



A report for the National Assembly for Wales

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



February 2019

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1. Executive Summary

- 1.1. The Food Hygiene Rating (Wales) Act 2013 places a duty on the Food Standards Agency (FSA) to review the operation of the appeals system on an annual basis. A report relating to these reviews must be produced and laid before the National Assembly for Wales, and a copy sent to Welsh Ministers.
- 1.2. This report has been produced following a review of food hygiene rating appeals information for the period 28 November 2017 to 27 November 2018.
- 1.3. The review found:
 - 94 businesses in Wales made an appeal;
 - 17 appeals (18%) resulted in changes to food hygiene ratings;
 - 87 appeals (93%) were determined within the required 21-day period;
 - All 94 appeals (100%) were determined by an officer not involved in the assessment of the rating being appealed.
- 1.4. In the majority of cases, local authorities (LAs) are operating the appeal provisions within the Food Hygiene Ratings Scheme (FHRS) (the Scheme) in accordance with their statutory obligations. Notwithstanding that, in respect of seven appeals, LAs did not notify the food business of their determination within 21 days of receipt. The FSA has followed up in each of these instances and ascertained the reasons for the delay.
- 1.5. An independent review of the FHRS Business Safeguards, commissioned by the FSA in 2018, found there were no systematic failings with the operation of FHRS safeguards and that, in general, they were being delivered effectively and within required time limits. The review recognises the benefits of data collection for inclusion in the annual review of appeals as part of the statutory arrangements in Wales. There were no recommendations to change the delivery of business safeguards in Wales.
- 1.6. Research¹ indicates that a high proportion of businesses in Wales are aware of the safeguards with 70% recalling information about the right to reply, 81% about requesting a re-rating, and 88% about how to appeal a rating. The number of businesses using the safeguards remains low.
- 1.7. LAs continue to recognise the benefit of consistent application of the Scheme, prioritising officer participation in training events and consistency exercises. In 2018, 164 officers attended consistency training events funded by the FSA across Wales. Further, all LAs in Wales took part in the FHRS National Consistency Exercise (NCE) which focused on a scenario involving an appeal.

¹ Display of food hygiene ratings in England, Northern Ireland and Wales - BMG Research – awaiting publication

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”)². This built on an existing non-statutory scheme operated by LAs. The Act requires LAs to participate in the Scheme and for food businesses within scope, to display their food hygiene rating. To fully implement the Act, the Welsh Ministers made the Food Hygiene Rating (Wales) Regulations 2013 (“the 2013 Regulations”)³. In addition, businesses that supply food to take away are required to provide information on certain publicity materials directing consumers to ratings information⁴.
- 2.2. The Act also places a duty on the FSA to review the operation of the appeals system annually. Earlier reports were published in February 2015⁵ and updated in August 2015⁶; February 2016⁷ and February 2017⁸. The 2018 review was included in the Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme and the Operation of the Appeals System in Wales⁹ published in February 2018. These review reports were laid before the National Assembly for Wales and a copy sent to Welsh Ministers.
- 2.3. This report is the fifth annual review of the operation of the appeals system and has been prepared to meet the requirements of the Act. It covers the period from 28 November 2017 to 27 November 2018 and includes information provided by each of the 22 LAs in Wales. This report also provides an update on action taken to address those recommendations in the 2018 report that are relevant to the operation of the appeals system.

² [Food Hygiene Rating \(Wales\) Act 2013](#)

³ [Food Hygiene Rating \(Wales\) Regulations 2013](#)

⁴ [Food Hygiene Rating \(Promotion of Food Hygiene Rating\) \(Wales\) Regulations 2016](#)

⁵ [Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme in Wales and the Operation of the Appeals System, February 2015](#)

⁶ [Update Report of the Review of the Implementation and Operation of the Food Hygiene Rating Scheme in Wales, August 2015](#)

⁷ [Food Hygiene Rating Scheme Review of the Operation of the Appeals System, February 2016](#)

⁸ [Food Hygiene Rating Scheme Review of the Operation of the Appeals System, February 2017](#)

⁹ [Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme and the Operation of the Appeals System in Wales, February 2018](#)

