



Briefing

The Food Enforcement Lottery

Recent scares over chicken safety and food fraud have highlighted the importance of effectively policing the food industry to prevent consumers from becoming ill or being misled. Food businesses are ultimately responsible for complying with food legislation, but consumers also need to be able to rely on an effective system of enforcement that ensures they do this. Our latest assessment of local authority enforcement shows that there is considerable variation around the country and that a more robust system of food law enforcement is urgently needed.

In February 2014, Which? assessed how local authority food enforcement, over-seen by the Food Standards Agency (FSA), was working. This revealed that some local authorities were performing well, but also that many were struggling to meet inspection targets, ensure compliance and conduct food testing. We made a series of recommendations aimed at making more effective use of limited resources including: improving intelligence-gathering and co-ordination; ensuring effective tools to achieve compliance and improving consumer information through mandatory display of hygiene ratings.

Twelve months on, we have re-assessed performance using the FSA's Local Authority Enforcement Monitoring System (LAEMS) data for 2013/14¹ and found changes, both good and bad for consumers, across the authorities. It is clear that the system is under strain in some parts of the country. Food law enforcement needs to be reviewed and strengthened to ensure that it is fit for purpose to deal with the nature of today's food businesses and risks. A more strategic approach to enforcement is needed that makes more effective use of limited resources and skills and ensures consumers are effectively protected wherever they live.

Main findings

- Consumers have high expectations of local authority food law enforcement with 96% of people saying that it is important that local authorities ensure compliance with food hygiene rules and 91% in the case of food labelling rules.
- Some local authorities are ensuring a high level of compliance, but others are struggling to do so.
- Cherwell, Brentwood, Broxbourne, Basingstoke and Deane and Hartlepool topped our ranking; Enfield, City of Edinburgh, Lewisham, Ealing and Harrow were the poorest performers overall.
- Bexley, previously the poorest performing authority, is no longer among the worst performers.
- The North East of England featured most prominently in the top 10% while London and Scottish local authorities were most likely to appear in the bottom 10%.
- In the year following the horsemeat scare, there was a 14.1% increase in food composition testing and a slight increase in food standards interventions of 2.8%.

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Food law enforcement

Food businesses are responsible for compliance with hygiene and standards rules, but local authorities have an important role ensuring that they do this. Food businesses are required to register and should then be rated for risk to determine the frequency that enforcement officers inspect them. The number of businesses and nature of the risks they present will vary around the UK. Our research shows that consumer expectations can often differ from the reality of what authorities are able to deliver.

Some local authorities have responsibility for both hygiene and standards work, such as unitary authorities and London Boroughs. Where there is a two-tier system of local government, County Councils have responsibility for Trading Standards enforcement work and District Councils have responsibility for hygiene work, carried out by Environmental Health Officers and support staff. In Scotland, Environmental Health Officers do both standards and hygiene work and this is also becoming more common in other authorities where resources are tight.

There were 622,015 food establishments registered with local authorities and a total of 2,449 full time equivalent local authority staff (1,821 enforcing food hygiene rules and 624 enforcing food standards) in 2014/15. This is a reduction of 3.2% compared to 2012/13 and varies nationally.

Our latest food enforcement surveyⁱⁱ shows that consumers have expectations of local authority food law enforcement work which do not always reflect the reality on the ground:

- 96% of people say it is important that local authorities ensure that food businesses comply with food hygiene regulations and 91% think the same for enforcement of food labelling regulations.
- 9 in 10 (89%) say that food businesses should be inspected to ensure that they are complying with food hygiene requirements before they start to sell food to the public. Eight in 10 (79%) wrongly assume this to already be the case.
- 9 in 10 (91%) would be concerned if constraints on local authority resources meant that food businesses in their area were no longer inspected for food hygiene regulations - and 86% would be concerned if they were inspected less regularly.
- In the case of food labelling and standards enforcement, 86% would be concerned if constraints on local authority resourced meant that food businesses in their area were no longer inspected for compliance - and 81% would be concerned if they were inspected less regularly.

