

OADBY AND WIGSTON BOROUGH COUNCIL



FOOD SAFETY LAW ENFORCEMENT POLICY

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**June 2008
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OADBY AND WIGSTON BOROUGH COUNCIL FOOD SAFETY LAW ENFORCEMENT POLICY

The document is in 3 parts -

Part 1 – The Council’s General Enforcement Policy

This part details the Council’s policy on all aspects of its enforcement work. It embraces the nationally recognised principles of good enforcement.

Part 2 - Enforcement Considerations Specific to Food Law Enforcement

This part supplements Part 1 by adding policy matters that are specific to food law enforcement.

Part 3 – Food Safety Law Guidance and Procedures for Food Safety Officers

This part provides the procedural detail to enable enforcement officers to apply the policy as the Council intends.

It is supporting guidance for officers and does not form part of the policy statement itself.

Part 3 will be updated regularly to take account of changes in technical and legal guidance and good practice.

PART 1

Oadby and Wigston Borough Council's Enforcement Policy

OADBY AND WIGSTON BOROUGH COUNCIL



ENFORCEMENT POLICY

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OADBY AND WIGSTON BOROUGH COUNCIL

ENFORCEMENT POLICY

One of Oadby and Wigston Borough Council's principal duties is the regulation of a number of activities, the purpose of which is to secure adequate protection of the public and the environment.

We do this by applying laws which we have either the power or a duty to enforce.

It is our intention to apply these laws in a fair and consistent way.

To help us do so, this enforcement policy is adopted as our commitment to the principles of good enforcement.

1. Introduction

1.1 This policy sets out what businesses and others who are regulated by Oadby and Wigston Borough Council can expect from our enforcement service. It commits us to –

- Protecting the public, the environment and groups such as consumers and workers
- Equitable and consistent enforcement actions
- Allowing and encouraging economic progress in our borough
- Taking care to help businesses and others meet their legal obligations
- Reducing unnecessary burdens on businesses
- Responding proportionately to regulatory breaches, including those of criminal behaviour which would have a damaging effect on legitimate business
- Taking firm action, including prosecution where appropriate, against those who persistently flout the law or act irresponsibly

1.2 By delivering these commitments, we believe we shall help to maintain a fair and safe trading environment and to promote the local economy.

1.3 We recognise that most businesses want to comply with the law and it is our commitment to help and encourage them to do so.

1.4 The policy is supported by appendices in which we have set out additional measures that will be adopted to enforce certain legislation, where specific guidance applies. This includes legislation relating to health and safety at work and food safety.

1.5 The policy and its appendices are based on advice and guidance from government departments (including the statutory Regulators' Compliance Code and the Enforcement Concordat), the Health and Safety Executive and its local authority unit, the Local Authorities Co-ordinators on Regulatory Services (LACORS), the Chartered Institute of Environmental Health, the Code for Crown Prosecutors and current best practice.

2. Aim and Application of this Policy

2.1 The aim of this policy is to ensure that all enforcement action we take is **proportionate, consistent, transparent, targeted and accountable**.

2.2 In applying this policy we will –

- Enforce only within our areas of responsibility
- Work with employers, businesses and/or proprietors to achieve compliance with the law through education, the provision of advice and information and inspection
- Apply a risk based approach that is proportionate, targeted and flexible
- Adopt the principles of good enforcement (see Appendix A)
- Set clear guidance for officers to follow
- Provide adequate resources to enable the policy to be carried out

3. Action under this policy

3.1 The Council recognises and will use a variety of actions to carry out its enforcement policy. These include –

- Informal action, i.e. advice, assistance and education
- Issuing of a statutory notice – the type of statutory notice will be specified by individual laws. For the purposes of this policy, a statutory notice includes a fixed penalty notices
- Issuing of a formal caution
- Prosecution

3.2 Supporting guidance will be developed to identify officers who have sufficient training, knowledge and experience to make enforcement decisions (i.e. to determine which action is most appropriate).

3.3 When making enforcement decisions all officers who are authorised under this policy will abide by its requirements, its appendices and all supporting guidance.

3.4 Any departure from the policy will be exceptional, capable of justification and fully considered by the senior manager of the service before any decision is taken, unless it is considered that delaying the decision will cause significant and unacceptable risk to the public or the environment.

4. Competency of Enforcement Officers

4.1 The council recognises that only appropriately authorised officers may carry out enforcement work and that authorised officers must have a competency level that is appropriate to the level at which they expected to enforce.

We therefore undertake to authorise officers both in accordance with our Constitution and the requirements of any specific legislation and guidance that may apply.

4.2 We will set guidelines to ensure that only officers with an appropriate level of competency are authorised, and that authorisation of an individual will reflect their level of competency.

4.3 We believe that competency may be demonstrated by a mix of training, qualification and experience and in order to maintain, develop and improve the competency of our enforcement officers, we will support the continuing professional development that is necessary to enable them to deliver this policy within the law and guidance that applies.

4.4 It is the responsibility of individual officers to keep a record of their own training and professional development, which will form part of the authority's record of ongoing training.

4.5 All authorised officers will be made aware of the requirements of this policy, where they are relevant to their operational duties. Initial training on recruitment and periodic refresher training of officers will be undertaken as necessary and their activities will be monitored to ensure compliance with this policy. This will be through regular management supervision.

5. Working with others

5.1 The council recognises that many enforcement activities require an inter agency approach. In cases where this is necessary and appropriate, enforcement officers shall ensure that liaison is made with other interested bodies, in accordance with national and local guidelines.

6. Indemnification

6.1 The council will indemnify officers that it has authorised against the whole of any damages or costs which may be involved, if it is satisfied that the officer honestly believed that the act or omission complained of was within their powers, that their duty as an officer entitled them to do it and that their action was appropriate given the information they had available at the time their decision was made.

6.2 Indemnification does not include any officer acting wilfully against instructions

6.3 Officers will be fully acquainted with the requirements of this policy and the procedures to carry it out and will carry out their duties at all times in support of and in compliance with this policy.

7. Review of Policy

7.1 The policy will be reviewed regularly and developed to reflect changes in legislation or guidance. Reviews will also take into account improvements to the service and the particular interest in our authority of business owners and others that we regulate, their employees and the public.

7.2 In particular we will review the regulatory activity and interventions we carry out under this policy and consider the degree to which we may remove or reduce the regulatory burdens they impose.

7.3 Examples of when review will be undertaken include a change in legislation or guidance, a significant enforcement enquiry or dispute and as a result of feedback or consultation from businesses.

7.4 The next major review of this policy will be no later than 30th June 2011.

8. Complaints Procedure

8.1 The council is committed to providing an easy way for anyone wishing to challenge or complain about our enforcement action. Any complaints about this policy or its application will be dealt with in accordance with our formal complaints procedure, a copy of which is available on request.

This policy was approved by Oadby and Wigston Borough Council's Services Committee on 10th June 2008.

**OADBY AND WIGSTON BOROUGH COUNCIL
ENFORCEMENT POLICY**

PRINCIPLES OF GOOD REGULATION

Where enforcement action is necessary, Oadby and Wigston Borough Council is committed to the 5 principles of regulation, set by the Better Regulation Executive of the Department for Business, Enterprise and Regulatory Reform. These state that regulation should be –

Proportionate Consistent Accountable Transparent Targeted

In applying these 5 principles, we will –

1. Setting Clear Standards
2. Be Open
3. Be Helpful
4. Take Proportionate Action
5. Be Consistent
6. Have an Easy to Use Complaints Procedure.

1. Setting clear standards

We will set clear standards to show the levels of service and performance that residents of, businesses within, and visitors to the Borough can expect from us.

In setting these standards we will –

- * Consult with businesses and other interested parties on the development of our standards.
- * Publish performance against these standards at least once a year.
- * Make readily available the results of our performance.

