

## Contents

CGSO ADVISORY NOTE 4: FOOD POISONING .....	<b>Error! Bookmark not defined.</b>
Introduction .....	2
What causes food poisoning? .....	2
How do I know if I have food poisoning? .....	2
How do I contract a food poisoning? .....	4
How do the microbes get into the food? .....	4
How does the law protect me against food poisoning? .....	5
I have suffered from food poisoning, what do I need to know and do in order to make a claim? ....	6
• Call the Environmental Health Officer of the local municipality.....	6
• Seek medical advice and obtain medical evidence .....	7
• Call your medical aid .....	7
• Keep as much evidence as possible .....	7
• Take the matter up with the outlet.....	7
• Other steps .....	7

## CGSO ADVISORY NOTE 5: FOOD POISONING

This note is provided by the office of the Consumer Goods and Services Ombudsman to guide suppliers and consumers as to their rights and obligations under section 61 of the Consumer Protection Act, 68 of 2008, (CPA) with regards to food poisoning.<sup>1</sup>

### 1. Introduction

---

Anyone who has ever suffered from foodborne illness (more commonly known as food poisoning) will be all too aware of how unpleasant it can be. Fortunately, most sufferers recover within a day or two and with no need to seek medical help. For a lot of people though, the condition may become more serious and cause longer term medical conditions; some of the most extreme cases may even be fatal.

If a consumer or their family have suffered from food poisoning after eating contaminated food, they may be entitled to claim compensation under the CPA.

### 2. What Causes Food Poisoning?

---

**2.1** Several microorganisms cause food poisoning. Either they themselves at high enough levels or their toxins must be present in the food to cause illness. The more common microorganisms that cause food poisoning are bacteria and viruses and these are commonly referred to as “pathogens”. Not all foodborne pathogens cause the same symptoms; some may be similar and others can be quite different (see below). Some examples of foodborne bacteria and viruses are:

- *Salmonella*
- *Listeria*
- *Staphylococcus aureus*
- *E. coli* (certain types)
- *Shigella*
- *Campylobacter*
- *Clostridium botulinum*
- Norovirus
- Hepatitis A virus

### 3. How Do I Know I Have Food Poisoning?

---

**3.1** If you have contracted a foodborne illness, then look out for the most common symptoms which are:

- Vomiting

---

<sup>1</sup> **Warning:** This information is provided for information purposes. It is not intended to constitute legal advice and should not be relied upon in lieu of consultation with appropriate legal advisors.

- Stomach Cramps
- Diarrhoea
- Nausea
- Fever
- Headache
- Muscle Aches
- Shivering
- Tiredness / Fatigue

**3.1** In some cases, more than one symptom can occur at the same time for example, norovirus also known as “stomach flu”, causes both vomiting and diarrhoea at the same time, with some shivering and tiredness. It is important to note though that a number of other illnesses show the same symptoms as listed above, so it is not to say that you definitely have food poisoning if you show these symptoms. What is always a good indication, is whether other members of family or friends that ate the same food at the same time as you from the same source, are showing similar symptoms.

**3.2** There are some bacteria that target vulnerable sectors of the population where they cause severe illness and sometimes even death. These vulnerable sectors include the young, the old (people above the age of 65 years), pregnant women or their unborn or newly born babies and the infirmed i.e. those who have other conditions that affect their immune systems – for example, those with HIV/AIDS, the under-nourished, people undergoing cancer treatment, people who have undergone an organ transplant and are on immuno-suppressive drugs, where the immune system is being purposely suppressed so that the organ is not rejected by the body.

**3.3** An example of such bacteria is *Listeria monocytogenes* which causes listeriosis and has a mortality rate of 20-30%; it has caused deaths in old aged homes in Canada and the USA (where foodborne illness outbreaks are documented), when contaminated food was eaten. Symptoms of listeriosis are a little different to those listed above and include muscle aches, fever, stiff neck, confusion, convulsions and sometimes even septicaemia. However, it can also lead to miscarriages, stillbirths, premature delivery or life-threatening infection of the newborn infant such as meningitis.

**3.4** In South Africa, a class action suit has been instituted against Tiger Brands Limited in the Gauteng High Court, Johannesburg, following the listeriosis outbreak in 2018 – which caused 209 deaths, including 91 babies, and infected more than 1,000 people – and was traced to Tiger Brands’ Enterprise facility in Polokwane, Limpopo.<sup>2</sup>

**3.5** People who do not fall into the vulnerable group of the population, usually have mild symptoms which pass with no further consequences and these people often don’t know they had listeriosis.

**3.6** Another bacterial disease worth mentioning that causes different symptoms to the ones mentioned in the list above, which is also quite serious is *E. coli* O157:H7 (denotes a specific type of more dangerous *E. coli*). This organism tends to target young children and typically

---

<sup>2</sup> Tiger Brands Limited and Others v Pillay and Others (Famous Brands and Another Intervening) (2019/25309; 2018/12835; 2019/36431) [2020] ZAGPJHC 160.

causes *bloody* diarrhoea. It causes a significant number of deaths and also has terrific side-effects in many of those affected i.e. a condition called HUS, which stands for the scientific term Haemolytic Uraemic Syndrome, may develop where the kidneys are permanently affected. Kidney dialysis is then required.

