

**BRENTWOOD BOROUGH COUNCIL**  
**BOROUGH HEALTH, SAFETY AND LOCALISM**

**STATUTORY FOOD SERVICE PLAN FOR FOOD  
LAW ENFORCEMENT  
2015/16**

Drawn up in accordance with the Food Standards Agency's  
Framework Agreement (July 2004)

Approved by the Community and Health Committee - 22<sup>nd</sup> June  
2015

**CONTENTS**

	<b>Page</b>
<b>INTRODUCTION</b>	<b>4</b>
<b>SECTION 1: FOOD CONTROL SERVICE AIMS AND OBJECTIVES</b>	<b>7</b>
1.1 Aims and Objectives	7
1.2 Links to Corporate Objectives and Plans	8
<b>SECTION 2: BACKGROUND</b>	<b>9</b>
2.1 Organisational Structure	9
2.2 Scope of the Food Safety Service	10
2.3 Demands on the Food Service	11
2.4 Enforcement Policy	14
<b>SECTION 3: SERVICE DELIVERY</b>	<b>14</b>
3.1 Food Premises Interventions Programme ('Primary' and 'Secondary' inspections)	14
3.2 Carry Over	16
3.3 Inspections of imported food	16
3.4 Inspection revisits and revisits for the purpose of rescoring	16
3.5 Appeals against food hygiene scores	16
3.6 Non Programmed Inspections	16
3.7 Food and Food Premises Complaints	17
3.8 Primary Authority Principle	17
3.9 Advice to Businesses	17
3.10 Food Sampling	18
3.11 Outbreak Control and Infectious Disease Control	18
3.12 Food Safety Incidents	19
3.13 Food Standards work	19
3.14 Liaison with other organisations	19
3.15 Specialist Food Safety Information	20
3.16 Food Safety Promotion	20
3.17 Food Hygiene Training	20
3.18 Conflicts of Interest	20
3.19 Health and Safety inspections and interventions within food premises	21
<b>SECTION 4: RESOURCES</b>	<b>21</b>
4.1 Financial Allocation	21
4.2 Staffing Allocation	22
4.3 Staff Development Plan	22
<b>SECTION 5: QUALITY ASSESSMENT</b>	<b>23</b>
5.1 Quality Systems	23
<b>SECTION 6: REVIEW</b>	<b>24</b>
6.1 Review against the Service Plan	24
6.2 Identification of any variation from the Service Plan	24
6.3 Areas of Improvement	24
<b>SECTION 7: TARGETS/STANDARDS</b>	<b>24</b>
7.1 Targets and standards applied	24
<b>SECTION 8: PERFORMANCE INDICATORS</b>	<b>25</b>
8.1 Performance indicators applied	25

<b>Appendix 1</b>	Service Structure of the Council	26
<b>Appendix 2</b>	Structure diagram of Environmental Health	27
<b>Appendix 3</b>	Environmental Health Enforcement Policy	28

DRAFT

## INTRODUCTION

This is Brentwood Borough Council's 2015/16 Food Service Plan dedicated to the food safety enforcement function. It covers all the elements of food safety and hygiene for which the authority has statutory enforcement responsibility. The Service Plan also covers objectives relating to non-enforcement activity including food hygiene education/promotion which the Council is also required to undertake in accordance with Government guidance.

The Food Service Plan is an expression of the authority's commitment to the development of the Food Service and is a requirement of the Food Standards Agency as the body that monitors and audits local authorities' activities on food enforcement.

The Food Standards Agency's (FSA's) Framework Agreement issued in September 2000 and subsequently amended (amendment number 5 of 2009) provides service planning guidance and promotes the importance of service planning in ensuring that national priorities and standards are addressed and delivered locally.

Brentwood Borough Council's Food Service Plan has been drawn up in accordance with the guidance in the Framework Agreement and follows the Service Plan template. This is to enable the FSA to assess the Councils' delivery of its service and to allow local authorities to compare service plans written in the common format for any fundamental performance reviews under the local government Best Value agenda. This Service Plan also takes into account the updated Food Law Code of Practice (England) Guidance issued in April 2015.

The FSA in its Framework Agreement requires that the Food Service Plan be submitted to members for approval to ensure local transparency and accountability.

In 2015 the consumer watch-dog magazine '*Which*' looked once again at local authority performance with regard to inspection frequencies; completing due inspections within target dates, and the level of legal compliance within food businesses by District/Borough and City Councils. The results show that when considering these aspects and for the second year running, Brentwood has scored the highest in Essex and second highest within the U.K as a whole. This evidence clearly demonstrates the continued commitment of this authority to food safety enforcement, its ability to work with businesses in increasing their food standards and consequent enhanced levels of protection for residents and visitors to the Borough. It also demonstrates the excellent standards and performance within Brentwood food businesses and their ability to give their customers confidence whilst strengthening the local economy.

Over ninety seven percent of food premises now meet the FSA criteria of '*broadly compliant*' within Brentwood. This score would be even higher were it not for having to take account of new businesses which feature as 'non-

compliant' until they are inspected within the established 28 day limit. All premises identified for inspection in 2014/15 received an appropriate intervention together with revisits where necessary to improve compliance.

The Authority continues to operate the food hygiene rating system in cooperation with the Food Standards Agency where inspected food premises receive a rating of between 0 and 5. The Borough has very few low rated premises (less than 1%), however, additional work is done with these businesses to encourage and help them improve their scores in accordance with the available options within the Food Safety Code of Practice. This approach has noticeably improved standards.

The Authority continues to train food handlers working mainly in the Borough. Food Hygiene Foundation Level II courses are held bi-monthly. 84 food handlers received training with over 90% of candidates passing first time. This adds further to the high standards now being witnessed within the Borough's food premises.

The Borough continues to obtain food samples for bacteriological analysis from both catering and retail establishments for testing against EU legislation. Where any have been found to be borderline or unsatisfactory then appropriate action has been taken to improve standards. Some of this work has brought about hygiene improvements in major food companies. Over 115 food samples were taken in 2014/15.

In June 2010 the authority was audited by the Food Standards Agency with regard to its assessment of Hazard Analysis Critical Control Points (HACCP) application within food businesses. This was followed up in 2011 and there are no outstanding matters. The Authority continues to apply these standards within its delivery of the food safety function.

From 2015 onwards the Council will be running the 'Tuck-In' Scheme. This scheme, run jointly with other authorities in Essex aims to encourage takeaway food businesses to pledge to reduce the amount of sugar, salt and fat and calories in their products. The scheme also seeks to reduce portion size. This also forms part of Brentwoods' Health and Wellbeing Strategy and its intention to reduce levels of obesity within the Borough.


The food safety team also deal with food complaints and complaints about food premises in relation to issues such as foreign bodies, food handling and the cleanliness of food areas.

The Service Mission statement for the whole of Borough Health, Safety and Localism is included within this service plan as well as an aspirational aim for this individual service area.

The General Service objectives are designed to reflect and contribute towards the achievement of Corporate Objectives whilst covering ongoing service activity or potential new areas of service activity. The Service recognises the

contribution of well run compliant food businesses and the success of the local economy.

In order to give a contextual framework reference is made to links with the Corporate Plan 2013-2016. This is followed by a section which outlines the authority's policy approach to various elements of the Food Service.



Ashley Culverwell  
Head of Borough Health Safety and Localism

April 2015

DRAFT

## **SECTION 1: FOOD CONTROL SERVICE AIMS AND OBJECTIVES**

### **1.1 Aims and Objectives**

1.1.1 The Food Safety Service Mission Statement is: -

***“To ensure that food and drink intended for human consumption originating from or consumed within the Borough is safe, wholesome and healthy”***

1.1.2 It seeks to pursue this through a number of key objectives which include: -

- To secure compliance with food safety law having regard to official codes of practice and Better Regulation Delivery Office (BRDO) guidance, particularly concerning the frequency of food safety interventions;
- To secure the protection of consumers from the potential dangers of suspect or contaminated food, particularly that which may result in food borne infections;
- To ensure; *‘so far as is reasonably practicable’* that food is fit for human consumption and free from extraneous matter;
- To increase the knowledge of food handlers, food managers and the general public about the principles and practice of food hygiene and food safety management;
- To increase the knowledge of food business operators in the area of food safety management thereby assisting to raise standards and enable improved food hygiene rating scores under the National Food Hygiene Rating Scheme;
- To assist in the control and prevention of the spread of food borne diseases;
- To carry out food safety interventions (*activities that are designed to monitor, support and increase food law compliance within a food establishment*) in accordance with minimum frequencies and to standards determined by the FSA;
- To respond to and investigate Food Standards Agency ‘Food Alerts for Action’ in accordance with published guidance where these impact upon food originating or traded within the Borough;
- To alert the Food Standards Agency to any situation where a contaminated food purchased or sampled within the Borough is likely to be sold elsewhere so that they may effect a food recall.

