

Food - Case File

You are a fully qualified Environmental Health Practitioner working for Chadwick Valley MDC and responsible for the full range of food safety duties, including dealing with food complaints and initiating enforcement action. It is a warm day in mid-summer when you receive a message from your general office that there is a person in Reception with a food complaint. You go immediately to the counter where you meet a Mrs Higgins who presents you with a plastic bag full of in-shell pistachio nuts which she claims she purchased earlier that morning from the recently-opened 'Nature's Harvest' health food shop, which unbeknown to you has opened in the Wickside area of Chadwick, a district which is popular with students and young professional families.

Mrs Higgins claims that she opened the bag as she was waiting at the bus-stop, and the first nut she shelled was covered in mould, and the next looked OK but tasted 'odd'. As this was not the first time she had had cause to complain about the quality of the produce at 'Nature's Harvest', she decided that she would draw it to the Council's attention. However, she expressly wishes for her identity not to be divulged to the company and is reluctant to make a statement, as she does not wish formal action to be taken against anyone in this case. She is happy for you to deal with it as you wish.

Having taken down the lady's details and wished her good-day, you look carefully at the nuts, and knowing that they have a distinctive colour that might be confused with mould growth, you put one under a binocular microscope and see a web of tiny hairs that you correctly identify as the mycelia of a mould. You resist the temptation of eating one, but you feel that there is good cause to follow-up the complaint. Accordingly, you prepare to visit and inspect the premises, taking with you the department's sampling case, camera and pro-forma food complaint form. As you had no knowledge of the business before today, you check to see if there is a file in the system, but find nothing; indeed no one else has heard of the business save one person who says that she drove past it the previous day and said that there were a lot of young people hanging about outside, presumably attracted as much to the 'lifestyle' promoted by the establishment as to the food on offer.

On arrival at the 'shop' you are immediately struck by the general state of untidiness, the smell of incense sticks burning, and a wide range of vegetarian foodstuffs claiming to be 'organic', 'free-range' and 'healthy'. It is clear that the First Floor is being used as café as 'new world' music and voices of customers are audible, and a pleasant smell of cooking food is apparent.

You are greeted by husband and wife, Colin and Vanessa Sullivan, who indicate that they are the proprietors of the business. They immediately invite you to take some herbal tea with them and to discuss their new business venture.

Whilst the couple are clearly concerned that their customer had cause to complain, Vanessa is adamant that the mouldy nuts are incapable of causing harm. Asked how long they might have had this batch, Colin acknowledges that this was probably from a sack that was delivered in 'February or March', and that this customer might have had the last bit. He points to the rear door and says that all of their stock is stored in a lock-up garage to the rear of the premises.

Your request to inspect the garage store and the café upstairs is greeted positively, though Vanessa urges you to recognise that their business venture is an attempt to offer people an alternative to over-processed foods containing 'poisonous chemicals, pesticides and the like' and to let them try eating from 'nature's harvest' which is vegetarian and 'natural'.

You decide to examine the garage 'store' first and find it to be a corrugated iron structure with an 'up-and-over' door that leaves a 5cm gap at its base. The stock of dried goods like nuts, beans and lentils are contained in hessian sacks and stacked on pallets under a sheet of plastic which clearly has had to be used to protect the food from a leak in the roof. You look down in the corner and there is a small accumulation of mouse excreta, and evidence on the sheeting that a bird might have found its way in at some time. Despite the various breaches in the structure, it is the temperature and humidity of the garage that you remark upon, especially noticeable under the midday sun.

You return to the main premises and go up a set of stairs marked 'The Kitchen – This Way' and from the landing see two doors – one, clearly providing access to 'The Kitchen' where groups of youngsters can be seen eating, drinking and smoking, and the other marked 'WC'. You enter the cafe area, whereupon cigarettes are hurriedly extinguished. Food is being prepared in a fairly rudimentary galley-style kitchen, though the counter has an unrefrigerated cabinet in which are displayed an assortment of dishes containing egg-based flans and quiches, together with pre-cooked bhajis, rissoles and pasta-bakes that are clearly heated through for customers in one of the two micro-wave ovens.

