



A REPORT FOR THE NATIONAL ASSEMBLY FOR WALES

**The Food Hygiene Rating Scheme:
Review of the Operation of the Appeals System**

FEBRUARY 2017



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1. Executive Summary

- 1.1 In November 2013, the Food Hygiene Rating (Wales) Act (“the Act”) established a statutory Food Hygiene Rating Scheme (“the Scheme”). The Act amongst other requirements, made display of food hygiene ratings by businesses mandatory and participation in the Scheme compulsory for local authorities.
- 1.2 The Act also places a duty on the Food Standards Agency (FSA) to:
- Review the implementation and operation of the Scheme in Wales one year after its implementation, and each subsequent three years;
 - Review the operation of the appeals system on an annual basis.
- 1.3 This report addresses the duty to review the operation of the appeals system on an annual basis, and has been produced following a review of the period 28 November 2015 to 27 November 2016.
- 1.4 The review found that:
- 108 (1.9%) businesses in Wales issued with a food hygiene rating between ‘0’ and ‘4’ made an appeal;
 - Of the 108 appeals made, 19 (17.6%) resulted in changes to the food hygiene rating following consideration by local authorities;
 - 100 (92.6%) appeals were determined within the statutory timescale of 21 days;
 - All appeals were determined by local authority officers who were not involved in the assessment of the rating being appealed.
- 1.5 Local authorities in Wales are largely operating the Scheme in accordance with the Act and statutory guidance. However in eight (7.4%) of the appeals considered, local authorities did not make the determination within 21 days of receipt.
- 1.6 Feedback from businesses shows that there is a continued need for food business operators (FBOs) to be provided with clear information about the safeguards available under the scheme, including the process and the grounds on which an appeal can be made. This is particularly relevant for FBOs where English is not their first language.
- 1.7 The feedback from businesses highlighted perceived concerns about the impartiality of the appeals process. However, it is important to note that 17.6% of appeals received by local authorities during the period under consideration resulted in changes to food hygiene ratings. Further, the review found that appeals had largely been considered in line with the requirements of the Act.
- 1.8 As a result of the findings of this review, four recommendations have been made in connection with the ongoing operation of the Scheme in Wales:

Recommendation 1:

That the system currently in place for businesses to appeal their food hygiene ratings in Wales is maintained and reviewed in 12 months in accordance with the Food Hygiene Rating (Wales) Act.

Recommendation 2:

Local authorities should ensure that all appeals are determined and notified to food business operators and the FSA within 21 days of the appeal being received. Where delays have occurred, the FSA should ascertain the reasons for these delays and remind local authorities of their obligations.

Recommendation 3:

Local authorities should continue to ensure that all officers who rate food businesses under the Food Hygiene Rating Scheme continue to engage in activities that promote consistency, including the determination of appeals. The FSA should continue to support local authorities to deliver these activities.

Recommendation 4:

Local authorities and the FSA should continue to work collaboratively to raise food business operator awareness of the Food Hygiene Rating Scheme including how ratings are determined, the appeals process, and the right to reply. Communications should take into consideration food business operators whose first language is not English.

2. Introduction

- 2.1 In November 2013, a statutory Food Hygiene Rating Scheme (“the Scheme”) for Wales was established under the Food Hygiene Rating (Wales) Act 2013 (“the Act”). This built on an existing non-statutory scheme operated by local authorities.
- 2.2 The Act places a legal duty on local authorities to participate in the Scheme and requires food businesses supplying food to the final consumer to display their food hygiene ratings. The Scheme also places an obligation on food business operators (FBOs) to provide verbal information on the businesses’ food hygiene rating if requested. In November 2014, the Scheme was extended to include business supplying food to other businesses, such as manufacturers.
- 2.3 The Act also provides FBOs with safeguards to ensure the Scheme is fair to businesses. These include the right to appeal their food hygiene rating if it is considered unjust; the right to reply which is published alongside the food hygiene rating on the Food Standards Agency (FSA) website; and the ability to request a re-rating inspection if improvements have been made to the hygiene standards.
- 2.4 Under the Act, responsibility for determining appeals lies with the local authority that issued the food hygiene rating. However, the Act makes provision for Welsh Ministers to make regulations enabling appeals to be determined by a person other than the local authority.
- 2.5 The Act places a duty on the FSA to review the implementation and operation of the Scheme one year after its implementation, and each subsequent three years. There is also a duty on the FSA to review the operation of the appeals system annually.
- 2.6 The review of the first year of the Scheme’s implementation and operation of the appeals process was completed in early 2015, and a report¹ of the findings was published in February 2015. A subsequent update report² was produced in August 2015.
- 2.7 A review of the operation of the appeals process was undertaken after the second year of the implementation of the Scheme, and in February 2016, a report³ was published. The review found that 104 appeals had been made by