Food hygiene

We have ranked 398 local authorities for their performance on food hygiene using the data that they submit annually to the FSA's Local Authority Enforcement Monitoring System (LAEMS). The most recent data covers 2013/14 and we compared authorities using three indicators:

- *The proportion of A,B and C risk premises (medium and high risk) that are compliant with food hygiene requirements.* This reflects whether or not they are fulfilling their role of ensuring food businesses are able to comply with hygiene law.
- *The proportion of food premises in their area rated for risk.* This reflects their ability to keep on top of food businesses opening in their area, rate them and therefore determine future inspection frequency.

- *The proportion of planned interventions they carried out at rated premises.* This reflects the extent to which they are pro-actively trying to ensure that businesses that are not complying with hygiene requirements, improve their standards.

We scored each local authority against the UK average for each of the three measures, then combined those scores giving 50% of the weighting to the percentage of compliant medium and high risk premises - as the main purpose is to ensure compliance - and 25% of the weighting to each of the other two factors. The full results can be found at which.co.uk/foodhygiene.

The best performers

Once again, Cherwell and Brentwood District Councils came out as best performing overall, managing to ensure levels of 98.2% and 99.4% compliance with hygiene requirements for their medium and high risk food businesses.

Top 10 for hygiene enforcement

Local Authority	Region	Total no. of premises	% food premises rated for risk	% broadly complaint A, B and C (medium and high risk) businesses	% enforcement interventions achieved	Previous position (out of 395 rather than 398 LAs)
1. Cherwell (best)	S. E England	1167	100.0	98.2	100.0	1
2. Brentwood	E. England	692	98.4	99.4	100.0	2
3. Broxbourne	E. England	821	99.6	96.0	100.0	17
4. Basingstoke and Deane	S.E England	1375	99.6	96.0	99.5	3
5. Hartlepool	N. East	838	100.0	95.1	100.0	34
6. Ballymena	N. Ireland	996	98.4	97.3	95.6	6
7. Gwynedd	Wales	2121	99.4	94.9	99.6	22
8. Rossendale	N. West	758	97.2	96.6	100.0	8
9. High Peak	E Midlands	1099	97.8	95.5	99.5	9
10. Weymouth and Portland	S. West	882	97.5	96.1	98.2	23

There have been some noticeable improvements. Hartlepool ranked at 34 last year came 5th and Gwynedd, previously 22nd came 7th. This also meant that Gwynedd was the best performing Welsh Authority, in contrast to Anglesey last year. Ballymena was once again in 6th position and the best performing authority in Northern Ireland. No Scottish authorities came in the top 10.

The local authorities that had improved most since last year's analysis¹, along with their current and previous position, were as follows and included three from the East Midlands (Newark and Sherwood, South Derbyshire and Oadby and Wigston):

Newark and Sherwood - 342 to 131

South Derbyshire - 307 to 98

¹ The ranking was based on 395 local authorities in 2012/13 and in 398 in 2013/14.



Reigate and Banstead - 256 to 46

Winchester - 240 to 33

Oadby and Wigston - 350 to 149

The Poorest Performers

Six London local authorities and three Scottish ones were included in the poorest performing. The London Borough of Enfield and City of Edinburgh were the worst performers overall. This means that, at a level of 54.1% compliance, people living in Enfield have almost as much chance of walking into a non-compliant medium or high risk business as a compliant one.

Bexley that was previously bottom of our ranking has moved up to 379th. East Dunbartonshire which was the worst performing Scottish authority based on 2012/13 data - and worst authority overall for levels of compliance - has also moved up the ranking, with around three-quarters of its medium and high risk businesses compliant, compared to less than half previously.

Ceredigion was the poorest performing Welsh authority in 303rd place and Moyle was the poorest in Northern Ireland (343rd).

