



Department  
for Environment  
Food & Rural Affairs



Department  
of Health &  
Social Care

Briony Ballard  
London Inner South Coroner's court,  
Southwark Coroner's court,  
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REGULATION 28: RESPONSE BY THE FOOD STANDARDS AGENCY, THE DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS AND THE DEPARTMENT OF HEALTH AND SOCIAL CARE

Dear Ms Ballard,

Thank you for sending the Regulation 28: Report to Prevent Future Deaths, concerning the inquest into the death of Owen Carey, who died tragically from a severe anaphylactic reaction.

We were deeply saddened to hear of the death of Mr Carey in April 2017 and extend our sympathies to his family and friends.

In terms of the split of responsibility in Government, the FSA is responsible for food safety labelling and food allergy policy in England, Wales and Northern Ireland. Food information to consumers legislation, which incorporates allergen labelling, sits with Defra. Defra notes your recommendations and supports the Food Standards Agency's work to ensure that consumers have the information they need to make safe food choices.

### **The adequacy and effectiveness of allergen training at Byron**

The overarching responsibility of food business operators is set out in Regulation (EC) No. 178/2002 ('The EU General Food Law'), Article 17(1): *Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.* The reasoning for this is provided in Recital (30) in that *a food business operator is best placed to devise a safe system for supplying food and ensuring that the food it supplies is safe; thus, it should have primary legal responsibility for ensuring food safety.* Of course, food law places responsibilities on both operators and food businesses through other general and specific requirements too, and such is the case with the provision of allergy information.

To support businesses, the FSA provides support through materials such as the 'Safer Food, Better Business' guidance, which is tailored to the needs of different types of business and includes a specific section on allergen management. The FSA also hosts a free online training platform on food allergen management and awareness which is available for anyone to access. This is available here: <https://allergytraining.food.gov.uk/English/>. When things go wrong, the FSA works with businesses to understand the causes of an incident and consider appropriate action to prevent this from happening again. A free online training course in Root Cause Analysis is available on the FSA website.

Local authorities have responsibility for assessing how businesses, such as Byron, comply with food law and will take corrective action where any issues are identified. In carrying out their duties, local authorities will assess levels of compliance, including in relation to allergen management, through inspections, record and traceability checks, food sampling and staff interviews. Where non-compliance is identified, local authorities will work with the business to improve standards and take appropriate, proportionate enforcement action should that be necessary. The FSA has responsibility for oversight of this work and the Food Law Code of Practice is the primary mechanism through which the FSA gives direction to local authorities to ensure a degree of consistency in approach.

### **The effectiveness of the current placement and appearance of allergen notices on restaurant menus to trigger an allergen discussion between a customer and serving staff**

Food Labelling is an area of EU competence. The EU Food Information for Consumers ("FIC") Regulation (Regulation (EU) No. 1169/2011) is directly applicable across the EU and requires food businesses to provide consumers with clear information about the food, including information on allergenic ingredients. The domestic Food Information Regulations 2014 (which relates chiefly to England) and similar legislation in Scotland, Wales and Northern Ireland provide for the execution and enforcement of the EU Regulation in the UK. In terms of the provision of allergy information on foods other than prepacked (such as those you might find supplied to and sold in a supermarket) the UK, like other member states, is free to set its own rules that best meet their national requirements.

Legislation in the UK requires that any food business selling food that is not prepacked, such as meals sold in a restaurant, must provide allergen information, this can be by any means that the operator chooses, including orally. When a food business operator intends to make allergen information available orally, legislation requires that that option must be made clear to the consumer either on a label attached to the food, or on a notice, menu, ticket or label that is readily discernible at the place where the intending purchaser chooses that food stating that details can be obtained by asking a member of staff.

If a written notice is chosen, FSA technical guidance is clear that the mandatory information should be easily accessible, in a conspicuous place, easily visible and clearly legible. Information should be indelible (permanent) where appropriate, for example on food labels where it needs to withstand handling. The information should not be hidden, obscured, detracted from or interrupted by other written or pictorial matter or any other intervening material. Businesses should be able to demonstrate the systems they operate for this mandatory provision of allergy information to the relevant enforcement authorities, in England this rests with the Local Authorities.

Regardless of the method chosen, the information must be accurate and up-to-date. We are currently updating our guidance for businesses and will ensure that these

requirements remain clear, including the requirement for notices (on menus and elsewhere) to be readily discernible. We want to be sure that businesses are communicating allergen information to consumers in the most effective ways, and we are currently undertaking further research into how businesses understand and act on their responsibilities and how consumers receive and use this information. This research will inform any further updates to business guidance.

