



A Report for the National Assembly for Wales

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



February 2020

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1. Executive Summary

- 1.1. The [Food Hygiene Rating \(Wales\) Act 2013](#)¹ places a duty on the Food Standards Agency (FSA) to review the operation of the Food Hygiene Rating Scheme's (the Scheme's) appeals system annually. This report is the sixth annual review of the operation of the appeals system and covers the period from 28 November 2018 to 27 November 2019.
- 1.2. Mandatory display of ratings continues to have a positive impact in Wales. Food businesses with a rating of '5' (Very Good) have increased by 24 percentage points from 2013 to 69% in 2019. The number of food businesses with a rating of '3' (Generally Satisfactory) or above continues to increase from 87% in 2013 to 96% in 2019.
- 1.3. The review found:
 - There were 98 appeals
 - 19 (19.4%) resulted in changes to ratings
 - 96 (98%) were determined within the required 21-day period
 - 845 businesses requested a re-rating inspection
 - 747 (94.3%) of those businesses re-inspected achieved an improved rating of '3' or above
 - 462 (58.3%) of those re-inspected achieved the highest rating of '5'
 - 754 (95.2%) of the completed re-inspections were within the required three-month period
- 1.4. The report confirms local authorities (LAs) are operating the appeals provisions in accordance with their statutory obligations. Two appeals attributed to two LAs were determined beyond the statutory timeframe by one day and three days.
- 1.5. A change to the Scheme introduced in 2019 has offered greater flexibility for food businesses to request their rating is published early on the [ratings website](#)². This did not require any legislative change as it does not impact on the statutory requirements of the Scheme.
- 1.6. Research indicates food business operators (FBOs) continue to report high levels of recollection of the information provided on business safeguards in inspection letters. However, the number of businesses using the safeguards remains low.
- 1.7. The report confirms the continuing role the FSA has in facilitating and funding consistency exercises and Food Hygiene Rating Scheme (FHRS) training in Wales. Participation in consistency exercises remains a priority for all LAs in

¹ http://www.legislation.gov.uk/anaw/2013/2/pdfs/anaw_20130002_en.pdf

² <https://ratings.food.gov.uk/>

Wales and the outcomes have demonstrated officers are generally consistent in their application of ratings.

- 1.8. The FSA has acted upon, and completed, its actions in response to the three recommendations identified in the 2018 report.
- 1.9. This review has identified four recommendations about the ongoing operation of the appeals system in Wales.

2. Introduction

- 2.1. The Food Hygiene Rating (Wales) Act 2013 places a duty on the Food Standards Agency (FSA) to review the operation of the Food Hygiene Rating Scheme's (the Scheme's) appeals system annually. Since February 2015, reviews are carried out annually and reports laid before the National Assembly for Wales with a copy sent to Welsh Ministers. The reports are then published on the National Assembly for Wales' website.
- 2.2. This report is the sixth 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 2018 to 27 November 2019 and includes information provided by each of the 22 local authorities (LAs) in Wales.
- 2.3. This report also provides an update on the three recommendations included in the 2019 appeals report.

