



Title of Report:	MEMORANDUM OF UNDERSTANDING (MOU) IN RELATION TO FOOD FRAUD ACTIVITIES BETWEEN LOCAL AUTHORITY FOOD TEAMS IN ENGLAND, WALES AND NORTHERN IRELAND AND THE NATIONAL FOOD CRIME UNIT (NFCU), PART OF THE FOOD STANDARDS AGENCY (FSA)
Committee Report Submitted To:	ENVIRONMENTAL SERVICES COMMITTEE
Date of Meeting:	9TH FEBRUARY 2021
For Decision or For Information	FOR DECISION

Linkage to Council Strategy (2019-23)	
Strategic Theme	Resilient Engaged and Healthy Communities
Outcome	Implementation of statutory requirements
Lead Officer	Head of Health & Built Environment

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

1.0 Purpose of Report

The purpose of this report is to consider and agree a Memorandum of Understanding (MOU) between Council's Food Team and the National Food Crime Unit (NFCU), part of the Food Standards Agency (FSA), in relation to food fraud activities. Agreement of this MOU has been reached to promote collaborative working to help protect the public from food crime.

2.0 Background

- 2.1 In 2015 the FSA set up the NFCU which expanded in 2018 to include an uplift in its investigative capability and capacity. The NFCU has the remit within the FSA for tackling serious fraud and related criminality within food supply chains. It will normally investigate offences appropriate for prosecution under the Fraud Act 2006 or as conspiracy to defraud under Common Law. NFCU will lead on a small number of the most serious and complex investigations each year, and they will have some capacity to support and co-ordinate investigations led by partners, where appropriate.
- 2.2 Council Food Teams are tasked with the front line delivery of food safety and standards enforcement. Food Teams have, and will continue to have, powers to take enforcement action in respect of The Food Safety (Northern Ireland) Order 1991 and Food Regulation offences including food fraud.
- 2.3 The MOU sets out the high-level framework of how "the parties" will co-operate to assist one another and prevent duplication in food fraud work by:
- Setting out how information will be shared
 - Seeking to compliment and advance levels of co-operation and co-ordination
 - Setting out guidelines on agreeing primacy in relation to food fraud investigations and enforcement cases
 - Setting the approach for instances where NFCU becomes aware of an issue and wishes to act
 - Setting the approach for instances where Food Teams become aware of an issue in which the NFCU is likely to have an interest and/or the Food Team seeks support from the NFCU or to refer it to them.
 - Setting out how the MOU will be reviewed.

The MOU may be found at Appendix 1 to this report.

3.0 Recommendation

It is recommended that the Committee recommends to Council the signing of the above Memorandum of Understanding. It is further recommended that authority be given to the Director of Environmental Services to sign on behalf of Council.



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MEMORANDUM OF UNDERSTANDING (MOU) IN RELATION TO FOOD FRAUD ACTIVITIES

BETWEEN

Local Authority Food Teams in England, Wales and Northern
Ireland and

The National Food Crime Unit (NFCU), part of the Food Standards
Agency (FSA).

1. Purpose and Scope

This Memorandum of Understanding agrees the relationship between Local Authority Food Teams, ACTSO and the National Food Crime Unit, part of the Food Safety Agency, referred to as “the parties” throughout this MOU. It is impracticable to agree an MOU with each authority or group of authorities that captures their single or two tier model. By engaging with national food safety group leads and ACTSO, agreement of this MOU has been reached to promote collaborative working to help protect the public from food crime.

In Wales such food teams are represented by the Directors of Public Protection Wales (DPPW), a collective organisation representing officers heading up Welsh Local Authority Public Protection Services.

Food teams in England, Wales and Northern Ireland can have responsibility for both food safety and food standards or just one of those functions, reflecting the differing local government landscapes, and include Trading Standards and Environmental Health professionals. Regions across England operate two tier models in some areas. In Wales, there is a single tier approach to local

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authority services. District councils in Northern Ireland have teams that jointly cover both food safety and standards.

Responsibility across the three countries is tasked to Food Teams that are integral to front line delivery to enforce food safety and standards.

In 2015 the FSA set up the NFCU. Following the Kenworthy review as reported in 2017, the NFCU expanded in 2018, and this included an uplift in its investigative capability and capacity. In respect of its investigation function, the purpose is to identify and investigate offences of food crime, particularly food fraud. The NFCU's enhanced 4P (Prevent, Protect, Pursue, and Prepare) capability now includes a Pursue strand that will enable it to lead on a limited number of food crime/fraud investigations.