2. Being Open

We will assist individuals, organisations and businesses to understand what is expected of them and what they should expect from us. To achieve this, we will -

- * Provide information and advice in plain language on the rules that we apply.
- * Confirm advice in writing, if requested
- * Disseminate this information as widely as possible and by as many means as possible.
- * Be open about how we set about our work, including any charges we set.
- * Clearly distinguish between statutory requirements and advice given to help raise standards above the minimum

- * Consult with businesses, voluntary sectors, other organisations and residents of the Borough.
- * Discuss general issues, specific compliance factors or problems with anyone experiencing difficulties.

3. Being Helpful

We believe that prevention is better than cure and to put this into practice, we must work actively with businesses (especially small and medium sized businesses), and residents and visitors where appropriate, to advise and assist with compliance.

Therefore, we will provide

- * A courteous and efficient service.
- * Staff who identify themselves by name.
- * A contact point and telephone number for future dealings with us.
- * Encouragement for everyone dealing with us to ask for advice and information.
- * Efficient and prompt dealing with applications for licences, registrations, approval of establishments, etc.
- * Co-ordinated services to ensure that, wherever practicable, our enforcement services minimise unnecessary overlaps and time delays.
- * Prompt, effective and simple communication of legal requirements to businesses and others that we regulate
- * Provision of advice in a clear, concise and accessible form, using the language and choice of medium preferred by the business, wherever possible
- * A means of assessing the effectiveness of advice and information that we provide

4. Taking 'Proportionate' Action

In order to reduce the burden to businesses and minimise the costs they incur in compliance we will –

- * Ensure any action we require is proportionate to the risk of harm occurring
- * Develop effective risk assessment procedures and use these to target our resources to where they will be most effective (i.e, where risk is highest)
- * Identify through the risk assessment process businesses that persistently break regulations and target action against them
- * Identify factors that will influence our evaluation of likely non-compliance, such as past compliance records, the quality of risk management systems, management competence and willingness of the business to comply.
- * Ensure no inspections of business premises take place without a reason

- * Take particular care to work with small businesses and voluntary and community organisations so they can meet their legal obligations without unnecessary expense, given their size and the nature of their activities.

5. Being Consistent

We will –

- * Carry out our duties in a fair, equitable and consistent manner.
- * Have arrangements in place to promote consistency, especially where inspectors are expected to exercise judgement in individual cases.
- * Work with other regulators to share data and coordinate inspections
- * These arrangements will include effective liaison with other authorities and enforcement bodies at both local and national level.

6. Having an Easy to Use Complaints Procedure

If anyone wishes to complain about any aspect of the service they receive, we will –

- * Provide a well-publicised, effective and timely complaints procedure, easily accessible to business, the public, employees and consumer groups.
- * Explain any right of complaint or appeal, including details of the process and likely timescales, in any case where a dispute cannot be resolved.

Implementing the principles of good regulation

To enable enforcement officers to carry out the principles set out in this appendix, guidance will be produced and they will be informed about how it is to applied.

In turn, enforcement officers' implementation of the principals will be monitored as part of the normal management monitoring processes.

Part 2

**Oadby and Wigston Borough Council's
Enforcement Policy Supplement containing
specific guidance that applies to enforcement
of Food Safety and Food Standards Legislation**

OADBY AND WIGSTON BOROUGH COUNCIL



FOOD SAFETY LAW ENFORCEMENT POLICY SUPPLEMENT

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June 2008

OADBY AND WIGSTON BOROUGH COUNCIL ENFORCEMENT POLICY

Specific guidance applying to enforcement of Food Safety and Food Standards Legislation

This document is a supplement to Oadby and Wigston Borough Council's Enforcement Policy. It covers additional matters that are not covered in the general enforcement policy because they are specific to food safety and food standards legislation.

For the purposes of enforcing this legislation, the details in this document will form part of the enforcement policy.

Determining Appropriate Enforcement Action

In addition to the principles of good enforcement and the Regulators' Compliance Code, the following shall be considered in the determination of appropriate food safety enforcement action

- Current codes of practice issued under food legislation
- Industry guides for particular sectors of the food industry
- Advice issued by independent bodies such as LACORS* or CIEH*
- Application within a food business of food safety management procedures based on Hazard Analysis of Critical Control Points principles (a requirement of European Union Regulation 852/2004), including any subsequent food safety management procedures designed to improve the management of food safety within the food industry.
- Any Principal Authority Partnership between the business and another local authority, made under The Regulatory Enforcement and Sanctions Act 2008 and administered by the Local Better Regulation Office
- Current guidance applying to any 'lead', 'home' or 'principal' authority schemes, partnerships or principals in place at the time

Guidance will be issued to enforcement officers to help achieve proportionate and consistent decision making and service delivery

Competency of Food Safety Officers

The majority of food safety enforcement is initiated by authorised officers without reference to a senior officer. We will therefore ensure that officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified (in terms of the relevant code(s) of practice) and have relevant and adequate experience in food enforcement.

Maintenance of competency will be ongoing by continuous assessment, including an annual appraisal interview.

*LACORS is the Local Authorities Coordinators of Regulatory Services

*CIEH is the Chartered Institute of Environmental Health

This supplement was updated in June 2009 to incorporate the Primary Authority Partnership scheme, administered by LBRO (the Local Better Regulation Office) under the Regulatory and Enforcement Sanctions Act 2008.

Part 3

**Oadby and Wigston Borough Council's
guidance and procedures for officers
who are applying food safety and food
standards legislation in the borough**

OADBY AND WIGSTON BOROUGH COUNCIL



FOOD SAFETY LAW

ENFORCEMENT POLICY

Guidance and Procedures for Enforcement Officers

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June 2008

FOOD SAFETY LAW

Guidance and Procedures for Enforcement Officers

This guidance and procedures is written for reference by officers enforcing the Food Safety legislation, including the Food Safety Act 1990.

Its purpose is to ensure consistent application of the council's enforcement service, as it applies to food safety.

It is to be followed at all times and may only be deviated from in agreement with a senior environmental health or legal manager, and then in compliance with the 'exceptions' requirement of our enforcement policy

The guidance and procedures will be reviewed regularly and updated when necessary

Throughout this guidance the term 'regulated entities' includes businesses and all other bodies (eg charities and voluntary sector organisations) that are subject to food safety regulation by Oadby and Wigston Borough Council

This supplement was updated in June 2009 to incorporate the Primary Authority Partnership scheme administered by the Local Better Regulation Office (LBRO) under the Regulatory and Enforcement Sanctions Act 2008

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Reference Documents

Many documents have been considered in the formation of this guidance, including laws that have an impact on the delivery such as The Human Rights Act 1998 and The Food Safety Act 1990. A more detailed list will be found at Appendix A.

In addition, the Council has taken account of:-

- The principles of the Regulators Compliance Code (summarised in Appendix C of this policy).
- The principles of the Cabinet Office Enforcement Concordat (summarised in Appendix D)
- Code of Practice issued by the Food Standards Agency to local authorities under FSA/LA Framework Agreement.
- The law and guidance that applies to the Primary Authority Partnership scheme (from 6th April 2009)
- The 5 principles of regulation set by the Better Regulation Executive of the Department for Business, Enterprise and Regulatory Reform, which state that regulation should be :
 - Proportionate
 - Accountable
 - Targeted.
 - Consistent.
 - Transparent
- Our own Corporate Plan, Constitution and Equal Opportunities Policy

PART 1

GUIDANCE ON APPLYING THE REGULATORS' COMPLIANCE CODE

The Regulators Compliance Code came into force on 6th April 2008. This is a statutory code of practice for regulators which we must have regard to. It does not replace the Enforcement Concordat, which is a voluntary code, which applies to all areas of the council's work. The Regulators Compliance Code (referred to as 'the Code' in the remainder of this note) only applies to the enforcement of certain pieces of legislation a large proportion of which is enforced by Environmental Health.

The Code is central to the Governments Better Regulation agenda. Its purpose is *"To promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third sector and other regulated entities"*

There is an expectation that we will integrate the Code's standards into our culture and processes. This will have the benefit of us becoming more efficient and effective in our work and will deliver significant benefits to low risk and compliant businesses through better focused inspection activity, increased use of advice for businesses and lower compliance costs.

