



The Society of
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and Technology

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SOFHT FOCUS

The Magazine of the Society of Food Hygiene and Technology

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The Influence of Social Media on Food, Nutrition and Health

A different approach for SOFHT's
Summer Lecture 2025

“ One well executed viral post about food can reach more people in 24 hours than most public health policy campaigns do in a year ”

PLUS... SCM Summer Meeting | 3 Secrets to Successful Social Media Content in 2025
The Future of Food Regulation and Diet and Health | The Enforcement Dilemma

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THOUGHTS FROM THE EDITOR...



Welcome to the summer special edition of SOFHT Focus.

As is now customary in this issue we will focus on our recent Summer Lecture and AGM. This has now become a 'fixture' at the stunning National Memorial Arboretum in Staffordshire, along with the sunshine and BBQ! We've included lots of great photos of the fabulous BBQ in that sunshine, our sponsors and exhibitors and the AGM events. It was great to see so many members there. Also, this year, to try something different, we held a topical expert panel discussion, which I felt was a resounding success offering insights outside of our members usual technical areas.

In that respect, this year, saw a departure from our individual lecture to a confluence of experts – all together to discuss 'The Influence of Social Media on Food, Nutrition and Health'. This was ably hosted by Felicity Wingrove, of Inspirational Group, with two special guests at the forefront of content creation as well as Nick James from the Industry (Nick is European Marketing Director, Tate & Lyle Sugars). Read more about this in this issue.

As you would expect, our AGM included the formal business of appointing new Directors as well as serving Directors having contributed to the ongoing success of the Society being re-elected per our rules of Governance. We report on that in this edition too – welcoming in the new as well as thanking those who are already well-known for their continued service. A warm welcome then to Zara Thomson from Holland & Barrett and Sarah Whiting of 2 Sisters Food Group and thank you to Alan Lacey and Dawn Welham for their on-going support. Keeping on the theme of Directors, our "FOCUS on a SOFHT Director" is our Vice Chair Ellis Northover, who I'm sure you will enjoy getting to know a little better. We also report on our Supporting Company Members summer meeting which was hosted by the ASR Group at their HQ in London. I hope you enjoy this issue and once again thanks to the team (especially Karen Best and the office team, the team at Maple Rock and all the authors, contributors and advertisers) for producing another great edition. On the subject of authors, we are always keen to encourage articles of interest to members. In hope of this, this edition also includes a piece from me on thoughts regarding better regulation in the supplements sector – the first of a short series on Better Regulation as 'Food for Thought' – let me know what you think and let's get a conversation started!

The next edition will be the autumn special following our 'Back to Basics – Fundamentals of Food Safety' Conference and Exhibition at Nottingham's Belfry hotel, kindly sponsored by Sterilex. I also hope that it's not too early to remind readers to secure their place at our Annual Lecture, Lunch & Awards 2025 and to diarise this for the 20th November 2025 at The Brewery – places are limited, so grab yours early!

Enjoy your summer!

Sukh Gill, Editor SOFHT Focus

IN THIS ISSUE

4 Introduction

6 FOCUS on a SOFHT Director

8 Summer Lecture & AGM

12 Society Board New Members

14 SCM Summer Meeting

16 3 Secrets to Successful Social Media Content in 2025

18 The Future of Food Regulation and Diet and Health

22 The Enforcement Dilemma

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Introduction

PAUL DAVIDSON, SOFHT CHAIR

Welcome to the summer edition of SOFHT Focus!

It was wonderful to see so many people attending our Summer Lecture & AGM at the National Memorial Arboretum in June. It is such a peaceful venue. I was worried driving up through the showers that the weather would be against us but by some miracle it ended up being a bright day. My next challenge was to find the presentation lectern and screen as we had managed to fill the main room with exhibitor stands which was wonderful to see. The split room format worked well giving attendees more time to interact with the exhibitors and we will look to repeat this next year.

At the AGM we welcomed Zara Thomson and Sarah Whiting onto the SOFHT Council. Zara and Sarah have given a great deal of support and interaction to SOFHT prior to their appointment, and I am thrilled with the additional expertise they will provide.

We have launched a new SOFHT Strategy which is built around our vision to be 'The Trusted Voice of the Food Industry'. There is so much expertise within the membership, and we continue to tap into our industry leaders to provide high quality forums and events for the benefit of all of our members.

I would like to acknowledge Karen, Annette and the SOFHT team who help make the Society run smoothly. We hope to see you all at our Back to Basics – Fundamentals of Food Safety Conference in September and at our Annual Lecture, Lunch and Awards later in November.

Thank you for your support, Paul

Lizzie Latest

Lizzie has found her favourite spot to bask in the recent sunshine we've been having. She certainly knows the value of slowing down and enjoying the glorious weather, so whether you're taking a break or planning a getaway, Lizzie and the SOFHT team are wishing all our readers a relaxing and sunny summer holidays!