¹ [Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme in Wales and the Operation of the Appeals System](#)

² [Implementation and Operation of the Food Hygiene Rating Scheme in Wales](#)

³ [Review of the Operation of the Appeals System - February 2016](#)

food businesses in Wales between 28 November 2014 and 27 November 2015, which resulted in changes to 15 (14.4%) food hygiene ratings. The review also found that FBOs in Wales were unclear about certain aspects of the appeals system. As a result of the findings, three recommendations relating to the operation of the appeals process were made and are addressed in Section 9 of this report.

- 2.8 This report covers the review of the operation of the appeals process for the period 28 November 2015 to 27 November 2016.
- 2.9 To inform this review, data was provided by each of the 22 local authorities in Wales. The review was also informed by feedback from businesses via their industry representatives, and from individual FBOs through independent research commissioned by the FSA.

3. Background to the Food Hygiene Rating Scheme

- 3.1 The Food Hygiene Rating (Wales) Act came into force on 28 November 2013 establishing a statutory food hygiene rating scheme in Wales. The aim of the Scheme is to provide information to consumers about the hygiene standards of food businesses enabling them to make informed choices about where they eat and purchase food. The Scheme is also an important commercial driver, encouraging businesses to achieve and maintain compliance with food hygiene law. It provides transparency to consumers about the hygiene standards in food outlets at the time of inspection by food safety officers from a local authority. The aim is to give recognition to businesses that meet the requirements of food hygiene law and provide an incentive to improve to those that do not.
- 3.2 The Food Hygiene Rating (Wales) Regulations 2013 contain additional details on the operation of the Scheme. The FSA, in conjunction with the Welsh Government and the Wales Food Hygiene Rating Scheme Steering Group, developed guidance⁴ to support officers in the consistent implementation of the legislation.
- 3.3 Local authorities undertake food hygiene inspections in accordance with the Food Law Code of Practice⁵. Ratings are calculated by officers following an inspection, taking into account three specific elements:
- The level of compliance with food hygiene and safety procedures - how hygienically the food is handled - how it is prepared, cooked, reheated, cooled and stored;
 - The level of compliance with structural requirements - the condition of the structure of the building - the cleanliness, layout, lighting, ventilation and other facilities;
 - The confidence in management/control procedures - how the business manages and records what it does to make sure food is safe.
- 3.4 The hygiene standards found at the time of inspection are then rated on a scale from '0' - '5'.
- '0' - Urgent Improvement Necessary
 - '1' - Major Improvement Necessary
 - '2' - Improvement Necessary
 - '3' - Generally Satisfactory
 - '4' - Good

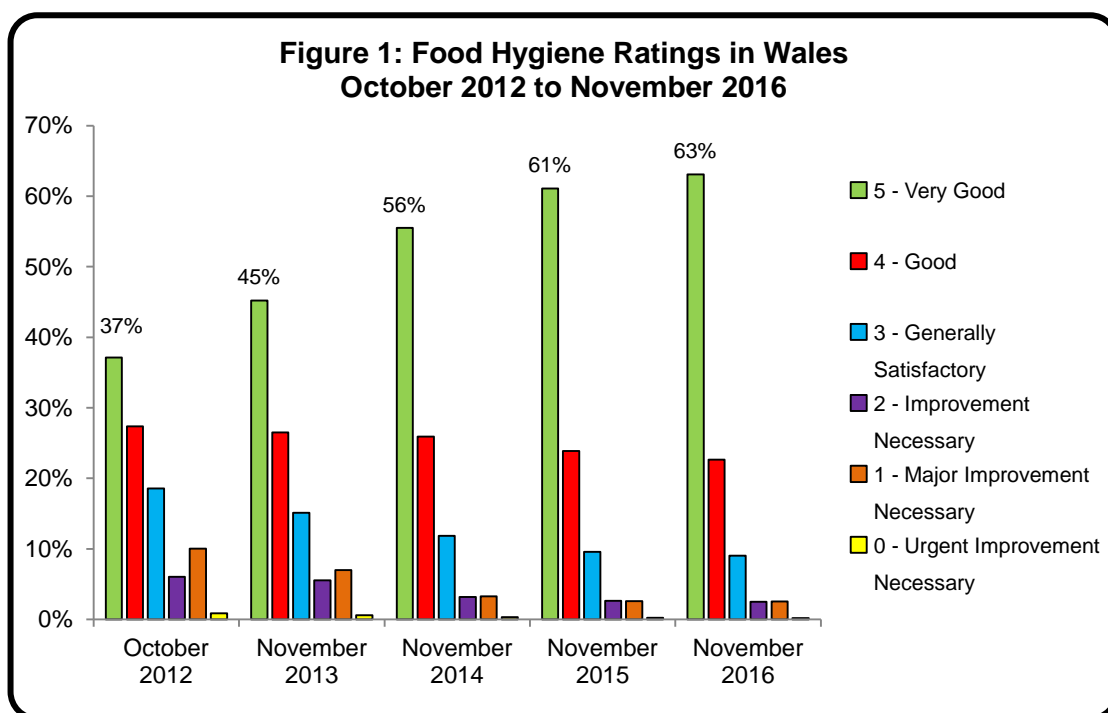
⁴ [Food Hygiene Rating \(Wales\) Act 2013 and Food Hygiene Rating \(Wales\) Regulations 2013: Guidance for food authorities](#)