The code stresses the need for regulators to adopt a positive and proactive approach towards ensuring compliance by:

- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily
- Responding proportionally to breaches.

The main elements of the code are detailed below. The code does not apply directly to the work of individuals in individual cases. However we must take into account the provisions of the Code and give them due weight when developing policies, procedures or in setting standards and giving guidance. The enforcement policy may be amended as the provisions of the Code become more familiar.

Specific Obligations of the Code

Economic Progress

- We must consider the impact regulatory interventions may have on economic progress. We should only adopt a particular approach if the benefits justify the costs
- We should make reasonable attempts to ensure that the burdens of our interventions fall fairly and proportionately on small regulated entities by giving consideration to their size.

Risk Assessment

- We should ensure that the allocation of our regulatory efforts and resources are targeted where they would be most effective.
- Risk assessment must precede and inform all aspects of our approach to regulatory activity
- Risk assessment should be based on all available relevant and good quality data and should include explicit consideration of the combined effect of
 - The potential impact of non-compliance on regulatory outcomes and
 - The likelihood of non-compliance

Advice and Guidance

- We must ensure all regulatory requirements as well as changes to those requirements are promptly communicated to relevant regulated entities
- We should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations
- We should provide targeted and practical advice that meets the needs of regulated entities
- When offering compliance advice we should distinguish between statutory requirements and advice and guidance aimed at improvements above the minimum standards.
- We should provide appropriate means to ensure that regulated entities can reasonably seek advice from us without triggering enforcement action

Inspection and Other Visits

- Inspections should only take place in line with risk assessment or where we are acting on other intelligence
- We should focus our greatest inspection effort where risk assessment shows that both
 - A compliance breach would pose a serious risk to a regulatory outcome and
 - There is a high likelihood of non-compliance
- We should give positive feedback to encourage and reinforce good practice. We should share information about good practice amongst other regulated entities and other regulators
- We should have arrangements with other regulators for collaboration to minimise the burdens on business through joint or co-ordinated inspections and data sharing

Information Requirements

- When asking for data from regulated entities we should have consideration of the costs and the benefits to the business

Compliance and Enforcement actions

- We should reward regulated entities that have consistently achieved good levels of compliance through positive incentives such as a lighter touch
- When considering taking enforcement action we should discuss the circumstances with those suspected of the breach and take these into consideration when deciding the best approach. This does not apply where immediate action is required.
- We must give clear reasons for any formal enforcement action to the person or entity against whom the action is being taken at the time the action is taken. These reasons should be confirmed in writing.
- We must ensure that we interpret and apply legal requirements and our enforcement policy consistently and fairly

Accountability

- We should create effective consultation and feedback with regulated entities
- We should provide courteous and efficient services to regulated entities.

Much of the above we are already doing, however there are other areas in which we need to change our approach. In dealing with regulated entities we must give due consideration to any burden our involvement may create and where possible seek to reduce this burden to the minimum, whilst still protecting consumers, employees and the general public.

PART 2

Use of Risk Assessment in Food Safety Enforcement

The Council is committed to the use of comprehensive risk assessment in all its regulatory work, to ensure that resources are concentrated in areas that most need them.

We will ensure that enforcement officers are familiar with the following principle of risk assessment –

Risk assessment involves identifying and measuring the potential to cause harm and where that potential exists, evaluating the likelihood and extent of harm occurring.

We use this principal to assess the risks of our regulatory outcomes and to target our resources to where they will be most effective and where risk is highest.

The risk assessment process precedes and informs all aspects of our approaches to regulatory activity, including –

- Data collection and other information requirements.
- Inspection programmes.
- Advice and support programmes.
- Enforcement and sanctions.
- Accounting for the combined effect of the potential impact of non-compliance and the likelihood of non-compliance.

When we consider the likelihood of non-compliance we shall take account of –

- Past compliance records and potential future risks.
- The quality of systems for managing risks.
- Evidence of recognised external accreditation.
- Confidence in management and willingness to comply.

We shall consider ways of consulting and involving regulated bodies and other interested parties when designing our risk methodologies, and publish details of methodologies.

Our risk methodologies will be reviewed regularly and improved where evidence suggests improvement can be achieved. Reviews will take account of feedback from those we regulate, our regulatory partners, official guidance and any other source that can inform and improve the risk assessment process,

PART 3

Partnerships and Communication

- 2.1 Oadby & Wigston Borough Council believes that its policy on food safety enforcement is most effectively delivered in partnership and communication with other organisations which have an interest in, and/or are affected by, food safety law.

Therefore, we will make arrangements for developing and maintaining effective and efficient communication channels and working links with the following:-

- Businesses.
- Other regulated entities
- Statutory bodies.
- Trade organisations/associations.
- Professional institutions.
- The Food Standards Agency
- Accredited laboratories serving Leicestershire local authorities
- Other local authorities in Leicestershire and the Midlands

2.2 Delivering our Partnerships and Communication Commitment

To put our commitment into practice, we will:-

- (i) Provide businesses with clear and jargon-free information and advice on how to comply with current food safety legislation and standards.

By doing this, we show how we put into practice the principles of transparency and openness.

- (ii) Support the roles of the Food Standards Agency (FSA), the Local authority coordinating body for regulatory services (LACORS) and the Better Regulation Executive (BRE) to ensure that a co-ordinated and progressive approach to food safety takes place.

- (iii) Support the Chartered Institute of Environmental Health Leicestershire Food and Technical Sub-Committee and its role as a forum for:-

- Developing consistency of enforcement.
- Organising training initiatives.
- Providing and co-ordinating approach to health and safety issues in the county.

- (iv) Support local and national initiatives aimed at securing food safety compliance, where we believe our resources input justifies the benefit to our business community and our residents.

- (v) Pay particular attention to raising food safety standards in small firms by identifying information from local and national initiatives, which will be of value to them and making sure they receive and understand it, and put it into practice.

- (vi) Work to achieve consistent enforcement standards by working with:-
- The FSA.
 - The Department for Business, Enterprise and Regulatory Reform (BERR).
 - Local Better Regulation Office (LBRO)
 - Any local authorities that are partnering a business in a Primary Authority Partnership (Regulatory Enforcement and Sanctions Act 2008)
 - Any home or lead authorities designated under a recognised home or lead authority scheme.
 - Local authorities in Leicestershire and the Midlands Region.
- (ix) Keep all interested parties informed of information relating to our enforcement and regulatory work (except where this may prejudice the success of action we are considering)

2.3 Communication with Regulated Entities

Where we request information from businesses or organisations that we regulate, we will consider the costs and benefits this information will bring to those bodies.

We will actively consider reducing costs to businesses and organisations by –

- Varying data requirements according to risk
- Limiting collection of data to specific regulated bodies, sectors or sub sectors.
- Reducing the frequency of data collection.
- Obtaining data from another source
- Allowing electronic submissions.
- Requesting only data that is justified by risk assessment.

We will pay particular attention to the impact our regulatory interventions have on small regulated bodies and to the ensuring that any regulatory burden is fair and proportionate, given their size and the nature of their activities.

2.4 Communication with Other Regulators

The Council will coordinate its Food Safety Enforcement Activity with the work of other regulatory bodies and enforcement agencies, where this is appropriate to the effective delivery of this policy.

Where the Council requires information or holds information that another regulator has or needs, we will share this information on a reciprocal basis.

We will create effective consultation and feedback opportunities to maintain co-operative relationships between those we regulate and other interested parties.

Where an enforcement activity affects a geographical area beyond that of Oadby and Wigston, or involves enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of the activity as soon as possible and all enforcement activity coordinated with them

Oadby and Wigston Borough Council may pass to or share information relating to wider regulatory matters with other regulatory bodies and enforcement agencies These may include –

- Government agencies (eg Food Standards Agency)
- Police authorities
- Fire authorities
- The Health Protection Agency
- Statutory undertakers, such as Severn Trent Water
- Other local authorities

In order to avoid duplication of collection, where we hold information from a regulated entity and this information is needed by another regulator, we will share the information we hold, where this is practicable, beneficial and cost effective.