The NFCU has the remit within the FSA for tackling serious fraud and related criminality within food supply chains. It will normally investigate offences appropriate for prosecution under the Fraud Act 2006 or as conspiracy to defraud under Common Law. The unit covers England, Wales and Northern Ireland, but not Scotland. NFCU will lead on a small number of the most serious and complex investigations each year, and they will have some capacity to support and co-ordinate investigations led by partners, where appropriate. In considering whether to lead, support or co-ordinate any investigation, the Head of the NFCU will consider:

- the strategic priorities of the NFCU as set out in its control strategy;
- the geographical scope and scale of the suspected offending;
- the nature and extent of the actual, potential or intended harm to the public, a food business operator and/or the confidence in the UK food industry.

The Head of the NFCU will also consider, where appropriate, any representations made by any partner that may be impacted by their decision. Such representations can be by conversation or email. There is no formal proposed mechanism for this.

The Association of Chief Trading Standards Officers (ACTSO) is the single membership organisation representing senior Trading Standards Managers from local authorities across England and Wales. ACTSO is focussed on providing effective leadership at the national level while supporting members to lead their services both locally and regionally. NFCU and National Food Group leads have worked together in agreeing this MOU.

Food Teams are defined for the purposes of this MOU to be those teams within Local Authorities that enforce Food Safety and/or Food Standards related matters. These teams will continue to have powers to take enforcement action in respect of Food Safety Act 1990 and Food Regulations offences including food fraud. The Food Safety Act 1990 and EU withdrawal legislation confer powers on the "food authority".

The Food Safety (Northern Ireland) Order 1991 is the comparative piece of legislation for enforcement and offences in Northern Ireland.

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The Appendix 2 sets out details of responsibilities/powers of the relevant partners to this MoU.

This Memorandum of Understanding (MOU) sets out the high-level framework of how “the parties” will co-operate to assist one another and prevent duplication of work in relation to food crime. It is not intended to set out in detail precisely what work will be taken forward by any party, as that level of prescription is unlikely to lead to effective food regulation. Each case will need to be dealt with based on the facts of the individual case, resource implications, and the relevant legal and policy position of any affected party.

A referral process is proposed by which each party can expect consistency in how intelligence and early investigations of food fraud, as it escalates to food crime, will be received and assessed by the NFCU. Similarly, a referral process is required to enable dissemination of intelligence and information of potential investigation opportunities between the parties.

Any assessment and determination around adoption of investigations will inevitably include an assessment of capacity and capability. The capability of partners is acknowledged, notwithstanding some lines of enquiry (e.g. requesting evidence from foreign national partners through International letters of request, or assistance under Mutual Legal Assistance Treaty arrangements) may require specific support and assistance.

2. Information sharing

2.1 The parties aim to co-operate by sharing information and intelligence where appropriate and where legally permissible. A general basis for information and intelligence sharing is to investigate and detect crime and protect the public (Data Protection Act 2018). Information will always be exchanged expeditiously and securely as per the below paragraphs. The dissemination of intelligence should always be timed to maximise its value in protecting the public. Such sharing should also aim to minimise risk, enable expeditious lines of enquiry to be identified, to clarify facts and recover evidence.

2.2 The communicating of information and intelligence between the parties will enable NFCU and LAs to analyse data and to identify both trends and other lines of enquiry that may support Food Teams. Additionally, such analysis will enrich the understanding of food crime across England, Wales and Northern Ireland.

2.3 Intelligence is recorded on the platforms as used by the relevant parties. Presently those platforms include Clue (NFCU) and IDB for Trading Standards teams. In the absence of having mutual access to each other's systems, then the intelligence will be shared by other appropriate means.

2.4 Specific information or enquiries requiring a direct response will generally be communicated by the NFCU to the relevant Food Team via a designated, secure email contact at the Food Team office, and from them to the NFCU via foodcrime@food.gov.uk.

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In Northern Ireland correspondence between the NFCU and Food Teams is facilitated through the NFCU Belfast office using agreed local protocols.

2.5 Where possible, information available to any of the parties that is relevant to the responsibilities of the other parties will be shared where requested, and parties will aim to process information requests within 5 working days or as current capacity allows. In addition, if any of the parties considers that information it has gathered would be of material interest to the other parties, it will proactively offer such information to the other parties without a request.

2.6 It should be noted that presently the NFCU have limited statutory executive powers, being the same as apply to the Food Standards Agency. The current, and interim, expectation is that the NFCU will, in order to access wider executive powers, seek support from Home Office Police forces through ongoing discussion with the National Police Chief's Council, or will seek such support through the wider FSA core membership of the Government Agency Intelligence Network (GAIN). It is the aim of the NFCU to secure executive powers through primary legislation.