### **The lack of key allergen information on the face of restaurant menus and therefore their potential to be falsely reassuring**

Current legislation does not specifically state that menus need to provide allergen information, however it is one avenue for businesses to provide mandatory allergy information which is required of them. As explained above, businesses must provide accurate allergen information at point of sale but this can be done in a number of ways including in writing or verbally.

Where businesses choose to provide information on menus regarding allergenic ingredients used in their products this information must be kept up-to-date and must not be misleading. The EU Food Information for Consumers (“FIC”) Regulation (Regulation (EU) No. 1169/2011) FIC art. 7 states that ‘Food information shall not be misleading’ and ‘Food information shall be accurate, clear and easy to understand for the consumer’.

Allergen declarations on menus may be difficult in practice for some businesses that change menus or ingredients frequently and could introduce a risk of false reassurance for customers if the written information cannot be relied upon due to day-to-day changes in ingredients. Again, the choice of the most effective way to provide information is part of the system that businesses should be providing to assure enforcement authorities that they are complying with information requirements.

As the FSA said in their evidence to the House of Commons Public Accounts Committee on 28 October, there are four key factors that food businesses need to get right to safeguard consumers in relation to allergens: good food handling practice and avoidance of cross-contamination; making information about ingredients available to consumers; ensuring staff are knowledgeable about what is in the food and are updated on changes so that they are able to provide accurate information to consumers; and ensuring that consumers are able to have conversations with the business, even if written information is provided.

The FSA regularly raises awareness of the information that businesses must provide to consumers, but due to the dynamic nature of the food sector, these messages must, however, continue to be reinforced. The FSA is planning a further business and consumer awareness campaign which will be launched in early 2020 to remind business of their responsibility to provide accurate information and to make sure consumers know what information to expect. The campaign and other planned material will engage with businesses and young people, who we know to be the highest risk age group.

The FSA will be hosting an Allergy Symposium in February that will bring together key industry sectors, enforcement bodies, consumer groups and clinicians to explore the complexities of managing allergens, showcase good practice, exchange knowledge, while expanding our awareness of food hypersensitivity and assisting food businesses in achieving compliance.

### **The lack of a national register recording severe food anaphylactic reactions**

As articulated in your report, this recommendation refers primarily to a register of deaths so that 'the circumstances of these deaths ... could then be analysed and learnt from by allergy specialists.'

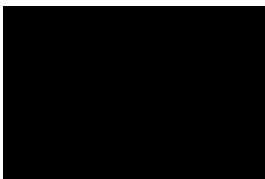
The FSA agrees that there needs to be more systematic information collected on anaphylactic reactions, and that the evidence base is currently inadequate. The FSA is exploring how to collect more data on allergic reactions so that we and others can identify emerging patterns or trends and build a better picture of allergic consumer experience of reactions. We have therefore embarked on work investigating a reporting platform for allergic reactions, including better information on severe reactions that do not result in a death. This is in the early stages as it is likely to involve the development of an online reporting system and/or better data sharing and exchange of information between different organisations.

The aim of this project is to create a reporting link to the FSA for a range of stakeholders such as consumers, businesses and potentially medical professionals so that the FSA can collect data on currently unreported allergic food reactions, identify trends in a timely fashion and if necessary alert local authorities so as to allow them to take appropriate investigative and enforcement action.

The Department of Health and Social Care (DHSC) notes the recommendation on a fatalities register and concurs that it is essential we learn from these tragedies. In conjunction with the FSA's ongoing programme to collect more information on anaphylactic reactions, DHSC will work to increase information prevalence on these deaths. The Department will identify means of access to relevant records so that they may be included, as is necessary and appropriate in preventing future incidents, within the FSA's planned reporting platform for the purposes of analysis. In addition to this the Department wishes to underline its emphatic support of the FSA's strategy on food hypersensitivity.

As a final comment from the Food Standards Agency, the FSA Board is committed to review progress on hypersensitivity at each of its public meetings. The extent to which is evident by the many steps the FSA has committed to in the last six months which will improve levels of protection.

Yours sincerely,



**Chief Executive Officer, The Food Standards Agency,**

A handwritten signature in blue ink, appearing to read 'Rt Hon the Lord Goldsmith'.

**The Rt Hon the Lord Goldsmith of Richmond Park, Minister State, Department for Environment, Food and Rural Affairs,**

A handwritten signature in blue ink, appearing to read 'Jo Churchill'.

**Jo Churchill MP, Parliamentary Under Secretary of State for Prevention, Public Health and Primary Care.**