

Thanet District Council

Environmental Health

FOOD LAW ENFORCEMENT PLAN AND ENFORCEMENT POLICY

2014/2016

Prepared Jan 2014
Reviewed Aug 2014
Annual Review Aug 15



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Introduction

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

The Service Plan incorporates the entire audit findings/recommendations from the Audit carried out by the FSA in November 2011, when the FSA expressed serious concerns regarding TDC's then current service.

Following a further review meeting with the FSA in July 2013, The Public Protection Team's functions and statutory duties were again thoroughly reviewed to improve efficiency and accuracy, taking a robust approach to deal with FSA concerns, with effect from January 2014.

Manston airport became a DPE (Designated Point of Entry) in January 2013. From September 2013 Port health functions and shellfish sampling were managed by a separate Port Health team under their own DPE manager, who are the direct responsibility of the Head of Safer Neighbourhoods.

In March 2014 an announcement was made that the airport was to be closed, this was due to be completed on 22nd May 2014. The Port health and shellfish sampling activities will be re-included in this Food Service Plan from July 2014.

During 2013/2014 the food service plan concentrated on clearing the backlog of inspections and new registration inspections, food officers dealt with issues that have been neglected in the past through lack of resources, this includes a more thorough approach to complaints and new registration visits, the use of alternative interventions, educative approaches, street auditing, and routine sampling work.

The Public protection Manager's role changed during 2013/2014, focusing on increased auditing of officers work, ensuring an accurate LAEMS return to the FSA, and ensuring that the team continue to adhere to the FSA Action Plan and recommendations from their audit.

1. **Service Aims Objectives & Priorities**

1.1 **Aims Objectives and Priorities**

Aims

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

Objectives

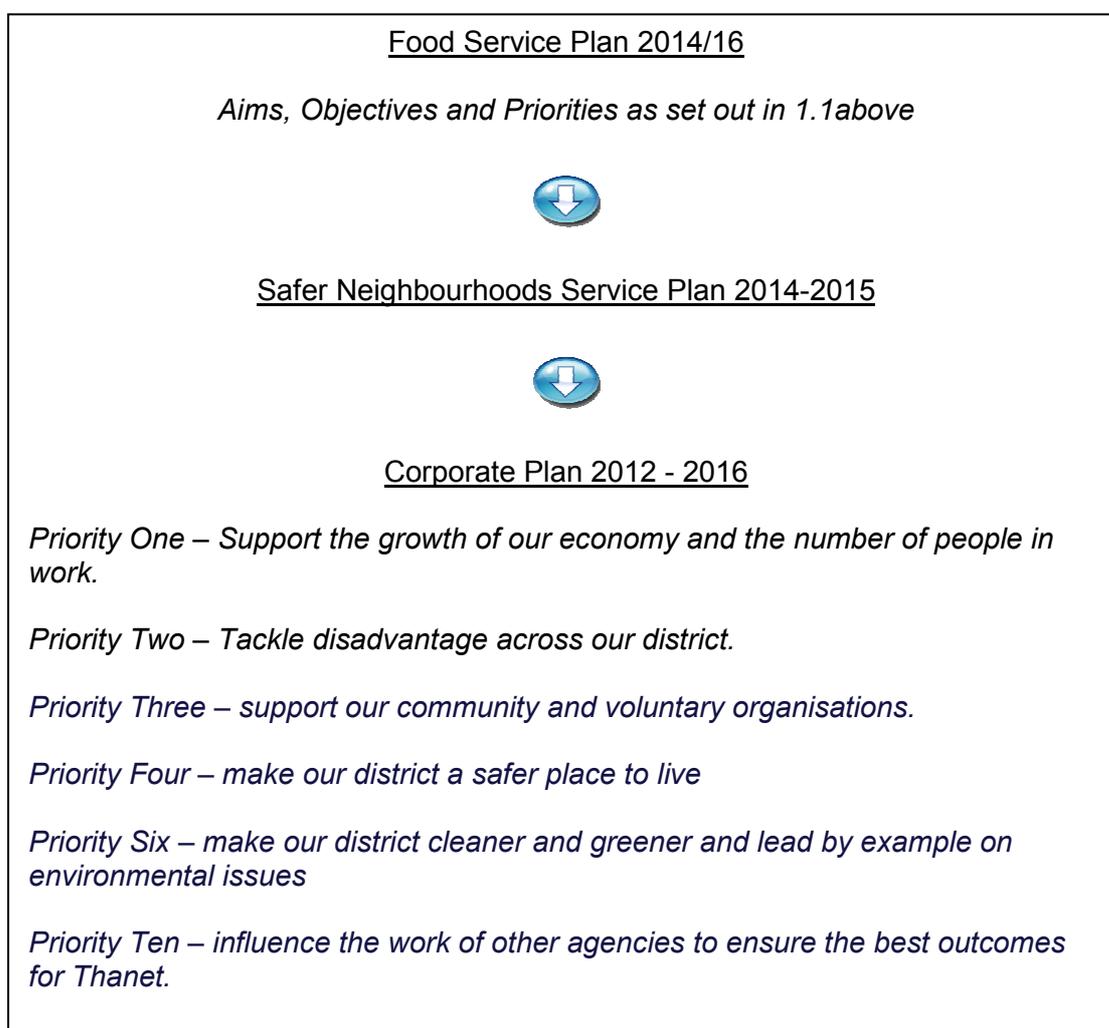
- To fulfil the statutory duty imposed on the Council under the Food Safety Act 1990 as 'The Food Authority' and ensure the effective implementation of Government Strategy on food safety issues, having regard to the Food law code of practice issued by the Food Standards Agency and guidance issued by government organisations.
- Protect the public as far as reasonably practicable by delivering a complimentary programme of education and enforcement which endeavours to ensure that food businesses are conversant with the law, understand the principles of hygiene and are operated and maintained at a standard that complies with relevant legislation.
- To fulfil the issues raised by the Food Standards Agency (FSA) auditors, following their audit of Thanet District Council's 'Food Authority' in November 2011. Their Audit report lists actions required by TDC to satisfy statutory requirements and the effective documented and procedural systems that need to be in place to support actions taken and enable accurate returns to the Government.
- To take appropriate enforcement action using an educative approach where appropriate, but closing premises through voluntary means or through the Magistrates court where an imminent risk to health is found.
- To achieve the above objectives, the following priorities for the two year period 2014 – 2016 have been identified. The FSA audit requirements will be reviewed periodically to ensure they are being adhered to and the Food Service plan will be updated annually or more frequently if appropriate.

