

<p>London Borough of Hammersmith & Fulham</p> <p>POLICY & ACCOUNTABILITY COMMITTEE</p> <p>9 September 2019</p>	
<p>FOOD ALLERGIES AND OUR ROLE IN THEIR CONTROL</p>	
<p>Report of the Cabinet Member for Environment, Transport and Residents Services - Councillor Wesley Harcourt</p>	
<p>Open Report</p>	
<p>Classification: For information</p> <p>Key Decision: No</p>	
<p>Consultation: N/A</p>	
<p>Wards Affected: All</p>	
<p>Accountable Director: Sharon Lea – Director of Environment</p>	
<p>Report Author: Graham Morrison Environmental Health Officer</p>	<p>Contact Details: Tel: 020 8753 3964 / 07899 915 286 graham.morrison@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1 The council has a legal duty to ensure that food businesses are compliant with the appropriate food law.
- 1.2 The important issue of allergens has received much media attention over the last 12 months which has helped to highlight the potentially fatal impact that some allergens can have. This report seeks to inform the committee about the differences between allergens and intolerances and provides an overview of the work that the Food Safety team are doing to keep residents and visitors to the borough, safe.

RECOMMENDATIONS

- 1.3 This work is an essential element in maintaining the safety of food sold in the borough and protecting the health and wellbeing of our residents and visitors.
- 1.4 It is recommended that Members note and comment about the key importance and potential impact of this issue and the ongoing work of officers.

2. BACKGROUND AND INTRODUCTION

- 2.1 Intolerances and allergies are not the same thing. Allergic reactions occur when the body's immune system overreacts by producing antibodies in response to a protein in the food. This can affect numerous body organs and can be fatal.
- 2.2 **Food intolerance**, also known as non-allergic food hypersensitivity, is a digestive problem where the gut is unable to process the food fully and is biologically unrelated to an allergic reaction. Intolerances, although unpleasant for those affected, are rarely serious in the way that allergies are, and symptoms can take hours to manifest themselves.
- 2.3 **Anaphylaxis, or anaphylactic shock**, is a severe reaction to an allergen to which the person has already become sensitized by previous contact and can affect multiple organs in the body; it can be fatal.
- 2.4 **Histamine poisoning** is frequently misinterpreted as an allergy. It is caused by excessive histamine usually from the scombroid group of fish and occasionally some other foods. Histamine poisoning is not an allergic reaction but food poisoning and anyone can be affected if the histamine level in the food is high enough. It can be described as an allergic-like reaction.
- 2.5 **Allergens:** UK law defines 14 substances information of which must be given to customers. In Britain, these substances are: celery, cereals containing gluten, crustaceans, eggs, fish, lupin, milk, mollusc, mustard, nuts, peanuts, sesame seeds, soya, and sulphur dioxide.
- 2.6 Food allergies affect some 5 - 7% of infants and 1 - 2% of UK adults¹; extreme cases have resulted in fatalities. 'AllergyUK' estimates 1 – 10% of people have a food hypersensitivity while 20% of the population believe they have². Food allergy is the commonest cause of anaphylaxis, which can be fatal, but the mortality rate is unclear. However, a study using USA and EU data suggested an incidence rate of 1.81 per million persons/year. The same study concluded that up to 10% of young children and 2 – 3% of adults were affected by food allergies, and this percentage was increasing³.
- 2.7 Some infant food allergies resolve out with age, but once a food allergy is established in an adult it is rarely cured. The NHS has advice on allergies and young children and babies; it can be found on the following website: <https://www.nhs.uk/conditions/pregnancy-and-baby/food-allergies-in-babies-and-young-children/>
- 2.8 There has been limited work on adult vulnerabilities, although those who are already seriously ill are likely to suffer more. In the elderly allergic reactions can be disguised by other issues or mistaken for another affliction. All body systems including the immune system alter with age.

¹Parliamentary Select Committee on Science & Technology, 6th Report.

²Association of UK Dieticians, 2015.

