

Food law, food safety and risk management

[Nutrition](#), [Food Safety](#)



Introduction

Details needed from Mrs Its Disgusting

In order to make a thorough investigation into the food complaint that has been made by Mrs Its Disgusting, it is necessary to take some details from her so that the actual cause of the complaint can be determined. This is also necessary in establishing whether the bakery in Elsewhere has breached food safety legislation by manufacturing and distributing the scones. Once the relevant information has been gathered, it will then become clear what the best course of action to take is, having regard to the Food Law Enforcement Policies of Somewhere Local Authority. The exact details of the bakery where Mrs Its Disgusting purchased her scone will be needed so that an investigation of the premises can take place. The time and day in which the scone was purchased is also required as well as the details of who served Mrs Its Disgusting. This will enable the correct premises to be identified and will ensure that no time is wasted trying to locate the bakery. It will also be necessary to find out who actually purchased the scone from the bakery and whether it was eaten on the premises or off the premises. The reason this information is needed is because it may affect the duty of care that was owed as shown in *Donoghue v Stevenson* [1932] UKHL 100.

Furthermore, it will also be necessary to find out whether Mrs Its Disgusting altered the scone in any way by spreading butter and jam onto it or whether she actually purchased the scone like that. This will help to determine liability since there is a possibility that there was no glass in the scone when it left the bakery. Furthermore, it will be necessary to find out whether any

other food was purchased from the bakery and the condition of it. It is also important to find out if there is a likelihood that someone could have tampered with the scone subsequent to it being purchased and before Mrs I-D took a bite out of it. In finding this out, Mrs Its Disgusting will need to be asked whether the scone is in its original state and whether it has been kept in a refrigerator or not. Finally, Mrs I-D's address and telephone number will be needed so that she can be contacted during the investigation and both Mrs Its Disgusting and Mrs I-D will have to sign a food complaint form to state that they are happy for an investigation of the problem to take place and that they will act as witnesses if the Council decide that legal action is appropriate.

The following questions will need to be asked;

Has the food been stored in a safe place

Has the food been tampered with any time after it was purchased

Are there any other packages apart from the one that you have provided me with

Was the scone part of a pack and if so do you have the remaining scones

Could you tell me exactly when and where you purchased the scones and at what time

Can you provide me with specific details as to how you handled the scones from the time of purchase up until you discovered the problem

What did you do with the scone after you discovered the glass

Can you tell me exactly how the food has been stored before and after the problem was discovered

Has you or Mrs I-D been affected by this

What injuries did Mrs I-D sustain as a result of the broken glass and do you have a medical report in relation to this

Are you and Mrs I-D willing to give evidence in court if necessary

Investigation Steps

Once all of the necessary information has been gathered from Mrs Its Disgusting and Mrs I-D it will then be determined whether an investigation is necessary and what steps will need to be taken. Since it is the responsibility of all enforcement authorities within the UK to ensure that food businesses comply with the law (Food Standards Agency, 2011, p. 4) it is evident that an investigation will be needed. This is because, under the Food Safety Act (FSA) 1990 and the Food Hygiene (England) Regulations (FHR) 2006 it is an offence for any person to sell or process food for sale which is harmful to one's health (Rochdale Metropolitan Council, 2012, p. 1). Furthermore, although the food was baked in a bakery in the neighbouring food authority, Elsewhere it will still be appropriate for the enforcement officer in Somewhere Local Authority to investigate this case because this is where the food was actually eaten.

Since Mrs Its Disgusting found glass in a scone she purchased from the bakery it is evident that this would be harmful to her health as this is a serious matter which needs to be dealt with accordingly. Under Reg. 6 (1) of the FHR and section 10 of the FSA it is made clear that an enforcement officer authorised under the FSA may serve a notice on the food business

operator ordering them to improve their business if they have reason to believe that the business is failing to comply with the Hygiene Regulations.

In doing so, the officer will thus be required to;

“ State the officers grounds for believing that the food business operator is failing to comply with the regulations;

Specify the matters which constitute the food business operators failure to comply;

Specify the measures which the food business operator must take in order to secure compliance; and

Require the food business operator to take those measures within a certain time period” (Reg. 6 (1) (a)-(d)).

