

Compliance with food safety legislation in small and micro-businesses: enforcement as an external motivator

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Abstract

This paper builds on the "Compliance Process Model" developed by Henson & Heasman (1998). It argues that many of the steps in the compliance decision process are not made internally and independently by small and micro businesses but are influenced by external factors. Many small businesses display a lack of food safety knowledge and skill. This leads to a lack of awareness of hazards that the business might pose to the consumer and a lack of confidence in dealing with food safety issues. Without awareness of hazards within their own businesses, the primary motivation to improve food safety conditions will not come from within, but will be provided by external drivers such as personal contact with enforcement agency staff or by trade association information. The reliance of the business on the enforcer to identify and direct compliance decisions will provide fundamental challenges for the moves within food safety legislation for businesses to adopt a more self-regulatory approach through hazard analysis.

Keywords: Environmental health; law enforcement; law compliance; food safety; small business; SME.

Introduction

Small and medium sized enterprises (SMEs) account for 99.8 per cent of all food businesses within the catering, hotel and retail sectors (Department of Trade and Industry, 2001). Micro-businesses dominate these sectors in terms of the number of enterprises (*ibid*). The Food Standards Agency (FSA) recently stated that 45 per cent of all businesses inspected in 2000 were "found to have breached some food regulations in some way" (FSA, 2002, p.11). This means that a significant proportion of SMEs do not meet the requirements of the food hygiene legislation. This paper concentrates on small and micro-businesses².

It is accepted that small businesses face particular challenges in their business operations. These include: short track records; heavy reliance on niche markets; lack of specialist skills; low cash flow; small asset base and the need to make changes in structure and

ownership at various stages of growth (Confederation of British Industry, 1996). These characteristics of small and micro-businesses impact upon their ability to comply with legislative requirements, in terms of time, skills and resources required to implement improvements.

The difficulties of small firms in responding to regulation has been extensively investigated. From the review of literature across environmental protection, health and safety and food safety it is clear that the attitudes of SMEs, the nature of SME operations, and barriers to improving conditions are similar (see for instance Hillary, 1995; Petts et al, 1999; Petts, 2000; FSA, 2001; HSE, 1998a). There are two main factors that make it difficult for SMEs to comply with regulation and improve environmental health conditions. These are interrelated and are: the nature of SMEs themselves, and the nature of regulation with which they are expected to comply (Fairman and Yapp, 2002).

The Food Standards Agency Task Force report on the burdens of food regulations on small businesses (FSA, 2001) found that whilst small businesses commonly complain that they are excessively affected by regulations, they do not feel that the requirements of food regulations are particularly onerous. The SMEs and their representatives highlighted a number of problematic areas: the demands of Hazard Analysis Critical Control Point procedures (HACCP), enforcement, and keeping up-to-date. HACCP systems were initially designed for food manufacturing (Panisello et al, 2001). According to Mortlock et al (1999) food manufacturers were five times more likely than retailers and caterers to be using HACCP.

Important barriers to food safety improvements and compliance identified by the FSA Task Force are:

- Lack of understanding of the principles of HACCP (see also Taylor, 2001)
- Lack of technical knowledge to identify hazards (see also Taylor, 2001; Rakel et al, 1998)
- Record keeping (fundamental in many risk management systems such as HACCP) is seen as burdensome and overcomplicated (see also Genn, 1993; Hillary, 1995; Taylor, 2001).

² As defined by the European Commission single definition – a small business is one with less than 50 employees and meeting defined financial criteria and a micro business has less than 10 employees within defined financial criteria (EC, 1996)

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- Inconsistent enforcement (see also Petts, 1999),
- Lack of knowledge of enforcement officers (see also Cabinet Office, 2000),
- Difficulties in keeping up to date with legislation (see also Cabinet Office, 1999),
- Limited availability of specialist consultancy-based intermediaries (see also Genn 1993: HSE, 1998b; HSE, 1999), and
- Trade associations may be a useful food safety information intermediary but many food SMEs are not members.

