

A review of policy and procedures for the Food Hygiene Rating Scheme (FHRS) safeguards for food businesses

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Executive Summary

1. This Review has been commissioned by the Food Standards Agency (FSA) reflecting that the Food Hygiene Rating Scheme (FHRS) has been operating for over eight years and during this time there have been a number of changes affecting the FHRS safeguards for food businesses and that industry has raised concerns about the appeals process. The Review's Terms of Reference are:
 - To review the FHRS safeguards, with the primary focus on appeals, and to make recommendations for improvements as necessary.
2. The purpose of the Review is to ensure the current FHRS safeguards:
 - are fair to businesses;
 - do not unnecessarily deny consumers access to information;
 - have a sound legal basis;
 - are understood by all key players;
 - are accessible for businesses; and
 - are fit for purpose.
3. The review was carried out between October 2018 and January 2019. It included examination of relevant published FSA legislation, policies, procedures, Brand Standard and statutory guidance materials supporting the current FHRS delivery arrangements in England, Wales and Northern Ireland. An Interested Parties (IP) consultation letter was sent to local authority and industry stakeholders informing them about the Review and requesting views on their experiences of using the safeguards and suggestions for improvement.
4. Telephone interviews and meetings were held with local authority and industry representative bodies; FSA officials administering FHRS in England, Wales and Northern Ireland; the All Wales FHRS Steering Group; representatives from Department for Business Energy and Industrial Strategy (BEIS); and the consumer organisation Which? A list of organisations contacted as part of the review is at Annex 1 of the Report.
5. Overall, I found the current policy and procedures for FHRS safeguards to be working effectively. Whilst there are implementation issues, which are highlighted in my report, the FSA has developed clear guidance and template materials in relation to the FHRS safeguards and these are being used extensively by local authorities. Most local authority environmental health services are undoubtedly experiencing significant pressure on resources, but they appear to be prioritising FHRS activity, and the FHRS safeguards in the main are being delivered effectively and within the required time limits set out in the relevant legislation or Brand Standard guidance.

6. Wider FSA research and reviews on the delivery of safeguards (referenced later in this report) generally support this view. However, my findings must be caveated because there is insufficient FSA qualitative, and in the case of England insufficient quantitative and qualitative oversight, of local authority delivery of the FHRS safeguards to robustly evidence these findings on an ongoing basis.
7. I did not identify any systemic failing in the local authority delivery of FHRS safeguards during my review. However, the current absence of robust data in England and the lack of comparative analyses across England, Wales and Northern Ireland in my view presents a significant risk of reputational damage to FSA and the FHRS Brand. It is also inconsistent with the need for a good evidence base on the routine operation of the safeguards as part of, or as a precursor to, any statutory FHRS scheme in England.
8. There is a current perception by industry that there is little FSA oversight of local authority delivery of FHRS safeguards and no apparent consequences for any individual local authority failing to operate them effectively. Industry representatives found it difficult to access official information on the delivery and outcome of safeguard decisions, given the differing or absent reporting arrangements and public data available across Wales, Northern Ireland and England. Currently, there appears to be no effective mechanism or FHRS forum to allow industry or external stakeholders to safely and routinely raise concerns with the FSA or discuss relevant analysed data
9. The 'right to reply' safeguard is the least used of the safeguards with a total of 72 live 'right to reply' notifications posted on the FSA website at the time of my review. However, I heard no comments for change or that the facility was no longer useful and most stakeholders felt that this option should remain available in spite of its low take-up.
10. Requests for a re-rating were the most used of the FHRS safeguards. The statutory schemes operating in Wales and Northern Ireland have introduced consistency in the implementation of this safeguard and the fees charged by local authorities for requested re-rating inspections. The facility to get a prompt re-rating inspection is viewed positively by both industry and most local authority stakeholders interviewed. The current FSA policy in England where local authorities make their own decisions whether to adopt powers under the Localism Act 2011 allowing them to charge and therefore expedite requested re-rating inspections has resulted in an inconsistent approach and access to this commercially important safeguard. The current post code lottery in England in relation to this access and the associated costs is generating considerable frustration in industry. There is an overwhelming industry view, which I share, that current access to this safeguard in England is inconsistent and unfair.
11. Appeals remain the most contentious of the safeguard provisions with industry perceiving the process as lacking an independence from the rating authority. That aside, no substantive concerns were raised or evidence provided that

appeals were not being processed and determined within required time limits. Local authorities and Lead Officers clearly view appeals as an important safeguard and appear to be prioritising resources accordingly.

