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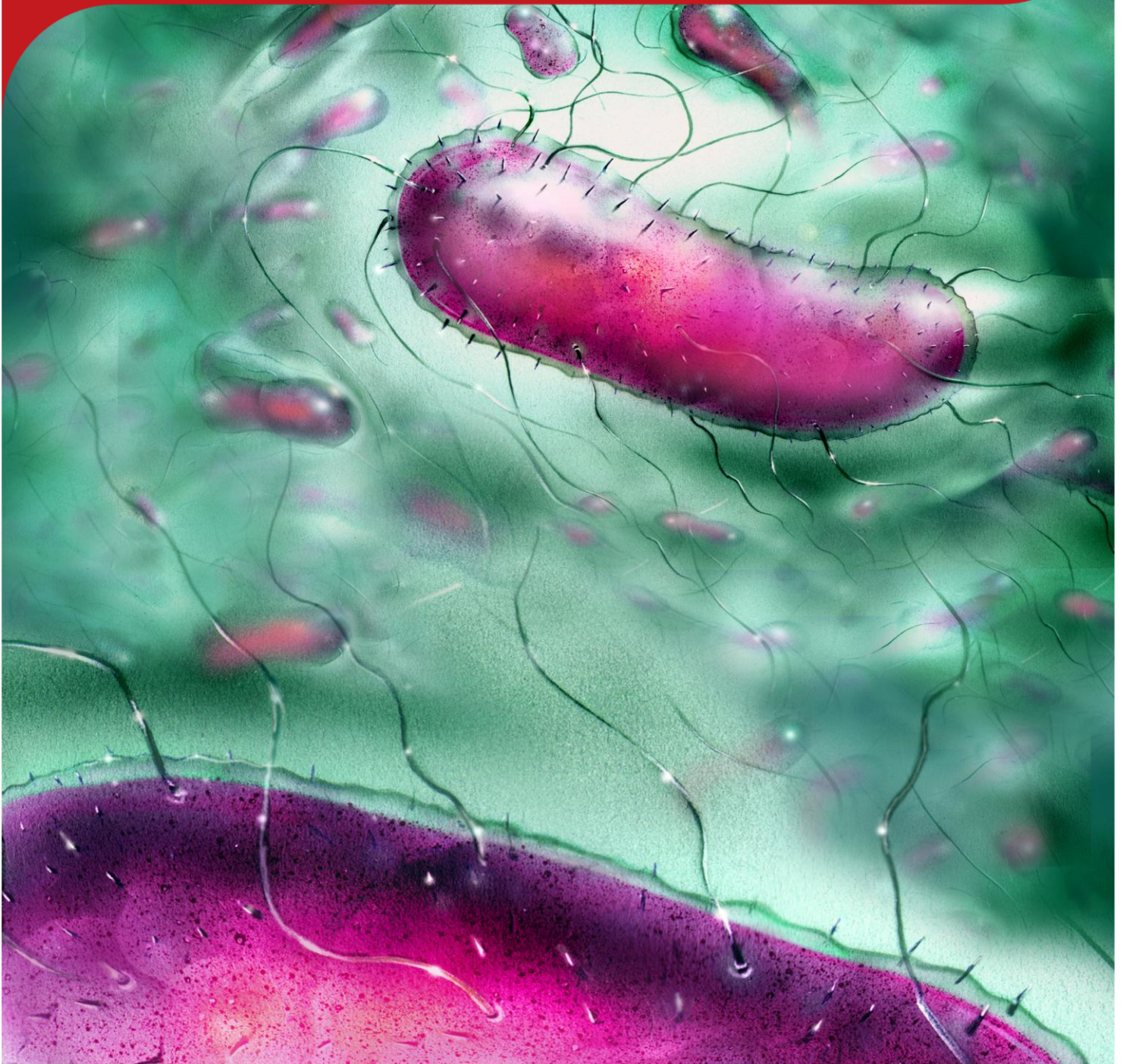
Consumer Focus  
Wales

Wales' Consumer Champion

Health, Wellbeing and Local Government Committee: HWLG(3)-12-10-p3: 24 June 2010

# Protecting consumers from *E.coli* O157: Progress on implementation of the Pennington Report in Wales

March 2010



# Contents

Foreword by Professor Hugh Pennington	4
Overview	5
Introduction	6
Professor Pennington's March 2009 recommendations	10
Conclusions	42
Next steps	53
Annex 1: Glossary of terms	56
Annex 2: Timeline of events	59

## About Consumer Focus Wales

Our structure reflects the devolved nature of the UK. Consumer Focus Wales looks at issues that affect consumers in Wales, while at the same time feeding into and drawing on work done at a GB, UK and European level.

In advocating for consumers we aim to influence change and shape policy to better reflect the needs of consumers. We do this in an informed way owing to the evidence we gather through research and our unique knowledge of consumer issues.

We have a specific focus on vulnerable consumers, particularly those on low incomes, people with disabilities, people living in rural areas and older people. In addition, we also seek to identify where other consumers may be disproportionately disadvantaged by an issue or policy.

**Images:** Posters used in this document come from a schools competition run by Consumer Focus Scotland and Food Standards Agency Scotland.





*Different meat Should never meet*  
By Lucy Aitken, Drymen Primary, Drymen

# Foreword by Professor Hugh Pennington

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A Public Inquiry has two main tasks, to find the facts and to make recommendations for the future. It has a duty to pass the test set for formal investigations by the Hon Mr Justice Sheen 'that members of the public should feel confident that a searching investigation has been held, that nothing has been swept under the carpet and that no punches have been pulled.' But even if it passes this test, a big problem remains. Once its report has been published, its work is done. Others are responsible for implementation. My personal experience in this regard is not a happy one. In 1996-07 I chaired an Expert Group which made recommendations after the 1996 Central Scotland *E.coli* O157 outbreak. My hope that their implementation would prevent subsequent *E.coli* O157 outbreaks due to food hygiene failures in butchers was dashed by the events in South Wales in 2005. My fear now is that there might be a 'Pennington 3'. That is why I enthusiastically welcomed the establishment of the Consumer Food Safety Group led by Consumer Focus Wales.

This authoritative review of progress towards the implementation of my recommendations appears on the first anniversary of the publication of my Public Inquiry report. It says that while much has been done, much remains to be done. The review is a powerful spur and stimulus to continued action.

One of the main themes of the review is money. Finance for those who deliver food safety in businesses and for their regulators is tight. Increased pressures on budgets will continue. But the threat from *E.coli* O157 isn't going to change. Prevention must remain paramount. That is why I am looking forward to positive responses regarding food safety finance, as well as to all the other items for action highlighted so well in this review.

## Hugh Pennington

On behalf of myself and my family and other affected families, I would like to thank Consumer Focus Wales for all the hard work they have carried out in compiling this report.

Transparency is what we called for after the recommendations were announced and I think this report gives us some much awaited answers to some of the questions which the agencies involved have failed to answer since Professor Pennington's report was published.

This report shows us that although a little progress has been made, so much more is still yet to be done. That is why funding is so crucial.

I'd also like to express my thanks again to Professor Pennington.

To you we are all eternally grateful.

### **Sharon Mills**

Mother of Mason Jones, who died on 4 October 2005 from *E.coli* O157

# Overview

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In September 2005, a major outbreak of *E.coli* O157 occurred in South Wales. Contaminated cooked meat, supplied by Bridgend-based butcher John Tudor and Son, was served to pupils in schools throughout four local authority areas. A total of 157 people, mostly children, became ill, and on 4 October 2005 a five year old boy, Mason Jones, died.

This report looks at what has been done since then to prevent another major incidence of *E.coli* O157. Following the 2005 outbreak a public inquiry was held, chaired by Professor Hugh Pennington. The inquiry made 24 recommendations aimed at public sector bodies and food businesses.

As an independent body Consumer Focus Wales has taken on the task of reviewing the work done to put the recommendations into action. This report looks at the picture one year on from Professor Pennington's inquiry report.

Quite clearly, all public bodies have taken the findings of the Pennington Inquiry very seriously. A great deal of time and money has been spent, particularly by local authorities, on addressing the issues raised in the inquiry. Much positive work has been achieved, and there is some promising activity currently in progress. However, three of the recommendations are not being put into action, and there are many other areas where Consumer Focus Wales believes more needs to be done.

The Welsh Assembly Government and local authorities in Wales need to ensure that enough funding is available to do the extra work necessary as a result of the recommendations, the total cost of which has been estimated at £2.5 - £3 million a year by the Welsh Local Government Association.

The law is not clear on whether Environmental Health Officers should be requiring food businesses to use separate machinery for raw meat and ready-to-eat foods. The Food Standards Agency should issue guidance on this issue to make it clear that complex, hard-to-clean equipment should never be used for raw and ready-to-eat meats.

Some issues are not being monitored as closely as we believe they should. The Food Standards Agency should monitor how many food hygiene inspections are carried out on a surprise basis. The safety of school meals also needs to be regularly surveyed: the last survey was carried out in 2006/07.

All agencies should look at how they engaged with affected families in the aftermath of the outbreak, to learn lessons for the future and ensure that people affected by *E.coli* O157 are always dealt with in a direct and sympathetic way.

We have identified many other actions that need to happen to increase consumer safety. Consumer Focus Wales will be ensuring that all agencies are aware of what we believe needs to be done to give consumers the best possible protection from *E.coli* O157 and other harmful bacteria that can live in food. We will continue to report annually on the work to turn Professor Pennington's recommendations into reality.

# Introduction

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In September 2005 a major outbreak of *E.coli* O157<sup>1</sup> occurred in South Wales. It was the largest outbreak of its type ever seen in Wales and the second largest in the United Kingdom. Contaminated cooked meat, supplied by Bridgend-based butcher John Tudor and Son, was served to pupils in schools throughout four local authority areas.

A total of 157 people were diagnosed with *E.coli* O157. Most of these were children from 44 schools in the Rhondda Cynon Taf, Caerphilly, Bridgend and Merthyr Tydfil areas. Thirty-one people were admitted to hospital. On 4 October 2005 Mason Jones, aged five, died.

To this day many of these children are living with severe and chronic health conditions as a direct result of the *E.coli* O157 infection, including gastro-intestinal problems, brain damage and kidney damage.

Following the outbreak the then First Minister, Rhodri Morgan AM, appointed Professor Hugh Pennington to hold a public inquiry to:

*'enquire into the circumstances that led to the outbreak of E.coli O157 infection in South Wales in September 2005 and into the handling of the outbreak; and to consider the implications for the future and make recommendations accordingly.'*<sup>2</sup>

Professor Pennington's report, which was presented to the First Minister on 19 March 2009, made a series of 24 recommendations aimed at public sector bodies and food businesses.

There is no doubt that the direct blame for the outbreak must lie with the butcher. As Professor Pennington said in his report,

*'The outbreak occurred because of food hygiene failures at the premises of John Tudor and Son. The responsibility for it falls squarely on the shoulders of William Tudor, the Proprietor.'*<sup>3</sup>

Tudor received a 12-month prison sentence after pleading guilty to seven counts of food hygiene offences.

## Substandard hygiene

The inquiry found that substandard hygiene practices had been the norm at Tudor's, and that the inspections undertaken by environmental health inspectors were made less effective by William Tudor's dishonesty<sup>4</sup>. Even so, the inspectors did not assess or monitor the business's management of food safety as well as they could, or should, have done<sup>5</sup>.

Clues were missed, and those that were spotted were lost in the system because there was no mechanism for alerting other Environmental Health Officers to issues or concerns for subsequent inspections.

Professor Pennington's recommendations have implications across a wide range of agencies, not just environmental health services.

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<sup>1</sup> The glossary at Annex 1 includes a brief explanation of what *E.coli* O157 is

<sup>2</sup> Terms of reference of the Public Inquiry ([www.ecoliinquirywales.org](http://www.ecoliinquirywales.org))

<sup>3</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p12, par 19

<sup>4</sup> *ibid.* p13, par 27

<sup>5</sup> *ibid.* p13, par 27



Procurement teams, responsible for awarding contracts for food supplied to schools, had failed to act on repeated complaints made by school catering staff about the quality of the meat coming from Tudor's.

The Food Standards Agency, whose responsibility it is to audit how local authorities conduct inspections, had failed to identify, in its latest audit prior to the outbreak, any serious problems in the way that Environmental Health Officers were working.

The Meat Hygiene Service, despite finding serious hygiene problems at the abattoir which supplied Tudor's, allowed the business to continue functioning even when it received a hygiene score of 11 out of 100 in August 1994, the lowest hygiene score ever awarded to an abattoir in the UK.

Since the outbreak much work has been done to implement the recommendations and strengthen the food safety regime in Wales. However, there is still a great deal to do. As an independent body with statutory powers to represent consumers and to investigate consumer matters, Consumer Focus Wales has taken on the task of reviewing the implementation of Professor Pennington's recommendations. We have done this independently, with input from key organisations.

## The public should know

Our view is that this information needs to be in the public domain. Consumers have a right to know what has changed, in the wake of the 2005 outbreak, to increase food safety and prevent another major incidence of *E.coli* O157. Our aim is to bring together information on what has been done to respond to the Pennington Report, and to highlight where further action is necessary.

This publication is a summary of actions to date, one year on from Professor Pennington's inquiry report. It is based on information contributed by organisations including:

- The Welsh Assembly Government
- Food Standards Agency Wales
- Welsh Local Government Association<sup>6</sup>
- Directors of Public Protection Wales
- Local Better Regulation Office
- Public Health Wales
- Haemolytic Uraemic Syndrome Help<sup>7</sup>
- Federation of Small Businesses
- Association of Independent Meat Suppliers
- National Federation of Meat and Food Traders

We have also ensured a high level of input from members of families affected by the 2005 outbreak as well as other people affected by *E.coli* O157. During this process it has become clear that none of the families we engaged with were aware of the work done to implement Professor Pennington's recommendations. It was also clear that they very much wanted this information. As a result of this project they are now considerably better informed.

The above organisations are represented on the Consumer Food Safety Group, a forum led by Consumer Focus Wales which aims to rebuild public trust in food safety in Wales in the wake of the 2005 outbreak.

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<sup>6</sup> Views of local authorities in Wales were gathered through the Welsh Local Government Association

<sup>7</sup> Haemolytic Uraemic Syndrome Help (HUSH) is a support group for people affected by *E.coli* O157

The original source for this report is an internal document compiled by the Welsh Assembly Government entitled *Responsibility for Actions on Recommendations of Final Report*.

This document is maintained directly by responsible organisations including the Welsh Assembly Government, the Welsh Local Government Association, Food Standards Agency and Public Health Wales, and records information on actions taken to date, including which agencies are responsible for implementation. It is not currently in the public domain.

Intended primarily for officials, it is written in technical language and assumes a good level of understanding of environmental health in Wales. The Welsh Assembly Government has shared the document with Consumer Focus Wales, and we have scrutinised it and requested further information and detail to build up a clearer picture of the current situation.

While we are grateful for having been given access to this document, we believe that it should be in the public domain and we are considering the legal implications of publishing it in due course.