Bottom 10 for hygiene enforcement

Local Authority	Region	Total no. of premises	% food premises rated for risk	% broadly complaint A, B and C (medium and high risk) businesses	% enforcement interventions achieved	Previous position (out of 395 rather than 398 LAs)
398. Enfield (worst)	London	2468	87.1	54.1	79.2	386
397. City of Edinburgh	Scotland	5905	82.4	68.1	55.3	385
396. Lewisham	London	2382	82.4	69.2	52.3	376
395. Ealing	London	3155	88.4	63.8	57.9	394
394. Harrow	London	1537	82.9	69.4	57.4	390
393. Perth and Kinross	Scotland	2054	76.0	75.5	86.5	Not rated
392. Falkirk	Scotland	1411	87.5	62.1	97.2	378
391. Birmingham	W. Midlands	7596	91.1	65.5	71.1	319
390. Camden	London	3655	83.4	81.8	44.8	372
389. Brent	London	2556	96.3	75.7	19.1	370

The local authorities that had dropped the furthest in our ranking² included three from the East of England:

Fylde - 356 from 124

Welwyn Hatfield - 305 from 111

North Hertfordshire - 378 from 199

² The ranking was based on 395 local authorities in 2012/13 and in 399 in 2013/14.



Cheltenham - 261 from 88

Portsmouth - 238 from 77

National and regional variation

Our research highlighted a lot of variation on a regional basis. We looked at which regions had the most authorities falling in to the highest and lowest 10% for performance. London and Scotland had by far the highest number of authorities among the poorest performers, whereas the North East stands out for having the highest proportion of authorities in the best performing 10%.

Percentage of Local Authorities ranked as best and worst 10% in the UK

Region (with Country)	%ge of LAs in worst 10%	%ge of LAs in Best 10 %
East Midlands, England	5%	13%
East of England	14%	11%
London, England	35%	0%
North East, England	0%	25%
North West, England	8%	13%
Northern Ireland	0%	12%
Scotland	26%	0%
South East, England	4%	13%
South West, England	6%	14%
Wales	0%	10%
West Midlands, England	13%	7%
Yorkshire and The Humber, England	10%	0%
Total	10%	10%

Factors affecting good performance

We contacted the best and worst performers as well as those that had seen the greatest movement - both good and bad - to find out what could explain the differences. Several common factors emerged from the local authorities that topped our ranking. The aspects highlighted by those that had performed the best included:

- Experienced and dedicated officers - with some authorities (eg. Cherwell and High Peak) saying that they worked to ensure compliance during evenings and weekends as well as working hours.
- Strong management, such as targets to achieve 100% of inspection targets with checks and contingency plans in place in case of staff absence (eg. Broxbourne).
- Adoption and promotion of the Food Hygiene Rating Scheme which had helped to incentivise compliance in the area (Hartlepool for example is promoting display of the scheme with FSA funding and Basingstoke and Dean noted the scheme is driving up compliance).
- A focus on helping businesses comply through courses and one to one sessions (eg. Ballymena).
- Maintaining up to date databases of businesses in the area, including co-operation with other relevant parts of the local authority (such as planning and licensing) to keep on top of new businesses (eg. Broxbourne).
- A focus on regional co-ordination and sharing of best practice with neighbouring authorities (eg. Weymouth and Portland work closely with other District Councils and the County Council in Dorset through a group annual business plan - as well as through South West regional meetings).

Bexley, which had moved from bottom place, has put additional staff in place and increased how frequently it inspects the poorest performing businesses. Other authorities that had made noticeable improvements attributed this to a change in ways of working.

Reasons for poor performance

Of the poorest performing local authorities that responded:

- Lewisham felt that its figures don't reflect the current situation: it took a dip during the period that the data covered because of staff shortages and officers taking on additional responsibilities.
- City of Edinburgh told us that it has adopted a policy of targeting the highest risk premises. It focuses on controlling risk of cross-contamination and raising the standards in the poorest performing premises.
- Ealing put its performance down to the large number of premises in the area including a large number of food manufacturers, restaurants, cafes and shops.
- Brent told us that it had identified a need to improve and following an FSA audit has recruited additional staff to increase inspection capacity and temporary staff to deal with overdue inspections. It will consider if further change is needed in Spring 2015.
- Camden has placed two additional staff in the food safety team because of the high demand and large turnover of businesses. It has also recently received an FSA grant to promote display of the FHRs.
- Birmingham has strongly refuted its position in our ranking. It told us that there had been problems with the data that it submitted to the FSA because of IT problems and so it did not think that its ranking reflected the situation in reality. It also disagreed with our approach on the grounds that : *“To imply that Birmingham City Council is a failing food authority, on the basis businesses we are inspecting have problems and are non-compliant, is not logical. This is akin to holding an external auditor responsible for the failures of the audited company.”* Birmingham is the largest local authority in the UK, which monitors more than 7,500 registered food businesses.
- Falkirk feels that the score for percentage of unrated premises makes it appear worse than it believes to be the case. It told us that these unrated premises are low risk premises or premises that it deals with through a less formal route such as childminders.

Among the reasons why some authorities' performance dropped so significantly from our rating last year was an increase in new businesses opening. North Hertfordshire told us that although its level for broadly complaint businesses had dropped during 2013/14, it believes that it has made a marked improvement in the last year. Fylde told us that it was a small authority and was focusing on its higher risk businesses.

Food standards and testing

The FSA data shows that food standards work (to make sure food is correctly described and the quality expected) has generally been hit harder than hygiene work. The number of food standards staff employed by local authorities for every 1000 food premises has fallen by 21% between 2011/12 and 2013/14. The number of food standards interventions did however increase by 2.8% between 2012/13 and 2013/14, possibly reflecting the attention food fraud has been receiving.

This is also the likely reason for a slight increase in sampling rates for food testing of 3% overall - although testing for food composition increased by 14.1%. However, 6 local authorities did not carry out any food sampling at all during 2013/14. These were Blackpool, Isles of Scilly, Moyle,



Redbridge, Rutland Sutton and Wolverhampton. However, eight in 10 (82%) people in our survey said that local authorities should test food to make sure it is what they say it is.

Local authorities receive specific funding from Public Health England to conduct microbiological testing to see if food contains food poisoning bacteria - but the following authorities stood out for failing to do any of this type of sampling: Bournemouth, Chesterfield, Harborough, Isles of Scilly, Mole Valley, North East Derbyshire, Rugby, South Cambridgeshire, South Norfolk, Tamworth, Thanet, Torbay, Waltham Forest and West Somerset.

On-going challenges

Despite some improvements, it is clear from our analysis that some local authorities are struggling to maintain an effective service and level of compliance. Although Environmental Health and Trading Standards work has been affected by cuts to resourcing in some areas, our research suggests that improvements do not always depend on additional resourcing.

Newark and Sherwood, the local authority that had improved the most, told us that it had not changed the number of staff working on food enforcement, but had changed how it works. This includes concentrating on premises with low compliance and those that “yo-yo” - decline, improve and then decline again. They spend time with these businesses providing advice, guidance and support. But they also take action and prosecute businesses that have had poor compliance and have publicised these prosecutions. Their food inspectors are mostly out of the office at inspections, including in the early mornings and evenings to coincide with business opening hours.

This is consistent with the approach the best performing authorities told us they have been taking - including targeted inspections, provision of advice and incentives to improve compliance (such as the food hygiene rating scheme) and in some cases, close co-operation with other authorities. Resourcing is clearly an issue for some of the worst performing authorities. But our analysis reinforces the need for a more strategic approach to food enforcement so that better use can be made of limited resources and consumers can have greater assurance that sufficient checks are being conducted, wherever they live.

Under the spotlight

Since our last analysis, there have been a number of initiatives relevant to food enforcement and which should be leading to improvements. The four most significant have been:

- **The Elliott Review:** Professor Chris Elliott was asked to advise the Government on the integrity and assurance of food supply chains following the wide scale contamination of beef products with horsemeat, reported in July 2014, and has set out a national food crime prevention framework. As a result of his recommendations, a new food crime unit has been established within the FSA. A review of the effectiveness of penalties for food crime is also being undertaken by the Sentencing Council.
- **A new Food Standards Agency Strategy:** The FSA has adopted a new Strategy for 2015-20 and subsequent regulatory strategy. The Agency will continue to place a high level of focus on food law enforcement. Specific commitments already made within the strategy include mandatory display of hygiene ratings across the UK.
- **The creation of Food Standards Scotland:** From April, a new food agency, Food Standards Scotland will be operational in Scotland. This will take over the current FSA’s enforcement responsibilities, including its relationship with local authorities.