Priorities:

Thanet District Council priorities, response work and service improvements are listed below, with the Food Standards Agency recent audit requirements/statutory duties highlighted in ***BOLD Italic*** throughout the service plan. The consequences of not satisfying the FSA audit requirements and statutory obligations may lead to the Government Agency putting in 'measures' to manage the 'The Food Authority' and recharging the local authority the costs, to enable statutory functions to be carried out.

1.2 Links to corporate objectives and plans

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



(*Issues raised by the Food Standards Agency audit and statutory functions are shown in 'bold' throughout the report)

1.2.1 Programmed work

- ***Effectively deliver a comprehensive risk assessed inspection programme for all high risk premises (Rated A and B).***
- ***Consider premises as ‘approved premises’ on routine inspections and ensure an effective recording and monitoring system is put in place, both documentary and on the councils computer system.***
- ***Develop and implement an alternative intervention programme including education and use of intelligence for medium and lower risk premises (Rated C, D and E).***
- ***Review and update the whole Food Safety Procedure Manual. Develop and provide officers with guidelines/checklists to enable them to make decision in the field consistent with current Government advice.***
- ***Deliver a food sampling programme where budget allows for the TDC area in accordance with LACORS, County or National programmes.***
- ***Carry out shellfish sampling in accordance with EU requirements where a need has been established by fishermen.***
- ***Monitor seaports for landing of non EU foods, fish/shellfish and ensure traceability is monitored.***
- ***Audit the work carried out by the food team to ensure consistency, accuracy and efficiency.***
- Routinely monitor the database for accuracy of local food businesses, and carry out occasional checks to cross-reference information against tourism websites/yellow pages/internal databases
- Implement the National Food Hygiene Rating Scheme as accurately and consistently as possible.

1.2.2 Response work

- ***Provide an effective response service able to deal proportionately with complaints regarding food hygiene***
- Provide an effective service for new business enquiries.
- ***Provide an effective response service able to deal proportionately with incidents or outbreaks of food poisoning or other notifiable diseases***
- ***Ensure all newly registered premises are assessed and receive full initial inspection***

- ***Respond within appropriate timescales to FSA food alerts and withdrawals***
- Develop the provision of basic food hygiene level 2 courses to our food business operators to improve standards in the Thanet area
- Provide advice and information to public and businesses within resource

1.2.3 Service improvements

- Engage with local businesses during the implementation and roll out of the National Food Hygiene Rating scheme.
- ***Expand on officer training as appropriate to ensure a consistent approach to food related enforcement within the district.***
- ***Put procedures in place to improve the consistency and accuracy of data held on the M3 data base***
- Seek to improve effective sharing of information within the Council and with external agencies, according to the Data Protection Act 1998.
- Expand the intelligence based checking of visiting FBO's and show a presence at small and large scale public events.
- Take positive steps to identify and monitor/investigate inland imported foods
- ***Full participation in the UK sampling programme***
- ***Continue the monthly accountability meetings with the Head of Safer Neighbourhoods to improve performance and monitoring of food team activities.***
- ***Ensure that out of hours inspections are up to date and carried out at a frequency stated in the Food Law CoP***
- ***Take a pro-active approach to imported food duties and accurately recording those activities for the LAEMS return.***
- ***Take a more robust approach to identifying and recognising potential Approved premises, through training and more thorough inspections***

1.2.4 Reviews

- ***Review, update and then maintain officer training programmes, particularly free FSA courses, to assist with the competency of Food Enforcement Officers***
- ***Roll out a training programme with regard to the new documented procedures, to improve on consistency, performance and accuracy.***
- ***Review the internal audit and it's recommendations, including the requirement to carry out inspections on the basis of geographical area, rotated between officers on a regular basis.***
- ***Review the agenda for monthly 1:1 meetings between Public Protection Manager and food team officers to encourage improvement, and make agenda items that integrate the Food Law Enforcement Plan/Corporate Plan/FSA Audit requirements/officers individual targets and responsibilities. Integrate the agenda with the HR 1:1 document requirements.***
- ***Review all food premises receiving a score of 3* and less and monitor the task that has been given to a specific officer to improve their scores by training/seminars/SFBB coaching etc., Review their scores before and after intervention and analyse most successful outcomes.***
- ***Review sampling and imported food activity entry onto M3 database to ensure a more accurate LAEMS return in these two areas where we are failing to account for our actions.***

1.3 Food Standards Agency Audit December 2011

The power to set standards, monitor and audit local authority food law enforcement services was conferred on the Food Standards Agency by the Food Standards Act 1999 and the Official Feed and Food Controls (England) Regulations 2009. The audit of Thanet District Council was undertaken under section 12(4) of the Act as part of the Food Standards Agency's annual audit programme.

This Authority was audited following a meeting between Agency officials and representatives from the Authority in August 2011, which raised a number of concerns regarding the Authority's ability to provide an effective food law enforcement service. The audit was agreed as a means of gaining a broader assessment of the food service and the Authority's performance in delivering its statutory food law obligations.

The findings of the audit highlighted serious concerns in relation to the Authority's performance in delivering its statutory obligations across the food law enforcement service to ensure that public health is adequately protected.

The auditors found that there was a failure to provide an adequate risk-based food premises inspection programme with effective assessments of business compliance. Poor records of food law enforcement activities across all areas, and a failure to carry out adequate food inspection and sampling at points of entry into the UK and at shellfish beds within the Authority's area.

