



Charnwood

Leading in Leicestershire

Charnwood Borough Council

**Environmental Health,
Food Safety, Commercial Team.**

**FOOD LAW ENFORCEMENT
POLICY**

January 2006

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Food Law Enforcement Policy

Framework Agreement on Local Authority Food Law Enforcement

The Authority has set up and implemented a documented enforcement policy in accordance with the relevant Food Safety Codes of Practice and other official guidance, approved by the relevant Local Authority Member forum.

The Authority carries out food law enforcement in line with the relevant Food Safety Codes of Practice.

All decisions on enforcement action are made following consideration of the Authority's enforcement policy. The reasons for any departure from the criteria set out in the enforcement policy are documented.

The enforcement policy or an accurate summary are readily available to the public and food businesses in the Authority's area.

Food Safety Enforcement Policy – General Statement

This policy builds upon the principles of good enforcement set out in the Environmental Health Enforcement Policy Statement in relation to food safety law enforcement and sets out to inform the public and food businesses of the principles by which enforcement action is taken.

This Council is committed by action through advice, education and enforcement to ensuring that food and drink intended for human consumption, which is produced, stored, distributed, handled or consumed within the Borough is without risk to health or safety of the consumer and satisfies the requirements of the Food Safety Act, Regulations made under the European Communities Act 1971 and all other relevant food safety legislation

Enforcement action will be based upon risk to public health, or the seriousness of the contravention of food legislation.

It is the Council's aim to achieve and maintain consistency in its approach to enforcement. It is therefore committed to supporting the Government Statutory Codes of Practice and to such other guidance and industry codes as may be issued by recognised and authoritative bodies on food and food related matters.

If an enforcement matter is professionally contentious, or appears to be of national significance, or it is felt that existing guidance has not adequately taken account of the legal provision, Case Law, relevant research or other evidence, the matter will be put to the Food Safety Technical Sub-Committee of the Leicestershire Branch of the Chartered Institute of Environmental Health for consideration and possible referral to national bodies in order to ensure consistent enforcement.

Only suitably trained officers will be employed by the Council on food law enforcement activities, with initial and refresher training consistent with those required in the Codes of Practice and departmental policies (Procedure Note PN 08).

Officers will be fully equated with, and abide by, the policy when making enforcement decisions. Any departure from the policy will be exceptional, capable of justification and be fully considered by senior managers within Environmental Health Services before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.

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

Complaints Policy

We are committed to providing ready access to those wishing to appeal or complain about enforcement action, in accordance with the Council's corporate complaints procedure (see Procedure Note PN 17). However areas where there is a formal right of appeal or a legal remedy must be solved through the legal process.

Should anyone wish to complain, initially contact should be made with the Commercial Team Manager. This may be by person, telephone or writing. If not satisfied with the response at this stage, a written complaint should be made to the Environmental Health Manager who will carry out a further investigation. If still unhappy at this stage, the Corporate Service Development Officer should be asked to arrange for an independent review of the case.

At this point all the stages of the Council's Complaints Procedure will have been initiated and will have hopefully resolved the problem satisfactorily. If still dissatisfied the complainant can approach the Local Government Ombudsman for adjudication

Authorisation

Principles

No officer will carry out food hygiene inspection and enforcement duties unless suitably trained and experienced and authorised in writing by the Director of Housing and Health.

The criteria used to assess the competence of Food Enforcement Officers are those detailed in Procedure Note PN 7.0 as well as specific requirements demanded in Statutory Codes of Practices

The level of authorisation for each Food Enforcement Officer complies with the Code of Practice in terms of competency, qualification and experience and is detailed in Procedure Note PN 7.0

Enforcement action under the Food Safety Act 1990, European Community legislation or related legislation will be initiated by suitably qualified experienced and competent Enforcement Officers without further reference to Elected Members.

In addition, specific authorisation details include the following:

Advice and authorisation will be sought from the Lead Officer for food safety matters

- 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.
- Officers will be authorised to sign improvement notices only for premises within the categories for which they are qualified.
- Only officers holding specific food inspection qualifications will be authorised to inspect, detain or seize foodstuffs.
- Emergency Prohibition Notices and voluntary closure agreements will only be signed by specifically authorised officers, being an environmental health officer having a minimum of two years post-qualification experience of food safety enforcement and currently involved in food

safety enforcement.

- Newly qualified officers will only be authorised after a minimum of 6 months of structured practical training in enforcement procedures at the appropriate level.
- The designated Officers who are responsible for authorising a prosecution will be aware of the limits of their delegated powers by reference to the Councils Functions and Scheme of Delegation to Committees and Officers and Statutory Codes of Practice and any other forms of guidance, including the principles set out in this policy.

Training

The Council will provide appropriate initial and updated training to Food Enforcement Officers as is deemed necessary to enable them to carry out their duties efficiently and effectively. This will include the following in accordance with the Code of Practice and Procedure Note PN 8.0.

- a) Minimum update training of 10 hours per year for continual professional training.
- b) Minimum of 15 hours revision training for authorised officers returning to food law enforcement.
- c) Minimum of three months monitoring of Officers returning to food law enforcement duties after an absence of more than 3 years.
- d) Minimum update training of 30 hours for Chartered Environmental Health Practitioners.

Enforcement Principles

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

- This food authority has adopted a graduated approach to enforcement as described in the Enforcement Concordat. 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 proprietor.
- Codes of Practice issued under the Food Safety Act, European Communities Act 1972, and other relevant food safety legislation under these acts give guidance on the appropriate use of the available procedures. This authority strictly follows advice issued by central government and the Local Authorities Coordinators of Regulatory Services (LACORS) and authorised officers are required to follow this enforcement policy.
- 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 proprietor with food safety legislation and his willingness to remedy contraventions.
- This authority has regard to the LACORS Home Authority principle and will consider whether a relevant Home Authority should be consulted before giving detailed advice or taking enforcement action.
- This authority recognizes 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.

Hazard Analysis – Compliance with Article 5 of EC directive 852/2004

- Non-compliance with any of the requirements of Article 5 will not be considered in enforcement terms to be any different from the other detailed requirements of the Regulations. The level of enforcement action will be risk based and will be considered using the principles of proportionality described above.
- Compliance with the “analysis” aspect of Article 5 is important in ensuring that all potential food safety hazards are identified.
- There may be instances where there has been a failure to complete an “analysis”, but where all “critical control points” are effectively controlled and monitored. Where no risk to food safety is presented by the non-compliance, no enforcement action will be taken, but the contravention will be recorded in writing and continued effort will be made to secure an “analysis” by educative means.

Follow up visits

Where **significant** breaches of hygiene regulations have been identified during an inspection, a revisit will be carried out to on progress towards compliance. Wherever practicable, and in all cases where a formal notice has been served, or prosecution instituted, the revisit will be undertaken by the same officer who carried out the original inspection

Enforcement Options

Purpose

The purpose of this section is to state the authority’s policy with respect to:

- a) Achieving and maintaining consistency of approach in deciding on enforcement action concerning food safety.
- b) Ensuring commitment to an approach in all enforcement decisions that is fair and balanced and based on common standards to protect the public.

Enforcement Options

Enforcement options available, after consideration of all relevant information and evidence are:-

- a) Take no action
- b) Take informal action
- c) Issue Statutory Notices
- d) Issue formal cautions
- e) Prosecution
- f) Take prohibition action
- g) Seizure and detention

The Policy

The policy of this Council is as follows:-

- a) No Action

Where an inspection or investigation reveals full compliance with the relevant Food Safety and Food Standards Legislation / Codes of Practice, no further action is required, apart from issuing a post inspection report as required in Section 40 Codes of Practice. The results of the inspection will be recorded in the premises file.

- b) Informal Action

Informal action to secure compliance with legislation may be given in the form of:-

- i) Verbal Advice

- ii) Written requests for action or advice
- iii) Food Hygiene Inspection reports
- iv) Written Agreements e.g. Voluntary Closure

The existing principle of giving advice and informing of minor contraventions by informal letters is accepted and understood by food businesses in the Borough. Officers will use this approach as long as they believe that this will achieve compliance with food safety legislation within a timescale 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 proprietor of an existing or new food business, and will seek to encourage food businesses to adopt good food hygiene practice through this approach.