- **The EU review of Official Controls:** The Regulation that sets out how enforcement is to be delivered by EU member states, including the competencies of enforcement officers, scale of penalties and mechanisms for charging is also under review at European level.

Which? has called for improvements to the system of food law enforcement in five main areas. So far there has been limited action to address these from central and local government.

1. A joined up and coherent approach:

Action called for: *The FSA needs to ensure a clearer and more robust mechanism for co-ordinating activity and on-going sharing of information, intelligence and guidance across the UK between the Agency, local authorities, other enforcement agencies and stakeholders.*

Progress: This still needs to be addressed. The FSA has established a ‘strategic liaison group’ which includes local authority representatives, but does not include wider stakeholders.

2. Anticipating threats and problem areas

Action called for: *There needs to be better intelligence gathering. The FSA needs to work more effectively with local authorities, the food industry, stakeholders as well as the EU and other countries to understand the vulnerabilities of supply chains, including financial opportunities for fraud, and anticipate threats in order to help target enforcement resources. Food surveillance and analytical capability needs to be strengthened. More local authority food testing is needed, along with a mandatory system for collecting sampling information from local authorities into a UK database and a more strategic approach to ensure adequate sampling and analytical capacity to deal with potential threats.*

Progress: The FSA has begun to improve its intelligence capability. This should be further enhanced through the new food crime unit that has been set up post-Elliott’s review. Defra is also establishing ‘centres of excellence’, recommended by Elliott, in order to improve the analytical capability for food testing around the country. But there is still no mandatory system for collecting sampling information from local authorities.

3. More strategic use of resources and expertise

Action called for: *There needs to be greater collaboration and sharing of expertise. The FSA needs to over-see more strategic sharing of services and expertise across local authorities, building on existing best practice. This should include the development of regional teams of officers with specialist knowledge to deal with more complex businesses and review the split between environmental health and trading standards food functions.*

Progress: There has been limited progress on this. Some local authorities are sharing services, but on a limited scale and not always to improve food enforcement. The food crime unit is an opportunity to enhance specialist expertise and co-ordination, but will initially be limited to an intelligence-gathering role. A National Trading Standards Board has been created to co-ordinate Trading Standards work more generally and has taken on responsibility for animal feed enforcement activity. An Environmental Health Board has also recently been established with the same intention for food hygiene activities, but it is too early to see what its impact will be. Both of these bodies will have limited budgets and are unable to step in where a poor service is being

provided at local level. The FSA is consulting on the potential for greater flexibility for staff responsibilities, based on competencies rather than qualifications.

Action called for: *Inspection costs should be recovered from all food businesses. In line with new EU proposals, fees that cover local authority costs should be extended to all food businesses, as already happens with meat plants, provided they are structured in a way that incentivises compliance and does not compromise the independence of inspections.*

Progress: There has been no action on this to date. The UK is not supporting European Commission proposals to require fees to be charged for enforcement activity, preferring to have flexibility to decide how this should operate and the charges that should be applied at national level. There have been no proposals for how this would work, although it may receive attention under the FSA's regulatory strategy.

4. Ensuring independence and prioritising consumer interests

Action called for: *Independent enforcement must be ensured. Moves towards privatisation of services within some local authorities and a more collaborative approach between businesses and local authorities must not create conflicts of interest or undermine the public-focused nature of enforcement activity. A risk-based approach is essential that recognises businesses that have good standards and focuses on the poorer performers. But this should be backed up by unannounced inspections to ensure circumstances have not changed - and risk assessments should recognise the damage from misleading consumers as well as health risks.*

Progress: This remains an issue, although the Elliott report has reinforced the importance of unannounced inspections and standards work more widely. The primary authority scheme, where a national food business can fund a local authority for its Trading Standards and Environmental Health work, continues to be rolled out and needs to be kept under review to ensure that it is not affecting their independence or willingness to take formal enforcement action when required.