⁵ [Food Law Code of Practice \(Wales\) - April 2014](#)

- '5' - Very Good

3.5 The food hygiene rating for each business is published on the FSA website⁶. In November 2014, the information published was extended to include a narrative summary breakdown of the three elements underpinning the rating, providing consumers with additional information on the reasons for the rating given. From November 2014, a statement was also published on the website informing consumers that inspection report letters may be obtained from the local authority that carried out the inspection.

3.6 Following the introduction of the Scheme in 2013, the number of businesses in Wales receiving a rating of '3' or above has increased steadily year-on-year. As shown in Figure 1, the number of food businesses obtaining the highest rating of '5' has also increased from 7,469 (37%) to 17,558 (63%) since 2011/12. The number of businesses receiving a rating of '0' has fallen from 172 (0.9%) to 57 (0.2%). This demonstrates that the Scheme is working to drive up food hygiene standards.



3.7 On the 28 November 2016, the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016⁷ came into force. This places a legal obligation on takeaway FBOs to publish a bilingual statement, in a conspicuous place on certain hardcopy publicity materials, directing customers to the FSA website. The regulations also allow the voluntary

⁶ ratings.food.gov.uk

⁷ [The Food Hygiene Rating \(Promotion of Food Hygiene Rating\) \(Wales\) Regulations 2016](#)

display of food hygiene ratings on this type of publicity material, but if displayed, the rating must be valid and in the specified format. If publicity materials show food for sale, the price and a way of ordering the food without visiting the establishment, the following bilingual statement must be included:

“Ewch i food.gov.uk/sgoriau i ganfod sgôr hylendid bwyd ein busnes neu gofynnwch i ni beth yw ein sgôr hylendid bwyd wrth archebu. / Go to food.gov.uk/ratings to find out the food hygiene rating of our business or ask us for our food hygiene rating when you order”.