In return we expect this to be a reciprocal arrangement with other regulators.

With regard to application of The Data Protection Act 1998, we note the advice from the Information Commissioner on the avoidance of unnecessary restriction of data sharing.

Where appropriate and practical, we will collect data from regulated bodies in a way that is compatible with the processes they already use, and those of other regulators who collect similar data.

Where wider regulatory matters can be more effectively addressed through joint working, Oadby and Wigston Borough Council will consider entering into formal enforcement liaison policies, including Memoranda of Understanding, in appropriate cases.

Effective communication with regulated entities, other regulators and interested parties will be achieved by providing courteous and efficient services and taking account of feedback comments about the behaviour and activity of our enforcement officers.

2.5 Comparing with Others

The Council is committed to comparing its services with those of others and in particular with better performing authorities.

To achieve this, we will take part in local and national benchmarking (including Inter-Authority Auditing) where we believe the resources needed to do this will be reflected in the improvements we are able to secure as a result.

PART 4

AUTHORISATION & INDEMNIFICATION OF OFFICERS

The Council recognises that only appropriately authorised personnel may undertake certain aspects of food safety law enforcement.

We are committed to accounting for our food law enforcement actions by designating officers identified in Part 4 to take certain decisions.

The purpose of Part 4 of this policy is to identify:-

- (i) Officers who are appointed and authorised to take enforcement action, and the limits of their delegation.
Such officers may include suitably competent officers of other local authorities, where we believe flexibility will bring about an improved and desirable regulatory outcome.
- (ii) The designation of those who may authorise a prosecution under the Food Safety Act 1990.

Part 4 also includes the Council's Policy on indemnification of officers who are authorised to take enforcement and prosecution actions.

Authorisation

It is the policy of the Council that enforcement action under the Food Safety Act 1990, and associated legislation, should be initiated by suitably qualified, experienced and competent enforcement officers who have been duly appointed in accordance with the Food Standards Agency Codes of Practice and the Council's current Constitution.

The Council recognises varying levels of complexity and intricacy in food safety enforcement and may vary the powers conferred upon appointed officers, depending on their experience, qualifications and competency.

Indemnification

The Council will indemnify authorised officers against the whole of any damages and costs or expenses which may be involved if it is satisfied that the officer honestly believed that the act complained of was within their powers and that their duty as an officer entitled them to do it.

Indemnification does not include any officer acting wilfully against instructions.

Prosecution

It is the policy of the Council that where, as a result of applying the principles of this document, a prosecution is appropriate, the following officers may authorise this action to begin:-

- the Head of Legal and Licensing or
- the Chief Executive.

In each case consultation with the Head of Environmental Health and/or the Director of Community Services will take place.

We may also consult with other officers and/or external advisors/experts where we believe it is appropriate to help secure the evidential test and the public interest test. (See Part 5.4 of this document).

All the above named officers will be aware of the limits of their delegated powers by referring to these procedures, the Council's Prosecutions Manual, the statutory Codes of Practice and any other considerations which they believe relevant to the case.

References to these sources will determine whether or not a prosecution action proceeds.

Other Enforcement Action

It is the Policy of the Council that Food Safety enforcement action other than prosecution may be instigated by any duly authorised Environmental Health Officer or Technical Officer, in consultation with the Head of Environmental Health (including the Principal Environmental Health Officer when deputising for him), OR the Director of Community Services.

Competence of Food Law Enforcement Officers

The criteria used to assess the competence of these officers will be those detailed in council policy documents AND specific requirements demanded by any statutory Codes of Practice and any other considerations which are believed to be relevant in the case.

In this respect we shall pay particular attention to the Food Standards Agency Framework Agreement with local authorities and the current editions of the FSA Code of Practice. The assessment of competence will apply to all officers employed to undertake food safety enforcement in the borough, regardless of their employment status.

Where the competency of officers falls below the standards necessary to enforce the full range of food safety legislation, authorisation to act under the Food Safety Act 1990 will be in accordance with the level of competency.

Training

In order to maintain, develop and improve the competency of its officers for food safety work, the council will support and resource the continuing professional development that is necessary to enable its officers to deliver this policy within the law and the guidance that applies.

It is the responsibility of individual officers to keep a record of their own training and professional development and this will form part of the authority's record of ongoing training.

PART 5 DECISIONS ON ENFORCEMENT OPTIONS

The Council believes it should achieve and maintain a consistency of approach in the decisions it makes about food safety and food standards enforcement action.

This approach should be free from unfair or illegal discrimination.

We are therefore committed to ensuring a fair and balanced approach to all enforcement decisions, which relate to common standards to protect people at work and anyone affected by their work.

Our approach includes working with other agencies where there is a shared or complimentary enforcement role.

ENFORCEMENT OPTIONS

The Council recognises the following enforcement options –

- (1) Informal Action
- (2) Issuing of Statutory Notices
 - Hygiene Improvement Notices
 - Hygiene Prohibition Notices
- (3) Issuing of Simple Cautions
- (4) Prosecution
- (5) Prohibiting of persons

The council also recognises the following as options to deal with particular circumstances –

- (6) Voluntary closure /Surrender
- (7) Forfeiture proceedings
- (8) Seizure and detention of food and records
- (9) Court injunctions
- (10) Refusal, suspension or revocation of licences or approvals

In Part 5 of this guidance, we set out how we decide which of the options is most appropriate to take, together with procedural guidelines for each option.

Where we consider that the Regulators' Compliance Code is either irrelevant or outweighed by another relevant consideration, we may choose not to follow one or more of its provisions. However, such a departure will only be where properly reasoned and based on material evidence, and with approval of the Head of Environmental Health or Head of Legal Services.

Where the business in question is part of a formal Primary Authority Partnership, any decision we take with regard to an enforcement option will be consistent with and in compliance with the legislation and good practice guidance governing and informing such a partnership.

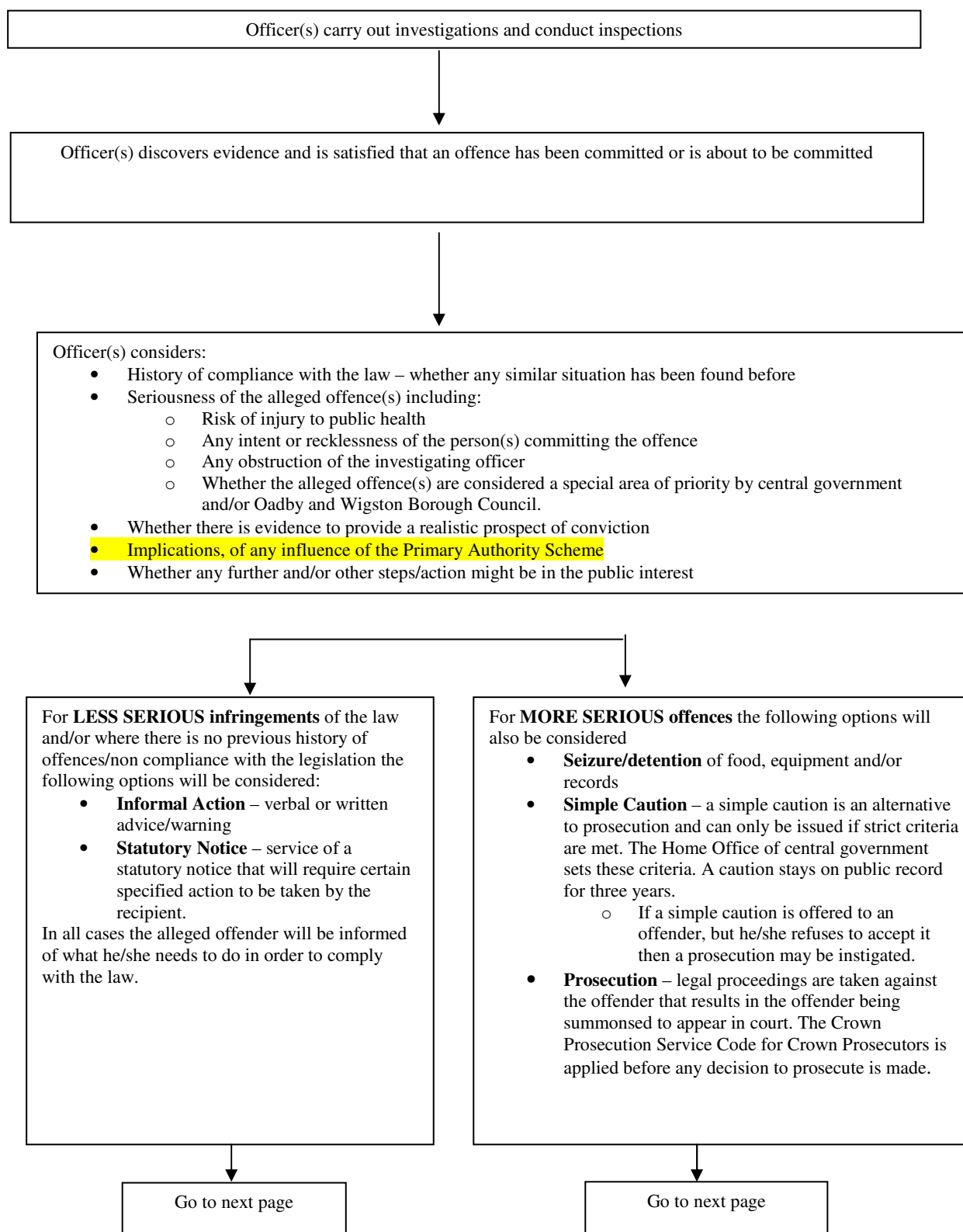
Any decision we take with regard to an enforcement option will be consistent with recommendations of the Macrory Review (see Appendix E).

