

The Food Hygiene Rating Scheme Appeals Procedure for food business Operators who Dispute their Food Hygiene Rating

Introduction:

To ensure fairness to businesses the Councils have developed an 'Appeals Procedure' to enable food business operators to appeal the food hygiene rating given to their food business establishment.

Should a food business operator consider that the food hygiene rating given by the 'inspecting officer' is unjust s/he may appeal to the Lead Officer for Food or in his absence a designated deputy.

In cases where the 'inspecting officer' who has given the food hygiene rating is the Lead Food Officer, the appeal will be determined by the Lead Officer for food in another authority.

A food business operator can also appeal a 'new' food hygiene rating given to a food establishment following a re-inspection or re-visit that he/she has requested.

Appeal Process:

The 'inspecting officer' will notify the food business operator in writing of the food hygiene rating given to his/her food business establishment. The notification will be made within 14 days following the food safety intervention carried out at the establishment.

The rating is assessed on three elements – hygiene, structure and confidence in management

The notification will include details of why the 'inspecting officer' has determined the rating and, in cases where the top rating has not been achieved, what priority actions are needed for improvement for each of the three elements assessed.

The notification will include information on how the food business operator can appeal the food hygiene rating given. The appeal must be made in writing and within the period of 21 days beginning from the date of notification.

After the 21 day period has expired and no appeal is lodged the food hygiene rating will be published at <http://ratings.food.gov.uk/> and the business will be issued with a sticker for voluntary display at the establishment.

The Appeal Procedure:

In the first instance the Lead Officer or his designated deputy will request that the 'inspecting officer' make contact with the food business operator to try and resolve any disputes about the food hygiene rating in an informal manner. (If the inspecting officer is a contractor, then the district officer will make contact).

This may mean further clarifying and explaining how the rating was derived. Every effort should be made to resolve the matter at this stage before resorting to the appeal procedure.

If the dispute cannot be resolved informally, the food business operator may within 21 days beginning from the date of notification, lodge an appeal in writing to be considered by the Lead Food Officer or in his absence a designated deputy.

Until the outcome of the appeal is determined the rating will not be published at <http://ratings.food.gov.uk/>. Any previous food hygiene rating will be removed and <http://ratings.food.gov.uk/> will show that for the establishment in question 'the assessment of hygiene standards is awaiting publication'.

The food business should remove any stickers on display at the establishment until the appeal has been determined.

The Lead Officer or his designated deputy will contact the food business operator to warn him/her that the outcome of the appeal could result in the establishment receiving an even lower food hygiene rating to that initially given by the 'inspecting officer'.

The Lead Officer or his designated deputy will review all documented evidence collected by the 'inspecting officer' at the time of the intervention visit and any notes made afterwards which may include:

- The carbon copy of the Inspection Report left with the food businesses operator at the premises following the visit
- Detailed Inspection Form and/or Targeted Intervention Form
- Risk Assessment and Reporting Form
- Letters and/or Hygiene Improvement Notices,
- Data input on M3 premises file
- Photographs
- Copies of any monitoring records, Food Safety Management documents, microbiological results, etc
- Any other notes taken at the time of the intervention or any relevant notes made at a later date

The Lead Officer or his designated deputy will discuss the case with the 'inspecting officer(s)' to seek clarification on how the rating was determined in the three elements of hygiene, structure and confidence in management.

The Lead Officer or his designated deputy will assess all the evidence against the Code of Practice guidance on scoring of the standards that would, in practice, be expected of a business in order to achieve a score for the purpose of intervention rating in Annex 5 of the Food Law Code of Practice (England)

In some circumstances the Lead Officer or his designated deputy may need to undertake a further visit to the establishment. This will depend on the nature

of the injustice alleged 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.

The Lead Officer's Decision:

The food business operator will be notified in writing of the Lead Officer's decision within 21 days from the date that the appeal was lodged. The notification will explain how the decision of the appeal was determined.

Once the food business operator has been notified the food hygiene rating will be published at <http://ratings.food.gov.uk/> and a new sticker will be issued for voluntary display at the establishment.

Challenge to the Lead Officers Decision:

The Food Standards Agency Guidance on the Implementation and Operation of the Food Hygiene Rating Scheme makes no further appeal procedure should a food business operator disagree with the outcome of an appeal.

This does not preclude a food business operator from challenging the Councils decision by:

- Judicial review
- Taking the matter to the Local Government Ombudsman if they consider that the council service has not been properly delivered.

Food business operators can complain to Elected Members or Heads of Service if they wish to complain about the process followed in delivery of a service.

Right to Reply

To ensure fairness to food business operators they will be informed that they have a 'right to reply' which must be published at <http://ratings.food.gov.uk/> with the food hygiene rating. The purpose is to enable the food business operator to give an explanation of subsequent actions that have been taken to rectify non-compliances or mitigation for the circumstances at the time of the intervention.

The food business operators can send comments electronically or in writing to Adur & Worthing Councils who will publish on <http://ratings.food.gov.uk/>

The 'right to reply' cannot be used to complain or criticise the 'inspecting officer' or the food hygiene rating scheme and therefore the text may be edited to remove any offensive, defamatory, clearly inaccurate or irrelevant remarks .

The Councils may also edit comments on the 'right to reply' to remove duplication, vague or ambiguous text.