



# Sampling Protocol for the Examination of Food, Shellfish Water and Environmental

March 2024



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## **SAMPLING PROTOCOL**

### **1. Introduction**

- 1.1. Sampling (including shellfish and waters) makes an important contribution to the protection of public health and food law enforcement functions of the Borough Council of King's Lynn and West Norfolk (BCKLWN).
- 1.2. It is used as part of a planned approach to gather information about the quality and possible presence of harmful micro-organisms or toxins in foods or waters which are produced and/or sold/used locally. Sampling can also be vital in establishing or preventing outbreaks or incidents of infectious or communicable disease and foodborne illness. Based on this information appropriate action can be taken to protect the public.
- 1.3. As a Food Authority, BCKLWN are required to prepare and publish a Sampling Protocol and make it available to businesses and consumers under the Food Law (Code of Practice)
- 1.4. This protocol sets out this authority's general approach to food and other sampling and its approach to specific situations. Certain sampling is required by law such as samples taken for the classification of shellfish beds.
- 1.5. From this protocol a detailed sampling programme will be prepared detailing the authorities intended food sampling priorities.
- 1.6. The Sampling Protocol will be reviewed regularly; the Sampling Programme will also be determined on an annual basis. The programme may be subject to change throughout the year following changes in demand and changing circumstances.
- 1.7. BCKLWN will ensure that adequate resources are made available to ensure that the sampling programme prepared under this protocol is carried out.
- 1.8. The Sampling Protocol will be reviewed regularly; the Sampling Programme will also be determined on an annual basis. The programme may be subject to change throughout the year following changes in demand and changing circumstances.
- 1.9. This Sampling Protocol has been prepared with due regard to the guidance provided in the Food Law Code of Practice and its guidance and the Food Standards Agency Framework Agreement on Local Authority Food Law Enforcement.
- 1.10. BCKLWN provides a certification service for the export of certain food products of animal origin and also High-Risk Food of Non Animal Origin (HRFNAO) to the EU and some other third countries. Sampling is carried out to ensure food that the authority certifies has been produced in accordance with the relevant legislation.
- 1.11. In summary, the Food Sampling protocol will be made available to all via the Council Website or in equivalent paper format. A full version of the Protocol will be available on request.

## **2. Food Law Enforcement**

- 2.1. This Protocol takes account of the following activities related to the BCKLWN's food law enforcement responsibilities for protecting the consumer:
- a. Investigation of food contamination and food poisoning incidents.
  - b. Complaints.
  - c. Imported food responsibilities (particularly third country imports)
  - d. Exported food that the Local Authority certifies.
  - e. Home/originating authority responsibilities (e.g. in relation to product and critical control point monitoring).
  - f. Primary Authority responsibilities.
  - g. Avoiding unnecessary duplication with Port Health or Home Authorities.
  - h. Food sampling defined by statute (e.g. shellfish classification).
  - i. The use of sampling as part of a food hygiene inspection (to help assess hygiene standards and procedures).
  - j. Participation in the UK Health Security Agency (UKHSA) voluntary co-ordinated sampling programme.
  - k. Co-ordinated programmed surveillance sampling with other local authorities e.g., Eastern Region Co-ordinated Food Sampling
  - l. Sampling related to local products/events/initiatives concerning an issue particularly relevant within the authorities area; and
  - m. This authority's obligations under the Framework Agreement of the Food Standards Agency the Food Law Code of Practice.