The barriers to SMEs implementing HACCP have been examined by Taylor (2001). She identifies a major barrier to HACCP implementation as the resistance to implementing a completely new system of managing food safety. This lack of motivation to change can be attributed to:

- The belief that existing procedures are safe,
- The remoteness of enforcement, and
- The lack of conviction that HACCP is effective or practical in their businesses.

Instead of focussing on why achieving compliance is difficult in small businesses, this paper concentrates on how small businesses respond when faced with regulation. In particular it aims to examine the decision-making process that takes place within the organisation. By concentrating on the decision-making process, the role of the various actors in the process and the potential of different interventions can be examined.

Henson & Heasman (1998) developed a compliance process model that describes the decision-making process carried out within a business when faced with a legislative requirement. They base their analysis of the compliance process within companies on work carried out by French et al. (1991). The French work also forms the basis of work by Loader and Hobbs (1999) on understanding the response of companies to regulation. Neither work is specific to SMEs. Henson and Heasman (1998) based their model on a questionnaire survey of food business (67 responses) that was then developed into 24 interviews with technical directors. Their model of the compliance process is shown in Figure 1.0.

This paper examines the applicability of this model to small and micro-businesses. It describes part of the work being carried out on behalf of the FSA on evaluating enforcement interventions in SMEs. The external interventions that impact upon the SMEs decision-making process in relation to food safety legislation are investigated and the potentially most effective local authority interventions are discussed for each relevant stage of the compliance process. The first part of the paper describes how data was collected in order to develop a model of compliance in small businesses. The second part concentrates on how the qualitative data gathered enabled the Henson and

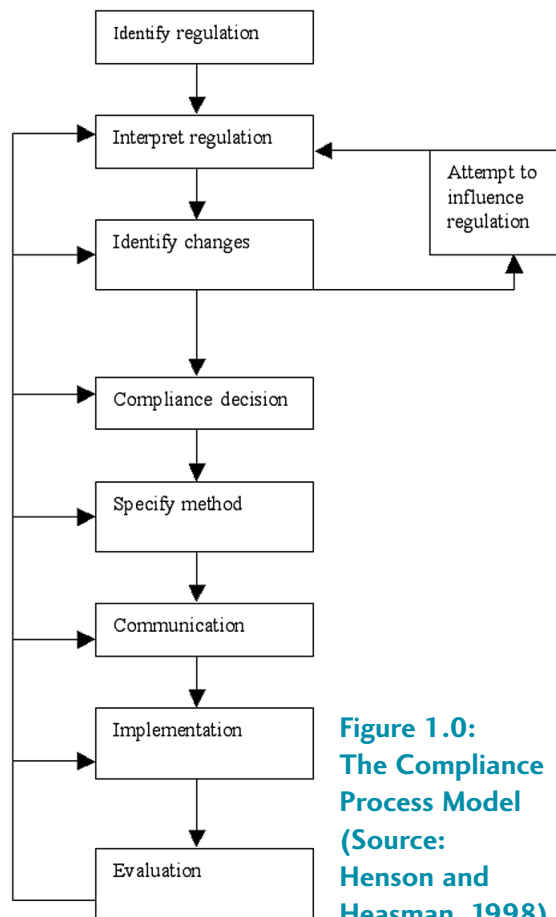


Figure 1.0:
The Compliance Process Model
 (Source: Henson and Heasman, 1998)

Heasman (1998) model to be adapted for small businesses. The final conclusions examine the importance of the enforcement process in the compliance decisions of small businesses.