3. The Statutory Food Hygiene Rating Scheme

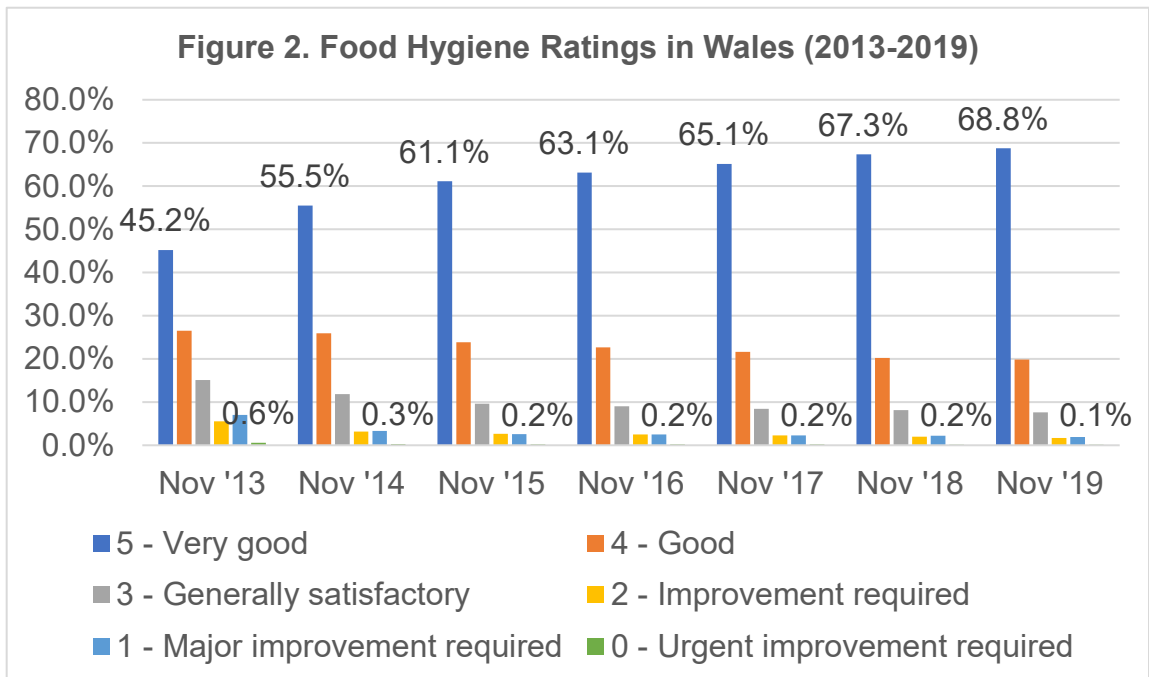
- 3.1. The purpose of the Scheme is to enable consumers to make informed decisions about where they eat and purchase food and, through those decisions, encourage food businesses to improve their hygiene standards. It does this by providing consumers with information about hygiene standards found in food businesses when they are inspected in the form of a rating from '0' (Urgent Improvement Necessary) to '5' (Very Good).
- 3.2. Following inspection, businesses are supplied with ratings stickers for display at their premises. Figure 1 below illustrates the different rating stickers for Wales.



- 3.3. More detailed [information about the Scheme](https://www.food.gov.uk/safety-hygiene/food-hygiene-rating-scheme) can be found on the FSA's website³.
- 3.4. Following the introduction of the Scheme in 2013, compliance continues to improve with 96.2% of businesses receiving a rating of '3' (Generally Satisfactory) or above in November 2019. This represents an increase of nine percentage points from 2013. Businesses obtaining the highest rating of '5' (Very Good) have increased from 45.2% in 2013 to 68.8% in November 2019. The number of businesses with the lowest rating of '0' (Urgent Improvement Necessary) has decreased from 134 (0.6%) in 2013 to 34 (0.1%) in November 2019.

³ <https://www.food.gov.uk/safety-hygiene/food-hygiene-rating-scheme>

3.5. Figure 2 below illustrates the continued improvement year on year in food hygiene standards in Wales.



4. Business Safeguards

4.1. The Act provides the following safeguards to ensure the Scheme is fair to businesses:

- the right to appeal the food hygiene rating if the business considers it unjust
- the right to reply, which is published alongside the food hygiene rating on the FSA's ratings website
- the ability to request a re-rating inspection where improvements have been made to the hygiene standards based on the LA officer's recommendations in the last inspection report

Operation of the Appeals System

4.2. Appeals can be made, free of charge, 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/or
- that the rating criteria were not applied correctly when producing the food hygiene rating

Appeals must be made in writing using the prescribed form within 21 days of receiving notification of the food hygiene rating.

4.3. Under the Act, the LA that issued the food hygiene rating is responsible for determining appeals and must notify its decision to the food business operator (FBO) and the FSA 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.

Appeals 28 November 2018 – 27 November 2019

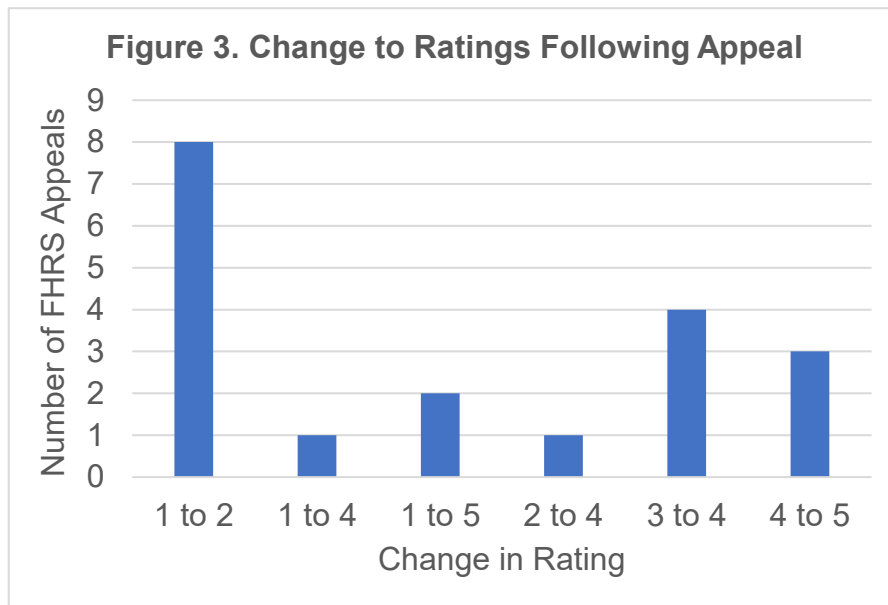
4.4. Food hygiene rating appeals information for the period 28 November 2018 to 27 November 2019 found that:

- 106 appeals were made by FBOs in Wales across 20 of the 22 LAs, eight of these were rejected as they did not meet the appeal criteria, resulting in 98 appeals
- 96 were determined within the required 21-day period, with the remaining two being determined within three days beyond the statutory timeframe

4.5. Further to the determination of the 98 appeals, 79 of the ratings remained the same and 19 (across nine LAs) resulted in an improved rating. On appeal, of the 11 businesses with a rating of '1' (Major Improvement Necessary), eight

increased to a rating of '2', one to a rating of '4' and two to a rating of '5'. Further, one business rated '2' increased to a rating of '4', four businesses rated '3' increased to '4', and three businesses rated '4' increased to '5'

4.6. Figure 3 illustrates the distribution of changes to ratings before and after the determination of appeals.



4.7. Thirty-nine businesses (40%) that made an appeal had been issued with a rating of '3' (Generally Satisfactory) or 4 (Good), which demonstrates the importance businesses are placing on higher ratings. This number comprised:

- 16 with a rating of '4'
- 23 with a rating of '3'

4.8. Fifty-nine businesses (60%) that made an appeal had been issued with a rating from '0' (Urgent Improvement Necessary) to '2' (Improvement Necessary). These comprised:

- Five with a rating of '0'
- 36 with a rating of '1'
- 18 with a rating of '2'

4.9. On review of LA appeal decisions, the FSA identified a potential discrepancy in several cases relating to one LA which indicated that the [statutory guidance](#)⁴ may not have been appropriately implemented. The FSA followed up with the LA and were able to confirm this was the case. The LA has written to confirm

⁴ Food Hygiene Rating Scheme Wales: Guidance for food authorities:
<https://smartercommunications.food.gov.uk/resource/files/1442?scrollPos=undefined>

measures have now been put in place to ensure all future appeals are properly determined.

Right to Reply

- 4.10. FBOs have the right to reply, which may be published on the ratings 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 FBO to explain the actions that have been taken following the inspection at which the rating was given, or to provide information on circumstances at the time of the inspection.
- 4.11. There were 19 right to replies received from FBOs and published during the period 28 November 2018 to 27 November 2019. These represent less than 0.01% of all rated food businesses in Wales.
- 4.12. Almost half (10) of the right to replies were received from businesses categorised as 'Restaurant/Café/Canteen'. The remaining right to replies were received from 'Take-Away' (4), 'School/College' (4) and 'Caring Premises' (3).

Requested inspection for re-rating purposes

- 4.13. The Scheme's safeguards include the FBO's right to request an inspection for re-rating purposes, where any required improvements have been carried out. This gives businesses the opportunity to improve their ratings in advance of their next programmed inspection. Re-rating inspections must be undertaken no later than three months after the accepted request was received.
- 4.14. A fee is applied for these requests 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. The fee was reviewed and increased from £160 to £180 in April 2019.
- 4.15. In the period between 28 November 2018 to 27 November 2019, LAs in Wales received 845 requests for re-rating inspections. These represent 9.3% of all food businesses rated '0' to '4'. Re-rating inspections were completed for 792 of the 845 requests. In the remaining 53 requests, these were within the three-month period and awaiting inspection.
- 4.16. There were 259 (30.7%) of the 845 requests for a re-rating inspection made by businesses with a rating of '3' or '4' and comprised:
- 76 (9%) with a rating of '4'
 - 183 (21.7%) with a rating of '3'

This demonstrates the importance businesses are placing on higher ratings.

