

# **Qualitative review of food safety regulatory decision-making**

Ipsos MORI report for the Food  
Standards Agency

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## **Abbreviations**

AES	Alternative Enforcement Strategy
AO	Authorised Officer
BC	Broad Compliance
CIEH	Chartered Institute of Environmental Health
EC	European Community
EHO	Environmental Health Officer
EM	Enforcement Manager
FHR/IS	Food Hygiene Rating Scheme
FSA	Food Standards Agency
FSMS	Food Safety Management System
FSO	Food Safety Officer
HACCP	Hazard Analysis and Critical Control Point
HEPN	Hygiene Emergency Notice
HIN	Hygiene Improvement Notice
HA	Home Authority
HSE	Health and Safety Executive
LA	Local Authority
LAEMS	Local Authority Enforcement Monitoring System
LGR	Local Government Regulation
LBRO	Local Better Regulation Office
PACE	Police And Criminal Evidence
PHA	Port Health Authority
PA	Primary Authority
RAN	Remedial Action Notice
RIPA	Regulation of Investigatory Powers
SFBB	Safer Food Better Business
SEHO	Senior Environmental Health Officer
FHR/IS	Food Hygiene Rating Scheme
TO	Technical Officer

# Summary

## Summary

This research with local authorities and food businesses was intended to help the Food Standards Agency (FSA) understand how food safety Authorised Officers (AOs) select regulatory interventions and enforcement action and how this impacts on compliance levels of food business operators (FBOs). The FSA uses business compliance with food hygiene and food safety requirements as a key proxy indicator for measuring progress in improving public health and consumer protection outcomes.

Research with 77 participants (LA and food business staff) were conducted in twelve locations across Great Britain between April and June 2011. The results of this study were intended to complement analysis being carried out into Local Authority Enforcement Monitoring System data. Together, the two strands of research were intended to:

- provide rich qualitative data on the decision-making process underpinning regulatory practice; and
- answer the question 'what works', assessing which interventions are most effective at improving and sustaining compliance among food businesses and which Local Authority approaches have proved successful.

In providing FSA with detailed insight in relation to the first objective, we explored and discussed regulation and its practice with Authorised Officers (AOs) and managers. We then triangulated these views by conducting a series of 12 in-depth observations of regulatory interventions being conducted in food businesses with varied compliance levels and follow-up interviews with AOs and FBOs.

A limitation of the qualitative phase identified at the start of the research, was its ability to *measure effectiveness* of enforcement outcomes. In light of this further evidence is now needed to build on the existing work and provide FSA with robust recommendations on effectiveness which can help inform policy and provide food practice guidance to food authorities.

### Public health protection is at heart of the matter

Despite the varied activities delivered by AOs as part of food safety regulation there were three key factors which AO's spontaneously explained predetermined their decision-making:

- LA proactive work i.e. the planned program of controls;
- LA enforcement policy i.e. graduated escalation; and
- Public health protection.

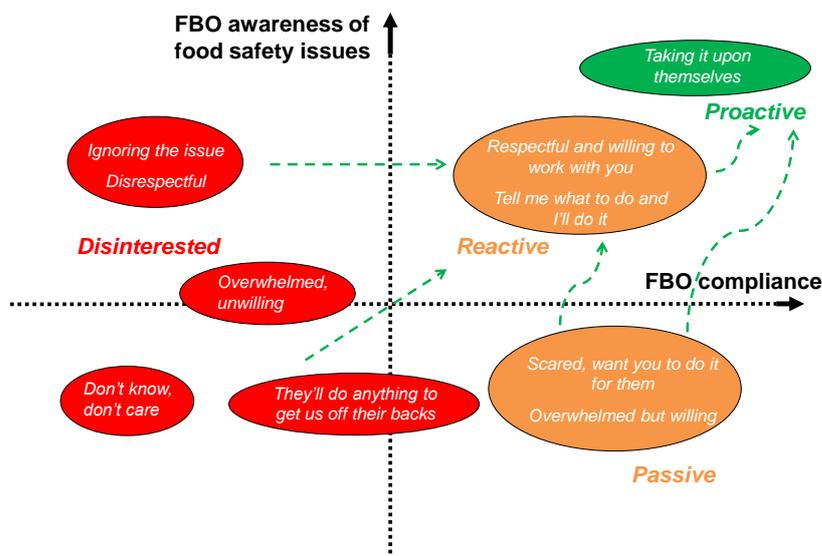
Many AOs talked about public health protection being the most important factor that shapes how much emphasis they placed on the use of official / non-official controls and/or escalation of enforcement action. The key objective of AOs regulatory work is to ensure all FBOs take ownership of compliance to the point where they are proactive in monitoring risk and ensuring the necessary controls are implemented. The research shows time and again AOs facilitating a process whereby a food safe environment is created which in turn limits the potential for consumer harm. Before this environment can be developed AOs have to get to a position

where they can influence the FBO attitude and ultimately bring the mindset closer to a proactive one.

## Typologies

Food business operators (FBOs) can usefully be grouped depending on differences in behaviours towards compliance (i.e. limiting consumer harm). Assessing an FBO attitude towards compliance was singled out by many AOs as top of their 'checklist' when thinking about how much emphasis to place on a particular regulatory style i.e. (informal vs. formal). The figure below shows how a FBO's pathway to compliance is likely to vary depending on the mindset they begin with. These mindset types are not exclusive, indeed it was common for AOs to talk of one FBO displaying more than one mindset at different stages of their development. The goal of regulatory work itself was often described as being to move food FBOs from those mindsets shown below on the left to those in the top right quadrant: proactive mindsets. Any single FBO could display a mix of mindsets, making an AOs job a challenge requiring good people management and communication skills as well as business acumen.

**Figure 1: Sustained compliance requires awareness and a proactive FBO mindset**



## Proactive

FBOs who displayed both the *will* to comply and clear *ownership* of food safety issues had a more 'proactive' mindset. Typically this type of behaviour would achieve a Confidence in Management (CIM)<sup>1</sup> score of 5 as it demonstrated recognition of risk and implementation of

<sup>1</sup> A confidence in management score indicates an AO's judgement on the likelihood of satisfactory compliance being maintained in the future. Factors that should influence the AO's judgement include: the track record of the establishment (i.e. its willingness to act on previous advice and enforcement and the complaint history); the FBO attitude towards hygiene and food safety; hygiene and technical knowledge available to the establishment (internal or external), including hazard analysis / HACCP

appropriate controls which in turn reassured AOs that standards were likely to be sustained. Taking a proactive approach was closely associated with the notion of taking ownership of compliance which was evident in some businesses who made it their job to self-educate, comply and, where needed, contact the regulator for advice and guidance if they were unsure.

### **Reactive**

These types of FBO were considered the most commonplace, with FBOs taking some positive steps towards ownership of risk and compliance while still relying on AOs for guidance to move them in the right direction. Reactive FBOs differed from more passive FBOs by displaying a certain *willingness* to comply with food law. Their willingness was evident both in the verbal exchanges they had with the AO (the questions they asked) and their overall demeanour (the way they voluntarily showed an AO around their business, talked them through paperwork), as well as in their general approach to FSMS, the upkeep of their paperwork and sufficiency of their systems.

### **Passive**

Passive FBOs show a bare minimum of compliance by not taking their own initiative or showing real commitment to improve. A passive mindset such as this was considered by AOs as extremely difficult to deal with as it often led to what they termed 'yo-yo' behaviour where broad compliance was achieved only temporarily and often not sustained from one regulatory visit to the next. FBOs with this mindset were motivated more by a desire to avoid enforcement action and incur financial or reputational costs than by a real appreciation of the public health risks that their business posed.

### **Disinterested**

This type of mindset is the sort that drives FBOs who show deliberate non-compliance. It was generally thought to be rare yet could occur just as easily in small, medium and even large food businesses. The best indicator of a FBO's disinterest was likely to be a clear lack of ownership for food safety. A key sign of a 'disinterested' mindset was likely to be that staff and manager alike all displayed a general air of disregard for an AO's presence, their feedback, education and food safety messages communicated during a visit. And the FBO was unlikely to take much interest in their score on any food hygiene rating scheme (FHR/IS).

Because of the many factors underpinning the FBO mindset there were no sure-fire ways to achieve and sustain compliance in a food business; nor were there any quick-wins. Achieving compliance was an initial challenge; sustaining compliance was an on-going task. But even in most food businesses achieving compliance could not be done overnight and required extended investments of time and a series of incremental improvements and "small wins".

### **Moving along the compliance pathway: signs of progress**

AOs approach their regulatory work with a much broader definition of success than a rise in a food business compliance rating. They look out for shifts in FBO mindset and evidence that food safety messages have been understood. These require more subtle means of measurement and involve AOs making qualitative assessments of food business practices

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and the control of critical points; and satisfactory HACCP procedures. A score of 0 indicates suggests a good record of compliance and a score of 30 a poor one.

and attitudes that exist within a food business, spotting “tell tale” signs that the FBO and staff have improved since their previous intervention and that they show potential to continue in the same vein.

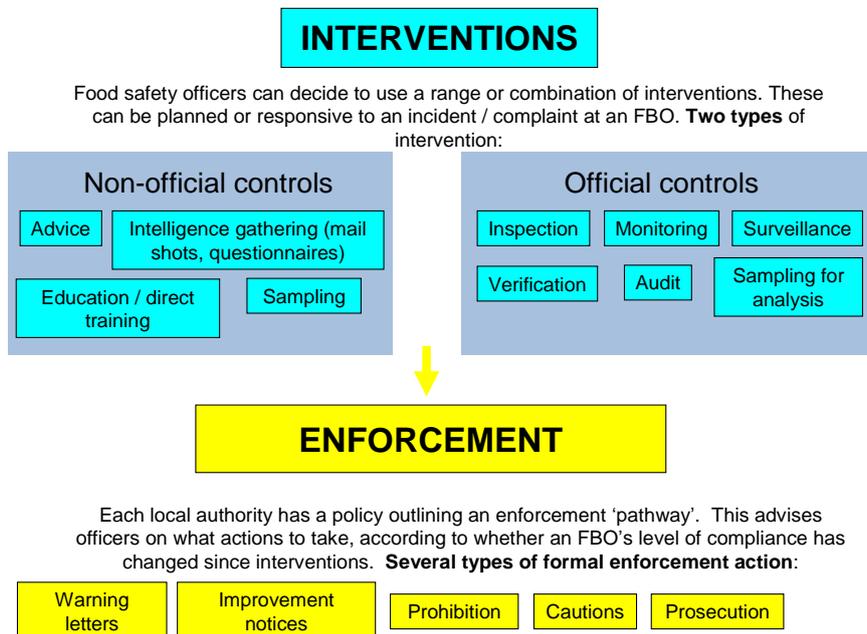
The use of the confidence in management scoring category has proved a useful framework allowing AOs to approach this kind of qualitative assessment systematically. Current FSA scoring system and scoring guidance for AOs is therefore going some way to recognising the importance of capturing these less measurable indicators such as ‘compliant will’ and ‘ownership of compliance’.

**Regulatory decision-making is not straight-forward**

In addition to FBO mindset and position of the food business along the compliance pathway, there were key issues which weighed heavily on AO decision-making, these include: balancing competing priorities i.e. proactive vs. reactive work; reluctance to be more risk-based out of fear of being blamed as a result of “another Pennington”; a perceived pressure at the local (elected members) and national (implications of Hampton report) levels to be more business minded.

Of all the interventions (see table 1 below) available, AOs would adhere to what they considered was a tried and tested approach: full inspection (followed by enforcement action where warranted), they explained the full inspection enables them to make a comprehensive risk assessment of the food establishment. This reliance on full inspection was also caused by their interpretation of an emphasis placed on delivering the planned programme of inspections, which in their view has been shaped by the FSA and LAs.

**Table 1: Authorised Officer’s toolbox**



Because these issues were prioritised differently across and within LAs the delivery of regulatory practice varied: focusing on high risk food businesses even at the expense of delaying lower risk business visits; too cosy a relationship and a hesitancy to escalate to enforcement action meant reliance on non-official controls or a repeating enforcement cycle (i.e. written warning served time and again for repeated contravention). Alternatively the sole use of enforcement meant FBOs were unlikely to understand their contraventions and how best to rectify them.

This one-size fits all approach fails to take account of difference in FBO mindset and position along the FBO compliance pathway. For example, conducting a full inspection would be necessary to assess standards in the premises of disinterested FBOs whilst it is likely a monitoring visit or partial inspection would be sufficient to verify standards in the premises of a reactive FBO.

To achieve and sustain compliance the research suggest the idea of better regulation is a way of enabling AOs to place more emphasis on a particularly regulatory style and should only be selected based on a comprehensive assessment of risk and the intelligence gathered about each food business.

### **How FSA can promote the idea of better regulation?**

While AOs understood that the idea of better regulation should be guided by being risk-based and proportionate in the main their practice relied on a single type of intervention (inspection). The fear of being blamed for “another Pennington” discouraged them from engaging with one aspect of better regulation: the current regulatory flexibilities provided in the FSA Food Law Code of Practice. It was evident therefore that more could be done to encourage AOs to adopt these flexibilities into their regulatory practice, these include:

- LAs reassuring AOs of the merit in adopting more targeted regulatory approaches;
- FSA making clear their desire for increased flexibility in the delivery of official controls by AOs and;
- FSA and LA promoting the idea and give clear examples of better regulation.

In summary, much of what FSA has communicated around ensuring regulation is effective, risk-based, and proportionate, in principle, should help encourage AOs to adopt more targeted approaches. However, until more AOs are convinced of the merits of being more flexible in the delivery of official controls and moreover feel reassured they will be supported in the event that “something is missed” then the effect of messages of risk-based regulation among AOs may be minimal and confined to AOs who are already conducting monitoring visits.

# Introduction

# Section 1: Introduction

In 2011, the Food Standards Agency (FSA) commissioned Ipsos MORI to conduct research to explore how food safety Authorised Officers (AOs) select interventions and enforcement actions and how this impacts on compliance levels of food business operators (FBOs). The FSA uses business compliance with food hygiene and food safety requirements as a key proxy indicator for measuring progress in improving public health and consumer protection outcomes. This report presents the findings and conclusions from the qualitative phase of research.

## 1.1 Background and context

There are 1.3 million cases of food borne disease in the UK every year, resulting in around 500 deaths.<sup>2</sup> The Food Standards Agency (FSA), created in 2000 with the remit of protecting consumers in relation to food, is a UK-wide non-ministerial government department, with offices in England, Wales, Scotland and Northern Ireland.<sup>3</sup>

One of the primary roles of the FSA is to work with Local Authorities (LAs) to enforce food laws. The actual enforcement of food legislation is largely, though not wholly, the responsibility of LAs, and more specifically Environmental Health Officers (EHOs) and Trading Standards Officers (TSOs). The FSA publishes Codes of Practice, which contain instructions and criteria that LAs should comply with when enforcing the law. There are separate but parallel Codes of Practice for each of the four UK countries.

The Code of Practice sets out instructions and criteria that LAs should comply with when enforcing food law. In order to ensure consistency by LA AOs the Code gives advice on how best to apply the provisions laid down in the code. For instance, Annex 5 of the Code provides guidance on how AOs should apply a risk rating to the level of compliance found in food businesses.

In June 2008, the FSA launched a revised Code of Practice. The main purpose of the new Code was to introduce additional flexibilities for types of interventions in lower risk category businesses which provide AOs with a bigger pool of interventions and enforcement actions. The intention of this was to facilitate more risk-based and proportionate approaches to regulatory work.

## 1.2 This research

In this context, the FSA commissioned Ipsos MORI to conduct an independent research study to explore influences of AO regulatory decision-making and evaluate the effectiveness of interventions undertaken by Authorised Officers (AOs) in achieving food businesses' compliance with food legislation.

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<sup>2</sup> Airey, S. and Greaves, A. (2005) *HACCP for small food businesses in the UK*, in Maunsell, B. and Bolton D.J. (eds) *Restaurant and Catering Food Safety: Putting HACCP on the Menu: EU-RAIN*.

<sup>3</sup> The Department for Agriculture and Rural Development Northern Ireland (DARD) has oversight for enforcing food law compliance in Northern Ireland.

The results of the qualitative research were intended to complement analysis being carried out into LAEMS data. Together, the two strands of research were intended to provide rich qualitative data on the decision-making process underpinning regulatory practice and answer the question 'what works', assessing which interventions are most effective at improving and sustaining compliance among food businesses and which Local Authority approaches have proved successful.

This study provides a qualitative analysis of how Authorised Officers decide what intervention to make when enforcing food safety. It considers the decision making processes, which interventions seem to work best and while the study cannot assess effectiveness, it gives examples of regulatory interventions that seem to have been effective. Seventy seven qualitative interviews were conducted, sixty five with LA staff, and twelve with food business operators. Interviews were carried out over twelve local authorities, chosen to ensure a representative sample. In each study area, researchers accompanied Authorised Officers on visits to food establishments. These constitute twelve cases of participant observation and are written up in the report as case studies.

The findings of the qualitative stage are intended to inform policy and provide good practice guidance for food authorities. By providing the FSA with insights into the decision making processes vital to food safety regulatory work, the research aims to help the FSA deliver its strategic aim, that food produced or sold in the UK is safe to eat as a result of effective, risk-based, proportionate regulation.<sup>4</sup>

## **1.3 Methodology**

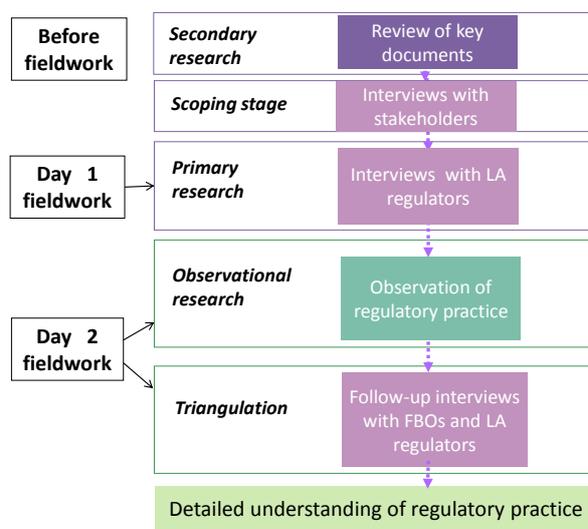
### **1.3.1 Research design**

In order to best meet the objectives of this study, a qualitative approach was chosen. This was largely because qualitative research enables in-depth exploration of participants' perceptions and the factors driving these perceptions, ideal for a study where one of the primary aims is to gain insight into decision-making processes. A staged approach to data collection was used (see figure 2 overleaf), incorporating a variety of qualitative methods and ensuring that each stage of the research built on insights which were gained previously.

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<sup>4</sup> The six outcomes FSA aim to deliver by 2015 are: foods produced or sold in the UK are safe to eat; imported food is safe to eat; food producers and caterers give priority to consumer interests in relation to food; consumers have the information and understanding they need to make informed choices about where and what they eat; regulation is effective, risk-based and proportionate, is clear about the responsibilities of FBOs, and protects consumers and their interests from fraud and other risks; and enforcement is effective, risk-based and proportionate and is focused on improving public health

**Figure 2: Overview of research design**



At the start of the research, in-depth telephone interviews with key senior stakeholders were conducted (see section 1.3.3 for information on stakeholder background). As well as providing insight into the stakeholders' views about food law enforcement, findings from these interviews were used to inform the design of research materials for the remainder of the study.

Following stakeholder interviews, the Ipsos MORI research team carried out two-day immersion visits to LAs. During each visit, a researcher conducted between six and eight in-depth interviews with AOs and accompanied an AO on a visit to a food business, where they conducted a silent observation of the regulatory process. After the observation, the researcher conducted an interview with the FBO and a follow-up interview with the AO for a 360 degree understanding of the issues.

The immersion visits offered the opportunity to juxtapose AOs' views about the range of regulatory options available to them with their actions, comparing what they say with what they do. They also provided FBOs with an opportunity to reflect directly on their visit and the intervention or enforcement action they used. Follow-up interviews with AOs enabled a discussion about what impact, if any, interventions were likely to have on the future behaviour of an FBO, as well as a discussion of how the present visit compared with previous ones and the subsequent impact of previous interventions or enforcement actions on behaviour.

An added benefit of the immersion visits was that they allowed researchers to spend extended periods of time with LA teams, helping to build rapport and trust between them. This proved to be important in helping researchers reassure AOs that the research study was not an audit or a review of their performance.

### 1.3.2 Meeting the research challenges

A study of this nature and scope presented several challenges to the design and conduct of the methodology. Table 2 below outlines the most significant of these and the approaches adopted throughout the research design to ensure study outputs that were robust and relevant.

**Table 2: Research design takes account of methodological challenges**

Methodological challenges	Approach taken	Benefit of approach
<b>Ensuring researcher understanding and knowledge surrounding food safety regulation</b>	Extensive background reading and on-going review of key documents (inc. Food Law Code of Practice 2008, FSA Board papers, FSA strategy / annual report, past FSA research, Hampton and Rogers reviews, Pennington report)	Thorough reading during setup phase provided lead researchers with an understanding and awareness of key issues affecting food safety regulation and FBO compliance. This informed the design of fieldwork materials and recruitment decisions.
	Detailed project team briefing and a 'moderator guidance pack' administered to each researcher prior to fieldwork	Information gathered during the background reading stage was passed on to the wider project team ensuring that <i>all</i> researchers were familiar with key issues before interviewing stakeholders and practitioners in the field. The 'moderator guidance pack' served as a reference point for researchers to consult whilst off site conducting interviews.
	Small project team with members involved from start to finish	As researchers developed their understanding of key issues, a small team made it possible to share insights easily and reduced the risk of an individual entering the field uninformed
	Close working relationship with FSA, fortnightly debrief meetings	Expert and up to date information was shared during meetings with the FSA lead for the research and wider internal audiences. Meetings also provided a useful point of verification for the IM team as emerging findings were shared and put into their wider context
	Scoping round of stakeholder interviews	Consulting experts in the field of food safety regulation early on was valuable for developing understanding and deciding key areas to mine further during interviews with AOs, EMs and FBOs
	Upfront in-depth interviews with AOs and EMs prior to observational work in FBOs	Interviews with regulators allowed researchers to develop a mental checklist of what to observe during site visits to FBO premises and provided them with the

		relevant contextual information on the history of individual food businesses
Ensuring the research provided a credible evidence base to withstand scrutiny	Accompanying AOs on FBO site visits and observing AOs carry out regulatory work	Decision-making processes were understood within the live context of a food business and data on actual as well as reported behaviour was collected to compare and contrast with data collected during regulator interviews
	Accompanying AOs on follow-up visits	2-day fieldwork visits allowed researchers the flexibility to observe the immediate impact of an intervention, for example where a premise was required to perform a 'deep clean' within 24 hours, which the AO would verify the following day
	Follow-up depth interviews with AOs and FBOs	This final stage of the immersion visit allowed for triangulation of data collected, cross-referencing the findings of earlier interviews and observation work by re-engaging agents involved in both the delivery and receipt of the intervention. Discussing the interventions process retrospectively and probing AOs around key areas which attracted the researcher's attention, allowed for a more in-depth understanding of decision-making processes, the value and impact of interventions. It also set observation data within the context of specific FBOs, helping researchers understand where behaviour was consistent with past visits or where improvements / slippages were evident
Minimising impact of a researcher's presence on AO/FBO behaviour	Explaining to FBOs the purpose of the research from the outset and providing an explanatory flyer upon arrival at FBO premises	By presenting the research as independent of the FSA and focused on assessing LA practitioners rather than FBOs, business owners and site staff were reassured and put at ease during the observation of the regulatory process. Introductory chats with the FBO where the independence of the researcher was explained secured trust
	Staying sensitive to the research environment and, where appropriate, carrying out observation work in silence	Minimising the researcher's interaction with either AOs or FBOs during the delivery of regulation allowed for a 'fly on the wall' perspective that guarded researchers against collecting superficial or affected data during observation work

Minimising researcher subjectivity during analysis and interpretation of research findings	Structured weekly internal analysis sessions to debrief on fieldwork findings	Constantly updating the project team on new fieldwork findings, sharing stories from the field and drawing comparisons between the data allowed the project team to develop thinking and begin the process of sorting data into themes which could be used for subsequent stages of analysis
	Researcher 'buddy system' used for a daily feedback of findings from the field	Due to the amount of data collected during the immersion visits, continual contact with other team members was crucial for informal downloading the data and on-going analysis of findings. Researchers were allocated 'buddies', peers who they reported to throughout fieldwork and updated with initial insights. This encouraged discursive approach to analysis and provided a useful element of peer review
Ensuring quality of data collection and post-fieldwork analysis	Discussion guides and observation aide-memoire used to record notes during fieldwork	Research materials listed key areas to observe while visiting FBO sites, ensuring that all researchers were focused on similar points of interest and collecting observational data in an organised format
	Structured fieldwork notes	Researchers organised their fieldwork notes under thematic headings allowing comparisons to be made between interviews and across LAs

### 1.3.3 Sampling

#### *Stakeholder interviews*

For in-depth interviews with stakeholders, the sample of potential participants included members of the FSA, the Chartered Institute of Environmental Health (CIEH) and Local Government Regulation (LGR).

#### *Immersion visits*

In agreement with the FSA, it was decided that twelve immersion visits should take place at twelve different LAs throughout the UK. To select these LAs from the 434 in the UK, a two-stage purposive sampling approach was adopted.

Using LAEMS data, 35 LAs were selected from the universe of 434 on the basis of whether they met two or more specified criteria. In consultation with the FSA, the following variables were identified and used to filter LAs from an extraction of the LAEMs database. The variables listed below were chosen because they enabled the selection process to take account of a) different levels of LA performance, b) a range of regulatory practices and c)

good spread of business types. As such, these variables were considered key factors behind the day-to-day decisions AOs make surrounding regulation.

Variables used in the LA selection process:

- the percentage of food businesses in the LA with compliance ratings either above or below the 'broad compliance' threshold;
- the percentage of unrated food businesses in the LA;
- the range of interventions the LA uses to tackle non-compliance;
- the range of enforcement actions the LA uses to tackle non-compliance; and
- the types of food businesses the LA focuses on (e.g. high-risk, non-compliant or compliant businesses).

Softer quotas were also set to ensure the research retained relevance across LAs and the final sample of twelve LAs were selected to reflect a good mix of:

- types of authority - District Council (DC), Unitary Authority (UA), Metropolitan Borough Council (MBC);
- urban and rural locations;
- levels of deprivation.

While geographical spread was taken into consideration during sampling and efforts were made to include LAs across the UK, it was not possible to visit LAs in Wales and Scotland due to LA commitments.

The limitations of the sample were due mainly to the size and scope of the project. By working with a sample of twelve LAs, it was possible to carry out the primary research over a period of two and a half months, which was necessary to meet the intended objectives for the study. To include a larger sample without extending the study timings would have required a larger project team and an increase in investment, which would have significantly changed the study scope.

### **1.3.4 Recruitment process and constraints**

#### *Stakeholder interviews*

FSA staff made the initial contact with stakeholders, to explain the research to them and why their contribution was valuable. It is often beneficial in stakeholder surveys for the organisation commissioning the research to approach potential participants to reassure them of their commitment to the study. The research team at Ipsos MORI then followed this up with a telephone call to interested stakeholders and arranged a convenient time for the telephone interviews.

#### *Immersion visits*

The Ipsos MORI research team started to contact food safety leads within the 35 selected LAs to ask them to take part in the research. The food safety leads were initially approached by email, with a letter attached explaining the purpose of the research, what it would involve,

and clarification about the researcher's independence from the FSA. One of the research team then followed up the email with a telephone call to explain the research further and answer any questions from the food safety lead. This process was carried out until twelve LAs agreed to take part in the research.

In total, 23 LAs were approached to take part in the research. Table 3 below details how many LAs were contacted in each country, how many agreed to take part, and how many declined. It is important to note that no LAs in Wales or Scotland agreed to take part in the research and this should be borne in mind when considering the findings.

**Table 3: Total number of LA's approached to take part in the research**

<b>Country</b>	<b>Number of LAs asked to take part</b>	<b>Number of LAs which agreed to take part</b>	<b>Number of LAs which refused to take part</b>
England	17	11	6
Wales	1	0	1
Scotland	4	0	4
Northern Ireland	1	1	0
<b>Totals</b>	<b>23</b>	<b>12</b>	<b>11</b>

LAs which declined to take part in the research often did so because of mitigating factors rather than because of a lack of desire to participate. The research took place during an exceptionally busy period for LAs: the end of the financial year, the end of inspection programme cycles and the Easter holiday period. This meant that a number of LAs were facing resourcing issues during the fieldwork period and could not allow staff the necessary time to participate. A few LAs were also in the process of restructuring following budgetary cuts and, in some cases, redundancies were being made which meant resources were particularly stretched. Understandably, this had an impact on some LAs motivation to take part in the research despite the researchers' flexibility.

### **1.3.5 Data collection and analysis**

#### *Data collection*

Six telephone interviews were carried out with stakeholders. These lasted between 45 and 90 minutes and a discussion guide was used to direct the interviews. All interviews took place in March 2011 and, where permission was obtained, these were recorded.

During immersion visits, 65 interviews were conducted with a range of enforcement staff. These included Environmental Health Officers, Senior Environmental Health Officers, Technical Officers, Food Safety Managers, Heads of Service and Trading Standards Officers. Table 4 overleaf shows the number of each type of regulatory staff interviewed:

**Table 4: Total number of interviews conducted<sup>5</sup>**

<b>Job role of participant</b>	<b>Number of interviews</b>
Technical Officers (inc. Food Safety Officers)	10
Trading Standards Officers (and more senior staff)	4
Environmental Health Officers	17
Senior Environmental Health Officers	18
Food Safety Managers	11
Heads of Service	5
<b>Total number of LA interviews</b>	<b>65</b>

The interviews with regulatory staff lasted between 60 minutes and 90 minutes each. Two different discussion guides were developed for interviews with Enforcement Managers (EMs) and interviews with AOs. For follow-up interviews with AOs after visiting food businesses, an aide-memoire was used. Given the nature of the immersion visits, researchers were able to have a host of informal chats with AOs, while travelling to and from a food business or at mealtimes. These provided valuable insights which were a useful supplement to data collected during formal interviews.

At least one observation of an AO carrying out an intervention or formal enforcement action was conducted during every immersion visit. Upon arrival at a food business, the researcher explained the aims of the research to the FBO and asked permission to observe the AO's visit. The FBO was also given a leaflet explaining the research and reassuring them of the researcher's independence from the FSA. The researcher then conducted the observation in silence and used an observation matrix to record what they saw. Immediately following the intervention, the researcher carried out a short interview with the FBO using an aide-memoir. In total twelve interviews were conducted with a range of FBOs. These were micro<sup>6</sup> and medium<sup>7</sup> enterprises in the retail and catering sectors, and small<sup>8</sup> enterprises involved in food manufacture, for example, ethnic and high-end foods. The views of FBOs are incorporated into the main body of the report. All FBOs approached agreed to take part.

All immersion visits took place between April and June 2011 and, where permission was obtained, all interviews were recorded.

<sup>5</sup> Throughout this report technical officer, trading standards officer, environmental health officer, and senior environmental health officer are discussed using the term Authorised Officer. Food Safety manager is discussed using the term Enforcement Manager.

<sup>6</sup> The European Commission (EC) definition of micro enterprise is an employee headcount under 10 and less than €2 million turnover. The definition was accessed at:

[http://europa.eu/legislation\\_summaries/enterprise/business\\_environment/n26026\\_en.htm](http://europa.eu/legislation_summaries/enterprise/business_environment/n26026_en.htm)

<sup>7</sup> The EC definition of medium enterprise is an employee headcount under 250 and less than €50 million turnover. The definition was accessed at:

[http://europa.eu/legislation\\_summaries/enterprise/business\\_environment/n26026\\_en.htm](http://europa.eu/legislation_summaries/enterprise/business_environment/n26026_en.htm)

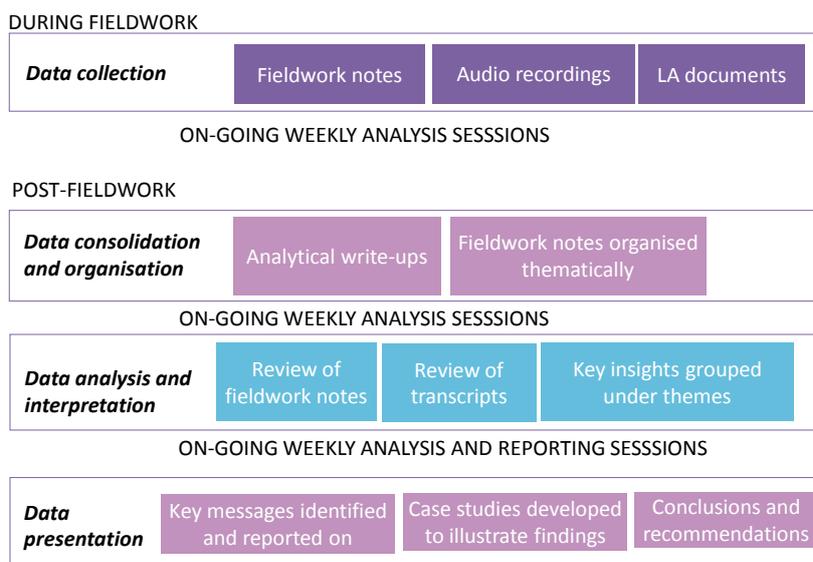
<sup>8</sup> The EC definition of small enterprise is an employee headcount under 50 and less than €10 million turnover. The definition was accessed at:

[http://europa.eu/legislation\\_summaries/enterprise/business\\_environment/n26026\\_en.htm](http://europa.eu/legislation_summaries/enterprise/business_environment/n26026_en.htm)

## Data analysis

Researchers produced detailed field notes following all interviews and observations. During and directly following fieldwork the research team met weekly to discuss their findings and identify emerging themes of the research. These sessions helped inform fieldwork as researchers were able to use subsequent immersion visits to explore emerging themes in more depth. Once fieldwork was completed, further analysis sessions were conducted and researchers' field notes were analysed in detail. The project team then reviewed the data in light of the themes identified in the analysis sessions and drafted the final report structure based on these themes. Figure 3 below details the approach to data collection and analysis used for this study, which is consistent with past studies conducted by Ipsos MORI.

**Figure 3: Overview of data collection and analysis**



## 1.4 Interpretation of the findings

It is important to note that qualitative research is used to shed light on *why* people hold particular views, rather than *how many* people hold those views. Such research is intended to be illustrative rather than statistically reliable and, as such, does not permit conclusions to be drawn about the *extent* to which something is happening. With this in mind, when interpreting the findings from this research, it should be remembered that the results were not based on quantitative statistical evidence but, like all qualitative research, on a small number of people who have discussed the relevant issues in depth. It is also useful to consider that these are not facts and not necessarily true, rather they are participants' perceptions.

Throughout the report, verbatim comments have been included to illustrate particular viewpoints. Where this is the case, it is important to remember that the views expressed do not always represent the views of all participants. In general, however, verbatim comments

have been included to illustrate where there was a particular strength of feeling among participants. No names have been used in the report to protect the anonymity of individuals.

## 1.5 Report outline

The rest of this report is structured as follows:

**Section 2: Key audience profiles** – this provides an introduction to the different groups of people who took part in the immersion visits, including AOs and FBOs.

**Section 3: Understandings of compliance** – this examines the concept of 'compliance' with food legislation, as understood by AOs, FBOs and the FSA.

**Section 4: The pathway to FBO compliance** – this explores the nature of the challenge faced by FBOs and AOs in achieving FBOs compliance with food laws. It explores different types of FBO and AO mindset and the impact of this on the stages of development.

**Section 5: Factors influencing food safety regulatory practice** – this provides an overview of the key national and local factors which influence LA food safety practice.

**Section 6: Factors influencing intervention and enforcement decision-making** – this provides an overview of the interventions and enforcement actions available to AOs to encourage food businesses to comply with food laws and details the decision-making processes AOs go through when deciding which intervention or enforcement action to use.

**Section 7: Regulatory outputs: signs of progress** – discusses the outputs of regulatory work and shows how AOs use these indicators to assess whether the interventions and enforcement action have worked

**Section 8: Regulatory outcomes: achieving and sustaining compliance** – identifies examples surrounding the notion of better regulation and shows how AOs put different emphasis on a regulatory style to prompt action among food businesses.

**Section 9: Final thoughts** – this brings together the findings from the study to provide overall conclusions.

**Appendix 1: Glossary of key terms** – this provides explanation of key terms used throughout this report.

**Appendix 2: Stakeholder opinion of food safety regulatory practice** – this provides an overview of the key findings from the interviews with stakeholders.