Another critical issue was that the Food Safety Procedure manual, which is core guidance for officers when carrying out food activities and database input is approximately 3 years out of date. All food activities and procedures should be carried out in accordance with the Council's procedures and the audit showed that without this guidance being up to date, there are serious failings. The recommendation is that the Procedure manual be brought up to date, and this is due to be completed by 30th June 2014.

2. Background

2.1 Profile of Thanet District Council

The District of Thanet comprises a mixture of rural and urban coastal resort communities with a population of approximately 130,200 in an area of 112 km sq. making it the second most densely populated district in Kent. Principal population areas are the resorts of Margate, Ramsgate and Broadstairs alongside a number of smaller villages. Thanet is one of 13 local authorities in Kent and is located on the South East Coast neighbouring the City of Canterbury to the West and the Port of Dover to the South West.

The area has serious deprivation issues and an ageing population which is predicted to grow at a higher rate than elsewhere in the County. Six of the 10 most deprived wards in Kent are in the Thanet area. This level of deprivation is evident in the significant difference in life expectancy of 11 years between the most affluent wards in Broadstairs and the most deprived ones in Central Margate.

The main industries were Ramsgate New Port and Kent International Airport, Manston; light industry and tourism. Unfortunately, the port lost its passenger ferry service in 2013 and the airport closed in May 2014. There is a recently developed retail and food area at Westwood Cross on the borders of Broadstairs. Due to its history as a resort area, the district has an above average number of food premises; many of them small and family run which present a challenge for the food safety enforcement function.

The Public Protection Team from which the food service is delivered is based at:

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

Telephone number: 01843 577000
Environmental health: 01843 577423

Fax Number: 01843 577340

E-mail: environmental.health@thanet.gov.uk

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

Mon – Weds	9am – 6pm
Thursday	9am – 8pm
Fri	9am - 6pm
Sat	9am - 5pm

2.2 Organisational Structure

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

Cllr. Mrs Iris Johnston was elected as the Leader of the Council.

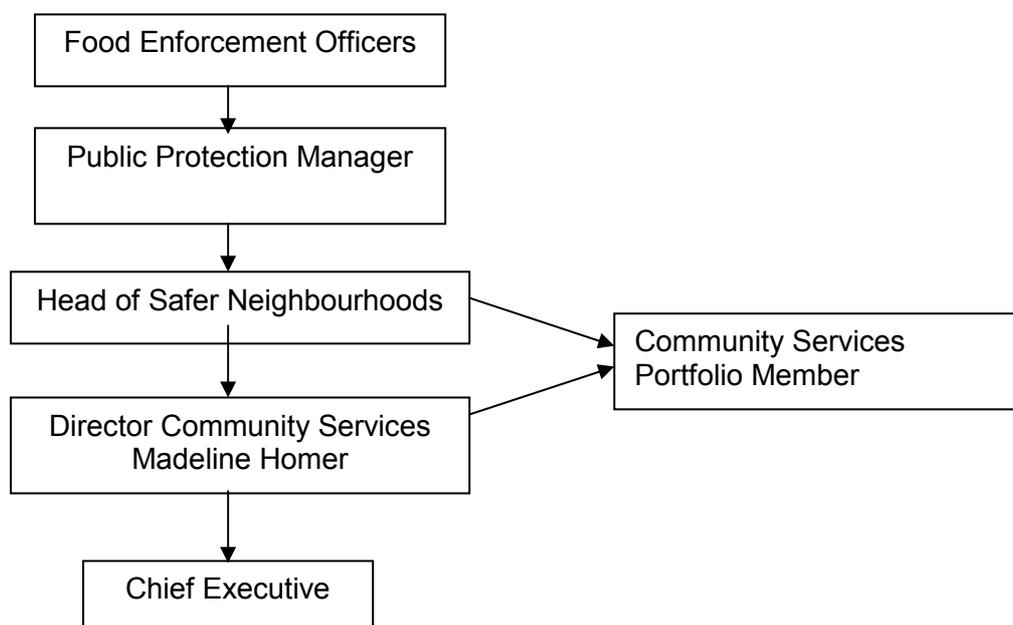
Cllr. Richard Nicholson was elected as the Deputy Leader.

The Cabinet and Shadow Cabinet details for the council year 2014 are:

Portfolio	Cabinet Member
Business, Corporate and Regulatory Services	Cllr Elizabeth Green
Community Services	Cllr Mrs Iris Johnston
Financial Services	Cllr Rick Everitt
Housing and Planning Services	Cllr Richard Nicholson
Operational Services & Deputy Leader	Cllr Mike Harrison
Strategic Economic Development & Leader	Cllr David Green

The Food functions are considered to be part of Community Services making Cllr Mrs Iris Johnston the relevant portfolio member. Her main contact is with Penny Button, Head of Safer Neighbourhoods.

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



Specialist appointments

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

Public Health England Infectious diseases	Director of HPA	Dr J Sedgwick Kent Health Protection Unit Preston Hall Aylesford Kent
Public Analyst		Kent Scientific Services 8 Abbey wood Road Kings Hill West Malling Kent
Food Examiners		FW&E Microbiology Lab (Collindale) London, 61 Collindale Avenue London NW9 5 EQ
Food Examiners	Shellfish Port Health samples	CEFAS Lowestoft Laboratory Pakefield Road Lowestoft SUFFOLK
Fish Inspectors	Internal appointments	Debbie Huckstep TDC Nicola Wilson TDC

2.3 Scope of the Food Service Plan

The Food Enforcement officers in the Public protection team are responsible for:

- ***Implementing the proactive programme for food hygiene interventions and subsequent revisits for high risk premises***
- Investigating the possibility of premises requiring 'Approval' at the time of inspection.
- ***Investigating reported cases of food poisoning and potential outbreaks in accordance with Health Protection Agency (HPA) guidance***
- ***Imported Food Controls at sea and airports***
- ***Shellfish sampling compliant with EU requirements***
- ***Investigating requests for service (complaints) regarding the hygiene of food premises, or food quality issues relating to foods purchased or produced in Thanet***
- ***Developing and delivering a programme of appropriate interventions for lower risk premises****
- ***Registration of food premises***
- ***Responding to food alerts***
- ***Delivering a food sampling programme in line with the LACORS/HPA national and regional programme***
- ***Provision of training, advice and support to existing and prospective food business operators and the users of the service***
- Delivering a Basic Food Hygiene training programme for Thanet food operatives

- Delivering a programme to improve the FHSR scores for premises rated under 3*
- Implementing projects and campaigns within available resources that promote good food hygiene
- Development and maintenance of partnerships and liaisons to the furtherance of the Food Service
- Referral of Health and Safety issues to Health and Safety Officer
- **Maintaining the database regarding food premises**
- **Providing the Food Standards Agency with statistical returns**
- Delivering the National Food Hygiene Rating Scheme
- Carrying out enforcement of inland imported food/controls

(The food service is not responsible for Food Standards).

2.4 Demands on the Food Service

As at May 2014 there are 1316 Food Premises in Thanet the District Council area. The following tables provide more detail regarding premises types and risks:

2.4.1 Establishment numbers by Groups (May 2014)

Description (MAFF Code)	No. of premises
Producers (A)	1
Manufacturers/Processors (C)	13
Importers/Exporters (E)	0
Distributors/Transporters (F)	14
Supermarket/Hypermarket (G01)	18
Smaller Retailers (G02)	190
Retailers Others (G03)	46
Restaurant/Canteen (H01)	314
Hotel/Guest House (H02)	49
Pub/Club (H03)	163
Take-away (H04)	131
Caring Establishment (H05)	165
School/College (H06)	74
Mobile Food Unit (H07)	26
Restaurant/Caterer – others (H08)	112
GRAND TOTAL	1316

2.4.2 Establishment numbers by risk groups (June 2014)

Risk Rating	Number of premises
-------------	--------------------

A	11
B	61
C	203
D	571
E	463
F	0
Not categorised	7
TOTAL	1316

2.4.3 Inspection frequency

In accordance with FLCOP Annexe 5.4 the minimum intervention frequencies are as set out below:

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

2.4.4 Inspections due per annum

Category	No of premises	Inspections per annum	<i>Partial/AI's</i>	%
A	11	22	0	
B	61	61	0	
C	203	135	34	25%
D	571	285	143	50%
E	463	0	154	100%
No Cat	7	7	0	
Total	1316	510	331	

2.4.5 Inspections - Categories A-D

Now 510 inspections per annum after CoP re-ratings adjusted

(Available working days per year per officer: 216 days
EHO's/Food Safety officers (PPO) averaging approx 1 inspection per day)

2.4.6 Non inspection Food Responsibilities:

- **Approved Premises: J. C. Rook***. (Statutory duty) Home Authority -This Company operates a cutting plant within their premises in Cecelia Road, which prepares pies, sausage rolls, pasties, quiches etc. for the chain of butchers' shops they operate across Kent. The FSA have a granted approved premises status to this premises. We are their Home Authority.
- **Approved Premises: Zeila Farm*** (Statutory duty) has been inspected and found to be an approved premise, monitoring is suspended as the FBO is not currently operating due to ill health
- **Approved Premises: Margate Smokehouse** (Statutory duty) Smoked cheese, smoked salmon, meat preparations and meat products.
- **Home Authority:** TDC is also the home authority for J. C. Rook's shops located across Kent; all Local Authorities refer to us regarding all premises.
- **Port Health function – Imported Food Controls.**
- **Shellfish Sampling**
- **Monitoring of Events**
- **Infectious disease notification work**

2.4.7 Resources requirement – Public Protection Team

EHO Environmental Health Officer x 3 from 1st July 2014 (was 4FTE)

PPO Public Protection Officer x 3.5 from 5th August 2014 (was 2FTE)

PPA Public Protection Assistant (deleted post from 1st July 2014)

Task	EHO % FTE	PPO % FTE	PPA % FTE
Public Protection Manager	1.0		
*Inspections A-C	1.0	1.0	
*Inspections D-E	.10	1.0	
*Admin	.10	.10	.00
*LAEMS return			
*Revisits	.10	.10	
*Port Health	.10	.20	
*Shellfish Sampling Routine Sampling	.10	.60	
Events Farmers Markets	.10	.10	.00
*Complaints	.10	.10	.
Advice to new business – Verbal and visits	.10	.10	.
*Infectious Disease work	.10	.10	.
*FHRS re-scoring visits/updating procedure manual	.10	.10	
TOTAL	3 FTE	3.5 FTE	0

*** Statutory functions/Code of Practice and FHRS requirements**

2.5 Regulation Policy

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

3. Service Delivery

3.1 Food Premises interventions Statement (Statutory duty)

The interventions programme for food premises on Categories A, B & C premises forms the core activity of the Food Safety Team. The programme of interventions which is detailed in Annexe 2 has been prepared to meet the aims, objectives and priorities summarised in paragraph 1.1 of this document in line with Chapter 4 of the Food Law Code of Practice (England) (April 2012 version)

Following the introduction of the National Food Hygiene Rating Scheme in Thanet In March 2012, full inspections are planned to be carried out over the following 3 years to bring all relevant premises into the scheme..

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

Hand written reports are be prepared at the conclusion of each inspection, with the aid of a checklist which authorised officers are required to use during all inspections. An inspection record sheet is provided to the Food Business Operator (FBO) with information at the time of inspection. The inspection checklist is used at each premise to assist with a consistent approach by the enforcing officers.

3.1.2 Types of interventions:

Full inspections/ Partial Inspections/ Audits. (Statutory duty)

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

Full Inspection: (FLCOP 4.1.3.1)

This is a check on compliance with legal requirements in accordance with elements set out in section 4.2.2 of the Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements.