## 4. How do I contract food poisoning?

---

**4.1 Not all** food poisoning organisms are found in **all** foods. Different organisms have different “preferences” as to which foods they can grow or survive in. A rule of thumb though is that cooked foods are generally safer than uncooked foods, provided that they are thoroughly cooked and consumed quite quickly after cooking. Thoroughly cooked foods that are kept for a period of time must be refrigerated and then only for a maximum of a few days. However, cooked foods can also be potentially dangerous under certain circumstances:

- If they have not been prepared under hygienic conditions creating a potential for certain heat resistant bacterial toxins to be produced in the food. In this case, the bacterial cells may be destroyed by cooking but not necessarily the toxins, which may then make you ill; or
- If they have been contaminated after cooking, and not reheated thoroughly before being consumed.

**4.2** Examples of some close associations between pathogens and certain foods where foodborne outbreaks have been listed are *Listeria* in soft cheeses and certain deli meats, *E. coli* O157:H7 in undercooked minced meat such as is found in undercooked hamburger patties, *Salmonella* in poultry, other meat products and eggs, *Clostridium botulinum* (causes severe illness called botulism) in traditionally-home-prepared salted or fermented foods (e.g. fish, cured meats) and improperly home-canned products. It must be stressed though, that most food products in the formal food sector are safe for human consumption. These foods are produced in plants which undergo regular hygiene and food safety audits, to ensure that the food is produced in an environment in which good hygiene and good manufacturing practices are followed.

## 5. How do the microbes get into the food?

---

**5.1** There are several factors that determine how foods become contaminated with bacteria, viruses or other microorganisms that can cause foodborne illness, of which only a few of the more critical ones are mentioned below i.e.

- Improper hygiene of people handling the food. Human hands are a great source of a number of different pathogens and regular washing of hands, particularly after being to the toilet, after sneezing or coughing into one’s hands, as well as other personal hygiene habits must be observed by all staff handling food served to the public (including waiters in restaurants).
- Inadequate cleaning and disinfection of surfaces and the environment. A number of food poisoning incidents occur where cooked food is handled on a surface where raw

food was handled, without that surface being cleaned and disinfected in-between. The raw food's juices can contain pathogens, which can then be transferred to the cooked food after which it is served to unsuspecting customers. This is called **cross-contamination** and is also applicable to any utensils that may be misused in this manner. Some other important aspects are:

- Proper hygiene training for all staff handling food in any way;
- Making sure staff wears clean protective clothing when they work with food so that microorganisms from hair or one's own clothing do not get into the food.
- Controlling pests such as cockroaches and rats to ensure that they don't transfer bacteria into or onto food. Rat and bird faeces are known to carry *Salmonella*, which may then land up in food, if these pests are not controlled.

## 6. How does the law protect me against food poisoning?

---

**6.1** The Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, which resides with the National Department of Health, states that any person shall be guilty of an offence if he sells, manufactures or imports for sale, any foodstuff which is contaminated, impure or decayed, or is, in terms of any regulation deemed to be harmful or injurious to human health. Under the terms of the Act, a number of applicable regulations have been promulgated that address specific issues to ensure that food is safe for human consumption.

**6.2** Under the common law, a supplier can be held civilly liable in court for damages arising from food poisoning, as was the case in the matter of *Muzik v Canzone-del-Mare*<sup>3</sup>, heard by the Cape Provincial Division. A patron of the Canzone-del-Mare restaurant ordered sea food and after eating the meal experienced symptoms of food poisoning which led to his hospitalization and further medical treatment. Muzik sued the restaurant for damages which included:

- his hospital and medical expenses;
- damages for:

(a) The anxiety he suffered (he believed he was going to die),

(b) The fact the experience put him off eating seafood, which he used to enjoy, and

(c) The loss of enjoyment of life, including (perhaps surprisingly) not being able to work, and not being able to read, play the piano or go for walks.

**6.3** The court found that claim (a) failed as there was no proof of mental impairment or that his bodily wellbeing was affected; there was no claim permissible in respect of (b) (put off eating seafood), but for claim (c), Muzik was entitled to compensation in the amount of R 400 for the temporary loss of enjoyment of life.

---

<sup>3</sup> 1980 (3) SA 470 (CPD).

**6.4** In 2008, the Department of Trade and Industry promulgated the Consumer Protection Act which made it easier for a consumer to claim against a supplier for damages arising from food poisoning. Under section 61, consumers are able to sue suppliers and manufacturers of goods (including food) for damages or injuries suffered by them as a result of using or consuming the goods, irrespective of whether or not there was any negligence on the part of the supplier or manufacturer. If more than one party is potentially liable, the consumer can sue any one of them, as their liability is joint and several. This means that if the consumer sues one party and receives payment, that party can then sue the others for a contribution towards the payment.