**Appendix 3: Research materials** – this includes all data collection tools used during fieldwork.

**Appendix 4: Risk-based and proportionate matrix**

# **Key audience profiles**

## Section 2: Key audience profiles

This section is a brief overview of the people working in and directly affected by food safety enforcement: Authorised Officers (AOs), enforcement managers (EMs) and food business operators (FBOs). Looking at their levels of education and training, personality types and priorities allows for a fuller understanding of the decision-making factors underlying food safety regulatory practice and the drivers and barriers to food business compliance.

### 2.1 Authorised Officers

AOs of all grades, from Technical Officers (TOs) to Senior Environmental Health Officers (SEHOs), had often joined food safety teams after working in other areas of environmental health and public protection. These included Housing, Anti-Social Behaviour, Noise, Waste Management, Health and Safety and Licensing. In general, they were a very committed group of people with strong interests in both the subject of food and environmental health or public health protection. Food safety work was considered a more specialist area of environmental health. Indeed, several who had made the move from other departments commented that the demands of this job were higher, but so too were the rewards.

*"The best thing about the job is the ability we have to make a difference and to see the results, to protect health and well-being... I get a buzz out of protecting public health."*

Environmental Health Officer, District Council

Several AOs had started careers in the food business sector, for example one AO had been manager at a chain pub and another had experience of the farming industry. There were also those with more academic backgrounds in Microbiology or Biological Sciences. Food safety work appealed because of the opportunity it gave AOs to apply their specialist skills while also serving the public good.

AOs commonly talked about their duty to the public and strong sense of responsibility both for protecting public health and supporting local businesses. That said, where there was not an imminent risk to public health some AOs often found it difficult to balance competing priorities; this is one of the key issues affecting intervention selection and discussed throughout this report. Their accountability to both groups was reflected in their daily priorities. Much of their time was spent out of the office visiting businesses and investigating public complaints. A substantial amount was given over to paperwork but the biggest demand on their time was the interaction with food businesses – travelling to and fro, advising and educating, carrying out interventions, and revisiting. AOs often spoke about building partnerships with food businesses as a way of getting FBOs to take ownership of compliance. Although many mentioned this can take time when it does pay off it was talked about as being the 'perk' of the job and source of much job satisfaction.

*"I enjoy nudging people; persuading them....I (like) to get them on my side."*

Senior Environmental Health Officer, District Council

*"I like meeting people"*

Environmental Health Officer, District Council

## 2.2 Enforcement managers

Enforcement Managers (EMs) had all previously been AOs and regarded this as key to the successful management of their team. In some LAs, EMs took on a share of the team's regulatory work, usually where resources were fewer or where their head of department was responsible for more of the food team's management thereby freeing up their time to do more "on the ground" regulatory work. However, several managers commented that in recent months they had in fact taken on a wider range of responsibilities, both managerial and frontline, such as human resources and investigations of imported foods. While others had *broadened* their remit, from just managing the Food Service to including other EH functions, particularly H&S, pollution from commercial business, licensing, noise etc. This in turn meant managers were less able to give time over to food safety regulatory work.

For some this also meant more time spent in the office dealing with paperwork and managing the interests of local stakeholders: elected members, members of the public, businesses, and heads of department. While for many, their days were often spent outside of the office, at regional and national food safety forums or committee meetings. At one LA, AOs joked:

*"Our manager [manager's name]? [Manager's name] who? We never see him now!"*

Environmental Health Officer, London Borough Council

Managers tended to see their role as one of quality assurance, reassurance and guidance. Quality assurance took different forms; some felt it was important to accompany AOs on visits and thereby ensure consistency of their working practices, while others relied on AOs giving a constant stream of feedback when they returned from visits. Regular and informal workplace 'chats' were also used as an opportunity for EMs to give AOs support and advice about their work. Several also felt responsible for clearly defining to AOs where their responsibilities lay, reassuring them about the limits of their accountability and allaying the common AO fear of "what if I miss something?" This fear of accountability is a theme explored in more depth in section 6.

Several EMs spoke of academic links they had established with local universities and the emphasis they placed on training their staff around food safety issues. Many felt it was a daily challenge to manage priorities of food safety enforcement, efficiency savings and political / local interests.

## 2.3 Heads of service

In some LAs the food team lead and the head of the Environmental Health or Public Protection department were seen working very closely together, with food teams considered a core function of the department. Heads of service often attended national, regional and local regulatory practice and food forums. Their role was therefore key as communicators of

important messages to food team managers about current practices and thinking in the field of food safety.

## **2.4 Food safety teams**

Most 'food teams', a phrase used by AOs and EMs, sat close together, sometimes in a separate room to other sections of the Environmental Health or Public Protection department. Team members praised this kind of arrangement as it allowed good dialogue between AOs and free exchange of ideas before and after conducting regulatory visits. EMs appreciated the opportunity it gave them to get AOs' feedback and insight around regulatory activity which was working and what was not. AOs praised the feeling of support and sense of shared responsibility that this brought. For example, if they encountered a dilemma while they were out on a visit they welcomed the chance to share this with the rest of the team back at the office, enabling them to make more informed regulatory decisions in the future.

A few LAs had recently seen changes to their office layouts and as a result food teams were no longer sitting together. Some were also encouraging AOs to work from home where possible, especially when writing up inspection reports or evaluating a discrete project where this style of working was thought to be more productive. This was the case in one LA where the whole department operated a hot-desking policy meaning AOs could never be sure of who they would be sitting next to. The new setup was noted as a barrier to on-going dialogues and advisory chats with fellow AOs and EMs. It had led AOs to make more use of their mobile phones, indicating that access to peer approval and advice about regulatory decisions was integral to a good food team and as result better regulation.

## **2.5 Food businesses**

The research involved visits to a range of different types of food businesses varying in size, customer profile, history of compliance, position on the 'farm to fork' chain and cultural background. Complying with food safety regulations involved a different set of systems and practices for each type of food business i.e. size, customer profile, history of the business and cultural background. This was observed during the research and emphasised by AOs and EMs who believed better regulation relied on AOs being given the flexibility to ensure their regulatory practice could accommodate a variety of business needs and business settings. The descriptions below indicate how food safety is approached in different types and size of food business.

Medium and larger businesses (such as national chain retailers and manufacturers) often use a third party organisation to manage food safety management systems (FSMS) and ensure compliance with food hygiene and standards legislation. Regulatory work (informal and formal) was necessary to ensure that these management systems work 'on the ground' and that day-to-day staff are aware of and able to deal with food safety hazards. In these food businesses, the main compliance issues tended to be related to day-to-day maintenance of a food safe environment.

Micro and small businesses were often provided with a safer food better business (SFBB) pack by AOs to use as a more appropriate FSMS. Lack of time, money and sufficient understanding of food safety issues were usually barriers to these types of business drawing up an adequate FSMS themselves. It would usually be the job of the FBO to monitor food

safety across the business and keep the SFBB pack updated but, especially in restaurants where the kitchen was the domain of a head chef, responsibilities could be shared.

It was also common for these types of business to employ a dedicated Hazard Analysis Critical Control Points (HACCP) manager to oversee food safety issues on a day-to-day basis and deal with any issues of non-compliance. Small and medium sized businesses sometimes also used independent consultants who they paid a one-off or annual fee. In these businesses, the biggest compliance issues tended to be related to how consistent management was in maintaining SFBB and how successfully food safety messages were understood by day-to-day staff.

The role of regulatory work among these businesses was usually to ensure that levels of awareness, understanding and commitment to food safety issues were consistent throughout the business. Structural issues were sometimes a stumbling block for these types of business with smaller business liable to poorer standards of maintenance. However AOs were often familiar with the staff and owners of these FBOs, especially where food teams operated 'patch' working. Where this occurred, enforcement work tended to be a balance of familiarity and formality.

# **Understandings of compliance**

## Section 3: Understandings of compliance

This section explores how different audiences understand compliance and where responsibility for compliance lies. It then looks at how these perceptions of compliance fit into a local and national context and lastly considers what AOs regard as indicators of improvement.

### 3.1 How do officers and managers define 'compliance'?

AOs and EMs commonly agreed on the basic definitions of compliance and what this should look like in a food business. Broadly, it was understood to mean compliance with food law, a lack of imminent risk to public health, reasonably clean and well-structured business and satisfactory food safety management systems in place. Definitions such as the following were common:

*"[It's] complying with legislation, having all the right documents, being structurally sound, clean."*

Food Safety Officer, City Council

*"Compliance is about meeting the minimum levels of compliance set out in food regulations. Compliance is when a business is clean, there are good, knowledgeable staff, safe food and there are food safety management structures in place."*

Food Safety Manager, District Council

When compliance was spoken about in these terms, AOs and EMs stressed the role of their assessment and the importance of sound judgement and "officer common sense" to gauge when a FBO displayed compliance.

Definition of compliance was often further associated with the '10, 10, 10' risk-score: although not mentioned in the Code of Practice some AOs and EMs would refer to this score as the business being 'broadly compliant'. And their descriptions of what businesses that score '10, 10, 10' should look like indicate consensus of opinion, as shown in the quotes above.

AOs and EMs made a subtle distinction between these basic definitions of a broadly compliant business and the more complex but important concept of compliance as an 'attitude' or a 'mindset'. Compliance as a mindset was far harder to put into words or use guidance for.

*"Compliance is a mindset, an attitude...I can't put my finger on it but you get a feel for it from talking to staff, walking around the business."*

Food Safety Manager, London Borough Council

Time and again, the use of an official risk category dedicated to *confidence in (FBO) management* was praised by many AOs for the opportunity it gave them to look beyond the most evident displays of compliance towards something that was a better indication of a compliant mindset and an ability to sustain compliant behaviour.

*"Confidence in management (is key)...we're no longer looking at floors, doors, ceilings etc. it's about something more than just what we see with our eyes on the day."*

Environmental Health Manager, District Council

The emphasis on detecting a compliant attitude meant, effectively, that an FBO's confidence in management (CIM) score was considered the crucial factor in predicting future compliance. Consequently, AOs would in any interaction with a food business, ask themselves the question 'to what extent can I trust this FBO to comply and sustain their practices'.

Several AOs and EMs drew a further distinction between "broad" compliance and "full" compliance. Full compliance was associated with food businesses that go beyond minimum legal standards; in practice this meant, sustaining a high level of compliance and exceeding national guidelines or industry code of recommended practice. It was therefore viewed by some AOs as the ultimate goal of their regulatory work, an idea explored further in section 4.1.

*"It isn't just about regulation, complying with the law, it's about good compliance."*

Food Safety Manager, Unitary Authority

*"It's about staff who are aware of the relevant knowledge, not simply in a short term way, but having read up and invested time in finding out about their business and important factors like food safety."*

Environmental Health Officer, City Council

There was however a divide between those who saw the aim of regulatory work as, ultimately, to ensure broad compliance was attained by all food businesses, and those who thought it should be geared towards shifting the hearts and minds of FBOs and as result prompt FBOs to take ownership of compliance. The latter view indicates the extent of the challenge that many AOs saw themselves engaged in.

*"BC is a very broad label. You have to look at **why** they are only BC, where there are still issues etc."*

Food Safety Officer, District Council

The following sections 4 and 6 explore how these contrasting perceptions of enforcement work can impact AOs' decisions.

## 3.2 Who is responsible for compliance?

Legal responsibility for compliance sits clearly with the food business, with the role of AOs being to monitor food business practices and ensure that they comply with food safety regulations. This was reflected in the initial response given by all AOs that it was food businesses who were responsible for compliance. One of the factors AOs considered most essential to securing compliance in a business was the attitude of its proprietor and staff and amount of ownership they took for food safety issues. While most AOs accepted their responsibility in monitoring compliance and, to an extent, helping to bring it about, they emphasised that the responsibility for public health protection needed to be shared. This is one of the key challenges AOs reported in their dealing with some food businesses; getting them to adopt the same sense of duty to public protection that they themselves had:

*“Food businesses need to realise that it’s their responsibility to public health. We need to get a different message across to them than profit. They need the same thing we have – if I do this job badly, someone may die.”*

Technical Officer, London Borough Council

Some of the more experienced AOs who had been working in the field of food safety for over twenty years laid the responsibility on food businesses; however they were sceptical about AO ability to encourage all food businesses to adopt a sustained compliant attitude.

*“All (officers) can really do is tell them. The ball is in their court. You can’t change human nature.”*

Senior Environmental Health Officer, London Borough Council

Despite the clear legal duty that lies with food businesses, some AOs took the view that they too were largely responsible for a food business achieving and sustaining compliant standards. This was based on the strong influence their legal powers give them over FBO practices and attitudes towards compliance; effective regulatory work sometimes required AOs to initially take ownership of the problems, in the hope that this would affect change and eventually instil a compliant will within the business.

In a couple of LAs, a message of ‘co-responsibility’ was clearly embedded in the food team’s culture. Where this was the case, AOs talked in terms of establishing a ‘shared understanding’ with food businesses and placed emphasis on their individual duty to establish the right relationship with an FBO, one that would encourage them to take responsibility for compliance.

*“It’s the AO – FBO relationship that counts, it is therefore the officer’s responsibility to build compliance.”*

Manager, District Council

There was a view among AOs and EMs with over ten years of experience in the field of local authority regulatory work that indicators used to analyse risk had evolved over time. Where before the focus of inspections had tended to be on structural issues, AOs reported more emphasis being placed on ensuring compliant *behaviours* and detecting, insofar as possible, *attitudes* towards compliance. AOs typically relied on confidence in management indicators

to make this assessment. This way of assessing compliance had in turn increased the expectations that AOs held of food businesses to understand better risk analysis and management. . As such, several AOs emphasised the increasing sense of responsibility they felt for passing on specialist knowledge about food safety and best practice to food businesses.

While the FBO may be ultimately responsible for running a safe food business, AOs were often conscious of their role beyond that of enforcers and regulators, including one of educators and consultants. This marked a departure from what was previously called 'pure enforcement' work, where an AOs role was more strictly defined by their responsibility for administering interventions and enforcement. For the most part, this shift towards a wider view of regulatory work (sometimes called better regulation) to include education, advice, training, consultation, and a larger remit of AO responsibilities, was viewed positively because it was felt this could encourage food businesses to take ownership of compliance. The idea of better regulation is discussed in section 8.

### **3.3 How do food businesses receive messages about 'compliance'?**

It was clear from interviews with AOs, FBOs and observation work, that translating 'compliance' into terms which resonate with food businesses is a challenge for regulation and indeed the idea of better regulation. To English and non-English speaking FBOs alike, terminology surrounding food safety compliance can be off-putting and rarely spark their interest. To many food businesses, 'food safety compliance' was viewed as legal terminology and grouped together with other areas of government regulation such as fire, health and safety, building and even the UK immigration service. AOs were sometimes sensitive to this reality and the fact that food safety was in many cases viewed by food businesses as a burden. For example, some AOs would sometimes use an empathetic approach as a means to encourage food businesses to think differently about food safety compliance. They would explain to the FBO that SFBB was also a relatively new tool for them which could be off-putting therefore together they would sit and work through it. Other examples cited by AOs were usually those cases where FBOs had come to understand the business case for food safety compliance or, even better, had felt its tangible benefits.

*"It's good for my business as better hygiene standards have helped me to get a [supermarket brand] contract."*

Small manufacturer, West Midlands

In medium and large businesses, there was usually a better understanding of the link between compliance and business success. While AOs often reported instances of lack of implementation at the local level, it was generally agreed that the larger the business the more likely they were to take on basic regulatory messages and implement structured approaches to food safety management. However, there was some concern among AOs and EMs about initiatives like Earned Recognition (see section 8).

Unsurprisingly, it was usually smaller and/or less experienced businesses who tended to see food safety as a second priority for their business. This created a discord between the AO and FBO perspectives, which explains why better regulation also relied to a great extent on

the effective *communication* of food safety as an important issue. As the owner of a local bakery chain in one London borough put it:

*"I'm trying to earn a living...he (the EHO) needs to understand that."*

Bakery owner, Greater London

A lack of financial means was the most commonly given reason for food businesses not regarding compliance with high priority. But even where finances were not a barrier, AOs admitted that it was quite rare for FBOs and their staff to see compliance as an essential part of their job, rarer still for them to see it as an ingredient for business success.

Ensuring that the message about compliance was properly communicated to food businesses often required AOs to adopt language and concepts that FBOs could relate to. In turn, AOs referred amongst themselves to terms like 'selling' and 'incentivising' compliance, indicating that it was helpful for regulators to adopt a business-focused mindset when thinking about the best means of disseminating food safety messages.

### **3.4 Raising compliance levels: serving local interests**

The sense of duty some LA AOs and EMs expressed towards public health was countered by a commitment to supporting the local economy. Their support was two-fold. On the one hand it involved encouraging growth in local food businesses; on the other it meant protecting consumers from harm. This was an issue raised by some EMs but it was clearly also a concern for AOs who often talked about their 'customer focus', classing both businesses and members of the public as their customers.

A good example of how LAs have successfully communicated the benefits of compliance levels locally is in the application of Food Hygiene Rating Schemes (FHR/IS). In one city council, the success of the scheme was attributed to the raised level of public awareness and public expectations surrounding food safety. By making compliance with food legislation an overtly public issue, the EM found that his AOs were better equipped to demand high standards of food businesses and as a result better able to provide the local population with a food economy to be proud of.

*"It's about quality and transparency, not naming and shaming."*

Environmental Health Officer, City Council

However, a few AOs felt a degree of discomfort in what they effectively saw as 'naming and shaming' poor practice food businesses. These AOs felt that publicising this level of information could have an impact on the AO-FBO relationship and be detrimental to the business growth message which several LAs were cautious to maintain at the present time.

It was feared that by making compliance with food law a public issue, some food businesses in particular those keen but struggling to comply might become demoralised and disengaged with the issue of compliance. Some AOs thought it was likely that the relationship of trust existing between the FBO and the AO could be badly damaged, and ultimately leave AOs with little option but to focus solely on enforcement as a way to improve compliance. In situations like these where the FBO showed a desire to comply but were finding it difficult, AOs perceived that the sole use of enforcement could be counter-productive.

Striking the right balance between serving the public interest, serving businesses and raising compliance levels was thus considered another key challenge for those working in enforcement.

### 3.5 Good compliance levels: more than a national indicator

LA's inspection targets were thought by some AOs to over simplify the value of food safety regulatory work. There was a perception that the BC category encapsulated most of the food businesses in a local area and therefore did not reflect the successes and failures in an LA's regulatory approach. Consequently, some LAs had begun using risk scoring to split the BC category and focus their efforts on non-BC food businesses.

Compliance ratings, while useful for indicating the level of public health risk in an area, were believed to overlook important longer term outcomes of better regulation. The view was that a more appropriate indicator would be the number of businesses successfully *brought into sustained compliance*, as a result of AOs' investments of time and effort. This was where AOs and EMs saw themselves adding public value. In fact it was also this that food businesses often seemed to value; during follow-up interviews with FBOs, those in newly compliant businesses often talked about the level of appreciation and respect for their AO, as a result of the investment and genuine interest they felt they had been shown by the AO. Seen as a supportive force, the AO was thought to enable compliance which in turn some businesses felt boosted reputation and therefore growth.

#### In conclusion

There was clear consensus among AOs over the importance of looking at compliance in a wider sense than structure, cleanliness, hygiene, or HACCP. While these factors are vital in making an objective assessment of risk, the significance of attitudinal factors in the overall judgment AOs make of food businesses was a point AOs constantly stressed during interviews. This wider definition underpins the goals which AOs set for their own day-to-day regulatory work and the motivations driving many key decisions.

# **The pathway to FBO compliance**

## Section 4: The pathway to FBO compliance

Sections 5 and 6 looks closely at Authorised Officers' (AOs) decision-making processes and the factors influencing different regulatory practices adopted by food teams. To give context, this section outlines the main objectives of food safety regulation as seen by AOs and the important role which the attitudes of both FBOs and AOs play. Thinking of FBO compliance as a continuum can help to understand why better regulation relies strongly on the amount of time and effort invested by both parties.

Past research supports the idea of a pathway to compliance and in a previous report produced for FSA<sup>9</sup> researchers have found it useful to look at the stages of development necessary for FBOs and AOs to work through in order to change attitudes and behaviour in such a way that compliance can be achieved and sustained long term.

### 4.1 Objectives of regulatory work

The basic goal of food safety regulatory work was widely recognised by AOs and EMs as achieving broad compliance (BC) across as many food businesses as possible. AOs and EMs felt this was in line with FSA's priorities and often cited the percentage of BC businesses in their area to illustrate the visible impact and effectiveness of their regulatory work.

But achieving broad compliance was considered only half the story. *Sustaining* broad compliance and ideally securing a standard of compliance above broad compliance was thought by many to be a more accurate description of their long term aims. AOs and EMs often talked in terms of 'the compliance journey' and 'the path to securing compliance', indicating that regulatory work did not stop as soon as broad compliance in a business was achieved; rather it required continued investment and intervention.

This helps explain why the use of official controls, such as inspections or verification visits, was sometimes considered by AOs as merely *one* element of successful regulatory work, and why additional informal visits where time and effort continued to be invested in a business were often judged just as vital for maintaining compliance and raising overall standards to BC and above.

*"Anyone can walk into a business and tick a sheet but an inspection is only just the start of the path to securing compliance."*

Environmental Health Enforcement officer, District Council

This also helps explain the hesitancy some AOs showed towards the idea of self-regulating food businesses. Although in principle AOs will often say that the goal of their regulatory work is to facilitate independent ownership of food safety management and thereby reduce the amount of input required by the regulator, in practice AOs are often guided more by a

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<sup>9</sup> Fairman R. & Yapp C., (2004) *The evaluation of effective enforcement approaches for food safety in small and medium enterprises (SMEs)* King's Centre for Risk Management. Kings' College London

belief that only through sustained contact with the food business can compliance be successfully maintained. In some instances, this stemmed from a lack of trust: how can an AO be assured that a food business displaying compliant behaviours has the necessary intention and will to sustain the right actions. In other cases, it was a pragmatic concern, based on experience: how can an AO be sure that the food business has the necessary capacity and resource to maintain food safety standards. Too often AOs said they returned to find a FBO had de-prioritised food safety compliance due to external factors such as a drop in business sales or staff changeovers leading to a slip in standards.

An example of good practice in place at one LA, involved AOs being encouraged by their EM to use a matrix system (see appendix 4) on their visits to food businesses encouraging a regulatory response based on risk-based and proportionate principles. The EM at this authority explained how using this more strategic approach enabled his team to be better regulators: The approach was identified as key to the team's success in raising compliance levels as it allowed AOs to focus their efforts on higher risk food business, motivating them to sustain compliant behaviour.

However, AOs worried that emphasising risk-based regulation could compromise the vital work many authorities do in providing sustained and continued investment in businesses wherever they are on their compliance pathway. They believed that many BC businesses still needed help sustaining this level of compliance. Similarly, for non-BC businesses, the value of sustained investment was clear, with AOs emphasising the need to communicate regulatory messages gradually ('drip drip') in order not to overwhelm FBOs with negative messages and potentially risk their disengagement.

*"For C rated businesses, it would be nice to have short nippy visits to say one time 'you need to do x and y' then the next 'you need to do z'. There's no real reason not to do it all at once except that it's human nature – it's better to disperse a message about 'you must do x,y, and z' than to say it all at once."*

Technical Enforcement officer, London Borough Council

Section 6.5 looks in more detail at the differences between 'enforcement pathways' and 'enforcement cycles'. One way to understanding why AOs sometimes favoured using 'enforcement cycles' is to see them in the context of this long term aim to *build* compliance in an business, providing continued support and attention even where they may see signs of 'slippage'.

This spells a potential challenge for better regulation: how to balance a close supportive relationship with one that gives food businesses sufficient distance to develop a complaint will and compliant behaviours of their own accord, owning up to the duty of compliance without relying on AOs for guidance. The importance and challenge of adopting a balanced approach to enforcement is explored in the final paragraphs of this section and again in section 8.

The ideal objective of achieving and sustaining *full* compliance in a food business was not shared by all AOs, however, and some took a much more pragmatic approach to their work. This was more common among AOs with ten years or more experience in the field, who had learned that the short term goal of achieving broad compliance was all they, realistically, could hope for:

*"Sustained compliance, that's difficult. We don't kid ourselves that we are doing anything other than changing behaviour for a short time. We are not winning their hearts and souls."*

Environmental Health Enforcement officer, District Council

Most AOs, however, had a more positive outlook and considered that their regulatory work was capable of shifting the attitudes of FBOs and enabling sustained behavioural change. Even when AOs and EMs were strong advocates of the responsibility of FBOs to sustain their compliance, they had ambitions for regulatory work beyond simply achieving higher levels of broad compliance' and emphasised the importance of longer term outcomes:

*"The key thing is to start to change the attitude and mindset of businesses to take responsibility for compliance themselves. They should not rely on us to be the generator of change."*

Divisional Environmental Health Authorised Officer, District Council

## 4.2 Food business operator mindsets

At the start of this research, stakeholders picked out the key impact that an FBO's attitude had on the compliance level of a food business, noting that without a 'compliant will' a good compliance score was not possible to achieve. In turn, it was said that the attitude of an FBO could strongly sway an AOs decision-making process, determining the level of emphasis they would place on a particular regulatory style, whether they invest continued amounts of time and effort or opt to move more rapidly to enforcement actions.

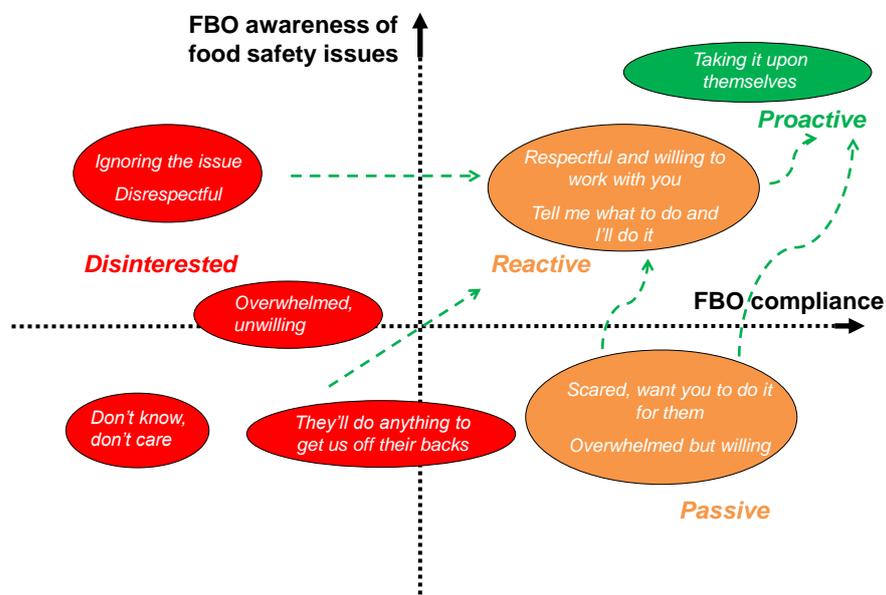
In interviews with AOs and EMs this was confirmed and several even said that it could be the deciding factor in whether they pursued enforcement action. Assessing an FBO's attitude towards compliance was singled out by many as top of their 'checklist' when carrying out regulatory work.

Once detected, an FBO's attitude often served AOs as a warning sign for the type of compliance journey which lay ahead for them and the FBO. For example, if an AO felt immediate hostility when they arrived at a food business, or if they suspected staff at the food business of telling lies to cover their back such as 'the manager's out!', they knew instantly that the journey to compliance would be long and time consuming. In other words, as soon as an AO perceived an FBO to be displaying a 'non-compliant will', he / she knew to be on their guard.

Individual EMs and AOs all had slightly different ways of describing the attitudes and values that characterise FBOs. Figure 1 below shows the kind of phrases that were used and indicates four broad types of FBO mindset: disinterested, passive, reactive and proactive.

These mindset types are not exclusive, indeed it was common for AOs to talk of one FBO displaying more than one mindset at different stages of their development. The goal of regulatory work itself was often described as being to move food FBOs from those mindsets shown below on the left to those in the top right quadrant: proactive mindsets. Any single FBO could display a mix of mindsets, making an AOs job a challenge requiring good people management and communication skills as well as business acumen.

Figure 4: Full compliance requires awareness and a proactive FBO mindset



In figure 4, green dotted arrows show how a FBO's pathway to compliance is likely to vary depending on the mindset they begin with. Below are short descriptions of each of the four types of the FBO mindset. They are based on findings from immersion visits to LAs and site visits to food businesses and as such are a useful starting point for understanding how AOs interacted with their target audiences and what impact FBO attitudes can have on regulatory decisions.<sup>10</sup> Each mindset is summarised in table 5 overleaf.

<sup>10</sup> These descriptions are suggestive and do not describe individual FBOs who took part in the research. They are based on a combination of data collected during interviews with enforcement managers, authorised officers, FBOs and during the observational research among food businesses. In-depth research with FBOs would provide more insight into different attitudinal types of FBO and could reveal more than the four outlined here.

**Table 5: Overview of FBO mindsets**

	<b>Summary of FBO mindset</b>	<b>What compliance / non-compliance looks like</b>
<p><b>Disinterested</b></p> <p>FBOs ignoring and disengaging with issues</p>	<p><i>To be honest, I don't really care. None of my customers have died or complained so I don't see the problem (e.g. small business)</i></p> <p><i>It's not my problem, what's the worst that could happen (e.g. shop floor staff of large businesses)</i></p>	<p>FBOs or staff showing very low levels of awareness of food safety issues, or where there is awareness there is no interest in dealing with them.</p>
<p><b>Passive</b></p> <p>FBOs expecting help and support</p>	<p><i>Other things take priority, like running the business</i></p> <p><i>I don't know enough about the issues, I needed the officer to help write our HACCP</i></p>	<p>FBOs showing low levels of awareness and as a result overlooking the importance of food safety. There is willingness to comply (if only to avoid formal enforcement action) but initiative is rarely taken and officer has no faith that any compliance which is achieved will be sustained.</p>
<p><b>Reactive</b></p> <p>FBOs waiting for guidance and prompts</p>	<p><i>I realise it's a priority and the issues are important but it's the officer's job to know the regulations, not mine, so I'll wait for them to steer me</i></p>	<p>FBOs showing a good level of awareness and engagement in food safety messages, but still not taking enough initiative and more often than not deferring to the officer for advice about basic compliance issues.</p>
<p><b>Proactive</b></p> <p>FBOs taking compliance upon themselves</p>	<p><i>It's <u>our</u> responsibility, we will see the benefits</i></p> <p><i>We need to be ahead of the inspector, make him/her impressed during their visit</i></p> <p><i>I want to know what more we can do</i></p>	<p>FBOs have put their own systems in place to ensure daily hazards are controlled (cleaning rotas, temperature checks and labelling) and these are working.</p> <p>FBOs will use an officer's visit as an opportunity to ask questions about how to improve and what areas of the business need attention.</p>

#### **4.2.1 Disinterested**

This type of FBO mindset was generally thought to be rare. It was usually one AOs detected after several interactions with them since the most common trait of a disengaged FBO was their clear lack of concern for the recommendations and advice AOs provided them with. This type of mindset is the sort that drives FBOs who show deliberate non-compliance. A key sign of a 'disinterested' mindset was likely to be that staff and manager alike all displayed a general air of disregard for an AO's presence, their feedback, education and safety messages communicated during a visit. And the FBO was unlikely to take much interest in

their score on any food hygiene rating scheme (FHR/IS). Taken together, these were all indicators to an AO that compliance was simply not an issue these types FBO were prepared to dedicate time, money or attention towards.

The best indicator of a FBO's disinterest was likely to be a clear lack of ownership for food safety. This could occur just as easily in small, medium and large food businesses. In fact many AOs cited staff working on shop floors of large supermarket chains and local store managers as some of the most disinterested people that they encountered. Despite having formal food safety management systems (FSMS) in place and a certain amount of engagement from top level management, the day-to-day staff working on shop floors sometimes lacked understanding, commitment and responsibility for matters of food safety and compliance with law.

*"Some FBOs think it's easy to employ people with low skills and pay them low wages but all they get is staff who have no ownership..."*

Environmental Health Enforcement officer, Metropolitan Borough Council

Disinterest was also common among food businesses with high staff turnover and in areas with a constant churn of new food businesses (most commonly urban areas). In both cases, FBOs and staff were unlikely to see compliance as worth the investment of time and money necessary for them to meet even just the bare minimum requirement for broad compliance. Failures of management led to poor general standards of food safety, poor processes and overall neglect of food safety and health and safety issues throughout the business. These types of FBOs were often considered rogue and early stage intervention work was thought to be wasted on them given their wilful non-compliance and blatant disregard for law. Enforcement action was usually considered the only available option for AOs to use. Although many AOs were sceptical of the impact even the strictest enforcement actions would have to shift the mindset of these businesses. Public protection could successfully be achieved but only short term, unless the food business was formally closed due to persistent disregard for law.

Shifting disinterested FBOs along their journey to compliance was one of the biggest regulatory challenges AOs faced. Strategies for tackling this group tended to take one of two forms. Some AOs saw the FBO's wilful disengagement with food safety issues and compliance with the law as best treated by an AO displaying equal disregard for the FBOs own priorities and challenges. If an AO taking this approach found cause for concern during a visit, they would probably move straight to enforcement, leaving no room for giving a food business opportunity to comply.

Other AOs would be more reticent to apply enforcement even to the most disinterested and rogue FBOs, because they feared this would only precipitate more disengagement and could damage any hope of achieving compliance in the long term and increase the potential of consumer harm. To these AOs, the decision to steer away from enforcement was not seen as light-touch. Rather, it was seen as adopting a more problem-focused approach to tackling the causes of compliance: deal with the FBO's attitude first and the right behaviours will follow. This therefore involved AOs placing emphasis on administering continued advice and training whilst keeping in regular contact with a food business to secure the best chance of shifting them along the stages of their development. It should be noted that although the use of enforcement action in these cases was often considered and implemented, especially where there was an imminent risk to the consumer, it was always done in proportion to risk.

The key point is that AOs sometimes questioned that taking this action would sustain compliance as scaremongering the disinterested FBOs into compliance could risk damaging any kind of attitudinal change that might have been emerging.

Most AOs and LA managers agreed that there were only a handful of these food businesses and they classed them separately to the majority of FBOs who tended to show at least some degree of willingness and intention to adopt compliant behaviour. It was also considered rare that an FBO would ever slip from a proactive, reactive or passive mindset into one of disinterest.

#### **4.2.2 Passive**

FBOs who displayed disinterest towards issues of food safety and hygiene might also show a degree of passive engagement, mainly concerned with staying out of court and therefore showing a bare minimum of compliance but not taking their own initiative or showing real commitment to improve. A passive mindset such as this was considered by AOs as extremely difficult to deal with as it often led to what they termed 'yo-yo' behaviour where broad compliance was achieved only temporarily and often not sustained from one regulatory visit to the next.

A passive mindset raised cause for concern among AOs for two main reasons. First, it was usually the result of a lack of understanding of food safety issues and the systems and practices needed to ensure compliance in a business was sustained. Second, even if compliance was achieved in the short term, it was usually out of fear for the commercial and legal consequences of non-compliance, rather than an acknowledgement of the food safety risks involved and duty of the FBO to comply.

FBOs with this approach were motivated more by a desire to avoid enforcement action and incur financial or reputational costs than by a real appreciation of the public health risks that their business posed. Even when they adopted compliant behaviour and established adequate FSMS or SFBB, AOs treated these food businesses with caution in the expectation that their standards might slip in the short term.

*"Smaller businesses comply to keep us off their backs and to avoid regulatory action. But compliance doesn't feature in their business plans."*

Divisional Environmental Health Enforcement officer, District Council

### Case study: a passive FBO

At one kebab shop, hygiene levels were found to be substandard and among other contraventions identified during the visit, cockroaches were found.

As a result, the AO issued several HINs as well as informing the supervisor they would return within 24 hours and at that time expect to find improved cleanliness otherwise escalated enforcement (a simple caution) action would be needed. The next day, staff had clearly taken the necessary steps to clean the premise but the supervisor's attitude remained one of passive engagement as the AO was asked *"just write (the contraventions) all down and I will sort it."*

The AO was frustrated. He had spent a lot of time and effort over the past year communicating the importance of Safer Food Better Business yet he found food safety processes developed as part of the food safety management system were not being implemented. The attitude of staff left in charge had not changed in twenty-four hours, he had only acted out of fear for the consequences of enforcement. As a result, the AO had no confidence that standards would be maintained beyond this follow-up visit.