However in addition to these principles many other criteria will be considered, including:-

- a) Whether the act or omission is serious enough to warrant formal action.
- b) Whether past history indicates that informal action can be expected to achieve full compliance.
- c) Whether officers' confidence in the premise's management is high.
- d) Whether the consequences of non-compliance will pose a significant risk to public health.
- e) Whether, even when some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.
- f) The availability of a due diligence defence (acting with reasonable care).

Following a food hygiene inspection an Enforcement Officer will issue an inspection report as prescribed in the Codes of Practice. The report will confirm all matters discussed at the closing meeting with a proprietor and confirm any verbal advice given at that time. The report will be sent to the proprietor of the business and will contain equivalent details to those prescribed

- a) Outline the regulations being contravened.
- b) Contain all the information necessary to understand what work (if any) is required and why it is necessary.
- c) Clearly indicate measures which are recommendations of good hygiene practice and which are legal requirements.
- d) Indicate the time allowed for meeting any legal requirements.
- e) Officer and manager contact details.
- f) The report will be quality checked by the Lead officer for food safety matters

Revisits to premises following a programmed inspection will be made where significant contraventions of food hygiene or processing regulations and/or poor hygiene practices are found.

c) Improvement Notices

An improvement notice is a legal document issued under the Food Hygiene (England) Regulations 2005 . It details contraventions of the hygiene legislation, the works required to correct the contraventions and a timescale 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

- i) Where formal action is proportionate to the risk to public health
- ii) 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

- iii) There is a history of non-compliance.
- iv) Standards are generally poor and management has little awareness of requirements.
- v) Non-compliance could have potentially serious consequences to public health for example where there is a breakdown of controls critical for food safety, or where no such controls exist.
- vi) Effective action needs to be taken as quickly as possible to put right conditions that are serious and deteriorating.

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.

Only officers who have been authorised by the Council to issue Improvement Notices will do so. Only an authorised officer who has personally witnessed the contravention/s will sign the notice.

Authorised Officers will follow relevant Codes of Practice and guidance on the issue of Improvement Notices, including the placement of realistic time limits for compliance, preferably agreed with the proprietor, although the final decision will rest with the Officer. The authorised Officer will also discuss with the proprietor what has to be done and will consider all the options available.

Consideration for an extension of time to comply with an Improvement Notice will be given if the proprietor has a genuine reason for requesting one. When deciding on a request for an extension the following will be taken into account:-

- a) the risk to public health associated with the fault if an extension was granted;
- b) the reason for the request;
- c) the remedy involved;
- d) the past record of co-operation of the proprietor;
- e) any temporary action which the proprietor purposes to take to remedy the defect.

The proprietor will be advised at the time of service of the notice that any request for an extension of the time limit should be made in writing before the expiry date of the notice.

Once the request for an extension of time has been considered the proprietor will be advised, in writing as to whether the request was adjudged reasonable or otherwise. The reasons for that decision will be explained and any new time limits reconfirmed.

Failure to comply with an Improvement Notice will, in general, result in court proceedings.

We will notify other appropriate bodies of any Improvement Notice served and its outcome where necessary. This will include 'Home' and 'Originating' authorities.

d) 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 and 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 proprietor.

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.

e) Emergency Prohibition Notices

The serving of an Emergency Prohibition Notice to close premises or a part of the premises, to require a discontinuation of a process or the use of equipment, is an action, which will not be entered into lightly. An Emergency Prohibition Notice will only be considered in one or more of the following circumstances:-

- a) The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- b) An imminent risk of injury can be demonstrated which may include evidence from experts such as Food Analysts or Food Examiners.
- c) The case meets the guidance criteria specified in Codes of Practice on conditions for prohibition, e.g.
 - i) Serious infestation by pests resulting in actual food contamination or a real risk of such;
 - ii) Very poor structural or equipment conditions, poor maintenance or cleaning or serious accumulation of refuse etc which will result in a real risk of food contamination;
 - iii) Serious drainage defects or flooding of the premises leading to actual contamination or a real risk of food contamination;
 - iv) Premises or practices which seriously contravene legislation and have been or are involved with an outbreak of food poisoning;
 - v) Serious risk of cross contamination;
 - vi) Inadequate temperature control;
 - vii) Operation outside critical control criteria;
 - viii) The use of a process for a product to which it is inappropriate.
- d) Where a proprietor volunteers to close a premises or cease to use any equipment, process or treatment, but where there is either:
 - i) No confidence in the integrity of the proprietor, or
 - ii) The proprietor is unwilling to confirm in writing his/her offer of a Voluntary prohibition.

Emergency Prohibition notices will only be signed by authorised competent Officers, with appropriate qualifications and experience, and who have personally witnessed the contravention/s.

An application for an Emergency Prohibition Order will be made to the Magistrates Court within 72 hours of the issue of an Emergency Prohibition Notice.

Officers will notify other appropriate bodies of any Emergency Prohibition Orders served and its outcome where necessary. This will include 'Home' and 'Originating' authorities.

e) Voluntary Prohibition

Should a voluntary offer to close a premises or cease the use of any equipment, process or treatment be accepted the Officer will explain to the proprietor that, by making the offer to close, he is relinquishing the rights to compensation if a court subsequently declines to make an emergency prohibition order.

If an authorised officer is minded to accept any voluntary offer from a proprietor the

Officer will:-

- a) require an offer document signed and dated by the proprietor setting out the nature and extent of the offer;
- b) determine whether the nature and extent of the offer would have at least the equivalent effect of any appropriate prohibition;
- c) if it would, prepare an acceptance document setting out; the nature and extent of the offer, its acceptance by the authorised officer, an undertaking to be signed by the proprietor to adhere to the contents of the acceptance document from the time of signing it until the time it is varied or cancelled in writing by the authorised officer;
- d) obtain the proprietors signature to the acceptance document.

Food Safety Prosecution Policy

Purpose

This section details the Councils criteria which must be considered prior to a decision whether to prosecute.

Prosecutions

The Council always has the discretion of whether or not to prosecute for an offence. The decision to prosecute is a very significant one and is not taken lightly and is based on the circumstances of each case laid out in the policy below.

The Policy

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.

Food Complaints

(LACORS Guidance on Food Complaints – second edition)

The decision to prosecute for Food Safety 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 or home 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. The wishes of the complainant regarding prosecution will be respected, unless it is in the public interest and there is sufficient evidence to proceed independently.

Food Hygiene Regulations

A decision to prosecute for offences under the food hygiene regulations will be taken based on the risk to public health presented by the contravention. It is not sufficient for there to be a technical breach of the regulations on a minor matter.

The initial response to contraventions that do not present a risk to public health will be written notification by informal or improvement notices.

Immediate prosecution action will be indicated where:

- conditions are found that present an immediate risk to public health, whether or not prohibition action is also taken;
- there is a risk to public health presented either by the seriousness or number of contraventions and there is documented evidence that the food business has previously received warnings regarding such contraventions.

Where a prosecution is prepared for food hygiene regulation contraventions, summonses will generally be issued for a small number of specimen charges, representing the more serious contraventions and demonstrating the element of risk.

The Prosecution Process

Before a prosecution proceeds, the appropriate Officer will be satisfied that the case is in the public interest and is supported by sufficient relevant evidence which is:-

- a) Admissible
- b) Substantial
- c) Reliable

The guidance contained in Section 40 and Crown Prosecution Code of Practices will be followed and all the following factors taken into account:

- a) The seriousness of the alleged offence.
- b) The previous history of the party concerned.
- c) The likelihood that a defence of due diligence (acting with reasonable care) can be established.
- d) Whether important witnesses are willing and able to co-operate.
- e) Willingness of the party to prevent the problem recurring.
- f) Whether prosecution would be of public benefit.
- g) Whether a Formal Caution, Improvement or Prohibition Notice might be more appropriate.

- h) Any explanation offered by the party concerned.