5. Tougher sanctions and incentives for compliance

Action called for: *More effective enforcement tools and tougher penalties are needed. Local authorities should be armed with a full range of tools to ensure effective compliance, including the use of Remedial Action Notices (RANs) around the UK and improvement notices for food standards issues, while maintaining the option of criminal prosecutions. Penalties must be increased as a deterrent and the FSA must step up its support for local authorities and have the powers to intervene in complex and national cases.*

Progress: There has been little progress on tools, other than in Scotland, although the Sentencing Council is consulting on strengthening penalties. The FSA has stated in its regulatory strategy that it wants to better align incentives and disincentives, including the balance between rewards and penalties. RANs are currently not an option for enforcement officers in England, although the FSA is conducting a review of their effectiveness in other parts of the UK. The Food (Scotland) Bill setting up the new agency will extend the powers available for food standards work, including allowing the use of fixed penalty notices and making it a legal requirement to report food fraud.

Action called for: *There must be greater transparency of food business standards: Display of food hygiene ratings should be mandatory for all business across the UK - and all local authorities should be required to be part of the national schemes. Businesses should also be more transparent about the nature of their supply chains and the steps they have taken to ensure compliance.*



Progress: We have seen some progress in all parts of the UK except England. The Welsh scheme has been mandatory for over a year and has been extended to a wider range of businesses. A Bill will shortly also introduce mandatory display in Northern Ireland. The Food (Scotland) Bill has provided Scottish Ministers with powers to make display mandatory. The FSA has stated in its new Strategy that it wants to see mandatory display in England too, but nothing specific has been proposed yet. six in 10 people(60%) in our survey say they have seen a food hygiene rating or information system certificate in a food business in their area. More than 9 in 10 (93%) say food businesses should be required by law to display them.

Improving the system

Our assessment reinforces the need for a fundamental review of how food enforcement is delivered, led by the Food Standards Agency (FSA). Progress is needed urgently on the action areas we have identified in order to support and enhance local authority enforcement work, while ensuring that there is more efficient and effective use of skills and resources. The priorities for local authorities, the Food Standards Agency, Food Standards Scotland (FSS) and central government are as follows:

- Local authorities that have performed the worst in our analysis need to assess why they are struggling to fulfil their responsibility and improve the consumer protection that they provide, learning from the better performers. The FSA and FSS need to ensure that this happens.
- The FSA and FSS where it has responsibility need to take forward a more fundamental review of how enforcement functions as part of its Strategy for 2015-20 and regulatory strategy, working closely with local authorities and other parts of Government. This needs to include:
 - Taking a strategic overview of food enforcement delivery around the UK that matches skills and resources to areas of greatest risk.
 - Working with local authorities to improve cross-border working, including creating regional hubs of specialist expertise.
 - Putting in place better co-ordination mechanisms for enforcement work that involves local authorities and other stakeholders.
 - Providing enforcement officers with the most efficient regulatory tools, including extending the use of remedial action notices and fixed penalty notices across the UK.
 - Ensuring penalties are strengthened to disincentivise food law breaches.
 - Introducing legislation that requires mandatory display of hygiene ratings in all parts of the UK.
 - Building a world class food crime unit that effectively gathers intelligence and investigates major food crime incidents.
- Government needs to support the FSA and FSS as strong, independent consumer champion and recognise the importance of effective, independent food law enforcement that incentivises compliance and penalises breaches for trade and economic development , as well as consumer protection.

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ⁱ Annual report on UK local authority food law enforcement, 1 April 2013 to 31 March 2014, Food Standards Agency.

ⁱⁱ Populus, on behalf of Which?, surveyed 2791 UK adults online between 14th and 15th January 2015. Data were weighted to be demographically representative* of the UK population. Populus is a member of the British Polling Council and abides by it's rules.