New Members

We are pleased to welcome the following members to SOFHT:

Gold

Bia Analytical Ltd

Gooday UK Ltd

Silver

BioDtex Technologies Ltd

ChecQR

Kirby Innovation Hygiene Consultancy Ltd

Student

Durojaye Funmilola

Bronze Personal

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Kim Stilwell

Rejoined Membership

Silver

Butchers Pet Care Ltd

Jersey Dairy



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FOCUS on a SOFHT Director

Ellis Northover

If you've spent any time in the food safety and compliance world, chances are you've crossed paths with Ellis Northover. With over 25 years of experience spanning retail giants, SaaS innovators, and Trading Standards, Ellis has carved out a career that's as diverse as it is impactful. Now Head of International at Ashbury and Vice Chair of SOFHT, he's still pushing boundaries and doing it with a smile.

Ellis, tell us about your career.

It's been a journey. I started in compliance and trading standards at a leading UK wholesaler, learning the ropes of own-brand product management, compliance and wine technology. From there, I moved through roles at trading standards, retailers and technical service providers, before diving into the world of SaaS and digital compliance.

Along the way, I co-founded Dinepilot, a platform focused on food allergy compliance which is something I'm particularly proud of.

Now at Ashbury, I lead international strategy and partnerships, helping global brand owners and manufacturers navigate complex regulatory landscapes. It's a mix of strategy, relationship-building, and a lot of listening.

Career highlights?

Working with some of the biggest brands on the planet is amazing but honestly, the real highlights are the people, building teams, mentoring team members at different stages in their career, and seeing clients succeed because of the work we've done together.

Any embarrassing work situations?

Plenty. But one that still makes me cringe? I once turned up to a butcher's shop to take a formal sample of sausages for analysis. All very official. I went through the process, took the sample, sealed it, thanked the butcher, and left feeling rather pleased with myself. About an hour later, I got a call. I'd left my scissors, bright red, very official-looking, right there in the counter, next to the pork chops. The butcher had to stop serving customers because no one was quite sure if they were part of the display or a health hazard!

What recommendations would you have for anyone embarking on a technical career in the food industry?

Be curious. Ask questions. And don't be afraid to get your hands dirty, literally and figuratively. The food industry is complex, fast-moving, and full of opportunity. Learn the products, legislation, understand the science, but also develop your people skills. Relationships matter just as much as technical knowledge.

How do you spend your leisure time?

I'm a bit of a collector, vinyl records and classic Italian scooters are my thing. There's something satisfying about restoring a vintage Vespa or finding a rare pressing of a soul album. I also love wine and food pairing, which probably explains my next answer...



Given your love of travel, what are your favourite foodie destinations?

Like many of us in the food industry, I have travelled a lot with work. This opened my eyes to some of the most beautiful wine regions in the world. Italy, is my favourite, hands down, it's the food capital of the world. The simplicity of the ingredients, the passion behind every dish it's unbeatable. My absolute favourite is a small family run ristorante in Bardolino called "Biri"

What would be your "Death Row" meal?

A perfectly cooked Branzino Alla Griglia (Grilled Sea Bass) washed down with a chilled glass of Lugana.

And your nightmare meal?

Anything involving chicken feet. I tried it once in Hong Kong. Never again. The texture was... challenging.

Who would you like to have dinner with?

Keith Floyd. He brought such joy and spontaneity to food. There was nothing polished or rehearsed about him, just a genuine love for cooking, storytelling, and a good glass of wine. I think we'd get along famously. It wouldn't be a quiet dinner, but it would be unforgettable.

What advice would you give to your younger self?

Don't rush. Careers aren't linear, and that's okay. Take the time to learn, to travel, to make mistakes. Remember "retail is detail".

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Summer LECTURE & AGM

THURSDAY 26TH JUNE 2025 • THE NATIONAL MEMORIAL ARBORETUM

“One well executed viral post about food can reach more people in 24 hours than most public health policy campaigns do in a year.”

That opening line set the pace for this year’s **SOFHT Summer Lecture**, held on Thursday 26th June at the National Memorial Arboretum in Alrewas, Staffordshire.

The theme? ***The Influence of Social Media on Food, Nutrition and Health*** — a subject as urgent as it is unpredictable.

Instead of traditional presentations, guests were treated to a dynamic panel discussion hosted by **Felicity Wingrove**, Managing Director UK at Inspirational Group. And she didn’t hold back. Her fast-paced Q&A kept the conversation sharp, insightful, and refreshingly honest.

The panel featured Nick James (European Marketing Director, Tate & Lyle Sugars), Michaella Mazzoni (nutritionist and content

creator), and Gavin Wren (food policy specialist and content creator). Together, they unpacked how digital content, credible or otherwise, is reshaping consumer choices. From algorithm-driven misinformation to the power of influencer partnerships, the discussion dug deep into the real-world impact of online messaging.

The day was also a chance to connect, with strong support from headline sponsor **Kersia UK**, brochure sponsor **SpaceVac International**, and over 20 member company exhibitors.

Striking venue. Big ideas. Real-world value.

For food safety professionals, the takeaway was clear: **if you’re not active in the digital space, you’re already behind.**





SUMMER LECTURE & AGM – SPONSORS & EXHIBITORS



SUMMER LECTURE & AGM – EXHIBITORS



SOCIETY BOARD MEMBERS



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Independent Food Safety Consultant



DEBRA SMITH

Global Hygiene Specialist
Vikan Ltd



DAWN WELHAM

Quality Assurance Director
Aldi Stores Ltd

Society Board welcomes new members!



