

**Open Report on behalf of Andrew Crookham,
Executive Director of Resources**

Report to:	Public Protection and Communities Scrutiny Committee
Date:	16 March 2021
Subject:	Food Safety Enforcement within Trading Standards

Summary:

This report provides a review of the delivery of Food Safety enforcement within the Trading Standards Service in Lincolnshire.

Actions Required:

Members of the Committee are invited to consider and comment on the contents of this report and the delivery of Food Safety and Standards work within the Trading Standards Service.

1. Background

- 1.1 County councils, metropolitan boroughs and unitary authorities in England have a statutory duty to enforce a range of legislation relating to Food Safety and Standards. Powers are provided under the Food Safety Act 1990 and European Union (Withdrawal) Act 2018.

The purpose of food standards regulation is to protect the public's health and interest in relation to food. The Food Standards Agency (FSA) is responsible for food safety and food hygiene throughout the UK. All local authorities have statutory duties to enforce legislation relating to food. In a two-tier authority there is a clear division of responsibilities with District Councils responsible for maintaining a database of registered food businesses, enforcing food hygiene standards and investigating cases relating to microbiological quality and contamination by micro-organisms or foreign matter and County Councils enforcing requirements relating to composition, presentation, chemical contamination, adulteration and labelling .

In Lincolnshire responsibility lies with Trading Standards. This work is funded by the Revenue Support Grant.

- 1.2** Lincolnshire County Council has signed up to the Framework [Agreement on Official Feed and Food Controls by Local Authorities](#) and the [Food Law Code of Practice](#) which were developed by the FSA in consultation with local authorities, the Local Government Association and professional bodies. A new version of the code is due to be published this year.

The framework agreement is approved by the FSA Enforcement Liaison Group. It sets out what the FSA expects from local authorities in their delivery of official controls on food law. It sets out the planning and delivery requirements based on the existing statutory Codes of Practice.

- 1.3** While the scope of the Framework is focused on work under the Food Safety Act and the European Union (Withdrawal) Act these responsibilities link to other strategic priorities of the Trading Standards Service including supporting the local economy. The Food and Farming industry is estimated to contribute £1 billion to Lincolnshire's economy. In terms of both value and employment it represents the third largest sector in the County where economic reliance on food and farming production and manufacture is four times higher than the national average (Source: [Lincolnshire Research Observatory](#)).

2. Food Safety and Standards Enforcement

The Trading Standards Service undertakes annual service planning based on the principles set out in the Framework Agreement. In April of each year, a plan of Food Standards enforcement activity is drawn up having regard to the requirements set out in the Framework agreement and Food Law Code of Practice. Consideration is given to the following:

2.1 Interventions at Food Establishments

The FSA has produced a Food Standards Scoring System that is incorporated into the Food Law Code of Practice. Appendix A shows the full scoring system. The scoring system is based upon a scale, from 0-180, and considers several variables. These include the complexity of legislation which must be complied with, the potential adverse effects on consumers and businesses, and an authority's confidence in that business.

Trading Standards maintain a database of food businesses that is regularly updated with data from the District Council Environmental Health teams. Each premise is risk assessed based on activity and compliance levels, and provided with a risk rating that is calculated by combining the scores from the scoring system. This identifies the high-risk premises and determines the intervention frequency.

The table below shows the score banding and how it correlates to the intervention frequency:

Category	Score	Minimum Intervention Frequency
A	101 - 180	At least every 12 months
B	46 - 100	At least every 24 months
C	0 - 45	Alternative enforcement strategy or intervention every five years

Based on these FSA recommendations Lincolnshire has 11 businesses required an annual intervention, 626 requiring a bi-annual intervention and 4906 that should be subject to intervention every 5 years or via an alternative enforcement strategy.

Interventions that are within the definition of Official Controls include: inspections; monitoring; surveillance; verification; audit; and sampling (where analysis/examination is required it must be carried out by an Official Laboratory).

To be fully compliant with the requirements of the code of practice and framework agreement Trading Standards would need to complete a minimum of 324 interventions for businesses in categories A & B with an additional 981 businesses in category C being subject to either an intervention or alternative enforcement strategy.

This level of activity is far beyond what the Trading Standards Service can deliver. The Service develops annual inspection and sampling plans based on the risk principles and taking into account local knowledge, complaints and referrals and past history.