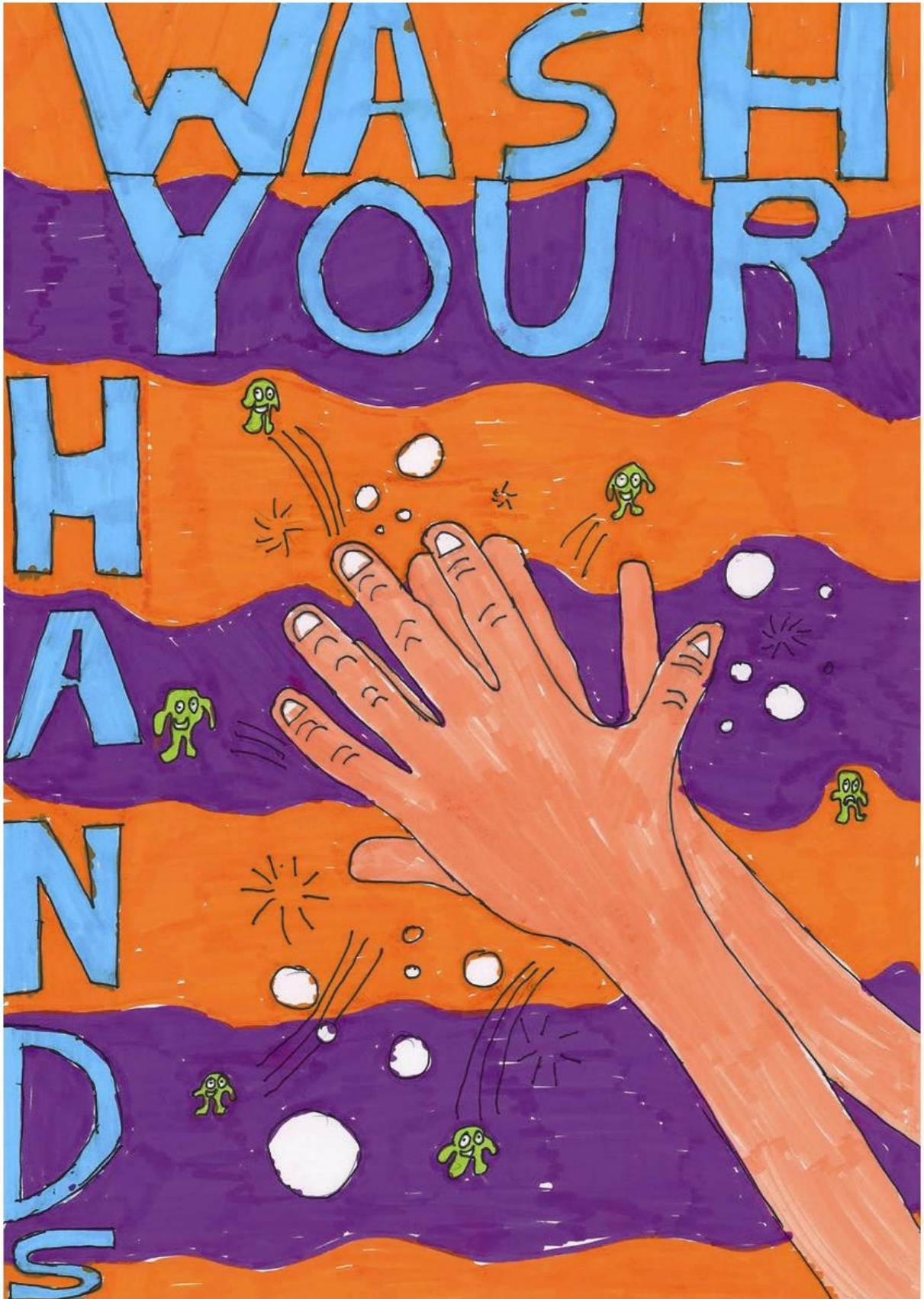
## **What we've done**

In the main body of our report we look at each of Professor Pennington's recommendations and summarise the actions that each organisation has taken. Because we feel it is important that members of the public are made aware of the facts, we have tried wherever possible to simplify the technical nature of the language, and explained key concepts and terms throughout. Annex 1 is a glossary which includes explanations of technical terms. A timeline of events is at Annex 2.

In the final section of this report we draw conclusions, giving our view on what are, from the consumer perspective, the critical issues and what still needs to be done.

We have also published a summary report which includes our broad analysis of implementation so far. This report can be accessed at <http://consumerfocus.org.uk/g/4L8> and hard copies are available from Consumer Focus Wales on (02920) 787100.





*Wash your hands*

By Kyle Jenkins, Tulliallan Primary, Kincardine

# Professor Pennington's March 2009 recommendations

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**Recommendation 1:** All food businesses must ensure that their systems and procedures are capable of preventing the contamination of cross-contamination of food with *E.coli* O157

**Recommendation 2:** Food businesses must get to grips with food safety management based very clearly on the seven key HACCP principles, ensuring it is a core part of the way they run their business

Responsible organisation (lead listed first):

**Food business operators**

**Food Standards Agency**

**Local authorities**

These two recommendations are being addressed together, since they are so closely connected.

HACCP – which stands for Hazard Analysis Critical Control Point – is the system that all food businesses must, by law, use to organise their approach to food hygiene. It involves carrying out an analysis of what happens in a business, to help the proprietor identify where the danger points may arise, and then keeping regular records to ensure that the identified dangers are avoided. Professor Pennington is strongly in favour of HACCP as the cornerstone of food safety.

It is not possible to guarantee complete food safety in any situation. However, if HACCP is being used properly, this should provide an acceptable level of protection. Crucially, it should be enough to prevent major contamination of food by *E.coli* O157.

Part of an Environmental Health Officer's role when inspecting premises is to check the HACCP plan and records. If HACCP is not being used as it should be, the Environmental Health Officer should work with the food business operator to help them understand and use HACCP properly. Inspectors work with businesses in a number of ways which include education and guidance as well as official enforcement actions which could result in a business being closed down.

The problem is that this is not always an easy process. It takes time and money to work with food business operators and inspectors say there can often be difficulties such as literacy issues – some food handlers and even business proprietors may have poor reading and writing skills, which would make it extremely difficult for them to use HACCP. Some business operators may have limited resources, and limited understanding of food law. Inspectors say these barriers mean that the workload required to bring a particular business's HACCP performance up to scratch may be more than the local authority can currently carry out.

This is why there are still some food businesses which do not have a HACCP plan. A study in September 2007 found that seven per cent of UK businesses did not have a food safety management system based on HACCP principles<sup>8</sup>. A further 21 per cent had only partially put into place their food safety management system. This is despite the fact that it is a legal requirement to have a fully operational HACCP-based system in place<sup>9</sup> and it is the duty of local authorities to enforce this.

Environmental Health Officers say that it isn't possible to ensure that all food businesses have a HACCP system, because of the high numbers of companies going in and out of business. They tell us that to get HACCP into every single business would require resources far beyond what any local authority department is given. They also point out that it is the responsibility of the food business to use HACCP correctly, and that it is not up to the local authority to do all the business's work for them.

Wherever the responsibility ought to lie in theory, in reality the majority of food businesses admit that they rely on local authority inspections to make them aware of the legal requirements<sup>10</sup>.

This issue raises the question, addressed again later in this report, of when exactly Environmental Health Officers should stop working collaboratively with businesses and start using formal enforcement action. When working with businesses, Environmental Health Officers follow a process known as the 'hierarchy of enforcement', which begins with collaborative, informal approaches and escalates if needed to formal enforcement actions.

Persistent failure to operate a HACCP system could result in a Remedial Action Notice or a Hygiene Improvement Notice being served which, if not complied with, could result in a large fine and, in some cases imprisonment, although this is extremely rare.

The next stage on the 'hierarchy of enforcement' ladder is a Hygiene Prohibition Notice, which can result in a business being closed down. However, it is unlikely that failure to operate a HACCP system would qualify as a serious enough contravention of food law to close premises down in anything other than the highest-risk businesses.

These notices are civil actions that local authorities can use as an alternative to prosecution. However, it is a criminal offence to fail to comply with the law on HACCP and carries a fine of up to £5,000 in a Magistrates' Court, and in the Crown Court carries an unlimited fine and up to two years' imprisonment.

Consumers rightly want to know why, if HACCP is a legal requirement, there are still businesses in operation that are not complying with the law on this issue. **Consumer Focus Wales believes that Environmental Health Officers need to use tougher penalties against food businesses who do not comply with the law on HACCP. Food businesses who do not operate a robust HACCP-based food safety management system should not be allowed to sell to the public.** Hygiene Prohibition Notices are dealt with in more detail in the section on recommendation 7.

The Food Standards Agency has developed the *Safer Food Better Business* approach in Wales and England, which is a food safety management system aimed at small and medium-sized food businesses. It includes a pack of information aimed at helping food business operators to understand and use HACCP.

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<sup>8</sup> Food Safety Management Evaluation Research (September 2007) Report prepared for COI on behalf of the Food Standards Agency. Jigsaw Research

<sup>9</sup> Under EU Regulation 852/2004 (Article 5)

<sup>10</sup> Fairman, R. And Yapp, C. (August 2004) The Evaluation of Effective Enforcement Approaches for Food Safety in SMEs. Report prepared for the Food Standards Agency. King's College London

Since the introduction of *Safer Food Better Business* in 2004 more than 450,000 packs have been distributed in the UK, 28,090 of which have been to businesses in Wales, covering the majority of Wales' estimated 32,000 food premises.

An evaluation of *Safer Food Better Business* was positive about its ability to be understood by business operators<sup>11</sup>. By providing information in a way that helps businesses to put their own food safety management systems into place, the Agency aims to take some of the pressure off frontline inspection staff.

The Agency has also produced a DVD guide in 16 different languages called *An introduction to food hygiene*, and has offered £615,000 to local authorities in Wales to help them promote food safety management systems to food businesses. The money is available between 2008 and 2011, and all 22 Welsh authorities have taken up this offer of funding.

Measures such as these should be effective at reaching food business operators who have a positive attitude to food safety and want to improve their performance. However, not all food business operators share this positive attitude. Some will not be interested in reading information packs or attending training courses.

Persuading resistant food business operators to improve their practices can be a huge challenge for Environmental Health Officers. An even greater challenge is learning to recognise when a food business operator is pretending to co-operate, making all the right noises while in fact ignoring any advice given. This is what happened in William Tudor's business. This is also what happened in the major *E.coli* O157 outbreak in Scotland in 1996, when 17 people died after eating meat supplied by John Barr of J. Barr and Sons, Butchers of Wishaw. According to Professor Pennington, the newly qualified Environmental Health Officer who was sent to inspect the butcher's premises shortly before the outbreak was unfortunately no match for the strong personality of John Barr, a much older man who was regarded by many as a pillar of the community.

The Food Standards Agency is undertaking research, due to be completed in spring 2010, to understand better communication between food businesses and environmental health. This is because a large part of the job of an Environmental Health Officer is a judgement call on the character and intentions of the person who runs the food business. The final report from the review will include discussion of the findings and recommendations for further action.

**Consumer Focus Wales believes the Food Standards Agency needs to develop a clear action plan with timescales to ensure that the findings from this research result in practical improvements in the way Environmental Health Officers work with food businesses.**

The Agency is also in the process of developing a new training course on encouraging behavioural change – helping Environmental Health Officers to understand the attitudes of food business operators and encourage behaviour change. The Agency tells us the course will be delivered in 2010 and the number of places is yet to be determined. **Consumer Focus Wales believes the Food Standards Agency should develop a clearly defined plan for roll-out of this course in Wales including timescales, venues, numbers of places, recruitment of participants and how they will monitor its effectiveness.**

Measures like these, to build the skills of those who carry out food hygiene inspections, are important. Ultimately, however, this is a finance issue. Recognising the time pressures on Environmental Health Officers, the Food Standards Agency advises that they should take a 'practical, flexible' approach to checking HACCP plans.

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<sup>11</sup> Food Safety Management Evaluation Research (September 2007) Report prepared for COI on behalf of the Food Standards Agency. Jigsaw Research



This is something that Professor Pennington has voiced concern over, saying:

*'I only hope that "HACCP principles" are not implemented too flexibly – as they were at Tudor's'<sup>12</sup>.*

## Scores on the Doors

Giving consumers access to information on the food hygiene ratings of the businesses they buy from will help to focus the attention of food business operators on raising standards. The Food Standards Agency plans to roll out its *Scores on the Doors* initiative from July/August 2010 which will allow consumers to find out for themselves which businesses have a poor food hygiene performance. Every food business will be scored on a scale of 0 to 5 points, with 0 being the lowest rating and 5 being the highest. These scores will be published on a website and businesses will also be able to display the score on a certificate in the premises, although this will be on a voluntary basis. **For the scheme to be properly effective Consumer Focus Wales believes a change in legislation is necessary to make it compulsory for businesses to display their score in a clear and accessible way on their premises.**

The roll-out of *Scores on the Doors* in Wales depends on when each local authority comes on board and puts the information into the public domain. Every authority has successfully applied for funding from the Food Standards Agency to help with the initial task of getting the scheme up and running.

Consumer Focus Wales is very supportive of *Scores on the Doors*. Our research has found that 89 per cent of people think that the food hygiene scores of food businesses should be publicly available<sup>13</sup>. We have also found that consumers will need a variety of channels for accessing this information, since 31 per cent of adults in Wales do not use the internet<sup>14</sup>.

Information on food hygiene scores needs to be communicated in an easy-to-understand way, consumers need to know what it means, and it needs to be rolled out in Wales as soon as possible. We will be working with local authorities and the Food Standards Agency to try and ensure this happens at the earliest opportunity.

**Recommendation 3:** Additional resources should be made available to ensure that all food businesses in Wales understand and use the HACCP approach and have in place an effective, documented, food safety management system which is embodied in working culture and practice

**Responsible organisation:**

**Welsh Assembly Government**

**Local authorities**

**Food Standards Agency**

This recommendation is broadly aimed at all public bodies, although Professor Pennington makes it clear in his report that he intends the primary target of this recommendation to be the Welsh Assembly Government.

<sup>12</sup> Pennington, H. Letter to Consumer Food Safety Group (December 2009)

<sup>13</sup> Beaufort Omnibus Survey September 2009

<sup>14</sup> Richards, S (2009) Logged in or Locked out? Consumer access to the internet in Wales. Consumer Focus Wales

The Welsh Assembly Government has not yet made any additional funding available to help environmental health services make the changes that Professor Pennington said needed to take place.

Following the major *E.coli* O157 outbreak in Scotland in 1996, the Scottish Secretary of State brought together an expert group, chaired by Professor Pennington, to investigate the circumstances that led to the incident.

As a result of these investigations Professor Pennington recommended that government ensured adequate resources were available to enable Environmental Health Officers to do their jobs, and he also recommended that such resources be ring-fenced to ensure they could not be used for anything other than environmental health.

In response to these recommendations the Scottish Executive made a payment that became known as the 'Pennington Money': £2.6 million annually for five years, earmarked for food hygiene, a move which enabled environmental health departments to focus efforts on making the improvements recommended by Professor Pennington. Most authorities used the money for staffing, with some investing in HACCP training for food businesses.

In Wales, the total cost of implementing Professor Pennington's recommendations has been estimated by the Welsh Local Government Association at between £2.5 and £3 million per year. Local authorities report that they have had to divert considerable resources to do this work. They say this has turned post-Pennington activity into an additional workload which they have struggled to cope with.

More worrying still is the fact that, with recession-related cuts in public sector spending forecast for the next five to ten years, there could be even less money available for environmental health. Existing budgets, already stretched to their limit as in other services, may be cut even further. The Welsh Local Government Association states that inspectors' jobs in at least one local authority are under threat.

Not only is there no extra money going into environmental health in Wales, there has not been a commitment from government, either at local or Welsh Assembly Government level, to protect current levels of funding. The Assembly Government is generally unwilling to ring-fence (or 'hypothecate') money – although ring-fencing is within its powers – preferring instead to give local authorities the choice as to how money is spent. The Assembly Government states that local authorities are free to decide their own budgets and that it is up to them to ensure that food hygiene is adequately resourced.

When deciding how much money local government should receive every year, the Welsh Assembly Government and the Welsh Local Government Association carries out an exercise to identify what the main pressures on services are likely to be. For the year 2010/11 this exercise identified food hygiene as one such pressure – acknowledging that in a difficult financial climate businesses may be tempted to cut corners. This meant that local authorities needed to protect their environmental health functions in order to deal with the greater risk of food poisoning incidents. Having acknowledged this risk, the Assembly Government's view is that this has been taken into account when allocating local government funding. The exercise led to an increase in overall funding from the Assembly Government of 2.1 per cent for 2010/11 – this increase was for the whole of local government, not restricted to food hygiene but to be spent on any service local authorities believe to be most in need.

Included in this funding is an extra £180,000 for the whole of Wales which has been given annually from 2007/08 to local authorities to support the enforcement of European food hygiene legislation including HACCP, although again this money is not ring-fenced, meaning that local authorities could, in theory, spend it on anything, not necessarily food hygiene. It is worth remembering, therefore, that local authorities have received some additional resources to support HACCP-related work.

They report that this money has had an impact on food hygiene budgets but has not been enough to offset the cost of implementing Professor Pennington's recommendations. We believe that local authorities should be able to demonstrate to the Welsh Assembly Government how this money is being spent.

The Welsh Assembly Government's view is that post-Pennington work needs to be funded through the normal financial settlement that local government receives every year as well as through the other funds that local authorities receive through Council Tax, and fees and charges.

