

Food Advice

Making a Complaint about Food

TORFAEN
COUNTY
BOROUGH

BWRDEISTREF
SIROL
TORFAEN



This leaflet outlines what to expect if you make a complaint to us about food that you have bought in the Torfaen area.

Investigation - Stage 1

The first thing we will do is advise you on your rights and the best way to resolve your complaint. Where the problem is relatively minor, we would generally advise that you take it back to where you bought it for a refund.

Most large retailers have good systems in place to investigate food complaints, and we generally only become involved where they have failed to resolve the complaint. However, if the food and packaging have been passed to the retailer, we are unable to carry out a full investigation as we will not have all the information that we need.

If we need to carry out an investigation, an Officer from the Food, Health and Safety Enforcement Team will collect the food and fill out a questionnaire which contains key questions in order to assist us with our investigation. We will require you to sign this questionnaire to confirm that the details are correct and that you are willing to voluntarily surrender the food complaint to Torfaen County Borough Council (we can not fully investigate unless we have the food and its packaging, which may be damaged or destroyed as part of our investigation. If you bought the food outside the Torfaen area, we can arrange for the correct local authority to take over the investigation at this stage).

It is not uncommon for complaints to be mistaken as something far more sinister e.g., a cockroach found in a curry could turn out to be a seed used as an ingredient (cardamom pods are easily mistaken for beetles etc). In these cases, the investigation will not proceed any further, and we will tell the complainant what we have found.

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Investigation - Stage 2

A thorough examination will be undertaken by an Investigating Officer, in order to confirm the nature of the complaint and to decide how best to carry out the investigation.

The complaint may then be sent to the Public Analyst or another expert with specialist knowledge if we are unable to identify the complaint. This can provide valuable information such as the type and likely origin of foreign bodies, e.g., glass fragments, identification of pests.

The Investigating Officer will usually contact the retailer (if necessary), the manufacturer and the local authority where the food was made to find out about the manufacturing process and gain their opinion on how the problem happened. This will allow us to establish whether there are a history of complaints or if a serious manufacturing problem exists. This will usually take 28 days. We will make every effort to keep you up-to-date as to our progress with your complaint.

Investigation - Stage 3

Once the Investigating Officer has received sufficient information we will decide which of the following forms of action to take, often via a case conference with other officers so that we can be sure we are making the correct decision and taking the correct action as a result.

Taking action

There are two main routes – informal and formal.

Informal Action

Some complaints are dealt with informally because

- the evidence received is not sufficient to satisfy a court of law 'beyond all reasonable doubt' or
- the offender has a 'due diligence' defence or
- It is deemed not be in the public interest to prosecute.

For example, a fly found in a beef burger sold from a food premises would require the investigation of several food suppliers and the premises itself. It

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would be difficult without sufficient evidence to prove it is definitely one source that is responsible for the complaint. If we did so, that company may be able to prove "due diligence" (see below), or be so keen to put things right that prosecuting them wouldn't achieve anything.

Formal Action

If the Food, Health and Safety Team are confident that an offence has been committed, there is sufficient evidence available and the company does not appear to have a "due diligence" defence, formal action will be considered, such as the issuing of a Formal Caution or instigating legal proceedings, having regard to our Enforcement Policy and all relevant policies and procedures.

If formal action is being taken you will be required to give a witness statement and if necessary attend court. Formal action may not be possible if you decide that you do not wish to provide us with a Witness Statement or are not willing to appear in Court.

What is Due Diligence?

Food safety offences are 'strict liability' offences, in that the Food, Health and Safety Team do not have to prove that there was an intention to break the law. However, this is offset by allowing the food company a 'due diligence' defence.

This defence allows the offender to be found 'not guilty' if they can prove that they took all reasonable steps to prevent the offence occurring. This means that we have to investigate what steps have been taken to ensure the safety of the food and whether more could reasonably have been done to prevent the problem.

Time Scales

Generally, a food complaint investigation can take 4 – 6 weeks to resolve unless the food was distributed from outside the United Kingdom or if formal action is being considered. This can then take several months. However, the investigating officer will aim to keep you updated on a regular basis.

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Can you claim compensation?

The Food, Health and Safety Team are not in a position to obtain compensation for you from the companies involved, nor are we able to pursue claims for personal injury.

On closure of your complaint and with your agreement, we can pass on your details to the Company concerned should they wish to contact you. Most will then contact you to replace the faulty item, which is all that they are legally required to do unless you can show that you have been harmed in some way.

If you feel a claim is appropriate, you are recommended to seek legal advice as soon as possible.