Investigation and decision making will not be unduly prolonged or delayed. It will be in accordance with principles laid out in the:

- i) Human Rights Act 1998
- ii) Police and Criminal Evidence Act 1984
- iii) Regulation of Investigatory Powers Act 2000

We will keep witnesses, complainants or other parties informed as to the progress of the case.

Once we have decided to prosecute, we will refer the matter to the Head of Legal Services who is authorised to appoint internal or external Solicitors to institute legal proceedings. Case reports will be submitted and the Office of Fair Trading will be contacted for evidence of previous convictions or warnings. In addition home and originating authorities will be consulted where prosecutions are planned and due regard will be paid to opinion of that authority.

Following a successful prosecution, a Prohibition Order may be imposed by the Court where it considers that the premises, equipment or process put public health at risk. The Court may also ban the proprietor or manager from managing a food business. Where the Council intend to seek a Prohibition Order it will:

- a) Ensure that it can satisfy the Court that there was a public risk.
- b) Prior to the hearing notify the proprietor, or his representative, in writing or orally of its intentions to seek a Prohibition Order, and consequently any evidence which will be disclosed in advance.

The Officer principally involved in the case will attend court in person even when a guilty plea has been lodged, so they can give further evidence, should the court require it, before granting a Prohibition Order.

Post Prosecution

Following a successful prosecution, the Council will:-

- a) Notify the Office of Fair Trading of the conviction and any Prohibition Orders in sufficient detail for other authorities to make use of the system.
- b) Notify the Home and/or Originating Authority if appropriate.
- c) With respect to complaints, notify the complainant of the outcome of the case.

Formal Caution

1) Purpose

This section details the Councils policy with respect to:-

- a) When it is appropriate to use a Formal Caution.
- b) The use of Formal Cautions will be in accordance with the Home Office Circular 18/94 and LACORS guidance given in the paper FS 7 94 2.
- c) Designation of the "Cautioning Officer".

- d) What to do when a person declines the offer of a Formal Caution.
- e) Notifying other bodies or authorities, if appropriate.

The policy aims to ensure consistency in using cautions.

2) The Aims of Cautioning

The aim of a Formal Caution is to

- deal quickly and simply with less serious offences
- divert them from unnecessary appearance in the criminal court
- reduce the chances of their re-offending

3) The Policy

It is the policy of this Council that a person will only receive a Formal Caution when the circumstances of the offence meet the criteria identified in Home Office Circular 18/94 or any replacement thereof and therefore there must be:-

- 1) Sufficient evidence of the offenders guilt to make a conviction a realistic prospect and,
- 2) An admission of guilt,
- 3) Such understanding of the issue of a Formal Caution as to enable the offender to give his informed consent to it.

There may be circumstances where evidence exists for a successful prosecution, but where mitigating circumstances are such that nothing is likely to be gained from such action. In such circumstances the authorised officer will consider the offer of a formal caution as an alternative to prosecution. Circumstances where a formal caution may be considered are:

- the contravention is minor and a first offence;
- the contravention, although serious, has been speedily dealt with and steps taken to prevent a recurrence;
- the food business has since closed or the food handler has ceased that occupation;
- the defendant would be unable to pay a fine, costs or compensation.

The Formal Caution will be administered by the Cautioning Officer, who is the Environmental Health Manager or relevant Service Unit Manager.

Normally the caution will be administered in person by the "Cautioning Officer".

We will inform the offender in writing that we propose to issue a Formal Caution, using the form in annex 11, document 1 of the Home Office Circular 18/94.

The formal caution will be issued in writing using the form in annex 11, document 2 of the Home Office Circular 18/94 in the case of an individual, and annex 2, document 3 when the offence is committed by a Company. Two copies will be signed by the person receiving and then the person administering the caution. One of the copies will then be given to the person receiving the caution.

If the offender refuses to accept a Caution or fails to return the signed copies within 14 days, we will consider taking legal proceedings but the option of a written warning is available.

Recording Offences

We will record details of the offence in the appropriate premises file and in a central formal action file.

Notifying Other Bodies

We will notify the Office of Fair Trading of the Caution as soon as possible using the form in annex 11

of the Home Office Circular 18/94. We will also send a signed copy of the caution letter to

Office of Fair Trading
Consumer Affairs Division
Field House (Room 206)
15-25 Bream's Building
London
EC4A 1PR

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

If the offence relates to a complaint, we will inform the complainant that a formal caution has been issued.

A breach of law will not automatically result in legal proceedings. The circumstances which are likely to warrant prosecution may be characterised by one or more of the following criteria:-

- a) There is a flagrant breach of law such that public health, safety or well being is put at risk, or there is a serious offence under food standards legislation.
- b) A failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to do so.
- c) A failure to comply in full or part with a Statutory Notice, licensing or registration.
- d) There is a history of similar offences related to risk to the public or food standards offences.
- e) A Formal Caution has previously been issued for a similar offence or has been considered but is not appropriate in the circumstances or has later been refused.

Relevant Documents

- 1) Food Safety Act 1990
- 2) Food Hygiene (England) Regulations 2005
- 3) European Communities Act 1972, and relevant directives made under this Act
- 4) Official Feed and Food Controls Regulations (England) Regulations 2005
- 5) Regulations made under the Food Safety Act 1990
- 6) Deregulation and Contracting Out Act 1994
- 7) Deregulation (Improvement and Enforcement Procedures)(Food Safety Act 1990) Order 1996
- 8) LACORS guidance on:
Food Safety Enforcement Policies

Food Hygiene Inspections

Food Complaints

Home Authority Principle

Commercial Use of Domestic Premises

Public Houses

Formal Cautions

- 9) Industry Guides to Good Hygiene Practice
- 10) Home Office Circular 18/1994 - The Cautioning of Offenders
- 11) Guidelines on Standard Defence of Due Diligence (Food and Drink Federation)
- 12) Police and Criminal Evidence Act 1984
- 13) Police and Criminal Evidence Act 1984, Codes of Practice
- 14) Crown Prosecution Service: The Code for Crown Prosecutors (June 1994)
- 15) Criminal Procedure and Investigations Act 1996 and Home Office Code of Practice
- 16) Food Standards Agency - Framework Agreement on Local Authority Food Law Enforcement
- 17) Human Rights Act 1998
- 18) Regulation of Investigatory Powers Act 2000

'ANNEX 1 OFFICER GUIDANCE LEGAL PROCEEDINGS

- 1.0 In England & Wales all legal proceedings are subject to the requirements of the Police and Criminal Evidence Act 1984 and the Codes of Practice made under Section 66 of that Act in relation to the procedures for gathering evidence. In considering prosecution, the Code for Crown Prosecutions also deals with considerations similar to those which food authorities have to address. The Codes of Practice under the Food Safety Act 1990 also give reference to relevant matters.

Prosecution should be brought without unnecessary delay. Prosecutions may be brought for a number of matters e.g. failure to comply with Section 10 Improvement Notices; failure to comply with food hygiene requirements or food safety requirements, including the possession of or sale of food unfit for human consumption. Primarily prosecutions should relate to a real risk to health. Prosecution for structural matters should be taken as a secondary consideration.

1.1 Investigations

When carrying out an investigation under food safety legislation particular attention must be paid to the collection of relevant evidence. Only factual evidence should be gathered as 'hearsay' evidence cannot be used in legal proceedings and may in fact mislead the investigator in the evidence gathering process. It is important to collect sufficient evidence in order to be able to prove the case should legal proceedings be taken. Written evidence in the form of the Inspector's notebook is particularly crucial and should detail sufficient information for the officer to be able to recount accurately the details of the inspection and the facts found. Four things in particular must be remembered as regards proof by evidence:-

- a) the prosecution has to prove the essential elements of the offence by evidence submitted (written and/or material)
- b) occasionally the prosecution need not bring certain evidence of a fact in itself e.g. a judicial notice may be issued, a presumption may be used if circumstantial evidence presented.
- c) the prosecution has to prove its case beyond reasonable doubt (this is the burden of proof, although the burden of proof can shift on occasions to the defence party)
- d) sometimes corroboration has to be given of certain evidence

The issue of a PACE Code B notice contained in Annexe 4 should be used in circumstances where you already suspect that offences have been committed for example, following a complaint.