Partial Inspection: (FLCOP 4.1.3.1)

An inspection that covers only certain elements of the inspection as laid down in Section 4.2.2 of the Code.

Planned audits (FLCOP 4.1.3.1)

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

The audit may include one or more of the following elements (FLCOP 4.1.3.1):

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

3.1.3 Revision of intervention rating: (Statutory duty)

On completion of the food inspection, partial inspection or audit the officer will revise the intervention rating of the establishment in accordance with Annexe 5 FLCOP. The FHRS star rating is also awarded based on this scoring, records of both are left with the FBO at the conclusion of the inspection.

3.1.4 New premises (FLCOP 4.1.3.2) (Statutory duty)

TDC responds positively and supportively to new food businesses which approach the authority prior to starting up. In response to initial enquiries they will receive as a minimum verbal advice, usually by telephone along with a registration form and advice on where to find the FSA 'starting up' booklet on the FSA website. An initial advisory visit will be provided where this is considered proportionate and appropriate to the needs and potential risks the business may present. It is preferred that we visit the premises after a food registration has been received so that the advice given can be recorded on their entry on M3, to avoid disputes on what was said at the time. A written record of what was agreed at the time is left with the FBO. There is an obligation to register the food premises 28 days before any food activities take place.

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

3.1.5 Routine planned inspections – high risk premises (A and B rated) (FLCOP 4.1.5.2.1) (Statutory duty)

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

Where other interventions occur at the same time as a full inspection, such as sampling, education or training, or a complaint visit, it will be recorded on M3 accordingly.

3.1.6 Planned interventions medium risk (rated C) (Statutory duty) (FLCOP 4.1.5.2.2)

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

Once it is considered to be broadly compliant, planned interventions will alternate between inspections, partial inspection or audits and other official controls as defined in paragraph 4.1.2.3 of the Food Law code of practice and listed below and defined in Annexe 3:

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

Broadly compliant is defined as:

Neither an establishment that has an intervention rating score of not more than 10 points under each of the following three parts of Annexe 5:

Part 2 Level of (current) compliance – Hygiene

Level of (current) compliance – Structure

Part 3 Confidence in Management

3.1.7 Planned interventions low risk premises (rated D) (Statutory duty) (FLCOP 4.1.5.2.3)

Interventions can alternate between an official control and an intervention that is not an official control, the frequency will remain that established by the Food law Code of Practice Annexe 5. Category D establishments that are also rated 30 or 40 for 'type of food and method of handling' must be an inspection, partial inspection or audit.

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

Premises in this category will be subject to alternative interventions at least once every three years in accordance with Annexe 5.2 of the Food law code of practice.

3.1.9 Alternative Enforcement Strategies (Statutory duty) (FLCOP 1.2.10, 4.1.5.2.4, Annexe 5.2)

Premises in this category (E) will be subject to alternative interventions at least once every three years in accordance with Annexe 5.2 of the Food law code of practice, unless the premises is subject to Approval.

3.1.10 Large scale public events (corporate plan)

To improve the prospects for Thanet, the Council is concentrating on regeneration and bringing in more investment. Alongside this a lot of emphasis is placed on putting on events to bring in tourism. These will range from small and local events to major show case events such as 'Broadstairs Food Festival'. There are between 50 – 100 events planned during the year which will have a TDC involvement either because they are on Council land, or are arranged by Council Events team, Parish or Town Councils. The food team have a system in place to respond to such events and carry out risk based desk top assessments using the information requested from FBO's 28 days before the event take place. Some events are spot checked by food officers on a regular basis to match the desk top data to what premises are on site.

3.2 Food complaints (Statutory duty)

All incoming complaints are directed to the Public Protection Team Leader who will assess and prioritise and allocate them to officer's areas on the following key criteria:

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

All complaints will be considered and will have a response within 3 working days, dependant on resources. This may comprise a phone call or a letter or email dependant on the nature of the complaint and the outcome of the assessment.

Complaints are investigated according to risk and the information provided. Anonymous complaints are not accepted. If a visit is warranted, where possible the next inspection will be brought forward and carried out at the same time as the complaint visit. Complaints are dealt with by officers, supervised by the PPM.

3.3 Home Authority Principle and Primary Authority Scheme (mandatory)

TDC has operated as the Home Authority for J. C. Rook since 8th April 1997. They operate a cutting plant and combined manufacturing and distributing plant supporting a chain of 15 butchers shops located across Kent within Canterbury, Thanet, Dover, Shepway, Maidstone, Medway and Tunbridge Wells Council areas.

The resources necessary to maintain the home authority scheme for J C Rooks is not significant.

3.4 Advice to business (mandatory & corporate plan)

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

Website	Reviewed quarterly to ensure accuracy and usefulness of data
Leaflets/ Booklets	Use if made of FSA website, starting up booklet and SFBB booklets
Verbal advice.	This is absorbed into routine work and will take place either in the case of routine official interventions or resulting from business enquiries for new or changed premises

Most contacts that businesses make are with regard to new and changed food businesses which are all responded positively to.

3.5 Food sampling

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

Routine samples

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

Environmental Swabbing

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

Following the FSA Audit in December 2011, a sampling programme was said to be 'crucial in protecting public health', and Thanet now intend to take part in local and national sampling from January 2014. Procedures are currently under review to be completed by June 2014 based on the Kent group Sampling procedures.

3.6 Infectious Diseases control and investigation (Statutory duty)

Officers investigate food related infectious disease notifications in accordance with its documented procedures, which will be completed in June 2014. The primary objective of every investigation is to identify the cause of infection and prevent any further spread. Officers investigate notifications that are connected to the allocated geographical area they are working in.

Response times and the nature of response are all set out in the procedure and are based on the Framework Agreement, KHPU/Kent & Medway LA's for the Control of Communicable Disease (March 2010).

Officers liaise with the Dr. Sedgwick, the 'Proper Officer' appointed under the Public Health Act 1984 and Section 47 of the National Assistance Act 1948 (as amended).

