

consumer information on
the inspection of food
premises

About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC's Chairman and Council members are appointed by the Secretary of State for Trade and Industry, in consultation with the First Minister. Martyn Evans, the SCC's Director, leads the staff team.

Please check our web site at www.scotconsumer.org.uk for news about our publications.

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The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS

Can consumers actually get the goods or services they need or want?

CHOICE

Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION

Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS

If something goes wrong, can it be put right?

SAFETY

Are standards as high as they can reasonably be?

FAIRNESS

Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION

If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

We can often make our publications available in braille or large print, on audio tape or computer disk. Please contact us for details.

Executive Summary

At present the public should be entitled to assume that if food premises are open for business they are 'safe' to eat in. However, there are clear degrees of risk and Environmental Health Officers conduct individual inspections to establish the risk and take action if required. As the law stands, the public is not entitled to receive information about the formal infringement actions against food businesses until the matter is finished in the courts. Although these inspection reports are taken in the public interest, consumers have no information about legal action until a late stage and will rarely have the information to make choices about where to buy their food.

The Scottish Consumer Council (SCC) Food Law Enforcement Report showed that a clear majority of surveyed Environmental Health Officers (EHOs) believed that consumers should be informed about formal enforcement notices at an earlier stage than currently occurs. The Report recommended that the Food Standards Agency (FSA) set up a Working Group to look at methods of providing this information. So far no group has been set up.

SCC believes that a user-friendly system must be developed to provide information for the public on inspection reports. Evidence from systems in other countries appears to support the view. Some form of system is imperative given the forthcoming implementations of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2005. This is against a background of increasing numbers of consumers eating out. If the issue is not addressed now then the matter is likely to be settled by the media.

Introduction

At present the public should be entitled to assume that if food premises are open for business they are 'safe' to eat in. However, there are clear degrees of risk and EHOs conduct individual inspections to establish the risk and take action if required. Higher-risk premises are visited more frequently and defects in food safety procedures are required to be rectified sometimes under threat of legal action. These inspection actions are taken in the public interest and yet the public has no information about the risk assessments. As the law stands, the public is not entitled to receive information about formal infringement actions against food businesses until the matter has finished in the courts. Although these inspection reports are taken in the public interest, consumers have no information about legal action until a late stage and will rarely have the information to make choices about where to buy their food.

The Need For Public Information

Information on restaurants should be available to the public in a user-friendly format given the context that consumers are eating out more and that the forthcoming Scottish Freedom of Information Act and Regulations will be implemented in January 2005.

Foodborne Illness

It is estimated that 10-30% of the population of industrially developed nations suffers food poisoning each year.⁽¹⁾ Data from the Scottish Centre for Infection Control and Environmental Health (SCIEH) show that there were 7693 *formally notified* cases of food poisoning for Scotland for 2002. These figures cover cases in and outside the home. The Food Standards Agency (FSA) Consumer Attitudes Survey 2003⁽²⁾ found that there was a significant increase in the number of people in the UK sample (16%) claiming to have experienced foodborne illness in the last 12 months.

Societal changes mean that people eat out more, and an increasing incidence of food-related illnesses and outbreaks are linked to catering establishments. The FSA survey^(ibid) found a further increase in the number attributing foodborne illnesses to food consumed outside the home 82% of those who experienced illness cited food out of the home as the source. It is likely that this trend to eat away from the home will continue. At a recent European conference in November 2003 on Catering Food Safety the catering industry representatives stated that they felt that 'customers should know how restaurants rate in inspection thus giving establishments that operate to high food standards due credit and recognition for their efforts.'