When Trading Standards draw up the annual inspection plan, consideration is given to the requirements laid down in the [Regulators Code](#) and the Service's Compliance and Enforcement Policy where appropriate.

2.2 Food Complaints

All complaints received by the Trading Standards Service are reviewed on receipt by the service's intelligence team and assessed in line with service objectives and the National Trading Standards Intelligence Operating Model.

Following documented duty officer guidance, complaints are noted for intelligence only, passed to partner agencies or allocated for further investigation. Only complaints which are assessed as being 'serious' in terms of Food Safety are allocated for further investigation.

Complaints which are recorded for intelligence purposes only are reviewed regularly and used to identify any emerging issues or potential threats.

2.3 Primary Authority Scheme

The Primary Authority Scheme enables businesses to form a legal partnership with one local authority, which then provides assured and tailored advice on compliance that other regulators must respect.

The Trading Standards Service has entered into a number of partnerships with local businesses including food manufacturers and retailers. The business benefits from:

- having access to relevant, authoritative tailored advice
- gaining recognition of robust compliance arrangements
- drawing on an established and effective means of meeting business regulations
- being more confident they are protecting themselves and their customers

The Trading Standards Service benefits from:

- having greater clarity over where responsibility lies
- supporting local economic growth through stronger business relationships
- improving the consistency of local regulation and target resources on high-risk areas
- developing their staff expertise via partnerships
- protecting front line services through cost recovery

Primary Authority Partnerships are chargeable services, on a cost recovery basis only, with businesses entering a rolling 12 month contract for an agreed number of hours support.

2.4 Advice to Business

Trading Standards endeavours to support economic growth by helping businesses comply with their legal responsibilities. Basic advice and guidance is available to all food business operators free of charge time limited to one hour.

The Service offers more detailed pay as you go advice to businesses seeking guidance for technical or complex enquiries, training or auditing. This work is charged for on a cost recovery basis and offered to businesses that want advice but do not want to enter into a formal Primary Authority partnership.

2.5 Food Sampling

The Trading Standards Service produces an annual food sampling plan. The type of samples to be included is based on risk and intelligence. The intelligence includes local data from officer experience, complaints and the results of previous sampling programmes, the FSA strategic assessment and information from the Public Analyst appointed by the Authority. The budget for sampling is £16,000 and includes samples arising from complaints in addition to the routine sampling plan. This allows the service to submit around 100 samples per year.

2.6 Food Safety Incidents

A “food incident” is defined as any event where, based on the information available, there are concerns about actual or suspected threats to the safety, quality or integrity of food that could require intervention to protect consumers' interests.

Quality should be considered to include food standards, authenticity and composition. Food Incidents are split in to 3 separate categories, which may overlap:

Food Hazards - a food-related incident involving (or suspected to involve) a biological, chemical and/or physical agent in food, or the condition of any food with the potential to cause an adverse effect on the health or safety of consumers.

Food fraud and food crime – Food crime is an umbrella term used to define the remit of the FSA’s National Food Crime Unit (NFCU). It is not a legal term. In this context food crime means **serious dishonesty which has a detrimental impact on the safety or the authenticity of food, drink or animal feed. Food crime can be thought of as serious food fraud.**

Non-Hazardous Incidents which may impact on the food supply chain. These may include issues of quality, provenance, authenticity, composition and labelling.

Food hazards are categorised according to the following criteria:

- **Localised food hazard** – one in which food is not distributed beyond the boundaries of the competent authority and is not deemed to be a serious localised food hazard; should be dealt with locally by the competent authority, in conjunction with other relevant agencies.
- **Serious localised food hazard** – one in which food is not distributed beyond the boundaries of the competent authority but which involves or may involve: Allergens, E. coli O157, other Verocytotoxin-producing Escherichia coli (VTEC), Clostridium botulinum, Salmonella typhii or Salmonella paratyphi, or which the competent

authority considers significant because of, for example, the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident; should be notified by the Competent Authority to FSA and other relevant agencies at the earliest opportunity and by the quickest available means and confirmed in writing on the incident report form.

- **Non-localised food hazard** – one in which food is distributed beyond the boundaries of the Competent Authority; should be notified by the Competent Authority to FSA and other relevant agencies at the earliest opportunity and by the quickest available means and confirmed in writing on the incident report form.