A statement from the Welsh Assembly Government on funding post-Pennington work said:

*'The Assembly Government fully recognises the financial pressures that local government, in common with all other areas of the public sector, face in the light of the current financial climate.*

*'It is accepted that with the over-riding need for the UK Government to reduce public sector debt the public expenditure outlook for 2011/12 and beyond is extremely challenging and all public sector organisations will need to work together in ever more collaborative and innovative ways to protect front line services.'*

It is true that the responsibility for funding post-Pennington work is not the Welsh Assembly Government's alone. **Local authorities need to make a clear commitment to prioritise food safety in their budgets.**

The Food Standards Agency is providing £615,000 to local authorities in Wales between 2008 and 2011 to promote food safety management systems to food businesses<sup>15</sup>, to help them implement recommendations 1 and 2.

Environmental health services are finding ways of saving money that include teaming up with neighbouring local authorities: Denbighshire and Conwy are now working together with a single food team manager across the two authorities.

Another concern is that too few people in the UK are training for a career in food hygiene-related environmental health. Local authorities have also been cutting back on environmental health traineeships and professional placements, saying that this is due to the need to economise. This has been a problem for a number of years. The consequences of this are the same as in any profession where there is too much work to do and not enough appropriately qualified people to do it.

In a letter to the Consumer Food Safety Group Professor Pennington voiced deep concern over the response to this recommendation, saying,

*'nothing is proposed to protect – never mind increase – the environmental health functions carried out by local authority staff. "Pennington Money" was allocated after my 1997 report. Without "Pennington 2 Money" the risk of "Pennington 3" is increased.'*<sup>16</sup>

This recommendation is critical to the success of the rest. The fact that the Welsh Assembly Government is not implementing it is a matter of great concern, and has not helped to lessen the risk of another major outbreak of *E.coli* O157. **Consumer Focus Wales believes the Welsh Assembly Government should ring-fence or hypothecate £2.5 to £3 million each year for five years to implement the Pennington recommendations.**

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<sup>15</sup> For more information on this funding see the section on recommendations 1-2

<sup>16</sup> Pennington, H. Letter to Consumer Food Safety Group (December 2009)

**Recommendation 4:** The principles underpinning the Butchers' Licensing Scheme, which was introduced in response to the 1996 *E.coli* O157 outbreak, should guide food hygiene measures in businesses processing raw meat and unwrapped ready-to-eat food

**Responsible organisation:**

**Food Standards Agency**

The central issue that this recommendation seeks to address is the use of the same equipment for raw and ready-to-eat meats. This is not expressly prohibited in law.

The Butchers' Licensing Scheme was a result of Professor Pennington's inquiry into the circumstances surrounding the 1996 outbreak of *E.coli* O157 in Scotland.

In his inquiry report Professor Pennington recommended that all butchers selling unwrapped raw meat and ready-to-eat food should be licensed in order to raise hygiene standards. The licence required businesses to operate effective HACCP<sup>17</sup> based systems and to receive appropriate food hygiene training.

The Licensing Scheme was only ever intended to be a temporary measure until new European regulations brought in a legal requirement for all food businesses to operate HACCP-based systems. These regulations came into force on 1 January 2006 and provide the same level of public health protection as the old Butchers' Licensing Scheme. The Butchers' Licensing Scheme was therefore withdrawn because there was no longer any need for it.

There is still confusion among some butchers about whether to follow the old Butchers' Licensing Scheme guidance or the new guidance, which has been developed under the Food Standards Agency's new *Safer Food Better Business*<sup>18</sup> approach. The Food Standards Agency has said it intends to clarify the HACCP guidance for butchers, to clear up any doubt over whether it is acceptable to use the same equipment for raw and ready-to-eat meats.

The inquiry found that William Tudor's vacuum packing machine represented a major risk of cross-contamination. Tudor had one vacuum packer, which he used for both raw and cooked meats. He lied to a series of inspectors, telling them that he owned two vacuum packers but that the other had been sent away for repair. Because of the lack of clarity in the law, he was allowed to keep operating with a single vacuum packer on the understanding that it was a temporary situation. He did not have an effective cleaning procedure for the vacuum packer, but inspectors did not act to improve this procedure.

Professor Pennington believes that it is very difficult to use complex equipment like a vacuum packer safely for both raw and cooked meats. He said in his report

*'The difficulties of making complex equipment microbiologically safe, bearing in mind the very low infective dose of *E.coli* O157<sup>19</sup>, and the need for a business to be able to demonstrate that such safety can be, and is, delivered routinely, are important issues. For a vac(uum) packer, I do not think that such a demonstration is possible to allow its use for ready to eat foods and raw meat.'*<sup>20</sup>

<sup>17</sup> For an explanation of HACCP see the section on recommendations 1 - 2

<sup>18</sup> For an explanation of 'Safer Food Better Business' see the section on recommendations 1 - 2

<sup>19</sup> For more information on cleaning, and the infective dose of *E.coli* O157, see the section on recommendation 6

<sup>20</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p327, par 18.16



Since the 2005 outbreak, some local authorities in Wales have taken the step of requiring complete separation of equipment for raw and ready-to-eat foods, even though the law is not clear-cut on this issue. Some argue that if a butcher carries out a proper HACCP analysis, then this should lead to complete separation anyway, on the basis that it is very difficult to ensure that cleaning can be routinely carried out to a standard high enough to prevent contamination by *E.coli* O157 and other harmful bacteria. In that sense, it is possible to argue that these local authorities have not gone above and beyond the requirements of the law but are simply taking a strict interpretation of legal requirements. If this is the case, then all local authorities should be following the example of the few which have taken the initiative on this issue.

Local authorities say they have also responded to the 2005 outbreak by making sure that a large part of an inspection is devoted to ensuring that business employees understand and use appropriate cleaning products.

The Food Standards Agency points out that separation of equipment is no guarantee of safety if cleaning is not carried out properly, or if staff use equipment in the wrong way.

For this reason the Agency sees the issue of separation of equipment and the issue of cleaning<sup>21</sup> as interlinked, and is carrying out a review of guidance on cross-contamination that takes both into account. It is possible that this review could lead to a change of advice on separation of equipment or cleaning.

The review is due to take place as part of the Agency's Food Hygiene Delivery Programme, which is due to run until April 2014. There is little sense of urgency and the Agency has been unwilling to commit to carry out this review within a shorter timescale.

The Agency's current guidance is that separate machinery should be required where an inspector has doubts about the standard and effectiveness of cleaning. This leaves the decision very much up to the individual inspector, and different inspectors may hold different opinions on this issue. This is a cause for debate within environmental health. Consumer Focus Wales is concerned that this is still a source of insecurity. Stronger, clearer advice from the Food Standards Agency would remove that insecurity.

**Consumer Focus Wales believes that the Food Standards Agency should issue guidance on this issue as soon as possible, making it clear that complete separation of equipment should be standard practice.** This needs to be done as a matter of urgency in order to provide consumers with better protection from food poisoning, particularly *E.coli* O157.

**Recommendation 5:** The Food Standards Agency should review its current guidance and should be proactive in generating new guidance where needs are identified

**Responsible organisation:**

**Food Standards Agency**

Professor Pennington noted in his report that, '*Views expressed to me suggest that some current guidance may be too limited or far from clear and that some gaps may exist.*'<sup>22</sup>

<sup>21</sup> For more information on cleaning see the section on recommendation 6

<sup>22</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p327 par 18.17

**The issues discussed under recommendation 4 show that there is an urgent need for new guidance from the Food Standards Agency on the separation of equipment used for raw meat and ready-to-eat foods.**

The Food Standards Agency has responded to the Pennington report by committing to carry out a number of reviews, including:

- Clarifying HACCP guidance for butchers
- Clarifying guidance on how inspectors should carry out discussions with food business employees and how they can protect whistleblowers
- Reviewing existing guidance on cross-contamination, including cleaning procedures and products, and separation of equipment for raw meat and ready-to-eat foods

In addition the 'Safer Food Better Business' approach, developed by the Food Standards Agency since shortly before the 2005 outbreak, includes a range of new guidance for food businesses on how to use HACCP effectively.

Developing guidance is one thing; ensuring guidance is acted upon is another. Local authorities have acknowledged that more could be done to ensure new guidance is taken up across Wales. The Welsh Local Government Association says that it plans to discuss with the Food Standards Agency possible ways of aiding take-up of good practice. Consumer Focus Wales will continue to monitor the development of this work to ensure this is a priority for all responsible agencies.

**Recommendation 6:** The Food Standards Agency should remove the confusion that exists among food business operators about what solution(s) should be used to prevent cross-contamination from surfaces and equipment

**Responsible organisation:**

**Food Standards Agency**

This recommendation is about cleaning procedures. The employees at Tudor's had a low level of understanding about how to properly clean equipment and the wrong types of cleaning solution were being used. This failure to clean properly, combined with an environment where raw and ready-to-eat foods were not sufficiently separated, had devastating consequences.

The infective dose of *E.coli* O157 is often described as being very low. In other words, it takes only a small number of *E.coli* O157 bacteria to make someone very ill. *E.coli* O157 survives well on stainless steel surfaces and is not immediately killed by sanitisers. High cleaning standards are always necessary, but if there is not complete separation of equipment for raw and ready-to-eat foods, the standard of cleaning is the one and only factor protecting consumers from infection.

Professor Pennington has suggested that one way of achieving this recommendation would be for the Food Standards Agency to draw up a list of approved products so that food businesses would know which solutions are the most effective ones for which kinds of cleaning. Not all cleaning products are equally effective: they contain a variety of ingredients in differing amounts. Also, the formula can be altered without any obvious change in the information on the packaging. However, the Agency has decided not to draw up such a list on the grounds that it is the job of the Health and Safety Executive to approve cleaning products. The Agency advises businesses to buy cleaning products from a 'reputable supplier' and to use products according to the instructions provided.

**Consumer Focus Wales believes that the Food Standards Agency should work in partnership with the Health and Safety Executive to ensure that businesses are aware of the most appropriate and safest cleaning products.**

However, another way of meeting this recommendation, as suggested by Professor Pennington, would be to provide improved information and guidance on cleaning products and procedures.

The Food Standards Agency has decided to carry out a review of guidance on cleaning products, and intends to issue the new guidance for consultation in April 2010. As part of this review, the Agency intends to develop a product standard which will enable food business operators to identify which products on the market are the most suitable for their needs. **Consumer Focus Wales welcomes this work, which should help to educate food businesses about appropriate cleaning products and procedures, in line with this recommendation.**

In addition to this review the Agency has helped to develop new national occupational standards for cleaning, which can be used by businesses to guide staff training. A new one-day qualification on cleaning in food premises has also been available since January 2009. The Agency did not supply details of numbers of places as Consumer Focus Wales requested, but stated instead that attendance at a formal training event is not always necessary to be able to demonstrate an appropriate level of competency.

The Food Standards Agency should seek ways to ensure those food businesses most at risk but least engaged are required to attend their one-day training on cleaning in food premises.

By providing training and guidance the Agency is able to reach those food business operators who are interested in maintaining high standards of hygiene. The difficulty lies in reaching those businesses like Tudor's, where the commitment to food safety ended the minute the environmental health inspector left the premises.

In these cases it is the judgement call of the inspector as to whether the business operator is capable of ensuring, on a daily basis, cleaning standards that are high enough to prevent *E.coli* O157 cross-contamination.

Professor Pennington believes that, for complex equipment such as vacuum packers, it is very difficult to reach these high standards on a routine basis if the same equipment is being used for raw and cooked foods. The safest solution, therefore, is to require complete separation of equipment for raw and ready-to-eat foods<sup>23</sup>, in addition to strict cleaning standards.

Local authorities have responded to the 2005 outbreak by making sure that a large part of an inspection is devoted to ensuring that business employees understand and use cleaning products. As previously stated, some have taken the additional step of requiring complete separation of machinery for raw and ready-to-eat foods, even though the law is not clear-cut on this issue.

Cleaning is crucial for food safety and needs constant vigilance to maintain standards. For those moments when standards slip the separation of equipment needs to be there as insurance, providing vital extra protection for consumers. **Consumer Focus Wales believes that the Food Standards Agency needs to act in the interests of consumer safety by issuing guidance to ensure that separation of equipment is standard practice among food business operators.**

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<sup>23</sup> For a fuller discussion of this issue see the section on recommendation 4

**Recommendation 7:** Regulatory and enforcement bodies should keep the choice of 'light touch' enforcement for individual food businesses under constant review

Responsible organisation (lead listed first):

**Food Standards Agency**

**Local authorities**

Government at all levels has struggled for a long time with the problem of regulation<sup>24</sup>. Too much regulation places limits on business; it costs time and money. On the other hand, too little regulation means that consumers are not protected. Some regulation is necessary to ensure, for example, food safety.

The goal is to establish a regulatory regime that is proportionate: in other words, that is designed to minimise unnecessary burdens to business while maintaining high standards of consumer protection as well as the other aims of regulation, such as ensuring a level playing field for businesses to compete in the marketplace.

Since 2006 the UK Government has introduced a number of new laws aimed at finding this regulatory balance. This programme of reform has become known as the 'better regulation agenda' or the 'Hampton agenda' after Sir Philip Hampton, who chaired the government's initial review, published in 2005. It means that some regulators now have a legal duty<sup>25</sup> to operate according to the principles of better regulation<sup>26</sup>.

Certain functions of Welsh local authorities have been covered by this new legal duty since November 2009, and even among functions which are not covered by the duty, it is generally regarded as good practice to operate according to the principles of better regulation.

In a recent study of the effectiveness of a range of national regulators, Consumer Focus found that the Food Standards Agency had used industry self-regulation with some success.

The report noted, however, that some felt the Agency was too hesitant to call on the UK Government to introduce mandatory approaches when necessary<sup>27</sup>.

The report found that in general, regulators had a misplaced confidence in the ability of market mechanisms to change company behaviour. When regulators did intervene, they tended to prefer a self-regulatory approach even when the chances of it working were apparently remote. The study concluded,

*'our concern is that regulators follow a pattern, from which they rarely depart, of encouraging self-regulatory solutions from industry even when the odds for success are very slim.'*<sup>28</sup>

This is not what the better regulation agenda is aiming for. It stresses that regulation must be in proportion to risk – in other words, that regulators should not shy away from taking tough enforcement action when it is needed. The aim of better regulation is to strike a balance between, on the one hand, reducing red tape and burdens to businesses that comply with the law, and on the other hand, focusing formal enforcement action on businesses with poor levels of compliance.

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<sup>24</sup> Regulations are rules that govern what a business should and should not do.

<sup>25</sup> Through the Regulators' Compliance Code 2007, a statutory code of practice for regulators

<sup>26</sup> The five principles of good regulation are that regulation should be accountable, consistent, proportionate, transparent and targeted.

<sup>27</sup> Brooker, S. and Taylor, A. (2009) *Rating Regulators*. Consumer Focus. p89

<sup>28</sup> *ibid* p6



However, the Welsh Local Government Association believes there may be potential tensions for local authorities between this recommendation and the Hampton agenda. The Association's view is that the better regulation agenda stresses bringing businesses into compliance by other means than formal enforcement.

The principles of good regulation are a relatively new development and enforcement officers are in the process of incorporating them into their working practices. The Local Better Regulation Office was set up in 2007 in order to work with local authorities to ensure that services such as environmental health are delivered in a way that is consistent with good regulation principles.

Work is ongoing to develop awareness of better regulation among local authorities in Wales.

The *Scores on the Doors* initiative<sup>29</sup>, currently being developed by the Food Standards Agency, demonstrates how a food business can perform very poorly during an inspection and yet still remain open for business. We question whether consumers understand how this is possible.

Poorly performing premises like these may even subsequently end up at the centre of an *E.coli* O157 outbreak – as happened in Wrexham in 2009, when four people were made seriously ill after eating at a fish bar which was rated 0 stars in the authority's *Scores on the Doors* scheme.

The difficulty is that if an inspector decides to close a food business's premises because of hygiene concerns, the inspector must be able to show that the business posed an 'imminent risk of injury to health'<sup>30</sup>. If the magistrate does not agree and allows the business to re-open, local authorities say that they could then be sued by the business operator for loss of earnings.

Examples of what counts as an 'imminent risk', which could result in premises being closed down, are detailed in the Food Law Code of Practice. These include:

- Infestation by rats or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination
- Very poor structural condition and poor equipment and / or poor maintenance
- Poor routine cleaning and / or serious accumulations of refuse, filth or other extraneous matter, resulting in the actual contamination of food or a significant risk of contamination
- Drainage defects or flooding serious enough to result in actual contamination
- Premises which seriously contravene food law.

Clearly, an 'imminent risk' is a very high test to satisfy in legal terms. Local authorities need better insurance policies and personal indemnity for officers to enable them to be bolder in taking enforcement action. Some also argue that officers need better training to gain good evidence from crime scenes.