12. The facility now for businesses to get a prompt requested re-rating in Wales, Northern Ireland and in many areas of England has meant that in the main businesses are focused on requesting a re-rating rather than appealing their low rating. This has toned down previous calls from industry for the FHRS appeal process to be fully independent of the rating authority. Industry stakeholders interviewed emphasised that any appeal system needed to be quick, effective and fair. The majority view was that setting up an appeal panel independent of the rating authority had the potential to increase costs and introduce delays. This view was shared by most local authority representatives interviewed
13. Many public sector bodies operate internal appeals and complaints processes, including schools, hospitals and the FSA's own review mechanism for meat approvals. This reflects a general trust in public services to take decisions that are fair and not conflicted. Given the findings detailed later in this report and the need for any appeal process to be quick and avoid creating a new 'appeals industry', I have not recommended a new independent appeal mechanism outside of local authorities. However, it is clear that industry reservations on the independence of the process remain, particularly given their perception that there is little effective FSA oversight or challenge in exceptional cases.
14. Currently, the Brand Standard and statutory guidance allows local authorities to use officers from another authority to determine appeals. This adds a degree of further independence to the process, and a number of authorities told me that they are managing some of their appeals this way. Currently there is little information or central oversight on the use of this facility by local authorities. Industry stakeholders overwhelmingly favoured more FSA clarity and guidance on this option with a view to businesses being more able to request their appeal is considered by another authority in certain cases. This should be examined by the FSA as it could provide a further degree of peer review of the current appeal arrangements as well as addressing some of the remaining concerns about independence.

Summary of recommendations

Recommendation 1

There is evidence that some local authorities do not notify Head Offices for multi-site businesses of the FHRs rating for individual outlets. This is not in line with FSA Brand Standard guidance and potentially undermines industry access to the appeal safeguard. The FSA should remind local authorities of their obligation to communicate ratings for individual outlets to Head Offices in the case of multi-site businesses and follow up with authorities failing to adhere to this obligation.

Recommendation 2

There is insufficient data on the number and outcomes of requested re-rating inspections and appeals determined by local authorities in England. This is in contrast to the current position in Wales and Northern Ireland. The FSA should as a priority consider mechanisms to revise the current arrangements so that local authorities in England routinely provide this information to the FSA. Arrangements should be automated as far as possible to avoid burdens on individual local authorities.

Recommendation 3

There is little oversight by the FSA on the implementation of FHRs safeguards in England and a lack of comparative analyses by the FSA of safeguard data and information currently provided by local authorities. Mechanisms should be put in place to collate and analyse relevant data for Wales, Northern Ireland and England to ensure the safeguards are being applied objectively and fairly to provide the FSA with a good evidence base and learning, and to support proposals for a statutory scheme and mandatory FHRs display in England.

Recommendation 4

Little qualitative information on the implementation of safeguards is available and there is no routine mechanism or forum outside of individual local authorities for industry to raise and discuss important safeguard issues or concerns about local implementation. The UK FHRs Steering Group has not met for over 2 years. This Steering Group should be reconvened and qualitative and quantitative information on the ongoing use and delivery of safeguards generated from improved reporting and oversight arrangements should be routinely considered by the Group.

Recommendation 5

Given the flagship nature of FHRs and the importance of transparency to improve understanding and maintain trust, consideration should be given to an annual FHRs Report or similar which includes collated and robust information on the take-up, use and outcomes of the FHRs safeguards across Wales, Northern Ireland and England

Recommendation 6

Given the importance of effective FHRS safeguard delivery, the commercial importance the business of the rating and the positive impact FHRS generally is having on hygiene standards and consumer protection, there should be more FSA oversight on this area. Also, any future local authority Balanced Scorecard should include relevant Performance Indicators relating to safeguard processes, such as adherence to time limits, participation in consistency training, and required data reporting.