Given the amount of effort and support the EO had invested in this establishment and the seriousness of the contraventions the AO explained to staff that he would be in contact with the duty holder to request he attend a formal interview at LA premises as he felt this would escalate the seriousness of slipped standards.

While in one sense this was an example of successful regulation since public protection was achieved due to staff at the food business undertaking a deep clean, there was no long term guarantee of standards being maintained and public protection assured since the staff's attitude remained one of passive engagement with the issue of food safety. Staff were not acting out of concern for public health or the risk they were potentially putting their consumers at, instead he had taken a knee-jerk reaction based more on the fear of extreme negative commercial consequences were the AO to take him to court.

This knee-jerk reaction was common among passive FBOs. When prompted, they would meet the minimum requirements of food safety law but only to ensure they were not faced with the hassle of a court case, required to pay legal fees or at risk of losing business from bad publicity or temporary closure.

A passive engagement with the issue of food safety was not a desirable end of regulatory work as it did not indicate to AOs that a food business was capable or willing to sustain compliance in the long term. Compliance achieved through passive engagement only marked the start of bringing a business into compliance:

*"Compliance is more than just tick box. They're not really compliant if it only lasts the 24 hours that you are on their case. FHR/IS is good because it forces an FBO to show you how they have changed their practices – while you are there."*

Food Safety Manager, London Borough Council

A passive mindset was especially common among smaller businesses in particular where the concern of trading from one day to the next within narrow operating margins overshadowed food safety matters. This mindset was common among some ethnic FBOs in particular where cultural differences affected awareness and understanding of UK standards or English as second language could sometimes be a barrier to taking corrective action such as FSMS usage.

A passive engagement with food safety often required a big investment of AO time and consequently these types of food business were considered by many AOs the most difficult to bring into compliance, and indeed identify in the first place.

*"It might be non-wilful and naïve (non-compliance) but that can be the hardest to pick up. It's easier to see when a business is being blatantly and arrogantly non-compliant. The cases that are tricky are the ones that lack the knowledge or confidence. You have to read between the lines."*

Environmental Health Enforcement officer, District Council

There was, however, an acceptance among AOs that passive engagement with food safety issues was for many food businesses a good first step along their compliance journey. AOs therefore believed in investing a substantial amount of time and effort in a food business initially, to secure a reasonable degree of engagement in the long run. Only by treating these types of FBO with a degree of patience and empathy could AOs feel confident that the FBO would come on board and gradually shift their mindset from passive to reactive and, hopefully in the long run, proactive.

#### **4.2.3 Reactive**

These types of FBO were considered the most commonplace, with FBOs taking some positive steps towards ownership of risk and full compliance while still relying on AOs for guidance to move them in the right direction. Reactive FBOs differed from more passive FBOs by displaying a certain *willingness* to comply with food law. Their willingness was evident both in the verbal exchanges they had with the AO (the questions they asked) and their overall demeanour (the way they voluntarily showed an AO around their business, talked them through paperwork), as well as in their general approach to FSMS, the upkeep of their paperwork and sufficiency of their systems.

They were also more likely to show an understanding of wider food safety issues, such as the high risk nature of running a food business, the potential dangers to public health and potential commercial impacts of complying with food law. They were likely to have more financial resource, enabling them to invest in the necessary FSMS and structural requirements. The main barriers to their becoming proactive were likely to be insufficient understanding of everything required to be food safe and internal management issues that made it difficult to ensure compliant 'will' was filtered down to all members of staff.

A reactive FBO was most commonplace among small or medium sized food businesses, running moderate to successful businesses and able to invest in their food safety management systems. However, willingness to comply with the law and having the financial means necessary for compliance were not always enough to ensure food businesses in this

group sustained their compliance long term. Despite their willingness to comply, cultural habits and beliefs often acted as barriers, making it hard for AOs to nudge these FBOs to take a more proactive approach to food safety.

*"The hardest thing is to change attitudes. Hand washing, for example. How do you convince someone that you need a dedicated hand wash basin for this and not just the sink when you would use the sink at home? (Or in some ethnic restaurants, the way they cook rice). I showed them this is how you should be doing it and the owner said 'that's not how I do it at home!'"*

Environmental Health Enforcement officer, London Borough Council

Characteristic of FBOs with a reactive approach to compliance was their dependence on AOs both to highlight potential hazards in their business and inform them about the best way to meet legislative requirements.

*"She (the Authorised Officer) tries to help my business and to encourage me to complete extra cleaning tasks....I've got this swabbing in my mind now I will look at those things, it focuses me on what should be cleaned."*

Food Business Operator, small

In this sense, they continued to rely on AOs to point out areas of concern. The key distinction with passive FBOs being they saw food safety issues as a priority for their business and had embedded in some but not all aspects of their business. However, they continued to see it as an AO's job to prompt and guide them.

*"Many FBOs see us as their auditors and prompters. I prosecuted someone last year who in court said 'until now it's been fine to just be reactive. Why the change?'"*

Senior Environmental Health Enforcement officer, London Borough Council

It is no coincidence that reactive types FBOs were considered the most common among food businesses and the hardest "to budge". Once FBOs started to perceive AOs as their advisors and hazard spotters there was little impetus for them to break the habit of waiting to be told what to do by the AO; so long as they saw the AO as responsible for keeping them informed and compliant, they were unlikely to become proactive and start regulating themselves. It was not easy to brush off their expectation that AOs would flag up potential hazard points for them. AOs considered this a significant challenge for enforcement work: how do they strike a balance between educating and hand-holding? How do they ensure they give FBOs sufficient advice and guidance while also ensuring the FBO develops independence that encourages ownership of food safety management? Only by taking ownership of the issues were FBOs showing signs of progress along the continuum from reactive compliance to proactive compliance.

Despite the challenges of shifting these reactive types of FBO, AOs were often optimistic about them because they displayed *willingness to comply* which was a core ingredient of building and sustaining compliance long term.

#### 4.2.4 'Proactive'

FBOs who displayed both *will* to comply and clear *ownership* of food safety issues had a more 'proactive' mindset. The difference between this and the reactive mindset was that being proactive involved taking the initiative for instance implementing a credible FSMS without being continually prompted. Typically this type of behaviour would achieve a CIM score of 5 as it demonstrated recognition of risk and implementation of appropriate controls which in turn reassured AOs that standards were likely to be sustained.

Taking a proactive approach was closely associated with the notion of taking ownership of compliance which was evident in some businesses who made it their job to self-educate, comply and, where needed, contact the regulator for advice and guidance if they were unsure. As with reactive FBOs, a degree of support and steer from AOs was still appreciated although proactive types were more likely to have made initial attempts to understand and educate themselves around food safety. In this respect they were less of a burden on AOs' time and energy, but were often still grateful of AO input and welcomed regulatory visits as opportunity for feedback, recognition and useful advice.

AOs often referred to telephone inquiries from FBOs as positive signs of proactivity. This suggests that AOs saw value in their playing the role of a consultant and educator to a food business, however far along the compliance journey they might be. Continued involvement in a FBOs' progress was considered important for ensuring a proactive attitude endured. Adopting too little engagement or giving too little attention to these types of FBO was said to risk sending out a misleading message and denying them the amount of encouragement and motivation they needed to stay proactive.

These FBOs were often people who had chosen to treat messages about food safety and legal compliance as matters of personal and professional integrity. For example in one small restaurant we visited, the FBO made a point of delegating matters of food safety management to his head chef. While the owner disowned some of his own responsibility for food safety, the AO was encouraged by the exemplary proactive attitude demonstrated by the chef:

*"I was hoping he (the AO) would come back. As a chef, you strive everyday to improve, do better; it's a personal challenge as much as being about the team here. Knowing my journey, where we were and where we're going to – that he (EHO) recognises things – it raises my strength. I'm a geek, I never thought I'd like it but it really was an education!"*

Head Chef, Food Business Operator, small

AOs would sometimes say that a truly proactive attitude should be independent of motivations tied to profit or business reputation as only then could they be fully confident that the FBO understood the sincerity of the food safety messages and complied for these reasons, rather than personal financial gain. They felt that a proactive attitude based on financial gains was always liable to slip and it was less likely that a culture of food safety would be in place in the food business. But this was a very idealistic outlook and the majority of AOs were pleased to see a proactive mindset whatever the motivation for it was. Indeed

several AOs suggested that a successful way of moving FBOs from being reactive to being more proactive was in demonstrating how integral compliance was to their business success.

Evidence of a more proactive mindset could therefore include a range of factors: well-kept SFBB, inquisitive / interested FBO, willingness to volunteer information unprompted, engaged and welcoming staff, personal pride taken by the FBO for good food safety management. Detecting any or all of these signs in a food business was seen as a successful regulatory outcome, especially where a FBO had previously shown a more reactive or passive engagement with issues of food safety, was considered a satisfactory outcome for AOs. It was not the end of the compliance journey as a FBO could always progress further to a position of taking sustained ownership of compliance but it was taken as a clear sign that an AO's regulatory approach was working.

### **4.3 Authorised Officer mindsets**

The rest of this section looks at four key AO mindsets identified during this research: educator, consultant, regulator and enforcer. The names given to these mindsets are all ones that AOs themselves used to talk about their work; some were also mentioned by FBOs.

There is also a relation between how the AOs mindset is influenced by the mindset of FBOs. And in turn, the AO's mindset played an important part in judgements about which regulatory approach was most appropriate. Later in this report we describe the difference between 'enforcement cycles' and 'enforcement pathways' – it is worth noting that at different stages along this pathway or cycle AOs talked about placing more emphasis on a particular style, from the educational through to enforcement. The attitudes and mindsets AOs adopted were therefore vital for impacting on a food businesses' compliance. While FBOs tended to display one or other of the four mindsets disinterested, passive, reactive or proactive - AOs were likely to move from one mindset to another such as educator to enforcer, adapting to suit the situation. AOs talked in terms of wearing different hats, an indication of the flexibility required for better regulation.

*"I go in and I'm me. It's not the bowler hat inspector! But if they don't play ball well we've got the legislative teeth to deal with that."*

Food Safety Enforcement officer, District Council

Stakeholders and AOs both underlined that there was no "straight-jacket" for regulation. Instead, it was common for AOs to favour one mindset over another and the application of different mindsets to different situations and different food businesses. AOs often had a preference based on which one they had had success with in the past and their understanding of a food businesses' previous case history.

#### **4.3.1 Educator**

The educator mindset was for many AOs the starting point of all their regulatory work. It formed part of what they saw as their 'responsibility to the public' and was considered key to the idea of better regulation and promoting sustained compliance within a food business.

*"Achieving compliance informally, not having to go to the next level of enforcement. It's when advice and training does the job on its own. It's a*

*success because it hasn't led to prosecution. We're not here to close people down unless we have to."*

Technical Enforcement officer, District Council

A spirit of education was imbedded in many LAs wider strategy. For example many LAs ran public and business-facing training activities, food safety workshops and customer advice services and considered these important features of their regulatory approach. Individual AOs were often involved in running outreach projects such as healthy eating programs in schools, nutrition awards for food businesses and hand-washing demonstrations at local town shows. The public healthy eating campaigns were often carried out at the same time as delivering food safety regulatory work.

It was therefore not surprising that individual AOs strongly identified with the role of educator and advocated its value for achieving results with food businesses. Being an educator was therefore not only a matter of habit and professional aspiration, it was perceived to be effective:

*"You can't just say don't do it, you've got to say why...tell them about bacteria and how this leads to sickness. Explain the logic and impact of regulation, why it's important to label dates."*

Senior Environmental Health Enforcement officer, City Council

Being an educator involved taking time to discuss issues of food safety with FBOs and using visual aids to demonstrate how they can manage potential risks. Showing FBOs clear steps for how to improve was also seen as a good way of showing to FBOs that the goal of compliance was achievable. It also served to reassure AOs that a FBO had understood issues of food safety as they knew that the process of show and tell was effective for ensuring messages sunk in. An example of this approach is described below:

#### Case study: AOs as educators

In one LA, AOs were using a large A3 educational pack to explain to SME sized food businesses the importance of cleanliness and the risk of infectious disease from build-up of bacteria. They invested time in the food business and recognised an educational need that if they had left unmet could have prevented the food business from moving towards compliance. Although this is an extreme example, where levels of food safety awareness were lower than in the average FBO, it demonstrates that in some instances wearing an 'educator' hat was an essential first step for engagement.

Part of being an educator was about making clear to FBOs that they are on a journey, with opportunities to progress. Rather than treating visits as final assessments, AOs thought it was useful to give FBOs praise, encouragement and feedback on important issues. Where

they found slippage in practices, they would balance shows of disappointment with encouragement, to ensure that the FBO and staff felt supported and spirited by having an AO show faith and trust in their ability to improve.

*"I usually include a paragraph in my letter to FBOs saying how they improved. This encouragement incentivises improvement. Not all Authorised Officers do that."*

Senior Environmental Health Enforcement officer, District Council

*"It's important to use positives in what you say."*

Senior Environmental Health Enforcement officer, District Council

The use of encouraging remarks was not just done as an act of civility, although this was in itself said to be important. It was thought to be an effective way of persuading FBOs to see themselves engaged on a journey, with the goal of compliance at the end. Once FBOs started thinking in these terms, it made them more attentive to the AO and more committed to meeting the requirements they asked of them.

The educator mindset was a powerful way of impacting on FBOs and shifting their own mindset. Taking an educational approach involved more than just providing advice and education in isolation, as it was often combined with the delivery of an official control that the positive effects of the educator mindset were best seen. For example, after an inspection at a small café, one store manager reflected on the AO's visit. She felt 'disappointed' and 'upset' because the café had fared badly due to structural issues not properly seen to and the staff showing a lack of concern for food safety procedures. During the inspection, the AO had adopted a firm but fair tone and at several points taken time to explain why standards had slipped and what the manager needed to do to ensure they scored more highly next time round. The AO showed disappointment but also encouragement, and in turn the manager appeared to take responsibility and show genuine will towards regaining compliance.

AOs sometimes talked about setting expectations of FBOs in the same way that teachers set standards of student in the hope that by raising the bar they are demonstrating a confidence and sense of belief that will motivate the student to achieve. As the quote below shows, being an educator was therefore key to securing the co-operation and ambition of a FBO.

*"We need to be seen as more than just enforcers otherwise they won't cooperate. We need to sell the whole idea of environmental health to a business."*

Senior Environmental Health Enforcement officer, City Council

Taking an educational approach was seen to be more time and effort intensive than other approaches, particularly as it often required a process of trial and error with food businesses learning best through initial (minor) mistakes. Nevertheless, the progress that ultimately this approach guaranteed was sufficient to encourage many AOs and EMs to place emphasis on education as a good starting point. Several mentioned the phrase 'educate now, enforce

later'. Although it should be noted that where there was an immediate risk to public protection, the educator mindset was superseded.

#### **4.3.2 Consultant**

A term many AOs used to describe themselves was "unpaid consultant". They implied that their educational approach mixed with their detailed knowledge of legislation put them in a good position to provide pragmatic and well-informed guidance to food businesses who either lacked sufficient understanding or sufficient means to comply with regulations.

It was for many AOs a natural step on from being an educational figure as it involved recognising that simply explaining and educating on matters of food safety was not always enough to bring them into compliance. AOs recognised there could be a tension in their acting as consultants. In one respect it was not the desired end of regulatory practice to have food businesses, relying on them to draw up their HACCP plans or fill in their SFBB pack, but on the other there was a perception that staying closely involved with a food business was beneficial for sustaining compliance as it allowed AOs to drip feed messages about food safety.

AOs tended to adopt a consultant mindset most commonly with micro and small food businesses where low levels of food safety awareness and a lack of financial means were barriers to compliance. But there was equally a call for AOs to act as unpaid consultants in larger businesses who often were subjected to third party audits. Where this was the case, FBOs might share the auditors' reports with AOs, asking for advice about how they could improve their practices to meet the auditors' standards and what practical steps they needed to put in place to secure compliance at their next audit.

Many AOs were happy to act in this capacity because they believed that by asking for advice and practical recommendations, FBOs were looking at their own compliance journey in a progressive and responsible way. AOs took this as evidence of a FBO developing a 'proactive' mindset and believed it was a good sign that they took some ownership of food safety issues.

Being a consultant had the potential to cause problems, however, and AOs expressed concern that FBOs were increasingly coming to see them in this light. They felt that FBOs who saw them as their unpaid consultants had expectations of AOs to take ownership of their food safety systems instead of them. AOs could often recognise that FBOs were in need of a consultant, sympathetic to the amount of time and effort that compliance required, especially for small businesses, but they did not see it as their job to fill this role. This was a worry for sustaining compliance since FBO expectation of this level of AO engagement was likely to be unsustainable. AOs tended to also feel that it was not an ideal model for building compliance as it would be like building a house that needed the scaffolding left up. Some also worried that they did not have the appropriate skills to act as consultants.

There was also a potential conflict of interest in acting as consultants since AOs could find themselves ultimately checking their own work. In a small business where the AO helped the owner to manage their paperwork, for example, it was hard for that AO to critically assess their CIM score since the signs they would usually use to gauge how informed, engaged and willing the owner was, were all documents that the AO had helped them with.

*"We can't write the HACCP for businesses. I've seen this happen, where Authorised Officers draft something and the business puts their name to our work. But you have to back off. You can give lots of advice but there comes a point where FBOs have to make some of their own decisions. This is what confidence in management is about."*

Senior Environmental Health Enforcement officer, District Council

### **4.3.3 Regulator**

Another mindset that managers often referred to was that of the regulator. It was similar to the enforcer mindset in that it involved taking a more formal approach to enforcement work, but different because of the emphasis being a regulator put on verifying and monitoring practices rather than enforcing them or clamping down. It was a mindset most often mentioned by managers, perhaps explained by their relative objectivity from enforcement on the ground and detachment from the other kinds of mindset that being an AO required.

Unlike the enforcer mindset, being in regulator mode was not linked to detecting any form of non-compliance or a desire to appear especially strict towards a food business. It was more about making sure that AOs were giving out a message to food businesses "we can drop in at anytime" and "we are overseeing you". In this sense, adopting a regulatory mindset was akin to AOs acting like wardens who constantly watch over businesses and their processes, rather than being police, who subject businesses to punishment where they fail to comply. The regulator / enforcer distinction is a subtle but important one. It relates to the way in which many AOs see themselves helping to maintain a continuum and on-going development towards a FBOs' compliance; they adopt the regulatory mindset over the enforcer in the belief that the regulator mindset is more likely to sustain compliance and the enforcer is mainly effective at securing immediate compliance.

It was partly this mindset that underpinned AOs' common concerns about scaling back on inspections and replacing them with partial inspections, monitoring and verification visits. Inspections were believed to send out the right message to a food business that they were being scrutinised which AOs felt the majority of businesses needed to understand. There was a fear that anything less than an inspection risked sending out the impression that the AO had become "slack" which might in turn be mirrored by the FBO, whether consciously or not. This relates to the challenge of encouraging FBOs to take ownership of compliance. If an AO was seen to disown the issue, there was said to be a similar effect seen in the FBO whose appreciation of food safety issues was often led largely by the interest and sense of urgency shown by an AO.

A few food safety enforcement teams reported that where FBOs displayed a proactive mindset, full inspections might not be needed as they felt it would be straight forward to verify if compliant practices were being maintained during a short visit. AOs were concerned however that by spending less time with these proactive businesses they could give off the impression that the food businesses' good efforts had been overlooked. Investing time and effort in businesses of all compliance ratings were therefore often seen as a clear incentive to spur a business along. Full blown inspections, for example, allowed sufficient time for a FBO to showcase the progress they had made and for the AO to recognise and praise them and so contributing to the FBO's sense of pride.

The regulator mindset was a driver for AOs conducting regular revisits and informal pop-ins when they were in the vicinity of a business who they were overseeing. Again, in the same way as a warden might survey their "patch", many AOs saw value in constantly keeping an eye out either for signs of improvement or slippage. Keeping a keen eye on where standards had improved was in some ways as important as looking out for slippages as it was a way of motivating FBOs to sustain standards as they could be reassured that if they improved an AO would take note.

Some managers believed that to properly maintain a regulator mindset, AOs needed a certain distance from food FBOs to ensure they did not develop too cosy a relationship. The concern was that in a cosy relationship, FBOs might start to depend on AOs for advice and guidance and equally AOs might dismiss some signs of non-compliance by giving the FBO too much benefit of the doubt that eventually their practices would improve. More experienced EMs and AOs noted the difficulties this posed for taking enforcement action. The quote below is from a manager who was discussing the merits of rotating AOs around businesses as a way of overcoming the issues associated with developing a cosy relationship:

*"There is greater pressure on us as regulators to be regulators. No-one wants a Pennington on their doorstep. We need to do a proper job. If that makes businesses hate us, so be it. We can sleep at night because the public is safe."*

Divisional Environmental Health Enforcement officer, District Council

The regulator mindset was also what drove AOs to draw attention to the exact terms of the law and contraventions during interactions with food businesses. Describing the principles of food safety and compliance by simply stating that "the law says you must", was often useful for getting a FBOs' initial buy-in to the seriousness of the issue. It was common for more experienced AO to tend towards this kind of mindset, perhaps because they, like their managers, had come to take a more objective view on their work. Or perhaps experience had made them disillusioned with wearing the educator hat in the past.

#### **4.3.2 Enforcer**

Described by some as "the final card", the enforcer mindset was for many AOs their last resort. It was a mindset that they adopt when they believed they needed to send out a sterner message to a food business (risk to public health was typically communicated) than they would be communicating by using a more educative approach. Some AOs even felt that during their first point of contact with a food business it was useful to start with an air of the enforcer about them as this established a level of respect and seriousness which they could always soften as and when they saw reason to believe the FBO demonstrated compliant behaviour or signs of a compliant attitude.

*"I hope I am open, that's what I strive for. I act not as an enforcer, but as a guide. It depends on the risk of course. I always go in with my enforcement hat on first to see what level of compliance is and then I act as a guide."*

Environmental Health Enforcement officer, District Council

Equally, if an AO felt that public protection was severely compromised, they would automatically adopt the enforcer mindset.

Another common reason why an AO might adopt the enforcer mindset during a visit, was if they started to suspect a FBO of disinterest or arrogance towards matters of food safety and the law. The AO outfit (white hat, coat, and clipboard) was itself a useful tool for establishing a tone of enforcement from the start of an AO's visit.

In the example below, a female inspector visited a small, independently-owned restaurant and during a follow-up interview she explained how her enforcer approach was about both the regulatory choices she made and the whole way in which she presented herself during the visit. The business in question was Turkish, which she claimed had caused some problems in the past with male employees not accustomed to receiving instructions from, or being answerable to, women. The example shows how the FBO attitude was a key factor that the AO accounted for when deciding how to deal with the food business. Previous experience of a FBO's hostility could therefore predispose an AO towards a stricter approach.

#### Case study: AOs as enforcers

At one independently owned restaurant, the AO was not particularly impressed by the FBO's front of house staff who she felt showed a lack of interest and appeared ill at ease with her presence. It was a business that had previously been rated B and had been scored down in the past due to structural issues and low confidence in management. This meant she was looking for warning signs of continued non-compliance and her attention was sparked by the hostility which she met on entry.

The AO reacted by making a point of putting on her coat and hat in full view of diners in the restaurant, a tactic which she said was useful for showing the FBO that she required their full attention and respect. It would have been very easy for the AO to get dressed in the back room, as other AOs did, suggesting that this was a decisive move on her part to create a formal air about the situation and demonstrate that she had powers to enforce, if necessary.

The owners of the business had relatively low levels of spoken English, which one might expect to cause problems in understanding food safety messages and acting on the advice given by the AO. However, the day-to-day manager was younger and fluent in English and this was who the AO delivered her messages to. When the officer encountered disinterest and disregard for important food safety messages which other AOs had given the FBO, such as failure to fill out the SFBB diary or replace hand sanitizers, she lost faith in the FBO and during a follow-up interview explained her disappointment: she believed the FBO's non-compliance was due to a lack of commitment and failure to take her and/or her colleagues' messages seriously, rather than being due to a lack of understanding or financial means which she said she would have had more sympathy with.

The quote below, however, shows the limitations some AOs saw in applying an enforcer mindset to their enforcement work. The main reservation AOs had was that acting like an 'enforcer' too soon during their interaction with a food business risked having negative consequences for compliance further down the line.

*"You can't go in there with a big stick. It's never going to work. You are trying to work at compliance, not lay down the law with a stick."*

Senior Environmental Health Office, London Borough Council

This helps to explain why even when a food business has demonstrated cause for concern, some AOs still showed hesitancy in using enforcement tools, seeing themselves as an 'educator first, enforcer second'. The case study below shows an example of an LA team where AOs were encouraged to adopt an enforcer approach.

#### Case study: a culture of "zero-tolerance"

At one LA, an ethos of zero tolerance had been filtered down to individual food team members and was evident in the way they all took a stricter approach during their enforcement work. The overriding message to businesses was that if they did not cooperate with AOs early the likelihood was that at some point down the line where significant non-compliance was found that they could end up being prosecuted.

'Zero tolerance' here was a very general term used by the LA to describe both their approach to serious breaches of the law and smaller signs of non-compliance. It meant AOs had few qualms with issuing HINs or POs and preferred to threaten court action than give the FBO the impression that this was a last resort.

The same LA believed strongly in the power of public hygiene rating schemes for presenting food businesses with a message that compliance needs to be taken seriously or it will have a damaging effect on business. The scheme was supported by AOs because they believed that the threat of a low scoring and harsh media coverage had made FBOs pay more attention to their enforcement messages. This is just one example where an enforcer mindset penetrated the whole of the food team's practices, leading AOs to adopt more of an enforcer first, educator second approach.

Some EMs, however, thought that too punitive an approach to enforcement could send out the wrong message to food businesses, leaving them disinterested by what they referred to as a culture of risk assessment "gone mad".

The distinction between technical enforcement, concerned with securing food safety compliance and administering food law, and the wider delivery of environmental health, concerned with multiple matters of consumer safety, is not one that is recognised by food businesses. Nor does it seem relevant to them. Rather, food businesses amass the different

types of risk assessment and monitoring together as part of a recent trend. The result is that individual messages can lose resonance and impact. This is especially true where a harsh 'enforcer' tone is adopted since it is more likely that the FBO will feel burdened and subsequently become disinterested.

Many thought it was more of a hindrance than a help to send out a message to food businesses that they are here to enforce and are not afraid to use their legal powers since this could lead to a situation where the FBO became scared off by food safety issues and disregarded the law.

#### **4.3.5 Balance**

Striking the right balance between their role as educators, regulators, consultants and enforcers was emphasised by many AOs as a major challenge of their work. There was value to be had in adopting all mindsets and AOs said that it was often necessary to show FBOs that not only could they quite easily tip from one to another but that they were wearing more than one hat at the same time.

*"I like to think they're quite happy to see me. But you can't be too cosy. You need an iron fist in a velvet glove."*

Environmental Health Enforcement officer, Unitary Authority

Perhaps the most challenging, was balancing the role of consultant and educator. While some element of education was considered important for all food businesses providing more consultancy services was usually only felt appropriate where a business lacked sufficient resource or was really struggling to comply with food law (e.g. micro and small food businesses). In all cases, providing consultancy was something AOs said they needed to keep an eye on, ensuring that an FBO knew they were going beyond the call of duty and that this level of attention and advice was not a permanent arrangement.

Consultancy was therefore considered an effective means of growing understanding of compliance in a business initially, and of communicating a message of support and interest in the FBO which was important for engaging them long term. But it could not be at the expense of communicating the equally important message that ultimately ownership of food safety management lay in the hands of the FBO, and that they held legal responsibility for maintaining standards.

The principle of balance was reflected in several LAs broader policies and relates to the dual focus environmental health teams have of supporting local businesses while also overseeing them.

*"We're trying to say to the businesses, work with us and we'll work with you, but if you don't work with us, we're not afraid to take a heavy hand."*

Environmental Health Service Manager, City Council

### Case study: balancing formality with familiarity

In a couple of food businesses who had demonstrated severe contraventions were being invited to interviews at council offices where AOs talked through the severity of their contraventions and advised them about improvements they could make. Council offices were a good setting for balancing formality with familiarity, showing the FBO clearly where the responsibility lines of regulation lay but also demonstrating that AOs were accessible and willing to provide support and help the FBO comply. Food team managers advised AOs to use this approach because of its success: food businesses involved had begun changing their practices and demonstrating more proactive engagement in matters of food safety, taking the initiative to call AOs after the interviews to ask follow-up advice.

The food team lead at one LA suggested that the mere act of inviting the FBO to their offices - agreeing an appointment time, booking a meeting room - sent out a useful message to the FBO that the AO had set high expectations and wanted to see them deliver. This was thought to be an effective approach that balanced enforcement with education because it showed food businesses that they could reverse past mistakes, motivating them to stick at their journey towards compliance.

The educator, enforcer, regulator and consultant mindsets all had an important role to play in how AOs made regulatory decisions and how they helped steer the development of food businesses towards compliance. However, none in isolation could tackle the problems of compliance. In the following sections, there is more analysis of how these mindsets can drive or hinder an AO's use of regulatory tools and where the tipping points are from one to another.

### In conclusion

Compliance was clearly treated like a journey which, depending on the attitudes of both an FBO and an AO, would take a different course. Compliance was therefore seen in the context of a continuum, whereby success was just as much about an AO detecting that a food business had made "good progress" as it was about achieving high compliance scores. The next section looks at the drivers and barriers that underpin AOs selection of interventions and enforcement, and considers the significance of this continuum for key decisions.

**Factors influencing  
food safety  
regulatory practice**

## Section 5: Factors influencing food safety regulatory practice

This section considers the impact of national and local factors influencing LA food safety regulatory practice. It looks at how enforcement teams balance these factors and decide on priorities. The following section sets out how these and other factors influence choices surrounding intervention and enforcement selection.

### 5.1 Key national factors influencing regulatory practice

#### 5.1.1 Economic climate

The impact of budgetary cuts was felt across all local authorities (LAs) and local services. Indeed as LA budgets were coming under increasing pressure LA regulatory services were forced to take steps to account for this. Enforcement teams talked about downsizing, “de-layering” and restructuring, indicating the major impact that this new reality had for food safety regulatory practice. Some of the most significant implications of this are discussed below.

Many enforcement managers (EMs) and heads of service were keen to explain they had taken steps to protect “frontline enforcement services” from *downsizing*. Despite this, there were some instances where dedicated administrative resources had been badly affected. As a result, some AOs talked about spending more time in LA offices in order to deal with paperwork, diverting them from vital aspects of regulatory work. In some LAs, inspection follow-ups (considered an important way of improving standards) had slipped or had failed to happen.

Although in other LAs, re-visits were considered an important aspect of “good” regulatory work and in these areas EMs would ensure that AOs prioritise re-visits to higher risk establishments while inspections of low-risk establishments could be conducted at a later date. Although at first AOs were said to be concerned about the possibility of missing some of the planned programme of inspection targets, EMs mentioned they could be reassured by making it clear that unless re-visits were done on the expected date then the FBO would most likely defer remedial action.

*“I really focus on checking officers getting their follow-ups done, I say to them I'd rather you didn't go to compliant Ds and focus on getting your high risk follow-ups done.”*

Team Manager, Food Safety Team Manager, Unitary Authority

AOs were also being diverted from carrying out essential work “on the ground”, a major worry for food safety regulation as they believed that a reduced presence sent out the wrong message to businesses that food safety was no longer a key LA priority. AOs also feared that in this new reality they would have less time to gather soft intelligence helping them identify unregistered / unrated FBOs or to conduct “pop-ins” on passive and reactive ones. This was

another major worry as it was felt that not carrying out these activities could increase the risk to the general public's health.

Although not as widespread as downsizing there were a few enforcement teams who explained that *de-layering* meant there was less oversight to guide AOs in their approach monitoring risk. A principal concern was the loss of enforcement team leaders (equivalent to Senior Environmental Health Officers) who played an important middle management role within food teams. EMs believed this might have led to more inconsistency in their regulatory work, as individual AOs were being granted more autonomy in their work. Many EMs had observed AOs being burdened by this increased autonomy which had sometimes facilitated an overly cautious attitude to hazard which in turn caused swifter acceleration to formal enforcement. However, there were also examples where AOs had become more hesitant in selecting formal enforcement actions and this is discussed further in section 6.4.

More AO autonomy meant there was widespread recognition among food safety teams of the importance of on-going consistency training. Many EMs reported that FSA consistency training had benefitted regulatory practice, however some AOs continue to interpret the risk scoring system in Annex 5 of the Code of Practice differently from one another. These inner-city LAs recognised that they needed to do more to support their teams, for example in promoting inter- and intra-LA consistency training.

"It's a valid criticism we are failing with consistency"

Food Safety Manager, Unitary Authority

The case study overleaf illustrates how seven LAs worked in partnership to set-up training that was aimed at tackling inconsistent scoring practices among AOs.

### Case studies: inter-LA consistency training

Across one region seven LAs joined forces to run a risk scoring consistency training programme intended for all frontline food safety AOs. EMs from across the region were concerned that the degree of inconsistency in risk scoring was a key reason for the variation in light-touch and heavy-handed enforcement. As a result EMs felt some businesses were being over-regulated as AOs sought to encourage best practice while others were not being brought into line quickly enough.

Training materials were designed based on FSA consistency training, which the EMs found useful. Working alone each AO was asked to risk score a variety of food businesses across different sectors using a written scenario about its historical and current level of compliance and photographic evidence of critical control points.

EMs found that the results were startling: in one LA for example an AO scored a butcher one star while another scored it four. During interviewing EMs were keen to point out that AOs were asked to score examples of food business practice and they explained that risk scoring in the real world would be less varied.

Analysis of scoring inconsistency is being used by LAs in two interesting ways. It has helped EMs to identify and put in place personal development plans for AOs considered too lenient in their scoring; this involved more frequent observations of these AOs by senior colleagues and more regular one-to-one's with line managers to discuss actions with non-compliance.

EMs explained the performance management measures had gone some way in addressing how AO's deal with non-compliance. A few LAs felt that some AOs would fall back into old scoring habits and therefore will run this type of training annually. The exercise has also made LAs recognise that there are certain types of business that should be regulated by AOs with food safety expertise to ensure a comprehensive assessment of risk is made.

As well as concerns about the impact of de-layering, AOs were concerned that the restructuring of regulatory function was having a potentially negative effect on their food specialist remit. Many food safety specialists, principally in urban areas, talked about being given wider environmental health responsibilities, for instance, dealing with residential noise complaints or incidents of anti-social behaviour. They felt these new duties were diverting them from what they considered their higher priority duties: carrying out essential food safety work, which in turn they felt would dilute their food safety expertise.

*"Now I need to consider noise complaints versus [businesses subject to approval under Regulation 853/2004] inspections".<sup>11</sup>*

Environmental Health Officer, HO, Metropolitan Borough Council

*"It's been a massive learning curve it's not what I signed up to be and I'm worried about diluting my food expertise."*

Food Safety Officer, Metropolitan Borough Council

Many EMs and AOs reported that a major regulatory challenge was that many teams were now not simply doing the *same* level of activity with less resource; they were now doing *more* with less. It was explained that the tough economic climate affecting other sectors had significantly increased the number of start-up food businesses, especially the number of take-aways and cafes. "In-home" FBOs were also on the increase, such as childminders and cupcake makers. EMs were concerned their food safety teams affected by downsizing would not have capacity to complete the total number of inspections.

Apart from resources being further stretched, it was found that this spike in the number of food business start-ups was diverting attentions away from the inspection of high risk businesses. This was because highly skilled AOs who would otherwise be dealing with these high risk businesses were required to conduct initial inspections on many low risk food businesses. Some EMs were frustrated because they believed section 1.2.2 of the Code of Practice prevented them from sending a Technical Officer to do an initial inspection on an unrated food business and called for this issue to be addressed in the updated version published in 2012.

*"I've got a highly paid officer, highly skilled officer going out doing E-rated business. We're looking to use someone who technically doesn't meet the Food Law Code of Practice but they've got the degree, several years experience in the team of dealing with food safety matters, they carry out revisits, they deal with food complaints, they're virtually qualified so I'm using them to go on a risk based approach to go out and actually inspect cupcake makers."*

Head of Food Safety, Unitary Authority

Given the qualitative nature of this research it was not going to be possible to measure the impact of budgetary cuts on LAs' food safety regulatory performance, but it is clear that these are difficult times. The evidence shows that most LAs had not stood still and had introduced new ways of working that aim to limit the impact of budget constraints on food business compliance levels. These new ways of working are discussed below.