Part one: data collection

Data on the nature and meaning of compliance in small businesses, the motivating factors, the resources available to small businesses in relation to food safety and the effect of intervention were gathered through semi-structured, qualitative interviews³. These interviews were held with small businesses, trade associations, regulators, enforcement bodies, and consumer groups. These organisations were selected from various sources, including the attendees at a DTI Enforcement Conference in November 2001, the FSA's standard list of consultees, and businesses registered on the Internet – www.brainstorm.co.uk/TANC. Several further groups were contacted as a result of information obtained from these gatekeepers⁴. Small businesses were contacted through the gatekeepers of trade associations, community and business development projects and enforcement bodies. Selection of interviewees was carried out purposively. All major food business and enforcement gatekeepers were

³ A copy of the interview protocol is available upon request.

⁴ A full list of the organisations contacted, and those participating in the interview process is available upon request.

contacted. SME selection was not random and there is likely to be bias in the ones interviewed as these were ones with links either to trade associations or enforcement agencies. It is likely therefore, that the SMEs interviewed would make up the "best" and the "worst" in food safety terms. Eighty five groups and businesses were contacted and full interviews were held with fifty.

The interview responses were coded and analysed in relation to the topics covered in the interview protocol. The compliance process model adopted by Henson & Heasman (1998) was considered in the light of the qualitative data gathered and adapted to specifically relate to small businesses. This adapted compliance model will form the basis of an evaluation of enforcement approaches used by local authorities. The following section outlines the model of the compliance process in small businesses based on that of Henson and Heasman (1998).

Part two: Findings and interpretation – The development of a compliance process model in small businesses

The qualitative data gathered allowed the development of an SME-specific compliance process model. This consisted of five stages; identification and interpretation of the legislative requirements; specifying the method of compliance; making a decision to comply; implementing this method, and

monitoring and evaluating the changes.

There are three main differences between the model developed here and that of Henson and Heasman. First, the stages of identification and interpretation are merged as we found no evidence for distinct steps. Secondly, the compliance decision step is altered.

In the original model, companies will make a decision to comply with regulation based upon economics, feasibility or market reasons. They may choose to fully comply, exceed regulatory requirements, partially comply or fail to comply. In our model developed for SMEs, the step of specifying the method of compliance comes before the making of the compliance decision.

From our initial research it appeared that small businesses will make decisions whether to comply based upon what exactly is being required of them. Finally, the separate step of communication is merged with implementation as it appeared that in many small businesses formal communication routes are not used.

The compliance process model for SMEs is shown in Figure 2.0. It also indicates the main actors in the process and types of intervention that may influence decision-making.

Stage one of the process – Identify and interpret Regulations

Henson and Heasman (1998) divide this stage of the process into two distinct phases – the identification of regulations, followed by their interpretation. From the data gathered it appears that small businesses feel little responsibility to carry out this stage of the compliance process themselves. There is a complete reliance on others for information about regulations and their effect. The predominant source of information comes from the local authority Environmental Health Practitioner during the regular food safety inspection, although targeted information from trade associations was cited as an important source from those small businesses that belonged to one.

Confirming previous research (FSA 2001; Cabinet Office 2000; Cabinet Office 2001), the quantity of legislation, not only food safety but also employment law etc, was identified by small