Recommendation 7

The current requested re-rating safeguard arrangements in England are inconsistent and unfair to businesses. Although it is not for the FSA to decide whether English authorities should charge for requested re-rating inspections or on the amount of any charge, the FSA should as a priority consider mechanisms to get routine data for England on the adoption by authorities of powers under the Localism Act 2011 to provide a charge based requested re-rating service, and on the charge being applied by individual authorities. This information should be published to provide greater transparency and challenge to the process.

Recommendation 8

No robust data is currently held on the number and outcome of requested re-rating inspections in England. It is important to ensure there is consistent and fair access to this safeguard. As such, the FSA should consider appropriate non-burdensome mechanisms to routinely collect this data to help track and monitor the business use of this safeguard and its effective implementation by authorities.

Recommendation 9

The approach to requested re-rating inspections in Wales and Northern Ireland and the recent changes to the Brand Standard in England to allow charging and remove the three-month 'standstill' period have been well received by industry and local authorities alike. In advance of any statutory scheme in England, the FSA should consider mechanisms to encourage and monitor local authority adoption of the Localism Act 2011 powers with the aim of improving transparency and consider providing further guidance and benchmark information to reduce the variation in both access to, and the cost of, requested re-rating inspections.

Recommendation 10

The current automatic 21-day hold – the time in which the business operator may appeal the rating - before any rating below FHRS 5 is displayed on the FSA website has created occasional local problems and inconsistencies. It means that ratings displayed at establishments can differ from the information about the business on the FHRS website for a period. This is seen by industry and many local authorities as an unnecessary restriction on the accuracy of information to consumers and at odds with the prompt re-rating service now available, particularly where a business does not want to appeal their new rating and wants their rating published promptly. Consideration should be given to the scheme having greater flexibility for businesses

to formally waive their right to appeal allowing the new rating to be published online without undue delay.

Recommendation 11

There remains a concern amongst key industry trade bodies that the current local authority appeal process lacks independence and oversight. Currently, rating authorities can use another authority to consider their appeals, but this seems an infrequent occurrence and no central data is collected on this. Industry stakeholders overwhelmingly favoured more clarity and guidance from the FSA with a view to businesses being given more opportunity to request this option in certain cases. This should be examined by the FSA as it would provide a further degree of peer review to the current appeal arrangements and help address some of the remaining concerns a number of industry stakeholders have about the independence of the process.

Recommendation 12

There is a lack of central data on the number and outcome of appeals in England, and limited FSA oversight or peer review in all countries of the process and decision making in individual authorities. Greater comparative analyses of the use and outcomes of appeals in Wales, Northern Ireland and England will provide more robust mechanisms to assess the effective implementation of appeals between individual authorities and countries, and the use of the appeal safeguard by companies. FSA should consider mechanisms through which it can better monitor and review - but not re-determine – relevant local authority documentation relating to all appeals to improve central oversight and where appropriate provide challenge.

Introduction

15. This Review has been commissioned by the Food Standards Agency reflecting that the FHRS has been operating for over 8 years and during this time there have been a number of changes affecting the FHRS safeguards for food businesses and that industry has raised concerns about the FHRS appeals process. The Review's Terms of Reference are set out below.

Terms of Reference

To review the FHRS safeguards, with the primary focus on appeals, and to make recommendations for improvements as necessary.

Scope

Review the current appeals policy and process to assess if it is working effectively for both local authorities and businesses

Seek views on the right to reply and requested re-rating processes and recommend any changes or improvements where necessary.

Learn lessons from the current established policy, by meeting with internal and external stakeholders to take evidence and views on the policy and procedures, using feedback to inform any recommendations for improvement

Provide an initial report to FSA, with options for possible improvements and recommendations

Provide an implementation timetable for delivery of the recommendations to FSA and identify any high-level risks to their delivery

Assist with the development of the final FSA report, which will be for internal and external stakeholders.