ZARA THOMSON is a Product Technical Manager at **Holland & Barrett**, where she leads the technical development, compliance, and quality assurance of products across the vitamins and supplements category. With a strong background in product formulation, manufacturing processes, and hygiene standards, Zara plays a key role in ensuring all products meet rigorous technical, safety, and quality requirements. She is deeply committed to upholding the highest standards of food safety, ensuring robust risk assessments, supplier compliance, and adherence to global safety regulations across the supply chain. Her proactive approach to quality systems helps safeguard product integrity and consumer trust.

Zara is particularly passionate about projects that blend scientific insight with innovative product development, whether it's navigating complex formulation frameworks, exploring new delivery technologies, or driving technical excellence from concept to shelf. She combines deep technical expertise with innovation awareness to help deliver products that are not only safe and compliant, but truly customer centric.



SARA WHITING is a Raw Material, Supply Chain and Technical Training Manager at **2 Sisters Food Group** and a seasoned food safety professional with over 30 years' experience in the Food Industry. With a background in FMCG categories including raw & cooked meat, sandwiches, sushi, ready meals, and salads, she has held senior roles in Technical and Hygiene capacity leading site technical functions, Category Technical Management for retail, and latterly Group Technical roles.

She is dedicated to delivering the highest standard food safety, legality, and integrity across all aspects of the food supply chain. This, along with being an enthusiastic advocate for coaching and knowledge sharing, Sarah brings a unique blend of expertise and enthusiasm.

We would like to welcome Zara and Sarah to the Board.

SOFHT SCM Summer Meeting

The sun was out, the coffee was hot, and the boardroom at Tate & Lyle HQ was buzzing.

On Thursday 10th July, SOFHT's Supporting Company Members came together for the summer meeting in central London and it didn't disappoint.

Things kicked off with a warm welcome and a quick catch-up over tea and coffee. Then it was straight into the main session, where we heard from Rose Judeh-Elwell and Dr Trisha Toop of Upcycled Plant Power (UPP).

Their talk? All about turning waste broccoli stalks into high-value food ingredients. Yes, broccoli stalks. UPP has developed a way to upcycle what's usually thrown away into something useful, ingredients that can be used in plant-based foods and supplements. It's smart, sustainable and a great example of how innovation can come from the most unexpected places. Further information about their work is available here: <https://www.upp.farm/>

Paul Davidson, Chair of SOFHT also gave a quick update on what's coming up in 2025:

- **Supporting Education** continues to be a key focus.
- **Upcoming events** include:
 - Hygiene Manager Forum – 21st July & 18th August (online)
 - Regulatory Forum – 17th September (online)
 - Back to Basics: Fundamentals of Food Safety Conference – 23rd September at the Nottingham Belfry
 - Elevenses – 15th October (online)
 - Annual Lecture, Lunch & Awards – 20th November at The Brewery, London – Including the launch of the SOFHT Awards and the brand new award: **Best Technical Team**

The meeting wrapped up at 4pm, but the conversations carried on outside. With drinks and canapés on the rooftop terrace, members enjoyed the sunshine, the views and the chance to chat more informally. It was relaxed, friendly and full of good energy.

Before everyone headed off, there was one last note: the next SCM meeting is planned for February 2026 at the National Liberal Club with the date to be confirmed.

Thanks to everyone who joined. See you at the next event!

Thinking of becoming a Supporting Company Member?

Joining SOFHT as a SCM means getting closer to the heart of the food industry. You'll have access to exclusive events, expert forums, and the chance to shape conversations around food safety, hygiene and innovation. It's a great way to stay informed, build connections and be part of something that's moving the industry forward. If you're interested, reach out to the SOFHT team and find out how to get involved.





3 Secrets to Successful Social Media Content in 2025



GAVIN WREN

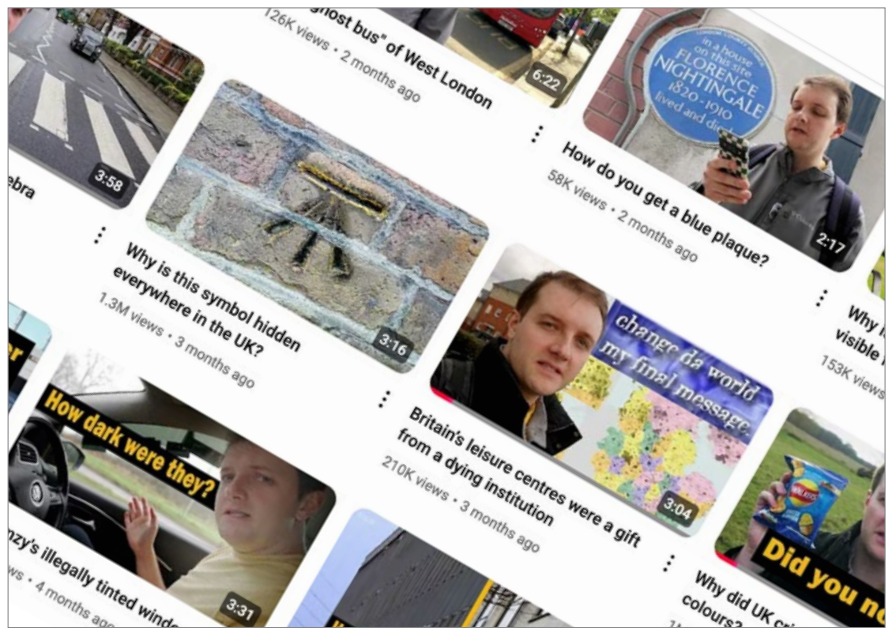
Niche businesses around the world are having a massive impact on social media, as 2025 sees a trend towards experts addressing small questions.