3. The Statutory Food Hygiene Rating Scheme

- 3.1. The purpose of the Scheme is to enable consumers to make informed choices about where they eat and purchase food and, through those choices, encourage businesses to improve their hygiene standards. It does this by providing consumers with information (in the form of a food hygiene rating) about hygiene standards found in food businesses when they are inspected.
- 3.2. In Wales, the Scheme applies to establishments supplying food directly to consumers, provided they are not exempt by the 2013 Regulations¹⁰, and food businesses involved in business to business trade, for example food manufacturers or packers with no retail outlet.
- 3.3. Food hygiene ratings are determined by LAs following inspections to verify food business compliance with food hygiene laws. These inspections are carried out in accordance with the Food Law Code of Practice¹¹. Ratings are calculated by officers following an inspection, using three specific elements:
- The level of compliance with food hygiene and safety procedures - how hygienically the food is handled - how it is prepared, cooked, re-heated, 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. Food businesses are given a rating from 0 (Urgent Improvement Necessary) to 5 (Very Good), which reflects the standards found at the time of the inspection (Figure 1).

Figure 1: Images of Food Hygiene Rating Stickers



¹⁰ Examples of exempt establishments include visitor centres selling tins of biscuits or wrapped goods, leisure centres with only drinks vending machines and newsagents selling pre-packed confectionery.

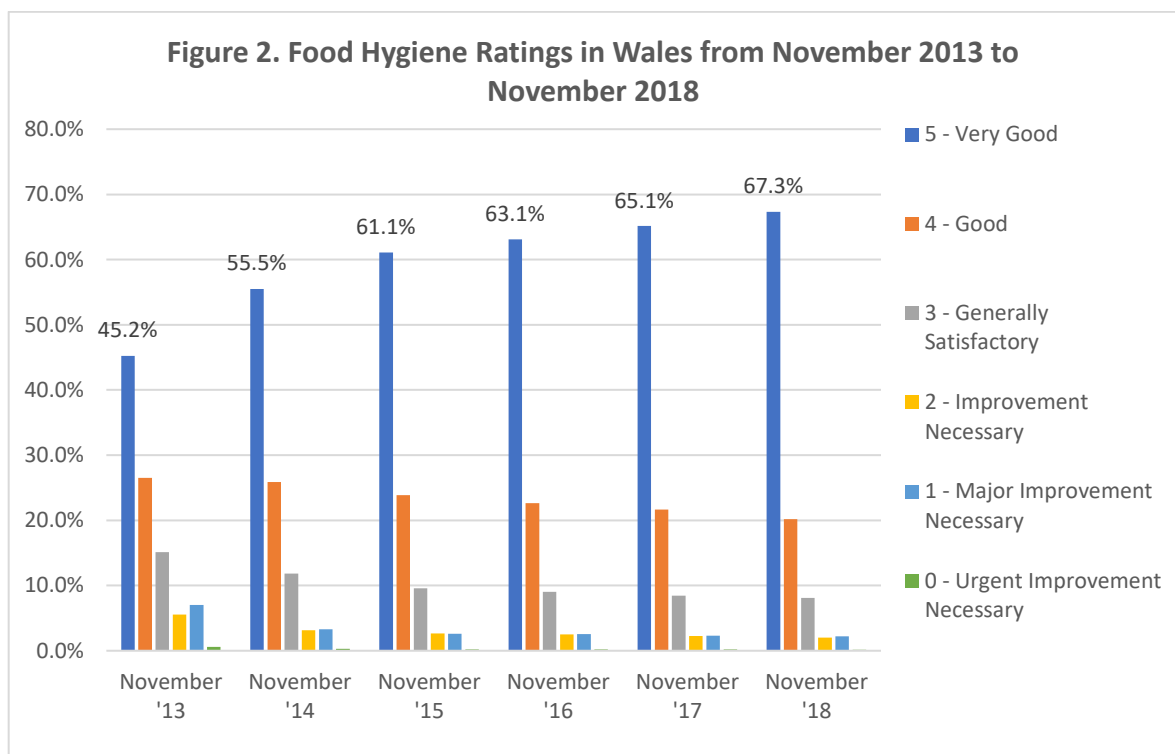
¹¹ [Food Law Code of Practice \(Wales\) August 2018](#)

3.5. The food hygiene rating for each business is published on the FSA website¹² alongside a narrative summary. The summary provides a breakdown of the three elements providing consumers with additional information on the reasons for the rating given. The website also advises consumers that inspection report letters may be obtained from the LA 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' (Generally Satisfactory) or above has increased steadily from 87.1% in 2013 to 95.6% in 2018;
- obtaining the highest rating of '5' (Very Good) has increased from 10,022 (45%) in 2013 to 19,465 (67%) in 2018; and
- receiving a rating of '0' (Urgent Improvement Necessary) has fallen from 172 (0.9%) in 2013 to 47 (0.2%) in 2018.