### **5.1.2 Restructuring regulatory function**

Some LAs had begun to think differently about how best to achieve and sustain compliance especially among problematic businesses while balancing budgetary constraints with regulatory priorities and in-house capacity. The most commonly cited way that LAs did this would be to align high risk food business with AOs and allow different regulatory teams (for

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<sup>11</sup> Food authorities are required to inspect and approve any premises defined as products of animal origin such as meat, dairy, egg or fish product plants under EC derived legislation.

example licensing teams who are given basic food hygiene training) to undertake food safety inspections in low risk food businesses, for example wet pubs, as part of their high-risk licensing work.

These arrangements were welcomed by AOs as it allowed them to bring their food safety expertise to bear where it was needed most (high-risk and non-BC food businesses). Furthermore, there was consensus that efforts to reduce the burden on business in combining health and safety (in food businesses) and food safety inspections was a step in the right direction as it was a means to a better AO-FBO rapport which in turn facilitated a more open dialogue between regulator and FBO about food safety issues. Combined visits were particularly useful for smaller food businesses with low resources where structural issues were often a major block to compliance and addressing this was a concern for both food safety and health and safety AOs.

Similarly we found the majority of LAs combining food safety and standards. AOs talked about their being a considerable amount of overlap in the areas they check for example, labelling checks (often done as means to test traceability) can be done at the same time as testing temperature control. Apart from the efficiency gains from combined visits they said it adds strength to the AO's message when they discuss issues in relation to products deemed to be non-compliant.

### **5.1.3 Policy background**

There were two key food safety and regulatory reviews which resonated among the majority of enforcement teams: Pennington and Hampton reports. These were mentioned time and again by enforcement teams as being key influencers of regulatory practice and decisions about intervention and enforcement action, and are discussed below.

#### *Pennington*

The E-coli outbreak in Wales in 2005, which claimed the life of five-year-old Mason Jones, was investigated by an independent inquiry led by Professor Hugh Pennington. His report published in 2009 sets out key recommendations for changes to how food businesses are regulated to improve protection for the public. One of the key recommendations was that LA food safety enforcement teams should improve the way intelligence is shared and acted on and this is further discussed in section 8. How AOs interpreted Lord Pennington's review had a significant impact on their regulatory approach.<sup>12</sup> Many AOs felt deeply concerned about being held accountable in case they "missed something" during an intervention which might lead to an outbreak of a foodborne illness and in turn making these AOs reliant on full inspections.

*"There's always that worry if you walk away then you are accountable."*

Environmental Health Officer, Metropolitan Borough Council

While the fear of being "named and shamed" among other AOs facilitated an overly cautious mindset and led these AOs to prefer undertaking full inspections in both high and low risk businesses. The implications of this are discussed in more detail in section 6.3.

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<sup>12</sup> Pennington, H (2009) *The public inquiry into the September 2005 outbreak of e-coli 0157 in South Wales*, Welsh Assembly Government.

## *Hampton*

The Hampton review is central to the Government's intention to ensure regulation protects the public without stifling economic activity. Hampton's report published in 2005 put forward recommendations for more efficient approaches to regulation without reducing regulatory outcomes. To achieve this, Hampton suggested regulatory approaches should be underpinned by risk-based assessment principles.

The majority of EMs explained that recommendations about regulatory reform set out by Hampton<sup>13</sup> had encouraged them to adopt or at the least consider a more risk-based and proportionate approach. However, in practice many AOs were reluctant and talked about favouring more heavy-handed regulation given their fear of blame from another Pennington. Some EMs took a more considered perspective and balanced these "contradictory" messages when developing their regulatory policies. These EMs said they were seeking to work more informally with FBOs who were willing to engage whilst adopting escalated enforcement action where warranted. This is discussed further in section 8.

*"Because of Hampton we had a re-think about enforcement and decided against nit-picking. Some small contraventions don't always indicate a complete failure in a management system and we've always tried to get to the bottom of why things are wrong. We now don't want to solely use the stick in food enforcement."*

Head of Food Safety, Metropolitan Borough Council

However, there were instances where placing too much emphasis on building relationships seemed to have gone too far, indeed there were a few AOs who explained they were reluctant to escalate to enforcement action even in situations where it was, arguably, appropriate. This is discussed again in section 6.4 and 6.5.

### **5.143 FSA message**

Given the uncertainty expressed by enforcement teams about the influence of these national factors on regulatory practice, many called for a clear and consistent message from the Food Standards Agency to help guide their approach. EMs in particular called for a stronger risk-based and proportionate message in relation to food safety regulation from the FSA. AOs felt this reassurance would encourage AOs to make better use of the intervention flexibilities currently allowed in the Code of Practice i.e. rotating between full inspection and monitoring visits for category C risk businesses.

EMs felt this would free up LA resources to work towards the idea of 'better' regulation and trial new practices, this is discussed in section 8.

*"FSA needs to decide if all authorities follow a standardised approach or let everyone go their own way as long as you can justify it and follow their own enforcement process. At moment we've got both and it's probably not working."*

Senior Environmental Health Officer, North-East England

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<sup>13</sup> Hampton, P. (2005) *Reducing the administrative burden: effective inspection and enforcement*, HM Treasury Publications

There are also many positive views expressed about the wide range of technical information and food safety and fraud updates available to LAs, in particular FSA email alerts and website were often read. Many enforcement teams valued FSA's work as interpreter of EC food law legislation for the UK allowing them to understand new policy development and free up their time to focus on regulatory work. As indicated above, there was also positive feedback about FSA's consistency training in helping to align their interpretation of Annex 5 of the Code of Practice. However, many enforcement teams called for information to be provided much quicker to ensure local regulatory approaches were in accordance with EC and FSA priorities.

## **5.2 Key local factors influencing regulatory practice**

### **5.2.1 Enforcement policy**

LAs explained that their enforcement policies had all been shaped by the national factors (discussed above) and national guidance set out in the Food Law Code of Practice as passed down by the Food Standards Agency.

In light of these influences enforcement teams told us about two notable changes to their enforcement policies. Firstly, AOs described a focus on inspecting FSMSs based on HACCP principles which have replaced the historical focus on ceilings, walls and floors. Secondly, there was increasing focus on ensuring food businesses met statutory food safety standards with less emphasis placed on gold-plating. However, it was evident that some AOs had been slow to adopt these messages into their own practice due to the AO mindset. Approaches characterised by the specific AO mindset had significant implications for how interventions and enforcement were selected and this is discussed more in section 6.3 and 6.4.

Variability in LA regulatory practice was also shaped by the following factors: urban / rural location, level of deprivation and an LA's mindset. These are discussed in turn below.

#### *Urban*

By their very nature urban areas had a significant number of food businesses (for example, in one area we visited the LA regulated c.7, 500) and as a result had a high degree of business churn and food business start-ups. Even though LAEMS data showed these areas have the most resource (based on the number of full time equivalents per 1000 food businesses) when compared to rural areas they were in general less cautious in escalating to enforcement. This was said to be because on average there was a higher number of problematic food businesses trading in these areas.

#### *Deprivation*

In general AOs said that food businesses located in deprived areas presented them with the biggest challenges to improving food safety compliance in their area. The priority for food businesses in deprived areas was "making ends meet" and as such regulation caused an immediate barrier to engagement. These food businesses would often do the absolute minimum to "comply" with regulation which can explain why there was a tendency for these businesses to slip back (i.e. passive yo-yo's). This was observed in one food business whose FBO argued against enforcement action by saying it was not possible to invest in structural improvement and staff training when he was operating on such low margins. How AOs reacted to this type of situation is discussed further in section 6.5.

*"I will help but I do serve a lot of notices because most FBOs in my deprived wards are non-compliant."*

Environmental Health Officer, Metropolitan Borough Council

#### *Local Authority Mindset*

There was consensus across LAs that regulation practices were increasingly being influenced by local political messages about "reducing the regulatory burden" on business. In some LAs the "open for business" message being advocated by council members, whereby AOs were described as "business support officers", was felt to have gone too far. In one LA an AO had resorted to completing the SFBB pack on behalf of the FBO because they had become frustrated by the FBO's repeated failure to complete it. Although an extreme case there were some AOs who acknowledged they preferred to offer a further opportunity to put right contraventions rather than serve or escalate enforcement. The reasons for this are discussed further in section 6. In these LAs, AOs were being told to consider themselves as "partners" instead of being regulators, causing some EMs to fear another "Pennington".

*"We're going into this relaxed phase at the moment, hands off business let them get on with it, they know what they're doing and there'll be another Pennington. Someone will die and then they'll blame us because that's how it works."*

Head of Food Safety, Unitary Authority

The degree to which this "reduced regulatory burden" message impacted regulatory practice varied across LAs. For instance, many AOs simply ignored this message out of fear of being blamed if they missed a hazard which then caused an incident of foodborne illness. While other AOs said they did if they considered the historical compliance or the FBO's attitude towards compliance poor. Whatever the reason for ignoring the message it meant some AOs spend a significant amount of time in food businesses. There were a few food safety enforcement teams who had taken advantage of the intervention flexibilities allowed in the Code of Practice (e.g. partial inspections, surveillance and monitoring visits) as part of their day-to-day regulatory work and the reasons for this are discussed in section 6.3. In general however it was evident that in the majority of LAs, the optimal approach of risk-based and proportionate regulatory practice was not being implemented. Also, when it came to enforcement some LAs were more willing to keep giving food businesses opportunities to comply which in turn would result in "enforcement cycle". This is discussed in section 6.5.2.

#### *Port Health Authority*

Only one Port Health Authority (PHA) was visited as part of this research. However, the evidence suggests that there was less scope for inconsistent regulatory practice in comparison with inland authorities. This was because the PHA regulatory activities involved mandatory microbiological and compositional sampling of specific foodstuff imports, and although guidance provides some flexibility for targeting, there is less scope for significant variation. However, food imports which failed the testing process could be dealt with differently depending on the decision of the PHA (for example either by disposal or by being re-despatched to the exporter. This is discussed below.

Food importers were said to have an increasing influence over PHA regulatory practices as ports increasingly sought to attract importers. It was explained that due to the tough economic climate PHAs were nervous about taking action that could have a detrimental impact on the employment and investment opportunities which the food import industry attracts to these areas. Indeed a few PHA officers expressed concern that because ports are in competition with each other and need to attract importers to sustain profit they are not willing to 'miss-out' on paying customers (i.e. importers) due to low standards. These PHA officers explained that LA commercial consideration may play against risk-based public health controls.

Another consideration among PHAs was that by dealing directly with agents of importers they do not establish the type of close working relationship with food businesses as AOs working in inland authorities. Without direct contact with an "owner", the AO-FBO rapport considered so important for affecting positive change in compliance could not be established. One PH officer therefore suggested that by working more closely with agents, for example putting on food safety regulation awareness raising events, it would then follow that agents could communicate PHA requirements to importers on the AO's behalf.

### In conclusion

The factors which influenced food safety regulatory practice varied widely. EMs and AOs talked about balancing these factors to make choices about which of their practices are essential for "on the ground" regulation and which are "nice-to-have" and second priorities. For example, key considerations were how to manage the high number of inspections of all unrated business, complete the whole program of planned inspections and what degree of emphasis to place on informal and formal approaches. In general it was felt that a restructuring of regulatory function combined with a more risk-based and proportionate approach and less emphasis placed on output targets (for example inspection targets) was needed in order to free up resources allowing LAs to provide the intensity of support necessary to tackle the disinterested and "yo-yo" food businesses.

**Factors influencing  
intervention and  
enforcement action decision-  
making**

# Section 6: Factors influencing intervention and enforcement action decision-making

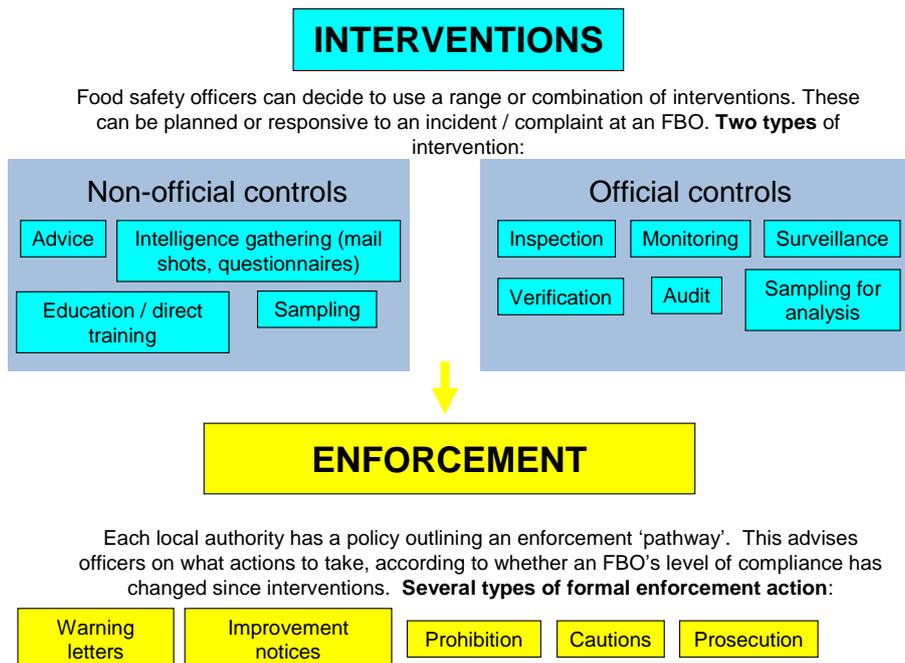
This section sets out the key priorities Authorised Officers (AOs) considered when choosing food safety intervention and enforcement. It starts with an overview of current interventions and enforcement action available to AOs before going on to discuss the factors which influence intervention and enforcement decision-making.

The initial overview section 6.1 is intended as background to the findings and as such does not detail research findings itself. Some readers may already be knowledgeable of the current range of interventions and enforcement actions and could begin their reading at section 6.2.

## 6.1 Authorised Officer's toolbox: an overview

Figure 5 below details the range of interventions and enforcement options available to AOs working in food safety regulation.

Figure 5: Authorised Officer's toolbox



'Interventions' are the activities that AOs can use to monitor, support and help increase compliance with food legislation by food businesses. They include a mixture of 'official' and 'non-official' controls and the different types of intervention are detailed below.

### 6.1.1 Legislative framework

From 1 January 2006, the following basic EU food hygiene regulations have applied throughout the UK:

- Regulation (EC) 852/2004 on the hygiene of foodstuffs
- Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin
- Regulation (EC) 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

These are implemented in England by the Food Hygiene (England) Regulations 2006. Similar regulations apply in Scotland, Wales and Northern Ireland. Regulation (EC)

### 6.1.2 Official controls

Official controls are any form of control performed for the verification of compliance with food law. They should be unannounced and carried out at all stages of food production, processing and distribution to establish whether or not the requirements of relevant food law are being met. The official controls that AOs can use are:

*Audits* are a systematic and independent examination to determine whether activities and related results comply with planned arrangements, and whether these arrangements are implemented effectively and are suitable to achieve objectives.

*Inspections* are the examination of any aspect of food in order to verify that such aspect(s) comply with the legal requirements of food law.

*Partial inspections* are inspections that cover only certain elements of the "full" inspection.<sup>14</sup>

*Monitoring* is conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with food law.

*Sampling for analysis* is taking food or any other substance (including from the environment) relevant to the production, processing and distribution of food in order to verify, through analysis, compliance with food law.

*Surveillance* is a careful observation of one or more food businesses, FBOs, or their activities.

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<sup>14</sup> FSAs Code of Practice (2008) states that it is not necessary to inspect every aspect of a food business at every inspection. Where the scope of an inspection is limited, however, the reasons for adopting this approach must be documented on the establishment file, and the scope of the partial inspection must be specified in the inspection report provided to the FBO.

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

### **6.1.3 Non-official controls**

In addition to official controls, the term intervention also encompasses other 'softer' activities aimed at supporting food businesses to achieve compliance with food law. These include:

- education, advice and coaching provided at a food business; and
- information and intelligence gathering, (including questionnaires, and sampling where the analysis is not carried out by an official laboratory).

### **6.1.4 Guidelines about which intervention to use and when**

Interventions must take place at a minimum frequency as set out in the FSA Code of Practice. Their frequency is usually planned in advance by LAs, but they also occur in direct response to incidents or complaints.

To some extent, AOs are able to use their professional judgement when deciding which intervention to use. However, they do have to adhere to certain guidelines found in the FSA Food Law Code of Practice. Food businesses are given risk ratings between A and E for food hygiene and A-C for food standards, where A signifies the highest risk to consumers and their health and C/E signifies the lowest risk to consumers and their health. Interventions should be applied in a risk-based manner, meaning that more intensive interventions are directed at food businesses that pose the greatest risk.

Food businesses that are rated category A or B for food hygiene or A for food standards should be given an inspection, partial inspection, or audit. Food businesses that are rated category C for food hygiene or B for food standards should be subject to an inspection, partial inspection, or audit until the business is considered to be 'broadly compliant' with food law. Once broad compliance has been achieved, interventions can include other official controls. FBOs that are rated category D for food hygiene can be subject to official and non-official controls on alternate visits. Food businesses that are rated category E for food hygiene or C for food standards can be subject to an Alternative Enforcement Strategy, where no visit to the food business is required. In such cases, AOs must ensure that the businesses are subject to official controls if any complaints are received about the business and an intervention at least once every three years for food hygiene, and once every five years for food standards.

If, during an intervention other than an inspection, partial inspection, or audit, an AO establishes that the nature of a food business has changed substantially, or the level of compliance has deteriorated, they are expected to change the intervention to an inspection or partial inspection and revise the intervention rating as necessary. In cases where new information arises, for example following a justified complaint or an unsatisfactory sampling result, the AO should consider whether it is appropriate to conduct an inspection, partial inspection or audit to investigate the matter. AOs can carry out more than one type of intervention during a visit to a food business.

### 6.1.5 Enforcement

As shown in figure 5, interventions can lead to enforcement action. Enforcement actions include warning letters, improvement notices, prohibition, emergency prohibition, cautions and prosecutions. When deciding the type of enforcement action to take, an AO should take into account the nature of the breach of food law and the history of compliance of the FBO, or, in the case of new businesses, the FBO's willingness to undertake the work the AO thinks is necessary to achieve compliance.

*Hygiene Improvement Notices* may be issued when formal action is proportionate to the risk to public health, there is a record of non-compliance with breaches of the food hygiene regulations, and the AO has reason to believe that an informal approach will not be successful.

*Remedial Action Notices*<sup>15</sup> are exclusively issued on food businesses who operate under Regulation 853/2004 (generally slaughterhouses, cutting plants, and businesses processing or manufacturing products of any animal origin). It allows for the immediate prohibition of the use of any equipment or any part of the business or any process and also allows for the rate of an operation to be reduced, or stopped completely. RANs require prompt corrective action to be taken, but without criminalising an FBO, needing the involvement of a magistrate, or indeed any court appearance. If a HEPN is used, the FBO may need to attend court.

*Hygiene Emergency Prohibition Notices* can be issued to immediately prohibit the use of FBOs, a specific piece of equipment, or a specific food process. They may be served on the food business followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order, provided there is imminent risk.

*Prosecution* is an enforcement action that AOs can take against an FBO. Before deciding whether or not to prosecute, AOs should consider whether there is sufficient evidence, whether the prosecution would be in the public interest, whether a prosecution would be warranted (e.g. consequence of failure to comply) and that it is in line with the LA enforcement policy.

The rest of this section details findings from the research.

## 6.2 How enforcement teams make decisions about non-official controls

Here we consider how Authorised Officers (AOs) made decisions when selecting from the range of non-official controls available under the current Code of Practice.

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<sup>15</sup> FSA is currently consulting on the extension of RANs to all food businesses. The primary reason for its extension is in relation to the effectiveness of RANs in securing immediate corrective action even though no imminent risk of injury is identified.

### **6.2.1 Advice**

Most AOs said that providing advice facilitated engagement with FBOs on food safety compliance which was considered an essential aspect of being a “good” AO. These AOs said using this informal approach also allowed them to build a relationship with food businesses because it tackled the widely held view that AOs were simply “nit-picking” government regulators with no interest in seeing food business succeed.

*“You can either look at them as an enemy or someone who can help.”*

Manufacturer, East of England

AOs talked about advice for food businesses as being more than a simple tool which they might use at one moment in time. For non-broadly complaint (BC) food businesses in particular it was part of an ongoing “compliance pathway” that was most commonly combined with an intervention (for example, inspection) and enforcement action where warranted. The reasons for combining advice with enforcement was based on assessment of the FBO mindset i.e. disinterested or passive, food business position along the compliance pathway i.e. historical compliance and risk analysis.

Many AOs said the best time to observe current levels of compliance (which AOs felt was most easily done during an inspection) may not necessarily be the best time to give advice. Particularly the case among non-BC businesses, where the best time to carry out an inspection tended to be during busy peak hours, times when staff were likely to be distracted and not attentive to advice.

As a result, some AOs tailored their message to what they considered the most pressing compliance issue which tended to be based on the basic food safety measures “The 4 Cs” (chilling, cooking, cleaning, and cross-contamination).

*“What works? Keeping it simple, it’s about a very basic message - the 4 pre-requisites.”*

Environmental Health Officer, Metropolitan Borough Council

In general passive and reactive food FBOs valued these targeted approaches as they felt “bite-size” information easy to understand and implement. In instances, where AOs focused on a wide variety of food safety issues it was evident this was largely counter-productive causing these food businesses FBOs to feel over-whelmed and confused about which were key priorities.

AOs also talked about tailoring advice to a FBO’s ability to comply with their requests for corrective action. Pragmatic AOs would negotiate the optimal way forward taking into account barriers to meeting minimum food safety standards, for example, applying gloss-paint to wooden surfaces to make them washable rather than demand a costly retro-fit.

*“Yeah I mean trust; it’s about believing that they’re doing what they tell us. They believe that we’re there to help them and that we are giving sound advice and we’re not asking them to do anything above and beyond what the law require. So we’re not making them do things that they don’t have to do or spend money on.”*

Head of Food Safety, Unitary Authority

Most AOs would also offer good practice food safety recommendations especially if they felt the FBO had capacity and willingness to improve their business. They tended to “sell” good practice recommendations using increased public awareness of food safety hygiene rating schemes stressing the point improvement would lead to increased trade. A few AOs adopted a similar technique with manufacturers explaining good practice could lead to a new business opportunity as a supplier to large retail outlets.



Advice was the default position to address the lack of a food safety management system (FSMS) in a food business. Even though AOs recognised this situation amounted to a technical breach and therefore adopting enforcement would be warranted, AOs said they would opt instead for explanation over enforcement so long as there was sign of other food safety measures such as hygiene but also a willingness of put an FSMS in place. These AOs felt that explaining the importance of documented policies and implemented procedures in terms of the impact it could have on public health can be more effective in achieving compliance than informing some food businesses in writing about European food law contravention. In their experience mailed communication is seldom read and therefore a verbal communication of legislative requirements was often viewed as being a more effective way of the message being taken on board.

However, there were instances where AOs repeatedly placed too much emphasis on the delivery of advice; they talked about spending hours across repeated visits explaining the purpose of the Safer Food Better Business (SFBB) pack and how it should be completed. There were even a few instances where AOs had completed it on the behalf of food businesses thinking this would get the FBO in the habit of completing the pack themselves. Evidence showed that in most cases advisory visits were successful at increasing the likelihood of SFBB completion, but some AOs questioned whether advice alone could sustain this. In these instances, AOs suggested that a combination of informal backed-up with formal enforcement was needed to achieve compliance.

The research did identify a specific approach that was reported as being successful in motivating some passive FBOs to take SFBB ownership. One AO would explain that without a SFBB in place it would not be possible to score more than one star under FHR/IS<sup>16</sup> Although it was acknowledged this message would be more effective amongst food businesses concerned about the FHR/IS if displaying the rating becomes mandated then it would be an effective measure to change FBO mindset.

<sup>16</sup> Confidence in management, one of three criteria AOs score overall food business compliance, is assessed by the extent FBOs have implemented an up-to-date food safety management system (Safer Food Better Business pack). Failure to have this system or an equivalent in place automatically results in a low food hygiene rating scheme score.

## **6.2.2 Education**

In general, AOs held similar views about the value of educative approaches. There was an consensus that the use of education facilitated mutually beneficial working relationships which in turn improved food safety compliance long term among some businesses.

*"In an ideal world the ideal officer will be someone who can achieve compliance with the cooperation of the FBO. You know get the FBO on board and get them to understand why they need to comply and get them to want to comply and use an informal approach I suppose is the ideal scenario."*

Head of Food Safety, Unitary Authority

In order to achieve this longer term goal AOs explained it was necessary to educate food businesses on a variety of important issues: tackling the myth AOs are simply enforcers, explaining why corrective action is needed (often done by explaining the consequence of poor food preparation on public health); not simply telling food businesses what must be done. Finally, raising awareness of the negative consequences of not taking corrective action, such as enforcement and reputational damage is vital.

The fact that the majority of food safety related education was face-to-face was said to have the advantage that both FBO and staff would be present, as a result AOs had developed several simple yet effective strategies to engage with and educate this audience. For example, demonstrating hygienic practices was considered an effective technique as it increased understanding of food safety standards and set an expectation for the future. In some businesses, this meant physically cleaning wash basins and food preparation surfaces while in others it involved showing photographic evidence of more compliant food businesses. Use of swabs during a visit was also viewed as a useful and relatively cost effective measure for improving food safety understanding. EMs and AOs explained that at a glance it allowed a FBO and staff to heed key hazard touch points in turn this facilitated a conversation about controls and on-going monitoring of risk.

## **6.2.3 Training**

Many AOs explained that a wide range of food safety training, funded by LA and FSA, had taken place in the last ten years although there was a concern that it would become less common as a result of budgetary restraint which they believed would have a detrimental impact on business compliance.

Overall AOs believed training events could often lead to increased awareness and understanding of food safety matters and to improved practice. However the success of training initiatives in achieving and sustaining compliance is largely unknown since these activities had not been evaluated beyond a short satisfaction survey completed by participants and a count of attendees. That said, there had been some successes as indicated in the quote below.

*"I was confused about SFBB at first but after training we have got used to doing it."*

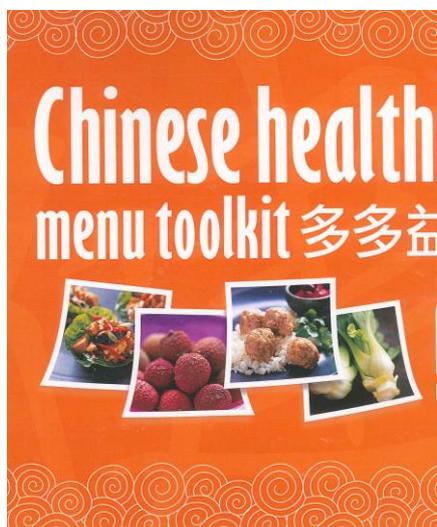
Food Business Operator, North-East England

AOs also valued training events as they demonstrated the LA's seriousness to support food businesses which AOs felt facilitated a positive relationship which in some cases encouraged the FBO and staff to improve standards.

*"The business I've visited who have been on that training course remember it. They have that sort of connection with you and they feel as though that they can work with you. And quite often that's breaking down the barriers."*

Senior Environmental Health Officer, Unitary Authority

Historically, training had focused on particular groups of food businesses in line with FSA priorities. For instance, in the period after the E-coli outbreak in South Wales training events targeted at butchers were delivered to raise awareness of cross-contamination. Training events funded by LAs have tended to target "yo-yo" businesses for example, take-aways. However, AOs recognised that those who attended the sessions were unlikely to be the most "disinterested" or "passive" and questioned whether attendees were truly "hard-to-reach".



There were examples of LAs working in partnership with a range of ethnic communities (Chinese, Indian and Turkish) to deliver food safety training. AOs said the availability of on-site interpreters and community based venue prompted attendance. It was explained that FBO understanding started from a low point therefore food safety training would focus on "The 4 Cs" but AOs would also spend time looking at and working through SFBB packs which they suggested saved time and reduced the likelihood of enforcement further down the line.

*"And a lot of them, when you go in, they still remember that and can produce the certificates that we gave them and that was just about concentrating on the four C's really."*

Senior Environmental Health Officer, Unitary Authority

LAs delivering accredited food safety training were keen to explain they charged a low fee (£35 per attendee for a 2-day accredited course) which anecdotal evidence suggested encouraged small and medium enterprises to enrol their staff. To encourage participation, some LAs sell the idea of training upfront, when food businesses register with the authority and at the time of the initial inspection.

#### **6.2.4 Intelligence gathering**

Most AOs talked about intelligence gathering being a crucial part of their day-to-day role. AOs explained that being able to make the right decisions at the right time hinged on having a detailed and comprehensive understanding about the business.

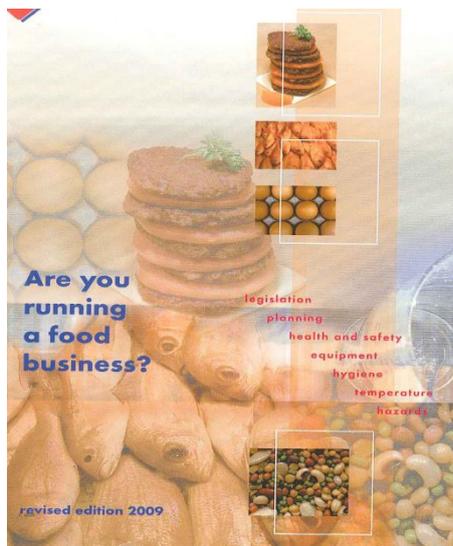
It was explained the process of sampling (e.g. swabbing touch-points) or results from microbiological sampling were useful indicators of practice as it would give AOs irrefutable evidence to use when deciding regulatory response (a detailed discussion of the use of intelligence to guide regulatory response can be found in section 8). Although sampling is not

defined (under the Code of Practice) as intelligence gathering, most food safety enforcement teams cited it as the most effective method of building understanding of a businesses' standards.

Most AOs tended to think about intelligence gathering as part of a bigger process of using a variety of other mechanisms such as public complaints, quick and often "pop-ins", to build an understanding of each food business. Briefings by colleagues or reviewing food business historical paper work were also regarded as being key to decision-making.

All LAs explained they were using a range of Alternative Enforcement Strategies (AES) - the Food Law Code of Practice (revised 2008) allowed LAs to use Alternative Enforcement Strategies with risk category E FBOs - typically this meant business questionnaires often mailed with food safety booklets or in a few cases inviting childminders to LA premises to take part in food safety training as a means of continuing to gather intelligence from and share information with low risk businesses. AOs broadly welcomed these approaches as they considered them a proportionate use of resource given the level of risk to the general public. However there was an acknowledgement that questionnaires told them very little about food safety standards within a business.

Some enforcement teams were concerned that the frequency of mailing questionnaires (every three years) plus a low response rate led to a gap in their understanding of the real level of risk among some food businesses – it was felt that often what was reported did not reflect actual activity. Consequently, most LAs would use technical officers to chase survey responses and use AO local knowledge to validate a sample of responses. Given the lack of direct contact with some food businesses LAs also send out information leaflets and handbooks covering the spectrum of food safety matters.



In general public complaints were considered a useful source of intelligence although opinions were mixed when AOs considered the trade-off between the amount of time spent investigating and the potential for identifying poor practice. Indeed many AOs had a particularly negative view reporting they were often triggered by minor issues and therefore were seen a waste of valuable AO time. AOs who were more positive about public complaints tended to have experience of a complaint that had led to a case of significant non-compliance being identified.

Since most AOs conducted food inspections on a ward or "patch" basis the importance of local knowledge to gather intelligence cannot be underestimated. Many AOs felt that simply "popping-in" to a food business, as a way to check on compliance, while en route to or returning from an inspection reinforced standards. There was a general feeling that "popping-in" sent an effective message out to food businesses that "if they slip they will be caught". Also, this way of working established their reputation in the local community as someone FBOs and the general public could contact if there was concern about a particular food business.

## 6.3 How enforcement teams make decisions about official controls

Here we consider how AOs made decisions when selecting from the range of official controls available to them under the current Code of Practice.

### 6.3.1 Audit

In accordance with 2006 food safety legislation<sup>17</sup> it is necessary for all food businesses to document and implement an FSMS based on HACCP principles. This means FBOs have a responsibility for identifying all hazards in the production, processing and distribution of food products and ensuring there are robust controls in place. Consequently, AOs explained there had been a shift in emphasis from checking structure (for example, ceilings, floors and walls) to ensuring FSMSs were fit for purpose. Auditing of FSMS has become an increasingly significant aspect of food safety visits because of the legal requirement to document and implement one, as well as being identified as the most common compliance weakness during food safety visits.

*"Most FBOs would have no paperwork without SFBB, they don't understand HACCP principles. It's very difficult to get them to keep SFBB updated."*

Environmental Health Officer, Metropolitan Borough Council

The lack of a credible FSMS was found across many LAs and was so entrenched in some areas principally in urban and deprived areas, that AOs had stopped "pushing" SFBB to FBOs in the retail sector in order to focus their efforts on higher risk food businesses in the catering sector.

*"I'm really struggling to get some FBOs to take on board and use, they don't see the point of it they view it as a tick-box exercise just to get us off their backs. I've given up on retail SFBB unless they do hot foods. Obviously I'm still pushing the catering pack."*

Environmental Health Officer, Metropolitan Borough Council

In general AOs combined an audit within an inspection because the process of observing food safety behaviours was an effective way of testing the food businesses' documented evidence. AOs also conduct audits as the sole intervention, as a means of reassuring themselves that historical non-compliance such as ill-thought HACCP documentation and out of date records had been corrected.

*"I have queries about some anomalies with your critical control points, the HACCP statement doesn't match the written documents."*

Senior Environmental Officer, District Council

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<sup>17</sup> FBOs are required to put in place procedures which manage food safely within their business. Article 5 (1) of Regulation 852/2004 requires that the procedure or procedures be based upon the HACCP (Hazard Analysis and Critical Control Point) principles set out in Article 5(2). The wording of the Article gives flexibility in that it requires that the procedures be based on those principles.

### **6.3.2 Inspection**

As evidenced in LAEMS data, inspections are the dominant intervention undertaken by AOs, this is largely because AOs find it difficult to adapt to recent flexibilities offered under official controls. As discussed throughout this report a fear of the 'what if', concern about 'another Pennington' and a feeling inspections are the only intervention suited to making a robust and credible assessment of risk drives AOs to select full inspections time and again.

This situation is becoming exacerbated as a direct result of regulatory restructuring which demands that AOs conduct a food safety, health and safety and other forms of regulatory inspection during a single visit.

The factors which explain why AOs prefer this intervention above all others are discussed in more detail below.

Most AOs simply believed inspection was the only intervention that allowed them to conduct a rigorous risk assessment. In practice AOs tended to use a combination of observation and questioning techniques to investigate food business practice and allow them to cross-reference practices with a food business's documented procedures. Conducting this rigorous yet time intensive process was said to give them greater certainty that they were sufficiently carrying out their duty to public health protection.

The widespread preference for inspection was often influenced by fear in the wake of "Pennington". Many AOs feared that they would be held accountable if by not carrying out an inspection they overlooked a potential hazard leading to an outbreak of foodborne illness. This fear was so strong among some AOs that they simply refused to alternate between inspection and other official controls (e.g. monitoring visits) even where guidance and EMs encouraged them to.

AOs' familiarity and experience of inspections were also strong influencing factors. As explained below few AOs were able to explain how the delivery of other types of official controls would work so they simply felt comfortable following a process they had done many times. Time itself was also an important consideration in the sense it allowed them the opportunity to communicate compliance using education but also allowed them to forge and develop trusted relationships.

It was observed that initiatives incentivising compliance such as FHR/IS had paradoxically put greater emphasis on inspections as more FBOs were requesting additional inspection in advance of their due date. In these cases, FBOs had in their view taken the corrective action so felt entitled to an improved rating. AOs were concerned that a refusal could have a detrimental impact on the AO-FBO relationship, thereby un-doing all the previous good work.

*"FHR/IS puts officers in a difficult position, minor contraventions could in theory lower a score from 4 to 3 but these things could be cleared up in a matter of days. So to give it a 3 for 18 months until the next visit seems quite severe punishment to me and the business."*

Senior Environmental Health Officer, Metropolitan Borough Council

### 6.3.3 Partial inspection

Most AOs found it difficult to move beyond their inspection mindset yet there were several examples across LAs where AOs were making use of partial inspections.<sup>18</sup> It is worth noting that AOs were aware of this intervention yet many were reluctant to select because of the fear of missing something which in turn could cause consumer harm. This type of risk averse mindset was embedded in the thinking of most AOs and subsequently these AOs reported spending a disproportionate amount of time in businesses in relation to risk. However, there was evidence to suggest that proportionate and risk based approaches could be encouraged where EMs communicated a strong message reassured AOs this was LA policy, although EMs called for FSA to reinforce this type of messaging.