Consumer Focus Wales believes that the 'imminent risk' test may be too high, and that a less stringent test of 'significant risk' would enable Hygiene Prohibition Notices to be used more effectively to ensure compliance with food law. **The Welsh Assembly Government and the Food Standards Agency should review the current effectiveness of Hygiene Prohibition Notices and Orders and consider pursuing a change in secondary legislation<sup>31</sup> to maximise their effective use.**

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<sup>29</sup> For more information on Scores on the Doors see the section on recommendations 1 – 2

<sup>30</sup> Food Law Code of Practice (Wales) (2006) p55 par 3.3.2.2

<sup>31</sup> Food Hygiene (Wales) Regulations 2006

This review should also examine the guidance available to environmental health services to consider whether more needs to be done to ensure best use of the legislation currently in place.

Professor Pennington's inquiry found that enforcement was inappropriately light on a number of occasions during the events leading to the 2005 outbreak. The use of the single vacuum packer should have been identified as an imminent risk to health<sup>32</sup>. The Meat Hygiene Service, responsible for ensuring hygiene standards in abattoirs, should have served more vigorous enforcement proceedings against the slaughterhouse supplying Tudor's.

Instead, the slaughterhouse was allowed to remain open despite its record of breaking food safety laws time and time again<sup>33</sup>. Evidence heard by the inquiry showed that between 2003 and 2004 the Food Standards Agency made a deliberate decision not to enforce the law on requiring small-scale abattoirs such as J.E. Tudor & Sons to operate a HACCP plan<sup>34</sup>.

The debate over enforcement could be said to create a conflict between the interests of consumers and the interests of business. The inquiry heard that inspectors did not feel it was within their power to require Tudor to operate separate machinery for raw and cooked meats, and allowed him to operate with a single vacuum packer as a temporary measure. The legal framework, in their opinion, did not justify requiring Tudor to buy a second machine in order to remain open.

Weaknesses in the law such as these demonstrate how the drive within all levels of government to reduce unnecessary burdens to business has the potential to outweigh avoidable risks to consumers. In his report, Professor Pennington said,

*'On the one hand, there were serious risks of cross-contamination of a serious kind in a business supplying vulnerable groups. On the other hand, there was at worst a need, as a precondition to continuing this part of the Tudor's operation, to buy a new vacuum packer'*<sup>35</sup>.

The essence of this recommendation is not about abandoning 'light touch' enforcement, but is rather about staying vigilant over when 'light touch' is and is not appropriate.

This is something for food hygiene inspectors to bear in mind in their daily working lives. Interpreting this recommendation has been difficult for inspectors, who say they see potential clashes with the better regulation agenda.

The Food Standards Agency has stated that it does not endorse a 'light touch' approach to regulation. In 2006, following the introduction of new EU legislation, the Food Standards Agency began a one-off exercise to re-visit and re-approve all abattoirs in the UK. Less than a third of abattoirs were found to be working to an acceptable standard on the first visit, but after being given guidance on what was required to comply, the majority of premises have since been re-approved. This exercise undoubtedly had a significant positive effect on hygiene standards.

Local authorities are also working on joint policies to make their approach to enforcement more consistent across Wales. However, uncertainty remains over precisely when it is appropriate to abandon the 'light touch' and take formal enforcement action. **Consumer Focus Wales believes that the Food Standards Agency and the Local Better Regulation Office should address this uncertainty by providing clear guidance to local authorities to confirm that there should be no contradiction between the Hampton agenda and implementation of this recommendation.**

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<sup>32</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p149 par 7.251 (i)

<sup>33</sup> *ibid.* p207 par 9.168

<sup>34</sup> *ibid.* p181 par 9.44

<sup>35</sup> *ibid.* p150 par 7.251 (iv)

## **Recommendation 8:** The inspection of HACCP plans must be audit-based

**Responsible organisation (lead listed first):**

**Food Standards Agency**

**Local authorities**

This recommendation is about the extent to which Environmental Health Officers actually refer to HACCP<sup>36</sup> during an inspection. Professor Pennington believes that HACCP is the cornerstone of food safety. His view is that an inspector should use a business's HACCP plan as the starting point for the whole inspection: examining the plan and records, and then assessing the business to see to what extent the activity matches what is written in the HACCP plan.

*'Observation is important,' said Professor Pennington in his report, 'but the heart of producing safe food is a comprehensive HACCP approach that is operated in day-to-day practice. It is not the only part of an inspection but it is, or should be the fundamental part'<sup>37</sup>.*

The opposite of this technique is the 'walls and ceilings' approach, when an inspector spends lots of time on a visual inspection of the premises. The state of walls and ceilings does not usually have a direct effect on food safety, but is more useful as a general indication of the state of the business. Professor Pennington's view is that an over-reliance on this type of approach will miss underlying hygiene problems.

The Food Law Code of Practice for Wales governs how food hygiene inspections should be carried out. It was revised in 2008 in response to the outbreak, and says that an officer conducting an inspection should,

*'assess and verify appropriate procedures based on HACCP principles... confirming that controls are in place and operating effectively'<sup>38</sup>.*

However, it does not specify that the HACCP plan should be the core of the inspection in the way Professor Pennington says it should be.

In reality, this means that during an inspection an Environmental Health Officer will inspect the premises, walk around, speak to staff, and will look at the HACCP plan in relation to some key issues, depending on the type of food business being inspected.

Inspectors tell us that if they were to take the 'audit' approach recommended by Professor Pennington – starting with the HACCP plan itself and going through every part to check if the business is doing what the plan says – this would take considerably more time than current resources allow. And, since it is not required by the Food Law Code of Practice, this is not what usually happens during an inspection.

Environmental Health Officers tell us that evaluating HACCP takes time, and that when there is not much time available, they prioritise what issues are most in need of attention. This means that the HACCP plan may not always be centre-stage.

Local authorities have a large workload of inspections. Some Environmental Health Officers believe this is not helped by the pressure to perform to standards known as 'key performance indicators' – statistics which measure certain aspects of the way an authority operates.

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<sup>36</sup> For an explanation of HACCP see the section on recommendations 1 - 2

<sup>37</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p330 par 18.28

<sup>38</sup> Food Law Code of Practice (Wales) (2008) p88 par 4.2.3

The Welsh Assembly Government and the Food Standards Agency measure local authorities according to the number of inspections they carry out in a year and this leads to pressure to work fast, without necessarily paying attention to the quality of inspections.

The Welsh Assembly Government is currently looking at revising the key performance indicators for local authorities and may replace the one on numbers of inspections with a different indicator which would measure the extent to which food businesses in a local authority area are complying with food law. This information could come from *Scores on the Doors* food hygiene ratings<sup>39</sup>, providing a more accurate view of food safety than the number of inspections can reveal. **Consumer Focus Wales is strongly in favour of using compliance levels as a key performance indicator.**

Fundamentally, local authorities say that the main reasons why this recommendation is not being implemented in its entirety are:

- a lack of money available and being spent on environmental health, and
- the Food Law Code of Practice, which allows flexibility in the approach inspectors take.

Furthermore, some are worried about the added burden to businesses<sup>40</sup> of carrying out more thorough audits of this type. There is also a feeling that the main responsibility for ensuring safe food lies with the food business itself. Local authorities will assist and advise but will not do all the business's work for them.

In summary, this recommendation is being only partially implemented. HACCP is an important part of the inspection process, and has become more important since the 2005 outbreak. However, it is still not the fundamental part of the inspection.

The Food Standards Agency is considering the issues arising from this recommendation. Work is at too early a stage to predict what change may follow, but possible actions may include revising the Code of Practice or issuing additional guidance to local authorities.

There needs to be a greater sense of urgency in the completion of this work. **The Food Standards Agency must make it a priority issue in order to provide the level of consumer protection that Professor Pennington's recommendations aim for. The Welsh Assembly Government and local authorities need to ensure sufficient resources are available to enable environmental health services to carry out audit-based inspections of HACCP plans.** This is particularly important for high-risk premises.

**Recommendation 9:** Training provision should be developed to ensure that all officers in Wales who check HACCP and HACCP-based plans, including those responsible for overseeing the work of those officers, have the necessary knowledge and skills

**Responsible organisation (lead listed first):**

**Food Standards Agency**

**Local authorities**

One of the roles of the Food Standards Agency is to assess how well each local authority's environmental health team does its job.

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<sup>39</sup> For an explanation of Scores on the Doors see the section on recommendations 1 – 2

<sup>40</sup> For an explanation of this see the section on recommendation 7

During these audits the Agency says it has found evidence that Environmental Health Officers are increasingly aware of the need to ensure that HACCP is at the core of inspections, a finding which is welcomed by Consumer Focus Wales.

Partly this is due to the additional training on HACCP which has been provided by the Agency in response to this recommendation. HACCP training is also provided by the Chartered Institute of Environmental Health.

The Food Law Code of Practice for Wales was revised in 2008 in response to the outbreak. It includes requirements on HACCP training for inspectors, and requires local authorities to make sure that all officers undertaking food hygiene inspections are suitably qualified and competent.

When an abattoir is in operation, an official from the Meat Hygiene Service – an agency of the Food Standards Agency – must by law be always present. The task of the official, who is a qualified veterinarian, is to check that the abattoir's HACCP procedures are being followed correctly, check the health of animals being slaughtered and check each carcass for fitness for human consumption. The Association of Independent Meat Suppliers, the organisation that represents small and medium-scale abattoirs, has concerns over the levels of HACCP training among these veterinarians, who are often newly-qualified graduates, and believes more needs to be done to ensure that official veterinarians present in abattoirs understand how to check HACCP plans effectively.

From 1 April 2010 the Food Standards Agency will officially merge with the Meat Hygiene Service. Partly this reorganisation is to enable a more efficient response to calls for improvement such as Professor Pennington's recommendations. The Food Standards Agency states that this merger will not have an effect on regulatory functions, and that official controls in abattoirs will still be carried out in the same way.

**As the new merger beds in, the Food Standards Agency should review HACCP training for all abattoir-based staff.**

**Recommendation 10:** Environmental Health Officers should obtain a copy of a business's HACCP/food safety management plan at each inspection, which should be held on the business's inspection file

**Responsible organisation (lead listed first):**

**Food Standards Agency**

**Local authorities**

Local authorities have decided to take a different approach to this recommendation from that specified by Professor Pennington. This is because there is general agreement among responsible organisations<sup>41</sup> that the difficulties involved in obtaining and keeping on file a copy of a business's HACCP plan outweigh the potential benefits.

These organisations argue that HACCP plans are live documents which need to be continually updated. To collect and keep copies from each inspection would be extra work and would require considerable storage capacity.

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<sup>41</sup> The Welsh Assembly Government, the Food Standards Agency Wales, and the Welsh Local Government Association



Another of their arguments is that it would be an unacceptable burden on businesses if they had to provide copies of their HACCP plan. Given that businesses must submit their HACCP plan for inspection anyway, it is hard to see exactly where the extra work burden is<sup>42</sup>.

Instead, the approach being taken by Environmental Health Officers is to make detailed records about the HACCP system as part of the inspection process, checking these against the HACCP plan at the next inspection.

Fundamentally, there were two main benefits that this recommendation aimed to achieve:

- Placing the HACCP plan higher in the mind of the food hygiene inspector
- Enabling a picture to be built up over time

So, whether this is an acceptable decision depends on the improvements that have been made in the above two areas, which are effectively covered by recommendations 8, 9 and 11.

**We believe more needs to be done and until recommendations 8, 9 and 11 have been fulfilled, this recommendation should be followed in full<sup>43</sup>.**

A suggested solution is that food business operators could be encouraged to operate web-based HACCP plans on a website maintained by the local authority or Food Standards Agency. Paper systems would be needed only for those without web access. This would comply fully with the recommendation, since Professor Pennington did not specify whether the copy of the HACCP plan needed to be paper or electronic.

Because some details of the HACCP plan are recorded during an inspection, local authorities tell us that this recommendation is not in fact being disregarded. Their view is that the spirit of the recommendation is being followed, even if copies are not actually retained on file.

They propose that Environmental Health Officers should take a 'practical, flexible' approach to the review of HACCP plans. Professor Pennington has voiced concern over this decision. In a letter to the Consumer Food Safety Group he warned against encouraging too much flexibility, saying,

*'I thought that this (flexible approach) described what happened at Tudor's over the years before 2005 quite well.'*<sup>44</sup>

Fundamentally, this recommendation seeks to ensure that a copy of the HACCP plan is obtained at each inspection and kept on file. If that is not going to happen, then this recommendation is not being fully implemented. **The Food Standards Agency and local authorities in Wales should explore all avenues for implementation of this recommendation, including developing a website to allow businesses to operate online HACCP plans.**

**Recommendation 11:** A system of logging issues, concerns or potential problems, whether by 'red flagging' specific documents or by file notes, should be standard practice

**Responsible organisation (lead listed first):**

**Food Standards Agency**

**Local authorities**

<sup>42</sup> For a fuller explanation of this, see the section on recommendation 7

<sup>43</sup> For a fuller discussion see the sections on recommendations 8,9 and 11

<sup>44</sup> Pennington, H. Letter to Consumer Food Safety Group (December 2009)

Professor Pennington made this recommendation because, during the history of inspections at Tudor's, some concerns that had been recorded by inspectors were lost in the system and not picked up later on. Because there was no way of 'red flagging' or highlighting issues, important clues were missed.

For example, in April 2001 an inspector from Bridgend County Borough Council noted that Tudor's records appeared to have been fabricated, since they had been made with the same style writing and same colour pen. The inspector made a note on the file as '*food for thought... upon any future inspections*'.

But because there was no system at Bridgend for highlighting these comments the information was lost. When the outbreak happened in 2005, South Wales Police carried out forensic analysis of Tudor's records and found that records were indeed not being completed on a daily or weekly basis, but batches of entries made at one time<sup>45</sup>.

Soon after the 2005 outbreak Bridgend Council developed a system for highlighting issues of concern, recognising that this needed to be done as a matter of urgency. This system was then shared with other local authorities in Wales as an example of good practice.

The Welsh Local Government Association has confirmed that all local authorities in Wales now have a system in place to 'flag' premises of concern.

The Food Law Code of Practice for Wales says that food hygiene inspectors should begin every inspection with a review of 'the information held on record by the Food Authority'.<sup>46</sup> This advice is essentially the same as was in place at the time of the outbreak. However, anecdotal evidence from Environmental Health Officers suggests that the outbreak has helped to focus their attention on the importance of following the guidance on reviewing information held on file. **Local authorities need to ensure this review is carried out as part of every inspection, as stated in the Food Law Code of Practice.**

The Code of Practice does not specify how far back in time the review should go, and given the pressures on environmental health services, it will probably not go back any further than the last few inspection dates. However, the red flagging system will help inspectors to identify any outstanding issues of concern. This recommendation has now been implemented across Wales.

**Recommendation 12:** Decisions about confidence in a business's management of food safety should be evidence-base

**Responsible organisation (lead listed first):**

**Food Standards Agency**

**Local authorities**

This recommendation goes to the heart of the issue of trust. It is about the ability of a food hygiene inspector to make a character judgement about the reliability of a business operator.

'Confidence in management' is one of the key areas that all food businesses are assessed and scored on during an inspection. It is about the systems that are in place for managing food hygiene and also the attitude of the food business manager.

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<sup>45</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p121 par 7.140-7.141

<sup>46</sup> Food Law Code of Practice (Wales) (2008) p87 par 4.2.2

It contributes to the business's overall hygiene rating and is a vital consideration in any decisions over enforcement action. A business scoring badly on confidence is less likely to be a candidate for 'light touch' enforcement, since it is less likely to have:

- a robust system in place to control hygiene standards, and
- a manager with the right attitude to respond to education, guidance and other voluntary measures

By making this recommendation, Professor Pennington stresses the importance of using evidence to form opinions about the trustworthiness of business managers and management systems. Inspectors should listen to what a business operator is telling them and compare it with actual business practice. This comparison should form the basis of any judgements on confidence.

Local authorities argue that inspectors are trained to make decisions based on evidence. The Food Law Code of Practice includes guidance on how to identify high-risk businesses and persistent offenders – this part of the Code of Practice was expanded in 2008 in the wake of the *E.coli* O157 outbreak.

But they also say that it is never possible to guarantee complete safety from such an individual as Tudor, who was acting in a criminal way and taking steps to cover his tracks. Local authorities can never totally guarantee to protect the public from criminals who act in this way.