- To respond to and investigate all notified cases of food-borne disease and take effective action to control the spread of infection.
- To carry out appropriate food sampling programmes and take appropriate action on non-compliant samples;
- To respond on a risk assessed basis to and investigate complaints as requests for service in relation to food and food premises and to provide first response with a maximum of five days or sooner as appropriate;
- To ensure so far as reasonably practicable that private water supplies are monitored for their adequacy and wholesomeness by carrying out appropriate bacteriological and chemical water sampling programmes;
- To liaise with relevant water supply companies about the adequacy and wholesomeness of public water supplies.
- To take swift and proportionate enforcement action against food businesses where they present a risk to public safety.

## 1.2 Links to Corporate Objectives and Plans

1.2.1 The Brentwood Council Corporate Plan 2013-2016 sets out the Council's ambitions, priorities and key pledges to residents and businesses.. The Plan seeks to reduce the burden on well-managed businesses and this Service Plan demonstrates that food safety resources remain focused on the higher risk premises and activities. The Service will also continue to provide advice on compliance to both new and existing businesses and, to provide information via its website and taught courses enabling businesses to understand the law and its application within the Borough.

1.2.2 The authority monitors on a monthly basis the percentage of broadly compliant food premises. This is applied as a local indicator only. The results (Figure 1.0) show that since the Food Hygiene Rating Scheme was adopted by Brentwood overall standards have raised within food premises by 10% to a current figure of over 97% which is the overall target for compliance adopted by this Authority.



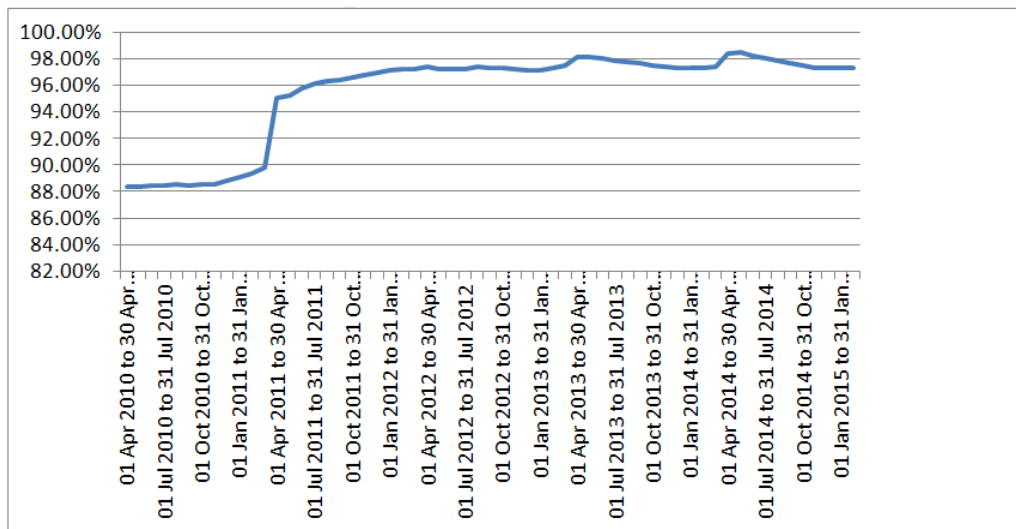


Figure 1.0 Upwards trend in 'Broad Compliance' since 2010

## SECTION 2: BACKGROUND

### 2.1 Organisational Structure

2.1.1 The Structure of the Council and for Borough Health, Safety and Localism are attached as Appendices 1 & 2. The Food and Health and Safety Team are composed of three employed posts, namely; an Environmental Health Manager, a Principal Environmental Health Officer (EHO) and a part-time District EHO. Their roles are described as follows: -

2.1.2 *Environmental Health Manager* - responsible for overseeing all work within the team including setting targets, monitoring performance, training and development. The role includes operational delivery functions and responding to all relevant stake-holders.

2.1.3 *Principal EHO* - responsible for managing the food hygiene and health and safety contracts and inspection scheme, carrying out inspections and interventions at high-risk food establishments, audits, food premises/food item complaints and investigations into food-borne illness.

2.1.4 *District EHO* (0.6FTE) - responsible for carrying out inspections and interventions at high-risk food establishments, audits, food premises/food item complaints and investigations into food-borne illness.

2.1.5 Three contracted EHO's also work for the authority as qualified officers authorised to carry out approximately 85% of the planned food safety interventions for the Borough. They carry out approximately eighty five percent of planned food safety interventions. There is also one further officer devoted to food sampling. These EHO's are remunerated according to the category of food premises they inspect and the numbers of inspections undertaken, and a fixed fee applies to each food sample.

2.1.6 Both the District EHO and the contracted EHO's carry out intervention revisits.

## 2.2 Scope of the Food Safety Service

2.2.1 The Food Safety Team will provide the following services: -

- Carrying out a programme of food hygiene interventions in accordance with the Food Safety Act 1990 Code of Practice;
- Investigating and resolving complaints about food and food hygiene premises/practices;
- Taking informal or statutory action including the service of notices, food seizure, premises closure or prosecution (amongst other available actions) to secure ultimate compliance within food safety legislation;
- Identifying and assessing premises requiring approval in respect of specific food products or processes and to ensure that they are issued with conditional and full approval as necessary;
- Ensuring that all food premises located or trading within the Borough are registered, and to maintain an accurate database of food premises in the Borough. To record inspection information and enable performance data to be provided to the Food Standards Agency;
- Receiving and investigating all relevant Food Standards Agency Food Alerts for Action and their updates as appropriate, and to communicate with business to disseminate relevant information concerning relevant food risks.
- To provide advice and assistance to businesses and consumers on food-related issues through the local authority website and other media;
- Investigate incidences of food borne disease and take action, including liaison with other bodies such as Public Health England (previously the Health Protection Agency), to identify the source and prevent further infection;
- Providing or arranging the provision of food hygiene training courses and one-off courses produced for specific targeted groups and to inform both the trade and the public in relation to food safety issues. This will include courses providing 'Safer Food Better Business workshops', and further workshops to assist businesses in enhancing their food hygiene rating risk-scores;
- As a partner to the National Food Hygiene Rating Scheme – to provide and operate a scheme locally and in accordance with the national guidance. To process and respond to any appeals against scoring or requests for revisits for

the purpose of rescoring. To supply all collected information to the Food Standards Agency as of a frequency laid down by the guidance;

- Carrying out an appropriate food sampling programme based upon received sampling program information, or in connection with any inspection or investigation;
- As a partner to the UK Food Surveillance system (UKFSS) – to provide food sampling data to the Food Standards Agency and to use the information available nationally to inform the Authority's local food sampling programme and assist with food poisoning/food-borne illness investigations;
- Carrying out an appropriate chemical and bacteriological sampling programme for private water supplies;
- Commenting on proposed food legislation codes of practice and other official documents as necessary and as requested.
- To carry out work under the Essex-Wide 'Tuck-In' Project. This will involve additional specific visits to determine current food practices and ingredients, giving advice to food business operators on ways to make food better by changing oil type, reducing sugar, salt and calories through portion size. These visits will compliment routine food hygiene inspections where practicable. This work is funded through the 'Leaders Innovation Fund', - a grant to the Essex Food Safety Group from Essex County Council. The Tuck In project will operate at no additional cost to Brentwood Borough Council.