16. The purpose of the Review is to ensure the current FHRS safeguards:
- are fair to businesses;
 - do not unnecessarily deny consumers access to information;
 - have a sound legal basis;
 - are understood by all key players;
 - are accessible for businesses; and
 - are fit for purpose.
17. My review was carried out between Oct 18 and Jan 19. As part of the review I examined relevant published FSA legislation, policies, procedures, Brand Standard and statutory guidance materials where applicable, supporting the current FHRS delivery arrangements in England, Wales and Northern Ireland. An Interested Parties (IP) consultation letter was sent to relevant local authority and industry stakeholders informing them about the Review, its purpose, approach and timetable requesting views on their experiences of using the safeguards and/or suggestions for improvement.

18. The review included telephone interviews and meetings with a number of local authority and industry representative bodies; FSA officials administering FHRs in England, Wales and Northern Ireland; the All Wales FHRs Steering Group; representatives from the Department for Business, Energy and Industrial Strategy (BEIS); and the consumer organisation Which? A full list of organisations sent the IP letter and those directly interviewed as part of the review is at Annex 1.
19. I have structured my Report under the following headings reflecting what I see as key elements of the current safeguard arrangements:
 - (a) Local authority processes for notifying businesses about the safeguards (para 31 to 42)
 - (b) Local Authority processes for meeting relevant safeguard timescales (para 43 to 50)
 - (c) Food Standards Agency oversight of current local authority delivery of FHRs safeguards (para 51 to 61)
 - (d) Right to Reply (para 62 to 69)
 - (e) Re-rating inspections (para 70 to 84)
 - (f) Appeals (para 85 to 113)
20. I reviewed these elements to assess how they are working for local authorities, businesses and consumers and whether any recommendations for improvements are necessary.

Background

21. The FHRs is a Food Standards Agency (FSA)/Local Authority (LA) partnership initiative. The scheme operates on a statutory basis in Northern Ireland and Wales and on a voluntary basis in England. In Wales the Welsh Government is a partner in the scheme. FHRs provides consumers with information about the hygiene standards in a food business establishment at the time they are inspected by the LA to check compliance with legal food hygiene requirements
22. The purpose of the FHRs is to allow consumers to make informed decisions about where they eat or shop, and through these decisions encourage businesses to improve their hygiene standards. There are six different levels of food hygiene ratings from '0' (urgent improvement necessary) up to '5' (very good). In Wales¹ and Northern Ireland² businesses are required by law to display their ratings so they are visible from the outside and in England encouraged to display their ratings conspicuously at their premises.
23. As at 31 December 2018, FSA data shows there were 434,335 FHRs rated food businesses across England, Wales and Northern Ireland. See Figure 1 below:

Figure 1: Number of businesses with a Food Hygiene Rating as at 31/12/2018

| Food Hygiene Rating | England | Wales | Northern Ireland | FHRs |
|----------------------------------|---------|-------|------------------|--------|
| 5 - very good | 271460 | 19541 | 11271 | 302272 |
| 4- good | 67986 | 5835 | 2405 | 76226 |
| 3 – generally satisfactory | 31136 | 2348 | 702 | 34186 |
| 2 – improvement necessary | 9316 | 580 | 123 | 10019 |
| 1 – major improvement necessary | 9830 | 611 | 51 | 10492 |
| 0 – urgent improvement necessary | 1093 | 45 | 2 | 1140 |
| Total rated | 390821 | 28960 | 14554 | 434335 |

24. The FSA has published FHRs 'Brand Standard' guidance for LAs which incorporates relevant requirements of statutory Food Law Codes of Practice on LA enforcement approach to help ensure consistency in the implementation and operation of the FHRs so it is fair to businesses and so consumers can be confident in the FHRs branding. In England, where the scheme is run on a voluntary basis, LAs are required to formally sign up to an agreement which requires them to follow in full the FHRs Brand Standard. In Wales and Northern Ireland where legislation has put FHRs on a statutory footing, the local authority guidance has been issued under the relevant legislation in each country.