3.7 Food Alerts/Incidents (Statutory duty)

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

3.8 National Food Hygiene Rating Scheme

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

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

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

The Council's aim for the future is to help premises with a rating of under 3*'s to improve their scores, we are considering workshops or special visits/mail shots to these businesses.

3.9 Liaison with Other Organisations

The team works in partnership to deliver services, some examples of which are given below:

External Partnerships/Liaisons

Customs and Excise (HMRC) & UKBA	Imported Foods and potential Fraud
Association of Port Health Authorities (APHA)	Imported Food, air and sea port
Kent Environmental Health Managers (KEHM) Food Technical Working Group	County-wide liaison group for all food safety issues with representatives from the Health Protection Agency and Trading Standards as well as local Authorities.
CEFAS	Government Laboratories for Shellfish and Imported Food issues
Thames Port (City of London)	Port Health, advice and support
Trading Standards	Food complaints, Port Health
Food Standards Agency	Wide range of advice and support
Health Protection AGENCY (HPA)	Outbreak control or advice
HPA, Food Sampling Group and labs	Food sampling
Kent Infection Control Committee	Infectious disease investigations
Kent Food Group	Consistency meetings/Policy
Health and Safety Executive	RIDDOR/Gas Safety/Electricity at Work
CIEH	Chartered Institute of Environmental Health

External partnerships and liaisons are strong; however there is a significant issue with regard sharing information with internal partners. Particular issues have been identified with regard to the need to improve internal communications with Events team, Licensing and Planning in order to enable the food team to make the best of intelligence already within the Authority which can then be used for better targeting of resources, all within FOI and data protection criteria.

3.10 Promotional Work

The overall resources available for the Public Protection Team have improved greatly from 2011 to 2014, All resources are effectively targeted to achieving the key responsibilities and commitments to the Corporate plan, Food Service Plan and in consideration of the FSA audit recommendations in 2011, as well as our own internal audit recommendations. The benefit of promotional work is accepted and appreciated and wherever resources can be identified, the Food team will actively become involved in promotional activities.

4. Resources

4.1 Financial Allocation

Following the July 2010 restructure, the budgets for the Food Safety function will be managed by the Head of Safer Neighbourhoods, with input from the Public Protection Manager.

4.2 Staffing Allocation

Following the restructure from 1st April 2014 the resources for Food Safety are currently:

Staff resource	Number (FTE)
<p>Public Protection Manager:</p> <p>Daily running and supervision of the team, allocating proactive workload, managing daily reactive work for example complaints and recalls, voluntary closures of food premises. Support and back up for officers. Legal and technical advice, dealing with enquiries internally and externally.</p> <p>Inspecting food premises within a geographical area of Thanet</p> <p>Annual Review of Food Service Plan</p> <p>Reports and monitoring of service delivery, improvements in service delivery, service reviews and performance returns for the FSA and Head of Safer Neighbourhoods for the following:</p> <ul style="list-style-type: none">• Inspections/Revisits/Complaints carried out• Auditing and review of officers work.• Auditing for consistency• Quality of complaint work• Accuracy of transfer of information onto M3• Alternative interventions carried out/Questionnaires• Port health interventions• Shellfish sampling• Routine sampling• Infectious Disease interventions• Relevant team training• LAEMS return monitoring• Financial claims of team• Time management of team	<p>1 FTE (Management of Food Service and statutory FSA requirements)</p>

<ul style="list-style-type: none"> • Kent food group co-ordination and attendance • Internal training • Procedure manual (once updated) • Sampling procedures • M3 procedures • Min 10 Inspections per annum • Events co-ordination • Annual leave requests • Prosecution and formal action supervision • Managing the training provision for basic food hygiene courses for FBO's • Ensuring that officers participate in inland enforcement of imported foods 	
Food EHO's	2 FTE
Public Protection Officers	3.5 FTE
Support (admin)	0
Total	6.5 FTE

4.3 Qualifications and competence

(FLCOP 1.2.9)

The establishments in TDC area require the following officers/qualifications:

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

An EHO must hold either:

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

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

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

The staffing establishment in July 2014 when this document was prepared included the following officers whose qualifications are indicated in the table below:

Officer	Qualifications	CPD notes
Deborah Huckstep, Public Protection Manager (EHO)	MSc Environmental Health July 2009 EHORB Registration 13 th August 2009 NEBOSH: National General Certificate Level 3 2 nd July 2009 FSA Official Fish Inspector March 2006	20 hours required p.a.
Nicola Wilson Public Protection Officer (EHO)	BSc Environmental Health 2.1 Hons EHORB Registration 15 th December 2003 FSA Official Fish Inspector March 2005	20 hours
Vacant post EHO		20 hours
Vacant Post (EHO) deleted and changed to Public Protection Officer post (non EHORB)	Due to the loss of 331 inspection in CoP April changes, this post will now be a Public protection post for alternative interventions.	10 hours recommended
Vacant post Public Protection Officer .50 FTE	Required for provision of shellfish sampling and re-classification of the Thanet cockle beds	10 hours recommended
Mark Kennedy Public Protection Food Safety Officer	Higher Certificate in Food Premises Inspection 1998 EHORB Registration 1998	10 hours recommended
Simon Hogben Public Protection Food Safety Officer (not fully qualified)	Higher Certificate in Food Premises Inspection 2014 (Not yet EHORB)	10 hours recommended
Public Protection Assistant post	Deleted	

4.4 Staff development plan

As new appraisals embed in 2013/2014 following a period of 2 years of unsettled management structure, more specific targets have been set, as well as monthly 1:1's arranged taking place for all officers together with monthly team meetings. The new staff development plans include improved training plans and meeting attendance. Documentation of training qualifications and training attended are now recorded and up to date records are used to establish training needs and competence.

4.5 Training and Development

There is no specific training budget for the professional officers. Officers have the opportunity to apply for funding for specific courses that would aid their development, as well as ample time off and opportunity to attend FSA food courses. The Food Standards Agency had highlighted this issue and the consideration of a specific budget was considered and not agreed. The Head of Safer Neighbourhoods has discussed this with the FSA and the TDC Chief Executive TDC.