## **2.3 Demands on the Food Service**

2.3.1 The authority had (*at 1st April 2015*) 658 rated food premises on its database that were subject to programmed food hygiene interventions. In addition to the premises recorded on the database are a number of unregistered premises. It is the intention of the food safety team to ensure that details relative to all known food premises are kept up to date and that as new premises are identified that these are also added to the database. The team will also review and keep up to date the details relative to all food premises registrations. The authority is also mindful that this process will involve scrutiny of local newspapers, mail shots and internet searches. Where any planning applications relating to food premises are received by the authority then the food team are also consulted. At this stage the food team can inform the applicant of applicable legal standards before any building works/alterations take place. This reduces the possibility of legal infringements later once the business has started up, together with costly alterations, and it also reduces the burden on business later when they are inspected. The authority will also respond to any credible information passed to it suggesting any rogue food activities within the Borough. The number of known food premises rated by type can be categorised as follows: -

Food Standards Agency Monitoring Category	PRIMARY PRODUCERS	MANUFACTURERS AND PACKERS	IMPORTERS / EXPORTERS	DISTRIBUTORS / TRANSPORTERS	RETAILERS	RESTAURANTS AND CATERERS	NUMBER OF PREMISES
Premise Rating - A	0	0	0	0	0	1	1
Premise Rating - B	0	0	0	0	3	17	20
Premise Rating - C	0	4	0	0	12	175	191
Premise Rating - D	0	3	0	0	16	153	172
Premise Rating - E	1	8	2	7	95	161	274
Premise Rating - Unrated	0	0	0	0	0	4	4
<b>TOTALS</b>							<b>662</b>

Figure 2.0: Profile of Rated Food Premises – 2015/16

All food premises residing or trading within the Borough are risk rated and their frequency for intervention purposes determined. In accordance with the Code of Practice the risk ratings attained reflect the frequency at which the next hygiene intervention should occur. These are as follows: -

Food Standards Agency Monitoring Category	Minimum frequency of inspection	Number of premises
Premise Rating - A	Every 6 months	1
Premise Rating - B	Every 12 months	20
Premise Rating - C	Every 18 months	191
Premise Rating - D	Every 24 months	172
Premise Rating - E	Every 36 months	274
Premise Rating - Unrated	Unknown until inspected	4
<b>TOTALS</b>		<b>662</b>

Figure 3.0: Inspection frequencies of known food premises – 2015/16

2.3.2 There are two languages other than English identified as being significant among food handlers and proprietors within the district. These are Bengali and Cantonese; however, the majority of these proprietors are able to speak English or have someone present at the premises who can translate. Arrangements are in place for a translator to be contacted in emergencies.

The Service ensures that appropriate food hygiene guidance leaflets are provided in foreign languages where available and will provide Level 2 Food Hygiene Courses in other than English where demand is sufficiently high.

2.3.3 In delivering the food safety enforcement function, there are a number of uncontrollable variables acting upon its delivery: -

- The food safety team investigates approximately 20 food poisoning notifications and allegations each year;

- There are a number of outdoor events which require the inspection of mobile food premises;
- Where any food premises are inspected and there is also a programmed health and safety intervention due then these inspections can be carried out together. This reduces inspection costs and reduces the burden on businesses. However, in doing this officers are to take into account LAC 67/2 (rev 4.1) – ‘*Targeting local authority interventions*’ which dictates that authorities firmly target their interventions around risk and not just because they are in a premises to carry out a food hygiene inspection. This policy is also referenced within the Authority’s Health and Safety Service Plan. Lac 67/2 (rev 4.1) is currently in draft form but is expected to be adopted without change in 2015.
- The authority receives around 80 food premises and hygiene of premises complaints annually.

2.3.4 The authority may need to take legal action in relation to any significant contraventions. Investigations involving evidence gathering, formal interviews under the Police and Criminal Evidence Act and case preparation are likely to be involved.

2.3.5 The food safety team will also inspect food premises for other health-related issues as they arise such as outbreaks of communal disease (e.g. *Norovirus*) which can occasionally occur in care homes.

2.3.6 The Service is based in the Town Hall which is situated in Brentwood Essex. In taking measures to improve productivity and efficiency in an environment of reducing resources the Food Safety Unit has adopted flexible and remote working. Officers now have full remote access to Council I.T systems wherever the internet may be accessed. The Authority has now been running the Uniform database for organising food premises inspections and other work since April 2012. The system has provided advances in the amount of information stored and the ability to produce credible data for Local authority enforcement data system (LAEMS) returns to the Food Standards Agency. The system also provides for better tracking of complaints and outcomes. It also holds additional data upon which to make more informed decisions about risk and where to target resources most effectively.

2.3.7 The normal hours of service delivery are 8.30 a.m. to 5.00 p.m. Monday to Thursday, and 8.30 a.m. to 4.30 p.m. on Friday’s. Arrangements are made to deliver the Service outside of these hours, e.g. in the case of routine inspections to premises which only open in the evenings. However, out of hours emergency cover for food alerts, outbreaks and premises closures is not guaranteed on a routine basis. The code of practice requires premises to be inspected out of normal hours as appropriate. To meet this requirement the Service will inspect approximately 5% of premises outside of normal working hours. No formal arrangements exist to guarantee emergency cover out of

normal hours although the council is contactable and messages may be taken for officers.

## **2.4 Enforcement Policy**

2.4.1 The Borough Health Safety and Localism Service endorses and adopts the principles laid down in the Enforcement Concordat which recognises that enforcement must be fair, consistent and equitable. The service also has regard to the 'Code for Crown Prosecutors' guidelines. These documents will form the basis of decision making processes in deciding the most appropriate enforcement action. The Council's Food Safety Enforcement Policy outlines the various enforcement options ranging from advice/education to formal action including the service of notices and prosecution for non-compliance with legislation.

2.4.2 The Service operates to the documented enforcement policy in Appendix 3. This has been reviewed and with reference to the enforcement concordat. The Enforcement Policy will be revised in 2015/16 to take account of the Regulators Compliance Code.

## **SECTION 3: SERVICE DELIVERY**

### **3.1 Food Premises Interventions Programme ('Primary' and 'Secondary' inspections)**

3.1.1 It is the intention of the food safety team to inspect all premises due for any food safety intervention (except 'E' rated premises) during 2015/16 and that routine food hygiene interventions are focused on the highest risk premises as a top priority in accordance with the Food Law Code of Practice (2015) and other recognised guidance such as that issued by Local Government Regulation (LGR). This policy was put into practice during 2012/13 and had the effect of reducing inspection costs and burdens upon business at the lower end of the risk spectrum whilst maintaining hygiene standards within all food businesses.

3.1.2 In April 2014 the Government informed local authorities of a change to the food hygiene rating scheme where the bands 'C' and 'D' were modified. This had the effect of moving more category 'B' premises in to the 'C' band, and more 'C' band premises in to the 'D' band. This has been done to reduce inspection frequencies at the end of the lower-risk spectrum thereby freeing up authority resources to allow for more inspections at the high-risk end.

3.1.3 Officers will determine the intervention frequency using the risk-rating scheme defined in the Food Law Code of Practice 2015. The risk rating profile of premises is shown in Figure 3.0 above. High-risk premises ('A' and 'B' rated) will include larger premises such as manufacturers and those which cater to a high number of vulnerable clients or inherently low-risk premises with a poor record of compliance. Medium-risk premises ('C' and 'D' rated) include the majority of cafes and restaurants. Low-risk premises ('E' rated) include

newsagents, home caterers and other small retail shops selling mainly pre-wrapped shelf stable foods. Interventions at E rated premises fall within the 'Alternative Enforcement Programme' (AES).

3.1.4 As a consequence of the National Food Hygiene Rating Scheme and the need to focus resources where most improvement is required - category 'E' premises are no longer be inspected every time they are due but instead are sent a questionnaire enquiring as to various standards and practices in place. However, category 'E' premises will be inspected at every other planned intervention. This has the effect of legitimately reducing the burden on lower risk premises and on the service. This is in line with the Food Safety Code of Practice and is a system conducted successfully by other Essex Authorities. In adopting this scheme the Authority is mindful that it will be necessary to verify the information received otherwise it may not come to the correct conclusions regarding risk in these premises. The authority will therefore carry out random inspections on a sample of premises where questionnaires have been returned. The Authority will also inspect any premises not returning their questionnaire.

3.1.5 The number of programmed food hygiene interventions programmed for 2015/16 is shown below: -

Risk Rating	Min. Frequency	No. of Premises	No. of Inspections
Premise Rating - A	Every 6 months	1	2
Premise Rating - B	Every 12 months	20	20
Premise Rating - C	Every 18 months	191	152
Premise Rating - D	Every 24 months	172	34
Premise Rating - E	Every 36 months	274	86
Unrated	Unknown	4	20
	<b>TOTAL</b>	<b>662</b>	<b>314</b>

Figure 4.0: Numbers of premises (*estimated*) to receive an intervention in each rating – 2015/16

3.1.6 Where any programmed health and safety inspection coincides with any food hygiene inspection then they may be conducted together (*subject to the caveat in 2.3.3*) in order to reduce the burden of inspections upon business and to reduce resources. The authority will also at any inspection consider compliance with smoke-free legislation which prevents smoking in public places.