1.2 Evidence

It must be remembered that evidence within itself can be ruled inadmissible. Therefore, particularly 'hearsay' evidence, that is uncorroborated evidence or evidence gathered from a third party without the benefit of proof, would not be admissible.

There are four methods of proving a fact:-

- a) witnesses
- b) documents
- c) real evidence
- d) confessions

1.3 A Witnesses

It is important for officers to remember that for food hygiene and food safety offences it is the Council that takes the prosecution and the officers themselves act as witnesses for the Council. Therefore, notebook entries must record fully and accurately details found at the time of investigations and any statements or other information collected during the investigation, particularly in the case of food hygiene offences when the recording of lengthy and varied contraventions are unlikely to be clearly recalled even a short time after the event. When an officer

is giving evidence and requests permission to refer to his/her notebook the question is most likely to be asked as to when the entries were made. The notebook can be supplemented by photographic evidence or exhibits including food which is taken in accordance with the Food Safety Code of Practice No.4 - 'Inspection, detention and seizure of suspect food'. Regard must also be had to the other Food Safety Codes of Practice when collecting evidence for possible legal action.

1.4 B Documents

These can be certain types of information including public documents, certain statements and certain business records. Under the Food Safety Act and Health and Safety legislation authorised officers have powers to inspect documents relating to the matter under investigation. Copies of these documents may be taken and copies of the documents themselves may be taken away. In such cases where documents are taken away a receipt for the document must be given.

1.5 C Real Evidence

These would include photographs, objects, video recordings and accurate tape recordings. Receipts for objects taken should be given.

Where objects are used as evidence if they are a sample then they must have been taken in accordance with Code of Practice No.4 - 'Inspection, detention and seizure of suspect food'. It is important to use the appropriate chain of evidence form when dealing with food complaints and food samples where there is a likelihood of formal action being taken. The forms ensure that the chain of evidence starts at the beginning.

Form FSCHAIN 2 - would be used where the analyst has received the food and carried out a test upon the food, or where we have received the food and it is subsequently to be passed on to another authority or to Trading Standards.

Form FSCHAIN 1 - would be used to deliver the food to the analyst, other authority or Trading Standards. It would be completed by the courier, or the officer receiving the food.

Form FSCHAIN 3 - would accompany the food to the analyst, Public Health Laboratory etc. and as a request suitable for all types of action involving food under the Food Safety Act.

Real evidence would also include food that has been seized however it is not considered feasible that food that is voluntarily surrendered should be used as a basis of legal action against the defendant. Other samples e.g. insects, dirt scrapings etc. should be placed in a suitable container and sealed to avoid the evidence being tampered with. It should have a label affixed securely to the container stating the premises the sample was taken from, the date and time, identification of the sample, a sample reference number and the signature of the sampling officer certifying the above information. Similarly, with photographs these should bear the same information on the reverse of the photograph, and each photograph should ideally be consecutively numbered bearing a reference for the inspecting officer. When objects are submitted as part of evidence for a prosecution, including documentary evidence, such as returned forms bearing details of information submitted by the defendant they should bear a fully completed evidence label.

1.6 D Confessions

A confession is a statement wholly or partly adverse to the person who made it, whether or not it is made to a person in authority and whether it is made by words or otherwise. Such confessions and statements may be held to be inadmissible in evidence, particularly if it was found to be unfairly obtained and if Codes of Practice issued under the Police and Criminal Evidence Act have not been complied with.

During confessions, a defendant may request legal advice and this should only be given if the person specifically asks for that advice. No attempt should be made to dissuade a person from obtaining legal advice and questioning should cease if a person asks for legal advice until that person receives it unless there is immediate risk of harm to health or damage is likely.

2.0 Cautioning

Immediately an officer has grounds to suspect that a person has committed an offence, the person must be cautioned before questions or further questions are put. Initially, evidence gathering will be by powers under Section 32 of the Food Safety Act or under Section 20 of the Health & Safety at Work Act. Upon becoming aware that an offence has been committed, the officer must stop carrying out questioning under those Acts and must issue the formal caution and continue questioning under the Police & Criminal Evidence Act. It would be necessary for the officer to indicate this to the other party in order to ensure that they are quite clear as regards the issue of the caution and its implications. It would also be necessary to advise the other party that they are not under arrest and are not obliged to remain with the officer and may obtain legal advice. (see Annexe 1 attached).

Following the issue of the caution it may be necessary to put some of the questions previously asked to the other party again in order to obtain that information under caution. It would not be considered necessary to obtain proof of identity and address under caution since that information would be admissible where it has been obtained under other legal powers. However, information relating to the offence would not be admissible where it has been obtained under other legal powers.

3.0 Interviews

Interviews can comprise a number of different forms including:-

1. The questioning of a person regarding their involvement or suspected involvement in a criminal offence or in offences
2. A quick chat
3. An 'off the record' discussion, or
4. Other relevant comments as suspected persons. The Code of Practice C under the Police & Criminal Evidence Act applies to interviews held anywhere. If a break has occurred in the interview then it would be advisable to re-caution the other party. Additionally, if the other party appears not to understand the caution then the officer should explain the caution in their own words.

An accurate record of the interview must be made either verbatim or an account of the record which accurately and adequately summarises it. Interview form (Fig 1) and statement forms for witnesses (Fig 2) are available from the Administrative Support Officer.

The record must state:-

1. The place of interview.
2. The time of the start and the end of the interview.
3. The time the record was made (if different from the above).
4. Any breaks in the interview with times.
5. The names of all persons present.

The record must be either on an interview form or in a pocket book or on tape. (The procedure for tape recording interviews is contained in Annexe 3) and if written should be signed by the maker. If the officer writes down the response to the interview then the interviewee should also sign the form after having read it and agreed that it represents a true statement or record of the facts.

Unless it is impracticable the person interviewed shall be given the opportunity to read the interview record and to sign it as correct, or to indicate the respects in which he considers it inaccurate. If the interview is tape recorded the arrangements set out in Code E apply. If the person concerned cannot read or refused to read the record or sign it, the Senior Officer present shall read it to him and ask him whether he would like to sign it as correct (or make his mark) or to indicate the respects in which he considers it inaccurate. The Senior Officer shall then certify on the interview record itself what has occurred.

If the person's solicitor is present during the interview, he shall also be given an opportunity to read and sign the interview record (or any written statement taken by the officer). Any refusal by a person to sign an interview record when asked to do so in accordance with the provisions of the Code must itself be recorded.

A written record shall also be made of any comments made by a suspected person including unsolicited comments which are outside the context of the interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. Where practicable the person shall be given the opportunity to read that record and to sign it as correct or to indicate the respects in which he considers it inaccurate. Any refusal to sign shall be recorded.

When an interviewee agrees to read records of interviews and of other comments and sign them as correct he should be asked to endorse the record with words such as 'I agree that this is a correct record of what was said' and add his signature. Where the interviewee does not agree with the record, the officer should record the details of any disagreement and then ask the interviewee to read these details and then sign them to the effect that they accurately reflect his disagreement. Any refusal to sign when asked to do so shall be recorded.

In long interviews, breaks from interviewing should be made at recognised meal times. Short breaks for refreshments should also be provided at intervals of approximately 2 hours subject to the interviewing officers discretion to delay a break if there are reasonable grounds to believe that it would:-

- a) involve a risk of harm to people or serious loss of, or damage to property
- b) delay unnecessarily a person released from interview

OR

- c) If in the course of the interview a complaint is made by the person being questioned or on his behalf concerning the provision of the code then the interviewing officer shall:-
- d) record it in his interview records; and
- e) inform the Commercial Team Manager who is then responsible for dealing with it in accordance with the appropriate code.

If the interview has been contemporaneously recorded and the record signed by the person interviewed in accordance with the foregoing sections, or has been tape recorded, it is normally unnecessary to ask for a written statement. Statements under caution should normally be taken in these circumstances only at the persons expressed wish. An officer may, however, ask him whether or not he wishes to make a statement.

