

Enforcement policy equality analysis

The aim of this policy is to set out the principles, approach and considerations to be applied by council officers and decision makers in reaching an enforcement decision. The attached decision example provides an example of how the policy is tailored to specific circumstances of any case.

Lead officer: Lyn Collins

Stakeholders: businesses, members of the public, Health and Safety Executive, government offices, departments and authorities, service trade bodies, car users, park home owners, tenants, housing associations, public health.

Equality analysis is a valuable tool to help embed equality into everything we do

While process is important, equality analysis is essentially about outcomes

Lack of evidence of discrimination is not evidence of a lack of discrimination

It is not acceptable to say that a policy is applied uniformly to all groups and is therefore fair and equal. Applying a policy or procedure consistently may result in differential outcomes for different groups.

For each of the areas below, an assessment needs to be made on whether the policy has a positive, negative or neutral impact, and brief details of why this decision was made and notes of any mitigation should be included. Where the impact is negative, this needs to be given a high, medium or low assessment. It is important to rate the impact of the policy based on the current situation (i.e. disregarding any actions planned to be carried out in future).

High impact – a significant potential impact, risk of exposure, history of complaints, no mitigating measures in place etc.

Medium impact – some potential impact exists, some mitigating measures are in place, poor evidence

Low impact – almost no relevancy to the process, e.g. an area that is very much legislation led and where the Council has very little discretion

	Neutral	Positive	Negative
Target group / area			
Race and ethnicity (including Gypsies and Travellers; migrant workers, asylum seekers etc.)	Specifically consulted traveller community and their representatives however received no feedback.	Investigations in some parts of the in scope services experience regular interaction with Gypsy and Traveller groups. The policy allows for tailored information to specific groups depending, for example, on culture, language and literacy. Where investigations involve this group, officers use verbal investigation techniques to prevent exclusion, such as taped interview and interview under caution as literacy may be an issue. All enforcement decisions factor in equality and human rights principles. See attached decision example. Access to translation and interpreting services exist across all council services.	
Disability (as defined by the Equality Act - a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities)		The policy allows for tailored information to specific groups depending on disability. Interview under caution approach supports groups who may struggle with written English (such as people with dyslexia). Officers will routinely visit customers at their home where disability prevents access. All enforcement decisions factor in equality and human rights principles. See attached decision example appendix 1. Enforcement of disabled parking abuses positively protects some disabled groups. Access to translation and interpreting services and web based accessibility tools exist across all council services and accessibility is considered at all buildings.	
Gender	No impact identified		
Gender reassignment	No impact identified		
Religion and belief		All processes and decisions factor in equality and human rights principles. See attached decision example appendix 1	

Sexual orientation (including heterosexual, lesbian, gay, bisexual)		All decisions factor in equality and human rights principles. See attached decision example appendix 1	
Age (children and young people aged 0 – 24, adults aged 25 – 50, younger older people aged 51 – 75/80; older older people 81+. The age categories are for illustration only as overriding consideration should be given to needs)	The policy focuses on the issue of Fixed Penalty Notices to 10 – 17 year olds subject to national guidance. Consultation has focused particularly on this age group to obtain an objective view.	Feedback from the consultation especially from younger age groups supports the value of serving notices on 10-17 year olds subject to guidance and this is viewed positively. To align notices with the police and protect any notice recipients against a positive impact a protocol has been developed to control any negative impact. See attached appendix 2 & 3	
Rural communities	No specific impact identified		
Areas of deprivation	No specific impact identified		
Human rights		All processes and decisions factor in equality and human rights principles. See attached decision example appendix 1	
Health and wellbeing (consider both the wider determinants of health such as education, housing, employment, environment, crime and transport, as well as the possible impacts on lifestyles and the effect there may be on health and care services)	The enforcement policy's focus is to deliver a safe, fair and healthy trading and wider environment. Whilst there may be perceived negative individual impacts as a result of a specific enforcement intervention the wider community need is being served.		
Procurement/partnership (if project due to be carried out by		Any contractor would need to factor in equality considerations at the first point of contact and	


contractors/partners etc, identify steps taken to ensure equality compliance)		within the manner of services delivery to capture any disability / literacy issues which influence the mode of service delivery.	
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Evidence:

- Appendix 1 - example enforcement decision showing equality and diversity and human rights considerations at the point of decision.
- Copy of consultation feedback and report to Corporate Scrutiny on 23 April 2014 showing support of community including youths to the issue of fixed penalty notices to 10 to 17 year olds.
- Equality analysis for the Enforcement Policy consultation process.

Action plan:

Actions required	Key activity	Priority	Outcomes required	Officer responsible	Review date
Provide an officer resource to support the policy as an appendix.	Make all officers aware of <ul style="list-style-type: none"> • the Gypsy and Traveller Liaison Officer support and contact details. • Gypsy and Traveller drop in also exists on Tuesdays 9.30 to 1.30 in Ellesmere Port council offices to provide assistance to the community. 	Low	Improved engagement with Gypsy and Traveller community.	Lyn Collins	31 July 2014
Robust Protections in place for the issue of FPN's to under 18s	Develop a protocol for the issue of notices to under 18s to meet national guidance and train staff in its use and application.	High	All staff aware of and using the developed and signed off protocol and effective systems applied and reviewed.	MN	31 July 2014

Sign off	
Lead officer:	Lyn Collins supported by Helen Stott, Dawn Taylor and Ron Davies, Youth Support Worker (Youth Parliament), review team representatives of all in scope services – Gareth Jones, John Adcock, Amanda Shaw, Paul Blackburn, Robert Charnley, Sue Fernandez, John Hickey, Richard Jones, David Lennon, Jane Makin, Stephanie Massey, Ewan McHenry, Margaret Morris, Shamen Naidu, Michelle Nicholson, Ken Prior, Andrew Rees, Rachel Rens, Nicki Rose, Garry Shields, Stephen Bailey, Helen Stott, Dawn Taylor, Susan Taylor.
Approved by Head of Service: 	
Moderation and/or Scrutiny - Approved at Directorate Equality Group 9 June 2014 subject to: Additions regarding translation and disability and customer access visits, attachment of consultation feedback report reference; development of Fixed Penalty Notice protocol to include liaison with Youth Offending Team as part of the process to deliver the best youth intervention and avoid an inappropriate sanction.	
Date: 27 June 2014	
Date analysis to be reviewed based on rating (high impact – review in one year, medium impact - review in two years, low impact in three years)	Low impact, three year review

Please forward the completed Equality Analysis to the Equality and Diversity Managers for publishing on the Council's website

Appendix 1

Recommendation for Legal Proceedings

Report No: 13/00757/FOOD

Defendant: [REDACTED]

Trading status or occupation: [REDACTED]

Offence: As indicated in the inspection report

1. Placing unsafe food on the market ie sale of undercooked chicken mini fillet as part of a children's meal. Regulation 178/2002 and Regulation 4(b) General Food Regulations 2004
2. Failure to implement procedures based on HACCP principles laid down in Article 5(1) of Regulation 852/2004 – Regulation 17(1) Food Hygiene (England) Regulations 2006

Last date for laying information: 1. 01.02.2014 2. 3.2.14

Date of offence: 1. 02.02.13; 2 between 18.01.13and 09.03.13

Summary: See case summary on the investigation report.

Previous convictions: [REDACTED]
[REDACTED]

Potential statutory or other defences: No apparently justifiable due diligence defence,

Any legal problems or evidential problems anticipated:

1. It is now noted that time is pressing to bring this case to a timely conclusion, the main reason for this is the undue delay experienced in trying to arrange a convenient PACE interview date as well as an extended period of communication between ourselves and the authorities legal team. This has been compounded by QHLtd claiming non-receipt of some correspondence.
2. Email regarding the food complaint was received from complainant on Saturday 2nd Feb 2013. Picked up by Leanne Needham in Team on Monday 4th Feb 2013 and she spoke with complainant 5th Feb 2013. Food complaint was brought to Council offices Monday 11th Feb

2013. This week delay may be seen as a problem – food complaint was kept frozen during this time. It was the earliest opportunity complainant had to bring the food to the council offices. The validity and lab testing was unaffected by the storage of the product in a freezer.