You turn your attention to the sanitary accommodation and find that there are two WCs available, with a wash-hand basin in the lobby serving both. You observe that the toilet seat in the ladies' compartment is loose and the flush mechanism defective, and the basin is only supplied with cold water and a dirty cloth towel is the sole means of drying the hands. Upon asking the assistant preparing the food where she washes her hands, she points to the same WC compartment that you have just left.

You approach the proprietors again, and despite their attempts to make light of the situation, you indicate in no uncertain terms that things are really not satisfactory, and that the argument that mice and birds are 'also God's own creatures' might not stand up in Court. They are sufficiently impressed by the seriousness of the problem that they indicate that with immediate effect they will close the shop and café, so long as you will agree not to serve notices and are prepared to accept that they are doing this on their own volition for the purposes of carrying out a planned programme of 'decoration and refurbishment'.

In keeping with the Council's policy to adopt, as far as possible, a 'soft touch' approach to new businesses, you consult your line manager by telephone and she agrees that an informal approach can be taken in this case, so long as you are confident that the action indicated by the proprietors can be relied upon. It is also agreed that you will put off raising the absence of a 'food safety management system' until the Sullivan's have met with the 'requisite requirements'.

Food – Tasks

Task 1

It comes as some considerable relief to the Sullivan's to know that they will not be prosecuted or served enforcements notices in respect of the contraventions noted, but they agree to sign a letter to the effect that they will not re-open until expressed authorised by the Council to do so. Draft such a letter, explaining the legal requirements and contraventions (citing legislation, where appropriate) as noted in the course of the inspection of the shop and café, and specifically in terms of the following:

- the sale of the 'mouldy' pistachio nuts;
- food storage arrangements in the 'garage', with particular reference to pest control;
- the arrangements for the temperature control of foodstuffs in 'The Kitchen'; and,
- the condition of the WC compartment and sanitary facilities.

(80 marks)

Task 2

Although, not a food safety matter, the issue of smoking on the premises is deserving of special consideration if the message is not to go out to other establishments that the Council is prepared to 'turn a blind eye' when it encounters an offence. Accordingly, you wish to make it perfectly clear what the Sullivan's must do to inform customers and staff of the 'ban', whilst reminding other new businesses of the same. Since the Council's quarterly 'newsletter' for food businesses is just going to press, draft the text (maximum 100 words) for a box to go on the front page of the newsletter specifically referring to the means by which staff and customers should be informed of the 'ban'.

(20 marks)

<p>For the purpose of this examination you should justify any assumptions you have made within the answers given</p>
--

Food - Marking Advice

1. *It comes as some considerable relief to the Sullivan's to know that they will not be prosecuted or served enforcements notices in respect of the contraventions noted, but they agree to sign a letter to the effect that they will not re-open until expressed authorised by the Council to do so. Draft such a letter, explaining the legal requirements and contraventions (citing legislation, where appropriate) as noted in the course of the inspection of the shop and café, and specifically in terms of the following:*
 - *the sale of the 'mouldy' pistachio nuts;*
 - *food storage arrangements in the 'garage', with particular reference to pest control;*
 - *the arrangements for the temperature control of foodstuffs in 'The Kitchen'; and,*
 - *the condition of the WC compartment and sanitary facilities.*

(80 marks)

Letter should contain the normal salutations / valedictions with a suitable introductory sentence confirming the circumstances of the visit and subsequent inspection, and a sentence at the end offering further discussion. References used at the head of the letter should included the address of the premises and the legislation that applies i.e. the Food Safety Act 1990, the General Food Regulations 2004 and the Food Hygiene (England *or alternative*) Regulations 2006

Most importantly, reference should be the voluntary closure of the premises (subject to the agreement indicated by the signing and returning of a copy of this letter) expressly authorised to do so by you. You should indicate here that you cannot agree to go along with the pretence that the closure of the premises is at the Sullivan's own volition (though you might not go to the length of suggesting otherwise). However , it should be pointed out that if the Sullivans were to go back on their word that it may then become necessary (if the 'health risk condition' was met) to serve a Hygiene Emergency Prohibition Notice under Section 8, Food Hygiene (England) Regulations 2006 which would have to be displayed in a conspicuous position visible from outside the premises. (20 marks)