4.17. There were 586 (69.4%) requests for a re-rating inspection from businesses with a rating between '0' and '2'. These comprised:

- 209 (24.7%) with a rating of '2'
- 330 (39.1%) with a rating of '1'
- 47 (5.6%) with a rating of '0'

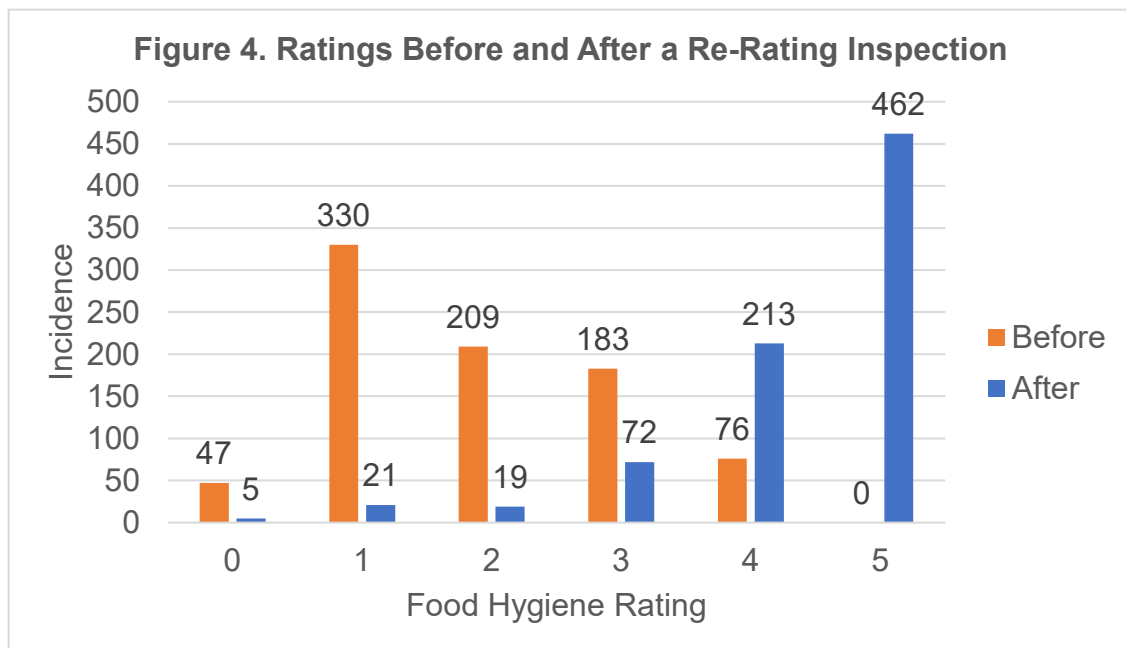
4.18. There were 747 (94.3%) of the 792 completed requests for re-rating inspections that resulted in a new rating between '3' and '5'. These comprised:

- 462 (58.3%) with a new rating of '5'
- 213 (26.9%) with a new rating of '4'
- 72 (9.1%) with a new rating of '3'

4.19. There were 45 (5.7%) requests for re-rating inspections that resulted in a new rating between '0' and '2'. These comprised:

- 19 (2.4%) with a new rating of '2'
- 21 (2.7%) with a new rating of '1'
- 5 (0.6%) with a new rating of '0'

4.20. Figure 4 illustrates the ratings before and after a re-rating inspection.



4.21. There were 739 (93.3%) of the 792 re-rating inspections carried out that resulted in improved ratings, 36 (4.5%) remained the same and 17 (2.1%) decreased.

Corporate Complaints

4.22. Where the FBO considers that the LA has not properly discharged its duties in respect of the Scheme's safeguards, they may use the LA's corporate complaints procedure. Where 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.

4.23. LAs reported receiving 15 corporate complaints relating to the Food Hygiene Rating Scheme (FHRS) from 28 November 2018 to 27 November 2019.