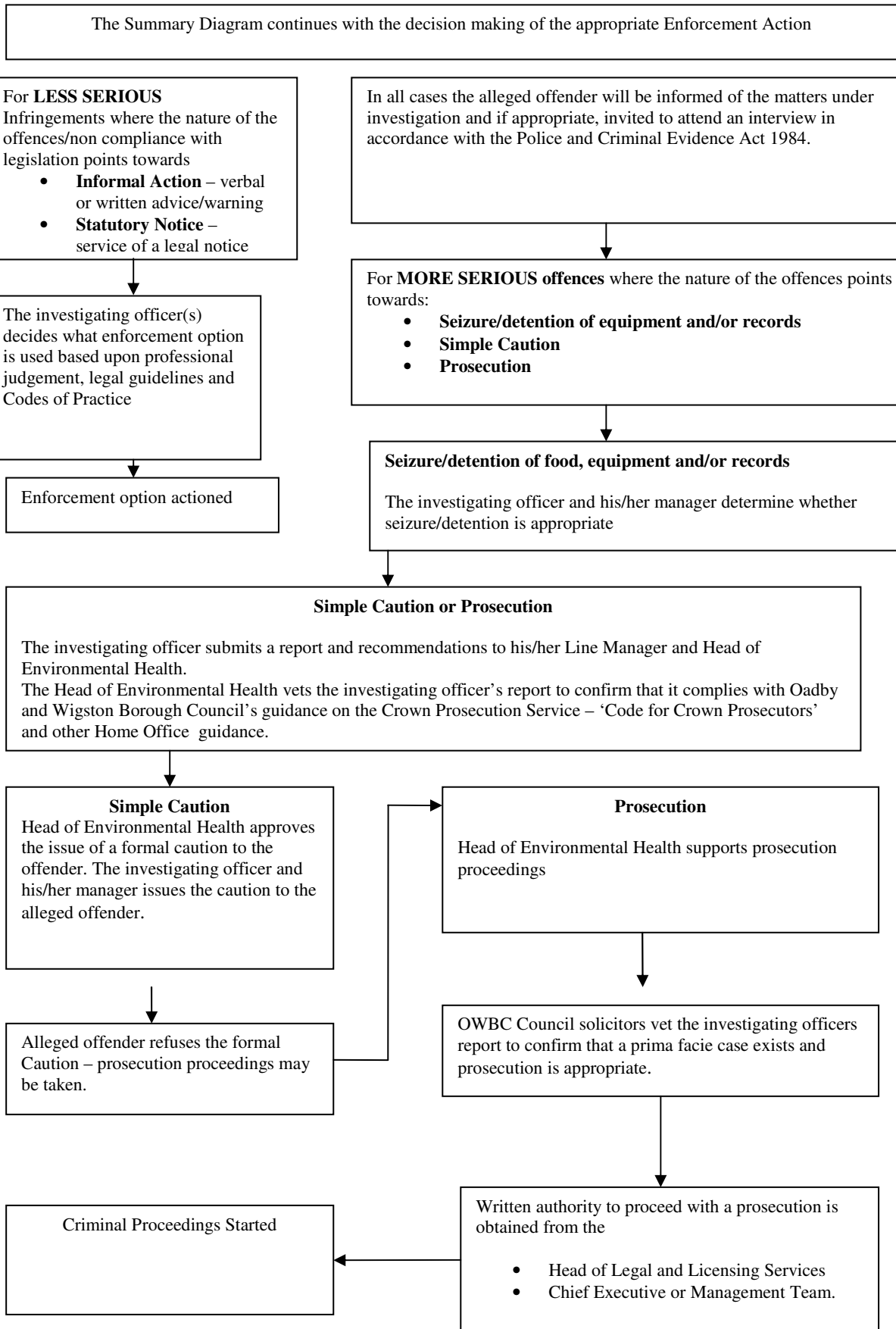
Further guidance on determining the appropriate enforcement action is set out in the flow chart on the next 2 pages.

The Food Safety Inspection Procedure (Ref FS 10.1) should also be consulted.

Factors to be Considered When taking Enforcement Action

This diagram summarises the decision making process that officers will follow in all cases.





5.1 Informal Action

- (a) The purpose of informal action is to help the food business proprietor to ensure the business complies with food safety law.
- (b) Informal action may be taken at the discretion of an authorised officer.
- (c) Informal action may take the form of
 - advice, assistance or information
 - education
 - requests for action
 - warnings
- (d) This action may be oral or in writing (either by letter, e mail or written report).
- (e) Provision of education will include making available the CIEH Accredited training courses such as 'Level 2 Award Food Safety', where we have resources available to provide it.
- (f) The provision of advice, assistance, information and education will be used to meet some of the specific requirements of the Regulators' Compliance Code, notably –
 - stimulating economic progress
 - placing greater emphasis on support and advice
 - passing on relevant information to businesses by information packs rather than a visit for inspection.
 - rewarding regulated entities that have consistently achieved good levels of compliance by lighter inspections and reduced reporting requirements, where justified by risk assessment.
 - assisting in particular small and medium sized enterprises by explaining in simple terms the food safety requirements of their business.
 - demonstrating accountability and transparency by encouraging feedback opportunities that will foster an active consultation by creating ongoing co-operative relationship with regulated entities and other interested parties.

Advisory services will normally be provided free of charge but we reserve the right to charge a reasonable fee for services beyond basic advice and guidance, where this is necessary to help ensure compliance.

In considering whether a fee might be appropriate, we shall take account of the needs and circumstances of smaller businesses and organisations that we regulate.

- (g) We will take informal action where one or more of the following apply –
 - (i) an act, omission or contravention is not serious enough to warrant formal action
 - (ii) the consequences of non-compliance will not pose a significant risk to public health
 - (iii) our previous history of the organisation, enterprise or individual suggests that informal action is likely to achieve compliance
 - (iv) confidence in the individual/enterprise's management is high
 - (v) other significant circumstances apply, e.g. the business is associated with a voluntary organisation
- (h) When carrying out informal action, Authorised Officers will follow the up to date procedural guidance set out in (i) to (n) below in all cases, except where the 'Exceptions to Policy' clause applies.