For each of the four main issues to do with the food business, premises and the activities performed therein, the candidate should produce a narrative that covers the following points (citing, correctly, where appropriate, the relevant chapter and paragraph of Annex II of Regulation (EC) 852/2004 on the hygiene of foodstuffs) but ensuring that it presents as a coherent text appropriate to a letter sent to people who are openly ignorant but willing to co-operate. For each or each one, up to 15 marks should be awarded:

Sale of the 'mouldy' pistachio nuts

Reference should be made to the complaint and the fact that on the basis of your examination that this is mould growth and that is unacceptable and aside from constituting an offence of not being of the 'quality' demanded (Section 14, Food Safety Act 1990) makes the food 'unsafe' to eat (Article 14, 178/2002) through the presence of 'extraneous matter' making it unreasonable for it to be consumed in this state, though the risk of this mould containing a mycotoxin (aflatoxin) e.g. *Aspergillus* spp. may indicate unfitness and a serious risk to health if consumed. Given that Vanessa Sullivan has been so adamant that mouldy nuts present no hazard to health one might expand upon the serious damage that mycotoxins can have on human health.

In such a case a prosecution might be successfully taken (General Food Regulations 2004) as there is evidence (including a confession) that the nuts had been stored in a hot and humid garage for an extended period of time, but this is not the preferred outcome and so the matter will not be taken further. However, the lesson should be learnt – one might include reference to the penalties involved and the possibility of civil action in damages - that this is not a sensible way of storing pistachio or any other nut or cereal product, and so consideration should be given to overhaul the garage and provide some means of fixed natural, or mechanical ventilation, or else discontinue the storage of these products.

Food storage arrangements in the 'garage', with particular reference to pest control

Reference should be made to the fact that this is not the best arrangement for dry goods storage, but it being a garage does not automatically rule it out. However, the 5cm gap at the bottom of the up-and-over door means that rodent pests in particular to enter and leave at will and so will need to be sealed, pointing out the requirements of Reg (EC) 852/2004. However, any arrangement where the whole of the fourth wall of the storeroom has to be removed periodically, and possibly frequently, makes it hard to defend as a suitable means of access and egress from the garage. Accordingly, it would be important to suggest how the up-and-over door could be opened on the least possible occasions each day, and this might mean re-stocking the shop just once a day.

If the garage is to continue being used as a food store then it will need to be emptied of food and the roof leak detected and repaired so that food is not dependent upon being covered in plastic to protect it against the elements. The Sullivan's should be disabused of any notion that hessian sacks constitute a sensible means of storing foodstuffs, and the idea seeded that the contents of sacks should be decanted into sealed plastic 'bins' in which case they can be stored on the floor. Otherwise, foodstuffs should be maintained off of the floor and away from the walls to assist cleaning and the detection of pests and evidence of pest infestation. Certainly, the need to consider the employment of an accredited pest control contractor should be raised given the nature and complexity of the premises in general and the special vulnerability of the foodstuffs stored in the garage store. It might be stated that the physical repair of the

structure itself, the decanting of products into 'bins' and changes to storage arrangements all have benefits to pest control, but the use of the means of early detection of infestations of cockroaches, beetles and other stored food pests and rodents is essential to avoid damaging (and costly) litigation and losses through food spoilt by pests. In addition, they should be advised of the public health implications of uncontrolled pest infestations and the fact that, if detected, this would provide the grounds for the immediate closure of the premises or area so affected.

Arrangements for the temperature control of foodstuffs in 'The Kitchen'

There is evidence that the temperature control requirements of Regulation 30 & Schedule 4 of the Food Hygiene (England) Regulations 2006 are being contravened in that there are cooked foodstuffs (bhajis, egg-based flans, pasta bakes) that need to be kept at or below 8°C prior to re-heating and/or service. It is at this point that the need for a 'food safety management system based upon the principles of HACCP' as per Article 5 of Regulation (EC) 852/2004 on the hygiene of foodstuffs should be raised so as to put temperature control into the wider context of hygiene, identifying 'Safer Food Better Business' as a suitable and convenient means of complying with the legal requirement, whilst safeguarding customers. In addition to requiring some sort of refrigerated storage, one would mention temperature measurement and monitoring, specifying that the cooking and re-heating processes should be subject to probing to indicate that a desirable temperature of 70°C (still better, 75°C) had been exceeded for 2 minutes during these processes, and for cold-holding not to exceed 8°C, unless the product was expressly excluded by virtue of the legislation e.g. so long as the flan case or set, egg mixture, remained unbroken. The '4-hour rule' defence available if the temperature of food requiring to be kept chilled exceeds 8°C for this period, might be mentioned, but this is not relevant until such time as some form of refrigerated storage is available; indeed, nothing should divert the Sullivan's attention to this as a priority and condition of re-opening.