3.7. This demonstrates that the Scheme is helping to drive up food hygiene standards.



¹² ratings.food.gov.uk

4. Business Safeguards

4.1. The Act provides a number of safeguards to ensure the Scheme is fair to businesses. These are:

- the right to appeal their food hygiene rating if they consider it unjust;
- the right to reply, which is published alongside the food hygiene rating on the FSA's website; and
- the ability to request a re-rating inspection if improvements have been made to the hygiene standards.

Operation of the Appeals System

4.2. Appeals can be made to the LA 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 inspection; and
- that the rating criteria were not applied correctly when producing the food hygiene rating.

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.

4.3. Under the Act, responsibility for determining appeals lies with the LA that issued the food hygiene rating. The LA must determine the appeal and notify the food business operator (FBO) and the FSA of its decision within 21 days. The appeal should be considered by an authorised officer who was not involved in the assessment of the rating that is being appealed.

4.4. If the FBO is not satisfied with the outcome of the appeal and/or they consider the LA service was not properly delivered they may use the LA's complaints procedure. If the FBO remains dissatisfied, the matter may be referred to the Public Services Ombudsman for Wales. Ultimately, the FBO may make an application for leave to bring judicial review proceedings against the LA.

4.5. LAs reported receiving six formal complaints relating to the Scheme from 28 November 2017 to 27 November 2018. These were distributed between three LAs.

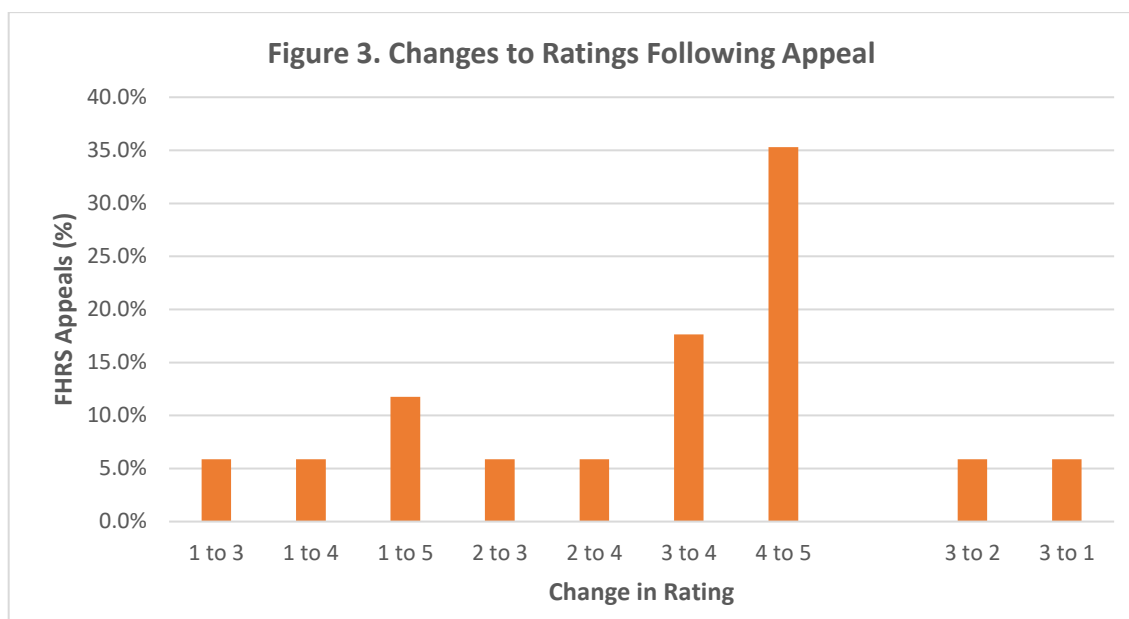
Food Hygiene Rating Scheme Appeals November 2017 – November 2018

4.6. Food hygiene rating appeals information for the period 28 November 2017 to 27 November 2018 found that:

- 94 appeals were made by FBOs in Wales across 19 of the 22 LAs;

- 87 appeals (93%) were determined within the required 21-day period, with the remainder being determined within 16 days of the statutory timeframe; and
- all 94 appeals (100%) were determined by an officer not involved in the assessment of the rating being appealed.