4. Operation of the Appeals System

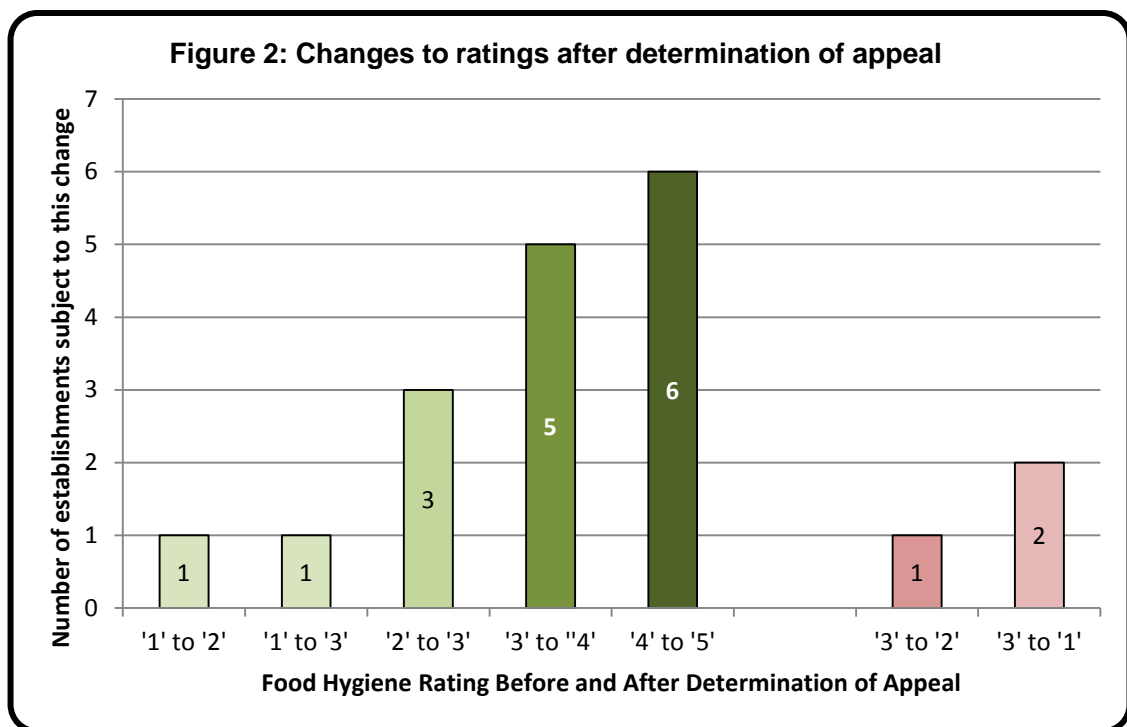
- 4.1 When FBOs are notified of their food hygiene ratings, local authorities must, at the same time, provide information on the appeals procedure. The FSA has produced an information leaflet for FBOs, 'Business Safeguards Explained'⁸, on the safeguards available, and includes a step-by-step breakdown of the appeals process.
- 4.2 Appeals can be made to the local authority which issued the rating on the following grounds:
- That the rating does not properly reflect the food hygiene standards at the establishment at the time of the inspection;
 - That the rating criteria were not applied correctly when producing the food hygiene rating.
- 4.3 Appeals must be made within 21 days of receiving notification of the food hygiene rating and must be made in writing on the prescribed form.
- 4.4 The FBO is encouraged to make contact with the inspecting officer in the first instance to resolve any disputes or clarify any points informally. However, there is no requirement for the FBO to do this and they may decide to proceed directly to the formal appeal stage.
- 4.5 An appeal is made to the local authority that issued the rating, and is determined by an authorised officer who was not involved in the original assessment of the food hygiene rating being appealed. The local authority must determine the appeal and notify the FBO and the FSA of its decision within 21 days from the date the appeal was received. The authorised officer may visit the establishment for the purpose of considering matters raised in an appeal.
- 4.6 Following the determination of the appeal, the local authority must send the FSA a copy of the notification of the food hygiene rating and a written statement of reasons for any revision.
- 4.7 If the FBO is not satisfied with the outcome of the appeal, and/or they consider that a local authority service has not been properly delivered, they may use the local authority's complaints procedure. In the event that the FBO remains dissatisfied, the matter may be referred to the Public Services Ombudsman for Wales. Ultimately an FBO may make an application for leave to apply for Judicial Review.

⁸ [Business safeguards explained](#)

- 4.8 A total of 283 appeals have been made by food businesses in the three year period since the legislation came into force on 28 November 2013. The 283 appeals represent 2.0% of the 14,272 establishments rated '0' to '4' since the introduction of the Act.
- 4.9 Local authorities reported receiving a total of eight formal complaints relating to the Scheme during the period 28 November 2015 to 27 November 2016. It is not clear whether these complaints related to the operation of the appeals process. Some local authorities also reported receiving informal complaints and telephone calls from FBOs who were not satisfied with their ratings or with the officer who conducted the inspections.

5. Food Hygiene Rating Scheme Appeals November 2015 - November 2016

- 5.1 Between 28 November 2015 and 27 November 2016, 108 appeals were made by FBOs in Wales.
- 5.2 100 appeals (92.6%) were determined within the required 21 day period, with the remainder being determined within 27 days.
- 5.3 All appeals were considered by an authorised officer not involved in the assessment of the food hygiene rating that was appealed.
- 5.4 Of the 108 appeals made, 89 (82.4%) of ratings remained the same and 19 (17.6%) resulted in revised ratings. Of the 19 that were revised, 16 (14.8% of the total appeals) resulted in a higher rating and three (2.8% of the total appeals) resulted in a lower rating. Figure 2 shows the distribution of ratings before and after the determination of these appeals.