Social media is the lifeblood of the internet, and whether it's LinkedIn, TikTok or YouTube, there's space for everyone to show a little more of their geeky side and create conversations about themselves or their business.

Social media is also a big and complicated world, so here are three things to consider when planning social media content in your business.

Consistency

Social media is all about consistency, the platforms and algorithms love people who show up regularly. It's not about how often you can post, it's about long-term consistency over the coming months and years. When starting out, you don't need a big campaign, expensive photoshoots or highly-polished videos, you simply need a regular, consistent presence which you can fit into your schedule. For example, simply posting a text post on LinkedIn once a week might be enough to start with, and it's something you can scale over time.



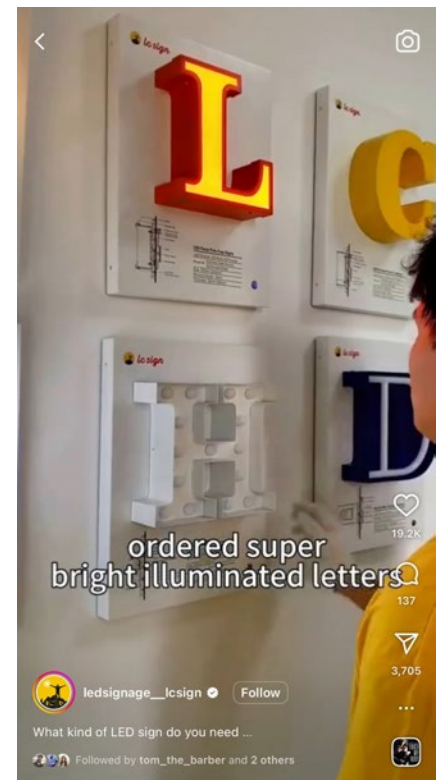
Niche

This has been a buzzword since the dawn of social media, and niches are only getting deeper. A decade ago, niches were broad categories, such as food, sport or travel. Today, audiences expect a deeper level of granularity within those niches, they want the guy who only makes burritos, or the reviewer who only tests rotisserie chickens.

Audiences respect and appreciate experts who can deliver bite-sized info about a very specific area of expertise, and that plays right into the hands of specialist businesses. Your strength is your depth of knowledge within the field of food hygiene and technology, you're not attempting to reach a big public audience; you're looking for a small audience who will appreciate your expertise. It's often the content about small details which people enjoy, because it's easier to watch and simple to comprehend. Don't worry about the big issues, drill down into the little details in your niche, and people will love you for it!

Authenticity

Another buzzword which never loses its relevance. Today, authenticity is more raw than ever before, as audiences seek content that truly reflects individual personalities. You don't need to be a shouty influencer or media-trained to be successful on social media, you simply need to be yourself and let your genuine knowledge in your business shine through. There's a big trend towards social media content which takes things slowly and focuses on the details. For example Chris Spargo, who talks slowly, films in car parks and really answers the small questions in life. Lean into your personality and your niche knowledge, it's your superpower!



Gavin Wren is a content creator, social media consultant and coach, helping individuals and businesses choose the right strategy and pathway for their social media.

TikTok: @gavinwren
Instagram: @gavin.wren
Twitter: @GavinWren
YouTube: @GavinWren
Website: gavinwren.com

The future of food regulation and diet and health



SUKH GILL

With my consulting hat on, I also act as the Secretary General to the Irish Health Trade Association. In that guise, I was grateful for the opportunity given by the Chartered Trading Standards Institute (CTSI) to speak at two sessions of its annual conference in Blackpool in the summer. One of the sessions which was on diet and health was kindly sponsored by a member, Holland and Barrett. I hope the following report on my contribution to these discussions is of interest to SOFHT readers.



CTSI as an institute and the profession that it represents champions consumers & I'm proud to be a long-standing member and Fellow of it. In my role as Secretary General of the Irish Health Trade Association representing the interests of our consumers goes hand in hand with the interests of its members. In relation to food, those consumers represent a health culture that prizes diet (including supplementation and herbal remedies) as the primary route to good health which the sector has grown to meet. It has done this with no support and against a challenging EU regulatory environment.