4.7. The 94 appeals made represent 1.0% of the 9,445 establishments rated '0' (Urgent Improvement Required) to '4' (Good) in the period and 0.3% of all rated food businesses in Wales. Following determination of the 94 appeals raised, 77 (81.9%) of the ratings remained the same and 17 (18%) resulted in revised ratings. In respect of the 17 ratings that were revised (across 9 LAs), 15 resulted in a higher rating and two resulted in a lower rating. Figure 3 shows the distribution of changes to ratings before and after the determination of appeals.



4.8. More than half (48) of the appeals (51%) were made by food businesses which had been issued with a rating below '3' (Generally Satisfactory). This number comprised of:

- three with a rating of '0' (Urgent Improvement Necessary)
- 28 with a rating of '1' (Major Improvement Necessary)
- 17 with a rating of '2' (Improvement Necessary)

The remaining 46 appeals are broken down as follows:

- 26 were made by businesses with a rating of '3' (Generally Satisfactory)
- 20 were made by businesses with a rating of '4' (Good)

Right to Reply

- 4.9. FBOs have the right to reply, which may be published on the FSA website alongside the rating to which the comments relate. The right to reply comments may be submitted at any time while the rating is valid, whether or not an appeal has been made. The purpose of the right to reply is to enable the business to explain the actions that have been taken by the FBO following the inspection at which the rating was given or to give information on circumstances at the time of the inspection.
- 4.10. There were 26 right to reply comments received from FBOs and published during the period 28 November 2017 to 27 November 2018. These represent 0.1% of all rated food businesses in Wales.

Requested inspection for re-rating purposes

- 4.11. FBOs may request an inspection for re-rating under the Scheme. This safeguard provides businesses with the opportunity to improve their ratings in advance of their next programmed inspection, where the required improvements have been carried out. There is a charge applied in the case of a request for a re-rating and certain conditions need to have been met in order to be eligible to apply. LAs in Wales have collectively calculated and agreed the reasonable cost of a re-rating inspection, which is currently £160. This fee is applied consistently by all LAs in Wales.
- 4.12. In the period between 28 November 2017 to 27 November 2018, LAs in Wales received 833 requests for re-rating inspections. These represent 8.8% of all food businesses rated 0 (Urgent Improvement Necessary) to 4 (Good). This figure does not take into account businesses issued with a rating of 5 (Very Good) as they would not be expected to request a re-rating.

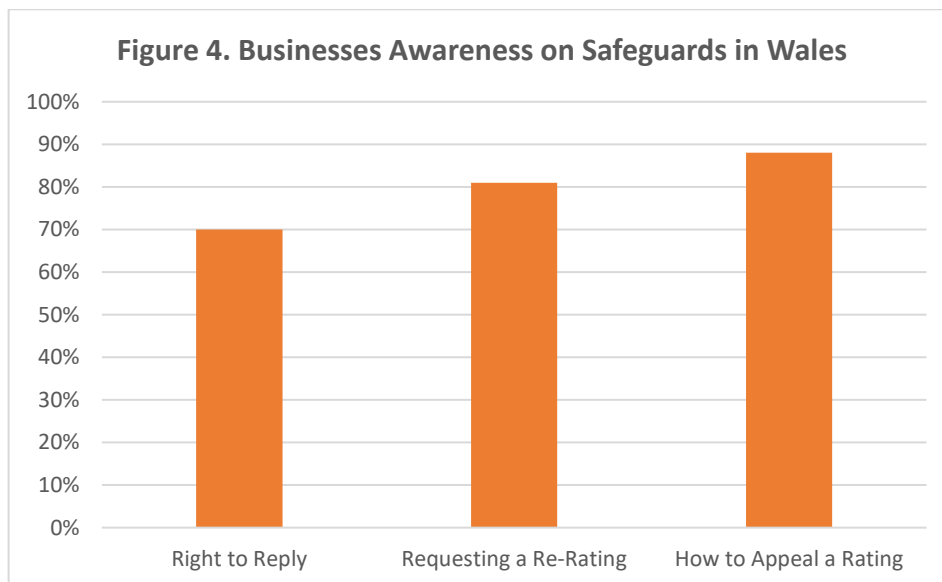
5. Review of Policy and Procedures for FHRs Safeguards for Food Businesses