Once a food hazard has been identified the Trading Standards Service must immediately carry out an assessment to determine the likely scale, extent and severity of the risk to public health or safety. Responsibility for action at local level remains with trading Standards unless and until written notification is received from the FSA.

Food incidents that are contraventions in law but not food hazards are normally resolved by Trading Standards and the food business operator. Significant incidents should be reported to the FSA immediately.

The Service regularly publishes Food Safety Alerts issued by the FSA through their Social Media accounts.

2.7 Liaison with Other Organisations

In accordance with the Regulators Code and where the law allows, Trading Standards will share information about compliance and risk of food businesses with other regulatory services. The service will also respond to any reasonable communication from another regulator requesting information or assistance. Reasons to request information or assistance may include:

- Referrals of cross boundary enforcement issues or concerns;
- Referrals of food complaints reported to the regulator in error; or
- Information to help coordinate enforcement activities.

Any matter considered to be of a serious nature is referred to the FSA.

Liaison is particularly important working in a two tier authority. District Councils receive and process food business registrations and share the information with Trading Standards. The code also requires Lead food officers of District and County Councils to ensure that effective day-to-day liaison arrangements are in place and working effectively.

There is a clear division of responsibilities between County and District Councils. It is not always clear to the public who is responsible for what and an effective referral mechanism is in place to refer complaints received in error to the appropriate service.

The Trading Standards Lead Food officer represents the authority on the Trading Standards East Midlands Food Group where matters of regional concern, best practice and enforcement consistency are reviewed. He is currently contributing to a regional task and finish group focussing on food allergens.

3. Training and Competency

3.1 There are two defined roles that deliver official controls for hygiene and standards: Lead Food Officer and Authorised Officer.

Lead Food Officers must: have a good knowledge and understanding of the nature and type of food establishments that operate in the Authority's area; understand the common hazards and risks associate with food processes and technologies in operation at these establishments; be able to apply appropriate control measures, including enforcement sanctions; apply the requirements of the Food Law Code of Practice; be involved in the assessment of other officers competency; and comply with competency requirements for Lead Officers.

Authorised Offices are officers who undertake assessment of compliance with food law and enforcement action as appropriate. An authorised officer must: have a level of knowledge, skills, experience and understanding that allows them to deliver official control interventions; have an understanding of the hazards and risks within the premises they are required to inspect; and recognise when formal measures are not appropriate and to be able to give advice appropriately.

Both posts require the Officer to hold a baseline qualification, usually the Trading Standards Qualification Framework (TSQF) including the Diploma in Consumer Affairs and Trading Standards (DCATS) with the Food Standards Service Delivery module. They must also obtain a minimum of 20 hour continuous professional development (CPD) per year, split into:

- A minimum of 10 CPD hours on relevant core food matters directly related to the delivery of official controls for which the Officer is authorised;
- 10 hours on other professional matters. This could include training needs identified by the Lead Food Officer during competency assessments/ appraisals.

There are currently 8.2 FTE frontline trading standards officers who are deemed to be competent to undertake food safety and standards. There are an additional 3.95 FTE (plus 1.81 FTE currently on secondments) that hold a recognised baseline qualification who need to complete a minimum of 30 hours CPD on relevant core food matters directly related to the delivery of official controls before their competency can be reassessed.

4. Activity and outcomes on Food Safety and Standards in 2020-2021

4.1 Food Safety and Standards work has been undertaken by Trading Standards despite restrictions on activities being introduced due to the COVID 19 pandemic. Shortly after the first lockdown was introduced the Food Standards Agency advised local authorities to refrain from undertaking inspections at food businesses unless there was an urgent need. This initial request has been reviewed and updated and is due to remain in place until the end of June 2021. A breakdown of the activity to date follows.

4.2 Interventions at Food Establishments

Instead of conducting site visits Trading Standards have taken the opportunity to complete a project to review the level of compliance in food products being sold online in Lincolnshire. To date 44 websites have been visited across a wide range of food producers and retailers, see table below. Of those 33 have been identified as non-compliant and follow up work is planned. Initially advice will be issued in writing with site visits built into next year's inspection program where necessary.