'Self-care takes pressure off overburdened healthcare systems'

Yet, there is no doubt that such self-care takes pressure off overburdened healthcare systems. And would sustainably benefit

society, given the drain of lifestyle diseases on aging populations in Europe. And given the threat of future pandemic risks. Indeed, during the recent COVID-SARS pandemic the role of Vitamins and especially Vitamin D in supporting immune systems was vital. Not just for individuals, but for the mitigating effect that well-nourished individuals likely had on its spread.

'we cannot ignore Brexit'

My first talk was in a session entitled the Future of Food Regulation – the report in this edition relates to that.

I reflected that to consider the future we need to take stock of where we are now. In doing so, we cannot ignore Brexit, nor the promises it made to the UK to regulate differently. With my Irish perspective, I must be conscious that the march of EU

regulation continues irrespective of what the UK does - leading to divergence. This can inevitably affect supply chains - particularly for packaged food. In recent memory (pre-Brexit) a product suitable for the UK was also available to Irish consumers with ease.

Differences, reformulation and additional cost to comply with market differences can make smaller markets unattractive and threaten consumer choice and even food security. Both the UK and Ireland rely on imports for food security and consumer choice. Meanwhile, the increasing global population, climate, wars and other peak effects (see more context, below) threaten the ability of the world to feed itself, already challenging supply chains. So, it makes little sense to create additional red tape when both the UK and EU already enjoy near identical high levels of consumer protection.

EU red tape

In the EU the activities of the Heads of Agencies group threaten more red tape for the already highly regulated food supplement sector. When the world was preoccupied by the public health and economic challenges of the pandemic, it seems that certain officials in EU member states set about trying to harmonise the sector to one more reflective of its own restrictive national approach and to publish this as a report on food supplements. The report includes proposals on botanicals and to restrict maximum levels of vitamins and minerals, with potential to take choices safely enjoyed by our consumers today, away from them, forever.

Loss of the UK voice in Europe

Pre-Brexit the UK had been a more reasonable voice influencing EU regulation in the sector on maximum levels of vitamins and minerals and had previously resisted such moves - unfortunately, Brexit has done for that!

Of course, Ireland has a seat at the EU table and the Irish sector needs Ireland to become the proportionate voice replacing the UK, and ensuring changes are driven by industry, science and proportionality not politics. The IHTA will impress upon Ireland's officials the importance of that.

UK - 'New approach to ensure regulators and regulation support growth'

It's interesting to see that the UK is looking at a 'New approach to ensure regulators and regulation support growth' as set out in the UK Treasury's detailed policy paper. After two decades of stagnation, it would be timely for the EU to consider this too, and for EU member states to press them too.

While underlining the importance and benefits of regulation the paper rightly concludes that the current regulatory landscape is not functioning as effectively as it should - holding back growth and inhibiting private sector investment.

Whilst other countries outside Europe have continuously improved their regulatory systems, the UK has fallen behind. So then has the EU, given that the UK has assimilated EU legislation.

Brexit and the jurisprudence of the CJEU have shone spotlights on how some questionable regulatory approaches have been retained while others diverge. The EU has a Novel Food Status Catalogue, which places emphasis on whether the food in question has a history of consumption prior to May 1997 in determining its Novel status. While the catalogue, which has no legal basis in EU law could not therefore be retained in the UK, the emphasis on history of consumption continues to be used as a determining factor of novelty - even though this only a qualifying factor to be considered alongside more nuanced legal definitions.

Both the FSA and FSAI's approach to history of consumption recently drew

criticism from their respective courts, recently highlighting the problem (this was in relation to Monkfruit decoctions). Brexit has also allowed for contrast on risk assessment approaches between COT and EFSA.

On November 13th 2024, the Court of Justice of the EU annulled significant parts of Commission Regulation (EU) 2021/468, as regards botanical species containing hydroxyanthracene derivatives. The judgment emphasized that the Commission's actions must be based on solid scientific and legal foundations. Commission rules were found not to be adequately supported by EFSA's conclusions in the case and this appears to have influenced the approach EFSA and the Commission will now take to the HoA report¹. Whilst the judgment is binding from its announcement date, the Commission has lodged an appeal.

'trying to support positive health outcomes'

What is striking in all of this is that the sector is trying to support positive health outcomes; outcomes that officials should be supporting in collaborative regulation with the sector and its consumers. In UK developments, in line with the treasury's policy paper, it is encouraging that the UK is looking at outcome based collaborative regulation to support innovation in proteins.

This future focus is welcome but there is still much to be dealt with from the past and the present.

Given the scale of assimilated law, limited civil service resource and competing agendas for parliamentary time, change, if left to officials is nigh on impossible. However, with creativity and collaboration with Trade Associations, using existing legal frameworks, I believe it is possible to support both prosperity and protection.

Moreover, some of those frameworks could also facilitate a high level of consumer

¹ EFSA has sought clarification on the scope of the assessment and the Commission has formally requested Germany and the Netherlands, acting as HoA Chair and Vice-Chair respectively, to define parameters such as the substances involved, relevant plant parts, and adverse event criteria.