2.7 In the event of an investigation being adopted and tasked to an Investigations team by the NFCU as a result of a referral from a Food team and where executive powers are identified as necessary for that enquiry, then on the basis of that referral, the NFCU may apply to the Secretary of State for Health for the granting of specific powers under S.6 of the Food Safety Act 1990, and as related to that specific investigation only.

2.8 Where information is received from third parties, the ability to share such information between the parties to this MOU may in some instances be constrained by the terms of agreements with those third parties, or by other legal restrictions. However, the parties will seek to ensure that these instances are minimised. The default position will be to share unless the handling code at point of receiving the original intelligence from the disseminating source is such that it is clearly sensitive and not to be further shared without the authority of the originating organisation. Efforts will be made to secure consent to share the intelligence in those circumstances and this will also enable the development of better informed strategic and tactical assessments.

3. Co-operation and Co-ordination

3.1 In all areas of work where there is a joint interest, the parties will endeavour to co-operate closely with each other. The parties will work to maintain oversight of this and to provide a forum for the parties to raise any concerns. Early identification, discussion and resolution of any issue is always the aim. There exist across England, Wales and Northern Ireland existing frameworks to co-ordinate, and these will continue. The Regional intelligence officers from the NFCU working with Food teams and relevant partners continue to develop the flow of information and intelligence around food crime with the aim of identifying appropriate interventions, escalation and

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support to partners in dealing with the problem. This MOU seeks to compliment and advance those rather than in any way compete.

4. Enforcement and agreeing primacy

4.1 Notification to each party of their food fraud investigations is desirable and recommended. It will enable support to be offered by way of intelligence checks. It will also enable identification of matters in respect of which the parties are likely to have, or are known to have, an interest. It will also seek to avoid taking regulatory or enforcement actions that are incompatible or even in conflict. This will enable prevention of the duplication of resources, investigating the same subjects in ignorance of partners’ investigations, and provide clarity of direction and ownership.

4.2 There are likely to be two broad scenarios: firstly, where an issue is identified by the NFCU and they want to act against a subject or, secondly, where a Food Team identifies an issue and seeks support from the NFCU. These are dealt with below.

4.3 In terms of agreeing “primacy” in any case – this will be agreed between the parties on a case by case basis. This will depend on many factors. The indicators listed below are simply those that may weigh the decision one way or the other BUT no single one will be a defining factor. It will be the totality of the nature and scope of any cases, along with the capacity and capability of NFCU and partners.

4.4 Any case involving death will be referred to local police for investigation ownership (in line with the Work-Related Deaths Protocol) and they will determine any support required from the NFCU or Food Team.

<i>Indicators where NFCU may be best placed to lead</i>	<i>Indicators where the LA Food Team may be best placed to lead</i>
<ul style="list-style-type: none"> • National and international investigations. • Ongoing or relevant and now past significant risk (including financial) to the public and/or UK plc • Clear intelligence of organised methodology in the planning, co-ordination and control of such criminal network as is identified to be involved in such criminality • Capacity and capability exist to undertake the investigation 	<ul style="list-style-type: none"> • More limited geographical scope • Already significant investment into an investigation • Where there are links to other existing LA regulatory/fraud investigations (within or co-terminus) • Capacity and capability exist to undertake the investigation

5. Instances where NFCU becomes aware of an issue and wishes to act

5.1 The NFCU will contact the relevant Food Team at the earliest possible opportunity and both parties will share all relevant information to help ensure the most appropriate way forward.

5.2 In the absence of any operational justification for taking a different approach, the default position will be that the NFCU will not carry out any on-site visits to any business or person in any Food Team area and where the Food Team have responsibility for those premises, without first notifying the relevant Food Team or undertaking a joint visit.

5.3 Where the NFCU identify investigative opportunities that may exist or require an initial response outside of their remit as set out at the start of this document, then such information will be shared with the relevant Food Team to enable them to decide in respect of any required response.

5.4 Where there are already investigations ongoing by NFCU and one or more relevant Food Teams, then both sides will discuss how the case will be conducted and agree who will lead, support or co-ordinate. The decision should be recorded in writing (proportionate to the scale and nature of the case) which outlines the role of each party. This should, among other things, include the following:

- Who will take decisions on the case?
 - Who will institute proceedings?
 - What resources partners will provide?
 - Procedural issues such as CPIA disclosure, storage of exhibits, examination of digital devices etc.
 - How any confiscated assets will be dealt with?

6. Instances where Food Teams become aware of an issue where the NFCU is likely to have an interest and/or the Food Team seeks support from the NFCU or to refer it to them.