3.1 Interpreters

Where it becomes apparent that a person suspected on an offence cannot understand English or is deaf, that person must not be interviewed in the absence of a person capable of acting as an interpreter. Such cases will include:-

- a) if he has difficulty in understanding English
- b) the interviewing officer cannot speak the persons own language
- c) the person wishes an interpreter to be present

The interviewing officer shall ensure that the interpreter makes notes of the interview at the time in the language of the person being interviewed for use in the event of his (the interpreter) being called to give evidence, and certifies its accuracy. He shall allow sufficient time for the interpreter to make a note of each question and answer after each has been put or given and interpreted. The interviewee shall be given an opportunity to read it or have it read to him and sign it as correct or to indicate the reports in which he considers it inaccurate. If the interview is tape recorded the arrangements set out in Annexe 3 and Code E apply.

In the case of a person making a statement in a language other than English:-

- a) the interpreter shall take down the statement in the language in which it is made
- b) the person making the statement shall be invited to sign it
- c) an official English translation shall be made in due course

Action to call an inspector to comply with the Code and any agreement to be interviewed in the absence of an interpreter must be recorded.

If the interpreter is needed as a prosecution witness at the persons trial, a second interpreter must act as the court interpreter.

4.0 Written Statements under Caution

If a person wishes to make a statement the following points apply:-

The person shall always be invited to write down himself what he wants to say.

Where the person wishes to write it himself, he should be asked to write out and sign, before writing what he wants to say, the following:-

'I make this statement of my own free will. I understand that I do not have to say anything, but it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.'

Any person writing his own statement shall be allowed to do so without any prompting except that an officer may indicate to him which matters are material or question any ambiguity in the statement.

If a person says that he would like someone to write the statement for him, an officer shall write the statement, but before starting, he must ask him to sign, or make his mark to the following:-

'I wish to make a statement I want someone to write down what I say, I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given as evidence.'

Where an officer writes the statement, he must take down the exact words spoken by the person making it and he must not edit it or paraphrase it. Any questions that are necessary, for example, to make it more intelligible and the answers given must be recorded contemporaneously on the statement form.

When the writing of a statement by an officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement.

'I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will'.

5.0 General

Ensure the person who has been cautioned/being interviewed know what offence is being investigated. If the offence committed could have been one of a number of matters e.g. lack of training or no safe system of work OR lack of instruction etc, then quote all possibilities.

If you are interviewing or taking a statement from a rep, safety adviser, direct or to person of similar standing and you are asking questions about the offence and any action taken by the company that relates directly to the offence, you must verify that, that person is authorised/able to speak on behalf of the company and record this fact.

Cautions only need to be given to persons involved in the offence. For example, if you interview a work colleague who witnessed an accident but who was not involved in the accident, you would not need to caution that witness.

If a person who is cautioned and interviewed about an offence, makes a voluntary statement, you may record what is said in your notebook and ask the person to read through and sign the statement as being accurate.

In the officers witness statement, background information can only be included which is directly relevant to the offence and which the officer has seen or can verify as being factual e.g. 'I have seen correspondence in the departmental files that show this company were prosecuted for lack of suitable training to staff, 2 years ago'.

When information is to be sent to our solicitors, they will require:-

- a) a brief memorandum covering what the case is about
- b) a copy of your statement
- c) a copy of any letters referred to in witness statement as exhibits with exhibit cards attached.

Other exhibits such as photographs, actual letters etc should be retained by the officer for chain of evidence purposes and have exhibit cards attached.

When the statement is being made, any errors should be initialled by the interviewee and where sentences or lines of words do not reach the end of the page the rest of the line should be crossed through with a single horizontal line to the end of the page to prevent any additional words being written in.

The record of the interview should be made during the interview unless it is impracticable or would interfere with the conduct of the interview, and if it is not made during the interview the record must say why not. The interviewee must be given a chance to read the record or must have read it, corrected it where necessary and signed it. If it is read to the interviewee, the recorder must record that fact and any corrections indicated by the interviewee. Any refusal to sign must also be indicated.

If relevant unsolicited comments are made by the interviewee, providing they are relevant to the offence they must be recorded, timed and signed by the maker of the record and if practicable the interviewee should be given a chance to read, correct and sign the comments with any refusal to sign being recorded.

6.0 Statements

If a written statement is made under caution it should be made on the appropriate statement form. If the suspect wishes to make a statement they should be allowed to write the statement down with the statement starting with the appropriate 'written statement under caution', and with the appropriate written caption at the end of the statement to remind that the caution has been given. Opportunity to alter or correct the statement should be allowed to the suspect with alterations initialled by them. During the suspect writing the statement or making the statement, no prompting should be given by the officer that indicates matters that are material to the case. If the statement is dictated the exact words must be taken down with no editing or paraphrasing. The suspect should be asked to read, correct and sign any statement which has been dictated to the officer and if the suspect cannot or will not read the statement, the statement is to be read to them and they are then to be asked if they would like to correct, alter or add anything and to sign the statement. The statement should be certified accordingly as to what happened.

7.0 Reporting

As information is gathered and upon completion of the gathering of information, the officer should discuss the matter with the Lead Officer for food safety matters and the Commercial Team Manager to ensure that the case is suitable for passing to the Legal Division. If it is decided that the issuing of a formal caution would be an appropriate alternative to prosecution, then the procedure set out in Annexe 4 must be followed.

Offences under the Food Safety Act must be brought for prosecution within either 3 years of the commission of the offence or 1 year from its discovery by the prosecutor. In practice, the Legal Division would be advised of the offence without unreasonable delay to allow for resource allocation.

The officer will prepare a witness statement on the appropriate form commencing with a brief description of the premises concerned or the incident concerned, giving the full name and full home and/or registered office address of the offender(s) together with a brief description of the matter or incident that led to the offence taking place. Any other relevant information should also be included at this stage. The statement should then go on to itemise the offences with each item recorded under the appropriate regulation or section in ascending regulation or section order. Offences under different legal provisions should be indicated clearly and separately and the statement should be finalised with a list of the evidence/documents available/referred to. All relevant evidence/documents available/referred to in the officers statement should be attached together with any necessary site plan. The officer should ensure that all witness statements and similar documents are completed and signed.

Two copies of the statement and attached documentation should be produced, with the main original copy going to the Legal Division office for the attention of the appropriate solicitor and one to be maintained by the officer which will eventually pass to the premises file.

Prior to finalising the statement, the officer should make contact with the appropriate solicitor within the Legal Division in order to discuss the matter through. The views of the solicitor should be taken into account when collecting evidence and preparing the witness statement. If there are any matters which appear to conflict with the proceedings agreed within the Team and then suggested by the solicitor, the officer should discuss this in the first instance with the Lead Officer for food safety matters and the Commercial Team Manager

When the evidence is passed to the solicitor, a covering memorandum should be attached briefly outlining the case.

It is possible for photographs to accompany the officer's witness statement should it be found necessary or desirable, but the negative must be retained by the officer to ensure continuity in the chain of evidence. The photographs should be marked on the back bearing a suitable reference which is cross referenced and referred to within the officer's witness statement. Similarly, if any samples or other hard evidence have been obtained, these should be suitably referenced and referred to within the officer's witness statement.

When the officer's witness statement and all relevant documents pass to the Legal Division, it will

be necessary for the initiating officer dealing with the matter to liaise with the appropriate solicitor on points of evidence and matters of proof. At this stage any samples should also be identified to the solicitor together with copies of photographs suitably endorsed.

When the solicitor is satisfied with the evidence and feels that there is a case to answer, summonses will be drawn up and issued for service. In certain cases there may be a request for summonses to be served personally by the officer involved but this should be the exception rather than the rule and a last resort to bring the case to court. Prior to summonses being issued, copies of the summonses should be forwarded to the officer dealing with the matter and these should be checked.

Prior to the court hearing any changes in the circumstances surrounding the case should be notified immediately to the solicitor for example, compliance with improvement or prohibition notices, additional matters of evidence and conversations or contacts with the accused party relevant to the proceedings.