In practice AOs would most commonly select partial inspections for two reasons. First, they allowed AOs to focus on historical contraventions (e.g. cleaning or hygiene) in a food business. Second, it allowed AOs to focus a risk assessment on a single area of a large food business (e.g. the bakery of a supermarket or department of university). In order to reassure themselves of compliance levels in other areas of the food business, the AO would then perform a quick hazard spot-check, considering this a sufficient level of risk assessment until the next planned full inspection.

*“So basically inspecting by focussing on the production kitchen, because that's the high risk activity, and then we sort of hazard spot in the bar or cafe, we do a spot check on there and follow up the chain of the food. We may not inspect them if we feel that they are managing well.”*

Senior Environmental Health Officer, Unitary Authority

These AOs supported partial inspections as they considered them a better use of resource ensuring they invested more time to work with high risk and non-BC business. There is evidence to suggest that the use of partial inspections is in fact more widespread than is reported via LAEMS as some LAs did not use the term partial inspection explaining that they were recording all types of inspection under the one title “inspection”.

The use of partial inspections shows that the message of risk-based and proportionate practice was clearly being embraced in the practice of some LAs, but it is clear that there is greater potential for EMs and the FSA to communicate a louder risk-based message. In particular, the message needs to address fears about accountability and the “what if” mindset.

### 6.3.4 Monitoring

We found only one example of an LA's AOs selecting monitoring visits (MVs) from official controls. The factors driving the selection of MVs reflect those which underpin the selection of partial inspections. A key factor was their efficiency (AOs talked about completing MVs in c.30 min), allowing them to focus on higher-risk and non-BC businesses. In the one LA reported to have been using MVs, their use had also freed up resource to deliver the annual inspection programme and ensure 90 per cent of all unrated food businesses were visited

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<sup>18</sup> A partial inspection covers only certain elements of the inspection as set out in section 7.1.1 of the Code of Practice, for example, HACCP.

within 28 days of registration. As such it allowed this LA to achieve while delivering risk-based and proportionate regulation.

*"I have to keep telling my officers that the Code of Practice allows flexibility. Alternating between inspections and monitoring visits is risk based, it helps officers achieve their programme of inspections and reduces burden on broadly compliant business."*

Operations Manager for Food Safety, Metropolitan Borough Council

EMs in favour of monitoring visits explained it allowed AOs to assess compliance proportionate to risk without spending extended time in a business. As such the use of MVs allowed for more time to be spent regulating higher risk businesses. However, many EMs had given up encouraging AOs to its use since most AOs found them unappealing – largely because of their fear of "what if" and the blame of accountability. This mindset was difficult to shift among AOs and the quote below illustrates the tendency for AOs reverting back to inspections even after an LA took steps to introduce monitoring visits.

*"Officers were walking away following monitoring visits not fully confident and thinking what if? And we only feel confident using MVs when visiting fully compliant FBO scoring, 0, 0, 0."*

Environmental Health Officer, Metropolitan Borough Council

### **6.3.5 Sampling for analysis**

The use of compositional and microbiological sampling of food products and swabbing of key contact areas was selected by many AOs. Planned LA sampling activities were shaped by the FSA, Health Protection Agency (HPA) and Local Government Regulation (LGR) guidance and priorities. Ad hoc sampling on the other hand was determined by an AO's assessment of risk and this is illustrated in the quote below.

*"We have if you like reactive sampling where we go to a place where we think we should be taking some samples. That would generally be done by the EHO at a problematic business. They go somewhere, find something, and see that they should follow that up with some sampling to reinforce the conditions found."*

Head of Food Safety, Unitary Authority

In general a decision to undertake ad hoc sampling was triggered by a "cause for concern" identified during a visit or following a public complaint. Sampling was viewed as a useful means of gathering robust intelligence to test this "cause for concern" and the validity of corrective action. Crucially it was said it provided AOs with irrefutable evidence allowing them to justify any subsequent enforcement. It also appealed to many AOs as they felt the process of sampling in particular microbiological swabbing was an effective way of demonstrating hazardous contact points. There were a few examples where it had encouraged self-sampling. However, sampling should not be regarded as the holy grail of regulation since a failure to gain a negative result is not indication of compliance or that there would be no

imminent risk. Therefore AOs look for other tell-tale signs and these are discussed in section 7.

In several LAs, sampling was at risk of becoming overlooked. Many AOs said that it only gave them a snapshot of evidence which was not sufficient for many AOs to feel confident that they had conducted a comprehensive risk assessment. Again, this is underpinned by the AO's "what if" mindset. While in some LAs, sampling had simply become too expensive due to the increasing cost of transporting samples for testing. Because of this, several LAs had planned or were on the verge of putting significant limits on their ad hoc sampling.

### **6.3.6 Verification**

There was widespread confusion among AOs about how this intervention would work in practice; some were simply not aware that it was written into the Code of Practice. AOs imagined it would involve verifying practices and behaviours which they recognised as being part of the standard inspection process.

*"The point is we go out to places, there's a lot of argument about verification audit, you know an inspection is a bit of auditing and it is a bit of monitoring and it is a bit of verification and there's an overlap but we go in as a normal inspection and we cover all those bases and it seems to work in our current model."*

Head of Food Safety, Unitary Authority

### **6.3.7 Surveillance**

Similar to the findings on verification visits, many AOs were unsure how this intervention would work in practice. A few AOs talked about undertaking covert surveillance to build-up a portfolio of evidence for prosecution. While others mentioned simply "being on district" which meant they were able to conduct overt surveillance. Nevertheless surveillance was not considered a comparable form of official control to the standard inspection which caused a similar degree of reluctance to use surveillance more frequently.

### **6.3.8 A major stumbling block**

Considering the full range of official controls available, it was noticeable how strong a focus there continued to be on carrying out inspections. AO hesitancy to select other official controls was often based on the perception that these only gave a "partial picture" of an FBO's compliance. This belief was a major barrier to the uptake of interventions such as partial inspections, monitoring visits, sampling for analysis, verification or surveillance.

Furthermore, many AOs felt confident that inspections were the most effective way of detecting likelihood for *sustained* compliance. Only during an inspection could AOs properly gauge whether an FBO and staff had a compliant "will", considered a reliable indicator of sustained compliance. This spells a significant challenge for ensuring risk-based and proportionate interventions become more widely used.

## 6.4 How enforcement teams make decisions about formal enforcement

Here we consider how AOs make decisions when selecting from the range of enforcement options.

### 6.4.1 Written warning

The Code of Practice requires the use of written warning to FBOs where any instances of non-compliance are identified and in order to support the policy of graduated enforcement. AOs explained that it is a necessary first stage of enforcement action especially if in future visits they needed to justify escalation (i.e. elected members, enforcement managers, magistrate or FBO).

In general opinion was mixed about the effectiveness of written warnings in increasing standards. AOs talked about written warnings “being a wake-up call” to some passive and reactive businesses as the very fact of receiving a formal letter from the LA was enough for the FBO to take appropriate action.

*“It's a mix, it's a variety. It very much depends on the food business and their willingness to comply. Some people you can just write it in a letter give them a time period and it's done.”*

Senior Environmental Officer, Unitary Authority

AOs were quick to acknowledge this type of enforcement had limited success with disinterested FBOs who in turn require escalated action. In addition, there were a few examples of national retail outlets where these warnings had not worked, often caused by off-site responsibility for investment decision-making. In these cases on-site managers tend not to take responsibility for the warning simply because of a powerless to do anything about it. Without a primary<sup>19</sup> or home authority<sup>20</sup> arrangement these cases, AOs had little choice but to make repeated often unsuccessful attempts to engage with regional and national managers to ensure remedial action was completed.

There were some positive views of the Home Authority arrangement as it allowed LAs access to a single point of contact who was considered well informed about the practices of the relevant national chain. There was less support for Primary Authority due to a perception that the financial arrangement between LAs and large businesses could influence LA decision-making.

How written warnings were presented (for example, terminology, jargon, and length) also contributed to their ineffectiveness. Some AOs talked about setting out the identified hazard, the legislation contravened accompanied with a list of “must-do” actions and “nice-to-have” recommendations. Taken together it is likely this amount of information made the written warning difficult to navigate and confused food businesses to determine *essential* actions.

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<sup>19</sup> Under Primary Authority LAs charge the FBO for acting as the central contact for other enforcing authorities' enquiries.

<sup>20</sup> Under a voluntary arrangement the LA acts as the central contract for other enforcing authorities' enquiries with regard to that company's food.

*"On my inspection reports if I feel there are recommendations that would help them achieve good practice then I'll put that on.*

Senior Environmental Health Officer, Unitary Authority

To prevent this, AOs endorsed a conversation with the FBO at the end of the inspection in order to report back and summarise inspection findings. It was felt this dialogue was pivotal in ensuring FBO understanding which in turn would increase the likelihood of corrective action being taken.

#### **6.4.2 Hygiene Improvement Notice**

A hygiene improvement notice (HIN) was one of the most commonly used enforcement option. The decision to escalate to this type of enforcement was straight forward for most since it was the next step of an LA's graduated enforcement policy. It was explained however that some AOs shy away from selecting them because of associated administrative burden and bureaucracy.

*"Well there's a problem when you draft the hygiene improvement notice; it takes time because it's got to be legally correct. You know you've got to be sending it to the right person at the right address, it's got to be worded correctly, it's got to be signed off correctly, and it's got to be served. It's a timely process, as well as a time sapping process."*

Environmental Health Officer, Unitary Authority

It was explained there were several stages of data processing (i.e. inspection notes, inspection report, and LA's management information system) before they could document and serve this legal notice which distracted some AOs from meeting inspection targets.

That said, AOs felt that the gravity of receiving a legal notice was sufficient to motivate most reactive and passive FBOs into ensuring improvements were completed in the agreed timescale and to appropriate standards.

*"Visits are not the answer, with notices the FBO and officer know where you are, you can monitor the progress made."*

Environmental Health Officer, Metropolitan Borough Council

However most AOs felt HINs were of little use in motivating some food businesses especially those businesses ran by disinterested FBOs to tackle urgent cleaning issues.<sup>21</sup> Given the 14-day right of appeal AOs explained they had nothing in their toolbox other than the threat of enforcement to motivate food businesses to improve cleanliness. This situation illustrated in the following images; the image on the left shows cleaning issues found on day-1 of an accompanied visit to a kebab take-away. Day-2 improvement using an explanation of the potential impact on public health of not improving and the threat of escalated enforcement (simple caution) is shown in the image on the right.

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<sup>21</sup> The Code of Practice (2008) suggests that HINs should not be used for transient issues such as cleaning.



In addition to a conversation of the cleanliness issues, the AO spent time focusing on the requirement for SFFB and implementation of other risk management measures such as credible cleaning system and ensuring staff understand and comply with food safety legislation. Instead of serving HINs for non-cleaning issues the AO acted, largely because of the FBO's history of non-compliance, to immediately escalate to simple caution.

As indicated above there was consensus among AOs that effectiveness tailed off when served on disinterested businesses. As such many EMs and AOs advocated the use of targeted regulatory work to achieve and sustain compliance among problematic businesses, this is discussed in section 8.

#### **6.4.3 Seizure and detention**

This enforcement option was rarely mentioned during interviewing with inland authorities however the scale of sampling reported suggested it was simply not top-of-mind for most enforcement teams. Those who spontaneously discuss it were strongly supportive of the immediacy of Food Hygiene Regulation 27<sup>22</sup> which gave AOs authority to seize and dispose of unfit food.

*"It hits them where it hurts in the pocket."*

Food Safety Manager, Metropolitan Borough Council

#### **6.4.4 Remedial Action Notice**

Enforcement teams explained that Remedial Action Notices (RAN) were introduced to put an immediate stop to high risk production and processing in "853 approved"<sup>23</sup> food businesses. Many AOs considered it a powerful tool in tackling non-compliance and called for the extension of these powers to all food businesses. They felt it had several advantages over HINs: it had immediacy (there was no risk of delays arising from a right to appeal); it would motivate food businesses to raise their standards or else incur a financial hit; and it took less time to prepare the notice. LAs who had a strong culture of supporting business expressed

<sup>22</sup> Food Hygiene Regulation 27 allows AOs to seize and dispose food which fails food safety requirements

<sup>23</sup> Regulation (EC) No 853/2004 sets out hygiene rules applying to businesses producing food of animal origin.

less support for their expansion and it would be likely that AOs hesitant to serve HINs would feel the same about RANs.

#### **6.4.5 Hygiene Emergency Prohibition Notice (HEPN)**

AOs said that the decision to serve HEPNs needed to be “watertight”. This meant they needed to be confident there was imminent risk to public health, although there were other considerations. Before serving even the most experienced AOs would weigh up a wide range of factors: detrimental impact on AO-FBO relationship; and if escalated, LA expenditure (staff time and legal cost); and personal confidence to give evidence in court. In most cases, EMs took a key role in overseeing the approval of HEPNs therefore ensuring escalation was not stalled by AO hesitance.

#### **6.4.6 Caution**

Enforcement teams explained that increasingly the use of cautions had become more widespread since the cost of prosecution had become more prohibitive. A few LAs explained it enabled them to simultaneously escalate in a cost-effective way and deliver a “last chance saloon” message. In general, enforcement teams felt that cautions achieve short-term compliance but on its own questioned affect on long-term behaviour change. They suggested that since all previous attempts to address compliance had failed it was likely a simple caution would also not work.

*“One of the businesses I did a couple of years ago, he accepted a simple caution and he would move to broader compliance, and now he's back to a non-broadly compliant status. The deal with him now is he gets his act together or it's a prosecution. He doesn't get the option.”*

Senior Environmental Officer, Unitary Authority

#### **6.4.7 Prosecution**

As enforcement is escalated the less autonomy AOs have in choosing the option. The decision to prosecute was ultimately made by the Food Safety Team Manager or in some LAs Heads of Service albeit based on recommendations made by the AO on the basis of risk and previous enforcement action taken.

*“You go somewhere else [LA region] you will find quite often a reluctance to prosecute. We don't have that at [LA name] because our Head of Environment Health and Trading Standards is very keen on the legal side of things.”*

Head of Food Safety, Unitary Authority

In deciding whether to escalate to prosecution Heads of Service also accounted for: LA capacity, and profile and these are discussed in turn below.

Some EMs felt that the amount of AO time and level of skill needed to collate evidence was a significant barrier to prosecution. Most enforcement teams talked negatively about their own legal teams suggesting they were overly-cautious and unresponsive due to competing priorities. As a result, EMs would ensure AOs had the right training to carry out efficiently and effectively evidence gathering and that it was prioritised over other activities.

*"At [LA name] we prepare our own files, we don't use the in house legal team, we don't have a need to and I think in house legal teams can be a barrier actually to taking action. They're either overly cautious or they're not timely in their response to your needs for input, they don't understand what we do and why we do it."*

*Head of Food Safety, Unitary Authority*

The resolve of elected members to proceed to prosecution varied widely across LAs. In general there was more willingness to prosecute in areas of high business churn and deprivation largely because they wanted to send a preventative message to the business community. Whilst EMs in affluent areas where businesses were more likely to have the financial means to comply felt that the "threat of formal action" was often sufficient to prompt action.

LA reputation and profile were key considerations when deciding to prosecute. It was evident there was a tension between building closer partnerships with the business community ("open for business") and having a reputation for taking swift enforcement to protect public health. However, some forward thinking LAs believed these were not mutually exclusive provided they got the message out that prosecution was in the public interest. Moreover, some were now delivering a mix of targeted activities which had achieved and sustained compliance without the need to prosecute; this is discussed in section 8.

Similar issues were considered when deciding to seek prohibition of persons – often sought as a last resort when all other enforcement actions had been exhausted yet the food business continued to be non-compliant. In general, LAs regarded it as an effective means of dealing with the extreme disinterested and rogue businesses although the process of gaining approval from within LA and the courts needed speeding up to limit the potential for consumer harm.

## **6.5 Enforcement on the ground**

In order to tackle non-compliance EMs and AOs explained they adhered to a graduated enforcement pathway, which generally started with a written warning and ended in prosecution. As AOs talked about their experiences and opinions of enforcement it was clear their approaches were more nuanced. There were in fact two distinct approaches to the use of enforcement: **enforcement pathway** and **enforcement cycle**.

### **6.5.1 Enforcement pathway**

AOs who said they adhered to a graduated enforcement approach would select from the entire range of enforcement options available to them, starting with written warning and ending in prosecution. In addition to the issues discussed in section 5 and above, AOs explained they chose to escalate depending on the degree of risk to public health, FBO mindset and where the food business sits along the compliance pathway. If the hazard was considered low yet contravened the AO's interpretation of food safety legislation then most commonly a written warning would be selected. If the hazard *and* a food businesses' historical compliance were considered low they would most likely select a HIN.

If the hazard was considered an imminent risk to public health then accelerated enforcement would be taken (for example, straight to prohibition). It was also reported that a simple

caution combined with HINs would be served where repeated breaches over an extended time had been monitored even though there was no imminent risk to public health. Finally, if escalation failed to improve and sustain standards AOs would most likely recommend prosecution to EMs, who would then seek approval from the Head of Service.

*"This gentleman has had a simple caution before, we've gone back to the place and had to shut it was that bad. So now we're prosecuting him. So we're using the hierarchy, we've tried the informal, we've tried the semi formal, now we're going for a prosecution and as I say we're going to go for a prohibition order on him as a FBO because in our opinion he can't show that he's fit to run a food business. Unfit food, mouldy food, no refrigeration you know critical kind of food safety issues so we're not talking a few minor misdemeanours, we're not talking a few minor cleaning issues although there were those as well. We're talking actually about very real food safety risks, so proportionate to what we found."*

Head of Food Safety, Unitary Authority

### **6.5.2 Enforcement cycle**

There were examples of some AOs who would be more reluctant to select from the full range of enforcement action. Indeed some AOs "get stuck" at the less severe end of enforcement (e.g. written warning or HIN) causing many to repeat the delivery of education combined with the same enforcement action at frequency of the next visit (according to risk category) so repeating the enforcement cycle. These AOs reported acting in this way only where they were certain there was no risk to public health. However timescales for repeating enforcement varied between 6 and 18 months which suggests non-escalation would leave non-compliance and the potential for consumer harm unchecked. The quote below illustrates how some AOs are hesitant in escalating to more severe enforcement action – it is important to note that this view was reported where the AO was satisfied there was no imminent risk to public health.

*"I'm empathetic to some of the challenges faced by businesses and I'm sympathetic to what the FBO is trying to do. I find it hard to issue notices."*

*Food Safety Officer, Metropolitan Borough Council*

Other AOs explained they had issue escalating from HIN to HEPN even where repeated breach was found explaining that so long as the risk was negligible HEPNs were deemed too heavy-handed and repeated opportunities to comply were allowed. Consequently, these AOs called for the expansion of RANs to cover all food businesses explaining that "RANs fill the gap between HINs and HEPNs". However it was clear that some of the same AOs who found it difficult to serve HINs would not serve RANs, as illustrated in the quote below.

*"I think it maybe is a confidence issue for some officers to see that improvement notices aren't that big a deal. All they're saying is yes it is a formal legal document but its saying I'll give you a reasonable timescale that the officer will negotiate with the FBO and say look you need to do this work."*

Head of Food Safety, Unitary Authority

The reasons for veering away from regulatory practice that followed a graduated pathway are varied yet the key issue is the AO mindset (see section 4). In other words whether the AO has a preference for a particular regulatory style and therefore places too much emphasis on advice and coaching or business support. It was also evident that the enforcement cycle was caused because many enforcement teams wanted to give food businesses another opportunity to take corrective action.

*"As part of enforcement policy we give businesses a chance to comply even if standards drop a little."*

Environmental Health Officer, Metropolitan Borough Council

As these examples demonstrate if repeated contraventions are not being addressed using the graduated enforcement there is a real risk that potential of consumer harm goes unchecked. As such EMs and team leaders had an important role in ensuring via the close monitoring of AO activity that AOs do not slip into the enforcement cycle. In one unitary authority an EM would closely monitor enforcement actions with non-Broadly Compliant (BC) FBOs. Whilst one LA placed AOs most confident in serving HINs in the area with some of the most challenging food businesses.

### **6.5.3 'Tipping points': where does education end and enforcement start?**

The factors influencing an AO's decision to adopt enforcement are wide-ranging and inter-related. The evidence shows that moving from education to enforcement is an over-simplified characterisation of how food safety regulatory practice works. On the ground AOs put more emphasis on a particular approach (e.g. educative, consultative, enforcement) depending on the degree of compliant attitude demonstrated by the FBO. AOs said that a poor attitude shaped their decision to lean towards informal or formal approaches because it was a clear signal that the FBO was blasé about risk and also indicate whether the FBO would engage with them to improve.

*"Depending on FBO attitude we can be the helping hand or the hand."*

Environmental Health Officer, District Council

The current level of FBO compliance (where the food business sits along the compliance pathway) was also a key consideration, specifically, an AO's decision would account for the nature and scale of the hazard. In one business where "medium level" cleaning issues were found an AO placed more emphasis on education demonstrating difference between generic hand-wash and anti-bacterial hand-wash. The AO added they would escalate to enforcement if on a follow-up visit<sup>24</sup> it was found the FBO and staff had failed to act on this advice.

*"There's the history of the business - you know what is their history of compliance, how have they responded previously. It's the degree of the problem. It's about the FBOs' response to the problem, are they working with*

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<sup>24</sup> The timing of follow-up visits was often determined by a variety of factors including: nature of the hazard, perceived level of risk to the public, expected time for corrective / remedial action to be done. It could vary between 1 day to 3 months after the inspection.

*us, and is there any mitigating factors or the like. And they're the key kind of tests that we're looking at to decide on the approach we take."*

Head of Food Safety, Unitary Authority

Also LAs explained that there was increasingly a greater pressure on them to demonstrate they had taken "all reasonable steps" to give food businesses an opportunity to comply.

### In conclusion

The factors which influence AO decisions when thinking about their intervention and enforcement action were largely shaped by FBO mindset and progress along the compliance pathway. The next section considers how AOs use their own judgement to make sense of the different signs of improvement.

# **Regulatory outputs: signs of progress**

## Section 7: Regulatory outputs: signs of progress

The previous section looked at the factors that underpin the selections Authorised Officers (AOs) make when deciding on their regulatory response. Here we explore the subsequent outputs and show that AOs use a range of indicators to assess whether interventions and enforcement have worked (whether compliance is achieved) or whether improvement is needed in order that compliance is achieved.

Below we describe these indicators and explore how they are useful signs of progress for AOs. AOs often described these as the “small wins” and “tell-tale” signs that their actions had made an impact. Section 8 will look at specific examples of approaches that have delivered more long-term outcomes i.e. sustained compliance.

### Observational research

The accounts AOs gave us of how they spot compliance and what signs of progress they look out for, were well substantiated by the researcher’s observational work. By shadowing AOs on their visits to a food business and conducting follow-up interviews with FBOs, researchers were able to cross-reference the signs they noted with what the AO focused on. This presented strong evidence that risk assessment work demands AO expertise and an understanding of which signs provide the most useful indicators of compliance.

### 7.1 Looking for signs of progress: spotting success

As discussed in sections 3 and 4, AOs approach their day-to-day work with a much broader definition of success than a rise in a food business’s compliance rating. They look out for shifts in FBO mindset and evidence that food safety messages have been understood. These require more subtle means of measurement and involve AOs making qualitative assessments of FBO and staff practices and attitudes that exist within a food business, spotting “tell tale” signs that the FBO and staff have improved since their previous intervention and that they show potential to continue in the same vein. Only by looking at a food business in the context of where they sit along their compliance pathway can AOs make accurate assessments about whether a food business is improving.

*“When you do an inspection you have to look back as well as front. Otherwise you’re getting a false picture and you won’t be able to make a good assessment.”*

Food Safety Technical Officer, London Borough Council

This emphasises the importance of ensuring LAs keep robust records about a food business and that this intelligence is used to ensure regulation is timely and relevant, for example consulting case history notes prior to a visit or sharing them with others on the team. This is discussed further in section 8.

The quote below further demonstrates how understanding an FBO’s background and seeing them as on a pathway towards compliance is important for an AO to be able to detect what

counts as a shift in their attitude and what signifies their potential to sustain compliance. Ability to spot the “small wins” and make an accurate assessment of food business compliance therefore requires an AO to have a solid past knowledge of and, ideally, rapport with the FBO.

*“The chef; he’s set about turning it around, so I was very, very pleased with that response. Physically they’ve done what I asked for in the kitchen. As he said, the cleaning, there’s a lot of longstanding carbonized deposits which over a period of time I would hope to see further improvements, like the castors on some of the equipment but generally speaking I was very, very happy with that. And the owner I think his attitude was right, he’s obviously spent some money on the place, he’s given the chef the room he needs, the support he needs to do what he’s done, so I was very pleased with it.”*

Senior Environmental Health Officer, District Council

## **7.2 What are the “tell tale” signs?**

AOs often talked in terms of a “subjective assessment” and a “gut feel” which they get on walking around a food business or in speaking to members of staff. But despite the importance of an AO’s intuition and the value of past experience for assessing a food business’s progress, a host of common signs were also identified. The rest of this section looks at the most prominent of these signs and considers why they are useful indicators of successful enforcement.

As discussed in section 3, many of these “tell tale” signs do currently fall into the ‘Confidence in Management’ scoring category and it was this criteria AOs suggested proved whether the FBO and staff had really taken on board their responsibility to comply with food law.

### **7.2.1 Day-to-day food safety management systems in working order**

Food business site visits often began with the AO taking a look around the business. After this they would usually sit down with the FBO and take a more detailed look at paperwork often focusing on documentation deemed inadequate at the last visit (e.g. cleaning schedule). This time allowed for a general discussion of food safety and legal requirements, and enabled the AO to gauge levels of awareness and understanding. During the inspection, AOs looked out for clear evidence that FSMS was being properly implemented and that FBO and staff demonstrated consistency in their approach. In other words, the AO was looking for evidence that what the FBO said they were doing (usually during the initial chat) matched what they were actually doing (during the day-to-day running of their business).

Some of the most common signs AOs looked out for were: up-to-date cleaning rotas on the walls, detailed labelling of chiller contents, evidence of regular temperature checks and clearly separated cooked and uncooked meat in the chiller. These varied depending on the type of business and the nature of their activity, for example in butchers the checks on preparation and handling of cooked and uncooked meats would be more rigorous.

These were important signs for AOs to look out for in making their assessment of a food business’s practice because they were evidence that a systematic approach was being taken to hazard and risk management, indicating that sustained compliance was a realistic outcome. These confidence in management indicators showed the AO that an FBO cared

and was prepared to invest time, resource and money into managing a food safe environment, a clear indication that the FBO was treating food safety as a priority and not a 'nice to have' feature of business.

The use of systems and routine processes for checking food safety demonstrated a degree of taking ownership of compliance by the food business and therefore reassured AOs that they were taking ownership of issues. If one goal of regulation is to communicate to FBOs that responsibility for running a food safe business sits with them, then evidence of well-managed food safety systems and up-to-date paperwork are good signs that this message has penetrated a business. Where AOs spotted effective FSMs, they could therefore be more confident that an FBO was moving in the right direction along their compliance pathway and to an extent felt satisfied that their past approach had worked.

AOs also paid close attention to logbooks kept by a food business to record the hygiene training and certifications received by their staff. An FBO who took responsibility for ensuring staff were all fully trained also demonstrated compliance and reassured the AO that the FBO was thinking independently about running a food safe business.

### **7.2.2 SFBB packs in use, diary entries up-to-date**

For smaller and medium sized food businesses, the introduction of Safer Food Better Business (SFBB) provided AOs with a useful yardstick to measure the progress of a food business. More than just a record of their practices and a clear indicator of how effectively the FBO was managing the day-to-day of food safety, it was a signal to AOs that the FBO had taken charge of issues and was accepting responsibility for compliance.

*"You can see it's worked when you visit the food business and they FBO and staff have understood what they need to do. You can tell they've bought into it. It's a good sign."*

Senior Environmental Health Officer, District Council

The process itself of sitting down with an FBO and/or staff and talking through the SFBB was often considered a good route in to probing for the full extent of their understanding and awareness of food safety issues. A useful indicator that regulation was working was therefore not only that the SFBB pack was sufficiently filled in, but that staff had the knowledge to back up what was recorded. AOs said that having this form of discussion with an FBO and staff allowed them to get beyond first impressions towards a better understanding of whether compliance was likely to be sustained. It was regarded by some AOs as an insurance policy against the risk that what they witness on the day of their visit only gives one side of the food business's story.

The diary section of the SFBB pack was an especially good barometer of whether staff and FBO saw themselves as accountable for safe practices. Taking initiative and responsibility for compliance was one part of the compliance pathway, ensuring that this was accounted for indicated an FBO's awareness of legal responsibilities. It showed that an FBO was thinking of the worst case scenario and what proof they would have to show for their due diligence in the event of a food poisoning outbreak or food scare traced to their business.

An up to date diary signalled an FBO who was thinking about the wider consequences of their day-to-day actions and consistent in the attentions they paid to food safety

management. By contrast, a diary which an AO suspected of being filled out retrospectively, where all the entries were written in the same pen and handwriting style, raised an alarm bell to the AO that regulation messages so far had not successfully been communicated and that understanding of issues remained poor.

Using SFBB booklets to assess a food business's compliance status relied strongly on AOs making subjective assessments: How much commitment has been put in to completing it? How genuinely the diary section has been filled in? Guidance could never ensure AOs all check SFBB in the same way as it depends so much on the combination of the food business's booklet and the attitude the FBO displays while being questioned about it. But that does not detract from its usefulness in assessing food business practices and attitudes, or its role as a key indicator of a food business making good progress.

### **7.2.3 HACCP managers and hired consultants**

In food businesses with a history of non-compliance, key indicators that they were on an upward path were the allocation of specific food safety responsibilities to an individual member of staff or in other cases changes (small and big) in internal management. In some cases, this meant using consultants to ensure a business was up to speed with food safety management systems. In others, it was a case of changing the head chef or the duty manager of an outlet to ensure that the person overseeing day-to-day practices was sufficiently competent and concerned about the standard of food safety in the business. Where AOs saw this kind of proactive approach being taken by management, they were reassured that their regulatory messages were getting through and that steps were being put in place to prevent a slippage in standards long term.

The following example shows how a change in food business management structures signified an important attitudinal shift of an FBO and confirmed to the AO that enforcement had proved successful.

#### **Case study: Food business makes a "cultural shift"**

At one food business with a history of poor compliance one AO dating back over three years had been using fairly 'low-level' approaches issuing warning letters and carrying out regular sampling activity and inspections. Soon after the AO retired, another AO ahead of the planned inspection carried out an initial scoping visit and found particularly poor sampling results. Subsequently the FBO was served with 11 HINs relating to poor structure and poor practices. The AO also gave warning that explained the legal repercussions for the FBO if standards were not improved.

Consequently, the FBO began to invest significant amounts of money to improve the structure of the building and in conjunction with this he sacked his head chef. When the AO returned after 6 months she was pleasantly surprised given the evident structural changes and new staff. The AO recognised a major culture shift in the running of the food business and saw these as signs that the FBO was taking control of their practices.

The effort and time the FBO had put in to recruiting a new member of staff was proof to the AO that they understood the severity of her message and were thinking maturely about how to run a food safe business and sustain standards. If an FBO was prepared to sack a member of staff in order to comply, it indicated to the AO they were prepared to address a major cause of their business's problems.

Enforcement action in this situation proved successful for ensuring that the FBO took corrective action initially. Enforcement action had an effect on the FBO who feared the legal costs of non-compliance and, worse, the possibility of closure.

Another means a food business was said to demonstrate this kind of 'cultural shift' was by employing members of staff to deal with HACCP principles and make sure that staff both at management and shop-floor level were complying with legislation. In businesses where this took place, AOs said that it acted as reassurance to them that the FBO was starting to make compliance a business priority and dedicating resources to ensure an immediate upturn in standards.

#### **7.2.4 Staff look the part and take an interest**

While in a food business, AOs often spent noticeable amounts of time talking to staff members, asking them about their daily routines and testing them with questions about relevant areas of food safety.

*"I don't just talk to the manager himself. I talk to the others and look to see how they work. You can tell a lot about management from talking to staff. Do they look the part?"*

Environmental Health Officer, District Council

*"Ask the man that's working the bludgeon machine what his practices are, it's far better than asking the person who has written the HACCP."*

Environmental Health Officer, District Council

In businesses which demonstrate good practice, staff were able to volunteer information themselves and talk AOs through their practices systematically. In doing this, there was often an air of pride and eagerness to show to the AO that they were working responsibly and safely. AOs valued this response from staff as a good indicator that food safety messages had been filtered down to all levels of the business and that staff who are directly in charge of food handling and processing had sufficient levels of awareness to comply with legal requirements. In fact, even in cases where staff awareness was low or practice was poor, the willingness of staff to engage with the AO and listen to their guidance was an encouraging sign, indicating a level of interest and engagement in food safety issues in the business even if the reality was that day-to-day practices were liable to slip.

Engaged and, ideally, knowledgeable staff were said to be evidence to AOs of an FBO having compliant *will*. While no legislation exists for how to include this in the food business's compliance score, AOs said that it influenced their overall impression of a business and fed into the score they gave for CIM. As such, evidence of a compliant will was something AOs put high priority on. And where AOs detected compliant will or "compliant *air*" about a food business, they left feeling satisfied that their approaches were working:

*"My first impression was I was quite pleased with what I found. I was impressed; there's a massive difference between when I visited in January to today. The whole place, the ambience in the kitchen as you walk in, it's brighter, it's sharper, and it's cleaner. The staff, their over clothing was clean, it had quite a buzz about the place I felt, although the restaurant wasn't busy, the staff all clearly knew what they were doing. So my initial reaction was that I was very, very pleased with what I found."*

Environmental Health Officer, District Council

### 7.2.5 FBO understands and welcomes regulatory process

Another example of good practice and key indicator of success was where a FBO responded proactively to the regulatory process itself. This involved showing a desire to take charge of the situation, facilitate discussions around areas of importance to their work and second guess which parts of the business the AO might be interested to hear more about or inspect in detail. Taking the initiative and acting decisively in front of the AO reassured the AO that the FBO was likely to take a proactive approach at other times. By pre-empting important areas of discussion and flagging up issues that the FBO suspected as cause for concern, the FBO was seen to be displaying encouraging levels of understanding of the AO's aims and a commitment to being regulated. Below is an example where a FBO showed this level of commitment.

#### Case study: FBO's commitment to the cause

When the AO arrived at the small sandwich manufacturer, the FBO was clearly on his way out and the AO suggested that he come back later when it was more convenient. Despite this, the FBO cancelled his prior engagement and took the AO into his office for a preliminary chat.

The FBO was clearly demonstrating that he treated food safety issues with high priority and that he valued the AO's visit to his premise as an opportunity to demonstrate the progress he was making and get feedback in other areas. Even more encouraging was the level of concern he had for food safety regulation as a whole. He flagged up to the AO the issue of start-up sandwich suppliers in the area who were operating out of non-refrigerated premises. His knowledge of food safety and regulation was comprehensive from years of working in the industry and he knew that the maximum length of time that food products should be kept ambient was being exceeded by these vendors.

The FBO's concern was not reportedly motivated by competition, since his business was already very successful and these start-ups presented little threat. By raising the issue with the AO, he demonstrated a real commitment to food safe practices and a desire to see them be more widespread.

Unprompted telephone inquiries to AOs were another means by which FBOs could demonstrate high levels of engagement with regulation. They also indicated the value many food businesses placed on AOs as a source of information and advice. The very fact that a FBO would volunteer information about potential food safety risks was a good indication to AOs that they were holding themselves accountable. Moreover it showed that the FBO had ambitions for running a food safe business which extended beyond just achieving broad compliance to a long term commitment to best practice.

*"As I was talking to him he started to ask questions. I was quite pleased that he felt that he was able to do that. You know, ask some sort of fairly topical questions about the recommendations on cooling. That I think is a, quite a*

*healthy situation, you know, rather than thinking, oh I mustn't ask this because he'll be appalled that I don't know anyway."*

Senior Environmental Health Officer, District Council

Showing a high level of understanding around food safety regulation and the legal and moral obligations of running a food safe business, demonstrated ownership of risk and was therefore considered a particularly successful output of regulatory work.

