

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING ASSISTANT DIRECTOR OF REGULATION AND  
ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**JANUARY 2020**  
**ALL WARDS**

**THE MANAGEMENT AND ENFORCEMENT OF ALLERGEN CONTROLS DURING  
INSPECTIONS AND THE ACTIONS TAKEN TO DATE**

1. Summary

- 1.1 As a result of increased concerns about allergen information provided to consumers, and the control of allergenic substances in food businesses, increased emphasis has been placed on this subject during food hygiene inspections.
- 1.2 Additional checks are carried out during inspections, including carrying out full audits of menus, and an assessment of the provision of food to consumers that present with an allergy. This then determines the level of intervention, with the aim of protecting consumers from a potentially serious food safety incident.
- 1.3 Officers have developed an innovative approach to dealing with allergen issues in food businesses, including the use of allergen stop requirements and the increased service of statutory notices. This means we are providing enhanced protections for allergen consumers in the city.

2. Recommendation

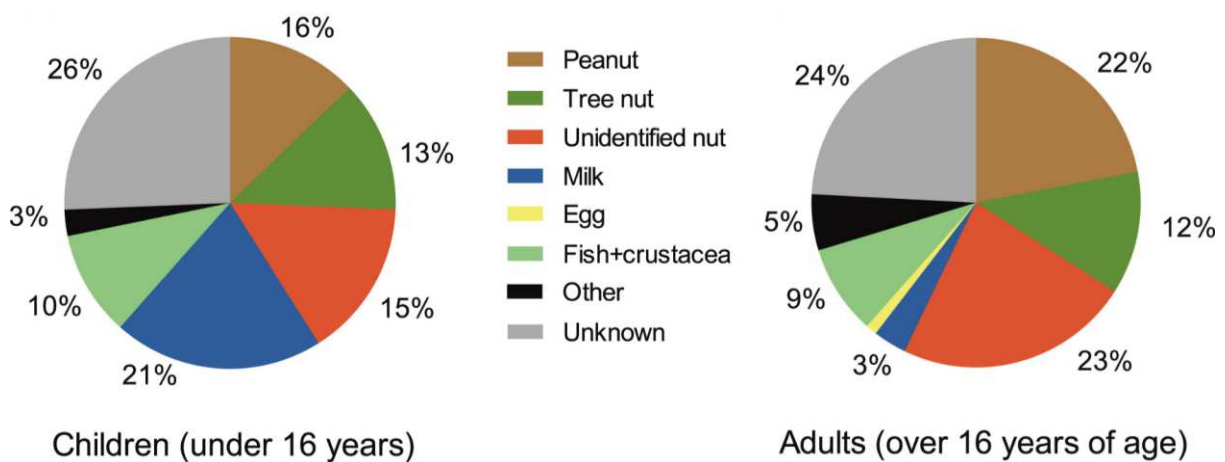
- 2.1 That the committee endorse and support the allergen control approach used during inspections, in order to ensure that Birmingham is a safe place for allergen consumers to visit.

Contact Officer: Nick Lowe, Operations Manager Food  
Telephone: 0121 303 2491  
Email: [nick.lowe@birmingham.gov.uk](mailto:nick.lowe@birmingham.gov.uk)

### 3. Background

- 3.1 In the UK it is estimated that 1-2% of adults and 5-8% of children have a food allergy. This equates to around 2 million people. People with allergies can have a reaction called anaphylaxis which can be fatal. An allergic reaction can be produced by a tiny amount of a food ingredient that a person is sensitive to.
- 3.2 Around 10 people die in the UK from allergic reactions to food every year. It is therefore very important that food businesses provide clear and accurate information about allergenic ingredients in their food.

#### What Foods Cause Fatalities?



- 3.3 In May 2016, Paul Wilson, 38, who had a nut allergy, died after consuming a curry containing peanut. He had explained to staff that his meal must be nut free. The restaurant owner had swapped almond powder for cheaper ground nut mix containing peanuts.
- 3.4 In June 2017, Chole Gilbert, 15 who had a severe dairy allergy died after unwittingly consuming a kebab containing yogurt.
- 3.5 In January 2017, Megan Lee, 15, who had a severe nut allergy died after eating a meal from a takeaway restaurant that contained nuts.