3.1.7 The Food Safety Service will endeavor to improve the ratings of premises outside the realms of enforcement wherever it is practicable to do so and within existing budgets. In previous years the authority has provided Safer Food Better Business/Food Hygiene Rating System Workshops to low scoring enterprises with good success. However, there are only a very small proportion of premises remaining which require such intervention. For 2015/16 the authority will concentrate on the Category 3 premises and to assist them towards Category 4 or better – 5. This will be done by coaching those businesses wanting individual help. It is intended that at least 10% of category C premises will be improved in this way during 2015/16.

### **3.2 Carry Over**

3.2.1 There are no programmed food hygiene inspections which did not occur in 2014/15.

### **3.3 Inspections of imported food**

3.3.1 The Food Standards Agency requires Local Authorities to include inspection of imported food during routine food hygiene interventions. This activity is included in the calculations and will form part of the overall inspection process. There are currently no border inspection posts, enhanced remote transit sheds or importing agents in Brentwood but officers will routinely look for any food imports during routine visits to check tractability and fitness for consumption.

### **3.4 Inspection revisits, and revisits for rescoring**

3.4.1 It is estimated that of those premises due for inspection, around 3% will require revisits to check compliance and for the purpose of rescoring under the National Food Hygiene Rating Scheme. This will include carrying out revisits to all premises not considered 'broadly compliant' with food hygiene law i.e. those showing elevated risk in the areas of hygiene, structure or confidence in management. This will include revisits to all category 'A' rated premises. Category 'B' premises are also considered eligible for reinspection but only where they are not broadly compliant and where their score is not influenced by their undertaking (such as with residential care homes). The majority of Category 'C' premises will not be expected to be revisited as they are all likely to be broadly compliant with food law. Revisits for the purpose of rescoring will be carried out on demand where a food business has completed all the works necessary to meet the legal requirements set at its previous programmed inspection.

### **3.5 Appeals against food hygiene rating scores**

3.5.1 Under the National Food Hygiene Rating Scheme businesses may appeal against the hygiene score given where they consider it unjust. The matter may be resolved by the Corporate Risk and Enforcement Manager but it may involve reappraisal of the premises in order to properly conclude the score. This may involve a site visit but not in all cases. This may occur in less than 1% of premises. There were no such appeals in 2014/15.

### **3.6 Non Programmed Inspections**

3.6.1 It is estimated that there will be approximately 20 new businesses requiring inspections during 2015/16.



### 3.7 Food and Food Premises Complaints

3.7.1 The Service seeks to investigate all food complaints with a first response within the target period of five working days. It is estimated that there will be 30 food complaints received during 2015/16. The Service also seeks to investigate all complaints about food premises and food hygiene practices with a first response within the target period. It is estimated that there will be 50 hygiene complaints of this nature. It is also estimated that there will be approximately 20 enquiries concerning the food hygiene rating scheme.

### 3.8 Primary Authority Principle

3.8.1 Primary Authority gives companies the right to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance. The Council endorses this approach to food safety. The Service has no formal Primary Authority Agreement with any food business in the Borough, however, it will actively explore such arrangements where suitable candidates are identified.

### 3.9 Advice to Businesses

3.9.1 Although there is no statutory requirement for authorities to offer free advice to businesses the Service encourages food businesses to seek advice as it encourages levels of compliance. It is preferable to resolve problems through co-operation at an early stage before the situation becomes serious, when formalised enforcement action may have to be considered. The 'Hampton Report' entitled '*Reducing administrative burdens: effective inspection and enforcement 2005*' states that; "We expect local authority enforcers to adopt a balance of techniques and approaches in order to ensure the safety and well-being of the public and of the environment and not to rely on any one method. We believe that assisting compliance is every bit as important as detecting non-compliance". This Service then would like to be perceived by food businesses as supportive and helpful and it actively seeks to give this intention.

3.9.2 Advice is mainly delivered on a one-to-one basis whilst officers are carrying out inspections and other visits but may also be given via telephone calls, newsletters, seminars, leaflets or letters. Officers give advice in accordance with recognised guidance and codes of practice. Currently there are no specific food business partnerships or forums in operation.

3.9.3 In 2011 the Food Standards Agency published the; 'E.Coli 0157 Control of Cross Contamination' guide providing critical information for food business operators and enforcement authorities. The guide aims to increase recognition of the threat of *E.coli* and identifies the need to have stringent measures in place to prevent transmission. It sets out controls in circumstances where food may be contaminated and is handled in the same establishment as ready-to-eat food. Given that very serious outbreaks and fatalities have been associated with this organism this service has produced specialist guidance to assist all

food businesses in their understanding of this organism and on the most effective ways of preventing infection.

3.9.4 In 2014/15 the Food Standards Agency set a 'Campylobacter Target' to: (a) reduce the number of contaminated chickens produced by industry from 27% down to 10%, and, (b) to reduce Campylobacter food poisoning by up to 30% which equates to around 111,000 cases per year. In recognition of this target the Food Safety Team at Brentwood will develop in 2015/16 a 'Safer Food Better Business Manual 'Safe Method' sheet to guide food businesses in the precautions they should take to minimise cross contamination, and where households are concerned they will similarly advertise such precautions via the Council's website and local tabloids through the correct communication channels.

### **3.10 Food Sampling**

3.10.1 The Service participates in food sampling programmes, co-coordinated with Public Health England (PHE) and the Essex Food Liaison Group. This co-coordinated programme includes the organised sampling initiatives. In 2014/15 the Food Team took 110 food samples and 38 swab samples taken in food preparation/server areas. The Service intends carrying out approximately 110 routine programmed food samples in 2015/16 and a similar number of swabs as per last year. In addition, reactive food sampling will also be carried out in respect of food complaints and other suspect food items. Where any samples are found to be unsatisfactory they will be followed up by written communication with the food business and a further inspection or sampling undertaken as necessary in order to improve standards. Targeted food sampling with Brentwood has on occasion identified poor suppliers located outside the Borough. In these cases relevant food businesses within Brentwood are advised to seek their food product from other suppliers producing safer food.

3.10.2 The PHE laboratories located at Collindale will continue to process the analysis of all food samples procured by the authority and provide a no cost courier service to this and other Essex authorities.

### **3.11 Outbreak Control and Infectious Disease Control**

3.11.1 The Service is expected to respond promptly as an overriding priority to the notification of communicable diseases especially where the source could be food borne and take action to investigate and attempt to control spread. Officer response should be according to an initial professional assessment of urgency based upon the information available, but in any event no longer than the response period determined in the targets section. Officers are also required to liaise with the Centre for Communicable Disease Control (CCDC) and 'Public Health England'.

### **3.12 Food Safety Incidents**

3.12.1 The procedure followed in respect of food alerts and updates is in accordance with Food Safety Act 1990 Code of Practice. The Service is connected to the Environmental Health Computer Network (EHC Net) to allow the receipt of food hazard warnings, as these are transmitted by the Department of Health (DOH) using this system. The FSA is likewise provided with the contact number of the authority which can be contacted out of hours where necessary. Food safety incidents are responded to on a risk assessed basis. In 2011 the Borough successfully prosecuted a business found to be at the centre of a Scombrototoxin food poisoning outbreak.

### **3.13 Food Standards work**

3.13.1 Although Brentwood Borough Council had an arrangement with Essex County Council to share elements of food safety enforcement this has now ended mainly in response to new legislation giving non-unitary authorities new powers in relation to the control of allergens in food. Therefore, from time to time, officers of this authority will be incorporating related questions concerning allergens in to their routine inspections. Complaints concerning allergens will also be investigated by the relevant authority.

### **3.14 Liaison with other organisations**

3.14.1 Arrangements are in place to ensure that enforcement action taken by the service in the Brentwood Borough is consistent with enforcement action carried out within neighbouring local authorities. This includes:-

- Active support of the Essex Environmental Health Managers Group which includes regular meetings and contact between Essex authorities and also has representatives from Trading Standards, PHE and CCDC representatives;
- Peer review bench marking exercises with all Essex Local Authorities;
- Regular discussions amongst officers in respect of Local Government Regulation guidance;
- Attending Chartered Institute of Environmental Health (CIEH) branch meetings, monitoring and responding to e-mail messages on the Environmental Health Computer Network (EHC Net);
- The Essex Health Protection Team in respect of the investigation of suspect food poisoning outbreaks which involves contact with the consultant in communicable disease control (CCDC). A representative from the Service regularly attends the PHE Liaison Meeting which among other things is the body which devised the Joint Health Authority/Local Authority Outbreak Control Plan.