³National Center for Biotechnology 2013: US National Library of Medicine (Wiley).

3. PROACTIVE AND REACTIVE ALLERGY RELATED WORK

- 3.1 Officers visit food businesses including schools, childminders and nurseries both as a routine inspection, on complaint, reference from another body, e.g. the Food Standards Agency (FSA), or as part of a sampling programme. Our schools record allergy information provided by parents, and most require a GP certificate.
- 3.2 For allergies, we also review web sites. During these inspections we examine the business' systems for preventing cross contamination when an allergen can become mixed with a meal by mistake, and the information provided to the customer. Schools maintain comprehensive diet and allergy records but for allergies most require a GP's certificate. The standard inspection schedules are explained in paragraph 5.2 below.
- 3.3 The most common 'allergy' non-compliance found on inspection (including web sites) is a lack of suitable information and signage. This could be incorrect information on menus, or lack of a prominent sign offering customers the legally required advice. If the business is unable to resolve the issues, then a Statutory Notice can be served. Failure to comply with a Statutory Notice is an offence likely to result in prosecution.
- 3.4 There are internet and classroom-based courses to help businesses to comply. During inspections and other visits, we regularly advise businesses on where to find information including the FSA website. Also, we include any advice or requirements in writing following inspections.
- 3.5 From April 2018 to June 2019 the team received 17 complaints concerning allergies. There have been seven specific complaints alleging an allergic reaction, from April 2016 to April 2018.

4. OFFICER POWERS

- 4.1 In London, Environmental Health Officers (EHOs) investigate cases of allergic reactions from food, inadequate labelling of food, or inadequate signposting to where information on allergens can be provided.
- 4.2 Issues might arise from inadequate or no information at the point of sale, cross contamination, mistakes in handling or criminally negligent preparation.
- 4.3 Environmental Health Officers have the power to serve Statutory Notices, close a food business that poses an imminent risk to health (for example, a pest infestation), require items to be removed from the food chain, seize food and take it before a magistrate to request that the food be condemned. In serious cases, legal proceedings will be considered in line with our enforcement policy. See section 12 below.

5. ROUTINE FOOD HYGIENE & FOOD STANDARDS INSPECTIONS AND FOOD SAMPLING

- 5.1 Statutory food hygiene and food standards inspections are a principal tool in the prevention of food incidents including allergies.
- 5.2 Businesses are risk rated for food hygiene A – E where A-rated premises present the highest risk. An example of an A rated business is a restaurant where we have little confidence in the controls and serving high risk menu items; the business would require a food hygiene inspection at least every 6 months. Food Standards inspections must be made at least every 12 months (A-rated) or 24 months (B rated), or for the lowest risk (C rated) businesses at least every 5 years.
- 5.3 As food safety and food standards inspection timings are not coincident, we look at the robustness of allergy systems regardless of the next scheduled food standards inspection. In addition to this, labelling and menus are examined during routine sampling programmes.
- 5.4 In addition to scheduled inspections and non-routine interventions (e.g. a complaint visit) we partake in sampling programmes, with other boroughs as part of the North West London Sector Food Group. This provides an enhanced picture of food safety issues. Allergens in food from take-away businesses are part of this programme.
- 5.5 The Food Safety team registered 346 new food business in 2018-2019 which must be inspected within 28 days from when they start trading. The total registered food business for food hygiene and/or food standards is currently 2027. Officers carried out 1040 food hygiene inspections in 2018/19.
- 5.6 Food sampling undertaken in 2018/2019 included four samples which were analysed for the presence of known allergens. All the samples procured by 'test purchasing' were found to be satisfactory. Since 1 April this year, there have been two samples taken that are being analysed for the presence of peanuts following a complaint from a resident who has anaphylaxis.

6. COSTS & EFFECTS

- 6.1 The cost to businesses can be significant when mistakes are made leading to products containing allergens entering the food chain and being consumed by susceptible customers. Consequences can be substantial, varying from loss of custom and reputational damage, to a term of imprisonment for manslaughter. Civil claims by customers against businesses for compensation are also likely to arise.
- 6.2 The impact to those affected customers range from minor to extreme; inconvenience to life threatening and the possibility of fatalities.