Freedom of Information

Following the implementation of the Freedom of Information (Scotland) Act 2002 and the forthcoming Environmental Information (Scotland) Regulations 2005, information on the risk assessment reports compiled by EHOs working for Scottish public authorities may have to be made available to the public. Under the Freedom of Information (Scotland) Act, there is a class exemption for information held by Scottish public authorities relating to investigations and proceedings arising out of them. Similarly, under the Environmental Information (Scotland) Regulations, which apply to information about human health and safety (including contamination of the food chain), information can be excepted if its disclosure would adversely affect the ability of a Scottish public authority to conduct an enquiry of a criminal or disciplinary nature. Both of these exemptions are, however, subject to a public interest test that may override them. This means that where a public authority claims that information that has been requested falls within this exception, it must demonstrate that the public interest in withholding the information is greater than the public interest in making it available.

While the Section 60 Code of Practice issued under the Act provides some guidance, as applying the public interest, this term is not clearly defined. However, guidance on the public interest published by the UK Information Commissioner states: 'there is a presumption running through the Act that openness is, in itself, to be regarded as something which is in the public interest.'⁽³⁾ Likewise the Scottish Information Commissioner, who is expected to publish similar guidance soon, has said 'Openness is at

the heart of the freedom of information regime and there is a presumption that enhanced openness is in the public interest.⁽⁴⁾ We wholeheartedly support this view, and consider that information about risk assessment reports is in the public interest and should be released wherever possible.

The SCC are concerned that there are serious potential public communication risks if there is not clear consideration of how best to make the information available on a consistent and planned basis. There is a need to ensure consistency across local authorities so that consumers are treated the same wherever they live.

The information about risk is difficult to understand and it is therefore important that consumers have meaningful information that can help them make an informed decision. It is important that a system of providing this information in a transparent way to the consumer is agreed before then. The role of newspapers in the collection and publication of such data also has to be given careful consideration, as there is the danger of misinterpretation in a way not helpful to the consumer.

Scottish Consumer Council (SCC) Food Law Enforcement Report

The SCC Food Law Enforcement Report (February 2004)⁽⁵⁾ showed that just over half of surveyed EHOs felt that consumers should be able to access inspection assessments. Also, a clear majority of EHOs/Food Safety Officers believed that consumers should be informed about formal enforcement notices for food premises at an earlier stage than occurs. However, there was a less uniform view as to how these types of information should be made available. SCC recommended setting up a FSA Working Group to look at methods. So far no group has been set up.

FSA Position

The FSA has given the issue some consideration.

In May 2001 the displaying of inspection reports was raised at the FSA Enforcement Liaison Group (ELG) – a group where the FSA meet with law enforcers, professional, industry and consumer representatives but was not taken further.⁽⁶⁾

Correspondence from the FSA in response to the SCC report (June 2004) stated that the FSA believes that the publication of inspection reports would ‘not be straightforward given the number of such reports, their technical nature and associated legal and practical issues’. There is a lot of truth in this assertion but the problems have been overcome in other jurisdictions and the SCC position remains that information from inspection reports should be made public. A key concern for the SCC is the consistency of the reports across the country.

Options For Public Information Schemes

Public Posting of Inspection Reports

International Situation

An international survey on the public posting of inspection reports in August 2000⁽⁷⁾ found ten different disclosure/letter grading systems. These were in the USA and Singapore. These included grade cards, posting of handwritten reports, website disclosure and provision of information to the media.

More systems have been initiated since then including a 'Smiley face scheme' in Denmark where different faces are used as a summary of inspection reports (www.fdir.dk/smiley). This scheme also covers shops and supermarkets.

In England the CIEH (Chartered Institute of Environmental Health) issued a press release (September 2004) proposing that owners of food premises including restaurants, pubs and takeaways post the results of food inspections visibly at their premises. They acknowledge that consistency is an issue that needs to be addressed.

Pros and Cons

Comments given in the international survey highlighting the advantages of posting inspection reports included:

- no extra cost if done as routine
- compliance improved (incentive to do the correct thing)
- popular with public
- popular with media
- important for elderly and immuno-compromised.

Disadvantages were seen as follows:

- difficult to police ensure reports remain posted
- resources workload/administration
- consistency of inspections
- need public awareness campaign
- breakdown of inspector/operator relationship.