- 5.1. The FSA commissioned an independent review of the FHRs safeguards¹³ across Wales, England and Northern Ireland in October 2018 to assess their effectiveness for LAs and businesses.
- 5.2. The review examined relevant legislation, published policies, procedures and guidance, including the statutory guidance for Wales and sought views from a range of stakeholders, including LAs and businesses through written consultation and group discussions.
- 5.3. The review found that there were no systematic failings of LA processes and FHRs safeguards were, in the main, delivered effectively and within required time limits.
- 5.4. Industry concerns expressed in the course of the review focused on the appeals system and on FSA oversight of LA delivery. The review recognises the benefits of data collection for inclusion in the annual review of appeals as part of the statutory arrangements in Wales and Northern Ireland. It acknowledges this provides robust quantitative information to evidence whether LAs are applying the safeguards fairly and effectively. The report makes recommendations to introduce a similar process in England.
- 5.5. The review concluded that the current safeguards appear to be working effectively and made no specific recommendations for change in Wales.

¹³ A Review of Policy and Procedures for the Food Hygiene Rating Scheme (FHRs) Safeguards for Food Businesses – awaiting publication

6. Research

- 6.1. The FSA conducts an annual research project across Wales, England and Northern Ireland. The most recent survey carried out between September and October 2018 included a telephone survey of food outlets to ascertain amongst other things, awareness of the safeguards associated with the Scheme. The sample for the telephone survey was selected from the FHS database and included 513 businesses from Wales.
- 6.2. Businesses were asked to recall whether they had received a letter following their last inspection, giving their food hygiene rating and advising of the safeguards available to them.
- 6.3. In Wales, recollection of the inspection letter was high (93%), compared with England (80%) and Northern Ireland (91%). There were also high levels of recollection of the contents of the inspection letter for businesses that have a rating of 4 or below:
- 91% recalled the letter containing instructions on how to achieve a maximum rating;
 - 88% recalled the letter detailing the fact that they can appeal the rating;
 - 81% recalled the letter informing them of their ability to request a re-rating inspection; and
 - 70% recalled the letter explaining their right to reply.



- 6.4. The research demonstrates a low level of take-up of the safeguarding options with no clear indication of the reasons why this is the case. The FSA data gathered for this review support this with 1% of businesses in Wales appealing their rating, 8.8% requesting a re-rating inspection and only 0.1% exercising their right to reply.

7. Consistency

- 7.1. The consistent application of the Scheme by officers within and across LAs in Wales is crucial to ensure fairness and equity for food businesses. This is important to maintain the credibility of the Scheme.
- 7.2. The Wales Food Hygiene Rating Scheme Steering Group, with representation from LAs, Welsh Government and the FSA, was set up to provide strategic direction and a forum for discussing implementation and ensuring consistency. The group met on four occasions during the period 28 November 2017 – 27 November 2018.
- 7.3. Statutory guidance for LAs¹⁴ was developed by the FSA, Welsh Government and the Wales Food Hygiene Rating Scheme Steering Group in 2014 to support officers in the consistent implementation of the legislation. The guidance was reviewed and updated in 2017.
- 7.4. The FSA has facilitated a fourth National Consistency Exercise (NCE) for LA officers across Wales, England and Northern Ireland. The NCE which presented a scenario via an online platform, was launched in November 2018 and ran for six weeks. All LAs in Wales participated in the NCE. The subject of the scenario was the FBO of a café who had lodged an appeal against its rating. The outcome of the exercise is being analysed and will be reported in April 2019.
- 7.5. An all-Wales consistency event took place in Powys in September 2018, supported by four regional events; two in Ebbw Vale, one in Wrexham and one in Llanelli. These events, delivered by a Senior Environmental Health Officer employed by Powys County Council were funded by the FSA. A total of 164 officers from across Wales attended and considered a number of scenarios. The outcome of the events demonstrated high levels of consistency among officers. Where there were differences in ratings, officers had the opportunity to discuss and reflect on their decisions.