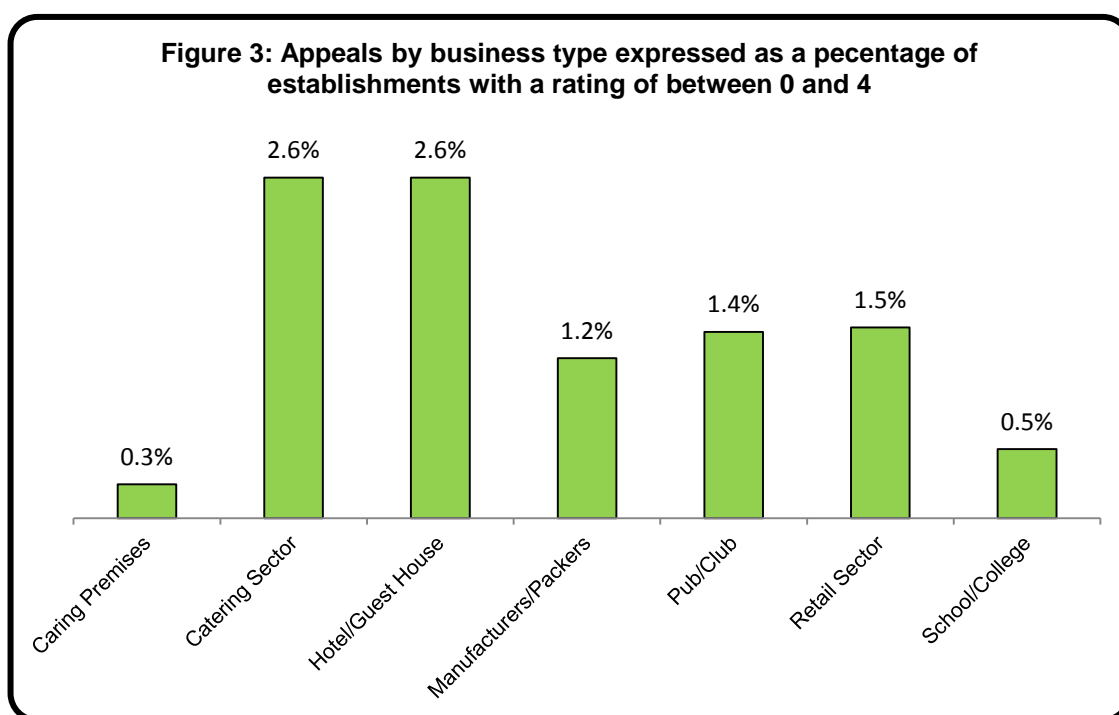


- 5.5 Most (58) appeals were made by food businesses which had been issued with a rating below '3'. This number was comprised of:
- 5 (4.6%) with a rating of '0'
 - 26 (24.1%) with a rating of '1'
 - 27 (25.0%) with a rating of '2'
- 5.6 In respect of the remaining 50 appeals made:
- 27 (25.0%) were made by businesses with a rating of '3'

- 23 (21.3%) were made by businesses with a rating of '4'

5.7 As shown in Figure 3, 2.6% of FBOs in both the 'catering sector' (2,861 establishments) and 'tourism sector' (189 establishments) who received a rating of between '0' and '4' made an appeal, the highest proportion of any categories. These sectors comprise restaurants, take-aways, cafes, canteens and mobile food units ('catering sector') and hotels and guest houses ('tourism sector'). The greatest number of appeals made by FBOs in the 'catering sector' were received from 'restaurant/café/canteen' and 'take-away' establishments (47 and 20 respectively). In total, 1.5% of businesses in the 'retail sector' appealed their rating. This sector comprises of supermarkets, hypermarkets and retailers.

5.8 Figure 3 shows the number of appeals by business type expressed as a percentage of those establishments awarded ratings between '0' and '4'.



5.9 FBOs in 18 of the 22 local authorities in Wales appealed their food hygiene ratings in the period between 28 November 2015 and 27 November 2016.

5.10 The 108 appeals made represent 1.9% of the 5,583 establishments rated '0' to '4' in Wales during the period. This figure does not take into account businesses issued with a rating of '5', as they would not be expected to appeal.

6. Other Safeguards

- 6.1 In addition to the right to appeal a rating, the legislation provides FBOs with the right to reply and to request an inspection for re-rating purposes.
- 6.2 When notifying businesses in writing of their food hygiene rating, local authorities must include information on how to request a re-rating inspection and the FBOs right to reply. The information must include details of how to obtain the form for making a re-rating request and the costs for the inspection; including how and when these must be paid. Information for the right to reply must include the name and contact details of the person to whom the comments must be sent, and the process by which the comments are forwarded to the FSA and published on the FSA website.