5. Update on the Review of FHRS Safeguards for Food Businesses

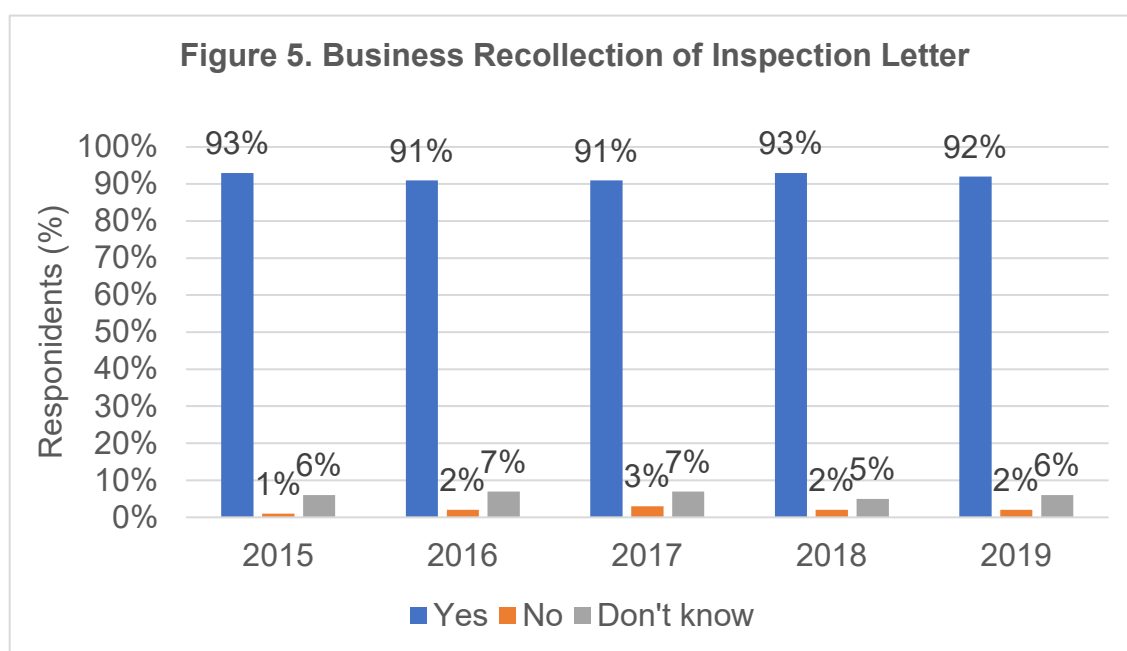
- 5.1. In 2018 the FSA commissioned an independent '[Review of Policy and Procedures for the Food Hygiene Rating Scheme Safeguards for Food Businesses](#)'⁵. The review aimed to assess their effectiveness in England, Wales and Northern Ireland and make recommendations for improvement.
- 5.2. The review concluded that the safeguards appear to be working effectively and there were no specific recommendations for change in Wales.
- 5.3. Appeals were the most contentious of the safeguards, with industry perceiving the process as lacking an independence from the LA issuing the rating. However, the appeals data collected by the FSA in Wales for inclusion in this report shows that, of the 98 appeals received, 19 resulted in an improved rating. This represents 19% of appeals determined in Wales and demonstrates the objectivity with which LAs are determining appeals.
- 5.4. In response to two of the recommendations in the review, the FSA has:
 - Reconvened the UK Food Hygiene Rating Scheme Steering Group with refreshed membership which includes representation from LAs in England, Wales and Northern Ireland, industry and consumers. The first meeting was held in October 2019
 - Published a '[Food Hygiene Rating Scheme \(FHRS\): Request for Early Publication of Rating](#)'⁶ form in Wales in October 2019. Previously, ratings lower than '5' could not be published on the ratings website until the 21-day appeal period had elapsed. FBOs who wish to have their rating ('0' to '4') published early can submit the completed form to their LA to request early publication. This does not affect the FBO's right to appeal. The FSA has agreed to keep the process under review in Wales

⁵ <https://data.food.gov.uk/catalog/datasets/d5178dcd-4f9f-4a20-a6a1-207be6576a0b>

⁶ <https://www.food.gov.uk/business-guidance/food-hygiene-ratings-for-businesses>

6. Research

- 6.1. The FSA conducts an annual research project of food businesses across Wales, England and Northern Ireland. This includes a telephone survey to ascertain, amongst other things, awareness of the safeguards associated with the Scheme. The most recent survey was carried out between September and November 2019 and a sample, selected from the Scheme's database, included 507 businesses from Wales.
- 6.2. During the telephone survey 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. Recollection of the inspection letter continues to be high in Wales with 92% of businesses saying they received the letter. This figure remained stable when compared to previous years.
- 6.4. Figure 5 illustrates the recollection, by businesses in Wales, of the inspection letter since 2015.