THE FUTURE OF FOOD REGULATION AND DIET AND HEALTH

protection that may be acceptable to the EU and legally compatible. In Ireland, better regulation has been on and off the agenda, and I hope we can see a return to focus on it under the current administration. With similar creativity, Ireland could champion better regulation for better outcomes and not only fill the vacuum the UK has left in the EU but perhaps enjoy the relationships between its officials and the UK's that it did pre-brexit – and be a conduit to supporting the closer working relationship that the UK and EU recognised to be in the common interest.

The contextual challenges

I developed the below slide for my talk which shows that the context we find ourselves in as a society is foreboding and requires collaborative approaches to resolve, including multiple actors.

However, the potential for our sector to support desirable outcomes, such as:

- 'PREDICTABLE' APPROACH TO REGULATION ENCOURAGING INNOVATION & INVESTMENT
- HEALTHIER POPULATIONS MORE RESILIENT TO DISEASE
- LESS STRESS ON HEALTHCARE SYSTEMS FROM PROTECTIVE APPROACH
- NATURAL HEALTH PRODUCTS UNDERPINNED TO MITIGATE FOOD SECURITY/SOIL IMPACTS
- BETTER HEALTH & ECONOMIC OUTCOMES FROM IMPROVED NUTRITION
- WELL INFORMED & PROTECTED CONSUMERS, PROSPEROUS BRANDS

- HOSTILE ENVIRONMENT FOR 'BAD ACTORS'; LEVEL FIELD FOR BRANDS
- GROWTH POTENTIAL ENABLED = INCREASING PRIVATE & PUBLIC REVENUE
- SECTOR PLAYING A GROWING IMPORTANT ROLE ALONGSIDE OTHER SECTORS

...is great, if we can achieve the right enabling regulatory conditions with government(s).

My report on the diet and health session will follow in the next edition – watch this space!

CONTEXT PRE- & POST-BREXIT RELEVANT TO FOOD



POLITICAL

➤ 'POPULISM'
➤ INFLUENCERS
➤ IMMIGRATION
➤ NATIONALISM
BREXIT < TRADE
TARIFFS < TRADE
◀ EU STABILITY
➤ PUBLIC DEBT €€€
◀ GROWTH €€€
➤ TAX BURDENS
➤ REGULATION
➤ REG DIVERGENCE
➤ CRISIS (BANKING, COVID, WARS)
DIET & LIFESTYLE
➤ OBESITY
➤ IMPACT OF NCD
➤ AGING
POPULATIONS
➤ HEALTHCARE STRAINS
➤ NEWS & 'ANGRY' SOCIAL MEDIA

ECONOMIC

➤ WEALTH GAPS
◀ FREE MOVEMENT
➤ TALENT GAPS
BREXIT < TRADE
TARIFFS < TRADE
➤ ROGUE TRADE
➤ PUBLIC DEBT €€€
◀ GROWTH €€€
➤ TAX BURDENS
➤ REGULATION
➤ REG DIVERGENCE
◀ INVESTMENT
➤ CRISIS (BANKING, COVID, WARS)
➤ UNCERTAINTIES
➤ OBESITY
➤ IMPACT OF NCD
➤ AGING
POPULATIONS
➤ HEALTHCARE STRAINS

SOCIAL

➤ 'POPULISM'
➤ INFLUENCERS
➤ IMMIGRATION
➤ NATIONALISM
➤ FOOD INFLATION
◀ FOOD SECURITY
➤ POVERTY
➤ DISCONTENTED
➤ ONLINE TRADE
➤ ROGUE TRADE
➤ TAX BURDENS
➤ INSTABILITY
➤ CRISIS (BANKING, COVID, WARS)
DIET & LIFESTYLE
➤ OBESITY
➤ IMPACT OF NCD
➤ AGING
POPULATIONS
➤ HEALTHCARE STRAINS
➤ NEWS & 'ANGRY' SOCIAL MEDIA

TECHNOLOGICAL

➤ 'POPULISM'
➤ INFLUENCERS
➤ POLARISED DEBATE
ALGORITHMIC CONTENT
➤ KNOWLEDGE/SCIENCE
➤ AI
➤ INFORMATION
◀ INFORMATION
➤ SOCIAL MEDIA
➤ DIGITAL MARKETING
➤ E-COMMERCE
➤ ROGUE ACTIVITY
INNOVATION &
'REGULATED PRODUCTS'
MEDICATE? MISINFORM?
THREAT OF 'DISEASE X'
MICROBIOME

LEGAL

REGULATION
OBCR
EU LEGACY
SCALE
GUIDANCE
RESOURCE
TIME
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TOOLS
FUTURE
INNOVATION

ENVIRONMENTAL

CLIMATE CHANGE
EXTREME WEATHER
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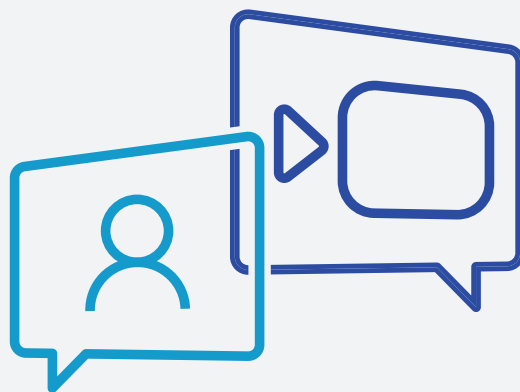
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The Enforcement Dilemma

To Challenge or Not to Challenge – That is the Question!