- (i) The requirements of the Council's General Enforcement Policy relating to officer's conduct and use of plain language will be met.
- (j) The specific requirements of any policies and procedures contained in the Food Safety Documents Library will be met, where they apply to informal actions.
- (k) All verbal warnings, advice and requests for actions which are made at the time of the inspection (or as the result of subsequent conversations, meetings or visits that raise additional matters) will be noted in the Authorised Officer's notebook and/or the file for the individual business concerned AND will be confirmed to the person(s) concerned in writing.
- (l) All written documentation produced as a result of informal action will contain all information necessary to –
 - understand the work that is required
 - understand the reason it is required
 - indicate the legislation contravened
 - understand the difference between a recommendation of good practice and a legal requirement
- (m) In giving any oral advice or information the officer(s) will make clear what is a recommendation of good practice and what is a legal requirement
- (n) Where an inspection or investigation reveals full compliance with the relevant Food Safety legislation/Codes of Practice, no further action may be required, other than to issue a post inspection report.
Details of the fact that the inspection revealed no action was required will be recorded on the premises file.

5.2 Statutory Notices

5.2.1 Hygiene Improvement Notices

- (a) The purpose of a Hygiene Improvement Notice is to specify in writing matters that are needed to help the food business proprietor ensure compliance with food safety law, and to indicate a time within which such matters should be completed.
- (b) An Improvement Notice may be served at the discretion of an Authorised Officer.
- (c) Before serving a Hygiene Improvement Notice, guidance in the current Code of Practice will be checked and the notice served only if one or more of the criteria are met. A Hygiene Improvement Notice will not be served where the circumstances meet the inappropriate criteria in the current Code of Practice
- (d) A Hygiene Improvement Notice will relate to the risk to health and safety and will not be issued for minor, technical contraventions unless we think an informal approach is unlikely to ensure compliance.
- (e) A Hygiene Improvement Notices will be signed only by an Authorised Officer who has witnessed the contravention.
- (f) Realistic time limits will be given for compliance with an Improvement Notice and where possible, these will be agreed as attainable and appropriate with the food business proprietor.
- (g) The Authorised Officer will discuss with the proprietor the works that will be specified in the Notice and will explain the options that are available.
- (g) Failure to comply with a Hygiene Improvement Notice will normally result in legal proceedings, in which case the section of this policy dealing with prosecutions will be consulted.
- (h) When preparing for and serving an Improvement Notice, Authorised Officers will follow the guidance set out below (h.1 to h.6) in all cases except where the 'Exceptions to Policy' clause applies.
 - h.1 The requirements of the enforcement policy relating to officer's conduct and use of plain language will be met.
 - h.2. The specific requirements of any policies and procedures contained in the Food Safety Documents Library will be met, where they apply to serving improvement notices.
 - h.3. The specific requirements of the relevant Codes of Practice and Guidance on the use of statutory notices will be met.
 - h.4. The Authorised Officer will discuss with the proprietor the works that will be specified in the Notice and will consider fully and then explain the options which are available.
 - h.5. The Authorised Officer will have regard to the most appropriate language to be used for an Improvement Notice and will seek to meet this need where it can be done without unduly prolonging any risk to public health.
 - h.6. We will notify other bodies of any formal action we take, or intend to take, where we believe it is appropriate to do so. Such bodies may include 'home' authorities, or similar, and appropriate government offices.
Where appropriate, notification will include the outcome of any action.

5.2.2 Hygiene Prohibition Notices

- (a) The purpose of serving a Hygiene Prohibition Notice is to address without delay a situation of imminent risk of injury to health.
- b) A Hygiene Prohibition Notice may be served at the discretion of an Authorised Officer, with the agreement of the Principal Environmental Health Officer or the Head of Environmental Health.
- (c) We will consider serving a Hygiene Prohibition Notice only where the following circumstances apply –
 - (i) immediate and decisive action is needed to protect public health.
 - (ii) An imminent risk of injury to health can be demonstrated
 - (iii) The guidance criteria specified in the current code of practice are fulfilled
 - (iv) There is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close the premises or cease the use of any equipment, process or treatment associated with the imminent risks. In cases where such offers are accepted, we will confirm the agreed criteria in writing as soon as is practicable after the visit resulting in the closure
- (d) A Hygiene Prohibition Notice will be signed only by authorised, competent officers holding appropriate qualifications and with relevant experience, and who have witnessed the matters to which the Notice relates.
- (e) When preparing to serve a Hygiene Prohibition Notice, Authorised Officers will follow the guidance set out below in all cases except where the 'Exceptions to Policy' clause applies
 - 1. The requirements of the council's general enforcement policy relating to officer's conduct and use of plain language will be met.
 - 2. The specific requirements of any policies and procedures contained in the Food Safety Enforcement Documents Library will be met, where they apply to prohibition notices.
 - 3. The specific requirements of relevant and current Codes of Practice and Guidance on the use of statutory notices will be met.
 - 4. We will notify other bodies of any formal action we taken, or intend to take, where we believe it is appropriate to do so. Such bodies may include 'Home' authorities and the appropriate government offices. Where appropriate, notification will include the outcome of any action.

5.3 Simple Caution

- (a) The purpose of a Simple Caution is to offer an alternative to prosecution that will –
 - deal quickly and simply with less serious offences
 - divert such cases from unnecessary appearances in the criminal court
 - reduce the chances of re-offending
- (b) The Council recognises that issuing a simple caution is legislative action in its own right and will not be used as an easy option to prosecution, but as a genuine option to achieve the above aims.
- (c) This policy authorises the following Senior Managers to issue simple cautions –
 - (i) The Head of Environmental Health
 - (ii) The Director of Community Services
- (d) We will consider issuing a Simple Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 18/1994, or any circular that replaces it, and in accordance with current LACORS guidance.
- (e) We will ensure to our reasonable satisfaction that all the following conditions are met before a Simple Caution is administered –
 - there is sufficient evidence of the alleged offender's guilt to give a realistic prospect of prosecution
 - the alleged offender admits the offence
 - the alleged offender understands the significance of a Simple Caution
 - the alleged offender gives formal consent to being cautioned
- (f) We will not consider a Simple Caution where we feel there is insufficient evidence to consider a prosecution.
- (g) When preparing for and serving a Simple Caution, Authorised Officers will follow the guidance set out below (g.1 to g.15) in all cases except where the 'Exceptions to Policy' clause applies -
 - g.1 The requirements of the council's general enforcement policy relating to officer's conduct and use of plain language will be met.
 - g.2 The specific requirements of the policies and procedures contained in the Food Safety Enforcement Documents Library will be met, where they apply to Simple Cautions.
 - g.3 The specific requirements of guidance issued by the Home Office on the administering of Simple Cautions will be followed.
 - g.4 As there is no legal obligation for a person to accept a Simple Caution, when explaining their significance to a business proprietor, no officer shall apply pressure to that person to accept one.

However, where the offer of a Simple Caution is refused, a prosecution should normally be pursued.

- g.5 The simple caution will be administered by an officer who we have authorised as a 'cautioning officer'.
- g.6 Normally, the caution will be administered in person by the cautioning officer, although in exceptional circumstances it may be administered by post.
- g.7 Where we propose to issue a simple caution we will inform the offender in writing, using the form in Annex 1, document 1 of the Home Office Circular 18/1994.
- g.8 We will issue all simple cautions in writing using the form in Annex 11, Document 2, of the Home Office Circular 18/1994 in the case of an individual, and Annex 11 Document 3 where the offence was committed by a company.
- g.9 Two copies of the caution will be signed, first by the person receiving and second by the person administering the caution. One of these copies will then be handed to the person receiving the caution.
- g.10 Should the offender refuse to accept a caution or fail to return the signed copies within 14 days, we are prepared in all cases to take legal proceedings.
- g.11 We will record details of the offence in the specific premises file and in our formal caution file.
- g.12 As soon as possible after issuing the caution, we will notify the Office of Fair Trading using the form in Annex 11 of Home Office Circular 18/1994. We will also send them a signed copy of the caution letter.
- g.13 If, under any Home or Primary Authority or similar scheme at place at the time, there is an authority acting in this capacity for the business in question, we will notify them of the details of the caution.
- g.14 Where the simple caution was issued as a result of an investigation begun by a complaint made by a third party, we will inform the complainant that the caution has been issued.
- g.15 At all times we will be aware of time limits for issuing a caution (and subsequent prosecution) should clause (10) apply.