8.0 PROHIBITION PROCEEDINGS

A court must impose a Prohibition Order following certain prosecutions if it is satisfied that there is a risk of injury to health. Where an officer authorised to do so serves an Emergency Prohibition Notice, the appropriate solicitor in the Legal Division should be advised as soon as practically possible and certainly no later than the next working day of the fact. The Commercial Team Manager should also be advised at this stage if they are not already aware of the matter.

The issuing officer should collect all necessary information to be able to prove the imminent risk to health before the court and arrange for the matter to be heard in court within three days following the service of the notice. Wherever possible the matter should be taken to the Applications Court of the Loughborough Magistrates Court, the following working day (the Code of Practice on Prohibition Procedures and the procedure laid down within the Food Hygiene (England) Regulations 2005 must be followed at all times).

If the court fails to issue a Prohibition Order, the issuing officer should be aware that the authority is liable for compensation. In this case, Commercial Team Manager must be informed immediately.

Where the court makes an Emergency Prohibition Order the officer should attempt to serve the order on the proprietor or person involved should they be in attendance at the court at the time. If the relevant person is not in court, the order should be served by hand wherever possible. Forwarding the order by fax is not considered appropriate.

The officer should ensure that a copy of any order closing premises or parts of a premises are affixed to the premises without undue delay. Wherever possible, the officer should bring the attention of the courts to the fact that they can attach provision requiring that the order not be removed from the premises.

Where the officer is aware that the risk conditions have been removed they must arrange to re-inspect the premises without undue delay and if satisfied at the removal of the risk, should issue the appropriate notice confirming that there is no longer a risk to health.

8.1 Prohibition of a Person

Where the officer taking a prosecution is of the opinion that the proprietor or manager of a business is not a fit and proper person to participate in the management of a food business or a specified food business, they should bring this to the attention of the prosecuting solicitor as soon as possible. The solicitor should then draw to the attention of the court the power contained in section 11(4) to prohibit a person if the court thinks this proper. There is likely to be a need for the authorised officer to attend court even when a guilty plea is entered in order to assist the court to make such a decision. It is not for the authorised officer to 'recommend' such action to the court.

Where a Prohibition Order has been made the Chartered Institute of Environmental Health should be informed of the fact in accordance with the Enforcement Provisions relating to Emergency Prohibition Notices.

8.2 Appeals

It is essential that the recipient of any notice clearly understand that he/she has a right of appeal. The Issuing Officer of any notice should ensure that the recipient is given the full name and address of the Food Authority, the name and address of the local magistrates' court and all details necessary to enable them to make an appeal should they wish to do so.

As soon as the Issuing Officer becomes aware that an appeal has been lodged against a notice served by them, they should immediately inform the Commercial Team Manager and the appropriate solicitor of the Legal Division.

If the notice appealed against is one which contains a schedule of a number of different items, the issuing officer should make contact with the appellant to discover as soon as practically possible, which item has been appealed against. Any items remaining on the schedule which are not subject to appeal should be reviewed on a fresh Improvement Notice.

Upon becoming aware of the appeal, the issuing officer should collect all necessary information surrounding the item appealed against and prepare a suitable report on the matter. The report should be discussed with the Commercial Team Manager and with the appropriate solicitor.

If the appellant or their own legal adviser should make contact with the issuing officer on the matter of the appeal, the issuing officer should refer that person to the appropriate solicitor in the Legal Division.

8.3 Compensation

Compensation may be payable to the proprietor of a food business if the action of the authority is held by the court to have been unjustified. Compensation is payable in respect of 'any loss' which is directly attributed to the wrongful service of a notice. The authority may assess the amount of compensation due taking into account, amongst other things, the following aspects where applicable:-

- a) the length of time the process or treatment was halted or the use of the premises or equipment was prohibited and for what purpose;
- b) loss of trade;
- c) value of spoiled food;
- d) loss of good will;
- e) loss of wages;
- f) how much of the damage to trade is repairable;
- g) the obligation of the proprietor to mitigate his/her own loss;

OR

If the proprietor of the business is agreeable, a loss adjuster may be called in.

Upon becoming aware of a claim for compensation for wrongful service of a notice, the officer involved should immediately notify the Commercial Team Manager and the appropriate solicitor in the Legal Division.

8.4 Seizure of Food

Where an officer authorised to do so is of the opinion that food should be seized due to it being unfit, not complying with food safety requirements or any other contravention making the food unfit or unsafe for human consumption, they should as soon as practically possible notify the Lead Officer for food safety matters of the fact. If necessary, the Lead Officer should attend site with the officer if that officer does not hold the authority to proceed with the seizure of food.

Where food is seized, it should be suitably packaged and stored under appropriate conditions (including refrigeration where necessary), until such time as the food is taken before the court for condemnation.

When food is seized, the seizing officer should issue the appropriate notice of detention/seizure and provide the owner of the food with a list of all foods being seized, describing the food, the container the food is within and the appropriate weight or volume of food concerned.

Without avoidable delay and ideally the next working day, the officer should present themselves at the Application Court of the Magistrates' Court and make an application for the food to be condemned as unfit.

The officer should have advised the owner of the food of the place and time at which the hearing would occur. The officer should complete a copy of the information and provide for the courts purpose a copy of the Condemnation Order for use by the Court.

The officer should present to the court all evidence that they have that the food is unfit for human consumption and provide photographic and other evidence as necessary.

If the court is satisfied that the food is indeed unfit, the court will sign and date the order. The order should then be taken to the court offices within the Magistrates building for the Justices Seal to be affixed. A copy of the Condemnation Order should be given to the owner of the food. The officer is then responsible for proper disposal of the food.

Should the court refuse to condemn the food as unfit, the officer should again indicate the matter to the owner of the food and ensure that the food is returned to the owner as soon as practically possible in the same condition (where possible) as that in which it was seized originally. The officer should then be aware that a claim for compensation may arise.

Where food is seized to be taken before a Magistrate, the officer should as soon as possible inform the appropriate solicitor of the Legal Division.

Where food is seized from a business, the Home Authority (where one exists) should be informed as soon as practically possible of the food seizure and advice sought from the Home Authority on the procedures in place within the company to ensure that such an offence does not occur. Reference to such procedures within the company can be given during the application for condemnation of the food. The Home Authority should also be advised of the seizure of food and the outcome of the court proceedings where considered necessary.

**OFFICER GUIDANCE ON THE TAKING OF STATEMENTS AND INTERVIEWING
PERSONS
UNDER THE POLICE AND CRIMINAL EVIDENCE ACT 1984 - CODE C**

1 CAUTIONS

- 1.1 As soon as an officer becomes aware or suspects that an offence has been committed, the person responsible for the offence or the person who may be involved or who may give factual information relating to the offence, must be cautioned before any questions about the offence are put to him regardless of this involvement or suspected involvement in the offence if his answers or his silence may be given as evidence to a court in a prosecution.
- 1.2 If a person has previously been cautioned and further questions are put to him, that person must be re-cautioned.
- 1.3 The person need not be cautioned if questions are put to him for other purposes, for example, solely to establish his identity or his ownership of a business in accordance with relevant statutory requirements.
- 1.4 Whenever a person is initially cautioned or is reminded that he is under caution he must at the same time be told that he is not under arrest and is not obliged to remain with the officer.
- 1.5 The caution shall be given in the following terms:-

'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court, anything you do say may be given in evidence'.
- 1.6 Minor deviations from the caution do not constitute a breach of this requirement provided that the sense of the caution is preserved.
- 1.7 If it appears that a person does not understand what the caution meant, the officer who has given it should go on to explain the caution in his own words.
- 1.8 When a person who is interviewed and cautioned fails or refuses to answer certain questions, or to answer them satisfactorily, after due warning, a court or jury may draw such inferences as appear proper under Section 36, 37 of the Criminal Justice & Public Order Act 1994. This applies mainly when a suspect is arrested by a constable, however, in our own investigations if a person refuses or fails to answer a question it is a precaution that the interviewing officer must first tell him in ordinary language.
- a) what offence the officer is investigating
 - b) what fact he is asking the person being interviewed to account for
 - c) that the officer believes this fact may be due to the interviewees taking part in the commission of the offence in question or that the interviewee can provide factual evidence relating directly to the offence in question
 - d) that a court may draw a proper inference if he fails or refuses to account for the fact about which he is being questioned
 - e) that a record is being kept of the interview and that it may be given in evidence if the case is brought to trial.
- 1.9 Where, despite the fact that a person has been cautioned, failure to co-operate may have an effect upon their treatment, for example, obstruction of an officer in the course of his duty, the interviewee should be informed of any relevant consequences and that they are

not affected by the caution.