### **3.15 Specialist Food Safety Information**

3.15.1 This is obtained through the Essex Food Liaison Group of which all Essex councils are members.

### **3.16 Food Safety Promotion**

3.16.1 The Food Safety Team provides up to date information on the Council's website which enables residents and food businesses to view the services available and to download formwork including that for business registration and training.

3.16.2 The Service responds to changes in legislation and current concerns about food by educating proprietors during officer visits and by sending out mail shots.

3.16.3 The Service provides Safer Food Better Business manuals to all new food businesses that wish to enshrine this as their food safety management system.. These are currently obtained free from the Food Standards Agency and where appropriately used and put into practice may conform with the legal requirement of providing a food safety management system based on HACCP (Hazard Analysis, Critical Control Points).

3.16.4 In 2011 the authority produced two supplements for the Safer Food Better Business manual. One was in response to a Scombrotoxin food poisoning outbreak, and the other concerning *E.Coli* was in response to a Food Standards Agency request to bring this hazard more firmly to the attention of business. Both supplements have since been circulated within the Essex authorities and copies provided to the Food Standards Agency. The authority will provide further such information where it is necessary to alert businesses or consumers to significant food risks.

### **3.17 Food Hygiene Training**

3.17.1 The Service offers the CIEH Level 2 Food Hygiene courses at the Town Hall. This qualification provides food handlers with training in food safety which may be deemed compliant with the legislative requirement to receive commensurate training and instruction. The Service plans to offer 6 of these type courses conducted bi-monthly. The courses are chargeable. Many local food businesses use the Council's course as it is local and taught to a high-level.

### **3.18 Conflicts of Interest**

3.18.1 For Services provided by Borough Health, Safety and Localism - the food safety code of practice requires food authorities to ensure that officers are always aware of potential conflicts of interest that can arise in enforcement situations through promotions of its own food authority's services.

3.18.2 Although the authority provides the Level 2 Food Hygiene Course it may not publicise this over and above others that are available. To this end it will also provide details upon request of other local providers within this market.

3.18.3 For enforcement within Local Authority managed premises - where the Council is the operator of food businesses or employs contractors to run food businesses there is scope for conflict of interest. When the Service is enforcing food hygiene legislation it applies the same national criteria in respect of scoring and inspecting businesses to determine the inspection frequency as it does for all its businesses. The council owns some premises providing parks and activity functions that fall within this category. This matter is dealt with within Food Safety Procedure 021 'Food Safety Enforcement'.

3.18.4 In relation to contractors - enquiries are made to ensure that any contracted enforcement officers are independent from any of the food businesses they may be involved with in food safety enforcement work.

### 3.19 Health and Safety inspections and interventions within food premises

3.19.1 The Health and Safety Service Plan sets out the Authority's intentions for health and safety enforcement and in-line with Health and Safety Executive (HSE) requirements. Authorities are not now expected to carry out a thorough proactive health and safety inspection whenever carrying out a food hygiene inspection. However, HSE document LAC 67/2 (rev 4.1) now specifically points local authorities to dangers relating to electrical safety and encourages them to take on a variety of interventions to reduce related hazards. This includes specific targeted inspections, increasing awareness and visiting new business start-ups.

## SECTION 4: RESOURCES

### 4.1 Financial Allocation

4.1.1 The financial allocation for inspections and complaint work for 2015/16 is as follows: -

COST CENTRE = FOOD SAFETY ENFORCEMENT	
AREA OF SPEND	AMOUNT £
Equipment	333
Publications	333
Clothing	133
Salaries	65,033
National Insurance Payments (staff)	5,060
Pensions (staff)	9,233
Recharges	81,733
Contractors undertaking food hygiene enforcement and sampling	19,666
Software Support & Maintenance	2,526
Subscriptions	1,000
Payroll allowances	640
Temporary Employees (Food Hygiene Course)	2,000
General fees and charges	-5,000
<b>TOTAL</b>	<b>182,690</b>

Figure 4.0: Financial allocation.

## 4.2 Staffing Allocation

4.2.1 There are three officers employed: -

- Environmental Health Manager (1.0 Full Time Equivalent) (FTE\*)
- Principal Environmental Health Officer (1.0FTE), and
- District Environmental Health Officer (0.6FTE)

4.2.2 Officers in these posts are authorised to enforce food safety legislation consistent with their qualifications in accordance with the relevant Food Safety Act Code of Practice to enforce food safety legislation in food premises rated 'A-E'. These staff not only do food work - they form a team which carries out duties in respect of health and safety, infectious disease control, licensing and animal welfare, etc. The cost of providing officers within these posts is £97,549

4.2.3 In addition to the field staff officers above there is also an allocation for administration and senior management support. A direct total of 0.90 FTE is allocated to the Food Safety Service.

4.2.4 A budget of £19,666 is allocated for the work of outside analysts and consultants each year to cover for food inspections, sampling and complaint work.

4.2.5 The number of staff and financial allocation available at these levels are deemed adequate to carry out the food safety function as required.

## 4.3 Staff Development Plan

4.3.1 The Service ensures that necessary training is given to officers to enable them to carry out their duties competently. The Environmental Health Manager is a voting member of the Chartered Institute of Environmental Health (CIEH), and has attained Chartered Status of the Institute. Voting members and those with chartered status of the CIEH are required to undergo at least 20 and 30 hours respectively of continuous professional development (CPD) per year. In compliance with the appropriate Food Safety Act Code of Practice, all officers in the food team will receive 20 hours of food training.

4.3.2 Staff receive annual appraisals and one to one meetings with their manager on a routine basis. In addition, regular team meetings take place during which training needs are discussed. A representative from the food team regularly attends the Essex Food Liaison Group Meetings. These meetings provide a useful forum for identifying common training needs for food enforcement officers throughout the county. Suitable low-cost courses are then organised to meet these needs.

\*FTE = The ratio of the total number of paid hours during a period (part time, full time, contracted) by the number of working hours in that period Mondays through Fridays. The ratio units are FTE units or equivalent employees working full-time. In other words, one FTE is equivalent to one employee working full-time. For example: You have three employees and they work 50 hours, 40 hours, and 10 hours per week – totaling 100 hours. Assuming a full-time employee works 40 hours per week, your full time equivalent calculation is 100 hours divided by 40 hours, or 2.5 FTE.

## **SECTION 5: QUALITY ASSESSMENT**

### **5.1 Quality Systems**

5.1.1 In recognition of the need to provide an effective food safety service to both the consumers of food and proprietors of food businesses, various systems are in place or are being considered to ensure that the quality expected by service recipients and the Council is delivered.

5.1.2 The following systems assist in assessing and ensuring the right level of quality is provided:-

- Regular monthly Food Safety Team meetings which are fully minuted and officers appropriately tasked;
- Bench marking exercises with other food enforcement services in Essex and elsewhere;
- Team meetings for sharing good practice and consistency;
- Joint inspections with the food enforcement officers' by their line manager provides an opportunity to monitor the officers' inspection techniques and to discuss the outcome. Officers are also encouraged to carry out joint inspections with other team members in order to share best practices;
- Counter signing of formal enforcement notices prior to service;
- Monitoring of copy letters which have been sent out by officers;
- Joint visits and auditing of officers during inspections and the paperwork they produce;
- Completion of an aide-memoir form providing permanent record of the findings of each inspection, which can be monitored and discussed;
- Documentation of various procedures;
- Implementation of external third party auditing which will involve scrutiny by food enforcement officers from other local authorities in Essex, co-ordinated by the Essex Food Group;
- The food hygiene training provided by the service delivers is periodically audited by the CIEH;
- Internal audits – the unit received an internal audit in 2011 and attained a 'substantial assurance standard' with no major or critical priorities identified;
- Third party monitoring and auditing of performance targets by the FSA. The service was re-audited by the Food Standards Agency in October 2011. All actions stemming from that audit have now been completed.

## **SECTION 6: REVIEW**

### **6.1 Review against the Service Plan**

6.1.1 Under the current performance management framework service plans include a number of targets and performance indicators. During the course of the year Borough Health, Safety and Localism formally monitors its performance against targets and on a monthly and quarterly basis. Performance indicators in relation to the food service that are currently in the corporate performance management framework documentation may be reported to members during the year.

### **6.2 Identification of any variation from the Service Plan**

6.2.1 The performance levels for the period 2014/15 are broadly in conformance with that period's service plan.

### **6.3 Areas of Improvement**

6.3.1 The Service has prepared various documented internal Quality Management Systems and regularly extends and reviews the number of documented procedures. This exercise is being repeated in 2015/16.