¹ <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

² <http://www.legislation.gov.uk/nia/2016/3/contents>

25. Both the statutory and voluntary schemes incorporate safeguards to ensure fairness to businesses. These include an appeal process, a 'right to reply' which can be published alongside the rating, and a mechanism for businesses to request a re-rating inspection following any necessary improvements being carried out.
26. Since the launch of the scheme in 2010 there have been a number of changes to the FHRS guidance which have affected these business safeguards. Some of these changes were introduced in the relevant legislation in Wales and Northern Ireland when the scheme was put on a statutory basis, and then replicated as far as possible for the voluntary scheme in England. These changes included extending the time period for businesses to submit an appeal to 21 days from 14 days, and an ability for LAs to charge businesses for requested re-rating inspections which then need to be carried out within three months. Where a charge is made for the requested re-rating inspection the three months standstill period which previously applied was removed.
27. In practice this has resulted in some variation in the way the safeguards are operated in Wales, Northern Ireland and England. In Wales an annual review of the safeguard appeals system is required as part of the statutory arrangements, and there is also a requirement for a three-year review of the operation of FHRS. These reviews have been carried out and published by the FSA since 2015.³ In Northern Ireland there is a similar requirement on the FSA to review the operation of the FHRS legislation within three years of its implementation, which also covers the safeguard arrangements. The review in Northern Ireland is due to be concluded later this year.
28. In Wales, to facilitate the review, local authorities are required to submit certain data, as set out in the statutory guidance, to the FSA on the operation of the appeals process. Additional information on the other safeguards is also sought annually for inclusion in the appeals report. Under the statutory scheme in Northern Ireland, LAs are required to notify the FSA Northern Ireland of the determination of any appeals received as well as any 'right to reply' submissions. LAs are also required to provide information as required by the FSA for the purposes of reviewing the operation of the scheme. There is no similar requirement in England, so no robust data is currently held centrally to help assess business use and the effective operation of the FHRS safeguards by English authorities.
29. FSA support and guidance to local authorities includes advice, materials and consistency training to help ensure consistency between officers and local authorities providing the FHRS ratings to businesses. FSA training is mainly on-line and FSA data for 2017 showed that over 99% of local authorities participated in this training. The 2018 consistency exercise results, which included an exercise on handling appeals, have not yet been analysed but early indications are that participation levels are very similar to 2017.

³ http://www.assembly.wales/laid_documents/gen-ld10113, and <http://www.assembly.wales/laid%20documents/gen-ld11433/gen-ld11433-e.pdf>

Comments from local authorities received as part of this review showed that the training is greatly valued and prioritised, with materials\training routinely cascaded locally and in Liaison Group exercises.

30. Whilst this element of FHRS falls slightly outside the scope of my review, and data from the on-line national consistency exercises shows improving consistency within and between authorities, some variation in rating decisions between officers remains and is potentially inherent in the process. This potential for inconsistency highlights the importance of the FHRS safeguards being accessible to businesses and operated effectively and fairly.

Local authority processes for notifying businesses about FHRs safeguards

31. Food hygiene ratings can only be given following an inspection, a partial inspection or an audit. The only exception is where a re-visit is undertaken at the request of a Food Business Operator (FBO) where it can be following another type of Official Control intervention. As part of the scheme, local authorities must have a policy for communicating the food hygiene ratings to businesses and their decisions should be in line with the policy. The food hygiene rating must be provided in writing which can be at the time of the intervention or sent to the business afterwards.
32. If the rating is not notified at the time of the intervention e.g. via a carbonated hand-written report or similar, the rating must be communicated to the business in writing within 14 days. In both the statutory and voluntary schemes, the information from the local authority should include:
 - a) The food hygiene rating for the business and details of the component rating scores from which the rating was determined – an FSA template is available to assist with this.
 - b) Details of why the establishment was rated as it was. In cases where the top rating was not achieved, the actions necessary in each of the three intervention rating scheme elements which make up the overall FHRs rating must be provided. This information must be sufficient to support the score given in each element to inform the FBO and facilitate internal monitoring. It should also be sufficient to enable any review of the rating – without any involvement of the inspecting officer - where an appeal is made.
33. In cases where the top rating has not been achieved, the information provided to the FBO should include:
 - a) Details of the appeals process and the deadline by which an appeal to the Lead Officer for food at the local authority
 - b) Contact details (name and telephone number) for the inspecting office and Lead officer
 - c) Details and weblinks informing FBOs about the safeguards and the mechanisms and relevant template forms to access the safeguards
34. The FSA has produced standard leaflets and template forms providing much of this information for local authorities to use. This material looks clear and succinct and I had no feedback during the review to the effect that the information about safeguards lacked clarity. This has ensured a degree of uniformity in the information provided to businesses about the FHRs safeguards and how to access them. But, there is still some flexibility for the local authorities to include specific information on an individual authority's arrangements and processes