- 1.10 A record shall be made when a caution is given either in the officers notebook or on the interview record as appropriate.
- 1.11 If there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt the caution should be given again in full when the interview resumes.
- 1.12 In considering whether or not to caution again after a break in an interview, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.

2 INTERVIEWS

- 2.1 An interview is the questioning of a person regarding his involvement or suspected involvement in a criminal offence or offences that is required by Paragraph 10.1 of Code C of the Police and Criminal Evidence Act 1984, (see paragraph 1.1 of this document) required to be carried out under caution. At the beginning of an interview relating to an offence or offences which have been committed the interviewing officer, after cautioning the interviewee, must ensure that the interviewee understand the implications of the caution, (see 1.8 (a-e)).
- 2.2 If the interviewee makes any significant statement or silence, the officer must ask the interviewee whether he confirms or denies that the earlier statement or silence is correct and whether he wishes to add anything. A 'significant' statement or silence is one which appears capable of being used in evidence against the interviewee, in particular a direct admission of guilt, or failure or refusal to answer a question or to answer it satisfactorily which may give rise to an inference by a court jury as mentioned in paragraph 1.8.
- 2.3 No officer may try to obtain answers to questions or to illicit a statement by the use of pressure. No officer shall indicate, except in answers to a direct question, what action will be taken on the part of the authority if the person being interviewed answers questions, makes a statement or refuses to do either. If the person asks the officer directly what action would be taken in the event of his answering questions, making a statement or refusing to do either, then the person may inform the interviewee what action the authority propose to take in that event provided that action is itself proper and warranted. Wherever possible before providing such information, the officer should seek the advice of the Lead Officer
- 2.4 As soon as the officer who is making enquiries of any person about an offence, believes that a prosecution should be brought against him and that there is sufficient evidence for to succeed, the officer shall ask the person if he has anything further to say. If the person indicates that he has nothing more to say the officer shall, without delay cease to question him about the offence. This should not, however, stop officers dealing with the seizing or detention of food or the closure of premises under the Food Safety Act 1990 from inviting suspects to complete a formal question and answer record in direct relation to the offence being investigated, after the interview is concluded.

3 INTERVIEW RECORDS

- 3.1 An accurate record must be made of each interview with a person suspected of an offence, whether or not this interview takes place at the department's offices.
- 3.2 The record must state the place of the interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview and the name of those present and must be made on the front provided for this purpose or in the officers pocket book or in accordance with the Code of Practice E for the tape recording of interviews with suspects. Please refer to Annex 2 for the procedure to be undertaken when tape recording interviews.
- 3.3 The record must be made during the course of the interview unless in the investigating officers view this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record or what has been said or, failing

this, an account of the interview which adequately and accurately summarises it.

- 3.4 If an interview record is not made during the course of the interview it must be made as soon as practicable after its completion.
- 3.5 Written interview records must be timed and signed by the maker.
- 3.6 If an interview record is not completed in the course of the interview, the reason must be recorded in the officers notebook.

OFFICER GUIDANCE ON TAPE RECORDING INTERVIEWS

1 Setting Up

- Connect recorder to AC mains.
- Plug microphone in.
- Turn on power switch at the rear of the recorder.
- Press stop button.

2 Commencing the Interview

- Explain that the tape will make a buzzing noise for a few seconds when switched on until it reaches tape that can be recorded on.
- New tapes to be unwrapped and loaded into the tape recorder in sight of suspect with label outermost.
- Press record.
- Make a note of the time in notebook.
- Introduce tape by saying:-
 - 'This is a tape recorded interview and may be given in evidence if your case goes to court.
 - Introduce self - name and job title 'Also present
 - Other officers introduce themselves, name, position.
 - Introduce suspect ask them to state their name, date of birth and address.
 - Introduce other parties present (i.e. solicitor, appropriate adult, etc.)
 - State date, time and place of interview.
 - Inform suspect that at the end of the interview they will be given a notice explaining what will happen to the tapes.
 - Where necessary confirm suspect is authorised to speak on behalf of the company.

Caution

'You do not have to say anything but it may harm your defence if you do not mention, when questioned, something which you later rely on in court, anything you do say may be given in evidence'.

'You are not under arrest, you may terminate this interview whenever you wish and you are entitled to legal advice.'

Do you understand the caution?'

Significant Statement/Silence

The officer shall put to the suspect any significant statement or silence which occurred before the start of the interview.

The officer shall ask the suspect if they confirm or deny the earlier statement/silence AND whether they wish to ADD ANYTHING.

During the Interview

- Any unusual noises must be explained for the tape.
- Any exhibits and gestures made by the suspect (eg. nods) must be explained.

Breaks

- Breaks in interview after 2 hours for 15 minutes for refreshment.
- If the room containing the tape recording equipment is left by the suspect or the interviewing officers, the tape should be dealt with as in 'Concluding the Interview' and new tapes used when the interview recommences, start procedure again and remind under caution.

When interview recommences state reason for break and confirm with suspect.

Concluding the Interview

- Suspect to be offered opportunity to clarify anything said or add anything they may wish.
- State time/date interview concluded.
- Make a note in notebook of time.
- Switch off tape recorder.
- Label the tapes.
- Seal the master tape in view of the suspect.
- Fill in mast tape seal.
- Seal master tape in polythene bag using plastic seal.
- Switch off power switch at rear of tape recorder.
- Suspect to be handed 'Notice to person Whose Interview has been Tape Recorded' which must be filled in and a copy then given to suspect eg. Form 1.
- Suspect's solicitor to be given 'Notice to Solicitor' Form 2.

After the Interview

- Master tape to be placed in secure storage (Form 3).
- Attached is Form 4 which should be read when the defendant or his solicitor require a copy of the working tape.

NB This Guidance Note should be read in conjunction with 'The Police & Criminal Evidence Act 1984 - Code of Practice E'.

CHARNWOOD BOROUGH COUNCIL

NOTICE TO PERSON WHOSE INTERVIEW
HAS BEEN TAPE RECORDED

1. This notice explains how the tape recording will be used and how you or your solicitor will be provided with a copy of the tape if legal proceedings are to be taken against you. You will be provided with a copy of this Notice when you have signed it.
2. The interview has been recorded on tape. One of these tapes/sets of tapes has been sealed in your presence and will be kept securely in case it is needed in court. The other will be a working copy to which the enforcement officers may listen. Both sets of tapes are protected against tampering.
3. If legal proceedings are to be taken against you a copy of the tape will be supplied to you or your solicitor as soon as practicable. A notice will accompany the tape.
4. If you have a solicitor, a copy of the tape will be sent to him or her to assist in the preparation of your defence before the case comes to trial. If you do not have a solicitor, you should think about whether you should seek one. If you do not intend to appoint a solicitor, a copy of the tape can be sent to you.
5. You may choose not to receive a copy of the tape(s). This does not prevent you or your solicitor from requesting a copy at a later date. If you do not have a solicitor at this time but intend to seek one later, he or she can ask the Environmental Health Division to provide a copy of the tape(s). Requests for second or subsequent copies of the tape may be subject to a charge.

Please complete the section below:

I UNDERSTAND THAT IF LEGAL PROCEEDINGS ARE TO BE TAKEN AGAINST ME I AM ENTITLED TO A COPY OF THE TAPE(S):

Tick one box only

- I do not wish a copy of the tape(s)
- I wish a copy of the tape(s) to be sent to my solicitor
- I do not have a solicitor and do not intend to seek one. I wish a copy of the tape(s) to be sent to me.