## 7.2.6 FBO thinks about the commercial implications of (non)-compliance

The use of FHR/IS in LAs have prompted FBOs to make a link between business outcomes and successful compliance ratings. From an AO's perspective, this was viewed as a success of the public scoring schemes because it forced FBOs to think more systematically and strategically about their approach to food safety management and helped ensure that compliance remained a priority in the long term.

FBOs telephoning LAs to request revisits before their next inspection date were a sign that this link had been made and signalled to AOs that the use of a commercial incentive to sell compliance to businesses was a successful regulatory approach. FHR/ISs was therefore viewed as a useful regulatory tool for AOs to move food businesses in the right direction along the compliance pathway. They also provided a useful and easily understandable way of presenting FBOs with their overall compliance scores.

Below is an example of how public scoring systems appealed to AOs, employing them as effective tools to incentivise compliance but also treating them with caution as being not necessarily the ultimate record of a business's compliance status.

### Case study: Stars are not the only measure of success

*"I did a pizza place a few weeks ago. I scored it two because it wasn't good. I said to him, look your standards are poor. It's not good enough. Next door to him is another pizza shop and if this guy gets a five or whatever obviously that's competition, where would you choose to eat? So once they've done all the work they can request a revisit for the purposes of rescoreing".*

Food Team Lead, District Council

In this example, using the incentive of FHR/IS and stressing the element of competition that it introduced for local businesses, was an effective means of communicating the message to the FBO that he must take matters of food safety seriously otherwise it would cost him business.

But whether the FBO was really on a pathway to compliance was not immediately detectable since true progress needed to be more than an initial, knee-jerk reaction to the threat of bad business and a poor star rating. The AO in this instance explained he would be looking for evidence that the impact of talking in terms of FHR/IS would be long term, with standards being sustained until the next planned visit.

This example shows that the AO was looking for evidence of a shift in the FBO's mindset as well as noticeable improvements that they had made to their structural compliance and day-to-day practices; only then did he believe he was making a true measurement of success.

### 7.2.7 Good rapport between FBO and the AO

Success for many AOs involved a personal sense of satisfaction that on leaving a food business they could be confident that they had established, if not boosted, a good relationship. As an intended goal of regulatory activity, this was a comparatively recent phenomenon. Where previously an inspection would have focused on clearer, more tangible outputs such as improvements to the structure and cleanliness of a food premise, AOs now gave significant attention to the general mindset of FBOs and staff towards compliance and the overall level of engagement they showed with what the AO had to say during the visit. In order to do this, AOs explained the importance of spending time with a FBO and valued the conversations they had with the FBO as it allowed them to establish rapport which they felt could increase the likelihood of improvement.

*"The old fashioned inspection was a physical inspection of the business , ceilings, walls, floors, lighting, ventilation, hot and cold water, wash hand basin, sinks, just equipment, fridges. But it's so important to try and get beneath that and find out what actually does happen in the business and you get that through dialogue. One of the things that I did bring away from the training that we did on social marketing, was that a lot can be gained from actually building a relationship with FBOs. As prior to that I'd always felt I've got to get in there, get the inspection done and get out both from their point of view and from mine. But the thing that I took away from the training is that there's an awful lot to be gained from spending time with people"*

Senior Environmental Health Officer, District Council

A reliable sign of a good rapport was where a FBO was able to respond well to negative feedback. Where an FBO took the AO's criticisms on board and showed understanding of their failings, AOs said they felt encouraged by the FBO's willingness to accept what was sometimes a harsh message about their practices by responding maturely and positively. It was an indicator of an FBO's compliant *will* which, as discussed, was considered by many AOs to be one of the most useful gauges of whether compliance could be sustained.

*"I was very pleased with the attitude of the manager, the chef and the owner. Often people become defensive, confrontational but they accepted everything that I said to them as being valid and fair and they responded to it. So in that respect I think it went better than most, I would have to say. It is quite unusual to get a place which is so, I use the term compliant in a sort of broader sense really, that is very much how I saw that they were, the, a desire to comply."*

Senior Environmental Health Officer, District Council

## In conclusion

Many of the most significant signs of progress described in this section rely on AOs detecting the attitudes and mindsets of FBOs and staff as much as their practices and behaviours. The use of the CIM scoring category has provided a useful framework allowing AOs to approach this kind of qualitative assessment systematically. Current FSA scoring system and scoring guidance for AOs is therefore going some way to recognising the importance of capturing these less measurable indicators such as 'compliant will' and 'FBO ownership'. There is perhaps still room, however, for the Code of Practice and Annex 5 scoring system to place more emphasis on the importance of detecting and capturing compliant *attitudes* as much as behaviours within a food business, since the evidence suggests only the right attitude ensures compliant behaviours are sustained.

**Regulatory outcomes:  
achieving and sustaining  
compliance**

## Section 8: Regulatory outcomes: achieving and sustaining compliance

As indicated in the introduction of this report, a limitation of the qualitative phase was its ability to *measure effectiveness* of regulatory outcomes. Subsequently, evidence provided in this section for 'what works' to achieve and sustain compliance is grounded in real life stories of AOs and supported by the detailed case studies they provided. This section also shows that by adding value to their regulatory duties AOs can achieve the concept of better regulation.

### 8.1 There is no one 'size-fits all' solution

Stakeholders at the start of the research raised this as a major issue for determining intervention and enforcement protocol and drawing up guidance for use by local food safety teams. In their opinion there can be no single way of achieving and sustaining compliance that will work everywhere because local authorities are each run differently and therefore harmonising LA approaches would be an impossible task.

Moreover, primary research among AOs suggests that the key challenge for achieving successful regulatory outcomes is how to tackle the range of underlying causes of non-compliance that can exist within a food business. Made even more challenging by the variety that exists within the food business universe – be it type, size, operation, FBO attitude, or any of the other factors that distinguish one business from another – and the knowledge that the success of an intervention is likely to vary depending on all these factors.

Identifying which type of intervention and enforcement add value to their work and are therefore most successful requires an understanding of how AOs make case-by-case decisions to determine what type or mix of approaches they believe will work.

As explored in section 4, it can help to understand food business compliance as a pathway that FBOs sit at different points on; from the disinterested and highly non-compliant to the proactive and compliant. The AO's assessment of where a food business sits on this pathway, and what the priorities are for achieving and sustaining compliance – education, consultancy, enforcement – are key to what aspect of regulatory practice the AO places most emphasis on. Understanding the practices an AO adopts is therefore important for understanding what constitutes better regulation.

### 8.2 Tried and tested practices that work

Despite the variety of types of food business and the different practices selected by individual AOs, clear themes emerged during the research about which regulatory approaches work under different types of condition. This indicates that there is some consensus among LA staff about what constitutes effective regulation.

In this section we detail aspects of regulatory practice which were reported to 'work' with particular food businesses, we have termed these regulatory styles: **education, consultancy, enforcement, combined educational and enforcement approach and earned recognition**. Some of these are terms used by LA staff themselves, others are

based on the descriptions they provided. They should not be viewed as mutually exclusive since AOs would often use a mix of these practices and would only place more emphasis on a particular style when interacting with a business depending on risk to public health, FBO mindset, and position of the food business along the compliance journey in order to achieve and sustain compliance.

### 8.3 Regulation is about more than achieving and sustaining compliance

Increasing the number of BC businesses in the local area as a proxy for safer food for the public to eat was undoubtedly a core function of every food safety manager and their team. But beyond this, many AOs spoke of their commitment to provide consumer protection and confidence, food safety, environmental health and business support. These commitments often drove the regulatory styles favoured by AOs and indeed provided the rationale for many of the activities run by LA teams which are detailed in this section.

An example of this would be where an LA's commitment to communicating risk in relation to hazard acted as driver for food safety teams placing more emphasis on education. In this example, *raising awareness* of food safety would be seen as a priority of their regulatory work, through a range of action such as teaching disinterested FBOs basics of food safety or boosting the nutritional knowledge of compliant food businesses. Another example of how wider aims for improved food safety outcomes impacts an LA's regulatory work would be where a commitment to business support drives an AO's consultative style to regulation: where AOs invest significant amounts of time and effort into establishing businesses' FSMS or giving advice on how start-up businesses can meet structural regulations.

### 8.4 Intelligence-based decision-making

AOs explained that before intervening in a food business they gather as much intelligence about the business as possible as this reassures them they are adopting a regulatory style they would expect to be effective. In other words the initial information they gather helps them to decide which intervention are relevant, timely and are likely to achieve progress along the compliance continuum.

During interviews and observations it was evident that intelligence gathering was an important aspect of an AO's day-to-day role as it helped them to make evidence based judgements about where the FBO sits on the compliance pathway. Subsequently AOs explained it helps them to make a decision about which regulatory style is best suited to the FBO mindset (often this was the degree of emphasis placed on education or enforcement) and therefore is likely to be the most effective approach for achieving and sustaining compliance.

There was a consensus among AOs that sampling (compositional and microbiological) was one of the most effective ways of gathering intelligence about food hygiene and standards within food businesses. Section 6.3.4 considers how AOs approach a decision about whether to intervene in a food business using this intervention (often it was caused by tightening resource) and why it is considered useful. Sampling is also an effective technique for assessing the extent to which compliance is sustained within a food business and once sampling results are known it can be useful in aiding the AO's decision about whether to place more emphasis on education or enforcement. Some AOs reported that they used the

results from covert compositional sampling of unrated businesses, or businesses newly assigned to them, to help them determine the balance of advice vs. enforcement. These AOs mentioned it allowed them to immediately focus on pertinent food safety issues which might otherwise not be picked up and as a result they believed compliance was achieved.

It was widely reported that local knowledge was important as it enabled AOs to build a body of evidence about each food business that they would rely on when making a decision about what type or mix of interventions to choose to improve standards.

On the ground, building this evidence often started with AOs being responsible for food businesses within their "own patch". For example, in District Councils food businesses were typically allocated on a ward basis because of the large distances between businesses located in rural areas. While in inner-city areas food business distribution was aligned to an AO's experience of dealing with food businesses that display certain characteristics. For example, the research shows EMs often assigned the most experienced AOs to a city-centre patch as these AOs were typically considered to be experts in achieving compliance and they had observed higher number of 'disinterested' FBOs in city centres.

Being allocated an area often enabled the AO to gather information about food businesses moving into and out of the area, and this way of working was regarded as especially useful for identifying unregistered businesses. AOs explained this was important because in general unregistered food businesses tend not to be run by proactive FBOs and therefore the conducting the initial visit as quickly as possible was a public protection priority. It also meant relationships could be forged more easily, and it was often said that this enabled the AO to help the FBOs to understand regulation which in turn could motivate reactive or passive FBOs them to improve their food safety system

As discussed in section 4, AOs felt that the initial visit to unrated food businesses and food businesses who up to that point had been visited by a colleague was crucial in setting the tone of the AO-FBO relationship. Furthermore, there was widespread acknowledgement among enforcement teams that it was often a vital element of gaining intelligence about the level of compliance. For instance, AOs reported they develop a clear picture of the degree of robustness of food safety practice (in particular confidence in management) within a business within the first five minutes of entering a premise.

*"If I enter a business and see dirty toilets then alarm bells start ringing!"*

Environmental Health Officer, Unitary Authority

Enforcement teams regarded timely intervention follow-up visits as being just as important as initial ones, especially when it comes to ensuring that disinterested and reactive businesses take the required corrective action. It was felt that initial visits allowed them to benchmark the degree of compliance against which they would compare during future visits and therefore was a useful yardstick however it was the follow-up which allowed them to verify corrective action but which also told them about the likelihood of sustained compliance.

Spending a short amount of time (often called "pop-ins") in food businesses especially ones which the AO believed were likely to slip was also regarded as a valuable intelligence gathering tool. Regular but brief "pop-ins" were said to be particularly useful in ensuring passive and reactive FBOs sustained their levels of compliance. Firstly, they acted as a

reminder to certain types of food business (who often needed it) that if standards slip then they would be "found out" and "dealt with" but it also allowed the early identification of potential hazards and below minimum statutory standards. Pop-ins were not routinely recorded by AOs, largely because AOs felt technically it did constitute an official control therefore was not considered to be worth the administrative hassle of creating a new paper or electronic record. Instead AOs explained they mentally noted what they observed and would use this intelligence as point of reference at the next interaction. For example, some AOs would use this insight to escalate more rapidly if warranted.

There were several other ways in which AOs used intelligence to determine what level of emphasis to place on informal or formal approaches: getting up to speed before a visit through a detailed check of the food business file; AOs sharing stories and experiences about how they have achieved a successful outcome in similarly profiled businesses; and drawing on observations made during an inspection. For example, many AOs talked about looking for signs there was a comprehensive credible system in constant use (in addition to cleanliness, AOs said signs that cleaning materials were dirty would trigger concern).

Another important aspect of using intelligence to aid regulatory decision-making, and one that AOs felt is likely to become more commonplace given the current restructuring of regulatory function is the sharing of information across these functions. The case study below illustrates how sharing of information between regulatory functions can limit the general public's exposure to risk.

#### Case study: information sharing across regulatory functions

At one LA, the food safety team received information provided by the Trading Standards team about an unregistered bakery that was found to have moved into the local area during the night and started immediate trading the next day. Given that the business was unregistered, and the high degree of risk from the bakery's products, the LA food safety team had sufficient cause for concern to immediately send two AOs to inspect the business. While on-site the AOs found a number of serious hygiene, standards and structural contraventions and several health and safety and fire protection issues which led to the involvement of the Health and Safety Executive and Fire Protection Service.

As a result of the variety of contraventions the food business was served with a mix of enforcement action (Hygiene Improvement Notices and Hygiene Emergency Prohibition Notices) meaning the FBO was prohibited from trading until the major hazards were rectified and compliance was achieved. The food safety enforcement team reported that an established culture of sharing information between LA regulatory teams enabled them to identify this high risk business that may be missed by AOs – in effect they are another set of eyes and ears on the ground. In addition, the food safety enforcement team said that multi-agency working (LA, HSE and FPS) meant that swift action could be taken and therefore the level of risk to the general public was greatly reduced.

In summary, intelligence based decision-making was considered vital in ensuring the right regulatory style was selected and the right amount of emphasis was placed on that style to best achieve and sustain compliance. However, LAs were keen to point out that intelligence needed to be collected systematically, recorded adequately, updated regularly and accessed by the whole team or there was a risk that information was being collected for its own sake.

In the following sections we outline how AOs rely on intelligence based decision-making to inform their regulatory practice. It is important to note that these practices are not mutually exclusive and indeed in most food businesses it is often necessary to achieve compliance that the AO switches between them.

## 8.5 The use of an educational style

Across local authorities, EMs and AOs were often keen to describe their overarching philosophy as based on a principle of education. In saying this they were often referring to how AOs interact with food businesses while conducting an official control, providing advice and information to FBOs and members of staff where necessary and *explaining the why* behind their messages. It was widely reported that building awareness and understanding among food businesses in relation to food safety is crucial in improving standards. For instance, if chiller contents were being checked for adequate separation of cooked and uncooked meats, AOs using an educational approach would talk the FBO and staff through the risks of cross-contamination, ensuring they provided information as well as notification of legal requirements.

As well as being characteristic of how individual AOs approach regulatory work, the use of education was also the driving force behind many projects LAs currently run as a way of *tackling non-compliance* and *promoting best practice* in food businesses. In addition to the delivery of one-to-one educative activities for example coaching during intervention work, many LAs delivered one-off events or training courses alongside their planned inspection programme as a way of educating local food businesses on food safety issues. The case study below describes how one LA was delivering a food safety training programme; it demonstrates the LA's wider regulatory goal to build understanding of food safety issues among the food businesses and share the expertise of AOs outside of formalised inspections or audits.

### Case study: Three-day food safety training programme open to all food businesses

Twice a month, one of the AOs in the food safety team sets aside time from her inspection programme to deliver accredited 'level 2' food safety training to FBOs and/or staff. The programme is designed to target micro businesses and SMEs where low awareness and poor understanding of food safety issues tend to be prime causes of non-compliance.

Food businesses pay a fee of £40 to attend; a competitive offer compared with similar courses run by further education colleges and other learning providers in the region. Food businesses are invited to attend from across the whole region and AOs actively encourage attendance while they are out visiting food businesses on site visits. AOs make sure they pass details of any food business in need of training to the AO in charge of training delivery. She subsequently contacts the food business, explaining the benefits of attendance and how the course is run.

The training is held at council offices, or at a venue provided by a local community group. Translators and interpreters are often provided by the community group. The programme has enabled the food team to effectively pass on a basic, but important, message about food safety: that it is an important subject for everyone and not an isolated issue relating only to the worst offending food businesses. This in turn has helped engender a sense of responsibility among the wider community and taken some of the burden off AOs who previously had to start from scratch with some food businesses taking them step-by-step through food safety procedures and bringing them up to speed on standard practices required of all food businesses.

The programme was established in accordance with the Code of Practice recommendation that all FBOs are accredited with Level 2 in food safety training. It continues to be run because of the food team manager's belief that investment of this kind in providing businesses with food safety guidance prevents non-compliance arising and helps build the critical rapport between FBOs and AOs that is necessary for ensuring food businesses take food safety messages on board which in turn facilitates long term compliance.

The training programme, is a useful regulatory tool and cited by AOs for having helped them educate food businesses and '*make them see where (AOs) are coming from, it explains the logic behind the law*'. However it is also at risk of being phased out with budgetary cuts which has caused some LAs to scale down regulatory work that go beyond planned inspection programmes. In some instances, progress among FBOs and staff who attend the training might be slow and not immediately evident, but consensus among LA staff was that it is an example of the vital building blocks that food teams must put in place in order to ensure they can deliver public health effectively and in a way that encourages *sustained* compliant practices.

The example above echoes similar programmes being run by other LAs. In some LAs they are called 'business workshops' and sometimes are used to target a group of especially poor performing or 'yo-yo' food businesses to communicate a detailed message about exactly

what the LA expectations of them as non-BC businesses are. At these workshop events, training is often put on for FBOs and members of staff and one-to-one advisory chats are offered in the afternoon where participants can directly approach AOs. This is good in the long term as it establishes a link or builds on existing links between the regulator and the regulated, helping to build trust and a mutual commitment to food safety which can ultimately encourage the FBO and staff to think more proactively about compliance.

One manager explained he believed these workshops were a good way of achieving *and* sustaining compliance because they communicated a more complex message about what it means to be compliant, encouraging disinterested and passive FBOs to see beyond what can appear like a tick-box exercise of inspections and audits and risk-rating scores. Given that these events are often attended by a large number of food businesses the manager also felt that FBOs and staff were able to see themselves as part of a 'norm', avoiding the risk that they become disinterested in food safety because they feel 'picked-on' by an AO.

In other LAs, the use of education had its roots in the department's belief that regulatory teams should go beyond their core functions of monitoring risk to in order to improve standards of environmental and public health. In the case of the food safety team, for example, this meant working with food businesses to ensure a 'healthier area', raising awareness among food businesses about the benefits of providing healthy options in their product offerings. At the end of a visit to a food business, AOs would hand-out information leaflets with recommendations about the nutritional value of certain foods and pointers for how the FBO could ensure they offered their customers good food options. They would therefore supplement their core message about food safety with one about food quality, shifting the tone from one of enforcement to one of education, communicating to the FBO what they *could* but not necessarily what they *must* do. Not only was this thought to be important from a holistic perspective 'you want to raise the standards of the business overall', but also some felt, it was an important part in getting businesses 'on-side'. By changing the tone of their approach, AOs felt FBOs were more likely to feel a boost in confidence and commit to compliant practices long term. This approach however was only appropriate where an AO detected no immediate risk to public health. In food businesses displaying high levels of non-compliance, adopting too much of an educational approach could be damaging to building compliance, although where poor awareness was a cause of non-compliance a degree of education was usually required.

*"We need to be seen as more than just enforcers otherwise they won't cooperate. The Nutrition Award we run is a good example of this type of co-regulation principle. We need to sell the whole idea of environmental health to a business. If we can promote that the nutrition award helps them a) get a new qualification and b) possibly get an award with lots of publicity, then we're bringing them round to compliance."*

Environmental Health officer, Unitary Authority

The case study overleaf describes a Nutrition Award scheme of an LA and demonstrates how taking a more holistic view of public health is seen as an effective way of raising standards among food businesses.

### Case study: Proactive team puts on city-wide 'Nutrition Award'

Half of the food team concentrated their efforts on dealing with reactive work while several AOs from the proactive team were in charge of coordinating a city-wide 'Nutrition Award' administered in part by Chartered Institute of Environmental Health (CIEH). One SEHO involved said it was a classic example of using education combined with incentivisation to bring food businesses into compliance.

The LA promotes the award widely via its council website using local media outlets and during visits to food businesses where the requirements for taking part and the benefits of being involved are explained. FBOs and/or members of staff are expected to attend two three-hour training sessions and take an examination at the end. During the training sessions FBOs and/or staff are taught about food safety and food hygiene but predominantly they learn about healthy eating, including ways to cook and prepare healthy food options.

There is a lot of publicity surrounding the award and quite a high level of awareness among local residents. Food businesses who win the award are interviewed in the local papers and video footage is posted on the council website. AOs use this publicity as a hook to encourage food businesses to take part, promoting the fact that more publicity is good for business, which (similar to the principles of FHR/IS) works well as an incentive to compliance.

There are long term benefits to running an award like this since regardless of which food business wins, taking part in the sessions and committing to the scheme can drive an increase in standards of food health and safety in all businesses that enter. As participation is conditional on being broadly compliant AOs also felt the award encouraged food businesses to improve their standards.

One SEHO who worked closely on organising the award scheme said that the key to the success of the award and noticeable benefits for local compliance levels (which she partly attributed to food business engagement with the award) was down to the fact that the focus of the whole scheme was not purely food safety. She felt that talking to businesses about food quality, healthy eating, ways of preparing food and ways to entice customers resonated better with an audience working in the food business. She thought it guaranteed a higher level of FBO engagement which in turn made communicating the 'drier' regulatory message about food safety easier.

In summary, educational activities were clearly highly valued and from AOs' accounts they do prove successful as a means of engaging reactive and passive FBOs in building and sustaining compliant practices. However, educational projects such as those described in the above case studies, were often those that AOs feared would be the first of their regulatory work to be sacrificed as resources are squeezed. One head of department for example explained that it was easier to make a case to councillors for money to carry out core

regulatory work but proving the returns of some of the supplementary work they are doing in relation to better regulation for example promoting best practice among businesses was harder and this valuable work risked being overlooked in the allocation of budget.

## 8.6 The use of a consultative style

As well as educational activity, some LAs explained the importance of providing consultancy to local food businesses, with AOs acting like business advisors in order to boost FBO and staff understanding of food safety related issues. These 'business-facing' LAs saw it as a responsibility of AOs to support local business in their operation and *work with* them to achieve compliance. There were a number of ways in which LAs were doing this; some were small scale for example encouraging individual AOs to help food businesses draw up their HACCP plans. While others were part of a more ambitious LA policy of establishing closer and more trusted relationships with food businesses, referred to by one LA as 'Business Relationship Management'. A consultative style builds on the education one described above, but puts emphasis on AOs working consistently alongside the FBO and staff to identify barriers to compliance. Using their expertise, the AO would point out solutions and negotiate with the FBO how best the recommendations could be implemented in order to sustain compliance.

The rationale behind providing consultancy as part of their regulatory work was generally that it encouraged food businesses to see AOs as experts who food businesses could rely on to improve their standards. One EM said he favoured this style of working with many non-compliant businesses because he felt it reflected the fact that many of the food businesses who fall into the 17% of non-BCs in his local area were not *persistently* non-BC, and therefore they showed *potential* for compliance, but requiring careful attention and investments of AO time and effort. It was not enough to simply provide information, advice and guidance, since this risked being too 'one-sided and could lead to disinterest and a slippage in standards further down the line. The principle behind a consultancy-based approach was that AO and FBO in partnership identify and think of solutions which in turn allow AOs to play an instrumental, proactive part in food businesses which can facilitate a change in FBO mindset.

This relates to a point raised by stakeholders at the very start of the research, that very few food businesses are entirely un-cooperative or disinterested with food safety issues; few are what they called 'wilfully non-compliant'. In connection with this, many AOs saw their consultancy role as influencing their decisions to postpone the use of enforcement action until they found serious cause for concern. In this sense, enforcement action was generally seen as a last resort which AOs resisted in favour of guiding food businesses along their compliance pathway. By solving problem areas with them and helping them to manage food safety better, AOs believed they were more likely to prompt proactive engagement from the FBO and a prolonged effort to sustain compliant practice. The more investment and concern the AO showed towards a food business, the more confident they could be that their approach would lead to positive behaviour change. FBOs were said to respond better to AOs who adopted timely, proportionate and targeted action, demonstrating that they were trying to understand the business perspective and the challenges businesses face to sustaining compliance.

In the following case study, an LA manager had organised a 'business relationship management' seminar for the whole of the food safety team to attend. It demonstrates the

kind of commitment an LA can show towards embedding the spirit of 'consultancy' throughout their regulatory work. It also shows AOs being encouraged to see the concept of better regulation as dependent on a degree of empathy and good communication skills.

#### Case study: Business relationship management workshop

At one LA, the food services manager had invited an external agency to spend a day with the food safety team training them in social marketing techniques and promoting the benefits of building strong relationships with food businesses as a way of guarding against food businesses slipping into non-compliance. AOs observed groups of actors conducting role plays of situations in which FBOs and AOs encountered problems complying with food law. After each role play, AOs were asked to feedback on the steps they would have taken to tackle the situation and explain their reasoning. Actors then finished off the scenario, demonstrating communication techniques that are known for affecting positive behaviour change.

When asked separately about the benefits of the session and what AOs gained from observing and analysing scenarios that reflected situations they regularly encounter during their work, most responded positively. They said it had been useful for confirming their belief that the key to good regulation was sustaining good communications with a business, setting clear expectations and building FBO confidence and even food business resource until they were able to meet these expectations.

The training informed their approach and produced a feeling among the team that they were working to a common set of principles, committed to building links with food businesses and securing their compliance by investing time and effort to understand their practices and the challenges they face.

Another way LAs delivered consultancy style regulation was by setting themselves up as 'open for service' and business-focussed right from their initial point of contact with an FBO. By engaging with an FBO's business – their wider commercial concerns, practical issues and management processes – AOs perceived themselves as better able to engage FBOs in the whole business of food safety. Approaching food safety from a business perspective often put AOs in a much stronger position to command the FBO's attention and co-operation. For example, one LA was disseminating 'new business packs' for start-up food businesses. The packs contained clear pieces of advice to help FBOs understand their responsibilities for food safety and to ensure they started off on the right track. AOs from this LA said they felt this kind of approach helped to build good links with an FBO and helped them to establish themselves as approachable 'consultants' rather than someone purely there to appraise a business. The pack was considered effective because it included recommendations for what food businesses should look into right from planning application stage, what structural considerations they needed to account for and what expectations would subsequently be made of them from a food safety perspective once they started trading. By disseminating these packs to new food businesses, AOs were able to frame food safety in a context that made sense to FBOs, presenting it as just one of the fundamental parts of running a business.

The benefit of this approach to regulation was said its preventative affect. Contraventions to food law could be avoided when food safety was imbedded into the working systems of a business and an FBO's mindset. Providing a consultancy-type service to businesses whereby AOs remained on-hand to answer an FBOs queries on matters that might even sit outside of an AOs standard food safety remit (for example, providing recommendations for structural works) helped to get a message across to AOs that food safety was an important part of running a food business, not an after-thought. This was proven to be an effective approach for maintaining good standards in food safety as many compliance issues could be short-circuited by laying the ground rules early on, making it easier for an AO to reference back to what was detailed during their consultation work should FBOs encounter difficulties or start adopting non-compliant practices.

Supporting a food business through planning applications and building work could be said to lie outside the scope of an AOs regulatory functions. However, there was a belief among AOs that being seen in this light helped to raise standards in compliance locally.

In summary, elements of consultancy based working reflect what might simply be called better regulation. Indeed this study has found that putting emphasis on a consultancy-based style of working is popular among AOs because of the fact it has triggered good results and helped them to nurture compliant practice in businesses. While this is encouraging for demonstrating good practice and understanding 'what works', it also presents a challenge to regulation as it builds a strong case in favour of food teams investing more time, resource and providing services that are personalised to a business, at a time when LAs face competing priorities and, as some see it, their ability to continue to practice in this way may be compromised despite positive returns.

## **8.7 The use of an enforcement style**

As discussed throughout this report, unless there was an imminent risk to public health or the food business was known to have a history of non-compliance then LAs in general placed emphasis on educative and consultative approaches in their regulatory work. LAs adopted this way of thinking because they believed that most food businesses i.e. passive and reactive ones can be moved along the compliance pathway using informal activity. They even felt some disinterested ones could be encouraged to take ownership of compliance so long as AOs effectively communicate the benefits of compliance along with the consequences of non-compliance. It was also felt that if FBOs struggle to develop ownership then it was vital for AOs to identify ways in which they could overcome any barriers. However, AOs and EMs suggested disinterested FBOs would be some of the most difficult to move along the compliance pathway and therefore felt that enforcement especially prohibition notices, the prohibition of person, and the expansion of RANs to all food businesses would often be the most effective in achieving compliance in these circumstances.

*"After all the touchy feely talk we are enforcers first and a helper second. For serious non-compliance I say to businesses "You will not trade until you have sorted this out".*

Food Safety Manager, District Council

For businesses identified as being the most difficult to bring into compliance, food safety enforcement teams felt they needed to supplement existing regulatory interventions; some LAs had started to look beyond available enforcement options and would now consider techniques judged to be successful in health and safety regulation. An example of how one LA has adopted health and safety enforcement style tactics to tackle non-compliance among some food businesses is described below.

#### Case study: Food safety blitzes

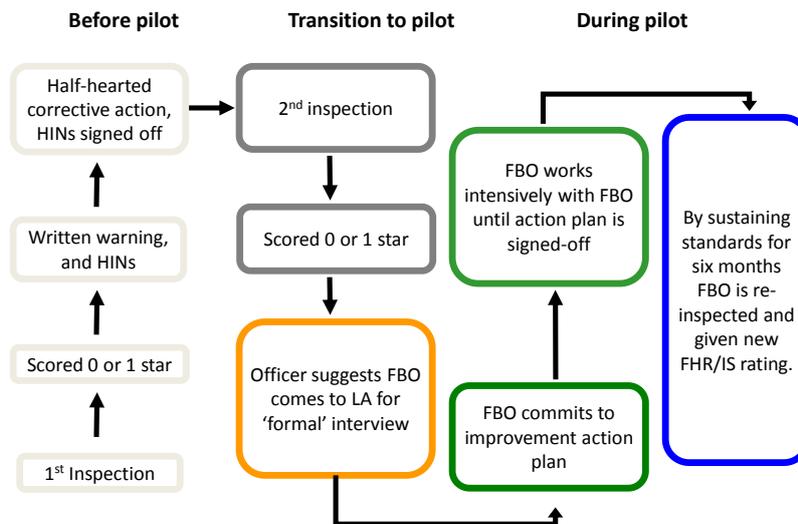
One Unitary Authority LA with a high density of non-compliant food businesses had tried a range of educational and enforcement activities yet had failed to sustain compliance among these disinterested businesses. It was decided an alternative strategy was needed and EMs who also had oversight for health and safety compliance among food businesses in the area decided to introduce a health and safety style “blitz” approach. This approach was combined with enforcement (prohibition notices) as health and safety blitzes had been observed as a useful way to send out a serious regulatory message. On the day itself, the LA’s team of AOs blitzed an area known locally as “The Curry Triangle” serving HEPNs on three separate food businesses. Aside from the improved compliance across these three food businesses the real success of the project was how these tactics spread by word-of-mouth among others in the vicinity who then “upped their game” out of fear of similar repercussions.

Despite the example above demonstrating positive impact on levels of compliance, many LAs we spoke to had recently begun to question whether enforcement on its own could sustain compliance and as such had introduced projects that combine a mix of intensive educative and consultative support with a threat of escalated enforcement (e.g. simple caution or prohibition of person) to drive up standards.

### **8.8 The use of a combined educational and enforcement style**

As discussed in section 6, EMs were particularly keen to reduce the percentage of non-BC food businesses in their local area. Most relied upon the traditional graduated regulatory response albeit with variable success in terms of sustaining compliance. More innovative LAs who recognised this approach can be limited as a means of encouraging FBOs to take responsibility for compliance developed more targeted approaches. Figure 6 overleaf shows how a project based on this approach was implemented.

Figure 6: Combined educational and enforcement



### Case study: Combined educational and enforcement approach “0 to 1 star” project

As illustrated above, there were a range of “carrot and stick” aspects to this project such as intensive education and consultancy and threat of escalated enforcement. The project was run over the course of twelve months and as a result it played a major contribution in the total number of 0 to 1 star food businesses decreasing from 50 to 11.

The project started with the EM using an analysis of LA FHR/IS data to identify the 50 “worst” (0 or 1 star on FHR/IS) food businesses in the LA area each one was mailed a letter informing of their repeated non-compliance and requesting they attend a formal interview held at LA premises. This involved a stern “telling off” from the EM but also signalled a warning that a lack of ownership with food safety issues would no longer be accepted.

Once there was joint agreement that corrective action was needed (visual evidence was used to overcome any disagreement) the EM drafted a bespoke improvement action plan used to gain FBO commitment and to allow for the monitoring of remedial action and progress towards compliance. Over the course of the next six months the AO worked closely with the food business.

Often the AO would give intensive support that would enable the FBO to complete actions set-out in the improvement plan. Typically this involved coaching or consultancy style tips on how to implement credible FSMS. As an incentive for their effort, the food business was guaranteed a re-visit inspection where (on the condition they had sustained these standards) they would score a higher FHR/IS rating.

This LA told us they would not be willing to accommodate a decline in standards or allow the same food business to benefit from this level of intensive support again without taking serious enforcement action.

*“If we’ve helped them and they’ve stalled or gone backwards then we take enforcement action. We’ve got to be known as enforcers.”*

Team Manager for Food Safety, Metropolitan Borough Council

This initiative showed that where LAs were willing to trial new approaches, major success among even the most disinterested FBOs could be observed. However initiatives such as this require a certain level of resource which some LAs may find challenging given current budgetary pressures. The challenge of resourcing was mentioned across LAs when questioned about how best to achieve positive outcomes with some of the most problematic businesses (often those with low confidence in management scores). Some AOs reported these businesses need a mix of interventions every 2 to 3 months in order to improve.

The evidence suggests that in order to achieve and sustain compliance among problematic businesses a re-think of traditional inspection focussed regulatory practice was needed (for example the model described in figure 6 above). Although on the face of things this alternative way of working may seem aspirational the recommendations throughout this report regarding a strong message about risk-based and proportionate may free up resource to spend more time regulating disinterested, reactive, and passive food businesses.

## 8.9 Earned-recognition

The majority of LAs advocated a focus on high risk and problematic food businesses which they recognised was resource intensive but nonetheless in general enforcement teams were critical of full earned regulation. This was true even when LAs considered the likes of national chains who had gained stringent food safety accreditation such as British Retail Consortium. It was evident that some EMs were cynical about earned-regulation suggesting "FSA being in bed with big business" while others described the FSAs Earned Recognition or Earned Autonomy as "Bought Autonomy". The majority of AOs also had some concerns that instances of non-compliance were commonplace in national chains and therefore felt Earned Recognition was a step too far. Many based these views on the degree of inconsistency between food safety procedures agreed between food business and Home or Primary Authority and the practices they said occurred in national chain outlets. However, EMs acknowledged a less invasive and targeted approach (e.g. partial inspection or monitoring visits) with most supermarkets would be proportionate conditional on LA verification and where necessary enforcement.

*"If it's coming let's just get on with it and give it a go. I don't believe the big businesses are as good as they like to think they are. They have got systems and procedures but it's not always implemented and that's the thing, it fails at the front line."*

Head of Food Safety, Unitary Authority

## In conclusion

When questioned during interviewing about what works the most common response from food safety enforcement teams was "it depends". Given the complex and varied factors which determine the success of regulatory outcomes some may consider this an obvious response. The evidence shows there are two over-riding reasons why AOs make the decisions they make, which in turn, determines how successful that decision will be in achieving and sustaining compliance: the FBO mindset (for example disinterested or proactive) and where the food business sits along the compliance pathway. The challenge for the AO in deciding the optimum approach is that neither the FBO mindset nor the food business position along the compliance pathway is static. The AO's job is further complicated

by the fact there are several approaches (for example, education or enforcement) that they could draw on to overcome the challenge of improving compliance among food businesses. To achieve and sustain compliance this section suggests these approaches are not mutually exclusive and should only have emphasis placed on them based on a comprehensive assessment of the intelligence gathered about each food business.

