
Navigating food contamination: Reporting and responding to incidents

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Discussion points

- Legal obligations and liabilities in the event of food contamination.
- The role of supply chain management in preventing contamination.
- The importance of having robust insurance coverage for product recalls, what goes wrong, more claims than ever, not always that expensive.
- Strategies for effective communication during a crisis to mitigate brand damage.

Contaminated Berry Blast Smoothie Mix

Incident

- FreshSip receives several customer complaints through social media and direct communications that people have fallen ill after consuming the Berry Blast Smoothie Mix.
- Initial symptoms reported include severe stomach pains and vomiting.
- The complaints are escalating, and the issue has started gaining media attention.
- FreshSip's internal quality assurance team initiates an immediate investigation and discovers that a batch of raspberries from one of their suppliers in Spain might be contaminated with Norovirus.

Legal and regulatory steps

- **Article 14:** **Is the contaminated food unsafe?**
 - *Is the food injurious to health or unfit for human consumption?*
- **Article 18:** **Traceability**
 - Can you identify the source of the contamination and to whom the food has been supplied? The rule of “*one step forward, one step back*”
- **Article 19:** **FBO Responsibilities if food is unsafe**
 - **Withdrawal:** preventing the affected food from reaching consumers.
 - **Customer Information:** advising consumers of the problem to prevent consumption.
 - **Recall:** where customers cannot be protected from consuming the product.
 - **Notification:** where the food is injurious to health report to the FSA/Local Authority.

Legal and regulatory steps

- In this case, FreshSip consults with legal advisors and decides to issue a voluntary recall of the affected batch of the Berry Blast Smoothie Mix.
- They publish a recall notice on their website and through social media, informing consumers to return the product to the point of purchase for a full refund.
- They notify the FSA, Local Authority and their Primary Authority.
- They engage with their supplier to notify them of the contamination and with their retail customers to support with the voluntary recall campaign.

Notification to authorities

- **What must an FBO consider when determining if a contamination issue is notifiable?**
 - Is it an absolute requirement for an FBO to notify the authorities?
 - If a decision is made to notify who should be notified and how should that notification be made?
 - What is the timescale for any notification?
- Under the General Food Law Regulation (EC) 178/2002, FreshSip notifies the Food Standards Agency (FSA) in the UK about the potential health risk and the steps they are taking to address the issue.

Supply chain investigation

- **How important is it for an FBO to work with its supply chain?**
 - Critical to actually manage the risks.
 - Traceability – up and down the supply chain.
 - Collaboration – essential to escalate a food safety issue and work with the supply chain to limit the risk to consumers.
 - Liability – the first phase is to protect consumers, but liability issues will also need to be factored into the FBO's considerations from an early stage.
- FreshSip works with their legal team to review contracts and obligations with the Spanish raspberry supplier. They investigate whether the supplier adhered to all safety and quality standards and whether there was any breach of contract.

Notifying your insurer

- FreshSip reviews their insurance policies to determine coverage for the recall expenses and potential liability claims.
- They prepare to file claims under their product liability and recall insurance, providing all necessary documentation of the incident and recall process.

Product recall market conditions

- Competitive market dynamic with new capacity entering the market over the last 24 months.
- Coverage expansion (sub-limited quality trigger offered to food manufacturers).
- Lockton initiative: Exclusive facility for clients with revenue below £100m.
- Increase in frequency and severity of claims leading to a more challenged claims environment.



Best Practices for Product Recall/Contamination Claims

Lockton Food and Beverage

Prompt reporting

Upon discovery of a potential products contamination event, clients should immediately report the incident to Lockton and to crisis consultants (**please find your consultant hotline within your Product Recall policy**).

Timely reporting allows for swift assessment and mitigation of damages. In the first instance, the insured shall not make any admission of liability.

Detailed information

Clients should look to provide comprehensive details regarding the contamination incident, including:

- Date time and location of the event
- Description of the contaminated products
- Cause of contamination if known
- Extent of contamination and affected inventory

Preservation of evidence *(important)*

Clients should preserve any evidence relating to the contamination incident, including:

- Contaminated products (please refrain from disposing of until we have insurer approval)
- Packaging materials including any relevant documentation records and contracts

Mitigation efforts

Clients should take immediate steps to mitigate further damage, including:

- The quarantine of contaminated products
- Notifying suppliers and customers and implementing cleanup procedures

Documentation and records

Clients should maintain detailed records of all communications, expenses, and actions taken in response to the contamination incident. This documentation will support the claims process and facilitate timely resolution. Examples of things that may be needed.

1. Purchase orders
2. Supplier contracts/agreements
3. Copies of third-party demands
4. Specific information about the contaminated product(s), including batch numbers, production dates, quantities produced, and quantities affected
5. Test results, expert analysis, or regulatory notices which confirm the source of the issue
6. Copies of any recall documentation, including (further) communication with regulatory bodies and evidence of customers or distributors who received the contaminated product
7. An initial estimate of the financial impact
8. Copies of quality control measures/HACCP plans and records of inspections, testing, and corrective actions taken
9. Supplier and ingredient information, including supplier certifications, insurances, and ingredient spec
10. Plant-specific information, demonstrating affected production lines, storage units, and the like along with unaffected lines and their ability to continue to process

Expert consultation

Lockton may recommend the engagement of industry experts such as forensic investigators or product testing laboratories to assess the extent of contamination and determine appropriate remediation efforts and measures.

Insurers/carriers may appoint or engage loss adjusters to act on the behalf of the policy investigating the event and reporting to them. Loss adjusters do not have control of policy coverage; this is the role of the insurer.

Once insurers have approved cover, the loss adjusters may have forensic accountants review the financial detail of the loss presented to ensure that it is in line with the cover provided. Lockton can assist in recommending forensic accountants to act on your behalf; their costs may be covered by your policy.

Resolution and settlement

Our Claims team will work diligently to evaluate the claim and negotiate a fair settlement in accordance with the terms of the insurance policy, keeping the insured apprised of all developments.

Continuous improvement

Following the resolution of the claim, our Claims team will conduct a thorough review to identify any lessons learned and implement measures to prevent future contamination incidents.

Consumer compensation

- FreshSip's legal team prepares for potential claims from affected consumers.
- They establish a compensation fund to cover medical expenses and other damages claimed by the consumers, ensuring compliance with the Consumer Protection Act 1987.

Regulatory compliance

- Throughout the process, FreshSip ensures that they comply with all relevant UK and EU regulations regarding food safety, product recalls, and consumer rights.
- They keep detailed records of all actions taken to demonstrate compliance and readiness for any regulatory inspections or audits.

Public relations and communication

- FreshSip maintains open lines of communication with consumers, stakeholders, and the media.
- They provide regular updates about the recall process and measures being taken to prevent future incidents, aiming to restore public trust in their brand.

Talk to us



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Thank you

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