6.3.2 The Service has now fully adopted the Uniform data base system which greatly enhances the type, quality and depth of information held on food businesses as well as complaints. The system has brought about improvements in service and in particular enables historic tracking of compliance within premises plus enhances progressive enforcement as the authority tries to improve standards in food businesses.

## **SECTION 7: TARGETS/STANDARDS**

### **7.1 Targets and standards applied**

7.1.1 The following targets and standards are utilised: -

- To operate a food hygiene interventions system whereby all food premises (100%) within the Borough and in accordance with the Food Safety Code of Practice receive timely interventions in the form of inspections, audits or a process of alternative enforcement in order to bring about compliance with all applicable food hygiene related statute.
- That all new food businesses will be visited and assigned an inspection rating within 28 days of becoming registered with the authority (receipt of the registration form).
- To take informal or statutory action including prosecution to secure effective and speedy compliance with legislation having regard to official



Codes of practice, Local Government Regulation Guidance and Borough Health, Safety and Localism Enforcement and Prosecution Policy.

- Officer responses to food related complaints and FSA's Food Alerts will be according to the initial professional assessment of urgency based upon the information available, but in any event not longer than 5 working days.
- To attend the Essex Food Liaison Group and to liaise with other District Councils, Essex County Council, Public Analysts and the Public Health Laboratory Service as required by the official Code of Practice.
- To record cases of notifiable disease and maintain weekly reports to ensure that statistical returns to authorised external agencies are produced as required.
- To respond promptly as an overriding priority to the notification of communicable diseases especially where the source could be food borne and to take action to control their spread. Officers' response to communicable disease notification should be according to the initial professional assessment of urgency based upon the information available, and in any event not longer than 5 working days.
- Implement bacteriological food sampling of 110 programmed samples, in addition to any samples required following an inspection. At least 10% of routine samples will be imported food.
- Implement chemical and bacteriological water sampling programme for private well water supplies as required.

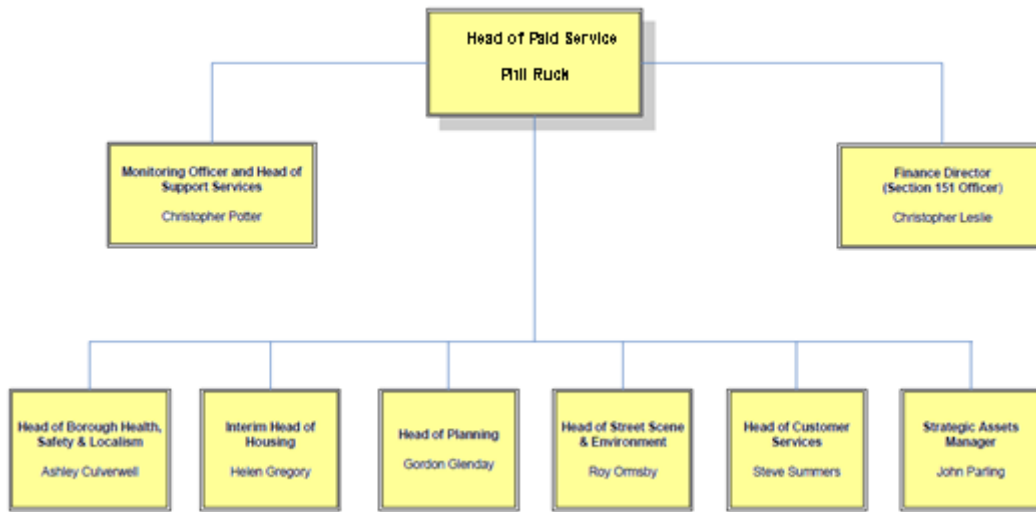
## **SECTION 8: PERFORMANCE INDICATORS**

### **8.1 Performance indicators applied: -**

8.1.1 The following performance indicator is utilised: -

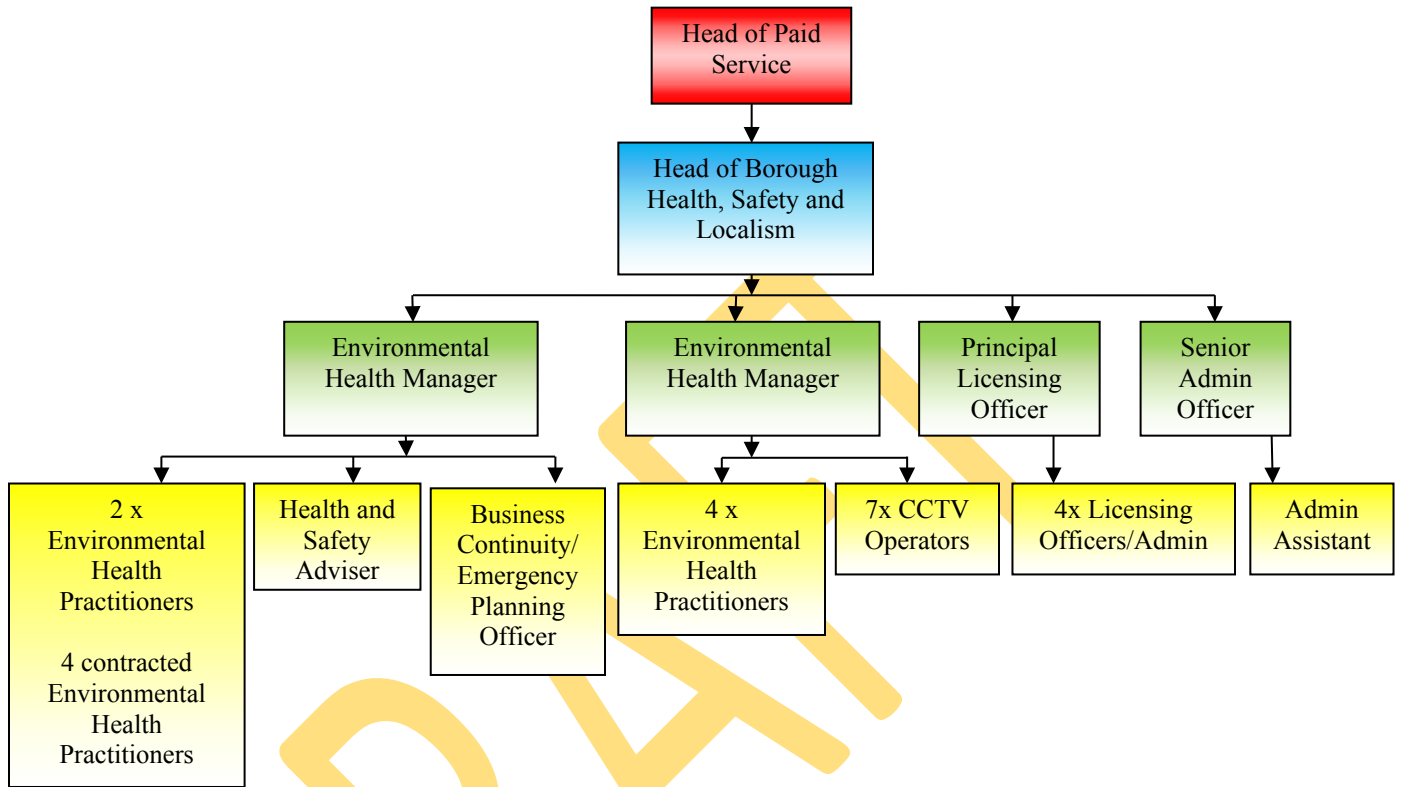
- (i) 97% of food premises are broadly compliant (those with a score of no more than 10 within the categories of food hygiene, structure and food safety management) with food safety legislation. The percentage of food premises now broadly compliant is around 98% which is 10% greater than it was within the Borough four years ago. This is reported on a monthly basis and as a cumulative figure.

**Appendix 1 – Structure of the Council**



DRAFT

**Appendix 2 – Borough Health, Safety and Localism Structure**



## **Appendix 3 BOROUGH HEALTH, SAFETY AND LOCALISM ENFORCEMENT POLICY**

### **INTRODUCTION**

Local Councils enforce legislation to protect individuals and the community as a whole. Borough Health, Safety and Localism carry out a range of activities with the aim of achieving this and to achieve compliance with legislation by individuals and businesses. To help achieve this, the Service will:

- work within the legal framework and apply the law fairly
- deal with customers with honesty and integrity
- remain responsive to customer needs
- work in partnership with groups which represent our customers
- make the service accessible
- use the resources available to the maximum benefit of our customers
- train and develop our staff to ensure their effectiveness
- treat our staff and customers equally, regardless of race, colour, ethnic or national origin, sex, marital status, disability, age, sexual orientation or political beliefs.