Signature of Interviewee:
Officer in Case:

Date:
Tel:

Environmental Health , Southfields, Southfield Road ,Loughborough LE11 2TX

CHARNWOOD BOROUGH COUNCIL

TAPE RECORDING OF INTERVIEW

NOTICE TO SOLICITOR

Place of the interview: _____
Address: _____
Telephone Number: _____
Name of Defendant: _____
Officer in Case: _____

1. An interview with your above named client was tape recorded and upon written request, you will normally be provided with a copy of the full tape recording. This will be available within a reasonable time for you to collect from Environmental Health, Southfields, Southfield Road, Loughborough, LE11 2TX
2. Alternatively, you can make a request to the Environmental Health Division to listen to the tape at Southfields. This can be done in writing or by telephone. When a mutually agreed time has been arranged you may attend Southfields to listen to the tape, either in the presence of a Council Officer, or if you wish in private.
3. Where you wish an unadmitted employee to collect or listen to the tape, facilities will normally be granted. However, the unadmitted employee will require authorisation from an admitted Solicitor to have access to such facilities.
4. As you may know transcriptions of tapes will not normally be made. Since the cost of providing a transcript may be very great, arrangements have been made, for Legal Aid Committees to give prior authority for the provision of a transcript. In no-legally aided case to be heard on indictment application for prior authority may be made to the Court or in indictable cases to be heard summarily, application may be made to the Justices Clerk.
5. In the event that you wish to take issue with any part of the evidence contained in the tape recording, or require additional material from the recorded interview to be included in the officer's record of interview you should communicate that fact to the Environmental Health Division at the earliest convenient time. One of the intentions of tape recording is that any dispute arising out of the conduct of the interview, or of the evidence obtained thereby can be resolved by the defence and prosecution well before the case comes to trial so that unnecessary adjournment may be eliminated.
6. A Code of Practice under the Police & Criminal Evidence Act on the use of tape recording of interviews has been drawn and it is strongly recommended that you are familiar with its terms. (Copies can be obtained from HMSO)

Form (3)

FOOD SAFETY ACT 1990, etc

CHAIN OF EVIDENCE - STORAGE OF MASTER TAPES

This statement of one page signed by me is true to the best of my knowledge and belief and I make it knowing that if it is tendered evidence I shall be liable to prosecution if I have willingly stated in it anything which I know to be false or do not believe to be true.

I of

certify that I received a sealed tape marked which was further

sealed in a plastic bag by Seal No.

from of

.....onat

The tape was kept securely in my possession and was then handed to:

.....

of.....on at

and that the said article was not opened by me at any time whilst in my possession.

Signed Dated

Signature of Officer handing over working copy tape(s)

Form (4)

CHARNWOOD BOROUGH COUNCIL

WORKING COPY TAPE RECEIPT FOR WHEN THE DEFENDANT OR HIS
SOLICITOR REQUIRE A COPY

Reference No:

Number of Tapes:

Department:

I.....of

(Defence Solicitor/Defendant)

HEREBY ACKNOWLEDGE to have received a copy of the Working Tape(s) relating to
the interview(s) of.....(Defendant)

Signed Dated

Signature of Officer handing over working copy tape(s)

OFFICER GUIDANCE FORMAL CAUTIONS

The Code of Practice No. 2 (Legal Matters) issued under Section 40 of the Food Safety Act 1990, states that before deciding on a prosecution you should consider issuing a formal caution in accordance with Home Officer Circular 18/1994. Further guidance on formal caution is contained in LACORS Food Safety Circular FS2923 of the 27th April 1992. Before a formal caution can be issued there must be:-

1. Sufficient evidence of the offenders guilt to make a conviction a realistic prospect and
2. An admission of guilt and
3. Such understanding of this significance as to enable the offender to give his informed consent to the caution.

The decision whether to issue a formal caution should be guided by such factors as the nature and seriousness of the offence, the likely penalty, the offenders age and state of health, his previous offence history and attitude to the offence for which a formal caution is contemplated.

The formal caution, issued according to Home Officer procedures, can be cited in court in any subsequent offence for which the person is found guilty. Consequently, it can be taken into account when deciding a penalty, however, a formal caution should not be cited in court in relation to an offence committed more than three years after the offences for which it was issued.

Once the officer is satisfied that the issuing of a formal caution is appropriate, the following procedure and documentation has been adopted by the Commercial Team

1. A covering letter (similar to Document 1) is sent to the offender offering the formal caution procedure as a means of dealing with the alleged offence(s). The letter advises of the consequences of acceptance and seeks the offender's agreement to the procedure and admission of the offence. The letter is accompanied by two copies of the same form of caution. The appropriate formal caution is dependent on whether the offender is an individual (Document 2) or a company (Document 3).
2. If the offender is in agreement with the procedure he is asked to complete and sign the declaration of both copies and return them to the Commercial Team. On receipt of both copies each is countersigned by the Environmental Health Manager. One copy is then served on the offender and the second copy kept as the official record on the premises file. Failure to accept the procedure within the specified time limit leaves the option open to institute legal proceedings.
3. Home Office Circular 18/1994 provides guidance on the administration of a caution for Police Officers. Officers of the Commercial Team may wish to consider implementing a similar scheme whereby a formal caution is administered in person by a suitable cautioning officer e.g. the Environmental Health Manager. In this instance documentation as described in paragraph 1 should be used to record the caution.
4. Formal cautions may be cited in court if the person is found guilty of an offence and they are relevant to the offence under consideration. The Office of Fair Trading (OFT) and LACORS are keen to ensure that details of all formal cautions are recorded on the Central Register of Convictions. When sending details of a formal caution to the Office of Fair Trading, Document 4 must be completed and sent with a copy of the signed caution.

Document 1

Dear

Re: (Appropriate Statute)

The facts surrounding the alleged offence, briefly described in the attached documents, have been reported to me by an officer of this department. I have carefully considered these facts and concluded that there are sufficient grounds to institute legal proceedings under the above mentioned Act.

I am on this occasion, however, proposing to issue a formal caution in respect of the allegation. This course of action is subject to your agreement and admission of the alleged offence.

I must advise you that should you agree to accept a caution, a record will be kept of it at this office and may subsequently influence a decision to institute proceedings should you be found to be infringing the law in the future. The caution may also be cited should you subsequently be found guilty of an offence by a Court of Law.

If you are in agreement with the proposed course of action, I would be obliged if you will sign and complete the declaration on each of the attached caution forms. The forms should then be returned to me, in the pre-paid addressed envelope provided, no later than 7 days from the receipt of this letter. A countersigned copy of the caution will be issued to you in due course.

Yours faithfully

C A U T I O N

Document 2

(Individual)

Case Reference:

Offender's Surname:

Forename(s):

Address:

Date of Birth:

.....

Date of Offences:

Place of Offences:

Brief Circumstances of Offences:

.....

Declaration:

I hereby declare that I admit the offence described above and agree to accept a caution in this case. I understand that a record will be kept of this caution and that it may influence a decision to institute proceedings should I be found to be infringing the law in the future. I further understand that this caution may be cited should I subsequently be found guilty of an offence by a Court of Law.

Signed:

Date:

.....

Signed:

(Designation)

Date:

(Name of Authority)

Commercial Team
Southfields, Southfield Road, Loughborough LE11 2TX

Document 4
FORMAL CAUTION

OFT REFERENCE NO:

CASE REFERENCE:

Name of Defendant:

Address:

Registered Company Number:

Joint Defendant:D.O.B.

Address:

Enforcement Authority:

Legislation:
(Act(s), Section(s), Regs etc)

Date of Offence:

Offence:

.....

Name of Officer Administering Caution:

Signed: Date:

Contact for Enquirer:

Telephone No (plus ext):

Forward to: Conviction Register
Office of Fair Trading
Craven House
40 Uxbridge Road
Ealing
London W5 2BS

NOTE: A COPY OF THE SIGNED CAUTION LETTERS SHOULD BE SENT WITH THIS FORM.