5. Quality Assessment and internal monitoring

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

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

- 100% desktop audit of the officers control sheet checked against the inspection report and completed checklist, to ensure that the Annexe 5 scores, the FHRS scores and the chosen star rating agree, as well as the FHRS status and whether the premises should be included in the scheme. Consistency is considered with regards to the scores and compared against other officers scoring. This audit is signed off by the PPM before the admin team input any information and scoring onto the database, hence the database scoring and FHRS scoring is correct, and the correct certificate and sticker are sent out, this gives protection to the database, as well as the resulting LAEMS return.
- An audit of 4 inspections per month for each officer is carried out various checks for example, that the correct standard paragraphs have been used, photographs of contraventions have been input on to the computer system, the checklist shows the contraventions that have been actioned, menu information has been collected, the premises has been considered for approval, and a copy of the inspection record has been left with the FBO are checked, this list is not comprehensive, and depends on the findings of the officers previous audits.

- Two inspections per officer are revisited by the PPM for a full audit of their findings, within 48 hours of the inspection being completed per year.
- Incorrect actions are noted and returned to the officer, corrected and the control sheet initialled by the officer, returned to PPM and kept in the audit file.

The FSA audit highlighted poor performance and unreliable LAEMS returns in the 2011 audit.

Monthly reports have been produced and auditing of the LAEMS figures to date takes place on a monthly basis. The following areas are checked through the LAEMS figures and in addition through auditing: (not exhaustive)

- Number of inspections/Revisits/Complaint carried out
- Scoring inconsistencies/anomalies
- Correct Categories against premises (local knowledge)
- No A or B categories outstanding
- Closed premises
- Unrated premises
- Registrations outstanding

7. Review Process

The Food Law Enforcement Plan is reviewed once per year.

The auditing checks of the teams work is reviewed by the Head of Safer Neighbourhoods on a regular basis, at least 4 times per year.

Annexe 1: Food Law Enforcement Plan and Enforcement Policy

Food Law Enforcement Objective

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

The Aim of this Policy

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

Enforcement

Purpose of food hygiene inspections

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

Factors influencing the enforcement approach

- An authorised officer has a range of options available in seeking to ensure the above aims are met. These range from the giving of advice and verbal warnings, to the service of statutory notices, or prosecution or closure of premises.
- This authority has signed the Enforcement Concordat and has adopted a graduated approach to enforcement as described in that document. As the first step towards securing compliance, an authorised officer will adopt an educative approach and discuss the requirements of the legislation relating to hazard analysis and the supervision and instruction and/or training with the food business operator.
- This authority will have regard to the BRE Regulator Compliance Code of Practice (attached as Appendix 1) in the conduct of its enforcement work.
- The Food Law Code of Practice (England) Code of Practice gives guidance on the appropriate use of the available procedures. This authority strictly follows advice issued by central government and the Local Authorities Coordinators of Regulating Services (LACORS) and authorised officers are required to follow this enforcement policy.

- Departures from this policy must be exceptional and the reasons will be documented.
- Enforcement action will be proportionate to the risk to public health arising from the contraventions identified. Combinations of formal notice and informal advice may be appropriate.
- Decisions on appropriate enforcement action will be taken based primarily on an assessment of risk to food safety and public health, but will also be influenced by the history of compliance by the food business operator with food safety legislation and his willingness to remedy contraventions.
- This authority has regard to the 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 recognises that some organizations, including voluntary and charitable ones operated by volunteers will need help and guidance to understand food safety requirements and an informal approach will be used where public health is not compromised.
- This authority recognises that many businesses in the District are small and family run on a tight budget. Consideration will always be given to low-cost solutions to contraventions, as long as this does not present a threat to the public health.
- This authority recognises that many businesses are seasonal and operate out of normal office hours and will need inspection and advice during these trading hours.
- This authority recognises that English is not the first language of many traders in its area and will take care to ensure its enforcement actions are clearly understood by providing documents and arranging for interpreters in an appropriate language wherever possible.
- Where there is a shared or complimentary enforcement role this authority will consult with those other enforcement agencies to ensure that the proposed action is consistent with the policies and actions of that other authority. An example would be consultation with Trading Standards over sampling programmes or the labelling of foodstuffs.
- Enforcement action taken by this authority will take into account the requirements of other departments of the Council and of other teams within the Environmental Services department to ensure consistency of action.
- Before taking action that the authority believes may be inconsistent with that taken by other food authorities, or with LACOTS advice, it will first discuss the area of difficulty with those bodies through the Kent Technical Food Group.

Legal Safeguards influencing the Enforcement Approach

- **The Regulation of Investigatory Powers Act 2000**

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

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

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

Qualification and Authorisation of Officers

- No officer will carry out food hygiene inspection and enforcement duties unless suitably trained and experienced and authorised in writing by the Director of Community Services.
- 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 Hygiene Improvement Notices only for premises within the categories for which they are qualified.
- Hygiene Emergency Prohibition Notices and voluntary closure agreements will only be signed by specifically authorised officers, having a minimum of two years post-qualification experience of food safety enforcement and currently involved in food safety enforcement. Only officers holding specific food inspection qualifications will be authorised to inspect, detain or seize foodstuffs.
- Only officers holding specific food inspection qualifications will be authorised to inspect, detain or seize foodstuffs.
- Only officers holding specific food inspection qualifications and specific imported foods training will be authorised to inspect, detain or seize imported foodstuffs.
- Newly qualified officers will only be authorised after a minimum of 6 months of structured practical training in enforcement procedures at the appropriate level.
- Continuing professional development training will be provided for all food safety officers to enable them to keep abreast of changes in legislation and good practice and meet the requirements of Code of Practice No. 19.
- Officers will be fully acquainted with the requirements of this Enforcement upon appointment and with any revisions as they arise.