- 6.5. There was also a high level of recollection of the contents of the inspection letter for businesses that have a rating of '4' or below:
 - 92% recalled the letter detailing the fact they can appeal the rating – an increase of four percentage points on 2018
 - 84% recalled the letter informing them of their ability to request a re-rating inspection – an increase of three percentage points on 2018
 - 77% recalled the letter explaining their right to reply – an increase of seven percentage points on 2018

- 6.6. The research continues to show a low level of take-up of the safeguarding options with 5% saying they appealed their rating and 6% saying they requested a re-rating inspection. However, 10% of those questioned said they had exercised their right to reply⁷. This is exceptionally high when compared to the FSA data gathered for this review, which found LAs have only received 19 right to replies in Wales that were published. This represents less than 1% of the rated businesses in Wales.
- 6.7. Although recollection of the right to reply has increased in Wales, its use remains low. Right to reply continues to be the least recollected safeguard. There may be benefit in the FSA exploring reasons for the low use.

⁷ It should be noted that the outcomes provided during the telephone survey are self-reported and are not verified against other sources.

7. Consistency

- 7.1. Consistent implementation by LA officers across Wales is crucial to ensuring fairness and equity for food businesses and for maintaining the Scheme's credibility. The FSA continues to fund consistency training events for LAs in Wales, which are delivered by a Senior Environmental Health Officer at Powys County Council, to address this ongoing challenge.
- 7.2. Statutory guidance⁴ for LAs has been developed to support officers in the consistent implementation of the legislation. The guidance was reviewed and updated in 2017 and will be further reviewed and updated during 2020.
- 7.3. The Wales FHRS Steering Group was set up to provide strategic direction and offers a forum for discussing implementation and enforcement of the Scheme ensuring consistency. Consistency is a standing item on the Group's agenda. The Group met on four occasions during the period 28 November 2018 – 27 November 2019.
- 7.4. There was an excellent response in Wales to the fourth National Consistency Exercise with all 22 LAs participating. A rating of '4', the expected outcome for the exercise, was given by 17 LAs (77.3%) in Wales. The remainder gave a rating of '5'. All LAs in Wales gave the same component scores for food hygiene and safety procedures and structure demonstrating a high level of consistency. The differences in score for the Confidence in Management component led to the difference in the rating given.
- 7.5. The FSA reviewed the feedback provided in support of LAs determinations of the Confidence in Management component from the National Consistency Exercise. Advice has been issued to LAs to remind them that, where there is any doubt between compliance scores, the higher of those scores should be allocated.

8. Actions in Response to Recommendations

8.1. In February 2019, the FSA made a number of recommendations in its report relating to the review and operation of the appeals system. This section considers how each of the recommendations has been addressed.

8.2. **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 within the required 21-day period.

Response – The FSA has followed up with the two local authorities on the two appeals that were not notified to the food business within 21 days of receipt to ascertain the reason for the delays and remind them of their statutory obligations.

8.3. **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.

Response – The FSA completed its review of the results for Wales and wrote to all local authorities in June 2019.

8.4. **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.

Response – The FSA continues to provide support for officers through contact with the Local Authority Partnerships team. In 2019, the FSA also introduced a Food Hygiene Ratings Community page for local authorities on its Smarter Communications platform. The page aims to facilitate open discussion and enable sharing of existing practices amongst officers to encourage greater consistency in the delivery of the Scheme.

9. Conclusions

- 9.1. Since the first annual report, published in 2015, the number of businesses appealing a rating has remained static and, in every year, represents less than 1% of all rated businesses in Wales.
- 9.2. Achieving the highest possible rating is important to food businesses in Wales, as it demonstrates very good compliance. This is evidenced by the data which shows the appeals system is also being used by those achieving ratings of '3' and '4'.
- 9.3. Overall, the information provided by LAs to inform this review has shown that appeals are being determined in accordance with the Act and statutory guidance. Changes to ratings following determination of appeals demonstrates that, although appeals are being considered by the same LA that issued the rating, the decision-making process is objective.
- 9.4. LAs continue to work collaboratively to ensure the consistent application of ratings. This helps to deliver a Scheme that is credible, robust and resilient in Wales.

10. Recommendations

10.1. The FSA is making the following recommendations:

Recommendation 1

10.2. That the FSA carries out a review of the use of the Request for Early Publication function and assesses its impact on LAs in Wales.

Recommendation 2

10.3. That the FSA explores the reasons for the low use of the right to reply safeguard in Wales.

Recommendation 3

10.4. That the FSA, in collaboration with local authorities, will review and amend, as necessary, the FHRS Statutory Guidance in 2020 on behalf of Welsh Ministers.

Recommendation 4

10.5. 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.