The purpose of this document is to publicly summarise how the Council's adopted enforcement policies for Borough Health, Safety and Localism seek to achieve compliance. It should be noted that there are some additional service-specific enforcement requirements i.e. health & safety and food safety. Detailed service-specific policies and procedures, where needed, are separately held, updated, audited and reviewed by the Service. Information on these may be obtained from Borough Health, Safety and Localism.

### **COUNCIL AIMS AND OBJECTIVES**

Brentwood Borough Council has set out its strategic aims and objectives and Borough Health, Safety and Localism at the Council carries out its duties in support of these aims. The specific aims and objectives relating to enforcement services can be found in the Service Plans. These along with the Council's corporate aims and objectives can be obtained from the Town Hall or by visiting [www.brentwood.gov.uk](http://www.brentwood.gov.uk).

These objectives will be achieved through education, guidance, advice and warning letters and, where necessary, by appropriate legal action, including the service of statutory notices, compliance notices, suspension notices, prohibitions, formal cautions and prosecution.

The Human Rights Act 1998, which came into force in October 2000, places general obligations on enforcement bodies to ensure fair treatment for all, to prevent any form of prejudice and to provide a right to privacy. This policy reflects the provisions of this Act in general terms as officers are required to follow agreed policies and procedures and work within their legal powers. Individual team procedures and guidance notes will cover specific areas of the Services' work where particular care must be taken to ensure the Act is followed.

Enforcement decisions and actions will be made with due regard to the provisions of:

- The Human Rights Act
- Equal rights and anti-discrimination legislation
- Service specific legislation
- All other relevant legislation applicable from time to time
- Crown Prosecution Service guidelines

If it is in the public interest, matters concerning non-compliance may be shared, where appropriate, with other enforcement agencies. This could include situations where there is a shared or complementary enforcement role with other agencies, such as the Police, Health & Safety Executive (HSE), Office of Fair Trading (OFT) or Trading Standards. Any such action will be undertaken in compliance with the Data Protection Act 1998. Other requests for information will be considered having regard to the Freedom of Information Act 2001 and the Data Protection Act 1998.

The Services have incorporated within the enforcement policy all aspects of good enforcement practice in accordance with the elements of the Enforcement Concordat, which the Council has signed (a full version of the Enforcement Concordat is available by visiting [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk) the Cabinet Office web site).

The use of enforcement action will be proportional to any offence committed, consistent in application (including, where relevant, consistency with other local authorities or enforcement agencies), transparent in its use and appropriate to the circumstances of the particular case in question. In particular:

- The policy is readily available at The Town Hall or by visiting [www.brentwood.gov.uk](http://www.brentwood.gov.uk) on the Council's web site or can be sent on request.
- A copy of any relevant service-specific enforcement procedures will be available on request.
- We will consult with our customers to obtain continuous improvements to our policy and procedures.
- We will ensure that businesses are not required to carry out works at unnecessary expense.

Borough Health, Safety and Localism will carry out its enforcement functions in an equitable, practical and consistent manner and to this end the Services are committed to:

- drawing up clear standards, setting out the level of service and performance the public and business people can expect to receive;
- dealing with the public and business community in an open and honest way;
- providing a courteous, efficient and helpful service;
- responding promptly and positively to complaints about the service;
- ensuring that enforcement action is proportionate to the risks in each case.

While it is understood that it is primarily the responsibility of individuals and businesses to ensure compliance with relevant legislation, the Council will help them,

where possible, to understand their legal responsibilities. The aim of the Council is to secure compliance with the legislation, which it will do by making the most efficient use of the Council's resources and having regard to minimising burdens on businesses.

This policy supports and supplements specific guidance on enforcement action contained in statutory Codes of Practice, government guidelines, approved industry guides, co-coordinating bodies such as the Local Authorities Coordinators of Regulatory Services (Local Government Regulation), the Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA) and other approved sources.

### **ENFORCEMENT OPTIONS**

Enforcement decisions shall be consistent, balanced, fair and relate to common standards that ensure the public, businesses, employees and the environment are adequately protected.

In order to achieve and maintain consistency of enforcement, officers will have regard to official guidance and codes of practice.

In the areas of food safety the Home Authority Principle set up by Local Government Regulation shall be adhered to and in the area of health and safety the Lead Authority Principle shall be adhered to. Where applicable, the comments of the home, lead or originating authorities shall be considered.

The factors to be considered in coming to an enforcement decision include: -

- the seriousness of the offence;
- the past history of the offender;
- the confidence in management and the degree of wilfulness involved;
- the consequence of non-compliance;
- mandatory/discretionary duties;
- the likely effectiveness of the various enforcement options;
- the different technical means of remedying the situation;
- the impact of the enforcement choice in encouraging others to comply with the law;
- the public interest/benefit.

In the event of a contravention being detected, the following enforcement options are available: -

- Advice or warning letter
- Statutory powers, for example service of notice or seizure provisions
- Simple caution
- Prosecution
- Revocation of a license
- Injunctive restraint

- Execution of work required by statutory notice where the recipient has not complied and recovery of all reasonable costs incurred
- Compulsory purchase /management/control of property
- Fine and statutory charges.

In some cases a combination of these options may be appropriate. Officers will comply with Codes B, C and E of the Police and Criminal Evidence Act 1984 (PACE) as it relates to local authority enforcement.

Code B deals with police powers to search premises and to seize and retain property found on premises and persons. Code C sets out the requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers. Code E deals with the tape recording of interviews with suspects in the police station.

### **ADVICE, ISSUE OF INSPECTION REPORTS, WARNING LETTERS**

If no breaches of legislation are discovered, or if the officer believes that a complaint or contravention does not warrant investigation or action, then it may be appropriate to take no action.

When a contravention is detected which, in the opinion of the officer should be dealt with by advice or warning letter, where appropriate the officer will issue a report of inspection specifying the details of the alleged infringements. Where the report or letter specifies a period of time in which corrective action should be taken, the officer will make a professional decision having regard to its priority and available resources as to whether a re-visit is appropriate to the premises to check compliance.

It will be appropriate to give advice or a warning when:

- the act or omission is not serious enough to warrant a simple caution or prosecution;
- from past history it can be reasonably expected that such action will achieve compliance;
- confidence in the individual and/or organisation is reasonably high;
- the consequences of non-compliance will not pose a significant risk to public health.

When such an approach is used to secure compliance with legislation, any written documentation issued will:

- specify the legislation that has been contravened;
- specify what remedial action is required, together with the reasons;
- ensure that any recommended areas of good practice which are above the minimum levels required by statute are clearly differentiated within the document;
- where examples are given of how compliance may be achieved, make clear that alternative means of compliance may also be acceptable;

- highlight the right to question works required by raising the matter with the relevant named manager.

In the case of health and safety matters, a copy will be sent to staff representatives.

## **STATUTORY NOTICES**

The statutory notice procedures will, in general, be used to enforce legislation which relates to risks to health or quality of life.

Failure to comply with statutory notices will, other than in exceptional circumstances, result in prosecution and/or works in default.

All statutory notices will be signed by an appropriately trained, experienced and authorised officer. The officer will be satisfied that the contravention is significant and that all appropriate criteria are met.

Sufficient evidence will be available to justify the notice, and details of all evidence will be properly recorded to satisfy PACE and Criminal Procedure and Investigation Act (CPIA) requirements.

Time limits given will be reasonable.

Other relevant bodies will be informed of the action as necessary, for example home or lead authorities, originating authorities, and copies will be forwarded on request.

Recipients of notices will always be informed in writing of their rights to appeal and these will normally be on the rear of the notice. They will also normally be informed in writing of the consequences of non-compliance.

In the case of breaches of Health and Safety legislation, copies of notices will be made available to staff representatives. Notices having public safety or environmental implications will be placed on a register accessible to members of the public on request where this is a statutory requirement to do so.

Compliance with the notice will be checked as soon as practicable after the expiry date of the notice. Reasonable requests in writing for time extensions to notices will be considered having regard to the seriousness/threat to public safety and the environment.

Confirmation of an extension of time or reason for a rejection of an extension of time will be put in writing to the applicant.