In deciding if there are reasonable grounds for believing that the food business operator is failing to comply with the regulations the officer would need to enter the premises and take necessary samples of the food being produced. Under Reg. 14 (1) of the FHR officers are permitted to enter the premises of a food business operator whether they are in or outside the authority's area. Furthermore, under Reg. 12 the officer will also be permitted to take samples of food or articles so that they can be used as evidence in the event of proceedings. If any samples are taken, the officer will then need to decide whether they should be examined under Reg. 13 and in accordance with their powers under section 9 of the FSA. Regulation EC 178/2002 provides the general traceability provisions which will provided the officer with the ability to trace and follow the food being produced by the

baker through all stages of production, processing and distribution (European Commission, 2007, p. 1).

As part of the investigation process, it is also necessary for the enforcement officer to send details of the food complaint to; the manufacturer or importer of the food; the bakery where the food was purchased; and the Elsewhere local authority. This is because, the comments provided by the manufacture of the scones and the bakery may be able to establish what caused the problem and an overview of the precautions normally taken will be provided. In addition, they will also be able to demonstrate what steps will be taken in the future to prevent this from happening again. The Elsewhere local authority will also be able to “ provide information on hygiene conditions at the production plant, the precautions taken and how well they usually comply with legal standards” (Embridge Borough Council, 2012, p. 1). Once the investigation has been undertaken, it is then up to the officer to decide whether an offence under the FSA has been committed. Since the bakery has rendered food that is injurious to health, it is likely that an offence under section 7 (b) of the FSA will be found. This is because an article appears to have been used as an ingredient in the preparation of the food which had caused Mrs I-D to sustain injuries.

In deciding whether the appropriate action shall be a warning letter, formal caution or prosecution, the seriousness of the offence and the steps taken to avoid any future mishaps will need to be considered. Regardless of this, however, if the bakery is able to demonstrate that they had taken all reasonable precautions to avoid problems such as this from occurring then

they may be able to put forward the 'due diligence' defense as provided for under section 21 of the FSA. If it can be shown that the person involved in the sale of the scones had acted with due diligence to prevent the commission of an offence from occurring then that person will not be found negligent (Wild and Weinstein, 2010, p. 627). Because of the broad nature of investigations, it is likely that the process will take a number of months since a lot of in-depth information needs to be gathered. This is because unless all of the relevant information is attained, a proper review of the case cannot be made and the due diligence defense will not be made out. On completion of the investigation, the officer will be required to write to Mrs Its Discgusting informing of the action that shall be taken.

If the matter has been resolved informally during the investigation no further action will be taken and the food business complained of may want Mrs Its Discgusting's and Mrs ID's details so that they can send an apology or provide them with compensation. The permission from both ladies will first be needed, however, before any details can be passed on. In deciding what action shall be taken, the officer will need to decide whether the bakery had acted reasonably in order to prevent any risks of contamination and if not a plan of action will need to be devised so that care is taken to "identify and consider the risks of potential sources of contamination in the surrounding environment" (Brennan, 2006, p. 357). Accordingly, suitable controls will need to be developed and implemented so that future contamination is avoided (Sprenger, 2003, p. 229). This will ensure compliance with Regulation 852/2004 which makes it clear that all food business operators must certify the "hygiene of foodstuffs at all stages of

the production process, from primary production up to and including sale to the final consumer” (Europa, 2009, p. 1) in order to avoid damage to health. Compliance with Regulation 853/2004 must also be certified which lays down the specific hygiene rules relating to the microbiological criteria for foodstuffs.

Available Options

There a number of different options available for the investigating officer, yet it would be appropriate to serve a notice on the food business ordering them to make necessary changes to the production process in order to avoid a re-occurrence of this problem. This will require the officer to serve a notice on the food business, yet in order to decide what changes need to be made, the officer will be required to interview all those involved with production. Once this has been done, the officer may also want to undertake legal action so that Mrs I-D can make a claim against the food business for breaching their duty of care towards Mrs I-D. In doing so, it will need to be established that the food business did actually owe Mrs I-D a duty of care, that they breached their duty and that the duty caused the harm as in *Caparo Industries plc v Dickman* [1990] 1 All ER 568. Because Mrs I-D would have been so closely affected by the actions of the food business that they ought to have had her in their contemplation it is clear that they owed her a duty of care. This duty was thus breached by allowing the glass to enter the scene and the glass subsequently caused injury to Mrs I-D’s gums. As a result, it is evident that the food business shall be liable for negligence and that Mrs I-D should be compensated for the damage. This can be settled out of court but if the food

business is un-cooperative; legal action will be the next step. And it will therefore be up to the food business to demonstrate that they acted with due diligence (Atwood and Thompson, 2009, p. 346).

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