Business Type	No Compliant	No Non-Compliant
Bakers	0	4
Butchers	1	15
CBD (Cannabidiol)	0	1
Coffee/Tea	1	0
Cheese	1	2
Chocolate/Confectionary	1	4
Distillers/Alcohol	1	2
Farm Shop/Garden Centre	0	2
Home Caterer/Meal provision	2	0
Hampers	1	0

Business Type	No Compliant	No Non-Compliant
Indian Food Provision	3	1
Jam	0	1
Market Place (website links to other food business)	0	1

4.3 Food Complaints

Trading Standards have received 82 Complaints regarding food safety or standards this financial year to date. All were reviewed by the Duty officer on receipt with those relating to foreign bodies or microbiological contamination being referred to the local District Council.

The majority of complaints falling within the remit of Trading Standards related to labelling including allergens (21) and food on sale after the marked expiry date (14). All complaints relating to allergens are referred to an authorised food officer to follow up due to potential safety concerns. If the manufacturer or retailer is out of County then the local Trading Standards service is notified.

Those relating to food past a use-by date are also referred. Food sold past the best-before date does not present a health risk and these form part of the wider intelligence utilised by the service when inspection and sampling plans are being produced.

4.4 Primary Authority

Trading Standards has entered into 4 Primary Authority partnerships with the following companies:

Lincolnshire Co-operative Society entered into a Primary Authority partnership with Trading Standards in October 2015. The partnership covers nearly 90 food stores in Lincolnshire and a few stores over the border in Newark & Retford. The partnership was extended to include Gadsby's of Southwell Ltd (Bakery) in October 2016.

Gousto who supply subscribers with recipe kit boxes which include ready-measured, fresh ingredients and easily followed recipes. The business pushes a sustainability ethos, aiming to reduce food waste, commitment to animal welfare, and seeks constant improvement with environmentally friendly packaging. Gousto's main packing plant is in Spalding

Bakkavor, are an International food manufacturer with a main base in Spalding. They are a leading provider of fresh prepared food in the UK. They produce meals, salads, desserts and bread & pizza. The products they make are prepared ready to eat, ready to reheat or ready to cook. Their customers include all of the large supermarkets, Tesco, Sainsbury's, M&S, Waitrose, Aldi, Coop, Morrison's, Asda, Ocado, Lidl.

Minster Fine Foods in Bourne represent a selected number of Continental Food Manufacturers responsible for the sales and marketing of their products in the UK. They deal with manufacturers across Europe, providing products to caterers across the UK.

The partnerships with Gousto and Bakkavor were established jointly with South Holland District Council who advise on food hygiene matters.

4.5 Advice to Business

Trading Standards has received 104 requests for business advice regarding food manufacture and sales this financial year. The majority of requests are from new businesses who receive a full guidance pack regarding their legal obligations. They are offered the opportunity to obtain more detailed specific advice on a cost recovery basis if they have technical questions.

The remaining enquiries are asking for specific advice about the labelling or composition of a food product. Information about the standards for meat products are common and this year we have also received requests about foods containing Cannabidiol that are classed as novel foods and will be subjected to greater regulation coming into force later this year.

4.6 Food Sampling

The food sampling budget for 2020/21 was set at £16,000. This resulted in a plan to procure 81 samples with capacity to take an additional 21 samples in response to complaints or what officer's found on inspection. To date 62 of the planned samples have been taken and we expect the remaining samples to be taken before the end of the financial year.

The majority of the sampling plan is focussed on allergens. The Service has focussed on the presence of peanuts in takeaway meals with 44 samples to be taken. This is based upon the results of previous sampling plans that have resulted in a number of adverse results.

The plan also includes samples taken ensure that composition and labelling of foods is accurate.

Only 5 complaint / officer initiative samples have been submitted to date. This is predominantly a result of Officers not undertaking inspection work and identifying issues in the field.