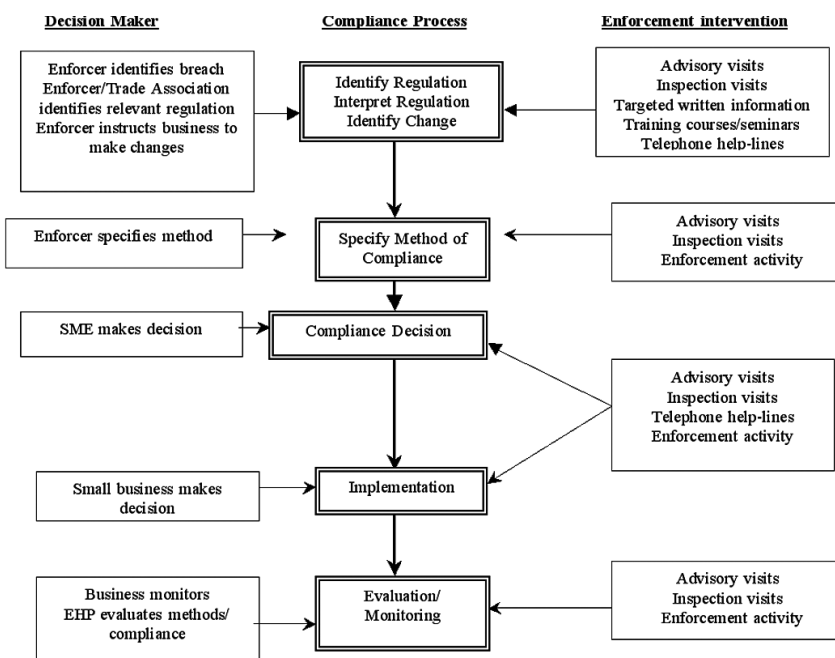


Figure 2.0: The Compliance Process Model for SMEs (adapted from Henson & Heasman, 1998)

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businesses as a reason for their not being able to identify legislative requirements.

"There is so much else to think about"
District Council

"Food hygiene legislation is impossible to keep up with"
Takeaway shop staffed by proprietor.

The consensus was that the enforcer would advise them of any legislative requirements during the inspection visit, or would even "drop by" to the business to notify them of changes in the legislation. The other sources of information noted by the expert groups were not mentioned by the small businesses. One of the most rapidly developing sources of information – the Internet – was dismissed by small businesses as irrelevant to the day-to-day running of their business:

Henson & Heasman (1998) also note that in smaller

Source of information	Type of information provision
Local Authority	Leaflets Websites Newsletters Inspection visits Advisory visits Training courses
Trade Associations	Newsletters Briefing sessions Websites Individual advice
Other sources	DTI Small Business Service information (website and personal advice) Business Link network Food Standard Agency website Environmental Health Consultants (visits, training, briefing notes, reports)

Table 1.0: Information sources identified by experts, enforcers and trade association to assist small businesses in identifying and interpreting regulations

Source of information	Type of information provision
Local Authority	Inspection visits Advisory visits
Trade Associations	Newsletters Individual advice
Other sources	Environmental Health Consultants (visits, training, briefing notes, reports)

Table 2.0: Information sources identified by small businesses as assisting in identifying and interpreting regulations

firms the responsibility for these stages usually rests with one individual, often supported by a trade association. Table 1.0 shows the range of information sources available to small businesses as identified by experts, enforcers and trade associations. Interestingly, when asked where they obtain information to assist in identifying and interpreting regulations, small businesses only identified two main sources - both providing tailored and specific information. These are shown in Table 2.0.

Total reliance on local authority enforcement staff was commonly cited by small businesses, trade associations and enforcers themselves:

"It's the only option we have"
Caterer, <10 staff

There appeared to be a belief among small businesses that identifying and interpreting regulations is not something in which they need to take an active role.

"We don't use the Internet"
Caterer, <10 staff

[There is] no time to go on the Internet
Caterer, <10 staff

This lack of impact of the Internet as an information source to small businesses confirms other work (HSE, 2000a; HSE, 2000b).

Stage two of the process – Specify the Method of Compliance

The data from gatekeeper groups and the small businesses highlights an overwhelming reliance on the enforcer to assist in specifying what the business needs to do in order to comply. Advice from the local authority Environmental Health Practitioner is sought at the time of the inspection visit, where a range of options may be discussed. Ultimately the small business determines the method of compliance. However, comments from the business

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owners/managers indicate that the Environmental Health Practitioner is responsible for guiding this decision:

"We do everything that we are told to"
Caterer, <10 staff

"Frequently they won't have a full understanding of quite why they're doing it"
District Council

Although other information sources are available (for example industry guidance notes, trade association advice), small businesses do not access this information themselves. Other "proactive" methods for seeking out information were mentioned by some groups, including telephone helplines and training courses:

[Training courses] "are very good but time consuming"
Retailer, <50 staff

[Telephone helplines] "take the sting out of the tail"
Retailer, <50 staff

Whilst some of the small businesses thought that these were helpful, there was an inference from some of the responses that they would just rather be told exactly what was needed for that business at the time of the inspection (for example the above quote on training courses – it is too time consuming to find out the information for themselves). Businesses appeared reluctant to take on any responsibility for making decisions about compliance which involved going out and getting hold of the information for themselves:

"HACCP doesn't fill me with horrors...provided that someone can show me a straightforward way of following it through"
Retailer, <50 staff

Stage three of the process – the compliance decision

Whilst external bodies can influence this stage of the process, it is ultimately the small business that makes this decision. Henson & Heasman (1998) recognised that the compliance decision is more complex than simply deciding whether or not to comply, and break this stage down into a number of options. The company may decide to act above and beyond minimum legal requirements "opportunism". The company may choose to comply fully or partially with the requirements or may choose not to comply at all. The company may decide to "exit" and cease trading as a result to imposed legal requirements.

The nature of the compliance decision differs between large and small companies. Large companies with their access to internal expert advice will base any decision upon legislative requirements:

"large businesses have the resources and personnel who are specifically dedicated to enable them to comply with all legislation"
Trade Association.

Small companies, in contrast, base their decision on the requirements set down by the enforcer at the time of the inspection, rather than on a knowledge of the legislative requirements:

"We do everything we're told"
Takeaway shop, staffed by proprietor

By relying on information and guidance from the enforcer, the small company is effectively shifting the responsibility for identifying problems within their business onto the enforcer. Whilst it is apparent that the decision is heavily influenced by external interventions, it is ultimately the small business that makes the final decision.

There appears to be significant differences between large and small companies in the decisions that they make. Small companies are very unlikely to act above and beyond the minimum legal requirements although "professional award schemes" recognising high standards and good practice by trade organisations (eg Seafish and Guild of Quality Butchers) may act as an incentive. Local authority hygiene awards are also offered by some authorities, but do not appear to encourage small businesses to raise standards further than is necessary:

"It wouldn't encourage us"
Takeaway shop, staffed by proprietor

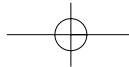
"We should do it [food hygiene] anyway"
Retailer, <10 staff.

Full compliance:

Two related themes emerged from the interviews with small businesses: they believed that they were fully compliant with the law and that their operations were not capable of harming the public. The businesses believe that they are fully compliant if they have done what the enforcer has told them to do when an inspection is undertaken, rather than because they are aware of the legislative requirements that apply to the business. From the interviews it is evident that the majority of small businesses are striving to be fully compliant. The general consensus from the expert, trade and enforcement bodies is that this is not what is actually being achieved. Where full compliance is the aim of the small business they will have a commitment to food hygiene in that they will be prepared to allocate resources – in terms of staff, time and money – in order to comply with legislation:

"We comply with everything"
Caterer, <10 staff

Whilst none of the businesses stated that their business was not capable of harming the public, it was noted that few of them stated that prevention of causing harm was the reason for complying with the law. The main reason for compliance with food



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safety legislation is the fear of being prosecuted and the adverse publicity accompanying such action:

"They don't want to be prosecuted or closed down"
Muslim Council of Britain

"I worry about being prosecuted"
Retailer, <10 staff

"People are frightened of prosecution..... the fear is not governed by the prosecution but the effect on the food business you lose your livelihood and your future"
Takeaway shop, Staffed by proprietor

Another reason given was to reduce the amount of attention from the enforcer:

"We don't want to be caught"
Caterer, <50 staff

[SMEs] *"don't like being pestered"*
Health and Safety Executive

One interesting point from the small business interviews was that none (with the exception of the butchers) believed that their business was capable of causing a food poisoning outbreak. The small businesses did not appear to associate food poisoning, and trying to minimise the likelihood of it occurring, with the existence of food safety legislation:

"HACCP doesn't help me... the legislation is too complicated and irrelevant"
Takeaway shop, Staffed by Proprietor

"They don't think food hygiene is relevant to them"
District Council.