The most important thing is that as soon as the criminal behaviour has been recognised, then it is tackled with appropriate enforcement action. As was the case with Tudor's, this can be a complicated process. The Crown Prosecution Service decided that the evidence was not strong enough to bring proceedings against the butcher for manslaughter. In the end Tudor was prosecuted for food hygiene offences only: three of the local authorities involved brought the prosecution against him.

It is generally agreed that more work needs to be done to understand communication between food businesses and environmental health. The Food Standards Agency is developing a course<sup>47</sup> to help food hygiene inspectors to encourage behaviour change among businesses. **As stated previously, Consumer Focus Wales believes the Agency needs to develop a clearly defined plan for delivery of this course, including timescales, venues, numbers of places and recruitment of participants.**

**Recommendation 13:** All inspections, primary and secondary, must be unannounced unless, exceptionally, there are specific and justifiable circumstances or reasons why a pre-arranged visit is necessary

**Responsible organisation (lead listed first):**

**Food Standards Agency**

**Local authorities**

The guidance which states that local authorities should, where possible, make unannounced visits is similar today to the guidance which was in place during the time of the outbreak. In fact the guidance has changed little in the last 18 years. Today it is part of the statutory Food Law Code of Practice, which was last revised in 2008.

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<sup>47</sup> For more information and a discussion of this work see the section on recommendations 1 - 2

However, Professor Pennington made this recommendation because he found that most of the inspections carried out at Tudor's in the months leading up to the outbreak had been announced: that is, Tudor had been given advance warning of the date and time the inspections were due to take place<sup>48</sup>, which gave him a chance to clean up the premises beforehand.

Some of these inspections were re-visits to check that certain agreed improvements had been made. On occasions like these, which are known as 'secondary' inspections, Environmental Health Officers argue that it can be necessary to give advance warning of the date and time, in order to ensure that the proprietor is there.

However, the inquiry found that on two occasions during July 2002 and July 2005 Tudor had been given advance notice of 'primary' inspections, which are occasions when a full food hygiene inspection takes place. This is against the guidance that was, and is, in place.

The Food Law Code of Practice gives local authorities some choice to determine when visits should be announced or unannounced. Local authorities say that since 2005 there has been a greater focus on carrying out inspections on an unannounced basis wherever appropriate. This means, in practice, that the majority of inspections are surprise ones. Situations when an inspector might give advance warning include:

- When a business has only been given 24 or 48 hours to clean, following a primary inspection
- When it is necessary to speak to a particular person who is responsible for managing food safety
- To check improvements that do not require a surprise visit, such as whether new facilities have been installed.

These reasons may well apply to secondary inspections, but there do not appear to be any compelling reasons why most primary inspections should ever be announced beforehand. There may be very limited exceptional circumstances, such as prison kitchens where unannounced visits would not get past security, but for ordinary food businesses it should be standard practice to carry out unannounced primary inspections.

Because most inspection regimes operate on a cyclical basis, food businesses will know roughly within a month or so when the next inspection is due even if it is unannounced. This is one reason why Professor Pennington advocated spot checks in addition to routine inspections<sup>49</sup>, effectively blending the current inspection regime with a 'bobby on the beat' approach. While these are generally thought to be useful, most departments say they do not have the resources to carry them out.

**The Welsh Assembly Government and local authorities should ensure that resources are available to carry out spot checks in addition to routine inspections, especially for higher-risk businesses.**

Some, but not all, local authorities have started to record whether a visit is announced or unannounced as part of the standard information recorded during an inspection.

The Food Standards Agency does not keep information on the proportion of inspections that are unannounced. Some local authorities monitor this, but there is nothing systematic at a national level to keep track of whether this recommendation is being followed. Essentially we have only anecdotal evidence to tell us whether the Code of Practice is being followed more closely on this issue than it was in 2005.

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<sup>48</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p125 par 7.158; p135 par 7.203; p137 par 7.212; p139 par 7.224

<sup>49</sup> *ibid.* p332 par 18.36

**The proportion of unannounced inspections, particularly of primary inspections, needs to be monitored by the Food Standards Agency as part of its assessment of environmental health teams.**

## **Inspecting abattoirs**

The system of inspections of abattoirs is different from that of butchers. An official veterinarian from the Meat Hygiene Service – an agency of the Food Standards Agency – is always present when an abattoir is in operation, so the issue of specific visits does not arise.

The task of the Meat Hygiene Service veterinarian is to check that the abattoir's HACCP procedures are being followed correctly and also to check the health of animals being slaughtered.

Some abattoir operators believe that the official veterinarian is not the right person to be carrying out the inspection of controls.

The official veterinarian is always present and, along with the operator, has responsibilities for the safety of meat, which may compromise their ability to take an independent view, since by carrying out inspections they are effectively critiquing their own performance.

Abattoir operators who hold this opinion believe that inspections should be carried out through unannounced visits by experienced, independent veterinary teams.

From 1 April 2010 the Food Standards Agency will officially merge with the Meat Hygiene Service. **As the new structure beds in, the Food Standards Agency should review official controls in abattoirs to ensure they are being carried out in the most effective way.**

**Recommendation 14:** Discussion with employees must be a standard part of food hygiene inspection visits

### **Responsible organisation (lead listed first):**

#### **Food Standards Agency**

#### **Local authorities**

This recommendation was made to ensure that food hygiene inspectors do not rely on the word of the proprietor alone but also speak to employees to find out what working practices are really like. This did not always happen during inspections at Tudor's, meaning that when Tudor lied about issues such as whether his staff had been given food hygiene training, Environmental Health Officers did not pick up on it.

Professor Pennington's view is that it should be fairly simple to make this recommendation happen. He said that

*'assessing the training people have received, their knowledge, and what they do is vital to building an accurate picture of food hygiene knowledge and practice. This should be achieved by way of some simple and informal questions around, for example, the way they clean surfaces and equipment.'*<sup>50</sup>

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<sup>50</sup> *ibid.* p332 par 18.37



It is generally accepted by environmental health practitioners that this is an important part of the inspection process. The Food Law Code of Practice says that staff '*may be questioned in order to verify that they understand their duties and are carrying them out effectively*'<sup>51</sup>. This is guidance rather than a requirement. However, the Food Standards Agency has been doing work to reinforce the importance of discussion with employees. The Agency revised its approach to the assessment of local authorities in response to the inquiry<sup>52</sup>, and under the new approach, hygiene inspectors are asked about whether they talk to employees. This helps to remind inspectors of the importance of information from employees, and encourages them to make it a standard part of inspections even though it is not, strictly speaking, required under the Code of Practice.

The Welsh Local Government Association says that local authorities would like assurance on how to protect whistleblowers who want to pass on information about their employers. The Food Standards Agency's response is that its policy on handling whistleblowers is laid out on their website at <http://www.food.gov.uk/foodindustry/regulation/whistleblowing>.

**The Food Standards Agency needs to ensure that local authorities are aware of this policy and fully informed about how to protect whistleblowers.**

**Recommendation 15:** The Food Standards Agency should develop, as part of its Audit Scheme or as an adjunct to it, a means of assessing how food hygiene inspections are undertaken by local authorities, including the assessment of HACCP and HACCP-based plans

#### Responsible organisation:

##### **Food Standards Agency**

One of the roles of the Food Standards Agency is to assess how well each local authority's environmental health team does its job. If there were problems with the way that Bridgend Council's team were carrying out inspections at the time of the outbreak, the assessment carried out by the Food Standards Agency should have picked up on it. However, the most recent audit, which was carried out in February 2004, found little wrong with the methods of working at Bridgend.

The inquiry's view was that the Food Standards Agency's audit methods were not designed to examine how inspections were carried out. The auditors spent most of their time checking that paperwork had been filled in correctly and that the right boxes had been ticked. They did not accompany inspectors on visits to observe working practices. There was no problem with the way the audit was carried out, which was correct according to the standard procedure in place at the time. It was the procedure itself that was incapable of picking up problems with inspections.

Since the 2005 outbreak the Food Standards Agency has developed a new approach to audits which is more focused on working practices and includes 'reality checks', during which inspectors are observed in action. The Agency has said it will continue to work on improving audit methods, which will include an assessment of whether inspectors are using HACCP as it is intended.

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<sup>51</sup> Food Law Code of Practice (Wales) (2008) p87 par 4.2.2

<sup>52</sup> For more information on the new audit approach see the section on recommendation 15

Over time it will become clear whether the kind of information that the new audit method throws up is significantly different from, or more penetrating than, the old methods. The Food Standards Agency says it will set up a specific project group to review the new audit method in order to ensure it is implementing this recommendation. **The Food Standards Agency should develop a firm timescale for reviewing the new audit programme and improving audit methods in line with this recommendation.**

Local authorities also carry out internal reviewing processes – in other words, self-checking that inspections are being carried out to a good standard. This is something that is required by the Food Law Code of Practice, while the Food Standards Agency encourages local authorities to carry out audits on each other as good practice, although this is not required by law.

**Recommendation 16:** Businesses contracting for the supply of high-risk foods, such as raw and cooked meats, to public sector organisations must be subject to independent food hygiene audits

**Responsible organisation (joint responsibility, listed alphabetically):**

**Food Standards Agency**

**Local authorities**

**NHS**

**Welsh Assembly Government**

When an organisation buys goods and services, the buying process is known as 'procurement'. When a public body buys anything, the process is governed by rules<sup>53</sup> to ensure maximum value for money. This does not necessarily mean the cheapest option, although because of the need to ensure that public money is spent wisely, cost is usually given a high priority in procurement decision-making. In the years leading up to the 2005 outbreak, school catering staff made repeated complaints about the quality of Tudor's products, and yet contracts to supply schools were still awarded to him.

This recommendation aims to ensure that hygiene is a central consideration when public bodies buy food. Professor Pennington notes that any business contracting to supply high-risk food to the public sector should be inspected by an independent auditor. The results of this inspection should be considered by procurement teams alongside any information from the standard inspections carried out by environmental health services.

In the years leading up to the 2005 outbreak, four local authorities – Rhondda Cynon Taf, Bridgend, Merthyr Tydfil and Caerphilly – had clubbed together to jointly buy food for schools in order to save money by buying in bulk. Rhondda Cynon Taf was leading the process. The inquiry examined this arrangement and found a number of flaws in the system.

Rhondda Cynon Taf did not carry out any procurement-related inspections of Tudor's even though the contract had included provision for them<sup>54</sup>.

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<sup>53</sup> Procurement is governed by EU Directives, UK law and public policy, which aims to ensure best value and a fair, transparent process

<sup>54</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p227 par 10.103

Although school catering staff complained regularly about the quality and safety of the meat being delivered from Tudor's, the system for recording complaints was flawed, meaning that the full complaints picture was not considered by procurement staff. There was also a lack of agreed roles and responsibilities in the joint contract between the four local authorities.

By the time that the inquiry was hearing oral evidence in February and March 2008, much had already changed. The inquiry heard that the outbreak had been a major wake-up call to procurement teams in local authorities throughout Wales. In that sense the outbreak was a significant driver of change in food procurement<sup>55</sup>, particularly in the four authorities involved.

Trading standards and environmental health teams are now consulted before any contract is awarded. A review of complaints is now standard practice and there are stricter procedures to ensure that every complaint made by consumers or catering staff is recorded.

Reviewing the progress that the four local authorities had made, Professor Pennington said, '*I am encouraged that action has been taken to learn lessons.*'<sup>56</sup>

Some local authorities have put the full recommendation into action and now employ independent inspectors to assess food hygiene at potential contractors' premises. Other local authorities send in their own inspectors to carry out an assessment which is in addition to the normal food safety inspections. A number of new tools have been developed to help procurement managers ensure that hygiene is a high priority when buying food and to help food businesses understand what is expected from them.

It is reasonable to say that a lot of work has been carried out to implement this recommendation. But the question that families affected by the 2005 outbreak want answered is whether these actions make a significant difference to the safety of school meals.

The safety of school meals was surveyed by the Welsh Food Microbiological Forum between September 2006 and July 2007<sup>57</sup>. A total of 2,351 samples of food were collected from 448 schools throughout Wales and analysed for a range of harmful food borne bacteria. Four samples found evidence of *E.coli* in rice and in raw fruit and vegetables; however, these were not at levels dangerous enough to be considered unacceptable<sup>58</sup>. Only one sample contained levels of bacteria that were considered unacceptably dangerous: this was a sample taken from a cream cake which had comparatively high levels of *Bacillus cereus*, a bacterium which can cause nausea, abdominal pain, vomiting and diarrhoea, usually lasting less than 24 hours after onset.

The report concluded that food served in schools was, in general, safer than food available to the general consumer. However, the fact that the sampled food was not completely free from microbiological hazard led the report's author, Dr Richard Meldrum, to recommend that the supply of food to schools continues to be periodically monitored to ensure that the same good quality food continues to be served.

This recommendation has not so far been followed, and no further surveys have been carried out since 2006/07. **The Welsh Food Microbiological Forum should conduct this survey on a regular basis to ensure that the safety of school meals is systematically monitored.**

Although these statistics relate to school meals a number of years ago, they should still form some reassurance for parents who worry about the safety of school meals in the wake of the outbreak.

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<sup>55</sup> *ibid.* p227 par 10.107

<sup>56</sup> *ibid.* p228 par 10.110

<sup>57</sup> Meldrum, R. (November 2007) Welsh Food Microbiological Forum Report on the Welsh School Food Survey September 2006-July 2007

<sup>58</sup> Levels of acceptability were defined according to the PHLS Central Public Health Laboratory's guidelines for the microbiological quality of ready-to-eat foods

However, it is unlikely to reassure parents of children who were made ill in 2005, many of whom no longer let their children eat food provided by the school. It is unlikely that any amount of reform to the system will change their minds. There are no statistics that could convince them.

The evidence from the food survey showed that, between September 2006 and July 2007, school food was safer than food available to the general public. And ultimately, the best evidence that can be offered to parents is that, in the years since 2005, there have been no further incidences of *E.coli* O157 associated with school meals. It is for each parent to decide whether this means the risk is managed better now than it was in 2005.

**Recommendation 17:** All health and care organisations should have an effective means of contacting key personnel during and outside normal working hours and for disseminating important information

**Responsible organisation (lead listed first):**

**Public Health Wales**

**NHS (Health Boards)**

**Local authorities**

Professor Pennington's inquiry found that the systems in place for controlling outbreaks worked well in 2005. Some weaknesses were identified but did not bring with them any adverse consequences. One such weakness related to out-of-hours communications with Local Health Boards. The outbreak was declared late on a Friday afternoon, leading to a need to communicate over the weekend of 16-18 September 2005.

On Saturday 17 September, doctors were unable to speak to anyone from Rhondda Cynon Taf Local Health Board for several hours, eventually making contact at around 12.15pm. Fortunately this delay did not have a serious effect on the handling of the outbreak.

Although this weakness concerned one local health board, the recommendation is aimed at all health and care organisations, a much wider relevance spanning many different public bodies. Local authorities maintain lists of out-of-hours emergency contacts but do not necessarily have reliable on-call arrangements in place.

To set up such arrangements would be a resource issue. Given the fact that the weakness identified by Professor Pennington was a relatively minor one, unconnected with any local authority, the Welsh Local Government Association is questioning whether it is necessary to implement this recommendation across the whole public sector.

Out-of-hours contact arrangements are vital for dealing with emergencies, and this is why Professor Pennington addressed the recommendation more widely than the NHS only. The outbreak control team was extremely fortunate that the consequences of this communications failure were not more serious. Consumer Focus Wales believes that local authorities have underestimated the importance of this recommendation. **All health and care organisations should have effective out-of-hours contact arrangements in place, and local authorities should review their emergency planning arrangements to ensure they dovetail with contact mechanisms for local health professionals.**

Contact arrangements within the NHS in Wales are in the process of being reformed. Because the NHS in Wales is currently undergoing a major reorganisation, this is work in progress.

In October 2009 the 22 Local Health Boards and seven of the NHS Trusts were replaced by a new structure made up of seven new Health Boards. This means that, although improvements have been made in the systems for out-of-hours contacts, there will still be some further changes that will come about as the reorganisation progresses.