### **3. Aims and Objectives of Sampling**

- 3.1 This protocol also takes into account the following aims and objectives for the examination of foods, materials or waters for micro-organisms, toxins or chemicals:
- a) To protect the consumer through the enforcement of food legislation and the encouragement of fair trading.
  - b) To identify foods that could pose a hazard to the consumer because they may contain significant levels of pathogenic bacteria and/or toxins.
  - c) To meet national legislative requirements e.g. products of animal origin regulations, the requirements of the Food Standards Agency (FSA) Framework Agreement and the requirements of the Food Law Code of Practice.
  - d) To identify any contraventions of food safety legislation e.g. EC 178/2002 Principles and Requirements of Food Law, Article 14 food which is unfit or food which is so contaminated to make it injurious to health or unfit for human consumption.
  - e) To help evaluate temperature control, food handling and processing practices at food premises in relation to legal food hygiene requirements.
  - f) To help determine whether advice or enforcement action would be appropriate where it is suspected that poor practices and procedures exist.
  - g) To give advice and guidance, if appropriate, on food hygiene matters.
  - h) To assess the microbiological quality of food manufactured, distributed or retailed in an authority's area and improve standards of food safety.
  - i) To provide the Borough Council of Kings Lynn and West Norfolk with a co-ordinated sampling programme.
  - j) To support the Primary Authority Principle for major manufacturers and other premises where the Borough Council is Home or Originating Authority.
  - k) To provide supporting evidence to businesses that food safety requirements are being met.
  - l) To address both local and national food, water, environmental or safety concerns.
  - m) To ensure that food that is certified for export complies with food regulations.
  - n) To ensure that shellfish harvested from classified beds in the borough is within the permitted levels for e-coli and specific toxins and in accordance with the requirements in assimilated Regulation (EU) 2019/627
  - o) To monitor or investigate where there may be incidents of infectious or communicable disease

- p) To assist in establishing whether safe practices are being undertaken in premises where the Borough Council are the Enforcing Authority for Health and Safety
- q) To assess requirements under the International Health Regulations 2005 for ports and vessels

#### **4. Authorisations**

- 4.1. All officers undertaking formal food sampling as laid down in the Food Law Code of Practice will be qualified and trained in accordance with the Code of Practice.
- 4.2. Any officer not possessing these qualifications will only sample on an informal basis for food samples.
- 4.3. Authorisation for Private Water Sampling will be carried out in accordance with the Private Water Sampling Manual
- 4.4. Regard will be made to 'Best Practice Guidance for Local Authority Delegation of Official Control Samples for Shellfish Site Classification to Third Parties' Seafish

#### **5. Informal samples**

- 5.1. Informal microbiological samples of food and shellfish will be examined by the UK Health Security Agency UKAS accredited laboratory in Collindale, London. Water samples, both private and mains will be tested at the AW Services Laboratory at Huntingdon and ALS for both microbiological and chemical parameters.

#### **6. Formal Samples**

- 6.1. Formal food samples will be analysed by the UKHSA, UKAS accredited laboratory in Collindale, London and will satisfy the Food Safety (Sampling and Qualifications) Regulations 1990.

#### **7. Centre for Environment, Fisheries and Aqua Culture Science (CEFAS)**

- 7.1. Live mollusc samples will be analysed by CEFAS central government laboratory at Weymouth for algal biotoxins. Seawater samples will be analysed by the CEFAS central government laboratory at Lowestoft for algal toxins.

#### **8. Other Samples**

- 8.1 These may include rancidity, fungal/mould growth and foreign material in food. Such items may be submitted to the Public Analyst with the prior approval of the Environmental Health Manager. The current Public Analyst is Eurofins, however in the event of formal samples being required Eurofins being already contracted by another body such as a food producer, an alternative Public Analyst will be used such as Lancashire Scientific. Non-food microbiological samples will normally be submitted to UKHSA

## **9. Sampling Programme**

- 9.1. A Private Water sampling programme will be prepared each January to ensure that council can have regard to all sources that require sampling during the year in accordance with the Private Water Supply regulation and guidance by the Drinking Water Inspectorate (DWI). The frequency and parameters sampled will be determined for each source by the legislation and through risk assessment.
- 9.2. This authority will prepare an annual Food, Shellfish, Water and Health and Safety Sampling Programme having regard to the factors listed in Sections 2 and 3 above. This programme will therefore consist of the following components:

### **9.3. Sampling Requirements**

#### **9.3.1. Shellfish Sampling for Classification**

Samples will be taken monthly or more frequently from shellfish beds to meet requirements in relation to shellfish monitoring in liaison with the Inshore Fisheries Conservation Authority (IFCA), local producers and neighbouring local authorities. Shellfish flesh will be examined for e-coli.

#### **9.3.2. Marine Biotoxin Sampling for classification**

This requires molluscs e.g. mussels, cockles and seawater to be sampled from growing beds and tested for algal biotoxins by the Centre for Environment, Fisheries and Aqua Culture Science (CEFAS) at their laboratories at Weymouth or Lowestoft.

