

PERFORMANCE SCRUTINY COMMITTEE – 18 May 2010

Report of the Director of Housing and Health

ITEM 7 Food Establishments – Compliance with Food Hygiene Law (NI 184)

Purpose of Report

This report outlines the details on NI 184 ‘food establishments in the area which are broadly compliant with food hygiene law’, information on the enforcement actions being taken for non-compliant establishments and publicity for those businesses which are compliant.

Action Requested

To note the content of the report.

Policy Context

Under the provisions of the Food Safety Act 1990, the Council are under a statutory duty to enforce food safety provisions. These requirements are outlined in detail in the Food Standards Agency’s Framework Agreement and the National Food Law Code of Practice.

The National Indicator NI 184 ‘Food establishments in the area which are broadly compliant with food hygiene law’, was published by the Government in October 2007. The Council monitor and report on this indicator to the Food Standards Agency through the Local Authority Enforcement Monitoring System (LAEMS). However, following the Budget Statement on the 24th March 2010, NI184 has now been removed from the National Indicator set.

The Food Safety service also contributes to the Corporate Plan Aims – People Matter: ‘We will improve the wellbeing of residents, acknowledging their diverse needs’, Prosperity Matters: ‘We will invest in and support sustainable development’ and Place Matters: ‘ We will make Charnwood a safe, cohesive Borough in which people live and work’.

Background

At the Performance Scrutiny Committee meeting on the 23rd February 2010, the quarterly report of the Director of Governance and Procurement was submitted, providing performance information for the third quarter of 2009/10. The committee subsequently resolved that a report be submitted to the next meeting of this Committee providing further information in respect of Indicator NI 184, in particular the approach taken to those establishments which are not compliant and publicity for those which are.

The Food Safety Team, within the Environmental Health Service, play an important role in protecting the health of the public. This was further highlighted in the

publication of the findings by Professor Hugh Pennington of 'The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales'. This brought about greater scrutiny by Food Safety Officers of safety procedures in food businesses.

The Council is under a statutory duty to enforce the provisions of the Food Safety Act 1990 and subsequent regulations that have been made under the Act. The Food Standards Agency (FSA) has powers under the Food Standards Act 1999, to issue guidance, monitor and require Local Authorities to provide details of their enforcement activities.

The FSA has also published a National Framework Agreement, which sets out the Agency's expectations on the planning and delivery of food law enforcement by Local Authorities.

The FSA require all Local Authorities to provide a full range of information on these enforcement activities on an annual basis. This is undertaken through the Local Authority Enforcement Monitoring System (LAEMS). The National Indicator NI 184 'Food establishments in the area which are broadly compliant with food hygiene law', is reported through this monitoring system. However, this Indicator has now been removed by the Government and it is not known if this will alter the reporting requirements from the FSA.

In addition to this, the FSA also publish a Food Law Code of Practice, which provides detailed guidance for all Local Authorities to follow when undertaking food safety enforcement.

Definition of 'Broadly Compliant'

There are currently 1325 food businesses registered with the Council, which are all risk rated in accordance with Annex 5 of the National Food Law Code of Practice. Six risk factors are taken into account when determining the rating, each of which is given a score.

The overall risk rating score is then used to put each premises into a Risk Rating Category of between A-E. All new premises are unrated until they have been inspected.

This risk rating category, A-E, will then determine how often the Council is required to inspect the 'High Risk' premises and also what alternative measures are undertaken with 'Low Risk' premises, such as food sampling, questionnaires, educational and promotional work. Inspections or other intervention frequencies range from 6 months for the highest risk rated 'A' category to over 3 years for the lowest 'E' category.

Following each full inspection the officer will re-assess the risk rating, which is recorded on the Environmental Health 'Civica' database.

'Broadly Compliant' is defined within the FSA's Food Law Code of Practice as 'an establishment that has an intervention rating score of not more than 10 points under each of the following three parts of Annex 5, A5.2:

1. Level of (Current) Compliance – Hygiene,
2. Level of (Current) Compliance – Structure and,
3. Confidence in Management.'

This will mean that where a premises scores between 0-10 in each of the above categories, it will be deemed to be 'Broadly Compliant'.

