

Q&A on Food Hygiene Rating Appeals

Extract from the Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation – the Brand Standard; Revision 7 - November 2018

Q1. When is it appropriate for an FBO to use the appeal procedure?

A1. The appeal procedure is relevant where the FBO wishes to dispute the food hygiene rating given, as not reflecting the hygiene standards and management controls found at their establishment at the time of intervention.

Q2. When is it not appropriate for an FBO to use the appeal procedure?

A2. An appeal is not appropriate in circumstances where an FBO has accepted the food hygiene rating but has requested a re-inspection/re-visit for re-rating on the basis that non-compliance(s) identified at the time of the initial intervention have been rectified. The FBO can be reminded that pending a requested re-inspection/re-visit taking place, a 'right to reply' may be submitted to tell consumers about improvements that have been made.

An appeal may be made after a re-inspection/re-visit if the FBO disputes the 'new' food hygiene rating given as it does not reflect the hygiene standards and management controls found at their establishment at the time of the re-inspection/revisit (see Q&A 12).

Q3. How long does an FBO have to appeal the food hygiene rating before it is published?

A3. The appeal has to be made in writing within the period of 21 days beginning with the date of notification.²⁴ The numbers of 'days' includes weekends and bank holidays. A standard template form that FBOs may use to appeal the food hygiene rating is available on request or from www.food.gov.uk.

After the 21 day period has elapsed, the food hygiene rating will be published at food.gov.uk/ratings if no appeal has been lodged.

Q4. Should appeals lodged later than 21 days after the notification of the food hygiene rating be considered?

A4. No. Appeals must be made within 21 days of the notification of the food hygiene rating. After this time, the rating should be published at food.gov.uk/ratings. For multi-site businesses, the start of the appeal period is triggered by the date of notification of the rating to the outlet.

Q5. Is there scope for informal discussion about ratings?

A5. Yes. It may be possible for the 'inspecting officer' to resolve any dispute about the food hygiene rating in an informal manner by further clarifying and explaining how it was derived. Although not a pre-requisite, FBOs should be encouraged to do this and every effort should be made to resolve the matter at this stage before resorting to the appeal procedure.

²⁴ The rule established by section 7 of the Interpretation Act 1978 will also be applied in respect of lodging of an appeal by the food business operator with the local authority Lead Officer for food. Under that rule as applied for the purposes of appealing the food hygiene rating, an appeal will be regarded as having been made by properly addressing, pre-paying and posting a letter informing the local authority Lead Officer for Food that an appeal is being made. It will be regarded as being effective at the time at which the letter would be delivered in the ordinary course of post.

Any such discussions do not form part of the formal appeal process and do not change the deadline within which an appeal must be lodged. This should be made clear to the FBO so that they are clear the appeal period does not commence only when informal discussions are completed and so that they may lodge an appeal, and may subsequently withdraw it, if they wish.

Q6. Where the food hygiene rating is being appealed, should the rating in dispute be published at food.gov.uk/ratings and displayed at the establishment?

A6. Until the outcome of the appeal is determined, food.gov.uk/ratings should show that, for the establishment in question, the assessment of hygiene standards is 'awaiting publication'. At the time of notification of the rating that is now in dispute, the business should be requested to destroy any sticker (and certificate) they have for the previous rating and reminded that to continue to display these after the appeal period may constitute an offence under trading standards legislation for example an offence under the Consumer Protection from Unfair Trading Regulations 2008 (see Section 9, Q&A 4).

Q7. Who should determine appeals?

A7. Appeals should be considered by the Lead Officer for Food or a designated deputy. Local authorities are encouraged to consider establishing a reciprocal arrangement with another authority to consider each other's appeals by the respective Lead Officer for Food or a designated deputy.

Q8. What role does the 'inspecting officer play in determining the appeal?

A8. None. No officer involved in the production of the rating or in the inspection on which the rating is based should consider the appeal.

Q9. How is the appeal determined?

A9. The paperwork associated with the intervention and the food hygiene rating given should be considered. In some circumstances, a further visit to the establishment may be required. This will depend on the nature of the dispute and whether a decision can or cannot be made on the basis of the paperwork associated with the intervention and the food hygiene rating given.

Q10. How should the decision be communicated to the FBO?

A10. The decision of the officer determining the appeal should be communicated in writing to the FBO as early as possible and within a maximum of 21 days from the date that the appeal was received (the numbers of 'days' includes weekends and bank holidays). Once the decision has been notified to the FBO, the food hygiene rating should be published at food.gov.uk/ratings.

Q11. When will the food hygiene rating be published at food.gov.uk/ratings following an appeal?

A11. The food hygiene rating will be published when the appeal has been determined and the outcome of the appeal has been communicated to the FBO.

Q12. Can an FBO appeal a 'new' food hygiene rating given following a reinspection/re-visit that they have requested?

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A12. Yes. As with the initial assessment, an FBO may appeal in such cases if the 'new' food hygiene rating is disputed. Appeals must be made within 21 days of the notification of the rating. After that period has expired, the food hygiene rating should be published at [food.gov.uk/ratings](https://www.food.gov.uk/ratings) if no appeal has been lodged.

Q13. What happens if the FBO disagrees with the outcome of the appeal?

A13. The FBO can challenge the local authority's decision by means of judicial review.

The FBO has recourse to the local authority complaints procedure (including taking the matter to the Local Government Ombudsman where appropriate) if they consider that a council service has not been properly delivered.

The FSA's Independent Business Appeals Panel, which applies to businesses in England (see <https://www.food.gov.uk/business-guidance/how-to-appeal-against-a-decision-made-by-a-local-authority>), is not a route for redress in cases of disputed food hygiene ratings.

Q14. If an FBO challenges a decision via judicial review, what should be published at [food.gov.uk/ratings](https://www.food.gov.uk/ratings)?

A14. Following determination of the appeal, the rating should be published at [food.gov.uk/ratings](https://www.food.gov.uk/ratings) and this should continue to be displayed until the judicial review is determined.

Q15. Is the local authority's complaints procedure part of the appeal process?

A15. No. Sufficient legal protection is given to FBOs if appeals against a disputed food hygiene rating are determined by the Lead Officer for Food or a designated deputy or the Lead Officer for Food or a designated deputy from another local authority. There is no legal requirement for the local authority complaints procedure to form part of the FHRS appeals procedure. This does not, however, prevent an FBO from using the local authority's complaints procedure where s/he wishes to complain about the process followed in delivery of a service.