4.7 Food Safety Incidents

Trading Standards has responded to 3 food incidents reported to us by the FSA in recent months:

- One related to a report alleging eggs were being kept on trailers past their durability date. The responding officer was able to speak to the DEFRA Egg Inspector who was aware of the eggs. They had tested positive for salmonella and he was due to oversee their destruction.
- The Service was advised of an adverse sample of dairy free dark chocolate procured in the North Wets of the Country that was found to contain casein, a milk protein. The product was manufactured in the County. A sample was taken locally that also failed. The chocolate supplied was produced in Belgium and the supplier had recently amended their labelling to include a warning that the product may contain milk. This information had not been passed onto the company in Lincolnshire who obtained the chocolate from a supplier in the UK.
- RSPCA Assured had approached the FSA to inform them that an egg producer was selling eggs as farm assured when in fact were not. Although this was not a food safety issue it could give rise to other offences. Trading Standards followed this up with the Company and RSPCA Assured and confirmed that audit results of had not been passed onto the Company who were unaware that the accreditation had been removed.

In addition to the food incidents arising in Lincolnshire businesses Trading Standards has also promoted 150 food recall notices issued by the FSA through their social media platforms. These notices are issued in response to a variety of problems including the presence of undeclared allergens, microbiological contamination and the presence of foreign bodies.

4.8 Liaison with Other Organisations

Liaison with the District Council Environmental Health teams has continued throughout the pandemic and joint inspections have taken place where necessary. Examples of Joint working undertaken include:

- A visit to a new venture where a porta cabin had been converted into a kitchen where Indian style meals were being prepared for delivery to customers in surrounding villages who place orders through a website. Trading Standards attended to give advice about the website, the recipe matrix and safe allergen safety including precautionary statements. Store room ingredients were checked against menu descriptions and found to be fully compliant. The business was awarded a 5 star hygiene rating.

- Environmental Health visited a small specialist supermarket and discovered issues with use by dates that had expired unfit food, lack of traceability and suspected illegally imported food. The premises were also selling ready meals with no labelling. The officer requested a joint visit with the Trading Standards. The subsequent visit showed a marked improvement an extensive check of the chilled food showed there were no use by dates expired. They had stopped selling the ready meals and traceability was demonstrated by invoices that weren't available to the officer during their first inspection.

The Service completed the statutory return to the FSA for the work undertaken in 2019/20.

The Lead officer for Food represents Lincolnshire Trading Standards on a regional task and finish group working on issues surrounding food allergens.

4.9 Training and Competency

Trading Standards have 10 F.T.E frontline Trading Standards Officers who hold the baseline food related qualifications set out in the code of practice. Not all staff holding a qualification are currently undertaking food work as they are fulfilling other duties. Of those 10 F.T.E. 2.6 F.T.E. are not deemed competent to act as an authorised officer as they have not been able to maintain their CPD requirements in their current role.

In Lincolnshire Trading Standards Officers are either deemed to be competent generally to undertake all official controls or competent in one of 5 areas below:

- Inspection of Food Establishments
- Use of Enforcement Sanctions
- Sampling
- Import and Export controls
- Reactive investigations

The Service has 3 F.T.E. who are competent in all areas. An additional 2.6 F.T.E are considered competent to undertake inspections, use enforcement sanctions and undertake reactive investigations, with 3.6 F.T.E. competent to take formal food samples.

The Service has an annual training budget of £15,000 for all training needs. This year almost £8,000 has been committed to food training to assist officers in meeting their CPD requirements and towards attaining the food module. 7.4 F.T.E. officers have submitted CPD training records for 2020 and we expect that they will retain their competency status.

Looking forward the Service has 4 officers currently undertaking stage 1 of the Trading Standards Qualification Framework and the Regulatory Compliance Officer (RCO) Apprenticeship. They are due to take exams in May 2021 and if successful they will begin stage 2 in September 2021. The Service will review current competency levels, consider future needs of the service and succession planning and will support a number of those officers to complete the food module and attain the baseline qualification.

In December 2020 the Service lost a full fully competent food officer who left the service to join the Food Standards Agency. We were unable to attract any applications from qualified staff and have appointed an unqualified and inexperienced candidate who will be commencing the RCO apprenticeship shortly after joining the service. With a national shortage of qualified officers, increasing demand from national regulators and competition between local authorities recruitment is likely to remain difficult and Trading Standards will have to ensure that measures are in place to recruit and train our own replacements. Unfortunately it takes 5 years for a new recruit to complete their training and gain experience under the current Trading Standards Qualification Framework.

4.10 Conclusion

The Framework Agreement on Official Feed and Food Controls and the Food Law Code of Practice set out clear expectations for the work that the FSA expect local authorities to undertake.