IAN THOMAS

INTRODUCTION

Faced with enforcement action, the food business operator (FBO) must carefully decide how to respond having regard to the potential consequences of their actions, or inactions.

This brief article considers some of the key stages of enforcement action and assesses some of the factors that might influence the FBO's decision-making.

For ease of reference, the official with enforcement powers will be referred to as the environmental health officer (EHO) (but similar points apply to enforcement action taken by others including trading standards officers and inspectors (e.g. those authorised under the Welfare of Animals at the Time of Killing (England) Regulations 2015)).

The overall thrust of this article is that when faced with enforcement action, including criminal proceedings, FBOs must take timely and proactive steps to address the issues head on. The situation will not simply go away, and procrastination is to be avoided.

Failure to comply with enforcement notices is often a separate criminal offence (see for example a Hygiene Improvement Notice or a Remedial Action Notice – regulations 6 and 9 of the Food

Safety and Hygiene (England) Regulations 2013) which could be added to any other offences that the EHO might decide to pursue. Irrespective of the merits of the initial grounds for intervention, and the possibility of defending those, failure to comply with a notice can be difficult to defend and is in any event is unlikely to make a favourable impression on the judge.

Each set of circumstances is different and the FBO must decide how to respond to try and achieve the optimal outcome for them and for the business. This might mean carrying out the legally required works, negotiating with the EHO about the extent of the works that are necessary to bring the situation into compliance, seeking an extension of time to carry out the works or formally challenging the notice.

Even if the FBO undertakes the specified works to the EHO's satisfaction within the required timeframe, this does not necessarily avoid a criminal investigation.

Decisions made responding to an enforcement notice may impact on how the situation develops over the following months.

The following is a discussion of some matters that might be relevant in enabling the FBO and their advisers make informed decisions.

ENFORCEMENT NOTICES

What happened during the EHO's inspection that resulted in the notice being served?

The notice might be served 'there and then' as is likely to happen with a Hygiene Emergency Prohibition Notice or it may be served sometime later.

The FBO, or in practical terms, the FBO's representative (e.g. the premises manager or area manager) should speak with staff to establish what the EHO did, what areas of the premises were inspected and whether the EHO took any documents or records. Did the EHO speak with any employees, and if so, what was said?

Did the EHO indicate that if the works in the enforcement notice were carried out, that would be the end of the matter, and no further investigation would be pursued?

At this stage the FBO is not only trying to decide how to respond to the notice, but they are gathering information and evidence that might be useful if a criminal investigation is undertaken.

The purpose of the EHO's visit

Was the EHO conducting a routine inspection, were they exercising statutory powers or did they attend because of a complaint (which might trigger the provisions of Code B of the Police and Criminal Evidence Act 1984).

The EHO serving the enforcement notice

The legislation will specify who is empowered to serve a notice. They are often designated as an 'authorised officer' or an 'inspector'. Is the officer who issued the duly authorised?

The recipient

Has the notice been addressed to and served on the correct person (organisation or individual)? Is the name correct? Has the notice been served on the person responsible for the alleged non-compliances?

The requirements of the notice

Does the notice comply with the statutory requirements?

For example, the legislation may require the notice to;

- state the officer's grounds for believing that the legislation is being contravened (this is usually a low threshold such as being 'satisfied', having 'reasonable grounds for believing' or 'where it appears' to the officer)
- specify the matters which constitute the failure to comply
- specify the measures which, in the officer's opinion, that must be taken to secure compliance, and
- specify a time limit by when the specified measures must be taken

Is the wording sufficiently clear to enable the FBO to be fully aware of what the problem is and what must be done to resolve it?

In addition to following the legal requirements, does the notice accurately reflect the situation on the ground? Are the facts stated in it correct?

Are the specified works legally required by the relevant legislation and can be enforced, or are they matters that amount to good practice or are a 'good idea'? Making a clear differentiation is important, particularly where the notice specifies works that will incur a significant financial outlay.

What timelines are in play?

When must the work be completed? Is this unrealistic and/or unreasonable? Should an extension be sought?

What routes of challenge exist, if any?

Does the legislation provide for a challenge by way of a statutory appeal to a magistrates' court or to the First-tier Tribunal? If so, what is the last date for commencing the appeal and what is the applicable procedure? Missing the deadline usually means that the FBO loses their right of appeal.

If there is no statutory appeal, is there a challenge by way of judicial review?

CRIMINAL PROCEEDINGS

What then if the circumstances that led to the service of the notice also form the basis of a criminal investigation?

The EHO must now present evidence that proves the case beyond reasonable doubt or so that the court is sure of the defendant's guilt. Although the evidence in a criminal case is often similar to that used to justify the service of an enforcement notice, the EHO is now operating to a much higher evidential threshold than is required for a notice (see above).

The stakes are now much higher for the FBO. Some very important decisions must now be made including at the following stages of the criminal case.