**6.5** The harm may arise from a product failure, defect or hazard or inadequate instructions or warnings regarding any hazard arising from or associated with the use of any goods. It is sufficient to show that the damages were suffered only partly as a consequence of these shortcomings. The type of harm for which a person may be held liable includes:

- The death of, or injury to, any natural person
- An illness of any natural person
- Any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable
- Any economic loss that results from any of the types of harm listed above.

**6.6** Economic loss means indirect financial losses that might result from one of the first three types of harm, such as loss of income, hospital bills etc. The claim for damages must be brought within three years of the death or injury of a person or the latest date on which a person suffered any economic loss.<sup>4</sup>

**6.7** Although you no longer have to prove negligence in order to recover damages, it is still necessary for you to prove that it was the tainted food sold to you by the outlet that caused you to get ill. This is why it is necessary for you to collect as much evidence as possible.

## **7. I have suffered from food poisoning, what do I need to know and do to make a claim?**

---

**7.1** **Call the Environmental Health Officer of the local municipality** immediately if you think that you were infected by eating food you purchased. They will then be able to investigate and take action against the outlet in question. Having an Environmental Health Officer's report will also greatly assist you in any compensation claim you make. The quicker they are aware of your problems, the sooner they will be able to begin their investigation. It is not unusual for food poisoning cases to come in 'clusters' or outbreaks affecting a group of people. The quicker the Environmental Health Officer can get in touch with fellow victims and have the supporting evidence the better your case is to prove.

---

<sup>4</sup> S 61(4)(d)(iv) Consumer Protection Act.

**7.2 Seek medical advice and obtain medical evidence** of your misfortune. You should preferably have a specimen of faeces or vomitus sent away for testing to a medical laboratory – speak to your doctor or local hospital about this as they will know what kind of test(s) to ask for based on the symptoms you are showing; keep the medical reports and document everything you can, such as :

- I. How soon after your last meal did you get the first symptoms of foodborne illness?
- II. Note all the symptoms of illness you are experiencing as they happen;
- III. List all (or as many as possible) foods you ate in the past 5-7 days, but particularly in the last 48 hours;
- IV. Add where you ate those foods or where you purchased them to your list;
- V. Ask anyone who may have eaten the same food as you, whether they are also experiencing the same or similar symptoms;
- VI. Get the medical practitioner to give you a “sick note”;
- VII. Keep the receipts for medical treatment, testing and medicines.

**7.3 In case you have to seek health advice** it is quite crucial that you simply tell the doctor exactly what happened and who or what you believe is the cause. Remember that more common food poisoning symptoms such as vomiting and diarrhoea can be caused by other medical problems, therefore it may be a challenge to pin the issues down to a particular event unless the medical information is as accurate as possible.

**7.4 Call your medical aid** to find out what tests it will pay for. Bear in mind that if you cannot make out a case against the supplier of the tainted foodstuff, you may have to bear the cost of any tests done.

**7.5 Keep as much evidence as possible**, where possible. If you have any left-over food from a restaurant or food service outlet and it has been refrigerated or frozen, have that tested as well by the same medical laboratory to see whether the same bacterium or toxin in question is present in both your faeces/vomitus and in the left-over food (please note however, that it is difficult to test for viruses in food and many laboratories are not able to do this and such tests are also very expensive; so if the organism is a virus, the chances are that it will not be found). Freezing food usually does not damage bacteria or their toxins and so the chances are good that these will be recoverable from frozen food, which has been thawed before testing. If you believe your illness has arisen from a product you bought from a shop or supermarket then try and keep the packaging or even the actual product itself. Likewise any receipts or evidence of purchase from a cafe or restaurant, food outlet or takeaway could be useful.

**7.6 Take the matter up with the outlet** that you believe supplied you with the tainted food. You should for obvious reasons do this after you have alerted the health authorities and they have carried out an inspection.

**7.7 Other steps:** If your claim is not met by the outlet, contact its central complaints department, if it has one or, if not, report the matter to the [National Consumer Commission](#) (Tel: (012) 428 7000) or an ombud that has jurisdiction over the supplier, or to the Restaurant Association of South Africa (Tel: (011) 705 2054/2897).

## Acknowledgement

---

Parts of the Advisory Note are based on information provided by Professor Lucia Anelich from Anelich Consulting. Prof Anelich is one of South Africa's best-known and experienced food microbiologists and food safety experts who consults for a number of United Nations bodies. She is also involved with many international and national food microbiology and food safety-related organizations and associations, is a Fellow of the International Academy of Food Science and Technology, has presented over 130 talks nationally and internationally on food safety; has written a number of book chapters and has published widely in scientific and popular media. See [www.anelichconsulting.co.za](http://www.anelichconsulting.co.za) for more information.

**Please direct any requests for clarification to [info@cgso.org.za](mailto:info@cgso.org.za)**

**Consumer Goods and Services Ombudsman**

**Revised March 2021**