The Welsh Assembly Government has developed a system called 'Public Health Link', which aims to provide an effective contact mechanism between public health bodies in Wales. The system currently awaits testing, having been delayed by the swine flu outbreak. **The Welsh Assembly Government should set a clear timescale for testing and launching the Public Health Link.**

Public Health Wales maintains lists of emergency contacts to ensure that Health Board managers, out of hours services, GP surgeries, and local authorities can be contacted outside normal working hours. Work is underway to update these lists in light of the recent reorganisation. Public Health Wales has stated that this recommendation will be a priority as the new NHS structure beds in. **Public Health Wales should set a deadline for updating emergency contacts lists.**

**Recommendation 18:** Every local authority should have a programme of audits to ensure that all schools have adequate toilet and hand washing facilities

**Responsible organisation (lead listed first):**

**Welsh Assembly Government**

**Local authorities**

*E.coli* O157 is highly contagious and can spread easily from person to person. Good personal hygiene is essential and this is why Professor Pennington made this recommendation, even though the state of school toilets and hand washing facilities did not emerge as a significant issue in the 2005 outbreak.

The recommendation has had the effect of focusing efforts on improving school facilities. Local authorities have begun to carry out spot-checks and audits of school toilets. While no new money has been allocated to improve facilities, the results of these spot-checks are being used to show where existing money can be spent more effectively.

The Welsh Assembly Government is working on guidance to set out minimum standards for school toilets in Wales and has stated that a draft of this guidance will be issued in March 2010.

Standards will help local authorities to identify what additional work needs to be done to bring toilet and hand washing facilities up to scratch. **The guidance needs to:**

- **Support schools to encourage children to understand the importance of good personal hygiene**
- **Include standards for staff facilities, particularly those involved in food preparation**
- **Be clear about where the responsibility lies for funding this work**
- **Include guidelines for involving schoolchildren in the audit of their own facilities<sup>59</sup>.**

<sup>59</sup> Children's Commissioner for Wales (2004) Lifting the Lid on the nation's school toilets



**Recommendation 19:** All local authorities in Wales should review their policies, procedures and systems against issues raised by this report

Responsible organisation (lead listed first):

**Local authorities**

**Food Standards Agency**

This recommendation aimed to ensure that lessons were learned more widely than among the four local authorities at the centre of the outbreak.

One of the reasons why the outbreak sent shockwaves throughout local government in Wales was because working practices at Bridgend were not significantly different from working practices in any other local authority. It seemed to have been almost a matter of chance that the outbreak occurred on Bridgend's territory. The inquiry heard from a senior local authority officer at Bridgend that:

*'since the Inquiry, I have spoken to a number of officers from different local authorities who have taken an interest in the Inquiry and in the role played by this Department within it. In all such discussions I have been told that the approaches adopted by our officers and the standards of our systems and procedures are no different from those adopted by others.'*<sup>60</sup>

Professor Pennington said that each local authority in Wales should undertake a review,

*'making public their findings and any developments that will occur as a result'*<sup>61</sup>.

Efforts are being made to learn lessons more widely across Wales. The Chartered Institute of Environmental Health, the professional body for Environmental Health Officers, has run a series of training days in the UK focusing on the events leading up to and including the outbreak. The training sessions included contributions from Professor Pennington, and examined issues such as how the outbreak control team worked.

Every local authority has appointed a senior management figure to co-ordinate activity, and every authority has an action plan listing all the improvements they have made and intend to make. Each of the four local authorities at the centre of the outbreak developed action plans in 2005 and 2006, soon after the outbreak. Among other local authorities this has been a newer development, some as recently as 2009/10.

In line with this recommendation, Consumer Focus Wales has requested that local authorities let us see copies of their action plans. All four of the local authorities involved in the outbreak sent their action plans to us. Other local authorities told us that their action plans were in the public domain and could be accessed on their websites. Technically, this is true: most of the action plans are on the council websites under the relevant cabinet or committee report sections. However, they are not signposted, and it would be extremely difficult for a member of the public to find them and to make sense of them once they did find them, due to the technical nature of the language. **Consumer Focus Wales believes it is in the interests of the public and local authorities that these action plans should be publicised more widely in an accessible way.**

<sup>60</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p334 par 18.49

<sup>61</sup> *ibid.* p335 par 18.51

While the scope of the inquiry did not extend beyond Wales, extending learning beyond boundaries is a subject of great interest to Professor Pennington, who chaired the inquiry into the 1996 outbreak in Scotland and found that those circumstances were in many ways very similar to the circumstances leading to the 2005 outbreak in Wales<sup>62</sup>.

Recognising this, the Food Standards Agency has made efforts to turn the lessons from the 2005 outbreak into permanent change in practice across the UK. The Food Hygiene Delivery Programme is the overarching framework for all the Food Standards Agency's work to implement the Pennington recommendations. The Agency has made the decision to broaden the relevance of the recommendations so that they cover not just Wales but the whole of the UK, and not just *E.coli* O157 but all food borne infections.

The Agency is developing a set of measures to show whether this activity is making a positive difference to food safety<sup>63</sup>. These measures were agreed in February 2010 and will be published regularly until the end of the Food Hygiene Delivery Programme in April 2014. **The Food Standards Agency should commit to a clear timescale for regular publication of these key performance indicators.**

**Recommendation 20:** The National Assembly for Wales should consider my recommendations and monitor and report progress on implementation

**Responsible organisation (lead listed first):**

**Welsh Assembly Government**

**Chief Medical Officer**

On 7 July 2009, the First Minister committed to reporting to the National Assembly for Wales in one year's time and regularly thereafter.

The Chief Medical Officer, Dr Tony Jewell, has agreed to act as the point of contact for information on implementation. He intends to write to all relevant organisations on an annual basis asking for an update on progress.

Consumer Focus Wales will be among those organisations contributing to the updates, ensuring that the consumer view is included in the annual reports that the First Minister makes to the National Assembly for Wales.

The Welsh Assembly Government has compiled an internal document entitled *Responsibility for Actions on Recommendations of Final Report*, which includes information on implementation contributed by organisations including the Welsh Assembly Government, the Welsh Local Government Association, the Food Standards Agency and Public Health Wales. The document was intended to aid information sharing between these organisations and has not been put into the public domain. The Welsh Assembly Government shared it with Consumer Focus Wales and we decided to use it as the basis of our report, to give full details to consumers on the extent of implementation.

While we are grateful for having been given access to this document, we believe that it should be in the public domain and we are considering the legal implications of publishing it in due course.

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<sup>62</sup> *ibid.* p335 par 18.53

<sup>63</sup> For more information on these measures see the section on recommendation 21

**Recommendation 21:** A substantial review of food hygiene enforcement in Wales should take place approximately five years after the publication of this report

**Responsible organisation:**

**Food Standards Agency**

One of the difficulties with *E.coli* O157 is that infections do not occur very often, but when they do occur they are often very severe. This means that Environmental Health Officers may not have had any previous experience of dealing with an *E.coli* O157 outbreak, and are suddenly thrown, when an outbreak does occur, into a situation of emergency.

By making this recommendation Professor Pennington is seeking to ensure that organisations remain vigilant about *E.coli* O157.

The Food Standards Agency is carrying out this review as part of its Food Hygiene Delivery Programme, which is the overarching framework for the Agency's work to implement the Pennington recommendations. The Delivery Programme is set to run until April 2014, covering the five years proposed by Professor Pennington.

Part of the Delivery Programme will be a set of measures to show whether this activity is making a positive difference to food safety. Among these measures will be the number of cases of food poisoning in the UK and the number of food businesses not complying with food law. These measures should therefore provide an effective 'acid test' to show whether food safety has improved as a result of lessons learned from the 2005 outbreak. Consumer Focus Wales will monitor these measures closely between now and 2014. **As discussed in recommendation 20, the Food Standards Agency should commit to a clear timescale for regular publication of these key performance indicators. They should also ensure that the Delivery Programme identifies what onward work will need to continue after April 2014.**

**Recommendation 22:** Good practice advice and guidance issued by public bodies should be subject to follow-up and/or more detailed evaluation

**Responsible organisation (lead listed first):**

**Food Standards Agency**

**Local authorities**

The public sector is constantly trying to improve performance. Often this learning takes the form of good practice guidance, which spreads the word about improved methods of working and draws attention to examples where things have gone well.

Some guidance is statutory, such as, for example, the Food Law Code of Practice, which is issued by the Food Standards Agency and which is followed up during audits of local authorities. Other guidance can be more informal or advisory in nature, and it is therefore up to individual organisations whether advice of this kind is acted on.

Professor Pennington found two examples of non-statutory good practice guidance which were highly relevant to the inquiry. One was produced by the South East Wales Task Force after the inquiry into the 1996 Scottish outbreak, and was an effort to learn lessons from a serious incident elsewhere. The other was a Welsh Assembly Government guide aimed at developing food procurement practice, entitled 'Food for Thought'.

Both had important lessons for food hygiene in Wales but because some elements were not put into practice, the benefits were lost.

There is a wealth of information on good practice published every year for Environmental Health Officers. Local authorities highly value this guidance, particularly as budgets become more pressurised, and are keen to see that none of this guidance is cut back in coming years. The Welsh Local Government Association is in discussions with a range of other government bodies on ways of improving systems for circulating good practice. **The Welsh Local Government Association should identify a timescale for discussions and develop an action plan for improved adoption of good practice across local government.**

**Recommendation 23:** Variable Number Tandem Repeat (VNTR) should be validated as a standard method for the typing of *E.coli* O157

**Responsible organisation:**

**Health Protection Agency**

VNTR is a method of identifying organisms from their genetic material. It was used successfully during the 2005 outbreak and Professor Pennington believes the method should be adopted more widely.

The VNTR technique was developed by the Health Protection Agency, which is the body responsible for protecting the health and wellbeing of the UK population. The Agency has acted on this recommendation, ensuring that VNTR methods have been validated and internationally recognised.

**Recommendation 24:** The feasibility of identifying 'supershedder' cattle on farms should be explored as a potential means of reducing the likelihood of spreading *E.coli* O157 to other cattle

**Responsible organisation:**

**Department for Environment, Food and Rural Affairs (DEFRA)**

*E.coli* O157 is found in cattle faeces and often ends up on the surface of meat during the slaughter process. The level of *E.coli* O157 found in cattle faeces varies but is often very low. However, for reasons as yet little understood, some animals excrete relatively large amounts of bacteria and have become known as 'supershedders'.

The presence of such animals increases the potential for the spread of *E.coli* O157, both within the herd and within the slaughterhouse. If a method could be developed for identifying these animals before they enter the slaughterhouse, this would help significantly to minimise any cross-contamination.

Tests do exist that can identify a 'supershedder'. However, they must be carried out in a laboratory and take two to three days to produce results. It would not be realistic, or affordable, to require these tests for animals being sent for slaughter.

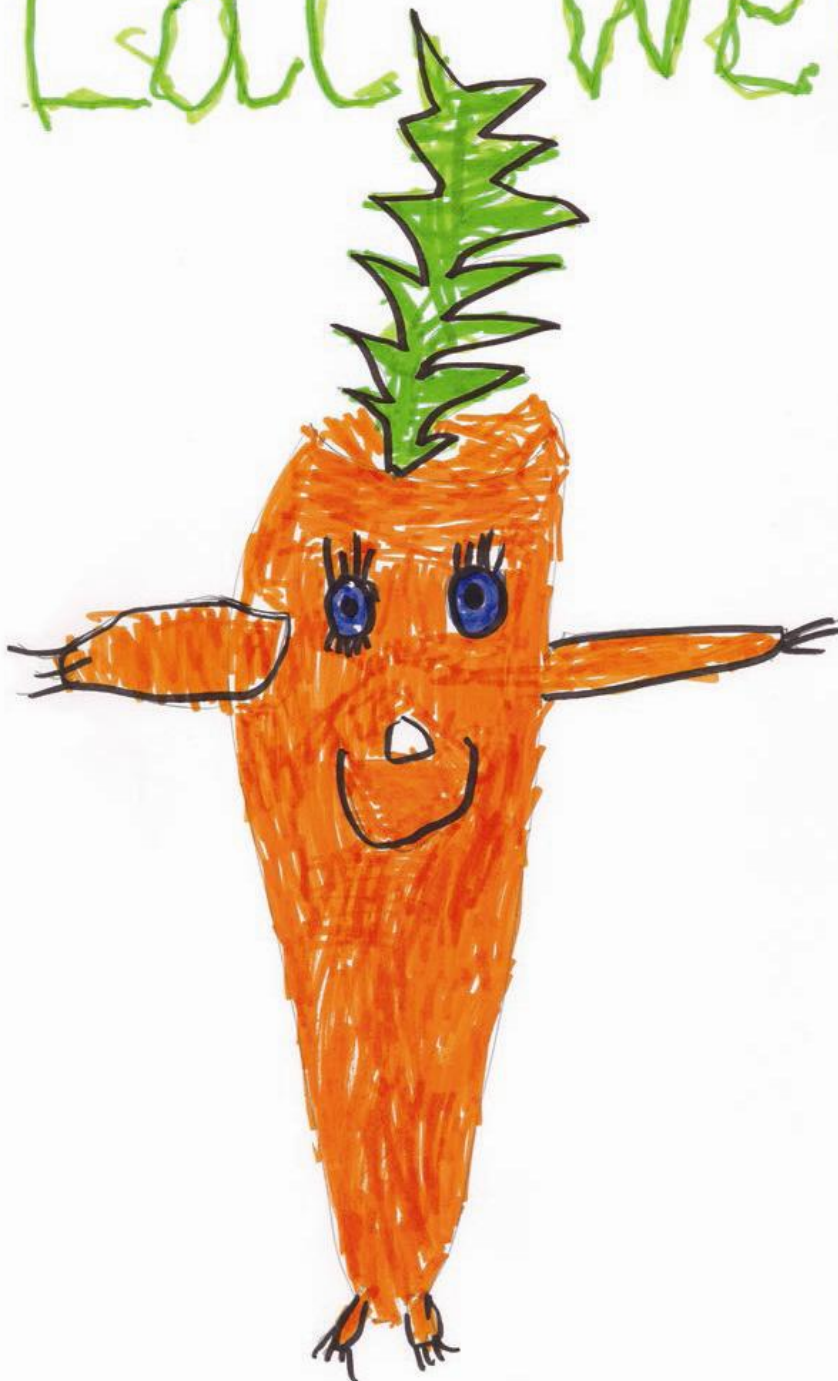
Currently there are no tests that could be used on-site in farms or abattoirs. However, scientific developments may mean that a test is one day developed.

The Chief Medical Officer for Wales, Dr Tony Jewell, has written to the Department for Environment, Food and Rural Affairs (DEFRA) requesting that this matter be raised at the next meeting of the UK Zoonoses Group, an independent committee set up by DEFRA to advise on issues relating to animal diseases which can spread to humans. At the time of going to print no response had yet been received. Dr Jewell is pursuing the matter.

**The Department for Environment, Food and Rural Affairs should ensure funding is available to carry out research to develop an affordable on-site test to identify 'supershedder' cattle and should ensure the Welsh Assembly Government is kept informed of progress.**



Eat well



*Eat well*  
By Fergal Aberdeen, St John Ogilvie

# Conclusions

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Quite clearly, all public bodies have taken the findings of the Pennington Inquiry very seriously. A great deal of time and money has been spent, particularly by local authorities, on addressing the issues raised in the inquiry report. This has been entirely necessary, since at the time of the outbreak working practices in the Bridgend environmental health team were not significantly different from working practices in other local authorities<sup>64</sup>. In that sense, the 2005 outbreak was a major wake-up call for the whole of Wales because it could have happened anywhere.

## State of play: March 2010

Much of the work undertaken by public authorities in response to the inquiry has been thorough, timely and appropriate. In particular we would wish to highlight the following as positive achievements which will increase the safety of the public from *E.coli* O157:

- Every local authority has adopted a 'red flagging' system to highlight issues of concern for future inspections
- Some local authorities are requiring complete separation of equipment for raw and ready-to-eat meats, taking a strict interpretation of the law in order to increase consumer safety
- *Safer Food Better Business*, developed by the Food Standards Agency, is an approach to educating food businesses about hygiene that is based on robust research
- The Food Standards Agency's 14-stage Food Hygiene Delivery Programme includes a set of measures which will tell us, in time, whether post-Pennington activity has actually made a difference to public safety
- Every local authority has drawn up an action plan and appointed a senior management figure to co-ordinate work on the Pennington recommendations – this is a good start, but they need to make sure that these action plans deliver results that are consistent across local authorities.