This paints an anomalous picture with small businesses believing they comply, not perceiving food risks within their businesses and but still appearing to be afraid of prosecution.

Partial compliance:

Whilst small businesses consistently believed that they fully complied with food safety legislation, the gatekeeper groups firmly believed that there was actually only partial compliance with legislation. Henson & Heasman (1998) also recognised that *"small firms are more likely to adopt partial or non-compliance as a strategy"*.

It is clear that prestige bias may have been a factor in small businesses asserting their compliance with the law. A number of the interviews with small businesses were carried out in the businesses premises and it was apparent that the businesses did not fully comply. For example, interviews were conducted with a retailer whose shop ceiling had partially collapsed and a restaurateur who believed that consideration of

hazard analysis was "not necessary" for the business. When confronted with the obvious non-compliance the business owners asserted that they believed they had complied because the enforcer had not identified the defect or omission as a contravention. This exposes the difficulties in defining the meaning of compliance to small businesses. A theme emerged from the business interviews that small businesses believed they complied because they had not been told they did not. This is not a view of compliance held by enforcers or regulators and has important implications for enforcement.

Where small businesses rely on others to tell them whether they comply with food safety legislation, they will have little motivation to improve further unless they are told to do so by the enforcer. This, together with a belief that their business does not pose any real threat to public health, introduces fundamental obstacles to the improvement of food safety conditions within small businesses. This research reinforces that of Henson & Heasman (1998) and highlights a reliance on the enforcing officer to identify areas of non-compliance. Unless and until these breaches are noted by the officer, the small business will believe that they comply with the law and will continue running a business that only partially complies with food safety legislation.

Non-compliance:

Whilst some small businesses rely entirely on the advice of the enforcer, other small businesses have a high level of knowledge and may disagree with the 'experts' view. Several small businesses interviewed stated that they have not always followed the requirements of the enforcer:

"I comply unless it is not feasible or not going to improve the food safety"
Takeaway shop, Staffed by proprietor

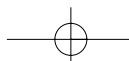
Small businesses may well have adequate knowledge and commitment to food hygiene but feel that the law is "irrelevant" to them. These businesses need a different enforcement approach to those with a more limited knowledge.

It was generally accepted by enforcers and experts that there will always be a sector of business that will not comply with food safety legislation, either due to a lack of knowledge or because it is simply not a business priority:

"They have different priorities"
City Council

[They are interested in] *"buying the product, selling the product. Anything else is secondary"*
Muslim Council of Great Britain

Several groups commented on the importance of educational background in influencing the level of compliance:



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"Food safety is a basic skill learnt from my mother"
Takeaway shop, <10 staff

"The attitude is dominated by the way they've been brought up"
Muslim Council of Great Britain

Stage four of the process – Implementation

Once a method of compliance has been specified, it must be implemented. Unlike the Heasman and Henson (1998) model, the data from small businesses did not support a separate stage of formally communicating the compliance strategy. In very small businesses management structures are usually very simple with the owner or manager taking responsibility for all management issues. In such structures, top-down communication of proposed changes are likely with the actions of the owner/ manager being important. This implementation step is likely to be the second and final "proactive" step to be taken by the business in the compliance decision process (the first being the actual compliance decision). Visible and active enforcement action is seen by businesses as a primary motivator to ensure that the new activity is implemented within the small business.

Stage five of the process – Evaluation and Monitoring

As small businesses appear to believe they comply until they are told they do not, monitoring and evaluation of changes is unlikely to occur. Where legislation attempts to force businesses to monitor (for instance the monitoring documentation required with HACCP or temperature controls), there appears to be a belief that it is unlikely that small businesses carry out this activity unless they are continually and consistently reminded to by the enforcer. Several comments were received by groups about the fact that small businesses believe:

"if they have the paperwork they're OK"
Trade Association

This was also seen in pest control contracts. Once a contract was in place, no further action was taken by the business - they did not read the contractor's report advising of a rodent infestation, let alone instruct the contractor to take any action to deal with it.