NI 184 then determines the overall percentage of broadly compliant premises within the Borough compared to total number of food establishments.

Broadly Compliant Food Establishments in Charnwood.

The national NI 184 data for 2008/09 was published on the FSA's website on the 18th March 2010.

Charnwood's NI184 published figure for 2008/09 is 80.6%, which equates to 1012 broadly compliant food businesses out of a total of 1256. (This is slightly different to the locally published data on the TENS system, as this excludes certain businesses that have not yet been rated, such as new businesses).

The full data for 2009/10 is still being collated by the FSA through the Local Authority Enforcement Monitoring System (LAEMS).

The reasons for a food business not being 'Broadly Compliant' will vary from premises to premises, depending on the standards found at the time of the inspection. Some of the common issues are:

- Lack of documented food safety system.
- Poor cleaning
- Structural problems
- Lack of appreciation for food hazards
- Poor food handling practices
- Poor temperature control.

One of the main issues with 'Broadly Compliant' ratings is that these can only be re-assessed at the next full inspection. Therefore, even if a business has improved conditions following an inspection, the ratings cannot be changed until the next full inspection, which could be up to 2 years. This particular issue has been recognised by the FSA, who are looking at trying to address this.

This will mean that it can take a number of years for the 'Broadly Compliant' figure to improve, depending on whether the standards of other premises also remain the same.

Following a full inspection, the enforcement action taken against any non-compliant premises will be dependent on the conditions found and the risk to public health. The following section details the enforcement actions that are taken by the Food Safety Team.

Charnwood Food Safety Enforcement and Education

During 2009/10 the Food Safety Team undertook the following:

- Carried out 787 Food Safety Inspections, 134 re-visits and 117 food safety questionnaires for low risk businesses.
- 375 (42%) businesses were awarded the top rating of 3 stars.
- Responded to 530 service requests, including complaints about food and standards within premises.
- Trained 79 food handlers.
- Coached 25 ethnic food businesses in 'Safer Food Better Business'.
- Took part in 'National Food Safety Week'.
- Analysed 148 food samples taken from food businesses in the district.

The Council has a clearly laid down food safety enforcement policy, which focuses on providing advice and guidance for businesses to secure compliance. However, where businesses consistently fail to comply with the law or present a threat to public health, the Council will take the necessary action to protect consumers.

During 2009/10, the food safety team undertook the following enforcement actions:

- issued 652 informal letters,
- served 17 improvement notices,
- undertook 1 voluntary closure of food premises,
- issued 1 simple (formal) caution and,
- prosecuted 1 food business.

The prosecution of the Bengal Tandoori and Balti Restaurant, Barrow Upon Soar, was undertaken on the 23rd February 2010. The operator was found guilty of 5 major offences and was fined £1,000 plus £750 costs awarded.

Publicity

In addition to this enforcement work, the Food Safety Team undertake positive publicity wherever possible, to assist businesses to comply with the law, promote good compliance and highlight key food safety messages to consumers.

The following outline some of the key publicity work undertaken by the Team:

- Food safety newsletters issued to all food businesses, which include articles highlighting businesses that have recently achieved the top 3 star ratings.
- Food Safety Week – targeted food safety advice, including activities at John Storer House and Martin Court.
- Press release for the recent prosecution of the Bengal Tandoori, which was reported in the Leicester Mercury and Loughborough Echo.
- Articles in Charnwood News highlighting the 'Scores on the Doors' Award scheme.
- Publicity around businesses achieving the Health & Well Being Award, which includes a criteria that a businesses must achieve a 3 star rating.
- Publicity over businesses that have achieved the Gold/Silver Food Hygiene awards.

- Information and advice provided on the Food Safety section of the Council's web site.
- Seasonal press releases issued on Food Safety matters.
- Consultation and development of policies with the Charnwood Food Business Partnership, with approximately 30 businesses across the borough.

Charnwood's Food Safety Law Enforcement Service Plan, outlines the main activities of the service which includes work on education and publicity.

Compliance Audits of Food Safety

During December 2008 the Food Standards Agency, as part of their monitoring role, undertook an audit of the Council's Food Safety Service and the use of consultants. This Audit looked at the inspection work to ensure that the Service complies with the National Code of Practice.