### 4. Megan Lee's Story

- 4.1 Megan Lee was 15 years old and attended the local secondary school, studying for GCSE's with an interest in musical theatre. At 18 months of age she was diagnosed with asthma and used inhalers on a daily basis. She was diagnosed with a nut allergy at the age of 8 years.
- 4.2 Tests conducted at her GP surgery were consistent with Megan being allergic to coconut, nuts (peanuts and almonds), grass, dust, prawns and pet hair. Megan and

her family were advised that the allergies were 'mild'. No epi-pen was prescribed, with her allergies capable of being controlled with over counter medication.

4.3 Megan was 'fastidious' in what she ate, with good eating habits consisting of 'plain food'. No care plan was in place at school and no previous incidents were noted that may have given reasonable cause to conclude that there ought to be. The last allergic reaction to food was five years prior (aged 10) the likelihood was the consequence of consuming a prawn cracker. The reaction was alleviated with over the counter medication.

4.4 On 30th December 2016 Megan Lee placed an order for starters with her friend, from a local takeaway, via a delivery App, stating in the comments box 'allergic to nuts, prawns'. The food was produced by the takeaway and delivered to her friends house, by the manager of the takeaway. Megan consumed part of a seekh kebab, and started to feel a tingling sensation on her lips and she is administered Piriton. Megan returns to eating the food and consumes half a peshwari naan and an onion bhaji, the following occurred:

- Friends parents call takeaway and advise of reaction
- Takeaway provide no further details on ingredients/potential allergens
- The manager returns to address to find out more information and check on the situation, this was a third chance to provide information, but no further information was provided
- On return home Megan experiences breathing difficulties, and subsequently goes into respiratory and cardiac arrest.
- Megan passed away on 1st January 2017
- Pathologist concluded that the cause of death was

#### 4.5 Acute asthma due to a nut allergy

*"Overall, considering the circumstances, clinical history, immunology findings and pathological features of this case it is my opinion that Megan Lee suffered a fatal asthma attack precipitated by an allergic reaction to nuts"*

#### Sampling Results

Food Type	Almond	Peanut	Crustacean	Comment
Chapatti	Almond < 2.5 mg/kg	Peanut < 2.5 mg/kg	Crustacean Allergen < 20 mg/kg	Allergenic substances were not detected in the sample which was satisfactory
Peshwari Naan	Almond < 2.5 mg/kg	Peanut > 20 mg/kg	Crustacean Allergen < 20 mg/kg	The amount of peanut protein in the sample was approximately 5 per cent. I am of the opinion that the presence of peanut protein rendered the food unsafe for a person allergic to peanut
Onion Bhaji	Almond < 2.5 mg/kg	Peanut 13.6 mg/kg	Crustacean Allergen < 20 mg/kg	Peanut protein was detected in the sample and, in my opinion, the food was unsafe due to the presence of a known allergen
Seekh Kebab	Almond < 2.5 mg/kg	Peanut 4.3 mg/kg	Crustacean Allergen < 20 mg/kg	Peanut protein was detected in the sample and, in my opinion, the food was unsafe due to the presence of a known allergen
Dough	N/A	Peanut < 2.5 mg/kg	N/A	Peanut protein was not detected which was satisfactory
Almond	Almond > 20 mg/kg	Peanut 5.0 mg/kg	N/A	Peanut protein was detected in the sample and, in my opinion, the food was unsafe due to the presence of a known allergen

## 5. Legislation

5.1 Since December 2014 all food businesses have been required to provide information about the allergenic ingredients used in food sold or provided by them. There are 14 major allergens which need to be declared:

Cereals containing gluten	Molluscs
Crustaceans	Celery
Eggs	Mustard
Fish	Sesame
Peanuts	Sulphur Dioxide ( >10mg/kg of product)
Soyabeans	Lupin
Milk	Nuts (almonds, hazelnuts, walnuts, pecans, brazil, pistachio, cashew, macadamia)

## 5.2 Food Information Regulations 2014

These implement the European legislation 'Food Information for Consumers Regulations' and brought about changes to prepacked food labelling. The existing requirements for pre-packed foods were retained, but a new requirement to **emphasise** allergenic foods in the ingredients list was introduced.