Part three: conclusions; the impact of enforcement on the compliance process model for small businesses

Small businesses have particular characteristics, and the process through which they make decisions as to whether to comply with legislative requirements will differ from those in larger businesses. For large

companies, the entire process is an "internal" one, with external influences maintaining the pressure on them to continue with the process. The main motivator to comply will be fear of negative publicity and subsequent impact on trade. In contrast, in small businesses the whole process is driven by external interventions, predominantly by the enforcer during the inspection visit. From the interviews carried out it can be seen that the small business will only be involved proactively in the process when it has to make a decision whether or not to comply, and when it has to implement a chosen compliance method. What small businesses mean by compliance is particularly interesting and has major implications for enforcement policy. Small businesses appear to believe that unless an enforcer has identified a problem that needs rectifying they are in compliance with the law. They believe that responsibility for identifying problems rests with the enforcer, not themselves.

This is exactly the situation identified in the UK in the early 1970s that existed in businesses in relation to health and safety law, which led to goal-based, non-prescriptive regulation (Robens, 1972). With identifying non-compliance and specifying the necessary action seen as the enforcer's responsibility it is clear that for small businesses the external actions of an enforcement body will be crucial in improving food safety conditions. Figure Two summarises the compliance process in small businesses, it highlights the main decision-maker in each stage, and the potentially most effective local authority intervention for each step.

Whilst such attitudes prevail within small businesses the self-regulatory culture being encouraged in the use of hazard analysis and HACCP approaches will be difficult to achieve. Small businesses appear to lack the skill and knowledge necessary for them to be able to identify hazards within their premises. This leads to confidence problems in identifying and rectifying problems. It can also lead to over-confidence and a belief that no hazards exist and that the public will not be exposed to food safety risks. This lack of knowledge contributes to the mistaken belief by many small businesses that they comply with the law.

Discussions within the professional community involved in enforcing food safety legislation often concentrate on whether education of small businesses or strict formal enforcement is the most effective approach in interventions. Clearly, the fear of prosecution expressed by small businesses might indicate that prosecutions within a local authority area would motivate other businesses to comply. However, for such a deterrence strategy to succeed, small businesses would have to relate the reasons for a prosecution in another business to the problems that exist in their own. When the lack of knowledge and awareness of hazards within businesses is considered and the general belief that they comply, it is clear that deterrence may not be effective.

The perceived need to be told what to do by an "expert"

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reinforces the educational role of the enforcer. If businesses are relying on a visit from the local authority, then it is vital that visits are carried out on a frequent basis. Advisory visits – of either short or long duration – focuses the small business owner or manager’s attention on food safety issues and the necessary measures within the business operation. Further, any type of physical reminder of the existence of enforcers will maintain pressure on businesses to implement compliance decisions, for example advisory visits, press releases, newsletters, and formal enforcement activity.

Advisory visits, particularly those of short duration, will keep businesses focused on the need to undertake these activities. Without these, requirements may be overlooked until the next inspection is carried out. Several ‘drop by’ visits throughout the year may remind small businesses that food safety legislation needs to be adhered to consistently, and ensure that there is not a “slackening off” between inspections.

Leaflets and newsletters may be useful to remind of enforcement activity in the area and to remind businesses of their continuing obligations. Local authority enforcement action should educate small businesses as to their responsibilities about food safety hazards, inform them of the necessary action within the business, and take appropriate formal enforcement action against those businesses that cannot be persuaded to improve conditions. As such both education and enforcement play an important role.

Acknowledgements

This research is funded by the Food Standards Agency. However, this paper covers the first stage of the research and reflects the opinions and findings of the authors, and not necessarily those of the FSA.

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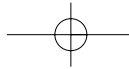
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