Right to reply

- 6.3 The purpose of the right to reply is to give FBOs the opportunity to comment on their rating, and to give an explanation of actions that have been taken following the inspection at which the rating was given. It allows FBOs the opportunity to give any information on particular circumstances at the time of the inspection that might have affected the rating. The right to reply is not the opportunity for FBOs to complain or criticise the Scheme or the inspecting officer.
- 6.4 A standard template form is available on which to provide comments, although there is no requirement for this form to be used. FBOs are free to submit their comments in a different written format, clearly marked as their right to reply comments. The FBO may submit their right to reply comments at any time while the rating is valid, whether or not an appeal has been made. The text will be published on the FSA website alongside the rating and will remain on the site until a new rating is given.
- 6.5 Any right to reply that contains offensive, defamatory, clearly inaccurate or irrelevant remarks is unacceptable. In such cases, the FBO will be advised that the text does not meet the requirements and will be invited to revise the content.
- 6.6 Right to reply requests were made by 15 FBOs during the period 28 November 2015 to 27 November 2016. This represents 0.3% of the 5,583 food businesses rated '0' to '4' during the period.

Requested inspection for re-rating purposes

- 6.7 The purpose of this safeguard is to allow an FBO who has undertaken the necessary improvements to request an inspection for the purpose of re-assessing the hygiene conditions at an establishment, with a view to improve the rating before the next programmed inspection.

- 6.8 FBOs must put their re-rating request in writing to the local authority officer that undertook the inspection of the establishment by completing a statutory form. The FBO must explain what actions they have taken on the issues raised at the last scoring inspection and should include supporting evidence, for example, receipts or photographs to show that work has been completed.
- 6.9 The FBO must agree to pay the local authority the reasonable costs of the re-rating inspection, currently set by local authorities across Wales at £160, and meet the following conditions:
- Any appeal against the current rating has been determined;
 - The FBO has notified the authority of the necessary improvements that have been made at the establishment;
 - The authority considers it reasonable to inspect and re-assess the establishment; taking into account the improvements that have been made;
 - The current rating sticker is displayed at the establishment;
 - The FBO has agreed to give access to the authority in order to carry out the inspection.
- 6.10 Following the receipt of a request, the local authority must undertake an unannounced re-rating inspection no later than three months after the request is received. The FBO will be informed in writing of their new food hygiene rating which could go up, down or remain the same. As with the original hygiene rating, the FBO may make an appeal or submit a right to reply for publication on the FSA website.
- 6.11 Local authorities received 812 requests for re-rating in the period 28 November 2015 to 27 November 2016. This represents 14.5% of the 5,583 establishments rated '0' to '4' in the period.

7. Business Feedback and Research Findings

- 7.1 The FSA commissioned independent research to gather the views of businesses in Wales who had experience of making an appeal during the review period 28 November 2015 to 27 November 2016. Twenty three businesses responded, which represents 21.3% of all businesses that made an appeal. Views were also sought from business representatives from the UK-wide Food Hygiene Ratings Steering Group⁹ who were contacted to gather feedback from their members in Wales. Responses were received from the British Hospitality Association (BHA) and the British Retail Consortium (BRC).
- 7.2 FBOs were contacted by telephone and were invited to provide anonymised feedback in relation to the following areas:
- How easy it was to find the information required about how to make an appeal;
 - Their experiences of appealing a food hygiene rating, including the process, the timeframe and how they felt the appeal was handled;
 - Their opinion on whether they considered the appeal outcome to be fair;
 - Their reasons for making an appeal;
 - Their level of satisfaction with the process.
- 7.3 All respondents stated they had received a letter following inspection with a rating sticker enclosed. However the BRC reported that copies of inspection reports were often not sent to the head offices of their members. They also commented that locating information on how to make an appeal could be difficult and time consuming.
- 7.4 Initial findings from the research indicate that FBOs are aware of their right to appeal and to request an inspection for re-rating purposes. However, respondents generally did not understand the grounds on which an appeal could be made and were often confused between the appeal and a request for re-rating. The right to reply was less familiar to respondents, with only a minority understanding the term. Some FBOs reported feeling that they did not have a good understanding of the reasons for their initial rating and/or the criteria by which they were assessed. Further, some reported not feeling confident enough to make an appeal.
- 7.5 Many respondents contacted their local authority for information on how to appeal their food hygiene rating. Those who contacted the local authority, or had previous experience of making an appeal, felt the communications and

⁹ [UK-wide Food Hygiene Ratings Steering Group](#)

process were easy and straightforward. However approximately a third of FBOs reported complications when making an appeal. These included locating the online appeal form and return address, and difficulty contacting the appropriate person at their local authority. The BRC also reported that some of their members had experienced some of these problems.