7. HEADLINES OF HIGH PROFILE AND TRAGIC CASES IN THE MEDIA

- 7.1 "Chloe Gilbert, 15, had a severe dairy allergy and died in Bath after eating a kebab she did not know contained yoghurt" (<https://www.theguardian.com/uk-news/2017/jun/16/teenager-with-dairy-allergy-died-accidentally-rules-coroner> Also Press Association June 2017)

- 7.2 'Two Indian takeaway workers arrested' after father, 38, dies from severe allergic reaction from curry containing peanuts” (Mail OnLine April 2014 republished May 2019: <https://www.dailymail.co.uk/news/article-2610420/Two-men-arrested-father-38-dies-severe-allergic-reaction-caused-takeaway-meal-containing-peanuts.html>)
- 7.3 A "reckless" restaurant owner has been jailed for six years for the manslaughter of a customer who had an allergic reaction to a curry. <https://www.bbc.co.uk/news/uk-england-36360111>
- 7.4 “Pret a Manger’s allergy labelling was inadequate”, the coroner in the case of a girl who died after eating a baguette from the food chain has said. ... The victim “went into cardiac arrest on a flight after buying a sandwich at Heathrow Airport in 2016.” (<https://www.bbc.co.uk/news/uk-45679320>)
- 7.5 The ‘Pret’ case occurred because it was not clear to the customer, who had a nut allergy, that the product contained sesame seeds. As the product was made on the premises for immediate sale, the law did not require full labelling. Pret has since published a revised policy promising full allergen labelling in advance of likely changes to the law. (<https://www.pret.co.uk/en-gb/labelling-commitment>)
- 7.6 In January 2019 the government (FSA/DEFRA) issued a consultation document to overhaul allergy labelling laws with reference to outlets preparing pre-packed food for direct sale to the customer. The consultation opened on 25th January 2019 and closed on 29th March. Officers responded to the consultation to the effect that these outlets should comply with the full labelling regime applied to pre-packed not for direct sale.
- 7.7 In late June of this year, it has been announced that there will be changes to the following the death of Natasha Ednan-Laperouse.
- 7.8 Under "Natasha's law", food businesses will have to include full ingredients labelling on pre-packaged food. The law, which will apply to England, Wales and Northern Ireland, is set to come into force by the summer of 2021. Businesses will be given a two-year implementation period to adapt to the changes. Some companies have already altered their practices in expectation of this.

8. CONCLUSION

- 8.1 H&F is a cosmopolitan inner London borough, which has seen an increase in developments both commercial and residential. There are over 2000 food business with start-ups registering weekly. The Council has a statutory duty to carry out food safety inspections, and to investigate complaints, by qualified EHOs who are legally competent to do so.
- 8.2 There are several academic theories as to why people develop allergies including genetic, environmental, the ‘hygienic hypothesis’, Caesarean birth, and high consumption of junk food.

- 8.3 Some evidence suggests that the more affluent communities suffer more from allergies than the less affluent, and that the developed countries suffer more than the less developed. But no single theory has found universal acceptance or proof; nobody knows for certain, and it seems unlikely that pure genetics is the sole reason. The genetic heterogeneity of the population has not changed in 50 years, but susceptibility to allergic reactions has increased substantially in the same period. It seems most likely that there are elements of all these theories involved in allergic reactions.
- 8.4 H&F has major entertainment venues and events, including three football clubs, Olympia exhibition centre, Polo, Fevertree Tennis and Westfield. These bring a significant large number of visitors to the borough and benefits local businesses. For this reason, particular attention is paid to compliance in these venues and at large events.
- 8.5 Officers will continue to be proactive and react as needed to individual cases and work to ensure compliance by all businesses large or small.