The request for an interview under caution

During the EHO's criminal investigation, they are likely to invite the FBO to answer questions under caution (Code C of the Police and Criminal Evidence Act 1984).

This is a crucial stage of any case and if the FBO has not already sought professional advice, they must seriously consider doing so now. Decisions made now often have a significant impact on the progress of the criminal investigation and any resulting criminal proceedings. The EHO must provide pre-interview disclosure which may assist in the decision-making process.

Should the FBO attend an interview in person with their legal adviser? Should they offer to answer questions in writing assisted by their legal adviser? Should the FBO refuse to answer any questions under caution (this may be the correct option but should only be taken having sought legal advice).

Answers provided under caution may be used in evidence and if made by an FBO who has not sought legal advice may do more harm than good.

THE ENFORCEMENT DILEMMA

Service of the summons – the plea

Unless the FBO can persuade the EHO not to commence the prosecution (perhaps because of what the FBO has said in interview) they must now decide whether to plead guilty or not guilty (to some or all the offences).

Each case is fact specific and again the FBO should work with its advisers to reach an informed decision.

Is there merit in challenging the commencement of the prosecution on grounds of insufficiency of evidence and/or the prosecution is not in the public interest? Are the matters of law that can be raised at this stage? This rarely results in a positive outcome for the FBO, but I have advised in cases where this approach has been successful. As is often the case, FBOs must make strategic decisions based on a careful assessment of law and fact.

Mitigation or defence

The FBO and their advisers will assess the strengths and weaknesses of the prosecution evidence. Is the evidence sufficient for the prosecution to prove its case?

The FBO will also review the evidence that is available to them (including evidence taking from staff at the time of the EHO's initial intervention and any expert evidence that might have been obtained).

What are the chances of successfully pursuing a due diligence defence or is the defence evidence better used as powerful mitigation?

No FBO should plead guilty to a criminal offence when they are not guilty. However, pleading not guilty and taking the case to trial and pursuing legal arguments might be the appropriate way to proceed.

Food law creates offences which are mainly strict liability (i.e. they can be proved on factual evidence of the non-compliance without having to prove the defendant intended to commit the offence). As such, they are sometimes considered to be relatively easy to prove. For example, in a food hygiene case, the photographs

accompanied by with oral evidence from the EHO may be sufficient to establish the alleged non-compliances to the criminal standard. This may be an important factor in the FBO's decision-making process.

The potential sentence

Readers will be aware that when sentencing defendants for food law offences, courts must follow the various steps set out in the Definitive Sentencing Guideline for Food Safety and Hygiene Offences.

The court assesses culpability (very high, high, medium and low) and harm (categories 1 – the most serious, 2 and 3). Having done so, the Guideline provides a series of tables of fines based on the corporate FBO's turnover. A similar process applies to individual defendants.

One of the steps in the Guideline requires the court to give credit to a defendant who has pleaded guilty. Early guilty pleas might benefit from a one-third reduction in the fine. With an individual, a guilty plea may take the case out of the range of sentences that include imprisonment.

Even where an FBO believes they a good defence and may be considering pleading not guilty, the reduction in a fine for a guilty plea might 'tip the balance' in favour of a guilty plea.

An example shows why.

For a large organisation (having a turnover of £50 million and over) where the court has assessed culpability as high and harm as category 2, the starting point fine is £230,000.00 with a range of between £90,000.00 and £600,000.00. Pleading guilty and securing a one-third reduction has a significant impact on the overall fine (and bear in mind that the FBO will also be ordered to pay the costs of the EHO's prosecution and a victim surcharge).

I have worked with corporate FBOs where the turnover is significantly higher than £50 million. They are classed a very large organisations (VLO) and the fines can become very high indeed (e.g. £500,000.00 and more).

Meticulous and careful preparation for a sentencing hearing is important to present the FBO's case in the best possible light to the judge.

OVERALL CONCLUSION

Experience shows that early consideration of how to respond to the EHO's action is vital. Delay can put unnecessary pressure on the FBO and its advisers. It can weaken the FBO's position in any negotiations with the EHO. Delay may result in the FBO committing the offence of failing to comply with the notice and may also mean the time for pursuing and appeal runs out.

Early engagement of professionals (e.g. a food consultant and/or specialist lawyer) is crucial to help the FBO achieve its 'optimal' outcome. This is particularly important where the person involved is an individual because of the potential for imprisonment. An individual might be the FBO or a director of a corporate FBO. If an individual is prosecuted as a director of a corporate FBO that is also being prosecuted there may be a potential conflict of interest.

To minimise the impact of enforcement action, clear, informed and strategic decision-making is essential. This is based on the partnership between the FBO and their professional advisers working together to achieve the optimal result.

This article is provided for information only and does not constitute legal advice. Formal legal advice should always be obtained before taking or refraining from taking any action.



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Richard Humphrey started volunteering at His Church Charity in 2004, he became the very first employee in 2005, and 20 years later as Operations Director, he has witnessed every step in their incredible journey first hand. Listen to Richard share more about this amazing story and some of seriously creative ways His Church "Repurpose Surplus" at our Annual Lecture, Lunch and Awards on 20th November at The Brevery.



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