- 7.6 Some respondents who did not have English as their first language also reported experiencing complications. It was suggested that providing communications in languages other than English could improve FBO understanding of the safeguards available.
- 7.7 A number of negative comments relating to the appeal form were received. Some felt the limited space on the paper form impacted on the assessment of their appeal. It should be noted, that the appeal form is not required to be submitted in hard copy and the downloadable version of the form allows the FBO to expand the fields in which information is entered. Feedback from FBOs suggests that the benefits of completing the electronic version of the form should be better explained. Other respondents reported feeling they were required to report their case using 'technical language' to match that of the inspector and encountered difficulties as a result. Feedback from the BHA suggests some of their members also formed this view. A third of FBOs also felt the information they received about the result of their appeal was unclear or in a generic written communication.
- 7.8 The majority of respondents felt the appeals process was "quick" and most said that their appeal was determined within "a couple of weeks". The majority also felt that appeals were handled appropriately, but those whose rating did not change felt less satisfied. Most FBOs felt the appeal process was fair, however a third believed the process was not impartial because the appeal was determined by the same local authority that issued the rating and not an independent third party.
- 7.9 For the second consecutive year the BHA raised concerns regarding their lack of confidence in the appeals process, while BRC representatives felt the process should be more robust. Both groups voiced the opinion that an independent body or panel to determine appeals would be more objective. It was suggested that an appeals panel or governance group be set up to determine appeals, or that there should be a role for the use of third party accredited auditors to determine appeals.
- 7.10 Approximately 50% of respondents reported being unwilling to make a complaint as a result of being unsatisfied with the appeals process, as they felt it might prejudice future inspections.
- 7.11 Overall, findings indicate that information provided by local authorities to FBOs about the Scheme and the safeguards available should be

strengthened. It is clear that there is still an element of confusion around all three safeguards, and this is a particular problem for FBOs where English is not their first language.

8. Consistency

- 8.1 Local authorities have an obligation to ensure that food hygiene ratings are assessed fairly and consistently. This is important to maintain the credibility of the Scheme in Wales, England and Northern Ireland.
- 8.2 In 2013, a Wales Food Hygiene Rating Scheme Steering Group was established with representation from local authorities across Wales. The Group meets quarterly and includes representation from Welsh Government and the FSA. Policy matters, implementation and consistency issues are discussed at these meetings.
- 8.3 An extensive programme of consistency training was delivered to officers across Wales. The training was supported by the FSA, and was led, for the third consecutive year, by an Environmental Health Practitioner from Powys County Council. Six courses took place in the period 28 November 2015 to 27 November 2016, attended by more than 215 officers from across Wales. The courses featured a number of workshop scenarios involving different types of food businesses with varying levels of compliance with food hygiene legislation and the determination of appeals.
- 8.4 Local authority officers in Wales also participated in the second national online Food Hygiene Rating Scheme consistency training exercise¹⁰ facilitated by the FSA. This training, aimed at local authority officers in England, Wales and Northern Ireland, was designed to identify areas of potential inconsistency so that further support may be provided. Local authorities were asked to assess a scenario with an expected rating of '5' ('Very Good'). Overall, the results indicate that local authority officers in Wales are performing assessments consistently with all authorities in Wales assessing the business as being 'Good' or 'Very Good'.
- 8.5 Matters of consistency are also regularly discussed by local authority officers at team meetings, regional liaison meetings, the Food Safety Expert Panel and through direct contact with staff from the FSA in Wales' Local Authority Support team.
- 8.6 Local authorities in Wales use a standard template letter to notify businesses of their rating following inspection. The letter provides information to FBOs on why the establishment was rated as it was, details of the action needed to achieve legal compliance and the safeguards available. The FSA has produced a leaflet¹¹ to provide further information to food businesses.