Condition of the WC compartment and sanitary facilities.

Before advising on the state of the sanitary accommodation you might explain the limitations imposed by the limited accommodation in terms of customers invited into the cafe area, if need be mentioning the limits. One might choose to mention here that it would be desirable for the staff to have their own toilet accommodation; this might be acceptable whilst the numbers of customers are small, but it is all the more reason why the condition of the WCs and the facilities available at the wash hand basins should be especially good. One might mention here the fact that staff should be provided with hand-washing facilities in the food preparation area as well as in the toilet, but whilst it might be acceptable for the time being, this should be something considered for the future. Indicating that the damaged toilet seat should be re-fixed or replaced, the flush mechanism repaired, and the basin properly supplied with hot and cold water (or water at a suitably controlled temperature) and a suitable, hygienic means of drying

the hands such as disposable paper towels or warm-air dryer (Annex II, Chapter 1, Para 4), there should be reference to the special importance of this because of the use by food handlers, identifying the desire to limit the need to touch surfaces that may be contaminated.

2. *Although, not a food safety matter, the issue of smoking on the premises is deserving of special consideration if the message is not to go out to other establishments that the Council is prepared to 'turn a blind eye' when it encounters an offence. Accordingly, you wish to make it perfectly clear what the Sullivan's must do to inform customers and staff of the 'ban', whilst reminding other new businesses of the same. Since the Council's quarterly 'newsletter' for food businesses is just going to press, draft the text (maximum 100 words) for a box to go on the front page of the newsletter specifically referring to the means by which staff and customers should be informed of the 'ban'.*

(20 marks)

The 100-word text (the key words and phrases are emphasised below in both examples) should make reference to the legislation that makes this an offence (the **Smoke-free (Premises & Enforcement) Regulations 2006**) and the penalties that can be handed down by the courts on the smoker and the food business operator who condones it. There should be reference to the specific requirements detailed in the **Smoke-free (Signs) Regulations 2007** re: **signage**, in this case that **which applies to England**, where signage **should appear at each entrance, in a prominent position, visible to all employees, customers and visitors**. There should also be reference to **the smoking prohibition sign being A5 size or larger and containing the wording "No Smoking. It is against the law to smoke in these premises"**, though suggesting that **alternatives are permitted when relating specifically to the premises itself** (e.g. replace "these premises" with "this hotel" or "this restaurant"). **In addition, secondary, 'employee only' entrances, and entrances to smoke-free premises within other smoke-free premises, require a smoking prohibition symbol of at least 70mm in diameter.**

Alternatively, the candidate might quote from the 'Explanatory Note' at the end of the **Smoke-free (Signs) Regulations 2007** which reads:

Regulation 2 **contains requirements for no-smoking signs in smoke-free premises. Paragraphs (1) and (2) require a no-smoking sign which consists of the no-smoking symbol and words which state that it is against the law to smoke in the premises. That sign is required at all entrances to smoke-free premises except those at which the no-smoking symbol alone may be displayed** under paragraphs (3) and (4). The

exception applies to entrances to smoke-free premises from other smoke-free premises and to secondary entrances to smoke-free premises which are used only by persons who work in them. The words "no-smoking symbol" are defined in regulation 1(2).

It should be noted that the requirements in Scotland and Northern Ireland are the same except that secondary, 'employee only' entrances and 'entrances within premises' should bear a smoking prohibition symbol at least 75mm in diameter, and the premises signage in Wales must contain wording: "Mae ysmygu yn y fangre hon yn erbyn y gyfraith. It is against the law to smoke in these premises."