# Final thoughts

## Section 9: Final thoughts

This section summarises how AOs make decisions in relation to food safety regulation, and the degree to which these decisions would genuinely facilitate FBO engagement with food safety issues. It ends with a discussion of the idea of better regulation which it is suggested could be a step in the right direction of delivering more consistent, risk-based and proportionate practice.

### Public health protection is at the heart of the matter

Every AO had a different story to tell, in terms of how and why they placed emphasis on a particular regulatory style (i.e. informal vs. formal), how and why they selected interventions or indeed escalated to enforcement action and what impact they believed their work had to move the food business along the compliance pathway. Despite the varied activities delivered by AOs as part of food safety regulation there were three key factors which AO's spontaneously explained predetermined their decision-making:

- LA proactive work i.e. the planned program of controls;
- LA enforcement policy i.e. graduated escalation; and
- Public health protection.

Many AOs talked about public health protection being the most important factor that shapes how much emphasis they placed on the use of official / non-official controls and/or escalation of enforcement action. The key objective of AOs regulatory work is to enable all FBOs to take ownership of compliance to the point where they are proactive in monitoring risk and putting in place the necessary controls. The research shows time and again AOs facilitating a process whereby a food safe environment is created which in turn limits the potential for consumer harm. Before this environment can be developed AOs have to get to a position where they can influence the FBO attitude and ultimately bring the mindset closer to a proactive one.

### Importance of understanding the FBO mindset

Understanding FBO mindset or "attitude towards compliance" is the starting point in adopting a regulatory response that will improve standards. Most FBOs fall into the disinterested, passive or reactive mindset; 'on the ground' this means there is in some food businesses a lack of oversight of risk (i.e. no credible FSMS has been implemented) while in others it is partial (i.e. monitoring of temperature goes on however staff are not sufficiently trained in food safety).

Once the mindset was understood AOs would investigate what drives the underlying cause of non-compliant behaviour. As stated in research<sup>25</sup> the reasons why some FBOs do not fully engage and comply with food safety legislation are complex and varied yet this research found widespread consensus among AOs that boosting FBO understanding of food safety

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<sup>25</sup> Fairman R. & Yapp C., (2004) *The evaluation of effective enforcement approaches for food safety in small and medium enterprises (SMEs)* King's Centre for Risk Management. Kings' College London

issues while making known consequences of non-compliance (in terms of public health and commercial impact) were in key facilitating change in FBO mindset. In turn this change in mindset would result in facilitate more compliant behaviour.

## What are the signs of progress?

If the aim of regulation is to prompt food businesses along the compliance pathway to a point where the FBO is thinking proactively about risk then it is clear this process involved time, prolonged engagement from the AO and, quite often, an element of trial and error to establish how much emphasis should be placed on a particular regulatory style.

Because of the many factors underpinning the FBO mindset there were no sure-fire ways to achieve and sustain compliance in a food business; nor were there any quick-wins. Achieving compliance was an initial challenge; sustaining compliance was an on-going task. But even in most food businesses achieving compliance could not be done overnight and required extended investments of time and a series of incremental improvements and “small wins”. As a result, ‘confidence in management’ indicators (e.g. SFBB packs in use; staff understand and adhere to food safety standards; and FBO sees the commercial sense of improving) would be looked for as signs the FBO had taken on board messages and made progress along the compliance pathway.

## A need for ‘better’ regulation

When questioned “what works” in achieving and sustaining standards among food businesses the response given time and again was “it depends”. In reality however almost all AOs would adhere to what they considered was a tried and tested approach that would allow them to make comprehensive risk assessment: full inspection (followed by enforcement action where warranted). This reliance on full inspection was largely caused by their interpretation of emphasis placed on delivering the planned programme of inspections which in their view has been shaped by the FSA and LAs.

This one-size fits all approach fails to take account of difference in FBO mindset and position along the FBO compliance pathway. For example, conducting a full inspection would be necessary to assess standards in the premises of disinterested FBOs whilst it is likely a monitoring visit or partial inspection would be sufficient to verify standards of a reactive FBO. Choosing the most appropriate control in relation to the level of risk is one aspect of better regulation.

Having delivered the control and identified level of compliance it is vital AOs make use of this intelligence in order to make the right regulatory decision about what action or mix of actions would most likely improve standards. Therefore the other aspect of the idea better regulation is ensuring that the right level of emphasis is placed on a particular regulatory style i.e. education, enforcement, consultative, combination of education and enforcement.

If followed the idea of better regulation can allow for greater targeting of resource on more challenging businesses while at the same time account for many of the local (e.g. LA reputation / profile) and national (e.g. budgetary restraint) factors which AOs find hard to balance.

## The need for a stronger and more consistent risk-based and proportionate message

While AOs understood that the idea of better regulation should be guided by being risk-based and proportionate in the main their practice relied on a single type of intervention (inspection). There was consensus among AOs that a fear of being blamed from “another Pennington” discouraged them from engaging with one aspect of better regulation: the current regulatory flexibilities provided in the FSA Food Law Code of Practice. It was evident therefore that more needs to be done to encourage AOs to introduce these flexibilities into their regulatory practice, these include:

- LAs reassuring AOs of the merit in adopting more targeted regulatory approaches;
- FSA making clear analysis of risk and expectation for approaches to regulation; and
- FSA and LA promoting the idea and give clear examples of better regulation.

As a result, AOs (and EMs) may be encouraged to fully engage with and implement in their own practice the idea of better regulation. If LAs are nudged into being more flexible in the use of official controls then the next step could be implementing more tailored and innovative solutions to address non-compliance.

# Appendices

## Appendix 1: Glossary of key terms

This report draws on terminology that is commonly used by food safety practitioners and food business staff. A glossary of these key terms is provided in the appendix to ensure clarity of understanding and mitigate the risk of misinterpreting findings. It is intended to provide the reader with a background explanation and context for standard industry terms and is indicative of common usage rather than a presentation of formal definitions or direct quotations.

Audit	A systematic examination to determine whether what is actually happening complies with documented procedures.
Food business	Any place where food or drink for human consumption is manufactured, processed, stored, handled, displayed, distributed, transported, sold or offered for sale to the public
Food hygiene	All conditions and measures necessary to ensure the safety and suitability of food
Food business operator	A person who has responsibility for and control over all activities carried out in a food business
Food inspection	The examination, by an agency empowered to perform regulatory and/or enforcement functions, of food products or systems for the control of raw materials, processing, and distribution. This includes in-process and finished product testing to verify that they conform to regulatory requirements.
Food surveillance	The continuous monitoring of the food supply to ensure consumers are not exposed to components in foods, such as chemical contaminants or biological hazards, which pose a risk to health.
HACCP Plan	A document prepared in accordance with the principles of HACCP to ensure control of hazards which are significant for food safety in the segment of the food chain under consideration.
Hazard	A biological, chemical or physical agent in, or condition of, food with the potential to cause harm.
Monitoring	In a HACCP plan, the act of conducting a planned sequence of observations or measurements of control parameters to assess whether a critical control point is under control.
Notices	Notices are issued under EU food law legislation when there are reasonable and probable grounds that a health hazard exists. The notice will refer to requirements that need to be met before the notice can be revoked.
Risk analysis	A process consisting of three components: risk assessment, risk management and risk communication.
Verification	In HACCP, the use of methods, procedures, or tests in addition to those used in monitoring to determine compliance with the HACCP plan, and/or whether the HACCP plan needs modification in order to enhance food safety.

## **Appendix 2: Stakeholder opinion of food safety regulatory practice**

In this section we consider stakeholders views on factors which influence AO decision-making to selecting interventions. It looks at what works in current food safety enforcement practice and how improvement could be made into the future. Overall the findings presented below resonated with the research undertaken with LAs and are included here to give contextual background.

### **1.1 Factors influencing the AO decision-making process**

Stakeholders provided a clear and comprehensive overview of the factors affecting AO intervention decisions. We have grouped these into nine categories. While each category addresses distinct factors, several are interrelated and as a list it is suggestive, rather than exhaustive.

#### **AO's skill-set**

An AO's "grade", experience within the regulatory sector and previous training had a significant impact on their understanding of food safety regulation and their decision-making when dealing with Food Business Operators (FBOs). Softer skills such as people management and communication were also deemed pivotal.

#### **Management and team culture of LAs**

Established or "approved" ways of working were both said to have a considerable effect on an individual AO's approach. Managers were seen as the drivers, or shifters, of these working practices. It was therefore their responsibility to set expectations of their AOs, and in this way regulate the level of autonomy an individual has when deciding on an intervention.

#### **LAs or AOs attitudes to change in regulatory practice**

The adaptability of enforcement teams and an individual's own willingness to change were perceived as hugely important for how intervention decisions are made in practice. Increased flexibility in the way AOs approach their decisions was seen to rely on an individual making a concerted effort to change.

#### **Local and political factors affecting LAs**

AOs were said to feel 'nervous' about issuing prosecutions as it might reflect badly on them and create unwanted tensions within their LA. LA legal and enforcement teams were seen as either lacking in confidence or resource to take on larger FBOs, such as chain supermarkets.

#### **Financial factors affecting LA resourcing**

Stakeholders saw cuts to LA budgets as having significant impact on staff numbers and capacity of local enforcement teams. A smaller workforce to draw on meant not only fewer people to carry out intervention processes, but also a smaller pool of experience to draw on. This could lead to decisions based on staff availability rather than the most effective intervention or enforcement action.

## **Attitudes to compliance adopted by LA or individual AO**

Central to decisions concerning interventions was, in stakeholders' opinion, the extent to which AOs held themselves personally responsible for securing a FBO's compliance. For AOs to make informed, subjective decisions they needed to adopt an *active*, rather than passive attitude to compliance.

The AO's chosen approach (i.e. educational versus directional) was also said to be dependent on the FBO's attitude to compliance, since adopting too 'soft' an approach (i.e. as an educator) in the face of a wilfully non-compliant FBO would risk undermining the AO's authority and compromise their ability to secure compliance at that business .

## **Use, understanding and suitability of the Code of Practice**

The Code of Practice, while regarded as an important tool in ensuring consistency, was also perceived as part of the problem. A number of issues were raised that may need to be considered to improve effective regulatory practice across the board.

- The revised 2008 Code was not seen as an accurate reflection of current practice, making it difficult for individual AOs to adhere to, since they were accustomed to using their own tried and tested strategies.
- Stakeholders suspected that individual AOs might not always understand the full details of the Code, and therefore the extent to which the guidance was adhered to would tend to depend on an AO's level of training, their interpretation and direct experience of using the Code.
- Stakeholders said it was likely not all AOs were consulting the latest version of the Code. Being distanced from the reality of LA practices, this was generally based on stakeholders' speculation more than factual evidence.
- It was also felt that the 2008 Code did not go far enough to reflect the government's current thinking on regulatory reform. The aim of creating a more risk-based and proportionate working model was potentially being undermined by the Code's continued emphasis on product-based risk assessments and lack of attention to actual behaviours of FBOs.

## **General attitudes to compliance adopted by FBOs**

Stakeholders split FBO's into three distinct groups, according to their level of compliance and overall attitudes to improving on their current practices:

- Wilfully compliant (most likely to be classed 'broadly compliant');
- Non-wilfully non-compliant; and
- Wilfully non-compliant.

'Softer' measures involving mentoring and guidance were seen to be most effective when dealing with the non-wilfully non-compliant. By contrast, a more rigorous approach with wilfully non-compliant FBOs was said to often be the only effective method. Fully appreciating an FBO's attitude to compliance was a decisive factor in the action taken by an AO.

One stakeholder referred to HACCP and FSMS as 'mindsets' not just processes. He explained that the single most important factor in ensuring compliance was that an FBO adopts the right attitude and fully understands the risks involved to public health.

## Setting 'standards' in compliance upfront

Stakeholders suggested that if an AO establishes a rapport with a FBO during the first intervention this helps them to make suitable and effective decisions further down the line.

### 1.2 Perceptions of effective regulatory practice

Stakeholders stressed the inconsistency of food safety regulatory practice that exists across LAs. They saw a need to recognise and share experiences of effectiveness between enforcement teams. Below are points stakeholders highlighted when talking about 'success':

**AOs working *with* FBOs to find compliance:** teams and individuals taking a more outcome-focused approach to regulation, looking at the advantages and disadvantages of how an FBOs existing practices fare and what their specific barriers or drivers might be to securing compliance.

**AOs taking more risks in how they regulate:** AOs balancing their understanding of the protocols in regulation with their own personal judgement and, in some cases, basing decisions on their assessment alone, rather than referring to a more senior member of their team.

**AOs being supported by managers and FSA:** in order to take risks, AOs should feel confident that their personal judgements are valid. AOs were said to need reassurance that they will not be held directly to blame in the event that an intervention they choose does not have the desired effect on food business compliance.

### 1.3 Future priority setting

Stakeholders suggested a number of action points which they believe will help guarantee more effective regulatory practices and consistency in standards.

#### **Improved access to training schemes delivered by cross-sector agencies (FSA, CIEH, LGR)**

These should include practical sessions teaching 'hard skills' for good interventions practice 'on-the-ground' as well as advisory sessions giving tips on 'softer' people skills.

#### **A consistent message of 'trust' and 'support' from the FSA**

FSA should communicate a stronger message to AOs, encouraging them to approach interventions with a greater sense of autonomy. This should include reassurances from FSA and LA managers that when an AO takes a more flexible approach to interventions, they will have their full support.

#### **More best practice sharing and learnings from the field**

LAs should be encouraged and enabled by appropriate local and national infrastructure to share ideas about what works and what does not in interventions practice.

#### **Clearer communications on regulatory policy and what this means for everyday interventions practice**

There should be a stronger message passed on to AOs that they can, and should, approach regulation in a more 'risk-based' way.

#### **Changing AO and LA cultures and attitudes**

This is a longer term goal, but stakeholders saw the importance of encouraging LA teams and individuals to break with old protocols and try new approaches.

### **Revising the Code of Practice**

The Code should be a better reflection of current working practices and a better communicator of overarching policy objectives, such as increased flexibility and autonomy granted to AOs.

### **Focusing LA monitoring systems on compliant versus non-compliant behaviours**

LAs should collect data on each FBOs history of compliance, what has worked / not worked in the past, and reduce the emphasis on the nature of the food hazard leading to an FBOs risk-rating score.

### **Ensuring that the cost of compliance to a food business does not outweigh the cost of non-compliance**

The investment required of a food business to put HACCP and FSMS in place should not be, or appear to be, so great that those who are wilfully non-compliant see it as more worthwhile to take the risk of non-compliance.

### **Promoting more targeted regulatory approaches that are tailored to FBO type / attitude and existing levels of compliance**

There should be a clearer message from practice guidance documents and regulatory agencies about adapting intervention procedures according to an FBO's attitude to compliance and previous history.

## Appendix 3: Research materials

### Discussion guides

**Ipsos MORI-FSA**  
**Qualitative review of food safety regulatory decision making**  
**Discussion guide for enforcement officer interviews**  
**FINAL**

In speaking to enforcement officers we aim to better understand their views on:

- **The context in which an enforcement team works**
- **Understanding the local landscape of food law compliance and regulatory practice**
- **Effective regulation and where 'good practice' case studies can be identified in their regulation work and learning from practice that has worked less well**
- **Current local authority regulatory approaches and factors affecting decision making towards enforcement – what you do and why**
- **Improvements needed to increase the effectiveness of regulatory practice and sustain compliance**

*The following is a guide for the flow of discussions. It is not a script or questionnaire and interviewers may not ask all questions during every interview, or follow the exact order. We aim to cover all of the following material across the sample as a whole. However, the amount and depth of coverage typically varies according to the individuals interviewed.*

Introduction	Objective	Timing
<p>THANK PARTICIPANT FOR TAKING PART INTRODUCE SELF, IPSOS MORI</p> <p>EXPLAIN PURPOSE OF RESEARCH AND THAT INTERVIEW WILL LAST FOR BETWEEN 1 HOUR AND 90 MINUTES AND WILL BE AUDIO RECORDED (GAIN PERMISSION TO RECORD) FOR ANALYSIS PURPOSES</p> <p>EXPLAIN THAT WE ARE TALKING TO PEOPLE ABOUT THEIR VIEWS ON <b>FSA INTERVENTIONS POLICY AND PRACTICE</b>, ON BEHALF OF FSA AND OUR OVERALL AIM IN TALKING TO THEM IS TO EXAMINE THE DECISION MAKING PROCESS FOR SELECTION OF INTERVENTIONS AND THE EFFECTIVENESS OF THESE IN SECURING IMPROVED COMPLIANCE WITH FOOD AND LAW.</p> <p><b>THE RESEARCH WILL ANSWER TWO KEY QUESTIONS:</b></p> <p><b>WHAT INTERVENTIONS ARE SELECTED BY PRACTITIONERS AND WHY</b></p> <p><b>HOW EFFECTIVE ARE THEIR APPROACHES IN SECURING REGULATORY COMPLIANCE AND IN A SUSTAINED MANNER</b></p> <p>REASSURE RE: MRS CODE OF CONDUCT We are independent researchers and want to hear about your experiences and views.</p> <p>REASSURE PARTICIPANT THAT INTERVIEW IS NOT A TEST – THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST WANT TO HEAR ABOUT THE WORK THEY DO AND WHY, SO FSA CAN SUPPORT THEM BETTER.</p>	<p><i>Introduce research</i></p>	<p><i>5 min</i></p>
<p><b>Section 1: Operational culture and procedures</b></p>		

<p><b>I'd like to start by learning a bit about you and how you work.</b></p> <p><b>Can I start by asking you to introduce yourself? Please tell us your name, job title, where you work and a bit about your role, responsibility, previous experience, best thing / worst thing about your job.</b></p> <p><i>(If not covered)</i> How long have you held your current position? How long have you worked at this local authority? How long have you worked in food safety regulation? Any other regulatory areas? IF YES: How does this help you in your current role? How long have you worked at this local authority?</p> <p><b>How many people are in your team? Who are they? How are tasks shared among the team? What are the benefits / limitations associated with this? PROBE: consistency/ habituation.</b></p> <p><b>How has the way you do things in your team changed in recent years: PROBE: last 3 years, last five years PROBE: duties/tasks.</b> How does this affect your work?</p> <p><i>Interviewer note: In the last five years there have been revisions to the Code of Practice in 2008 and key pieces of legislation inc. new Hygiene Regulations in 2006.</i></p>	<p><i>Understand how the enforcement office works</i></p>	<p><i>10 min</i></p>
<p><b>Section 2: Overall perception of food law compliance and regulation</b></p>		
<p><i>I would like to get a general sense of your perceptions about food compliance.</i></p> <p><b>When I say compliance, what do you think of? Why do you say that? What does non-compliance look like? What do you base your understanding on?</b></p> <p><b>Can you give me a brief overview of what food law compliance in your area currently looks like? PROBE: compared with 5 years ago.</b></p> <p><b>Who do you believe is responsible for ensuring food law compliance? Why? What role do FBOs play? What is the 'ideal' relationship between an officer and an FBO? PROBE: professional regulator, helping hand, educator. Why do say this?</b></p> <p><i>Moderator note: we're especially interested in any hint that officers are seen as taking a 'doing it for the FBO' approach in the name of increasing compliance at any cost</i></p> <p><i>I'd like us to focus now on compliance specifically in the context of the FBOs.</i></p> <p><b>Could you give me a bit of background about the type of businesses in this area PROBE: food sector, where they sit on the 'farm-to-fork' chain, size, age, customers, urban, rural. How does this affect what you do? Why?</b></p> <p><b>In general, how would you describe the nature of the relationship between yourself and FBOs? Why do you say that?</b></p> <p><b>In your own words, could you summarise the current state of compliance amongst businesses in this area? Why? How long</b></p>	<p><i>To understand officers' general attitudes to food law compliance and regulatory practice, both at authority and FBO level</i></p>	<p><i>10 min</i></p>

<p>has that been the case?</p> <p><b>What do you think contributes to food law compliance among FBOs?</b> Why do you think that? PROBE: personal experience, word-of-mouth, FSA / CIEH sources. How does this differ across FBOs? Why? What about the causes of non-compliance? Why?</p> <p><b>I'd like now to talk about regulation and enforcement....</b>  <b>When I say 'regulation', what do you think of?</b> Why do you say that? <b>What do you base your view on? Why?</b></p> <p><b>Can you give me a brief overview of current regulatory practice in this authority?</b></p> <p><b>What key changes to regulatory practice have taken place in the last five years?</b> What has been the impact of this?</p> <p><b>When I say 'enforcement', what do you think of? Why? What do you base your understanding on?</b>          What about key changes to enforcement practice? PROBE: specifically around interventions and sanctions</p>		
<p><b>Section 3: Perceptions of effective regulatory practice</b></p>		
<p><b>What does successful regulatory practice look like to you?</b></p> <p><i>Interviewer note: please encourage officer to give a top of mind response, then PROBE around:</i> number of FBOs rated as compliant, achieving your targets, protecting public health, being 'business' friendly.</p> <p><b>How effective do you think the current range of interventions is at securing compliance?</b> Why? What does this mean for how you choose to approach an FBO? PROBE: choosing between non-official and official controls, informal approaches e.g. alternative enforcement strategies (self-completion questionnaires) and formal approaches</p> <p>How does this vary across different businesses in your area? PROBE: SMEs, affluent / deprived areas, old / new establishments, positions in 'farm-to-fork' chain, urban / rural, risk rating score, <b>FBOs who are Broadly Compliant (Risk Rated Category C).</b></p> <p><b>How effective are the current range of interventions in tackling repeated compliance breaches?</b> Which of the interventions do you think work best to sustain compliance? Why?</p> <p><b>Which of the interventions do you think works best to improve a business's food safety management system (FSMS) and HACCP procedures?</b> Why? PLEASE REQUEST EXAMPLES .</p> <p><b>Do you use the full range of interventions available to you?</b> Why? Why not? <b>How prescriptive are you in your approach?</b> Why? What are the pros and cons of this? For you/ the FBO?</p> <p><b>How effective do you think the current range of sanctions is at securing compliance?</b> Why? PLEASE REQUEST EXAMPLES</p> <p>PROBE: court prosecution, hygiene prohibition orders, hygiene emergency prohibition notices, renewal action notices, hygiene improvement notices</p>	<p><i>To understand what constitutes effectiveness and identify examples of best practice and lesson learned</i></p>	<p>15 min</p>

<p>How does this vary across FBOs? Why do you think that is?</p> <p><b>Can you describe two examples where the decisions taken by you effectively secured compliance within a business?</b> For each, please could you explain:</p> <ul style="list-style-type: none"> <li>• Reason for action e.g. hazard, planned enforcement</li> <li>• Your approach to enforcement (e.g. informal vs. formal)</li> <li>• Interventions or sanctions used and why</li> <li>• Your role (e.g. educator vs enforcer – is it easy to have this dual role? Why?</li> <li>• Attitude of business</li> <li>• Impact on business compliance</li> <li>• Fit with LA's enforcement policy and standard procedure</li> <li>• What was different</li> </ul> <p><b>What do you think worked? Why? Who do you credit that to? How do you learn about best practice? How do you share your experiences?</b></p> <p><b>Could you give me an example when things didn't work so well? PROBE USING THE LIST ABOVE.</b></p> <p><b>What didn't work? Why? Who do you think was responsible? How do you learn from this?</b></p> <p><b>Overall, how effective do you think your enforcement approach is at <u>improving and sustaining compliance</u>?</b> Why is this? PROBE: range of approaches, nature of the approach (formal / informal), range of interventions / sanctions involved, examples of its success</p>		
<p><b>Section 4: Local Authority regulatory approach</b></p>		
<p><b>How would you describe the approach your authority takes to food safety regulation? Why?</b></p> <p><b>How does this look in practice?</b> What kind of regulation policy do you have in place? How easy/difficult is it to adhere to these? Why/why not?</p> <p><b>What do you think is the overall aim of regulation?</b> PROBE: to regulate FBOs, encourage self regulation / ownership of compliance.</p> <p><b>Moving on to interventions, what do you think about the range of interventions available to you?</b> What are the benefits/limitations? PROBE: official / non-official.</p> <p><b>Could you give me some examples of how you use these in practice?</b> PROBE: softer interventions, formal enforcement, alternative enforcement strategies e.g. FBO self-completion questionnaire / promotion of national campaigns e.g. National Food Safety Week.</p> <p><b>Which of the interventions do you think work best to improve compliance? Why? Are there certain interventions you tend not to use? Why is that?</b></p> <p><i>Moderator notes:</i>  <i>Most businesses are Broadly Compliant BC (Risk Rating category C) As a result, there's a wide range of interventions options available to officers dealing with businesses in this category. An inspection / audit will always be used, but officers (theoretically) should have the flexibility to combine this with other interventions (sampling, monitoring, surveillance, verification visits) depending on the business'</i></p>	<p><i>To understand general approach to regulation and processes for selecting interventions / sanctions</i></p>	<p>25 min</p>

compliance levels. In this section, we may find officers talk a lot about Broadly Compliant businesses. Try and probe around how (if at all) officers use different approaches with BC businesses and how their approach differs with Compliant and Non-Compliant business.

In general, evidence has shown that intervention usage across authorities is very varied. Some authorities move straight to enforcement/sanctions (enforcer) while other authorities take a softer approach (educator) as a means to increase food safety levels.

**Which of the interventions do you think works best in sustaining compliance? Why? How do you know this?**

**I'd now like to talk with you about the processes you consider when making a decision for selecting an intervention.**

**How much autonomy do you have when selecting an intervention?**

*Moderator note: permission to carry out certain interventions depends on qualifications held by the enforcement officer e.g. technical officer not permitted to issue HEPN.*

What form does this take? Does this affect which FBOs you visit?

**Do you need to seek agreement from your manager on which**

**intervention is most appropriate to use? IF YES: in what circumstances would you do so? IF NO: Why is that?**

**Under what conditions would you consider using an official control?**

PROBE: high-risk, unrated, history of non-compliance, public complaint. ASK FOR EXAMPLES

**Under what conditions would you consider using a non-official**

**control? PROBE: receptive FBO to advice, lack of food law understanding of FBO, ASK FOR EXAMPLES e.g. education, advice, coaching, information collection and gathering, Alternative Enforcement Strategy**

**Under what conditions would you consider mixing within and between official and non-official controls? ASK FOR EXAMPLES.**

What is the impact from this?

**What kind of things do you tend to consider when deciding which intervention to use? PROBE:**

- business profile and risk rating
- business attitude towards compliance (e.g. passive vs proactive)
- familiarisation with food law
- local authority resourcing
- local authority service plan
- clear regulation, revised code
- FSA / LACORS-LGR/ CIEH guidance
- own judgement
- follow-up / next steps
- personal confidence
- tried and trusted approaches
- common sense
- resources
- others

**What are the key factors you consider when selecting an official / non-official control? Why those ones? ASK FOR EXAMPLES. How**

<p><b>do next steps /follow-up affect decision-making? Why?</b></p> <p><b>What factors do you take into account when deciding the timing of an intervention?</b> PROBE: code of practice, local enforcement strategy, FBO's historical compliance.. ASK FOR EXAMPLES How does the timing of the intervention influence the FBO approach to compliance? Why?</p> <p><b>Once it has been decided you will undertake a certain / mix of intervention(s) what happens next?</b> <i>Interviewer note: please encourage officer to give a top of mind response THEN ASK.</i></p> <p><b>What sort of preparation and planning would you typically do before you carry out the intervention?</b> PROBE: review of monitoring data, case history of establishment, and other forms of evidence?</p> <p><b>Do some interventions require more planning and preparation than others?</b> IF YES. Which ones? Why is that? How does this affect selection of intervention? When would you inform a FBO about a planned intervention?</p> <p><b>What happens when you arrive at the business to undertake the pre-planned intervention?</b> <i>Interviewer note: please encourage officer to give a top of mind response THEN ASK.</i></p> <p><b>Is there an official process you follow?</b> <i>Interviewer note: please encourage officer to give a top of mind response THEN ASK.</i> Why do you follow this process? Is it written down? PROBE: code of practice, local authority service plan. <b>How easy is this process to follow?</b> PROBE: review HACCP / food safety management system. W Why do you say that? To what extent can you deviate from this process? Why would you do this?</p> <p><b>How easy is it to switch between a softer intervention and a more formal enforcement intervention during a visit? What would need to happen to move from an informal to a formal intervention?</b></p> <p><b>Moving onto sanctions, how would you describe the approach your authority takes to sanctions?</b> <b>Could you give me an overview of how this looks in practice?</b> What factors do you consider when selecting a sanction?</p> <p><i>Moderator note: a sanction is used when a serious or repeated compliance breach is committed by the FBO owner /manager. Typically, officers will start with a warning letter followed by a notice of improvement and ultimately prosecution.</i></p> <p><b>Could you describe to me your authority's sanction policy?</b> <b>PROBE:</b> verbal advice, informal written advice, formal written advice, notice and prosecution. How easy/difficult is it to adhere to this policy? Why/why not?</p> <p><b>How does the approach you take to sanctioning affect compliance?</b> PROBE: levels / timing of compliance</p> <p><b>How adequate are current sanctions available to you?</b> Are some 'better' than others at securing compliance? Why? What does it mean to be 'better'?</p> <p>PROBE: Hygiene Inspection Notice, Hygiene Emergency</p>		
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<p>Prohibition Notice, Hygiene Prohibition Order, Renewal Action Notice</p> <p><b>Please can you describe how you would follow-up a sanction? Why? Would you always do so in this way? Is there an official process to follow? Is it easy/difficult to adhere to?</b></p> <p><b>What kind of things would you consider when deciding on which sanction to use? PROBE:</b></p> <ul style="list-style-type: none"> <li>• nature of hazard</li> <li>• potential to harm</li> <li>• FBO profile</li> <li>• relationship with FBO</li> <li>• attitude of FBO</li> <li>• historical compliance of FBO</li> <li>• follow-up</li> <li>• clear procedures</li> <li>• guidance</li> <li>• resourcing</li> <li>• support internally (leadership, financial support)</li> <li>• external support (FSA , justice system)</li> <li>• own role / career</li> </ul> <p>How do these issues impact on your approach to sanctions? Why? How important to do you think sanctions are? Why?</p> <p><b>What are the advantages / disadvantages of the full range of sanctions available to officers? PLEASE EXPLAIN</b></p> <p><b>Why do you think that some enforcement approaches might not work in improving or sustaining compliance? PLEASE EXPLAIN</b></p> <p><b>Do you work to targets? IF YES: which ones? Are these the right ones? Are these personal or shared among your team? How do targets impact on your regulatory duties? Do you think having these targets support regulatory compliance? Why/why not?</b></p> <p>How are your targets monitored? How well do you achieve them? <b>Do you record anything else? If so what?</b></p>		
<b>Section 5: Challenges and future improvements</b>		
<p><i>Moderator note: participants are likely to spend time talking about resourcing. There are lots of other areas of importance so please don't spend too long on this issue.</i></p> <p><b>Thinking ahead, what is needed to make regulation more effective in your area? PROBE:</b></p> <ul style="list-style-type: none"> <li>• Working differently with FBOs: IF SO HOW, WHAT, WHY</li> <li>• Revised code of practice: IF SO HOW, WHAT, WHY</li> <li>• Revised operational structure (e.g. new targets) IF SO HOW, WHAT, WHY</li> <li>• New or different resources IF SO HOW, WHAT, WHY</li> <li>• Internal or external training IF SO HOW, WHAT, WHY</li> <li>• Networking opportunities with other local authorities/ FSA representatives IF SO HOW, WHAT, WHY</li> <li>• Increased support from local infrastructure (courts) IF SO HOW, WHAT, WHY</li> <li>• Increased support and communication from FSA IF SO HOW,</li> </ul>	<p><i>To understand conditions needed for effective regulatory practice and areas for improvement in order to sustain compliance</i></p>	<p><i>15 min</i></p>

<p>WHAT, WHY</p> <p><b>What three things beyond more resource would you need to improve and sustain compliance among FBOs in your area?</b> Why? How can this be achieved?</p> <p><b>How can you achieve effective enforcement given the current LA funding settlement? LINK TO EARLIER EXAMPLES: what will change?</b></p> <p><b>What do you see as FSA's role and responsibility in relation to your authority's regulatory practice?</b> PROBE: regularly updating the Code of Practice, guidance materials, communications materials, best practice pointers, training and business seminars, joined up delivery services.</p> <p><b>How could communication channels between your authority and FSA be improved?</b> What additional information would you like from the FSA? What additional support would you like? Why?</p> <p><b>In 2012 FSA intend to make further revisions to the Code of Practice, what suggested improvements do you have?</b> How would each of these help improve and sustain compliance? Which is the priority?</p>		
<p><b>Discuss site visit and close</b></p>		
<p><b>As you know, we are going to accompany you / one or your colleagues to an FBO today / tomorrow.</b> The aim of this is to observe regulatory practice and see for ourselves some of the things discussed in these interviews....</p> <p><i>(If FBO being visited is known)</i> We will be going to a place called 'xxx'</p> <p><b>What do you expect we will find? Why? What is the history of this establishment?</b> What will you be looking for? What is the purpose of the visit?</p> <p>Is there anything in particular you think we should ask the FBO at the end of the visit?</p> <p>Finally...do you have any questions for me before we end? Any areas we haven't covered that you would like to discuss?</p> <p>If you could feedback to FSA directly on one point around food safety regulation, what would it be?</p> <p>THANK AND CLOSE</p>	<p><i>Discuss site visit, summarise key points and bring interview to close</i></p>	<p><i>5 min</i></p>

**Ipsos MORI-FSA**  
**Qualitative review of food safety regulatory decision making**  
**Discussion guide for enforcement manager interviews**  
**FINAL**

In speaking to enforcement managers we aim to better understand their views on:

- **The context in which an enforcement team works**
- **Understanding the local landscape of food law compliance and regulatory practice**
- **Effective regulation and where 'good practice' case studies can be identified in their regulation work and learning from practice that has worked less well**
- **Current local authority regulatory approaches and factors affecting decision making towards enforcement – what you do and why**
- **Improvements needed to increase the effectiveness of regulatory practice and sustain compliance**

In addition, we will use these interviews with managers as a reference point, placing the full set of interviews conducted with officers and managers within the context of each authority's 'microculture'. We will look closely at the extent to which officers and managers share the same outlook on regulation and where attitudes towards improving and sustaining compliance with legislation overlap or diverge, and the impact of this on regulatory practices. Throughout, interviewers should probe around issues arising from earlier interviews at the authority and challenge managers around key points of difference, where appropriate.

**Cross-referencing attitudes between and within local authorities** is something we will explore further in the analysis sessions post-fieldwork.

It is important we use actual examples of regulatory practice. Interviewers should therefore encourage managers to explain responses by referring to specific cases arising with officers and, where possible, referring to **case histories** of food business we are likely to visit.