¹⁰ [Food Hygiene Rating Scheme consistency exercise](#)

¹¹ [Food hygiene is getting easier to spot in Wales](#)

- 8.7 On 7 October 2016, The Food Hygiene Rating Act (Northern Ireland) 2016 came into force. The arrangements put in place to determine appeals are consistent with those in Wales.
- 8.8 In Wales, England and Northern Ireland, any appeal made must be considered by an authorised officer who was not involved in the original assessment.
- 8.9 The time period in which FBOs must make an appeal is now consistent across Wales, Northern Ireland, and England. Following an amendment to the Brand Standard in England in October 2016, the original time period of 14 days beginning with the date of the notification was extended to 21 days to align with the statutory requirements in Wales, and Northern Ireland.

9. Recommendations from the February 2016 Report

9.1 In February 2016, the FSA made three recommendations in its report on the review of the operation of the appeals system. This section considers how each of the recommendations has been addressed.

9.2 Recommendation 1:

That the system currently in place for businesses to appeal their food hygiene ratings in Wales is maintained and reviewed in 12 months in accordance with the Act.

Response:

The system was maintained for the period 28 November 2015 to 27 November 2016 and operated unchanged from recent years. This report provides the findings, and makes recommendations, following the review of the process for that period.

9.3 Recommendation 2:

Local authorities should ensure that all officers who rate food businesses under the Food Hygiene Rating Scheme continue to engage in activities that promote consistency, including the determination of appeals.

Response:

Matters of consistency continue to be a standard item for discussion at the Wales Food Hygiene Rating Scheme Steering Group meetings. Issues of consistency are also regularly discussed by local authority officers at team meetings, regional liaison meetings, the Food Safety Expert Panel and through direct contact with the FSA's Local Authority Support team.

A consistency training programme funded by the FSA was delivered to officers across Wales for the third consecutive year. The programme consisted of six workshops which were attended by a total of 215 officers. The workshops featured a number of scenarios involving different types of food businesses with varying levels of compliance with food hygiene legislation, and the determination of appeals. Officers in Wales also participated in a national consistency exercise for local authority officers in England, Wales and Northern Ireland facilitated by the FSA.

9.4 Recommendation 3:

Local authorities and the FSA should work collaboratively to more effectively signpost food business operators to relevant information on the safeguards available to them should they not be satisfied with the food hygiene ratings issued to their businesses. This should include details of the appeals process.

Response:

The Food Safety Expert Panel members made changes to the standard template notification letter in order to provide FBOs with clearer information on safeguards, including appeals.

The FSA has produced a business information leaflet “Business Safeguards Explained” and local authorities have been encouraged to use this in their communications with businesses.

10. Conclusions

- 10.1 This review has found that local authorities in Wales are largely operating the Scheme in accordance with the Act and statutory guidance. The review found that in a small number of cases (around 7%) local authorities were not always meeting the requirement in relation to time taken to determine an appeal.
- 10.2 The data shows that the appeals system is increasingly being used by businesses achieving a rating of '3' and '4' (35.7% of all appeals in 2014/15 to 46.3% in 2015/16). This demonstrates the importance of achieving a good food hygiene rating.
- 10.3 The number of appeals received between 28 November 2015 and 27 November 2016 is consistent with the number received in the previous year. However the feedback from food businesses has identified a continuing need for FBOs to be provided with clearer information about the safeguards available, including the process and the grounds on which an appeal can be made. Research shows that this need is particularly relevant for FBOs where English is not their first language.
- 10.4 Research findings from individual businesses and feedback from business representatives has highlighted their preference for an appeals system whereby appeals are not determined by the same local authority that issued the rating. There is a perception that the current system for determining appeals is not sufficiently independent. The fact that ratings have changed following appeals provides some evidence of independence in the process. However the process will be kept under review to ensure this remains to be the case.

11. Recommendations

The FSA is making the following recommendations:

Recommendation 1:

That the system currently in place for businesses to appeal their food hygiene ratings in Wales is maintained and reviewed in 12 months in accordance with the Food Hygiene Rating (Wales) Act.

Recommendation 2:

Local authorities should ensure that all appeals are determined and notified to food business operators and the FSA within 21 days of the appeal being received. Where delays have occurred, the FSA should ascertain the reasons for these delays and remind local authorities of their obligations.

Recommendation 3:

Local authorities should continue to ensure that all officers who rate food businesses under the Food Hygiene Rating Scheme continue to engage in activities that promote consistency, including the determination of appeals. The FSA should continue to support local authorities to deliver these activities.

Recommendation 4:

Local authorities and the FSA should continue to work collaboratively to raise food business operator awareness of the Food Hygiene Rating Scheme including how ratings are determined, the appeals process, and the right to reply. Communications should take into consideration food business operators whose first language is not English.