#### **9.3.3 High Risk Food Not of Animal Origin (HRFNOAO) for Export**

All consignments of HRFNOAO must be sampled and analysed for contaminants specified by legislation before they can be certified by the authority for export. BCKLWN cannot certify HRFNOAO for export unless analysis results demonstrate that contaminants in the food are within permitted levels. Currently such sampling is carried out by BCKLWN in conjunction with Norfolk Trading Standards and samples are analysed by Public Analyst Scientific Services (PASS).

#### **9.3.4 Products of Animal Origin (POA) Sampling (EC 853/2004, EC 2017/625)**

Certain Premises approved under this legislation may be periodically sampled for routine monitoring and surveillance purposes to verify that the premises controls are resulting in the production of safe food. These types of premises include shellfish purification premises, fisheries products premises, dairies, and meat product producers.

Premises producing POA foods that the Local Authority certifies for export may also be subject to periodic sampling by officers to ensure compliance with microbiological regulations, such as Regulation (EC) 2005/2073



Factors such as the nature of food produced, compliance history of a premises, sampling results history and the adequacy of a premises own sampling regime will be taken into account when deciding which approved premises will be sampled and the frequency.

#### 9.3.5 Sampling During Routine Inspections

Food sampling is not ordinarily carried out during routine food hygiene inspections however, officers may carry out sampling in circumstances such as the following:

- If there is a history of poor food sample analysis results from the premises.
- If the officer suspects food safety controls may not be adequate.
- If a complaint or an allegation of food poisoning has been received in respect of food at that premises.
- If intelligence from other authorities or national bodies suggests controls at the premises may not be adequate.
- Premises has introduced new products and/or processes since the previous inspection.

#### 9.3.6 Investigative

Such sampling will only be carried out when the investigating officer deems it appropriate, for example: –

- Before, during or after routine inspections for the purpose of enforcement, process monitoring, or to assess the safety of particular foods
- Following a complaint (Food may be sent for analysis if formal action is likely as a result of the complaint, or where it is alleged that illness was caused by the consumption of the food in question).
- As part of a special investigation e.g. a suspected food poisoning outbreak, product withdrawal etc.

In the case of a complaint or investigation the sampling will be in liaison with UKHA or the Public Analyst

#### 9.3.7 Private Water Samples

Certain food premises in the Borough use private water (that is water that is not supplied by a water undertaker) to prepare food. Such water is usually supplied from a borehole, spring or well. Private water is sampled from supplies at various premises to ensure the quality of the water meets the requirements of the Food Safety Act 1990 and the Private Water Supplies (England) Regulations 2016 (as amended). A separate sampling plan has been produced for private waters.

#### 9.3.8 PHE Co-ordinated Food Liaison Group Sampling Programme.

This nationally organised programme requests sampling from a variety of premises and foodstuffs during a year. Such sampling usually takes the form of specified studies in which Local Authorities participate. BCKLWN will take part in such

studies where resources allow. Statutory sampling requirements will always take priority.

### 9.3.9 Other National Programmes

From time to time we may be required to participate in special surveys co-ordinated by the Food Standards Agency e.g. imported foods or specialist cheese makers.

## 9.4. Other Sources of sampling

- a) Formal sampling as a result of a food premises inspection or detention/seizure of foodstuffs.
- b) Sampling as a result of a food complaint or suspected food-poisoning outbreak.
- c) Sampling on request of a food business e.g. new product and/or processes sampling.
- d) Verifying the shelf life of foods produced by premises
- e) Sampling for infectious or communicable disease
- f) Proactive or investigative for Health and Safety premises

On receipt of the results, action will follow in accordance with the section on "Follow up Action".

## 9.5. Sample Numbers

9.5.1 Sampling will be undertaken to achieve the aim of the sampling plan. This plan will balance the need for sampling against, number of food samples will be taken each month as identified from the annual sampling programme and agreed with the PHE Laboratory.

9.5.2 The overall number of samples taken will be sufficient to meet the above requirements.

9.5.3 The annual Sampling Programme will be documented.

## 10. Sampling Procedure

10.1. There are several factors influencing when and how sampling takes place which will be taken into consideration. Examples may be whether the sample is being taken for formal or informal purposes, conditions during sampling and conditions during transport to the laboratory.