Whilst Trading Standards broadly comply with the spirit of the code they cannot commit the level of resources to meet the level of interventions at food businesses as set out. However by focusing those resources on interventions at the businesses that are at greater risk of non-compliance they are operating in the best interests of Lincolnshire's residents.

The on-line inspections of food business websites carried out in place of site visits due to the COVID 19 pandemic was successful in identifying a number of non-compliant businesses and a worthwhile alternative exercise.

The programmed food sampling is due to be completed. Officer initiative samples are lower than expected due to restriction on inspections due to the pandemic.

The Service has good relationships with the District Council Environmental Health Teams and joint working is undertaken where necessary. This approach should be encouraged and supported where possible.

Increasing the number of Officers who are competent generally should be a target for the service. This will allow the Service to increase the number of interventions that can be carried out and expand their business advice and Primary Authority capability.

5. Consultation

a) Have Risks and Impact Analysis been carried out?

Not Applicable

b) Risks and Impact Analysis

Not Applicable

6. Background Papers

6.1 No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

6.2 This report was written by Mark Keal, who can be contacted on 07500074526 or Mark.Keal@lincolnshire.gov.uk

A. Risk to consumers and/or other businesses

Score	Guidance on the scoring system
30	Manufacturers of foods for specific groups; Manufacturers, importers or packers of high value foods, or high volume foods where there is an incentive for fraudulent adulteration; Manufacturers of foods that contain a wide range of additives; Businesses that make nutrition, nutrient content, or health claims on pre-packed food labels or in advertising. Food businesses including manufacturers and importers that handle imported foods or food ingredients which may be subject to increased risk of chemical contamination
20	Manufacturers or packers of foods that are subject to statutory compositional standards.
10	Local businesses that use in-store produced labels, window displays, chalk boards, menus etc., e.g. butchers, bakers, health food shops, restaurants, takeaways, caterers supplying more than 10 meals per day, and businesses using claims for marketing advantage.
0	Caterers supplying not more than 10 meals per day, e.g. bed and breakfast; Any business not included in the categories above.

Score:

B. Extent to which the activities of the business affect any hazard

Score	Guidance on the scoring system
30	Food manufacturers, processors, importers handling a wide range of goods.
20	Local businesses that label loose goods on display, and/or undertake pre-packing for direct sale.
10	Non-manufacturing retail/catering selling only from their own establishment.
0	Any business not included in the categories above.

Score:

C. Ease of compliance

Score	Guidance on the scoring system
30	Manufacturer, packer or importer of a wide range of products.
20	Manufacturer, packer or importer of a limited range of products.
10	Retailers who apply descriptions to food such as butchers, bakers and delicatessens; Caterers with complex menus.
0	Any business not included in the categories above.

Score:

D. Consumers at Risk

Score	Guidance on the scoring system
20	Manufacturers, producers and packers of food that is distributed nationally or internationally.
10	Businesses whose trade extends beyond the local area, e.g. regional supermarket/hypermarket; small-scale local manufacturer.
5	Businesses supplying the local area, e.g. high street or corner shop; local supermarket, local restaurant.
0	Businesses supplying less than 30 consumers each day. Any other business not included in the categories above.

Score:

Part 3: Confidence in management/control systems

Score	Guidance on the scoring system
30	Little or no technical knowledge. Little or no appreciation of hazards or quality control. No food standards management system. Disproportionate number of justifiable complaints since the last inspection. Poor track record of compliance.
20	Staff have a basic understanding of relevant food law. May not have a food standards management system. Significantly varying record of compliance.
10	Score of 10 or better in Part 2. Staff demonstrates awareness of relevant food law and necessary controls. Appropriate food standards management system. Smaller businesses may have minimal documented system. Satisfactory record of compliance.
0	Technical advice available. Subject to internal audit/checks. Good food standards management system, documented records of critical checks and supplier checks, which may be subject to third party audit. Evidence of compliance with documented management system with few non-conformities. No justifiable complaints since the last inspection. Excellent record of compliance.

Score:

Category	Score	Minimum intervention frequency
A	101 to 180	At least every 12 months
B	46 to 100	At least every 24 months
C	0 to 45	Alternative enforcement strategy or intervention every five years