Works in default: - Where the powers of works in default are available, officers will consider the options and take the most appropriate form of action in each case, having regard to the benefit of carrying out the works, likely resultant harm if the works are not carried out and the practicalities of undertaking the works.



## **SIMPLE CAUTIONS**

National standards for “The Cautioning of Offenders” are laid down in a Home Office Circular.

The option of cautioning is considered on the basis that there is no rule of law that suspected offenders **MUST** be prosecuted and that cautioning represents a possible alternative course of action. Simple cautions will therefore be issued in accordance with the current Home Office circular, and will be considered against the criteria listed below.

A properly administered simple caution (which should not be confused with a letter of warning) may be cited at a future court hearing provided that the caution was administered for an offence committed within three years of the offence for which the prosecution is brought.

A prosecution will only take place where it is in the public interest and where there is sufficient evidence (see prosecution section below) to support that course of action. In cases where there is sufficient evidence to warrant a prosecution but the public interest would not benefit from such a course of action, then a simple caution may well be appropriate.

Where a simple caution has been accepted other relevant bodies will be informed of the action as necessary, for example home or lead authorities, originating authorities, and copies will be forwarded on request.

Simple cautioning will not be used as an alternative to a weak prosecution case.

A simple caution may be issued as an alternative to prosecution. Simple cautions will be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

In considering whether to administer a simple caution the following criteria must be met:

- there must be evidence of the offender’s guilt sufficient to give a realistic prospect of conviction. In other words a conviction should be more likely than an acquittal before a court of law;
- the offender must admit the offence; and
- the offender must be an adult and must understand the significance of a caution and give informed consent to being cautioned. This agreement will not be sought until it is decided that cautioning is the correct course of action.

In deciding whether to caution or prosecute the following factors must be taken into consideration:

- the nature and seriousness of the offence;
- the likely penalty if the offender was convicted by a court;
- the offender's age and state of health;
- the offender's previous criminal history;
- the offender's attitude towards the offence;
- the views of the victim or any aggrieved party;
- whether compensation has been paid;
- public interest;
- the likelihood of re-offending.

If a prosecution is deemed not to be required in the public interest it will often be appropriate to take no further action (other than to give advice) and this course will always be considered. However, the nature of the offence and other factors may make it more desirable to issue a caution.

If an offender refuses to accept a simple caution, the service manager will reconsider the evidence and decide whether or not a prosecution should be instituted.

## **PROSECUTION**

The Council recognises that the decision to prosecute is significant and could have far reaching consequences for the offender.

Prosecution will in general be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk, serious nuisance or other similar situations affecting any individual or the environment and will not be used as a punitive response to minor breaches.

The circumstances where prosecution is appropriate will include one or more of the following:

- Where there is a blatant disregard for the law such that there is a risk to public health, safety, well being or the environment;
- Where there is a failure to correct an identified serious problem after having been given a reasonable opportunity to do so by an authorised officer;
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- Where there is a history of similar offences.

In all cases the prosecution must be in the public interest and there must be a realistic prospect of conviction and sufficient evidence to support proceedings.

There may be circumstances where, as well as prosecution, it will also be appropriate to serve a statutory notice to enforce the remedy.

The final decision on whether to prosecute shall be made after:

- the suspected offender has been given the opportunity to offer an explanation;

- wherever possible a full and complete prosecution report file has been prepared and presented to the service manager; and
- the initiating officer has fully discussed the case with the service manager.

In deciding whether or not to prosecute for an alleged infringement, regard will be had to 'The Code for Crown Prosecutors'. In particular a prosecution should not be commenced unless the 'Evidential Test' and the 'Public Interest Test' criteria specified in the Code have been met.

In considering whether the relevant criteria are met, the following factors will be considered:

- The seriousness of the alleged offence; where there is a risk of harm to public health or a disregard of legal standards for financial reward;
- The previous history, in particular whether there is a history of similar offences, or a failure to respond positively to past warnings or statutory notices;
- Any likelihood of being able to establish a defense;
- The reliability of the evidence available;
- The ability of witnesses and their willingness to co-operate;
- Any willingness by the defendant to prevent a recurrence of the problem;
- The probable public benefit of a prosecution and the importance of the case especially with respect to legal precedent;
- Any explanation offered by the company or suspected offender;
- Whether the offence was premeditated;
- The need to influence the offender's future behavior;
- Whether the evidence shows the defendant is an organiser of the offence;
- Whether the defendant was in a position of authority or trust;
- The effect on the offender's, or a witness's physical or mental health, balanced against the seriousness of the offence;
- The views of any victims;
- Whether the offence, although not serious in itself, is widespread in the area where it was committed;
- Whether the offender has put right the harm caused;
- Whether there is a realistic prospect of conviction.

Factors against prosecution would be that a small penalty is likely to be imposed, or the offence is due to a genuine mistake or misunderstanding, but this must be balanced with the seriousness of the offence.

Consideration will be given to prosecuting directors of bodies corporate where:

- it appears that the offence was committed with his/her consent, connivance or neglect; or
- it is likely that the body corporate may be wound up to avoid criminal proceedings.

Prosecution of employees will only be considered in exceptional cases e.g. where the employee has clearly contradicted the employers' instructions; has been deliberately obstructive or has acted in a grossly negligent or wilful manner.

In cases of obstruction, prosecution will always be considered where this has resulted either in undue delay or in additional work/costs to the local authority, or where false information has been given deliberately.

Where there has been a death at work resulting from a failure to comply with health and safety law, the matter will be referred to the police if the circumstances of the case might justify a charge of manslaughter. The police are responsible for deciding whether or not to pursue a manslaughter case and this may occur alongside a prosecution for health and safety breaches. In all cases, the work related deaths protocol for liaison signed by the Police, British Transport Police, the Crown Prosecution Service, the Health and Safety Executive and the Local Government Association will be followed.

On completion of prosecution cases, officers must inform other interested bodies of the outcome of the case as necessary. In particular, any complainants or victims will be informed. The outcome of the case will be reviewed with the relevant service manager to discuss any necessary future action.

### **TRAINING, COMPETENCY AND AUTHORISATION**

Only duly authorised officers may undertake enforcement duties in accordance with the Council's scheme of delegation. Officers will only be authorised where their level of qualification, training and experience are considered acceptable. Newly appointed or transferred officers will also be assessed by their manager for competency and referred for training where necessary, in accordance with the training policy and the Council's 'Investors in People' appraisal scheme. Only officers with two or more year's experience will be authorised to sign Hygiene Emergency Prohibition Notices served under regulation 8 of the Food Hygiene (England) Regulations 2006 or Emergency Prohibition Notices served under section 12 of the Food Safety Act 1990.

Officers undertaking enforcement duties will be suitably trained and qualified to ensure they are fully competent to undertake their enforcement activities. Qualifications will be based on current government guidance. Appropriate training programmes for officers will be set up to achieve the necessary competence. The training requirements to achieve the necessary level of competence will be regularly reviewed by the service managers. Training will be prioritised within available resources.

Officers are responsible for ensuring they have regard to relevant guidance documents laid out in service procedures.

### **MANAGEMENT SYSTEMS**

The Council will maintain a management system to monitor and review the quality and nature of the enforcement activities undertaken in these services in order to demonstrate the effectiveness of the policy with respect to its aims and objectives and

to recommend changes and improvements. This will be periodically reviewed by service managers.

Service managers will ensure all staff are trained to ensure they are fully conversant with this policy and arrange retraining and updating when necessary.

### **COMPLAINTS AGAINST THE SERVICE**

If any person is aggrieved with the action taken or information or advice given by officers of Brentwood Borough Council or believe they have not received fair or consistent treatment as outlined in this policy, they will be given the opportunity to discuss the matter with the relevant line manager.

If not satisfied by those discussions the matter can be taken up with the service manager, who will consider the complaints, decide whether the enforcement policy has been breached in this instance and give a reply in writing. This is without prejudice to any formal appeal mechanism. If the problem cannot be resolved, the person will be informed of the Council's complaints procedure.

Brentwood Borough Council  
Town Hall  
Ingrave Road  
Brentwood  
Essex CM15 8AY

Web site: [www.brentwood.gov.uk](http://www.brentwood.gov.uk)

Borough Health, Safety and Localism Service  
Tel: 01277 312502  
Fax: 01277 312526  
email: [hoehpps@brentwood.gov.uk](mailto:hoehpps@brentwood.gov.uk)

Licensing Service  
Tel: 01277 312503  
Fax: 01277 312526  
email: [licensing@brentwood.gov.uk](mailto:licensing@brentwood.gov.uk)