The Audit was complimentary of the food safety service and identified some areas of good practice at Charnwood that were issued as part of national guidelines. Only minor improvements were required, which were subsequently implemented.

Additionally, in March 2009 an internal audit was undertaken of the Food Safety Service. This investigated whether procedures were being followed, the database was up to date, risk ratings were applied correctly and an up to date enforcement policy was in place.

This internal audit gave a 'substantial assurance' rating, the highest possible, and confirmed the internal control environment within the areas reviewed are adequate and effective, and appropriate actions are being taken to manage risks.

'Scores on the Doors' – Food Safety Award Scheme

The Council also operate a 'Scores on the Doors' scheme, which is accessed through the Councils web site at:

<http://www.charnwood.gov.uk/pages/scoresonthedoors>

The scheme was implemented across Leicestershire in 2007. The 3 risk rating scores that are used to determined the 'Broadly Compliant' level, as detailed above, are also used to calculated a star rating for the premises. The table below details the scheme and the relevant risk rating score, which is used for each star rating level.

Performance Level	Compliance Guidance *	General	Star Rating	Score – total of: Confidence in Management + Compliance: Hygiene & Safety + Compliance: Premises Structure
Good	Good level of legal compliance. Only minor safety issues not addressed.	legal issues not	 3 Stars	15 or less
Satisfactory	Mainly compliant with food safety legislation. An			Over 15 and up to 35

	understanding of food safety and standards being maintained or being improved.	2 Stars	
Poor	Some non compliance with food safety legislation – more effort required.	★ 1 Star	Over 35 to 50
Failing	A general failure to comply with legal requirements. Little or no appreciation of food safety.	○○○ No Stars	Over 50

The FSA is currently consulting on proposals for a new national ‘Scores on the Doors’ scheme, which will be a six tiered scheme (0 stars to 5 stars). This new scheme is due to be implemented during 2010/11.

The scheme covers most food premises that are currently inspected by officers, but will exclude those premises where no direct food preparation takes place, such as retail premises, some supermarkets and very low risk establishments.

The following table outlines the current total number of premises within each category.

Star Rating	2007 (From July)		2008		2009		Current	
3 stars	70	25%	196	42%	239	38%	375	42%
2 stars	173	63%	204	43%	277	44%	395	44%
1 star	25	9%	54	12%	93	15%	109	12%
0 stars	9	3%	16	3%	21	3%	19	2%
Total	277	100%	470	100%	630	100%	898	100%

A certificate is then issued to each business, following the most recent inspection, with their star rating. These can then be displayed by the business, however, this is not a legal requirement.

As outlined above, enforcement actions are taken where there is a clear risk to public health and major non-compliance with the legislation. The majority of these actions will relate to 0 and 1 star rated premises. As with ‘Broadly Compliant’, the ratings cannot be changed until the next full inspection.

The Food Safety Team will continue to comply with the requirements of the FSA National Framework Agreement and associated codes of practice. Where there is a clear breach in the legal requirements, enforcement action will be taken in line with the Enforcement Policy. The Team will also continue to provide advice and assistance to businesses to help them comply and improve standards. Positive publicity work will also be undertaken to highlight those businesses that continue to achieve high standards.

Financial and Legal Implications

Food safety enforcement is undertaken in line with existing staff and financial resources. The Council is under a statutory duty to enforce the provisions of the Food Safety Act 1990.

Risk Management

The risks associated with the options available and proposed actions to mitigate those risks are set out in the table below.

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Failure to meet statutory duties for food safety enforcement, as required by the Food Standards Agency.	L	H	Ensure that the service is adequately resourced to comply with the National Food Safety Framework Agreement.
Poor performance on 'Broadly Compliant' food businesses within the Borough, resulting in an audit by the Food Standards Agency.	L	M	NI 184 has been removed, but is likely to be continued to be monitored by the FSA. Ensure that relevant enforcement action is maintained for high risk food businesses within the Borough.

Background Papers: Food Safety Law Enforcement Service Plan 2010/11.
Food Standards Agency National Framework Agreement 2004.
Food Standards Agency Food Law Code of Practice 2008

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