5.4 Prosecution

5.4.1 General Guidance

- (a) The purpose of prosecution is to deal with people or companies who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements and who put the public at serious risk or persistently and deliberately continue to contravene safety law.
- (b) Authorised Officers who believe the contraventions they are investigating are sufficient to warrant a prosecution will refer the details to officers designated in Part 4 of this guidance for a decision on whether to proceed with prosecution action.
- (c) Where an officer of the Council who is authorised to conduct legal proceedings has not been involved in the decision to prosecute, details will be referred to such an officer at the earliest possible opportunity.
- (d) Any decision to prosecute under this policy will be based on the circumstances of the case and with reference to our Enforcement Policy.
- (e) Criteria for prosecution will be related to risk(s) to public health and/or the seriousness of an offence.
- (f) A breach of legislation will not automatically result in our instigating legal proceedings. However, a breach may warrant prosecution if one or more of the following apply to the alleged offence –
 - (i) There is a flagrant breach of the law, such that public health is, or has been, and/or law-breakers gain substantial economic advantages and the law-abiding are placed at relative disadvantage.
 - (ii) There is a history of similar offences related to risk to the public or food safety offences and the owner has been unable or unwilling to deal with them adequately or thoroughly.
 - (iii) A particular offence has caused serious public concern.
 - (iv) It involves a failure to correct a serious potential risk to food safety after a reasonable opportunity to correct the matter.
 - (v) The offender fails to comply in full or in part with the requirements of one or more statutory notices, unless exceptional circumstances exist.
 - (vi) A simple caution has previously been issued for a similar offence.

5.4.2 Preparing for a Prosecution

In preparing for a prosecution, the following will be taken into account –

1. The decision to prosecute will be made by –
 - (a) Consideration of each of the following reference documents –
 - (i) The Council's Enforcement Policy
 - (ii) Code for Crown Prosecutors
 - (iii) The Council's Prosecution Manual
 - (iv) Current Code of Practice issued by the Food Standards Agency
 - (v) Policies and Procedures in the Food Law Enforcement Folder
 - (vi) Any relevant LACORS guidance
 - (b) Applying the 'public interest' test. (see Part 5.4.6)
 - (c) Ensuring that the case is supported by sufficient relevant evidence that is –
 - admissible
 - substantial
 - reliable
 - (d) Accounting for any likely defences.
 - (e) Accounting for any possible mitigations.
 - (f) The seriousness of the alleged offence.
 - (g) The previous history of the party concerned.
 - (h) The likelihood of the defendant being able to establish a due diligence defence, i.e. acting with reasonable care.
 - (i) The ability of any important witnesses and their willingness to co-operate.
 - (j) The willingness of the party to prevent a recurrence of the problem.
 - (k) The probable public benefit of a prosecution and the importance of the case, e.g. whether it might establish a legal precedent.
 - (l) Whether other action, such as the issue of a formal caution or notice or prohibition, would be more appropriate or effective.
 - (m) Any explanation offered by the alleged defendant.
2. Officers involved in the preparation of a prosecution case will keep all witnesses, complainants and other interested parties informed of progress, to the extent that this does not prejudice the chance of successful action.
3. If we intend to seek a Prohibition Order, we will before the hearing –
 - ensure the proprietor or his representative has been warned in writing or orally of (a) our intention to seek the Order and (b) any evidence we intend to present
 - Have reference to evidence of previous convictions or warnings
4. We will ensure that any officer principally involved in the case will attend court in person, even where a guilty plea has been lodged, so that further evidence can be given, should the court require it before granting the Order

5.4.3 Notification of Legal Proceedings

1. We will inform any authority acting as Home or Primary Authority, or similar, at that time of prosecutions taken and their outcome, and this will be done in accordance with LACORS guidance.
2. We will also inform any government office or other body in a position to disseminate information that will be useful to other authorities, where this is good practice to do so.
3. Where the prosecution occurs as a result of an investigation begun by a complaint made by a third party, we will always advise the complainant of the outcome of the case.

5.4.4 Factors to be considered

Before deciding to prosecute, the following factors will be considered:-

- The seriousness of the alleged offence
- The previous history of the party concerned
- The likelihood of the defendant being able to establish a due diligence defence.
- The ability of any important witnesses and their willingness to co-operate
- The willingness of the party to prevent a recurrence of the problem
- The probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent
- Whether other action, such as the issue of a formal caution or notice would be more appropriate or effective.
- Any explanation offered by the alleged defendant.
- The advice contained in the current edition of the Code for Crown Prosecutions.

5.4.5 The Evidential Test

The investigating officer(s) together with the Principal EHO will satisfy themselves that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute the investigating officer (s) together with the Principal EHO will also consider whether the evidence can be used and is reliable.

5.4.6 The Public Interest Test

The public interest will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors put to the court for consideration when sentence is being passed.

The investigating officer (s) together with the Principal EHO will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The following lists include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

5.4.7 Some common public interest factors in favour of prosecution

- a conviction is likely to result in a significant sentence;
- the evidence shows that the defendant was a ringleader or an organiser of the offence
- there is evidence that the offence was premeditated
- the victim of the offence was vulnerable has been put in considerable fear, or suffered personal damage or disturbance;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption.
- The defendant's previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

5.4.8 Some common public interest factors against prosecution

- the court is likely to impose a nominal penalty
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- there has been a long delay between the offence taking place and the date of the trial, unless;
 - the offence is serious
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), Principal EHO, the Head of Environmental Health, and Oadby and Wigston Borough Council's Solicitors will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

5.4.9 Prohibiting a Person from Managing a Food Business

- (a) The purpose of prohibiting a person from managing a food business is to prevent the repeat of an offence(s) that involves risk of injury to health.
- (b) Where the proprietor of a food business is convicted of an offence under regulations relating to the Food Safety act 1990, the Local authority may apply to the Court for an order prohibiting the proprietor participating in the management of any food business.

Prohibition of persons will only be considered in serious cases, where there is a past history of non-compliance and the offence involves risk of injury to health.

Any decision to instigate prohibition action under this heading will be taken by the Head of Legal and Licensing Administration in discussion with the Authorised Officer and the Head of Environmental Health (or the Principal EHO when acting as Head)

5.5 Guidance on Other Enforcement Options

1. Forfeiture Proceedings

In appropriate circumstances, and where the law enables us to do so, Oadby and Wigston Borough Council will make an application to a court for a forfeiture

2. Seizure and Detention of Food and Records

The Food Safety Act 1990 provides for authorised officers to seize and detain food and seize and detain records. Receipts for all items will be given to any person from whom food and/or records are seized.

3. Court Injunctions

In appropriate circumstances, Oadby and Wigston Borough Council will apply for an injunction as an enforcement measure to deal with repeat offenders or dangerous circumstances.

An example of where we might consider this is offenders being found guilty of similar offences repeatedly.

4 Refusal or Suspension or Revocation of Licenses or Approvals

Where premises/businesses require a licence and/or an approval to operate legally, refusal, suspension or revocation of that licence or approval will be considered where the controlling person or organisation –

- fails to meet the conditions or requirements or duties attached to the granting of the licence or approval
- deliberately or persistently breaches the legal requirements or duties where such breaches result in a risk of injury to health
- deliberately or persistently ignore letters, written warnings or formal notices

For further guidance on enforcement options, the Food Safety Inspection Procedure (Ref FS 10.1) should be consulted.

PART 6
THE PRIMARY AUTHORITY PARTNERSHIP

Oadby and Wigston Borough Council recognises the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008, administered by the Local Better Regulation Office and coming into force on 6th April 2009.

When an enforcement action is being considered against a business that has a properly made Primary Authority Partnership with another local authority for the area of business in question, due regard will be had to the current guidance contained in 'Primary Authority Guidance', published by LBRO.