- [REDACTED]
4. [REDACTED] The management systems as explained should've been sufficient to prevent this consequently this presents no reasonable defence.
5. The analysts report records the sample as being Analyst EPW0330 not the EPN0330 however the sample references tally. This appears to be a lab error.
6. All paperwork received by the IO was in response to paperwork making the Caution clear therefore is permissible evidence.
- [REDACTED]
8. The company have taken some remedial action around staffing standards but records obtained some time after the offence date showed continued errors against the company's food safety management system.

Consideration of Council's Enforcement Policy: The enforcement policy principles of CWAC have been satisfied and explained to the offender. Action is consistent with the priorities of the council. In that:

- [REDACTED] delivery of a healthy, fair and safe trading environment and thriving economy.
- The Council is committed to improving the health and well being of its residents and this action supports improvement of food safety standards.
- The risk of harm to the public, or a child in this case as a result of the persistent failures at the premises to manage in line with its food safety management systems are potentially significant. The on site training and management is so confusing and conflicting and does not protect food safety.
- The nature of the offence is one where there should be a would be a normal expectation of prosecution.

- The gravity of the offence, taken together with the general record and approach of the offender justifies it - the service have a history of complaint regarding staff hygiene and cleanliness, attributable to this site, more than other comparable sites.

Consideration of the Code for Crown Prosecutors: Evidence proves the offence, and a reasonable grounds of conviction exists,

Action is in the public interest as;

- The premise has a reasonable history of food safety compliance. However has shown a reduction in hygiene standard more recently. It is currently rated 3 in the Food Hygiene Rating Scheme, was previously a 4. Reasons for the scores during past inspections have been poor hand washing, cleaning issues as well as problems/ errors with record keeping on site.
- A prosecution would have a significant positive impact on maintaining community confidence and ensuring compliance with Food Safety Legislation.

Consideration of Regulators' Compliance Code: Included within the principles of the Council's enforcement policy. The action proposed is a proportionate response to a regulatory breach.

Consideration of any other relevant guidelines: RIPA not relevant

Any human rights considerations: None save the defendant's Article 6 right to a fair trial. Whilst it would clearly have been preferable to have instigated action before this stage this should not hamstring the intended proceedings as any alleged abuse of process argument will be rebutted as the Council consider that unnecessary delays have been introduced by the defendants legal representative.

Equality Considerations: No language or other equality issues were identified or needed as part of this investigation.

Any known aggravating or mitigating factors: Following the allegation in [REDACTED]. The written report details procedures that should have been followed to prevent an occurrence like this, as well as their findings which included the identification that monitoring records had been falsified and that the [REDACTED] showed that company procedures were not being followed. Members of staff have been held to account and dismissed following this enquiry.

Recommendation: This is an on balance decision to prosecute [REDACTED] on the market food that was unsafe – namely an undercooked chicken mini fillet burger and failure to implement procedures based on HACCP principles with regards record keeping and the monitoring of the defrosting of raw chicken.

Rationale for the decision:

- It is considered that any lesser sanction such as Simple Caution will not send a sufficient incentive to the FBO to improve standards.
- Sufficient evidence.
- Consistent with the Council’s aims and objectives (see above) and in line with the Councils enforcement policy.
- It is in the public interest to ensure that food business operators have robust arrangements in place to comply with the legislation and produce safe food for the residents of CWaC.

Signed.....

Lyn Collins (Team Leader CPI)

January 2014

Investigating Officer:

Leanne Needham

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