35. From my feedback from industry stakeholders and information requested from local authority officers as part of this review, local authorities appeared to have effective policies for communicating food hygiene ratings to FBOs in line with the Brand Standard and relevant statutory guidance.
36. Industry did not raise any substantive comments about this aspect of the safeguard process. Recent BMG industry FHRs research⁴ carried out for the FSA across England, Wales and Northern Ireland and reporting April 2018 shows a high rate (between 75% - 93%) of recollection by businesses that their local authority rating correspondence contained relevant information on safeguards and how to access them.
37. I saw no evidence nor received adverse comments from external stakeholders that local authority letters lacked the necessary information enabling businesses to readily access the safeguards. Local authorities are making good use of FSA safeguard materials and templates in their correspondence and advice for businesses.
38. There is some variation in the way the information is presented and the relevant payment mechanisms required by individual authorities. This reflects the permitted flexibility in the FHRs guidance to accommodate different local authority systems. Whilst, stakeholders representing smaller businesses questioned why there couldn't be absolute consistency here to help busy proprietors, the process seems to be working effectively and the information for businesses on safeguards that I examined as part of the review was clear and succinct. I have made no recommendations in this area but accept it is an issue which should be routinely checked as part of any relevant FSA audit regime.
39. Local authorities appear to be operating internal quality control and monitoring arrangements to ensure Brand Standard and statutory prescribed requirements are being met and to help maintain rating consistency. This is something checked and confirmed by relevant FSA audits albeit improvements to the local arrangements have been recommended in some of the audit reports for authorities.
40. FSA consistency training is mainly on-line and 2017 showed that over 99% of local authorities participated in this training. All local authority officers I interviewed confirmed that they or their officers participated in national or inter authority consistency exercises. It is evident that in spite of resources in local authorities being stretched, priority is being given to this issue.
41. The potential for variation in rating decisions between officers and the need for internal process to address this, was something acknowledged by all officers I spoke to as part of the review.

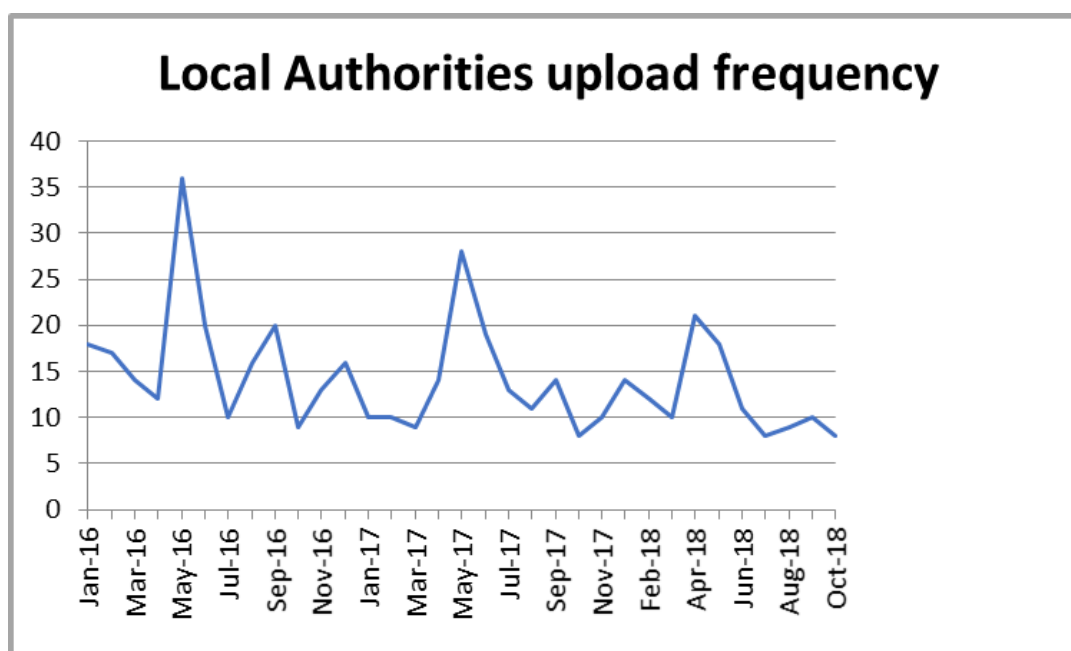
⁴ [Display of food hygiene ratings in England Northern Ireland and Wales](#)