*The following is a guide for the flow of discussions. It is not a script or questionnaire and interviewers may not ask all questions during every interview, or follow the exact order. We aim to cover all of the following material across the sample as a whole. However, the amount and depth of coverage typically varies according to the individuals interviewed.*

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<p><b>Section 1: Operational culture and procedures</b></p>		
<p><b>I'd like to start by learning a bit about you, your team and how it operates</b></p> <p><b>Can I start by asking you to introduce yourself? Please tell us your name, job title, where you work and a bit about your role, responsibility, previous experience, best thing / worst thing about your job.</b> (If not covered) How long have you held your current position? How long have you worked at this local authority? How long have you worked in food safety regulation? Any other enforcement areas? IF YES: How does this help you in your current role?</p> <p><b>Could you tell me about your team? How many of you are there? What are the job titles of your officers?</b> PROBE: Technical officers, Environmental Health Officers, Trading Standards Inspectors. Has it always been like this? Why/why not?</p> <p><b>What kind of role do different officers have?</b> What kind of experience do your officers have? How does this differ between officers at the same level? What is the impact on regulatory practice/ Why do you say this?  <b>How has the way you do things in your team changed in recent years?</b> PROBE: last 3 years, last five years.</p> <p><i>Interviewer note: In the last five years there have been revisions to the Code of Practice and other key pieces of legislation inc. new Hygiene Regulations in 2006. PROBE manager around the impact of these changes on them and their team</i></p>	<p><i>Understand how the enforcement manager and team operate</i></p>	<p><i>10 min</i></p>

<b>Section 2: Overall perception of food law compliance and regulation</b>		
<p><b>I would like to get a general sense of your views on food law compliance</b></p> <p><b>When I say compliance, what do you think of? Why do you say that? What does non-compliance look like?</b> What do you base your understanding on?</p> <p><b>Can you give me a brief overview of what food law compliance in the UK currently looks like?</b> PROBE: differences between countries, compared with 5 years ago.</p> <p><b>Who do you believe is responsible for ensuring food law compliance?</b> Why? What role do FBOs play?</p> <p><b>What is the 'ideal' relationship between an officer and an FBO?</b> PROBE: professional regulator, helping hand, educator. Why do you say this?</p> <p><i>Moderator note: we're especially interested in any hint that officers are seen as taking a 'doing it for the FBO' approach in the name of increasing compliance at any cost</i></p> <p>I'd like us to focus now on compliance specifically in the context of your authority.....</p> <p><b>Could you give me a bit of background about the type of businesses in this area?</b> PROBE: food sector, where they sit on the 'farm-to-fork' chain, size, age, customers, urban, rural, fixed, non-fixed.</p> <p><b>How does this affect what you tell your team to do?</b></p> <p><b>In your own words, could you summarise the current state of compliance amongst businesses in this area?</b> Why? How long has that been the case?</p> <p><b>What do you think are the causes of food law compliance among FBOs?</b> Why do you think that? PROBE: personal experience, word-of-mouth, FSA / CIEH sources. How does this differ across FBOs? <b>What about the causes of non-compliance?</b> Why?</p> <p><b>What do you think is the main aim of improving FBO compliance?</b> PROBE: protecting public health, being 'business friendly'</p> <p>I'd like now to talk about regulation and enforcement</p> <p><b>When I say 'regulation', what do you think of?</b> Why do you say that?</p> <p><b>What do you base your view on? Why?</b></p> <p><b>Can you give me a brief overview of current regulatory practice in this authority?</b></p> <p><b>What key changes to regulatory practice have taken place in the last five years?</b> What has been the impact of this?</p> <p><b>When I say 'enforcement', what do you think of? Why? What do you base your understanding on?</b></p> <p><b>What about key changes to enforcement practice?</b> PROBE: specifically around interventions and sanctions</p>	<p><i>To understand managers' general attitudes to food law compliance and regulatory practice, at UK LA and FBO level</i></p>	<p>15 min</p>
<b>Section 3: Perceptions of effective regulatory practice</b>		
<p><b>What does successful regulatory practice look like to you?</b></p> <p><i>Interviewer note: please encourage manager to give a top of mind response, then PROBE around:</i> number of FBOs rated as compliant, achieving your strategic targets, good team work <b>Would your officers</b></p>	<p><i>To understand what constitutes effectiveness and identify</i></p>	<p>15 min</p>

<p><b>share this view? Why?</b></p> <p><b>How effective do you think the current range of interventions is at securing compliance?</b> What does this mean for how you choose to approach an FBO? PROBE: choosing between non-official and official controls, informal approaches e.g. alternative enforcement strategies (self-completion questionnaires) and formal approaches</p> <p>How does this vary across different businesses in your area? PROBE: SMEs, affluent / deprived areas, old / new establishments, positions in 'farm-to-fork' chain, urban / rural, risk rating score, <b>FBOs who are Broadly Compliant (Risk Rated Category C)</b></p> <p><b>How effective are the current range of interventions in tackling repeated compliance breaches?</b> Which of the interventions do you think work best to sustain compliance? Why?</p> <p><b>Which of the interventions do you think work best to improve a business's food safety management system (FSMS), and HACCP procedures? Why?</b></p> <p><b>Do officers use the full range of interventions available to them? Why? Why not? How prescriptive are your officers in their approach? What are the pros and cons of this? For them / the FBO?</b></p> <p><b>How effective do you think the current range of sanctions is at securing compliance? Why? PLEASE REQUEST EXAMPLES</b></p> <p>PROBE: court prosecution, hygiene prohibition orders, hygiene emergency prohibition notices, renewal action notices, hygiene improvement notices.</p> <p><b>How does this vary across FBOs? Why do you think that is?</b></p> <p><b>Can you describe two examples where the decisions taken by your officers effectively secured compliance within a business?</b></p> <p>For each, please could you explain:</p> <ul style="list-style-type: none"> <li>• Reason for action e.g. hazard, planned enforcement</li> <li>• Enforcement officers' approach: informal / formal</li> <li>• Interventions and / or sanctions involved used and why</li> <li>• Their role (educator vs. enforcer)</li> <li>• Attitude of business</li> <li>• Impact on business compliance</li> <li>• Fit with your LAs standard procedure</li> <li>• What was different</li> </ul> <p><b>What do you think worked? Why? Who do you credit that to? How do your officers learn about best practice? How do you share experiences?</b></p> <p><b>Could you give me an example when things didn't work so well? PROBE USING THE LIST ABOVE.</b></p> <p><b>What didn't work? Why? Who do you think was responsible? How do you learn from this?</b></p> <p><b>Overall, how effective do you think your officer's enforcement approach is at improving and sustaining compliance? Why is that?</b></p>	<p><i>examples of best practice and lessons learned</i></p>	
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<p>PROBE: range of approaches, nature of the approach (formal / informal), range of interventions / sanctions involved, examples of its success</p>		
<p><b>Section 4: Local authority regulatory approach</b></p>		
<p><b>How would you describe the approach your authority takes to food safety regulation? Why?</b></p> <p><b>How does this look in practice?</b> What kind of regulation policy do you have in place? Do officers always stick to it? Why? When might they not?</p> <p><b>What do you think is the overall aim of regulation?</b> PROBE: to regulate FBOs, encourage self regulation / ownership of compliance.</p> <p><b>What do you think about the range of interventions available to your officers?</b> What are the benefits/limitations? PROBE: official / non-official. Does your team ever disagree on the merits of different options?</p> <p><b>Could you give me some examples of how your officers use these in practice?</b> PROBE: softer interventions, formal enforcement, alternative enforcement strategies e.g. FBO self-completion questionnaire / promotion of national campaigns e.g. National Food Safety Week.</p> <p><b>Which of the interventions do you think work best to improve compliance?</b> Why? Are there certain interventions your officers tend not to use? Why is that?</p> <p><i>Moderator notes:</i>  <i>Most businesses are Broadly Compliant BC (Risk Rating category C) As a result, there's a wide range of interventions options available to officers dealing with businesses in this category. An inspection / audit will always be used, but officers (theoretically) should have the flexibility to combine this with other interventions (sampling, monitoring, surveillance, verification visits) depending on the business' compliance levels. In this section, we may find officers talk a lot about Broadly Compliant businesses. Try and probe around how (if at all) officers use different approaches with BC businesses and how their approach differs with Compliant and Non-Compliant business.</i></p> <p><i>In general, evidence has shown that intervention usage across authorities is very varied. Some authorities move straight to enforcement/sanctions (enforcer) while other authorities take a softer approach (educator) as a means to increase food safety levels.</i></p> <p><b>Which of the interventions do you think works best to improve compliance?</b> Why? What about <u>sustaining</u> compliance? <b>How do you know this?</b> How much are you reliant on officers' feedback to know what is / is not working?</p> <p><b>Are the any interventions you prefer officers not to use if they can avoid it?</b> Why is that? PROBE: formal enforcement</p> <p>I'd now like to talk a bit about your perception of how officers make interventions decisions and what level of involvement you have in the process.</p> <p><b>How much involvement would you say you have in your team's</b></p>	<p><i>To understand general approach to regulation and processes for selecting interventions / sanctions</i></p>	<p>25 min</p>

<p><b>work? Are there areas of work you are more involved in than others? IF SO. Which areas? Why? Has this changed since 2008? Why? REQUEST EXAMPLES</b></p> <p><b>How much autonomy do officers have in making decisions regarding interventions? IF YES, what form does this take? Do you require them to give ask for your approval? IF YES: when? IF NOT: why?</b></p> <p><b>What are the main factors affecting officers' decision-making processes? PROBE:</b></p> <ul style="list-style-type: none"> <li>• business profile and risk rating</li> <li>• business attitude towards compliance (e.g. passive vs. proactive)</li> <li>• familiarisation with food law</li> <li>• local authority resourcing</li> <li>• local authority service plan</li> <li>• clear regulation, revised code</li> <li>• FSA / LACORS / LGR / CIEH guidance</li> <li>• own judgement</li> <li>• follow-up/ next steps</li> <li>• personal confidence</li> <li>• tried and trusted approaches</li> <li>• common sense</li> <li>• resources</li> <li>• others</li> </ul> <p><b>How do you personally ensure your officers are able to make effective decisions? PROBE:</b></p> <ul style="list-style-type: none"> <li>• clear procedures, Food Safety Plan</li> <li>• training</li> <li>• buddying</li> <li>• resourcing</li> <li>• monitoring competencies, qualifications and past experience of staff</li> <li>• knowledge of FSMS and technical processing</li> <li>• support internally (LA) and externally (FSA , partner agencies, local courts)</li> <li>• cross-sector forums</li> <li>• links to delivery partners</li> <li>• others</li> </ul> <p><b>How do you ensure your activities are risk-based, proportionate and consistent?</b></p> <p><b>Moving onto sanctions, how would you describe the approach your authority takes to sanctions? Could you give me an overview of how this looks in practice? What factors do your officers consider when selecting a sanction?</b></p> <p><b>What about taking a staged approach to sanctions? Could you tell me about how your authority manages this?</b></p> <p>What is the point of having this kind of approach? How long has it been like this? Do you review it? Why? How often? <b>How do you communicate it to officers?</b></p> <p><i>Moderator note: a sanction is used when a serious or repeated compliance breach is committed by the FBO owner /manager. Typically, officers will start with a warning letter followed by a notice of improvement and ultimately prosecution.</i></p>		
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<p><b>Do officers adhere to it in practice? What might prevent them from doing so? How would you manage this? How does the approach your officers take to sanctioning affect compliance? PROBE: levels / timing of compliance</b></p> <p><b>How adequate are current sanctions available to EOs? Are some 'better' than others at securing compliance? Why?</b></p> <p>PROBE: Hygiene Inspection Notice, Hygiene Emergency Prohibition Notice, Hygiene Prohibition Order, Renewal Action Notice</p> <p><b>Please can you describe how your officers would follow-up a sanction? Why? Would your officers always do so in this way? Is there an official process to follow? Do they adhere to it? Why/why not?</b></p> <p><b>What kind of things do you think your officers would consider when deciding on which sanction to use? PROBE:</b></p> <ul style="list-style-type: none"> <li>• nature of hazard</li> <li>• potential to harm</li> <li>• FBO profile</li> <li>• relationship with FBO</li> <li>• attitude of FBO</li> <li>• historical compliance of FBO</li> <li>• follow-up/ next steps</li> <li>• clear procedures</li> <li>• guidance (which?)</li> <li>• resourcing</li> <li>• support internally (leadership, financial support)</li> <li>• external support (FSA , justice system)</li> <li>• own role/ career</li> </ul> <p><b>What are the advantages / disadvantages of the full range of sanctions available to your officers? PLEASE EXPLAIN</b></p> <p><b>Why do you think that some interventions or sanctions might not work in improving or sustaining compliance? PLEASE EXPLAIN</b></p> <p><b>Do you work to targets? IF YES: which ones? Are these the right ones? Are these personal or shared among your team? How do targets impact on your team's regulatory duties?</b></p> <p><b>Do you think having these targets support regulatory compliance? Why/why not?</b></p>		
<p><b>Section 5: Challenges and future improvements</b></p>		
<p><i>Moderator note: participants are likely to spend time talking about resourcing. There are lots of other areas of importance so please don't spend too long on this issue.</i></p> <p><b>Thinking ahead, what is needed to make enforcement more effective in your area? PROBE:</b></p> <ul style="list-style-type: none"> <li>• Working differently with FBOs: IF SO HOW, WHAT, WHY</li> <li>• Revised code of practice: IF SO HOW, WHAT, WHY</li> <li>• Revised operational structure (e.g. new targets) IF SO HOW, WHAT, WHY</li> <li>• New or different resources IF SO HOW, WHAT, WHY</li> <li>• Internal or external training IF SO HOW, WHAT, WHY</li> <li>• Networking opportunities with other local authorities/ FSA</li> </ul>	<p><i>To understand conditions needed for effective regulatory practice and areas for improvement in order to sustain compliance</i></p>	<p>15 min</p>

<p>representatives IF SO HOW, WHAT, WHY</p> <ul style="list-style-type: none"> <li>• Increased support from local infrastructure (courts) IF SO HOW, WHAT, WHY</li> <li>• Increased support and communication from FSA IF SO HOW, WHAT, WHY</li> </ul> <p><b>What three things, beyond more resource, would you/your officers need to improve and sustain compliance among FBOs in your area?</b> Why? How can this be achieved?</p> <p><b>How can you achieve effective enforcement given the current LA funding settlement? LINK TO EARLIER EXAMPLES: what will change?</b></p> <p><b>What do you see as FSA's role and responsibility in relation to your authority's practices?</b> PROBE: regularly updating the Code of Practice, guidance materials, communications materials, best practice pointers, training and business seminars, joined up delivery services, other?</p> <p><b>How could communication channels between your authority and FSA be improved?</b> What additional information would you like from the FSA? What additional support would you like? Why?</p> <p><b>In 2012 FSA intend to make further revisions to the Code of Practice, what suggested improvements do you have?</b> How would each of these help improve and sustain compliance? Which is the priority?</p>		
<b>Discuss site visit and close</b>		
<p><b>As you know, we are going to accompany one of your officers to an FBO today / tomorrow.</b> The aim of this is to observe regulatory practice and see for ourselves some of the things discussed in these interviews....</p> <p><i>(If FBO being visited is known) We will be going to a place called 'xxxx'</i></p> <p><b>What do you expect we will find? Why? What is the history of this establishment? Please could I review the case file of this FBO?</b></p> <p><b><i>Interviewer note: you may have already heard about the establishment from the EOs. Please still ask this question in case there is a difference in their perception or attitude</i></b></p> <p><b>What do you advise us to look out for?</b> Is there anything in particular you think we should ask the FBO or your EO at the end of the visit?</p> <p>Finally...</p> <p><b>Do you have any questions for me before we end?</b> Any areas we haven't covered that you would like to discuss?</p> <p><b>If you could feedback to FSA directly on one point around food safety regulation, what would it be?</b></p> <p>THANK AND CLOSE</p>	<p><i>Discuss site visit, summarise key points and bring interview to close</i></p>	<p><i>5 min</i></p>

**Ipsos MORI-FSA**  
**Qualitative review of food safety regulatory decision making**  
**Discussion guide for stakeholder interviews**  
**Final**

In consulting stakeholders for this research, we aim to better understand their views on:

- **Current UK food law regulatory and enforcement practice**
- **The impact of the revised code of practice on regulatory and enforcement activity and factors affecting decision-making within Food Authorities**
- **The key drivers of effectiveness and barriers to improving and sustaining food law compliance**
- **Where 'good practice' can be identified among Food Authorities and how our evaluation can best capture this**
- **What they foresee as an appropriate use of the evaluation findings and how we can ensure subsequent immersion visit interviews gather meaningful information**

**FSA stakeholders being interviewed include individuals from:**

Local Government Regulation  
 Chartered Institute of Environmental Health  
 Trading Standards Institute  
 Food Standards Agency partners (central Government agencies e.g. DEFRA, and agencies responsible for food safety compliance in each of the devolved administrations e.g. DARD)

*We will aim to cover all of the following material across the sample as a whole. However, the amount and depth of coverage typically varies according to the individuals interviewed. For example, we may not ask all the questions listed or they may be asked in a different order.*

Introduction	Objective	Timing
<p>THANK PARTICIPANT FOR TAKING PART                      INTRODUCE SELF, IPSOS MORI</p> <p>EXPLAIN PURPOSE OF RESEARCH AND THAT INTERVIEW WILL LAST FOR ABOUT 45 MINUTES AND WILL BE AUDIO RECORDED (GAIN PERMISSION TO RECORD) FOR ANALYSIS PURPOSES</p> <p>EXPLAIN THAT WE ARE TALKING TO PEOPLE ABOUT THEIR VIEWS ON <b>FSA INTERVENTIONS POLICY AND PRACTICE</b>, ON BEHALF OF THE FSA AND OUR OVERALL AIM IN TALKING TO THEM IS TO EXAMINE THE DECISION MAKING PROCESS FOR SELECTION OF INTERVENTIONS AND THE EFFECTIVENESS OF THESE IN SECURING IMPROVED COMPLIANCE WITH FOOD AND LAW.</p> <p><b>THE RESEARCH WILL ANSWER TWO KEY QUESTIONS:</b></p> <p><b>WHAT INTERVENTIONS ARE SELECTED BY PRACTITIONERS AND WHY</b></p> <p><b>HOW EFFECTIVE ARE THE APPROACHES IN SECURING REGULATORY COMPLIANCE AND IN A SUSTAINED MANNER</b></p> <p>REASSURE RE: MRS CODE OF CONDUCT We are independent researchers and want to hear about your experiences and views. It</p>	<p><i>Introduce research</i></p>	<p><i>5 mins</i></p>

<p>would be difficult to guarantee non-identification of opinions, as we are interviewing a small number of stakeholders with very distinctive roles. However, we can take comments 'off the record' if requested.</p> <p>Related to this, what level of attribution would you like? Can we quote you directly? Do you have any questions about the interview before we start?</p> <p>Can I start by asking you to introduce yourself? Please tell us your name, where you work and a bit about your role, responsibility and involvement with the FSA</p> <p>What is your previous background? How long have you held your current position?</p>		
<b>Section 1: Overall perception of food law enforcement</b>		
<p>From your perspective, please can you give me a brief overview of food safety regulatory practice in the UK? PROBE: difference between food hygiene and standards</p> <p>To what extent does regulatory practice which takes place in England/Wales/Scotland/NI differ? What are the implications of this?</p> <p>What key changes to food safety regulation and enforcement have taken place in the last five years? PROBE: legislation, regulation, delivery model, practice.</p> <p>What has been the impact from this? Why do you say that? What have been the implications for your organisation?</p> <p>What key changes to food safety enforcement have taken place in the last five years? PROBE: legislation, regulation, delivery model, practice.</p> <p>What has been the impact from this? Why do you say that? What have been the implications for your organisation?</p>	<p><i>Understand recent and current enforcement practice in the UK and in-country difference</i></p>	<p>5 mins</p>
<b>Section 2: Revised code of practice and enforcement practice</b>		
<p>Please can you tell me about the Food Law Code of Practice (revised June 2008)? What is it and what does it set out to achieve?</p> <p>What is your overall impression of the revised code of practice? How is it perceived by others (local authorities and regulators)?</p> <p>What do you think the thinking was behind its revision? PROBE: risk-based, proportionate, flexible and effective enforcement. Has the Code achieved this aim? Why/why not?</p> <p>What has its impact been on enforcement practice? PROBE: benefits and limitations. Why do you say that? How does this differ across the UK countries, given the fact they use 'separate but parallel' Codes and Guidance?</p> <p>How well does it work in securing increased food law compliance? Why do you say that? Would others share this view? PROBE: FSA, regulators, professional bodies e.g. CIEH, TSI, food authorities, enforcement officers, and food business operators.</p>	<p><i>Understand impact on enforcement activity following regulatory change</i></p>	<p>15 mins</p>

<p>What improvements to the code of practice do you think are needed? Why do you say that? How would that help improve compliance?</p> <p>What other key regulatory and enforcement documents are you aware of? <i>PROBE: National Control Plan for the UK, FSA Framework Agreement with Local Authorities, Local Authority Food Service Plan.</i></p> <p>How important are these for you/your organisation, food authorities? Why do you say that? What has been their impact on enforcement practice? And impact on compliance? Why do you say that?</p> <p><b>Now thinking about the range of enforcement interventions available to enforcement officer in the revised code of practice.</b> Moderator note: we will be discussing official and non-official controls.</p> <p>What factors affect the decision making processes for the selection of interventions by enforcement officers? <i>PROMPT:</i></p> <ul style="list-style-type: none"> <li>- Familiarisation with the food law, legislation, regulation, revised code of practice, and guidance from FSA , Local Government Regulation and Local Authority</li> <li>- Experience and qualifications of enforcement officers</li> <li>- Training and skills</li> <li>- Familiarisation with risk/ hazard (e.g. habituation)</li> <li>- Resources</li> <li>- Powers e.g. sanctions, notices, prosecutions</li> <li>- Food Business Operator profile and culture</li> <li>- Attitudinal and behavioural influences (enforcement officers peers enforcement managers, others)</li> </ul> <p>Are there any other factors that you can think of which affect decision making? What are they? In your opinion, what are the top two factors which most likely affect decision making for selecting an intervention? Why do you say that?</p>		
<b>Section 3: Success, challenges and improvements</b>		
<p>How effective do you think current interventions are at securing compliance among Food Business Operators (FBOs)? <i>PROMPT:</i> official and non-official controls. See moderator handbook for information on control types.</p> <p>What do you see as the key measures of effectiveness? What does success look like for you? <i>PROBE:</i> improved risk rating of FBO, sustained compliance for FBO, improved public health.</p> <p>Are there certain conditions which need to exist for an intervention to be more effective? What are they? Which interventions are most effective in sustaining compliance among FBOs? Is it the same for all FBOs? IF NOT. How?</p> <p>What are the main challenges to increased levels of food law compliance among FBOs? <i>Probe:</i> risk/hazard, management, structures, education.</p>	<p><i>Understanding effective enforcement practice and barriers which prevent compliance. Identify examples of best practice and innovation</i></p>	<p><i>15 mins</i></p>

<p>What implication does this have for decision making about intervention usage? How can these challenges be overcome?</p> <p>What would help to improve the effectiveness of enforcement activity? Why do you say that? What needs to take place for this to happen?</p> <p>Do you know of any examples of good or innovative practice which contribute to increased food safety compliance? PROBE: social marketing to FBOs, third party assurance schemes, other risk-related initiatives such as 'cause for concern'.</p> <p>Do you know of any examples of good or innovative practice from other regulatory sectors, (for example, health and safety) which could benefit food safety enforcement? PROBE: awareness raising events, inspection blitzes, supply chain pressure e.g. supplier on retailer</p> <p>What is the potential transferability of these activities/ initiatives? What is needed to achieve this?</p> <p>What are the priorities for consideration in Code of Practice revisions planned for 2012? Why do you say that? What key messages should be contained in the revised code of practice?</p>		
<p><b>Use of evaluation findings and close</b></p>		
<p>Following our interviews with stakeholders, we will be visiting Food Authorities and businesses.... In terms of enforcement activity, what do you think we will find? Why do you say that?</p> <p>What key questions would you like us to ask during the visits? How would that help?</p> <p>What would be the most useful output for you from this evaluation study? Can I ask how you intend to use the outputs in future? What information would be most useful for tackling the issue of enforcement and driving up compliance?</p> <p>Do you have any recommendations, tips or warnings for us at this stage in the evaluation? PROBE:</p> <ul style="list-style-type: none"> <li>Practical challenges of conducting site visits</li> <li>Sensitive subjects of discussion</li> <li>Any disparity between reported and actual behaviour from your past experience of the 'field'</li> <li>Establishment record files kept by FA</li> </ul> <p>Is there anything you would like to ask me? Anything we haven't covered in this interview? If you could feed back to FSA directly on one point, what would it be?</p> <p><b>Thank and close</b></p>		<p>10 mins</p>

## Observation aide memoire and follow-up interview guide

**Ipsos MORI-FSA**  
**Qualitative review of food safety regulatory decision making**  
**Site Visits to Food Business Operators (FBOs)**

This document serves as an observation 'tool' for moderators to use during site visits to FBOs, and includes questions to cover during follow-up interviews with Enforcement Officers and staff at the FBOs. Our focus during the visits is on **observation** and **recording the details** of how enforcement is experienced on the ground, by EOs and the duty holders or managers within FBOs.

We are not taking photographs, but to ensure we capture as much detail as possible during the visit, it will help to imagine you are looking out for photo opportunities. We want this to be a record of everything that catches your attention. The table overleaf outlines the key things to keep an eye out for during the visit. They are all things to keep in mind while you are observing and for probes during follow-up interviews. Some of this can be filled in retrospectively.

FBOs have not been informed that we are attending the EOs visit. When appropriate, and as soon as possible upon entering the premises, hand the FBO representative the flyer headed 'Researching Food Safety Officers'. Please make sure you have read the flyer beforehand. If you are unclear about any of its content please check with another member of the team.

**The flyer is very important.** It explains to the FBO representative that our focus is on observing the Enforcement Officer carry out his visit and the affect of the visit on the FBO. It should reassure them that **we are in no way there to inspect them individually or as a business**. Please be prepared to talk them through the flyer and reassure them further. The success of our observation work relies on both the EO and the FBO representative being as comfortable as possible with us attending. Please keep a record of how you think your presence is felt by each party as it could be useful for understanding cultures and attitudes towards food and feed law compliance.

Moderator, Date, Location		Summary of Day 1 Food Authority visit.	
Rationale for selecting Food Authority (link in with LAEMS criteria). Check sample info.		Rationale for selecting FBO. Check with EO.	
Background info. on Food Authority (e.g. profile). Check sample info.		Background info. on Food Business Operator (e.g. business profile, sector, farm-to-fork, risk rating). Check with EO.	

<p><b>Relationship and communications</b></p> <p>What is the overall tone / language / attitude adopted by each? Does it change during the intervention? Overall does the EO take a soft / harsh approach? What issues arise (for either party)? Is there any disagreement, awkwardness? How does EO handle this?</p>	<p><b>Intervention and sanction procedures</b></p> <p>Which interventions and sanctions are issued? What conditions / practices led to the intervention activity or sanction? What is discussed? What is recorded /issued?</p>
<p><b>Decision-making (objective / subjective, actual / reported)</b></p> <p>How does the EO do this on the ground? How does the EO balance subjectivity with the guidance/ scoring systems? Are there any problems? What kind of formal or informal approaches are adopted? How does <i>actual</i> compare with <i>reported</i> behaviour in earlier EO interview(s)?</p>	<p><b>Attitudes to compliance</b></p> <p>Does the EO appear like an educator / enforcer? Does the FBO look like they know what they need to do to increase their compliance? (HACCP, SMS) Do you get the impression the FBO will take necessary steps?</p>

**Follow-up interview with FBO duty holder / manager**

THANK PARTICIPANT FOR TAKING PART  
INTRODUCE SELF, IPSOS MORI

EXPLAIN THAT INTERVIEW WILL LAST FOR ABOUT **15 MINUTES**

USING THE FLYER AS A POINT OF REFERENCE, EXPLAIN THAT THE PURPOSE OF TALKING TO FBO REPRESENTATIVES IS **TO UNDERSTAND THEIR EXPERIENCE OF BEING REGULATED AND WHAT THE IMPACT IS FOR THEIR BUSINESS**

REASSURE RE: MRS CODE OF CONDUCT. We are independent researchers unaffiliated to the FSA or any other regulatory body and want to hear about your experiences and views. We will not quote your name, your business or location. If there is anything you prefer us not to quote, we will take these comments 'off the record'. These comments which will not be reported back to the FSA but they will help us understand your point of view.

Do you have **any questions** about the interview before we start?

Can I start by asking you to introduce yourself? Please tell us your name, where you work and a bit about your role, responsibility

How long have you held your current position? What is your previous background? PROBE: enforcement background, food business background, managerial expertise

**1. SITE VISIT DISCUSSION**

**5 MINS**

*Let the duty holder give their account of the EOs visit before prompting with what you observed and referencing back to anything relevant that was discussed in earlier interviews with food authority enforcement staff*

Could you tell me how you thought that went? Was it what you were expecting? Pleasantly surprised? Disappointed?

How long has your business been up and running? How did this visit compare to other visits you have had from an enforcement officer? Why? Have you

noticed any difference in approaches to enforcement taken by officers since 2008? If so, how?

If you could feedback one thing to the officer, what would it be? Why do you say that? How would you feedback?

**2. REVIEWING WHAT YOU OBSERVED**

**10 MINS**

*Interviewer note: use this next section to discuss what you observed during the site visit, referring to the notes you made under the headings on pages 2 and 3. Try and get as much detail as possible, especially around anything which struck you as an example of good / bad practice*

**Probe around the four areas of focus:**

Decision-making (objective/subjective, actual/reported behaviour)

Intervention and sanction procedures  
Relationship and communication  
View of compliance PROBE: change over time (pre and post intervention)

### 3. EVALUATION OF SITE VISIT

Is there anything you wish had gone differently during the visit? Anything you wish you had said or done?

What needs to change to help you to *improve* compliance? What needs to change to help you to *sustain* compliance? Do you see a difference between improving and sustaining compliance? Is one more difficult than the other to achieve? Why?

Finally, thinking in terms of compliance, could you sum up how successful / unsuccessful you believe that was? Why? What would a 'successful visit' from an EO look like to you? Do you think that is the same as for the EO?  
Is there anything you'd like to add?

**THANK AND CLOSE**

## **Follow-up interview with Enforcement Officer**

### **1: SITE VISIT DISCUSSION**

*Interviewer note: use this section to let the enforcement officer give their top of mind account of the visit*

Could you give me an overview of how you thought that went? Did it go to plan? Was there anything unexpected? Better or worse than imagined? Why do you say that?

How does it compare to previous visits you've made to this FBO? And compared to other FBOs with the same profile. PROBE: process/ outcome e.g. compliance level

### **2. REVIEWING WHAT YOU OBSERVED**

*Interviewer note: use this section to discuss what you observed during the site visit, referring to the notes you made under the headings on pages 2 and 3. Try and get as much detail as possible, especially around anything which struck you as an example of good / bad practice*

**Look out for anything that seems like a contradiction between what they recount and what you saw.**

**Probe around the four areas of focus:**

- Decision-making (objective/subjective, actual/reported behaviour)
- Intervention and sanction procedures
- Relationship and communication
- Attitudes to compliance

e.g.

**If a sanction was issued and the EO gave a full explanation to the duty holder, you might ask:** I noticed you explaining the implications of the 'xxx' sanction (e.g. Hygiene Prohibition Order notice) that you issued. Why did you do that? Do you always do this? How do you think it helps improve and sustain compliance?

**Or if procedures take shorter or longer than you expected:** I was surprised by how much / little time it took to administer and carry out the 'xxx' intervention (e.g. audit)? Is that usual? To your knowledge, how long do other EOs take? How do other EOs deal with the paperwork?

### **3. CROSS-REFERENCING WITH EARLIER INTERVIEW**

*Interviewer note: use this section to compare what was discussed during earlier interviews with what just took place on the site visit. Probe around anything that seems to be different between what was said earlier and what happened. Specifically, try to remember their previous views on informal / formal approaches to enforcement and ask them how this is reflected in the site visit. If it's not, ask why not.*

Before the site visit, we talked about (PROBE AS APPROPRIATE)

An official / non-official control / sanction

On this visit, why did you decide on (AS APPROPRIATE)

An official / non-official control / sanction

What is the key strength of your approach? Key weakness?

Do you think the kind of practice you demonstrated here can be transferred to other cases? Why?

How do you think the approach you took on this visit will impact on the FBO's compliance levels? Why? Was this an example of an easy or difficult case? Why?

### **4. EVALUATION OF SITE VISIT**

*Interviewer note: the aim of the last section is to understand perceptions of effectiveness and where there is room for improvement in their enforcement practice. Probe specifically around how effectively EOs think they communicate with FBOs and how this impacts future compliance in businesses. Where relevant, cross-reference issues discussed during the follow-up interview with the FBO representative (without referring to them in an obvious way).*

Is there anything you wish had gone differently about the visit? What impact has this visit had? Why? What outcome would you expect from this visit? How could visits like this be improved?

Finally, could you sum up for me how successful / unsuccessful you believe that visit was overall? Why do you say that? What does 'success' look like to you?

Is there anything you'd like to add?

**THANK AND CLOSE**

## Local authority introductory letter

<NAME>  
<POSITION>  
<AUTHORITY>  
<ADDRESS>  
<ADDRESS>  
<ADDRESS>  
<POSTCODE>

<DATE>

Dear <INSERT>

### **Qualitative research on behalf of the Food Standards Agency: decision making processes for selection of food safety interventions by enforcement officers**

I am writing to you in relation to research that Ipsos MORI, an independent research company, are undertaking on behalf of the Food Standards Agency (FSA). The purpose of this research is to explore the decision making processes for selection of food safety interventions (official and non-official controls) by enforcement officers, as well as identify examples of good practice in achieving and sustaining food law compliance. **Please be assured that Ipsos MORI is completely independent of government and in no way is this research being undertaken as part of the ongoing review of the delivery of official controls.**

The Local Authority within which you work has been selected as one food authority we are interested in visiting as part of this research project. Selection has been based upon a number of geo-demographic factors and initial analysis of Local Authority Enforcement Monitoring System (LAEMS) data. We are writing to you to request your participation in this research project.

We are particularly keen to learn about the various ways in which interventions as set out in the Food Law Code of Practice are **selected, applied and impact on food safety compliance** and as such the fieldwork that we would like to undertake involves:

#### **3-5 interviews in total with senior managers, lead enforcement officers and enforcement officers**

These interviews would last around one hour. Our aim would be to speak to individuals with differing levels of seniority and involvement in relation to food safety, including at least two practitioners.

#### **1 accompanied visit to a food business operator**

This would involve a researcher accompanying an officer undertaking an intervention to observe delivery. A flyer would be provided to the food business operator by the researcher to ensure that they were fully aware about the nature of the research and to gain verbal consent.

#### **1 interview with a food business operator**

After the intervention we would seek to undertake a brief interview with the food business operator to gain their views on how the intervention impacted upon their ability to increase food safety compliance.

The fieldwork period for this project is 8th March to 22<sup>nd</sup> April, and we would like to discuss with you when the most convenient time to visit would be. We envisage that fieldwork will take place over two days to minimise disruption to you and your department however we are happy to hear your views on the best way for you to accommodate us.

**Please be assured that participation in this research is voluntary. It is important to note that anonymity will also be provided to all research participants.** While your authority has been selected from a sample list provided by the FSA, they will not be informed of which food authorities agreed to take part in the research. Furthermore, when reporting on findings all names and locations involved during the study will be anonymised to ensure this.

We would be very grateful of your participation in what will be a very important piece of research. We can be flexible with fieldwork dates if this would be helpful, and we would be happy to discuss an arrangement that works for you and your team.

Either I or my colleague Naomi Boal will call you in the next few days to discuss any questions you might have and arrange a convenient time for us to interview you. In the meantime, please do not hesitate to get in touch with either Naomi or myself on the contact details below.

Kind regards,

Graham Bukowski  
Research Manager  
Ipsos MORI Social Research Institute  
T: 0207 347 3456  
E: [graham.bukowski@ipsos.com](mailto:graham.bukowski@ipsos.com)

Naomi Boal  
Senior Research Executive  
Ipsos MORI Social Research Institute  
T: 0207 347 3958  
E: [naomi.boal@ipsos.com](mailto:naomi.boal@ipsos.com)

## Food business operator flyer

### **Food Business Operator (FBO) Flyer**

#### **Researching Food Safety Officers**

##### **What are we here for?**

Ipsos MORI are carrying out research on how food safety officers who visit your premises carry out food hygiene and standards activities and how this affects you and your business. **We are not here to monitor or inspect any aspect of your business.**

##### **Who are we?**

Ipsos MORI is one of the largest **independent** research organisations in the United Kingdom. Ipsos MORI carry out a large amount of social research on behalf of government, charities, the voluntary sector as well as commercial organisations. The Food Standards Agency (FSA) have commissioned Ipsos MORI to undertake this piece of research, however, **Ipsos MORI are fully independent and are not attached in any way to Local Authorities or the Food Standards Agency.**

##### **How can I help?**

We would like permission to enter your premises **to undertake this observation of the food safety officer. Your participation is completely voluntary** and at any time during the observation you can ask for the observer to;

- stop taking notes
- stop listening to your conversation with the food safety officer; or
- ask them to leave the premises

**We would also like to have a quick chat with you after the food safety officer has left the premises to gain your view on the impact of the food safety officer's visit on you and your business.**

##### **Will my business be identified in the research?**

**No.** We are bound by the Market Research Society Code of Conduct to ensure that all names of those involved in the research, including business names and locations, are completely anonymised.

##### **Who can I contact to get more information about the research?**

If you have any further questions please contact either Graham Bukowski (0207 347 3456) or Brian McIntosh (0207 347 3933) at Ipsos MORI and they will happily answer any questions you may have about the research

# Appendix 4: Risk-based and proportionate matrix