However, not all these perceived disadvantages were found when a system in place was evaluated. A recent evaluation was carried out in Toronto, Canada.

Toronto

Toronto implemented a Food Premises Inspection and Disclosure System (DineSafe) in August 2000 and carried out an evaluation study after one year.⁽⁸⁾ Their system requires all food premises to post one of three notices.

- Pass (green)
- Conditional Pass (yellow)
- Closed (red).

The infractions have to be cited, as does any enforcement action that has been taken since the last inspection. There is also an indication of the results of the previous inspection and date, thereby giving the public some historical information. The inspector's actual inspection reports also have to be available in the premises if the public wishes to see them.

The evaluation found:

- strong public support 98% of the public wanted it to continue
- support from the majority of restaurant operators (71% wanted it to continue)
- increased compliance and decrease in infractions
- heightened awareness of the work of inspectors
- vast majority of the public reported choosing a place to eat based on the signs.

The Toronto study did not find policing a problem as the public expected to see the signs at restaurants they used and, as shown, used the findings when making their choices. Consistency was found to be good with 82% of operators finding them fair and impartial. There was not a breakdown of the relationship between enforcers and operators and 89% of operators felt inspectors explained why infractions were of concern.

Interestingly, the majority of operators believed that the public did not understand the meaning of the conditional pass notice but when researched it was found that most did (63%).

For any new system implemented in Scotland there would have to be public education. If inspection reports were posted in full then an explanation of the scoring would need to be given e.g. as New York City does for its website www.nyc.gov/health to give the consumer an idea of the context. Risk assessment would also need to be discussed to explain why some food premises are high risk simply due to the nature of their business. The understanding that an inspection report is a 'snapshot' of the day and time of inspection will also need to be addressed.

Licensing/Prior Approval Schemes

Licensing and prior approval schemes are also being considered and a paper on this is due to go to the FSA Board later this year. SCC feels that licensing would be burdensome and that such a regulatory regime would not meet the criteria for good regulation set out by the Better Regulation Task Force i.e. proportionality, accountability, consistency, transparency and targeting, (www.brtf.gov.uk). A prior approval scheme may be more proportionate but would only affect new entrants to the market. This scheme would also not assist the consumer in making an informed choice on where to eat.

Award Schemes

Suggestions have been made that an award scheme could be implemented. Under this proposal the risk assessment 'scores' from individual food premises would determine which premises were entitled to display an award. Many award schemes are only relevant to the

lowest risk premises in the industry. Under the Eat Safe Award scheme being piloted by the FSA in Northern Ireland only the top of the range premises are entitled to the award. Currently there are 43 accredited establishments. While the SCC welcomes such schemes and indeed manages the Scottish Healthy Choices Award Scheme, awards do not address the issue of consumer information.

Greenwich Council is pioneering a new initiative called the Greenwich Food Hygiene Award Scheme. When catering businesses are inspected they receive an award if they are complying with the law and operating to hygienic standards. These awards can be displayed in their premises and will be published on the Council website. Businesses that do not comply with the standards will not be given an award. This information will also be published on the website.

Benefits for the Scottish Consumer

SCC believes that a system can be developed to provide information for the public on inspection reports. Evidence from other systems operating in other countries appears to support this view. The key benefits of such a system will include:

1. **Giving the consumer an informed choice.** A recent MORI poll⁽⁹⁾ stated that 84% of consumers would not return to a restaurant if they felt it fell below hygienic standards.
2. **Raising the profile of the enforcers.** This will heighten public awareness of the work of enforcers as covered in Recommendation 1 of the SCC Food Law Enforcement Report.
3. **Educating the consumer will help raise standards in the food businesses.** The consumer will have increased food hygiene awareness.
4. **More understanding of enforcers work by food premises operators.** Currently some operators do not see the inspection reports.
5. **Providing incentive for food premises to improve standards.** No restaurant will want to post a 'bad' report. Food premises with good reports should get market advantage for their investment in food safety standards.

References

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