The tables on the following two pages set out the procedure to be followed, depending on whether the Primary Authority does not object to the enforcing authority's proposed enforcement action (Table 6.1) or the Primary Authority does object to the enforcing authority's proposed enforcement action.

In order to keep up to date with the development and status of the Primary Authority Partnerships, officers enforcing food safety legislation will have access to the password protected pages of the LBRO website.

LIST OF APPENDICES

APPENDIX	A	Documents having an impact on the delivery of this policy
APPENDIX	B	The Council's Complaints Procedure
APPENDIX	C	The Regulators' Compliance Code
APPENDIX	D	The Enforcement Concordat
APPENDIX	E	The Macrory Review

APPENDIX A

DOCUMENTS HAVING AN IMPACT ON THE DELIVERY OF THIS POLICY

Legislation covered by this Policy

1. The Food Safety Act 1990
2. All Regulations and Provisions contained in legislation consequential to The Food Safety Act 1990.
3. Other legislation relating to food safety that may enforced by local authorities (see ... of the FSA Code of Practice)

Legislation and other Guidance Documents

The following legislation, guidance documents, policies and statement have been taken into account in the setting of this policy and will be taken into account in its implementation

The Human Rights Act 1998
The Police and Criminal Evidence Act 1984
The Data Protection Act 1998
The Freedom of Information Act 2000
The Food Safety Act 1990
The Legislative and Regulatory Reform Act 2006
The Regulatory and Enforcement Sanctions Act 2008

The Hampton Review
The Regulators' Compliance Code
(Issued by the Dept for Business Enterprise and Regulatory Reform in April 2008)
Guidance on the Regulators' Compliance Code
Primary Authority Guidance (Issued by LBRO)
The Macrory Review (published November 2006)
Food Law Code of Practice
The Food Standards Agency Framework Agreement with Local Authorities
The Cabinet Office Enforcement Concordat (issued 1998)
LACORS Food Safety Guidance
(Local Authority Coordinating Body on Regulatory Services)
Home Office Circular 18/1994
The Code for Crown Prosecutors (CoP No.2)

Oadby and Wigston Borough Council Documents

Corporate Plan
Constitution
Equal Opportunities Policy
General Enforcement Policy
Prosecutions Manual

APPENDIX B

COMPLAINTS PROCEDURE

Oadby and Wigston Borough Council is committed to providing an efficient, effective, high quality service to all its customers.

Wherever possible, we will try to –

- * deal with complaints fairly
- * find a satisfactory solution to all complaints
- * put things right if necessary

If you are unhappy about something we have done or a service we provide –

1. Speak with the member of staff with whom you have been dealing.

If you remain unhappy –

2. Put your complaint in writing addressed to

Mr M Cregg MSc,
Director of Community Services,
Oadby and Wigston Borough Council,
Council Offices,
Station Road,
Wigston,
Leicestershire. LE18 2DR

Your complaint will be thoroughly investigated and you will be informed of the outcome within a maximum of 10 working days.

If you are still not satisfied –

3. Write to the Council's Chief Executive explaining why you are still unhappy with the responses you have received.

The Chief Executive will make an in-depth investigation of your complaint and report back to you.

If you are dissatisfied with the findings you can –

4. Take your complaint to a panel of local Councillors and then, if necessary -
5. Ask for your complaint to be examined by the Local Government Ombudsman.

If you do wish to use our Complaints Procedure, we strongly advise you to call 0116 2572601 and ask for a copy of our leaflet –

“How to make a Complaint about Council Services”
and/or a copy of the leaflet –

“How to Complain to the Local Ombudsman.”

APPENDIX C

PRINCIPLES OF THE REGULATORS' COMPLIANCE CODE

The Regulators' Compliance Code is a statutory code of compliance applying to the regulatory function of local authorities.

It falls under the remit of the Department for Business, Enterprise and Regulatory Reform (BERR).

The code is a central part of the Government's Better Regulation Agenda.

Its objective is to embed a risk based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

Its aim is to achieve the following –

- To increase the efficiency and effectiveness of local authority regulatory work.
- To produce maximum value from the resources put into regulation.
- To deliver significant benefits to low risk and compliant businesses through better focused inspection activity.
- To increase the provision of advice for businesses.
- To lower compliance costs.

The code promotes not only fairness and protection from harm, but also proportionate and flexible enforcement that will allow, and encourage where possible, economic progress.

The code stresses the need for regulators to adopt a positive and pro-active approach towards ensuring business compliance by -

- Helping and encouraging regulated bodies to understand and meet regulatory requirements more easily.
- Responding proportionately to regulatory breaches.

The code supports the regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging affect on legitimate businesses and desirable regulatory outcomes. The code does not relieve regulated bodies of their responsibility to comply with their obligations under the law.

The code has statutory status, having been approved in accordance with Section 23 of the Legislative and Regulatory Reform Act 2006. There are 7 specific obligations placed on regulators by the code and these reflect the principles of good enforcement established in the Hampton Report. They are –

1. Economic progress – regulators to recognise that a key element of their activity will be to allow, and encourage where possible, economic progress and only to intervene where there is a clear case for protection.
2. Risk assessment – regulators to use comprehensive risk assessment to concentrate resources in the areas where they are most needed.
3. Inspections and other visits – no inspection shall take place without a reason.
4. Advice and guidance – regulators should provide authoritative, accessible advice both easily and cheaply.

5. Information requirements – businesses should not have to give unnecessary information or give the same piece of information twice.
6. Compliance and enforcement actions – the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
7. Accountability – regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

The Regulators' Compliance Code came into force on 6 April 2008.

APPENDIX D

PRINCIPLES OF THE CABINET OFFICE ENFORCEMENT CONCORDAT

In adopting the Cabinet Office Enforcement Concordat, we at Oadby and Wigston Borough Council have committed ourselves to the following –

- Adopting good policies and procedures
- Protecting the public, the environment and groups such as consumers and workers.
- Equitable, practical and consistent enforcement functions.
- Recognising that most businesses want to comply with the law.
- Taking care to help businesses and others meet their legal obligations without unnecessary expense.
- Taking firm action, including prosecution where appropriate, against those who flout the law or who act irresponsibly.
- Recognising that ‘enforcement’ includes advisory visits and assisting with compliance, as well as licensing and formal enforcement action.
- Providing information to show we are observing our commitments.

We believe these aims will also help to maintain a fair and safe trading environment, and promote a thriving national and local economy.

All residents of, businesses in, and visitors to the Borough will benefit from this policy through better information, choice and safety.

By adopting the Concordat we commit ourselves to the policies and procedures set out in this booklet, which in turn will contribute to the provision of ‘best value’ services.

For more information about how we carry out our enforcement work, ask for a copy of our Enforcement Policy and a copy of the Cabinet Office Enforcement Concordat.

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APPENDIX E

THE MACRORY REVIEW

The Macrory Review was published in November 2006 and made 9 recommendations, all of which were accepted by the government.

Their aim is to ensure that regulators have flexible sanctions that are proportionate and appropriate to the risks faced.

Oadby and Wigston Borough Council acknowledges the findings of the review and in applying sanctions and penalties, so far as we are able and where appropriate, we will aim to

- Change the behaviour of the offender
- Eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for the particular offender and regulatory issue under investigation, including the punishment and public stigma associated with criminal conviction#
- Be proportionate to the nature of the offence and the harm caused
- Restore the harm caused by regulatory non-compliance
- Deter future non-compliance

In accordance with the Macrory recommendations, we will also –

- Publish an enforcement policy
- Measure outcomes as well as outputs
- Justify our choice of enforcement actions to interested parties
- Follow up enforcement actions, where appropriate
- Enforce in a transparent manner
- Be transparent in how we determine and apply penalties
- Avoid perverse incentives that might influence the choice of sanction
- Give clear reasons for formal enforcement action to the person or body against whom it is being taken, at the time the action is being taken, and confirm these actions in writing
- Provide details of complaints and appeals procedures at the time the investigation is being taken
- Manage our enforcement service to ensure fair and consistent interpretation among our own enforcement officers and among enforcement officers of like-minded entities in similar situations