It also required allergens to be declared on all non prepacked and catering food, either verbally or in writing. If a food business operator chooses verbal, they must display a notice, and be able to give information verbally. In practice this means:

- Business must know which of the 14 allergens are present in each dish, sundry, drink and condiment that they serve
- Business must display a notice on the wall, or menu, online ordering platform, and ask when taking telephone orders
- Business must be able to give this information to any customer who identifies themselves as having an allergy
- Business must consider how they will pass allergen information on for online orders, telephone orders, and deliveries

## 5.3 Food Hygiene EC 852/2004

- "Raw materials and all ingredients stored in a food business are to be kept in appropriate conditions designed to prevent harmful deterioration and protect them from contamination." Regulation (EC) 852/2004 Article 4(2) Annex II Chapter IX Para. 2

- “At all stages of production, processing and distribution, food is to be protected against any contamination likely to render the food unfit for human consumption, injurious to health ...” Regulation (EC) 852/2004 Article 4(2) Annex II Chapter IX Para. 3

5.4 In practice this means:

- Businesses must take every step in their power to ensure that anyone who orders an allergen free meal, receives an allergen free meal
- The 14 specified allergens are included.
- Any other allergens not specified in FIC!
- Businesses must ensure that they address allergens as a hazard within their processes and procedures.
- Both as ingredients and as cross contamination

## 6. Revised Inspection Process and Outcomes

6.1 The control of allergens now forms a major part of our programmed inspections, our internal documentation and aide memoires are specifically designed to direct officers to carry out a robust examination of allergen procedures in the food business.

6.2 The areas considered when carrying out a food hygiene inspection are:

- Management of allergens  
Allergen control must form part of a business’s food safety management system
- Training  
How much training have the staff had?  
Do staff understand allergen control?  
Can they tell you the allergens that must be listed on packaging or know where to go for assistance?  
Do staff understand the severity of allergies and the issue surrounding cross contamination?  
Do staff understand product substitution i.e. peanuts for almonds in curries?  
What would they do in practice if a customer asked for a product free from an ingredient?
- Storage of allergens  
Where are allergens stored?  
Can allergens contaminate other products or become contaminated themselves? Milk leaking?  
Are there cross-contamination issues?  
Are all allergens marked where required?  
If there is there a colour code system in place, is it adhered to?

- Preparation
  - Do they have any set procedures when preparing food for a customer with a food allergy?
  - What controls do they have in place to prevent cross contamination when preparing a dish for an allergy suffer ?
  - Are all allergens marked where required?
  - If there is there a colour code system in place, is it adhered to?
- Cleaning
  - Is cleaning effective?
  - Heat alone doesn't remove allergen protein
  - Is there a risk of cross contamination?
  - Could cleaning cloths be contaminated with allergenic material?
  - Are there good hand-washing practices in place and observed?
  - Are there any circumstances where gloves are used?
  - Are gloves changed as required?

6.3 Where businesses are failing in their responsibilities we are now taking immediate action. If a business is offering allergy free options, and our assessment it that this is not safe we are issuing 'Stop Requirements'. This document details how the business is failing and requires them to stop offering food to customers that present with an allergy, and to display a sign to that effect. This ensures that customers are not put at an unacceptable risk.

6.4 This is then followed up with appropriate statutory notices, either to deal with the lack of accurate and available information on allergens, or to deal with the potential for cross contamination due to poor hygiene practices.

6.5 To date the service has issued 192 'Stop Requirements' and served 86 statutory notices to rectify allergen deficiencies. We are also currently investigating a number of cases where consumers with an allergy were sold harmful food.

## 7. Implications for Resources

7.1 The time involved in undertaking all interventions has increased due to this more intensive analysis of allergen control. Officers have been provided with the tools and resources to undertake this work and it is expected that as standards improve the time necessary for this will reduce. However, in Birmingham, it is important to recognise that Environmental Health is the only service visiting food businesses to check for allergen related compliance.

## 8. Implications for Policy Priorities

8.1 In 2019 serious allergen incidents are continuing and a number of people have lost their lives. It is a fact that a large number of businesses are still not compliant and therefore allergy sufferers have false confidence in the ability of food businesses to prepare allergen free meals.

8.2 It is important that all groups within Birmingham, as well as visitors to the city, are offered suitable safety standards in food businesses to allow them to eat out safely, with confidence, this must include customers with an allergy.

9. Public Sector Equality Duty

9.1 Equality issues are accounted for during activities carried out by officers.

Head of Environmental Health

on behalf of:

**ACTING ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: nil