not of the quality demanded by the purchaser will be taken at the earliest opportunity to avoid unnecessary and time consuming investigations by both authorised officers and food businesses.

Prosecution will be indicated where:

- the offence has resulted in a risk to public health;
- there is evidence of negligence in failing to adopt basic food hygiene precautions;
- The food business has failed to respond to an informal approach to prevent a recurrence of the problem.

Particular regard will be paid to the possibility of establishing a *due diligence* defence.

Only officers holding a relevant food inspection qualification will be authorised to consider whether food is fit for human consumption. Independent advice will be sought from the appointed food examiner or public analyst, or other expert, where appropriate.

In all cases where a prosecution is being considered, a report will be requested from the originating food authority as appropriate and particular regard will be paid to that report.

The integrity and co-operation of a complainant in providing witness support is especially important with food complaints. The wishes of the complainant as to whether to proceed to prosecution will be respected, unless it is felt to be in the public interest to proceed independently.

## Formal Cautions

The Home Office issued a circular (30/2005) in relation to the cautioning of offender to which reference should be made. Reference should also be made to the Code of Practice under Section 22 of the Legislative and Regulatory Reform Act 2006 and the Code for Crown Prosecutors. Cautions are a non-statutory disposal for adult offenders and Local Authorities may therefore exercise discretion when deciding to use them; as such it is not possible to be definitive about the circumstances in which

they are appropriate.

The aims of the simple caution are:

- to deal quickly and simply with less serious offences;
- to divert offenders where appropriate from appearing in the criminal courts;
- to reduce the likelihood of re-offending.

Formal caution will only be considered where there is sufficient evidence to give a realistic expectation of success if the case went to the courts. It will not be seen as an alternative to prosecution where it is felt the prosecution case is weak.

A caution can only be administered where the suspected offender is prepared to admit the offence. Care will be taken to ensure that the suspected offender understands the significance of the caution and is able to give an informed consent to being cautioned.

The decision to offer a formal caution will be taken by the Principal Solicitor upon receiving the report of the Public Protection Manager (PPM). The PPM is authorised as the “Cautioning Officer” for the purpose of implementing the caution.

If the offer of a formal caution is declined, further enforcement action will be considered. This will usually be prosecution, but the option of a written warning will be considered.

Home and originating authorities will be notified of formal cautions issued by this authority where appropriate.

## **Review of Policy**

This Enforcement and Prosecution Policy will be reviewed annually or when changes in legislation or centrally issued guidance make this necessary.

## **Appendices**

1. Notes on BRE Regulators Compliance Code of Practice
2. Guidance on enforcement of Article 5 requirement for documented food safety systems.

## Annexe 2: Definitions

**BREXIT** On 30<sup>th</sup> March 2019 under Article 50 of the Treaty on European Union the UK will cease to be a member of the EU. The decision by the UK to leave the EU will have implications for the regulatory regime for food safety in the UK.

**ROF** The FSA, the regulators for UK food safety, have published a controversial strategic plan for the period 2015-2020 to coincide with Brexit. The plan will lead to a major programme of regulatory change (ROF) through which the FSA is seeking to modernise comprehensively, the delivery and enforcement of its regulatory regime regarding food businesses, stating that it sends a sharper focus for the need for the FSA to move ahead with this programme before March 2019 beginning with central registration of food businesses 'Enhanced Registration'.

**FLCOP** Food Law Code of Practice and Practice Guidance – issued by the Food Standards Agency and mandatory for local authorities to adhere to.

From the FLOP:

**'Inspection'** means the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and welfare rules.

**'Monitoring'** means conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed or food law, animal health and animal welfare rules.

**'Surveillance'** means a careful observation of one or more food businesses, or food business operator or their activities

**'Verification'** means the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

**'Audit'** means a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objective.

**'Sampling for analysis'** means taking feed or food or any other substance (including for the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify through analysis compliance with feed or food law or animal health rules.

**'Intervention'** is defined as *Activities that are designed to monitor, support and increase food law compliance within a food establishment. This includes 'official controls'*

**‘Official controls’** are defined as *any form of control for the verification of compliance with food law. This includes:*

- *Inspections*
- *Monitoring*
- *Surveillance*
- *Verification*
- *Audit*
- *Sampling (where analysis is to be carried out by an Official laboratory).*  
*(These terms are defined in Annexe 3)*

**‘Other interventions’** are also defined and can include *‘other interventions, i.e. those which do not constitute official controls include:*

- *Targeted education, advice and coaching at food establishment*
- *Information and intelligence gathering (including sampling where analysis is not carried out by an Official laboratory)*

**NOTE:** *a visit to an establishment for the purpose of obtaining a sample does NOT constitute a planned intervention unless the sampling activity forms a component part of a wider reaching official control that overall provides sufficient information to allow the officer to determine the level of compliance. .*

**Full Inspection:** This is a check on compliance with legal requirement in accordance with elements set out in the Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements.

**Partial Inspection:** An inspection that covers only certain elements of the inspection as laid down in the Code.

Where a partial examination is agreed, the reasons for adopting this approach will be documented on the central database M3 in the agreed format. The scope of the partial inspection will be specified in the inspection report provided to the food business operator.

**Planned audits:** An audit may be undertaken instead of a partial or full inspection, where any food business operator, including those providing a high risk business has put in place an acceptable documented food safety management system (addressing Article 5 Regulation 852/2004). Details of the system will be required in advance of the audit so the Officer can plan the appropriate audit.

The audit may include one or more of the following elements (FLCOP):

- Complete audit of the food safety management system
- Audit of selected elements of the food safety management system where the system is complex
- Partial Audit concentrating on a particular produce
- Operational audit concentrating on certain arrangements such as temperature monitoring.

### Annexe 3: Organisation Chart: Public Protection Team