6.1 Food Team officers are increasingly using the national "Management of Risk in Law Enforcement" (MORiLE) framework to assess investigations and match resource to demand. The same framework is used within the NFCU around assessing tasked investigations. This offers the opportunity for commonality going forward in respect of how referrals may be made and received.

6.2 A process for referral of such cases is currently being rolled out whereby the NFCU regional liaison officers (Appendix 1) should be the first contact point for Food Teams. This will enable the earliest assessment of the potential investigation to be made, as well as identifying through mutual discussion, support and other lines of enquiry that may be considered by the Food Team.

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6.3 Where the decision by the Head of the NFCU is to support or co-ordinate an investigation, then the best placed officer from the NFCU and Food Team will discuss how the case will be conducted and agree who will lead, co-ordinate, support.

6.4. Where the decision is to task within the NFCU a referred investigation as may have been received by a Food Team, then the tasked Lead Investigator from the NFCU and the similarly best placed officer from the Food Team will agree and record the transfer of any lead responsibility to the NFCU. The discussions of such matters should progress outside of the tasking mechanisms used by the respective parties where investigative considerations so necessitate.

6.5 In respect of 6.3 and 6.4, the decision should be recorded in writing (proportionate to the scale and nature of the case) which outlines the role of each party. This should, among other things, include the same considerations as at 5.4.

6.6 Matters of a more time critical nature should be brought to the attention of the NFCU expeditiously and without putting the public at any increased risk or losing evidence, either by contacting the NFCU Regional Liaison Officer (RLO) or contacting the NFCU Intelligence Bureau, via foodcrime@food.gov.uk. In Northern Ireland contact will be via the NFCU Belfast office.

6.7 Nothing in this document should stop any officer from any of the parties taking the necessary steps to deal with any identified imminent risk of harm to the public involving food.

7. Review of Memorandum of Understanding

The parties will meet regularly to review the effectiveness and efficiency of this MOU. In Wales this will be through the NFCU (Wales) Assurance Forum.

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-----signatories to be identified from Food Safety Group leads -----

Signed

Dave Holland

Chair, DPPW

Date

Signed

Darren Davies

Head of NFCU, FSA.

Date

Wendy Martin

CEO, ACTSO

Date

Signed

Ian Andrews

Chair, Food Hygiene Focus Group (England)

Date

Signed

Northern Ireland

Date

Appendix 1 – Regional Contacts

National Food Crime Unit – Regional Liaison Officers

Ed McDonald – Northern Ireland – Ed.Mcdonald@food.gov.uk

Nick Smith – West Midlands and North West regions nick.smith@food.gov.uk

Steve Rowe – East Midlands, Eastern regions Steven.rowe@food.gov.uk

Jane Rawling – Wales Jane.Rawling@food.gov.uk

Will Simpson - South East and South West Will.Simpson@food.gov.uk

Please note that the Yorkshire and Humber and North East post is currently vacant

Steve Smith – Head of Outreach Steve.smith@food.gov.uk

Trading Standards Regional Coordinators

Gaynor Jackson – South East – gaynor.jackson@surreycc.gov.uk

Stephen Knight – London – Stephen.knight@londontradingstandards.org.uk

Lisa Peters – South West – lisa.peters@tssw.org.uk

Dai Jones – Wales – daijonesrc@outlook.com

Nick Harrison – West Midlands – nickharrison@warwickshire.gov.uk

Sandra Roberts – East Midlands – sandra.roberts@lincolnshire.gov.uk Marie
Meadows – East of England – marie.meadows@suffolk.gov.uk

Suzanne Simmons – Yorkshire and Humber – yahtsg@wyjs.org.uk

Nicola Pearson) – North East – Nicola.pearson@durham.gov.uk

Kate Pike – North West – kpike@warrington.gov.uk

Environmental Health Regional Coordinators

Graham Perry – Wales - (grahamperrywork@outlook.com)

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Contact details correct as at 07/02/20

Appendix 2 Powers/responsibilities of relevant partners

NFCU

Due to currently limited statutory powers, the NFCU have arranged for the Police to provide support when asked with powers of arrest and search. The NFCU will continue to look to LAs for support in using their powers outlined below.

Local Authorities

Food Team officers are authorised with the full range of powers as set out in law and the Food Law Code of Practise. These include, but not limited to:

- Power of entry and to take others into a premise
- Power to take samples and to submit these for analysis
- Power to inspect, detain or seize any records
- Power to seize or detain food
- Power to serve Detention Notices, Hygiene Improvement or Emergency Prohibition Notices
- Power to prohibit an activity or process