10.2. Several procedures have been developed to cover specific types of sampling and reference should be made to these before any sampling is undertaken. These are listed under the references section of this document.

- 10.3. In carrying out the above considerations due regard will be had to the guidance and advice provided in the HPA Guidelines Assessing the Microbiological the Microbiological Safety of Ready-to-Eat Foods Placed on the Market 2009 and legislation. All food sampling activities will comply with the requirements of the Regulation of Investigatory Powers Act 2000.
- 10.4. The follow-up action for all sample results will be passed to the nominated Case Officer who may discuss the results with a more senior officer to consider any action to be taken which may involve resampling and/or premises inspection. Due regard will be had to the expert advice from the food examiner, Public Analyst the authority's enforcement policy and any liaison with the Primary Authority, Principal, Home or Originating Authority if appropriate. Action to be taken will be dependent on the type of sample under consideration.

#### **10.5. Private Waters**

- 10.5.1. Where water for a food premises is also a Private Water, action will be determined by the Private Water Supplies England Regulations and Water Industry Act 1991 and food safety legislation where the affected supply controllers and users will be contacted.

#### **10.6. Mains Water**

- 10.6.1. In the event of non-compliance with the microbiological standards of the Water Supply (Water Quality) Regulations 2000, the Case Officer will notify Anglian Water for action by them. In addition, contact will be made with the user of the supply offering advice and arranging a resample as required.

#### **10.7. Receipt of sampling results**

- 10.7.1. On receipt of the results, comparisons should be made with the appropriate Guidelines or legislation concerning that sample.
- 10.7.2. For Food samples Guidelines Assessing the Microbiological the Microbiological Safety of Ready-to-Eat Foods Placed on the Market 2009 and relevant legislation such as EC Regulation 2073/2005 will be consulted. Most sampling results will be categorised by the laboratory as being satisfactory, borderline or unsatisfactory. A record of the sampling and actions will be made on the premises record and the sample results will be linked to the premises through the document management system. Appropriate action will be taken by the Case Officer as follows:
- 10.7.3. Satisfactory Result – The food business will be notified of the result within 10 working days from receipt.
- 10.7.4. Borderline Result – This result demonstrates that the food is of borderline microbiological quality. Within 5 working days the proprietor will be notified of the result the suggested means to prevent further samples reaching unsatisfactory

levels. The proprietor will be advised that a further sample may be taken at some future date.

- 10.7.5. Unsatisfactory Result – The proprietor of the food business will be notified of the result either in writing, verbally or face-to-face within 3 working days. The result should be confirmed by writing and advice offered regarding the possible cause and means of rectification. The proprietor should also be notified that a further unsatisfactory result may lead to formal action being taken. Resamples will be taken as a matter of course.
- 10.7.6. Where unsatisfactory sample results highlight the presence of a pathogen then action will be taken by the officer to bring the matter to the businesses attention as soon as is practicable and will require specific action to be taken by the business. This may result in the detention or seizure of food or the recall of food that has been distributed. Such decisions will be taken based on the risk posed to public health.
- 10.7.7. Where further unsatisfactory results are obtained following re-samples then an assessment by a Senior Officer such as Principal Officer or Environmental Health Manager (and if necessary by the Microbiologist) will be made to determine further action which may result in formal action. Note: In the case of the food item being produced outside the Borough boundary and being “unsatisfactory” the originating authority/manufacturer will be notified as soon as is practicable. Consideration should also be made of reporting of the result as a Food Incident to the FSA Food Team.
- 10.7.8. Formal action leading to legal proceedings will be considered in the following circumstances:
  - A poor previous history of compliance at a particular premises
  - Observation of poor practices at the premises concerned e.g. cross contamination
  - Poor compliance with hazard analysis or HACCP requirement,
  - Evidence of poor temperature control relating to the food sampled,
  - Where adverse previous sampling results have been obtained,
  - Where unsatisfactory samples are linked to a food poisoning outbreak or illness.
- 10.7.9. Initiation of legal proceedings will be determined in accordance with the BCKLWN Enforcement Policy and the Food Law Code of Practice and its associated guidance.
- 10.7.10. Where unsatisfactory results relate to a classified shellfish bed then action will be taken in accordance with assimilated Regulation (EC) 2017/625 and assimilated Regulation 2019/627, Food Law Code of Practice and the Eastern Shellfish Liaison Group Local Action Plan. This may result in the temporary closure of the shellfish bed for harvesting or temporary degrade of the bed.