The Informal Approach

- The existing procedure of giving advice and informing of minor contraventions by informal letters is accepted and understood by Thanet's food businesses. Officers will use this approach as long as they believe that this will achieve compliance with food safety legislation within a time-scale that will protect the public health and ensure safe food production.
- An authorised officer will be prepared to offer advice where this is requested by the operator of an existing or new food business, and will seek to encourage food businesses to adopt good food hygiene practice through this approach.

- This informal approach will be consistent with the Food Safety Act 1990 Code of Practice and with LACOTS guidance.
- Officers will clearly differentiate between legal requirements and recommendations of good hygiene practice in both verbal and written communications.

The Use of Hygiene Improvement Notices

An improvement notice is a legal document issued under the Food Hygiene (England) Regulations 2006, Reg 6. It details contraventions of the EU Hygiene Regulations, the works required to correct the contraventions and a time-scale for completion. Failure to comply with the notice is an offence.

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

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

An improvement notice will not be used where:

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

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

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

The Use of Hygiene Prohibition Orders

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

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

The Use of Hygiene Emergency Prohibition Notices

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

Conditions where prohibition of premises may be appropriate:

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

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

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

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

Voluntary Closure

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

Hazard Analysis – Compliance with Article 5

Article 5 of EU Regulation 852/2004 requires that a food business operator shall put in place, implement and maintain a permanent procedure based on the HACCP principles. These seven principles are to identify food safety hazards, critical control points, critical limits, monitoring arrangements, corrective actions, and to set up procedures and documentation to implement these principles.

- 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 Hygiene Regulations. The level of enforcement action will be risk based and will be considered using the principles of proportionality described above.
- The extent of procedures and documentation required for compliance will be commensurate with the size and food safety risks presented by a food business. Fuller details are contained in the Safer Food Better Business (SFBB) Guidance Notes (Appendix 2).
- Provided hazards are adequately controlled, an educative approach will be taken to assist a business in complying with the documentation requirements using the Safer Food Better Business scheme.
- Where a subsequent revisit reveals little or no progress towards adequately documented system, Hygiene Improvement Notice procedure will be followed.

Follow Up Visits

Where significant breaches of hygiene regulations have been identified during an inspection, a revisit will be carried out to check on progress towards compliance. The time-scale for the revisit will be agreed with the food business operator at the time of the primary inspection. 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.

Port Health Enforcement

Enforcement of port health duties will be guided by the principles described above. Additionally:

- When carrying out inspections of imported foodstuffs, authorised officers will have regard to guidance issued by the Food Standards Agency and DEFRA.
- When carrying out food hygiene inspections of ships and Port food businesses, authorised officers will have regard to guidance issued by Governmental bodies and the Association of Port Health Authorities (APHA).
- When carrying out all port health duties, authorised officers will take care to liaise with the Maritime and Coastguard Agency and HM Customs and Excise to ensure consistency and support for enforcement actions.

Prosecution

- Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the above enforcement procedures.
- In considering prosecution action for food safety offences an authorised officer will consider whether that course of action is proportionate to the risk presented to the public health by the contravention, using the principles outlined in the paragraph “Factors influencing the enforcement approach” above.
- Home and originating authorities will be consulted where prosecutions are planned and due regard will be paid to opinion of that authority. Such authorities will be notified of the outcome of prosecutions taken.
- The recommendation to prosecute will be made by the Public Protection Manager after careful consideration of a written report from the inspecting officer.
- The decision to prosecute will be made by the Principal Solicitor, who will take account of the criteria set out in the Code for Crown Prosecutors, in particular the Evidential Test and the Public Interest Test. The Code is a public document and is available from the CPS Communications Branch, 50 Ludgate Hill, London, EC4M 4EX or on their website: www.cps.gov.uk.

The decision to prosecute

Factors that will be considered before initiating prosecution procedures include:

- The seriousness of the alleged offence;
- The previous compliance history of the food business;
- The likelihood that a *due diligence** defence could be established;
- The ability of any important witness and their willingness to co-operate;
- The willingness of the food business operator to prevent a recurrence of the contravention;
- The probable public benefit of a prosecution and the importance of the case in establishing a precedent;
- Whether other action, such as issuing a formal caution, serving an improvement notice, or imposing a prohibition, would be more appropriate or effective;
- Any explanation offered by the food business.

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

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

Prosecution will be indicated where:

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

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

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

In all cases where a prosecution is being considered, a report will be requested from the originating 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 with food complaints. The wishes of the complainant as to whether to proceed to prosecution will be respected, unless it is felt to be in the public interest to proceed independently.

Food Hygiene Regulations

(E U Regulations 852/2004)

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.

Formal Cautions

(Home Office Circular 18/1994 and LACOTS circular FS 7 94 2)

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 business operator ceased that occupation;
- The defendant would be unable to pay a fine, costs or compensation.

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

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

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

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

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

Review of Policy

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

Appendices

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

Annexe 2: Definitions

FLCOP Para 4.1.2.3

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

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

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

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

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

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

FLCOP Para 4.1.1

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

FLCOP Para 4.1.2

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

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

FLCOP Para 4.1.2

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

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

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

FLCOP 4.1.3.1

Full Inspection: This is a check on compliance with legal requirement in accordance with elements set out in section 4.2.2 of the Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements.

Partial Inspection: An inspection that covers only certain elements of the inspection as laid down in Section 4.2.2 of the Code.

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

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

The audit may include one or more of the following elements (FLCOP 4.1.3.1):

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

The reason for this approach will be documented on the M3 data base in the agreed format. The scope of the audit will be specified in the inspection report provided to the food business operator.

FLCOP 4.1.5.2.2

Broadly compliant is defined as *neither an establishment that has an intervention rating score of nor more than 10 points under each of the following three parts of Annexe 5:*

- Part 2 Level of (current) compliance – Hygiene
 Level of (current) compliance – Structure*
- Part 3 Confidence in Management*

Annexe 3: Organisation Chart: Public Protection Team