¹⁴ [Food Hygiene Rating \(Wales\) Act 2013, Food Hygiene Rating \(Wales\) Regulations 2013 and Food Hygiene Rating \(Promotion of Food Hygiene Rating\) \(Wales\) Regulations 2016 – Guidance for food authorities](#)

8. Fixed Penalty Notices

- 8.1. Authorised officers have the discretion to issue fixed penalty notices (FPNs) in respect of certain offences in the Act and the Regulations. A FPN offers a food business the opportunity to discharge any liability to conviction for an offence by payment of an FPN. Initially, receipts from FPNs for food hygiene rating offences were required to be returned to Welsh Ministers. However, the Public Health (Wales) Act 2017 introduced an amendment enabling LAs to retain these receipts to support activities in relation to the enforcement of the Act.
- 8.2. The FSA, in its 2018 Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme and the Operation of the Appeals System in Wales, recommended that it should evaluate the impact of the amendment at the end of the period of one year of commencement.
- 8.3. The FSA has, in collaboration with LAs in Wales, identified the data needed to evaluate the impact of LAs being able to retain receipts from FPNs and has developed a process for capturing the data. It was agreed that obtaining past data from LAs was not practical or cost-effective. As a consequence, this data has been captured since November 2018 and will enable improved assessment and annual reporting in the future.
- 8.4. The FSA has continued to collect baseline data during the period of this review. LAs have advised that 162 FPNs were issued in 2017-18. This compares to 59 in 2016-17 and 81 in 2015-2016. The increase in the number of FPNs may reflect the end of the transitional period afforded to businesses to comply with the requirement to include a bilingual statement on certain publicity materials following the introduction of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016¹⁵. LAs have also collectively agreed to serve FPNs for all offences where a business has already received a warning.

¹⁵ [Food Hygiene Rating \(Promotion of Food Hygiene Rating\) \(Wales\) Regulations 2016](#)

9. Actions in Response to Recommendations

9.1. In February 2018, the FSA made a number of recommendations in its report¹⁶ relating to the review of the operation of the appeals system. This section considers how each of the recommendations has been addressed.

Recommendation – That the FSA evaluates the impact of the amendment to the Scheme introduced by the Public Health (Wales) Act 2017 in relation to the retention of FPN receipts, at the end of the period of one year of commencement.

Response – *The FSA has, in collaboration with local authorities in Wales, identified the data needed to evaluate the impact of local authorities being able to retain receipts from FPNs and developed a process for capturing the data. It was agreed that attempting to collect past data from local authority systems was not practical or the best use of resources. Data capture commenced in November 2018 to enable improved annual reporting from February 2019.*

Recommendation – That the FSA continues to facilitate and support the work of the Wales Food Hygiene Rating Scheme Steering Group to ensure the ongoing success and development of the Scheme.

Response – *The FSA has facilitated and funded meetings of the group, which met four times between the period 28 November 2017 – 27 November 2018. During this period, the Terms of Reference for the group, including membership and representation were reviewed and updated. In 2018 the group focused on developing a protocol to deliver targeted interventions at establishments with food hygiene ratings of 0-2 and piloted a programme of research to establish levels of compliance with requirements relating to publicity materials.*

Recommendation – That local authorities ensure all appeals are determined and the business operator and FSA notified of the outcome 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 statutory obligations.

Response – *Seven local authorities reported that they each determined one appeal outside of the required 21-day period. The FSA contacted each local authority to ascertain the reason for the delay and to remind them of their obligations under the Scheme.*

¹⁶ [Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme and the Operation of the Appeals System in Wales](#)

10. Conclusions

- 10.1. The review found that LAs in Wales are largely operating the Scheme in accordance with the Act and statutory guidance. However, seven appeals across seven LAs were not determined within the required 21-day period.
- 10.2. There were changes to some food hygiene ratings following appeals (18%), which provides some assurance that the appeals process is being administered fairly by LAs.
- 10.3. The data shows that the appeals system is increasingly being used by businesses achieving a '3' (Generally Satisfactory) and '4' (Good). These accounted for 39% of all appeals in 2016-17 and 49% in 2017-18. This provides an indication of the value food businesses place on achieving a higher rating.
- 10.4. The findings of the review and previous reviews as part of the statutory arrangements in Wales provides quantitative evidence to demonstrate that LAs are applying the safeguards fairly and effectively.
- 10.5. There are three recommendations arising from the review about the ongoing operation of the appeals system in Wales.

11. Recommendations

11.1. The FSA is making the following recommendations:

Recommendation 1

That the FSA reminds local authorities of the need to have suitably robust arrangements in place to determine appeals and notify food business operators of the outcome within the required 21-day period.

Recommendation 2

That the FSA reviews the results of the fourth National Consistency Exercise for local authorities in Wales and works with the Wales Food Hygiene Rating Scheme Steering Group to identify the need for additional support or guidance, as necessary.

Recommendation 3

That the FSA continues to provide support to ensure that all local authority officers who rate food businesses under the Scheme continue to engage in activities that promote consistency.

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