## Ongoing action

It is also clear, however, that there is still a great deal to do. As we have demonstrated in this report much of the activity is work in progress, including the following:

### The Food Standards Agency is:

- improving methods of assessing how food hygiene inspections are undertaken by local authorities
- reviewing guidance on issues relating to cross-contamination, including use of sanitisers and separation of equipment for raw meats and ready-to-eat foods
- conducting research to better understand communication between food businesses and environmental health
- developing a new training course on encouraging behavioural change

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<sup>64</sup> Pennington, H. (March 2009) The Public Inquiry into the September 2005 Outbreak of *E.coli* O157 in South Wales. p334 par 18.49

- considering ways of making the inspection of HACCP plans audit-based
- regularly publishing the results of their set of measures on food hygiene

#### **The Welsh Assembly Government is:**

- developing guidance on standards for school toilets and hand washing facilities

#### **The Welsh Assembly Government and Public Health Wales are:**

- developing improved systems for out-of-hours communications with key health and care personnel

#### **Local authorities are:**

- following action plans on the delivery of Professor Pennington's recommendations

#### **The Local Better Regulation Office is:**

- building awareness of the principles of good regulation in local authorities.

## **Failure to implement**

Furthermore, recommendations 3, 8 and 10 are not currently being implemented.

- **Recommendation 3** – on making additional resources available – is one of the most important recommendations in the report, in that a failure to carry it out threatens the viability of a number of the other recommendations. In response to this we believe:

**The Welsh Assembly Government and local authorities in Wales should ensure that sufficient resources are available to do the extra work necessary as a result of Professor Pennington's recommendations. The Welsh Assembly Government should ring-fence for food hygiene £2.5 to £3 million each year for five years.**

- **Recommendation 8** – on making the inspection of HACCP plans audit-based – is a thorough approach to inspections which local authorities say they do not currently have the resources to carry out. In response to this we believe:

**The Food Standards Agency must prioritise their planned review of this issue. The Welsh Assembly Government and local authorities need to ensure sufficient resources are available to implement this recommendation, particularly for high-risk premises.**

- **Recommendation 10** – on keeping a copy of a business's HACCP plan at every inspection – is being interpreted in a different way by local government officials, who have decided to take an approach that involves recording elements of the HACCP plan but not obtaining and holding a copy on file, as the recommendation states. In response to this we believe:

**The Food Standards Agency and local authorities in Wales should explore all avenues for full implementation of this recommendation, including developing a website to allow businesses to operate online HACCP plans.**

**There are many areas where Consumer Focus Wales believes further work is needed. Our recommendations have been highlighted throughout this report and are summarised later, under 'What else needs to happen'.**

## Action by the Food Standards Agency

The Food Standards Agency's post-Pennington work programme, known as the Food Hygiene Delivery Programme, is fairly comprehensive in scope. However, with an end date of April 2014 the programme is a long-running one, and in terms of the individual activities that are taking place within it, we have been struck by a distinct lack of clear, short-term deadlines. There needs to be more urgency for this work and we believe the Food Standards Agency needs to commit to firmer deadlines to produce some positive results from this programme as soon as possible.

## Role of the Welsh Assembly Government

After having spent £2.3 million<sup>65</sup> on holding the public inquiry, we would have expected the Welsh Assembly Government to have developed a plan for how implementation work should proceed. Local authorities tell us they were anticipating the Assembly Government to specify what was expected of local government in light of the report and how this work was to be funded.

The Welsh Assembly Government has not taken on that role but has allowed local authorities and other responsible agencies to decide for themselves how best to respond to the recommendations. Co-ordination activity has been fairly hands-off in nature, and has been for information-sharing purposes only. The Welsh Local Government Association has taken on the role of collating local authorities' action plans. They are not being scrutinised centrally by the Welsh Assembly Government.

**Consumer Focus Wales believes that the Welsh Assembly Government should have taken a stronger role on directing post-Pennington work, in order to ensure the best possible outcomes from the £2.3 million that the public inquiry cost. This issue of leadership links to the issue of funding for post-Pennington activity, which is explored in more detail below.**

## Challenges facing environmental health

A criticism made by parents who sat through the public inquiry was that the root cause of many of the issues raised by Professor Pennington's report was individuals not doing their job thoroughly enough. A key question is whether they were in fact unable to do their jobs more thoroughly. Did they have the resources to do better? Do they have the resources now?

Many of Professor Pennington's recommendations were targeted at local authority environmental health services. In order to understand the extent of the improvement work carried out in environmental health it is necessary to set it in the wider context of issues facing the profession.

A key problem is a shortage of qualified professionals specialising in food hygiene. In comparison with other areas of environmental health, food hygiene is a high-risk, highly pressurised career path. For an Environmental Health Officer to move into food hygiene from another area takes months of additional training.

A common view expressed by those within the profession is that the 2005 *E.coli* O157 outbreak, and the public inquiry that resulted from it, have further discouraged newly qualified officers from specialising in food hygiene. We have been told that some local authorities in Wales have to pay food hygiene specialists a higher wage than other Environmental Health Officers to persuade them to remain in post.

Furthermore, local authorities have been cutting back on environmental health traineeships and professional placements as a cost-reducing measure, meaning that there are fewer opportunities for environmental health graduates to begin a career.

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<sup>65</sup> Public inquiry team

Market forces apply to this job market as to other markets. When competition is strong and vacancies have many applicants, the calibre of employees is high. When competition is weak, the opposite can be the case.

A further issue, according to some within the field, is that local authority environmental health services are measured in a way that requires a high turnover of inspections. The pressure to carry out large numbers of inspections means Environmental Health Officers can feel that they are prevented from spending the right length of time with a particular food business. A greater emphasis on quality over quantity would provide a better environment for inspectors to respond to businesses' needs. Data is collected by the Welsh Assembly Government and the Food Standards Agency, and the Food Standards Agency states that there is not much room for reform here as the requirement to collect data on enforcement activity is governed by European legislation.

Finally, the issue of resources has been raised frequently by environmental health services as a major challenge. A view expressed by many in the profession is that the service does not enjoy the same status as other statutory services provided by local government. According to this view, environmental health has become sidelined so that today the profession is generally underrepresented on senior management teams. This means that they are less able to fight their corner when budgets are set and, according to some within the field, is a key reason why environmental health needs ring-fenced funding.

The Welsh Local Government Association says that the Pennington Report represented a huge amount of extra work for local authority services which were already stretched to their limit. Professor Pennington realised the resource implications of what he was recommending, which is why he also recommended that additional resources should be made available.

He made similar recommendations in Scotland following the major *E.coli* O157 outbreak of 1996, and in response the Scottish Executive made an annual payment of £2.6 million for five years, earmarked for food hygiene, a move which enabled environmental health departments to build capacity to focus efforts on making the improvements recommended by Professor Pennington.

More than 10 years on, however, the financial climate is very different. All levels of government are facing many competing priorities: education, health, social services and many other services have urgent funding needs.

There is also less appetite for ring-fencing funding: the Welsh Assembly Government's general policy is not to 'hypothecate' or specify what funding should be used for. The Assembly Government has said it does not intend to provide ring-fenced funding to offset the costs of implementing the Pennington recommendations. Their view is that local authorities are free to decide their own budgets, and that it is up to them to ensure that food hygiene is adequately prioritised within these.

Local government in Wales received an increase in overall funding from the Assembly Government of 2.1 per cent for 2010/11. Included in this funding is an extra £180,000 which has been given annually from 2007/08 to local authorities to support the enforcement of European food hygiene legislation. Local authorities report that it had an impact on food hygiene budgets but was not enough to offset the cost of implementing Professor Pennington's recommendations, estimated by the Welsh Local Government Association as between £2.5 and £3 million per year.

The cost of carrying out improvement work has been met through environmental health teams' existing budgets and, according to them, has been a considerable expense. The improvement work carried out by Bridgend Council, the authority that was responsible for inspecting Tudor's premises, has included:



- Recruiting three new officers to conduct food hygiene inspections
- Reviewing all inspection procedures, paperwork and policies
- Providing full HACCP training for all inspection staff and managers
- Sending letters to all high-risk businesses reminding them of their food safety responsibilities and alerting them to the dangers of using the same equipment for raw and cooked meats
- Developing a 'red flagging' system for highlighting issues of concern for subsequent inspections and sharing it with other local authorities as good practice.

To assess the effectiveness of some of these improvements, the authority has been the subject of auditing by the Food Standards Agency and the Wales Audit Office. Although the results of these two audits have not yet been published, early indications are that Bridgend has managed to make substantial improvements to the management of the environmental health service.

It is to the credit of Welsh local authorities that they have forged ahead with post-Pennington work despite having inadequate additional financial support to do so. But it is also inevitable that this has put Environmental Health Officers in a position where some feel that they have already spent sufficient time on the Pennington recommendations; that the recommendations have already been addressed as far as they are able; even that the report has not made the positive difference that was intended.

Additional funding would allow local authorities to implement more thorough inspection techniques, including, importantly, full audit-based inspections of HACCP plans and unannounced spot checks of food businesses. It would also help build capacity among food businesses to implement HACCP. The Assembly Government must recognise the need for additional resources to support implementation of the inquiry's recommendations. These resources need to be ring-fenced to ensure that, in this difficult financial climate, they are spent on food hygiene.

People affected by *E.coli* O157 pay the ultimate price, but the public purse also pays, whether it is by resourcing environmental health services or by resourcing the NHS when victims need treatment. A failure to invest in preventative services such as environmental health and health promotion carries a cost which is far greater, both in human and financial terms. It cost the NHS hundreds of thousands of pounds to treat just one individual, Karen Morrisroe of Wrexham, who contracted *E.coli* O157 in 2009 after eating a vegetarian burger. Twice a day for three weeks, and then once a day for many more weeks, Karen was being given blood plasma replacement treatments that cost £5,000 per treatment.

The public sector is entering a period of severe restrictions on finances: we are told that local authority budgets will be reduced annually for the next five to 10 years, and departments are being asked to find efficiency savings or make job cuts. Environmental health will be no exception and the Welsh Local Government Association reports that inspectors' jobs in at least one local authority in Wales are under threat.

Professor Pennington's view is that, unless the Welsh Assembly Government provides additional funding specifically for environmental health, the public is at greater risk of another serious outbreak of *E.coli* O157.

In a letter to the Consumer Food Safety Group, he said,

*'nothing is proposed to protect – never mind increase – the environmental health functions carried out by local authority staff. "Pennington Money" was allocated after my 1997 report. Without "Pennington 2 Money" the risk of "Pennington 3" is increased.'*<sup>66</sup>

## Compromises

Environmental health services report that the pressures facing them mean that they simply do not have the resources to carry out some of the recommendations in their entirety, in particular, the ones related to HACCP. Professor Pennington's view is that HACCP should be the cornerstone of food safety. The HACCP plan at Tudor's was a particular focus of the inquiry because it was so seriously flawed as a plan, and yet successive inspectors had failed to properly deal with its inadequacies.

In his report Professor Pennington made a series of recommendations aimed at enabling inspectors to work with food businesses in order to ensure that all have an effective HACCP system in place. The HACCP system should also form the basis for the inspection process: an inspector should look at the HACCP plan and then check to see whether it is actually being followed in the activity of the business.

Environmental Health Officers say that this is not possible with current resource levels. It would take far too long to verify the complete HACCP plan at every inspection. Nobody disputes that the HACCP plan should form the basis of the inspection, but in the real world of dwindling budgets, Environmental Health Officers say that it is not currently achievable. This recommendation will not be implemented unless greater priority is given to it.

## Enforcement

Working within resource limits, and the current central government drive for 'better regulation'<sup>67</sup>, means that Environmental Health Officers tend to take a flexible, risk-based approach, which involves concentrating efforts on high-risk businesses (known as A-risk, on a scale of A to E, with E being the lowest risk). Category A will usually include butchers that sell raw and ready-to-eat meats, but it will not generally include businesses such as fish and chip shops. Smaller businesses may also be considered less of a risk due to lower volumes of food being supplied.

In July 2009 an outbreak of *E.coli* O157 occurred in Wrexham. Four people were taken ill, some of whom were in a serious condition for many weeks afterwards. The source of the outbreak was traced to a fish and chip shop in Llay, run by a single individual. The fish bar was known to have poor food hygiene standards and had been rated 0 stars, according to the *Scores on the Doors* rating system<sup>68</sup>.

The local authority had classified the business as B-risk. Environmental health professionals stress that B-risk is not low-risk: premises in this category will be inspected relatively frequently. In the case of the Wrexham fish bar, this frequency was 12 months which is the maximum interval allowed for B-risk premises<sup>69</sup>.

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<sup>66</sup> Pennington, H. Letter to Consumer Food Safety Group (December 2009)

<sup>67</sup> The five principles of good regulation are that regulation should be accountable, consistent, proportionate, transparent and targeted.

<sup>68</sup> For a fuller discussion of Scores on the Doors, see the section on recommendations 1 - 2

<sup>69</sup> Maximum inspection intervals are set by the Food Standards Agency at six months (risk category A); 12 months (risk category B); 18 months (risk category C); two years (risk category D); and unspecified for risk category E (alternative enforcement strategy to be used).

At the time of the outbreak the fish bar was shortly due for an inspection. However, the local authority had visited on a number of occasions in the months leading up to the outbreak, in order to work with the business to try to improve standards by communicating with the business operator.

Since the Wrexham outbreak, many consumers have asked a simple and valid question: why was a food business with a 0-star rating allowed to stay open at all?

Environmental Health Officers use a range of methods of working with businesses to improve practices, including education and guidance as well as formal enforcement actions which may result in premises being closed down. However, there is often a mismatch between the public's idea of when formal enforcement should be used and what actually happens in day-to-day practice.

Primarily this is because local authorities are concerned that they may risk being sued for loss of earnings, if the authority closes a business down and the magistrate subsequently disagrees that the business posed an 'imminent' risk to public health – in legal terms, a very high test to satisfy.

A further potential issue is the 'better regulation' agenda, which is a UK Government drive to streamline regulation by reducing red tape and burdens to businesses that comply with the law while focusing enforcement action on businesses with poor levels of compliance. The Welsh Local Government Association believes there may be tensions between the better regulation agenda and the recommendation on keeping the choice of 'light touch' enforcement under review.

It seems that local authorities would benefit from some greater clarity on this issue. We will draw this to the attention of the Local Better Regulation Office, whose responsibility it is to promote the new duty. Local authorities need some reassurance that there should be no reason for the Pennington recommendations to clash with the 2008 duty. Guidance on this issue would be useful to confirm exactly where the 2008 duty should and should not be cited as a reason for inaction.

## **Inconsistencies**

A further issue highlighted by our review relates to the separation of equipment for raw meat and ready-to-eat foods. Because the law is not clear on this issue different local authorities have taken different approaches: some have taken the step of requiring complete separation while others have taken a more pragmatic approach, perhaps allowing the same equipment to be used if they think it is being properly operated and cleaned.

Professor Pennington believes that for complex equipment such as vacuum packers, it is extremely difficult to guarantee this standard of cleaning on a routine basis. We believe that the Food Standards Agency needs to act now to ensure complete separation of equipment, particularly for complex machinery such as vacuum packers.

## **Information gaps**

Our review has been inconclusive on a number of recommendations, simply because the information does not exist to tell us whether they have been implemented. We don't know whether inspections are being announced or unannounced because the Food Standards Agency, and most local authorities, do not collect this information. All we have is anecdotal evidence which tells us that 'most' inspections are unannounced.

There are a variety of reasons why it can be beneficial to announce follow-up inspections, but it is hard to see why initial (or primary) inspections should ever be announced beforehand. We would like to see a greater focus on this issue.

The Food Standards Agency should be monitoring the proportion of unannounced inspections that environmental health services carry out.

Other recommendations are by their nature difficult to measure, such as:

- Recommendation 7: keeping the choice of 'light touch' enforcement under review
- Recommendation 12: Making evidence-based decisions about confidence in a business's management of food safety
- Recommendation 22: Following up and/or evaluating good practice guidance

The best overall test, however, should be the set of indicators being developed by the Food Standards Agency in relation to the Food Hygiene Delivery Programme. These measures will tell us whether fewer consumers are contracting food poisoning, and whether fewer businesses are breaking food safety laws. As we publish further progress reports in coming years we will monitor these indicators and ensure that consumers are kept fully informed.

## Re-building public trust in food safety

Research carried out for Consumer Focus Wales has found that people in Wales have a lower level of trust in the food safety regime than people in the UK as a whole. In September 2009 we carried out a Wales-wide survey into consumer attitudes towards food safety<sup>70</sup>, comparing our results with historical data from the Food Standards Agency's Consumer Attitudes surveys<sup>71</sup>. This comparison found that the 2005 outbreak had a strong effect on levels of trust in Wales but not at UK level. Today levels of distrust in Wales are still higher: our 2009 survey found that 24 per cent of people said they were not confident in current measures to protect our health in relation to food safety, compared with 17 per cent of people in the UK.