42. There is evidence – from FSA audits, industry feedback and from local authority officers interviewed – that some local authority letters informing businesses of a rating lower than ‘5’ sometimes lacked the necessary compliance detail and clarity on the measures necessary to secure compliance with food hygiene legislation. This can impact on the efficacy of the appeal process and decision making for businesses. Whilst there is no evidence to suggest that this is a widespread failing, and Lead Officers I interviewed told me that they focused on this issue in their quality checks, I have made some recommendations later in this report about improving FSA oversight to help address this issue.

Local authority processes for meeting relevant safeguard timescales

43. There are prescribed time limits in the Brand Standard and specified in law in Wales and Northern Ireland, on the operation of the safeguards. These include a time limit for local authorities to determine appeals; carry out requested re-rating inspections; and for uploading FHRS ratings to the FSA website. Whilst a business can request a re-rating inspection or provide a 'right to reply' at any stage after the relevant intervention, there is a 21-day time limit for any appeal. The new rating is not published until this period has elapsed except where the rating awarded is a '5'.
44. No substantive concerns were raised by industry that local authority arrangements for handling appeals, requested re-ratings or 'right to reply' were ineffective or tardy. The findings from the focused FSA FHRS audit of English LAs also concluded the authorities audited were..... '*generally demonstrating a commitment to the targets set out in the brand Standards*'. As such, I have concluded that local authorities currently appear to be meeting relevant safeguard time limits. However, I must caveat this finding because there is generally a lack of robust data in England to effectively and routinely monitor this.
45. An area the FSA can currently centrally monitor is local authority upload of FHRS data to the FSA website. The Welsh and Northern Ireland legislation requires the local authority to upload the rating information to the FSA within 49 days and 34 days respectively following notification of the rating to the business, the time limits reflecting wider provisions in the law. The FSA Brand Standard guidance actually sets a tighter 28-day deadline for authorities and this 28-day deadline is generally being met by authorities with many uploading their data weekly or more frequently. Certainly, most authorities are meeting the 28-day time limit and the FSA promptly chases authorities that do not. Figure 2 shows the number of local authorities not meeting the FSA 28-day deadline over a recent 18-month period. Numbers failing to meet the target tend to peak April/May, although the position is improving year on year, with 21 authorities failing to meet the time limit in April 2018 and generally these uploads are made a few days late, once prompted by the FSA approach.
46. In contrast to the position in Wales and Northern Ireland, there is no central data held in England on the number and outcome of appeals and requested re-rating inspections carried out by local authorities. Published data in Wales shows a small number of appeals (4 of 100 appeals in 2017) were not determined within the 21-day period, being finalised a few days late. There is provision in the legislation to allow for the 21-day deadline to be exceeded in exceptional cases.