9. CONSULTATIONS

- 9.1 Officers have taken note of the national issues, consumer concerns, expert opinion, and government advice. We have also consulted our Public Health England partners for accuracy on clinical matters. References to academic publications and other sources are credited in the text.

10. EQUALITY IMPLICATIONS

- 10.1 The Council, when making decisions in relation to any of its functions, must comply with its public-sector equality duty as set out in s149 of the Equality Act 2010.
- 10.2 Food allergies present a worldwide problem and can affect anyone in our community. There are no particular issues in relation to their impact on the areas under the statutory duties contained in the equalities impact assessment for the Food Safety team, but contributes towards the corporate priorities of the council, as set out in the H&F Business Plan, specifically; creating and compassionate council and building shared prosperity.

11. LEGAL IMPLICATIONS

- 11.1 The following legislative provisions cover the legal duties for the Council in relation to allergies:
- 11.2 Cross contamination would be addressed by The Food Hygiene (England) Regulations 2013 and associated Codes of Practice.
- 12.3 Defective, incomplete, or absence, of information is addressed by The Food Information Regulations 2013, which brought into UK law the provisions of European Regulation (EU) No. 1169/2011.

- 12.4 Regulation (EU) 1169/2011 also amended The Food Safety Act 1990 with specific provisions concerning food information. The Act now defines the term 'food information' as having the meaning attributed to it in Regulation (EU) 1169/2011. Section 15A was inserted to effect this. Section 15 provides the offence of falsely describing food.
- 12.5 The Food Safety Act 1990 section 9 empowers the service of a Notice to prevent food from being used, or to be taken before a Justice of the Peace. Section 14 provides the offence of selling food not of the nature or substance or quality demanded by the customer.
- 12.6 The Health & Safety at Work etc. Act 1974, although not specific to food, could be employed in very serious cases.
- 12.7 In cases where gross negligence and a total disregard for the safety of food has resulted in a fatality, the police and the Crown Prosecution Service might (and have) submitted charges for manslaughter under The Homicide Act 1957.

Implications verified by: Champa Gurnani – Senior Solicitor, Legal Services, telephone 020 8753 2763.

13. FINANCIAL IMPLICATIONS

- 13.1 The Food Safety team already undertakes this work and we envisage that the continuation of this statutory duty and changes to the law will not require any additional resources going forward.

Implications verified by: Lucy Varenne – Interim Head of Finance – Environment Department, telephone 020 7341 5777.

14. IMPLICATIONS FOR BUSINESS

- 14.1 The implications for compliant business are limited to ensuring that new employees are aware of the law and have enough knowledge for the business to remain compliant. The implications for non-compliant businesses are both financial and reputational. In the most serious cases the continued operation of the business could be put at risk.
- 14.2 The financial implications to businesses which cause customers to suffer allergic reactions or anaphylaxis can be considerable by way of remedial work, Court appearances, reputational damage, the possibility of civil action by customers, seizure of product, etc. In extreme cases Courts can impose custodial sentences upon food hygiene and food standards failings.
- 14.3 Businesses on which this law impacts will need to redesign packaging/wrapping in line with the requirements for businesses not preparing on the premises (e.g. supermarkets). This is likely to have a bigger impact on smaller businesses with only a few outlets. However, it has always been the case that these businesses must inform customers of allergens so there should be no financial penalty except for individual labels for products. The

government proposes summer 2021 for implementation to allow businesses time to prepare. Larger companies may choose to follow Pret and start sooner.

15. COMMERCIAL IMPLICATIONS

15.1 None, this is a Statutory function with no general power to charge or recharge.

16. IT IMPLICATIONS

16.1 There are no specific IT implications for this work beyond our normal operating procedures. However, this subject carries a greater than normal likelihood of FOI requests by solicitors on behalf of client who are victims, as civil litigation for compensation is likely to arise. If Statutory Notices have been served, we could only respond to an FOI in general terms until the case is closed (so as not to prejudice an appeal or prosecution) and in compliance with the General Data Protection Regulations.

17. BACKGROUND PAPERS

None.