## **11. Food Complaints**

- 11.1 Occasionally food complaints are submitted to the section where it has been alleged to have caused illness to the complainant. In deciding whether to submit the food for analysis the Case Officer should have regard to the probable benefits of the analysis and its use in the subsequent investigation. Such samples should only be submitted with the prior approval of the Microbiologist and agreement over the tests to be undertaken.

## **12 Outbreaks and emergencies**

- 12.1 Where samples are being in relation to outbreaks or emergencies, regard shall be given to the other agencies or partners involved in the event and guidance from any incident management teams that may have been convened to manage the incident.
- 12.2 Where food is suspected of causing an outbreak of illness, the implicated food will be taken with a view to analysis or examination. It will then be submitted, as appropriate, in liaison with the Microbiologist and the Consultant in Communicable Disease Control. Similar action will be taken in the event of a food emergency in liaison with the FSA as appropriate. Formal samples may need to be taken in accordance with Food Law Code of Practice. Other formal action may be taken such as detention and seizure of food under the Food Safety Act 1990.

## **13. Cost of Sampling**

- 13.1 Food Sampling will be funded through Food Sampling Credits in accordance with the guidance from UKHSA and in liaison with Norfolk Food Liaison Group
- 13.2 Charges for food sampling will be made in accordance with the BCKLWN Fees and Charges in respect to chargeable activities under Regulation (EU) 2017/625 and The Trade in Animals and Related Products Regulations 2011
- 13.3 Cost of sampling for classification of Shellfish beds cannot be recharged and sampling credits can not be used and BCKLWN are responsible for these costs including any transport.
- 13.4 Private Water Supplies will be charged in respect of BCKLWN Fees and Charges

## **14. Responsibility**

- 14.1 It will be the responsibility of the Technical Support Officer or other nominated officer to undertake the majority of the routine sampling as requested by Officers. The Technical Support Officer should ensure that on receipt of the results, Case Officers are informed. Case officers should be informed promptly of any poor results so that they can review any actions that are necessary.

**15. Complaints and Appeals**

- 15.1 Any person wishing to complain about the service they have received or appeal against any decisions that affect them will be provided with information on how to do this in accordance with the BCKLWN's Enforcement Policy.

**16. Review**

- 16.1 This Sampling Protocol will be reviewed and amended as necessary. The Environmental Health Manager (Commercial) will be responsible for reviewing this Protocol

## REFERENCES

### Legislation

- Food Safety Act 1990 as amended
- Food Safety and Hygiene (England) Regulations 2013
- Food Safety (Sampling and Qualifications) Regulations 1990 as amended
- Regulation of Investigatory Powers Act 2000
- International Health Regulations 2005
- Regulation EC 2073/2005 Microbiological Criteria for Foodstuffs
- Regulation EC 853/2004, 2017/625, 2019/627, 2004/178
- Water Supply (Water Quality) Regulations 2016 as amended
- Private Water Supply Regulations as amended

### Formal Guidance

- HPA Guidelines Assessing the Microbiological the Microbiological Safety of Ready-to-Eat Foods Placed on the Market 2009
- Food Law Code of Practice and guidance (March 2021)
- Food Standards Agency: Framework Agreement on Local Authority Food Law Enforcement (April 2010) as amended
- Best Practice Guidance for Local Authority Delegation of Official Control Samples for Shellfish Site Classification to Third Parties' Seafish
- Food Standards Agency protocol for the collection and transport of shellfish samples for the purpose of Official Control Monitoring of classified shellfish production areas in England & Wales

### Council Policies and Protocols

- BCKLWN: Enforcement Policy [Corporate Enforcement Policy document | Borough Council of King's Lynn & West Norfolk \(west-norfolk.gov.uk\)](#)
- BCKLWN Private Water Supplies Local Manual
- BCKLWN Food Sampling Programme Plan 2024-2025
- BCKLWN Private Water Sampling Plan 2024
- BCKLWN Food, Health and Safety Service Plan (2024-2028)

Borough Council of  
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