Greater transparency is essential for re-building trust. This report is the first step towards that. However, action needs to be taken by all responsible agencies to publicise the work that has been done. For example, the action plans that local authorities have drawn up have not been presented in a way that is accessible to the public, although they contain a great deal of positive information about what has been achieved.

The fact that local authorities have not made more of this opportunity for positive communications is mainly due, they say, to a lack of resources to spend on publicity. Action plans are written using technical terms and would need translating into everyday language. Time and energy would need to go into producing comprehensible documents and publishing them in a consumer-friendly format.

Documents are already in existence that can provide a useful starting point to help local authorities explain key issues in plain language that the public can understand. The Welsh Local Government Association produced a briefing, '*E.coli* Inquiry and Local Government', which is intended to help local authorities talk to the public about post-Pennington work. The Pennington Report itself is written in an accessible way. And we hope that this report, together with the summary report which uses clear language, will help to explain the work that they have done.

## Families affected by *E.coli* O157

As well as carrying out consumer research, we have also been in close contact with a number of families affected by the 2005 outbreak to find out about their experiences, how they have been treated, and what they would like to see happen in Wales.

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<sup>70</sup> Beaufort Omnibus Survey September 2009

<sup>71</sup> The Food Standards Agency Consumer Attitudes survey was carried out annually between 2000 and 2007

What is clear from these discussions is that there is universal support among the families for Professor Pennington's findings. In this sense he managed a remarkable achievement in drawing a set of conclusions that everybody agrees with.

Families have told us they want to know what has been done to implement the recommendations and prevent another incidence of *E.coli* O157. Some have been in contact with local authorities and other public bodies to try to find this information. They say that the response has been mixed.

Some organisations have taken a very open approach, instigating face-to-face meetings with family members and taking steps to keep them informed. In particular, the Food Standards Agency and Rhondda Cynon Taf Council have been highlighted to us as organisations that have gone the extra mile to engage directly with affected families. They have been open to criticisms, willing to talk about where mistakes have been made, and have kept in touch voluntarily with families over a period of time.

The families say that other public bodies have been much more defensive in their attitude, engaging only by letter and only in response to approaches they have made. The language in such letters has often been quite formal and stilted, with frequent use of official jargon. Families believe that a fear of litigation may have prevented some authorities from engaging more meaningfully with them.

We would like to emphasise the good practice that others should learn from. It is not enough to correspond by letter with people who have suffered in *E.coli* O157 outbreaks. Discussions need to be held face-to-face, with sensitivity, ideally with families having a consistent point of contact to liaise with throughout the process. Families tell us they want public bodies to be willing to hold their hands up when mistakes have been made. They want public bodies to be clear about the extent of their responsibility and the action they will take to address their failings. Families have a right to receive this.

Since the outbreak occurred, authorities have emphasised repeatedly that the main responsibility for the outbreak was Tudor's. This is not disputed. But the public protection system failed to protect the public, who in this case were vulnerable individuals. Two recent cases highlight the complex nature of responsibility for these failures: following the public inquiry into the murder of Victoria Climbié, a number of social workers lost their jobs. Similarly, the murder of Baby Peter led to individuals being sacked, some of whom were senior local authority figures and doctors.

During Professor Pennington's inquiry, families witnessed criticisms being made of a number of individual professionals. Professor Pennington called individuals to account for their professional conduct and criticised them when he believed they did not act according to standards he felt were acceptable. This process led families to believe that jobs might be lost when the inquiry ended. Their expectation was not met, but rather it was the system that was said to be accountable, with apparently no individuals being held responsible for the way the system operated. The effect of this has been greatly to intensify distrust felt by many families, who feel that responsible agencies have acted to protect themselves.

One family member said to us,

*'Professor Pennington was very open about naming and shaming, but when the inquiry ended all we heard was that these people had gone on to promotion and better jobs elsewhere. Nobody came out and took responsibility. The system just closed in on itself. We were left thinking, well, are these the type of people we have working in our local council? It is really frightening.'*

We stress that we are not calling for people to lose their jobs. It is far too late for remedial action of that kind. But we feel it is important to emphasise that agencies must accept how and why these failures occur and can be held to account against these.



Acknowledgement of that responsibility is a vital first step towards providing families with closure and rebuilding trust. The way in which some public bodies handled the aftermath of the outbreak has demonstrated how a failure to engage at appropriate times and face-to-face can easily lead to an escalation of bad feeling.

Important lessons can be learned from families affected by *E.coli* O157. Their experiences are a test of the systems for controlling outbreaks; they reveal how well public protection teams are equipped to respond to emergencies. They can tell professionals involved in food safety management how it actually feels to have *E.coli* O157.

This is a message that people who have been affected by *E.coli* O157 have stressed to us time and time again: they want the professionals to understand that *E.coli* O157 is not like ordinary food poisoning. It is not just another stomach bug. The pain is overwhelming; there is an awful stench that people describe as like a rotting smell. It is traumatic to experience and to witness, even without the added awareness that it can have a devastating lifelong effect on health and is potentially fatal. The families we have spoken to are driven by a determination to do all they can to prevent anyone else having to go through what has happened to them.

These lessons have been taken on board by environmental health professionals in Scotland. In October 2009 Sharon Mills, the mother of Mason Jones, was invited to Edinburgh to speak at a Royal Environmental Health Institute of Scotland conference. She was invited because what she had to say to the audience of professionals demonstrated to them precisely what is at stake in their working lives. Her speech was so well received that the Institute has invited her to speak again in 2010.

The Food Standards Agency, the Welsh Assembly Government, and local authorities in Wales should recognise how the contribution and experiences of Sharon Mills, and other families who are still living with the consequences of the 2005 outbreak, could make a real difference here in preventing further outbreaks of *E.coli* O157. Public authorities should provide a platform for Sharon and others to speak to food hygiene inspectors, both trainee and qualified, to help them understand the importance of their role; to food businesses, to bring home to them the consequences of lax hygiene practices; to public sector budget-setters, to help them understand why environmental health needs to be properly funded; and to the wider public, to alert them to the need for vigilance about *E.coli* O157.



*Don't worry about being rude, always check you're safe with food*  
By Sorcha Turner, St Cadoc's School, Glasgow

# Next steps

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Outbreaks of *E.coli* O157 occur irregularly but frequently. Very often they are not food-related but occur when people come into contact with cattle faeces, for example on campsites or petting farms. However, a number of food-related outbreaks of *E.coli* O157 have occurred in Wales since 2005. In August 2009 four people were taken ill after eating at a fish bar in Llay, Wrexham; more recently five people were taken ill in September 2009 after eating food from a business in Tenby. In that instance Pembrokeshire County Council refused to name the food business at the centre of the outbreak.

Each of these outbreaks has been a test of the system, revealing strengths and weaknesses and throwing up new issues with implications for consumer safety. Issues like these will be a focus for the future work of Consumer Focus Wales, including:

- looking at policies on treatment of victims of *E.coli* O157 to ensure that people who are diagnosed with the illness and their relatives are dealt with by the authorities in a fair and sympathetic way
- comparing how much is spent on food hygiene-related environmental health in Wales, Scotland, England and Northern Ireland
- investigating whether it should be compulsory for food businesses to have public liability insurance
- ensuring that the Food Standards Agency's *Scores on the Doors* initiative is delivered as soon as possible, in a way that suits the needs and preferences of consumers.

In addition, we will continue to report annually on progress towards implementation of Professor Pennington's recommendations, and our views will feed into the annual reports that the First Minister has committed to make to the National Assembly for Wales.

## What else needs to happen

In considering what else key agencies should be doing to implement the recommendations, Consumer Focus Wales believes that more needs to be done in the following areas:

### The Food Standards Agency should:

- identify clear timescales for much of the planned work, including publication of the key performance indicators, delivery of the course on behaviour change, continued improvements to audit methods, and review of issues related to cross-contamination
- ensure that the Delivery Programme identifies what onward work will need to continue after April 2014
- pursue a change in secondary legislation to make it compulsory for food businesses to display *Scores on the Doors* on their premises
- issue guidance on separation of equipment as a matter of urgency, making it clear that complex equipment should never be used for raw and ready-to-eat meats
- seek ways to ensure those food businesses most at risk but least engaged are required to attend their one-day training course on cleaning in food premises

- work in partnership with the Health and Safety Executive to ensure that businesses are aware of the most appropriate and safest cleaning products
- monitor the proportion of unannounced inspections as part of its assessments of environmental health teams
- ensure that local authorities are aware of how to protect whistleblowers
- review HACCP training for all abattoir-based staff
- review official controls in abattoirs to ensure they are being carried out in the most effective way

**The Food Standards Agency and the Welsh Assembly Government should:**

- review the current effectiveness of Hygiene Prohibition Notices and Orders and consider pursuing a change in secondary legislation<sup>72</sup> to maximise their effective use

**The Welsh Assembly Government should:**

- set a clear timescale for testing and launching the Public Health Link system

**The Welsh Assembly Government and local authorities should:**

- ensure that resources are available to carry out spot checks in addition to routine inspections, especially for higher-risk businesses

**Local authorities should:**

- review their emergency planning arrangements to ensure they dovetail with contact systems for local health professionals
- Publicise regularly updated post-Pennington action plans, presenting them in public-facing language

**The Welsh Local Government Association should:**

- develop a timescale and action plan for improving adoption of good practice across local government

**Public Health Wales should:**

- set a deadline for updating emergency contacts lists

**The Welsh Food Microbiological Forum should:**

- regularly repeat its survey on the microbiological quality of school meals

**The Department for Environment, Food and Rural Affairs should:**

- ensure funding is available to carry out research to develop an affordable on-site test to identify 'supershedder' cattle and should ensure the Welsh Assembly Government is kept informed of progress

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<sup>72</sup> Food Hygiene (Wales) Regulations 2006

**Finally, the Food Standards Agency, the Welsh Assembly Government, and local authorities in Wales should:**

- provide a platform for Sharon Mills and others affected by the 2005 outbreak to speak to food hygiene inspectors, food businesses, public sector budget-setters, and the wider public to enable lessons to be learned and to ensure vigilance about *E.coli* O157



# Annex 1: Glossary of terms

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<b>Association of Independent Meat Suppliers</b>	An association representing small and medium sized abattoirs.
<b>Better Regulation</b>	An approach to regulation that aims to reduce unnecessary regulatory and administrative burdens.
<b>Butchers' Licensing Scheme</b>	Introduced after the 1996 <i>E.coli</i> O157 outbreak in Scotland. Set out requirements for butchers handling raw and ready-to-eat products.
<b>Chartered Institute of Environmental Health</b>	The professional body representing environmental health practitioners.
<b>Cross-contamination</b>	The transfer of harmful organisms from one surface to another. Can occur directly or indirectly from contact with hands or machinery, work surfaces or tools.
<b>Directors of Public Protection Wales</b>	A collective organisation of officers heading up public health protection services within local authorities.
<b>Environmental Health Officer</b>	An individual trained in environmental health issues such as housing, sanitation, food, clean air, noise and water supplies. Responsibilities include inspecting restaurants and other food premises and investigating cases of food poisoning.
<b><i>Escherichia coli</i> O157</b>	A particularly virulent type of <i>Escherichia coli</i> bacteria that can cause severe illness.
<b>Federation of Small Businesses</b>	A campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms.
<b>Food hygiene</b>	The measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff, taking into account its intended use.
<b>Food hygiene audit</b>	A comparison of a business's food safety management system with actual business practice to establish how well the system regulates food hygiene.
<b>Food Law Code of Practice</b>	Published by the Food Standards Agency and must be adhered to by authorities responsible for food hygiene inspections. Covers food safety practice and the conduct of inspections.

<b>Food safety</b>	The assurance that food will not cause adverse health effects to the final consumer when it is prepared and eaten.
<b>Food Safety Management System</b>	A system for ensuring a business maintains standards of food hygiene using HACCP principles. Must by law be kept by food businesses.
<b>Food Standards Agency</b>	An independent government department set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food.
<b>HACCP</b>	Standing for Hazard Analysis Critical Control Point, a food safety management method designed to enable businesses to identify, evaluate and control hazards.
<b>Haemolytic Uraemic Syndrome</b>	A condition which can be caused by <i>E.coli</i> O157 infection, characterised by acute kidney failure, anaemia and thrombocytopenia (a lowered body level of platelets, which are needed for normal blood clotting).
<b>Haemolytic Uraemic Syndrome Help</b>	A charitable organisation set up after the 1996 <i>E.coli</i> O157 outbreak in Scotland, which aims to support families affected by <i>E.coli</i> O157.
<b>Hygiene Emergency Prohibition Notice</b>	Can be served if a food business proprietor is failing to comply with food hygiene regulations. Can result in premises or part of premises being closed down.
<b>Hygiene Improvement Notice</b>	Can be served if a food business proprietor is failing to comply with food hygiene regulations. Failure to comply with the terms of an Improvement Notice is an offence.
<b>Hypothecated funding</b>	Government money which is dedicated for a specific purpose. Otherwise known as 'ring-fencing'.
<b>Key performance indicators</b>	Statistics that are used to keep track of certain aspects of a public body's performance.
<b>Local Better Regulation Office</b>	A public body that aims to improve local regulation of business by environmental health, fire safety, licensing and trading standards services, in order to reduce the regulatory burdens on business while maintaining public and environmental protection.
<b>Meat Hygiene Service</b>	An executive agency of the Food Standards Agency, aiming to ensure hygiene standards in abattoirs as well as the health and welfare of animals being slaughtered.
<b>National Federation of Meat and Food Traders</b>	An organisation representing the independent meat and food trade, with specialist knowledge and expertise in fresh chilled foods.

<b>National Public Health Service for Wales</b>	Provides resources, information and advice to enable public bodies to discharge their statutory public health functions.
<b>Outbreak</b>	An increase in the number of people with an illness or disease above that normally expected to be seen in the population at a particular time, or two or more linked cases with the same illness.
<b>Procurement</b>	The process of buying goods and services.
<b>Safer Food Better Business</b>	Developed by the Food Standards Agency, a food safety management system for use by food businesses.
<b>Scores on the Doors</b>	Developed by the Food Standards Agency, an initiative that allows consumers to find out food hygiene ratings of businesses they buy from.
<b>Supershedders</b>	Animals, usually cattle, which excrete relatively large amounts of <i>E.coli</i> O157 bacteria in their faeces.
<b>Vacuum packing</b>	The removal of all or most of the air within a package of, for example, food, preventing its return by an airtight seal.
<b>Value Wales</b>	Part of the Welsh Assembly Government, a branch with responsibility for achieving better value for money in Welsh public services.
<b>Variable Number Tandem Repeat</b>	A robust typing method of typing the specific strains of bacteria such as <i>E.coli</i> O157.
<b>Welsh Assembly Government</b>	The devolved government of Wales.
<b>Welsh Local Government Association</b>	Represents the interests of local government in Wales.
<b>Zoonoses</b>	Infectious diseases that can be transferred from non-humans to humans.

## Annex 2: Timeline of events

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16 September 2005	First positive test results for <i>E.coli</i> O157; outbreak declared
20 September 2005	Bridgend Council issues Emergency Prohibition Notice closing Tudor's premises
21 September 2005	Mason Jones, five, sent home from school suffering from a headache
4 October 2005	Mason Jones dies
Late November	157 individuals infected with <i>E.coli</i> O157, mostly children in 44 schools
7 December 2005	National Assembly for Wales votes in favour of holding a public inquiry to be chaired by Professor Hugh Pennington
20 December 2005	Outbreak declared over
13 March 2006	Public inquiry formally starts
27 June 2006	Public inquiry holds preliminary hearing

20 July 2007	William Tudor pleads guilty to six food hygiene offences
3 August 2007	Tudor pleads guilty to seventh charge of failing to protect food from risk of contamination
7 September 2007	Tudor jailed for 12 months
December 2007	Tudor released early from prison after serving 12 weeks
12 February – 19 March 2008	Public inquiry hears oral evidence
14 May 2008	Additional session to hear closing submissions
19 March 2009	Professor Pennington delivers final report to First Minister
7 July 2009	First Minister committed to report to Plenary in one year's time and annually thereafter



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ISBN: 978-1-907125-17-1