Figure 2: Number of LAs not meeting the 28-day upload deadline between Jan 16 and Oct 18



47. Overall, this aspect of the safeguard arrangements seems to be working effectively and local authorities appear mindful and diligent in meeting required time limits. Again, this conclusion must be caveated given the lack of robust quantitative data available in England. Recommendations are made later in my report to help address this.
48. There is evidence – from industry comments and confirmed during my interviews with local authority officers – that some local authorities in England are not notifying the Head Office for multi-site businesses of the FHRs rating for individual outlets, a specific requirement of the Brand Standard. This reflects the resources in some authorities available to do this routinely and a perception that the registered Head Office is not in any event the appropriate operational hub for the business, and the unit should and will forward the rating information.
49. Food safety representatives for national companies operating multi-site businesses raised substantive concerns about occasional delays in their Head Office being made aware of an individual outlet’s FHRs rating. They felt that these delays coupled with letters which lacked the necessary clarity and supporting detail, undermined their decision making and access to the appeal safeguard as there is a 21-day time limit for the company to lodge an appeal and this period commenced on the notification of the FHRs rating to the outlet.
50. I did not get the impression that this was a systemic problem. However, I did sense an industry frustration and perception that there was no formal way businesses could raise these failings with the FSA and no apparent consequences for authorities persistently not adhering to the Brand Standard guidance. One authority in England confirmed to me that they do not currently, as policy, communicate the FHRs notification letter and other required

documentation to the Head Office for multi-site businesses, although they intimated they would if FHRS operated as a statutory scheme.

Recommendations

Recommendation 1 - There is evidence that some local authorities do not notify Head Offices for multi-site businesses of the FHRS rating for individual outlets. This is not in line with FSA Brand Standard guidance and potentially undermines industry access to the appeal safeguard. The FSA should remind LAs of their obligation to communicate ratings for individual outlets to Head Offices in the case of multi-site businesses and follow up with authorities failing to adhere to this obligation.

FSA oversight of current local authority safeguards

51. As stated previously, the statutory FHRs process in Wales and Northern Ireland have formal mechanisms in place which require local authorities to report to the FSA relevant information on safeguards. As such arrangements are in place through which local authorities provide quantitative data to the FSA on the operation of the safeguards, such as the number and outcome of appeals and requested re-rating inspections. Also, in both countries, where a decision is made to revise the food hygiene rating following an appeal, the local authority is required by the legislation to send information to the FSA. This information includes the original inspection report. In practice, I was informed that most local authorities send this additional information for all appeals they determine, although I understand that little routine qualitative analysis of the paperwork on those appeal decisions is carried out currently by officials in those countries
52. There are no similar central reporting arrangements in England, so no robust data is available to assess the operation of safeguards. Currently, there is also no central comparative analyses of the available FHRs safeguard data from the three countries. As such, there is no central evidence base or learning in relation to local authority delivery and industry use of the safeguard arrangements operating in Wales, Northern Ireland and England.
53. Little qualitative information on the operation of safeguards is routinely collected or discussed in the FSA or by stakeholders. Industry do not currently participate in the relevant Implementation Steering Groups overseeing FHRs delivery in Wales and Northern Ireland. The UK wide FHRs Steering Group, which does contain industry and other external stakeholders aside from local authorities, has not had a meeting since 2016. In all countries there has been extensive involvement of industry representative bodies in relevant working groups to help inform and facilitate legislation and key changes to FHRs. However, I heard of no routine forum for industry to discuss the current ongoing delivery of FHRs safeguards or allow them to routinely raise issues of concern
54. There is limited FSA audit activity in this area. A focused FHRs audit programme for English authorities was carried out in 2016⁵ which concluded authorities had a strong commitment to consistency training and internal monitoring but found some local authority notification letters to businesses did not contain the necessary evidence to support the rating given. This is consistent with concerns raised with me by industry representatives during my review that some local authority letters occasionally lacked the necessary detail and clarity. I must stress that I did not see any letters evidencing this during my review. Local authority audit programmes looking at FHRs delivery have been carried out in Wales. It is my understanding that the publication of the audit findings has been delayed due to issues arising in connection with the analysis

⁵ https://signin.riams.org/files/display_inline/45696/assessmentlaimplementationoperationfhrrs-04012018.pdf

of data submitted by local authorities. The report is currently being finalised and is due to be published Spring 2019.

55. No local authorities interviewed as part of the review had recently carried out local business satisfaction surveys on their operation of FHRS, though there are other mechanisms in all local authorities for individual businesses to 'Have their Say' or make formal complaints to the authority about service issues. No local authority representatives I spoke to were aware of any formal complaints received through their authority's independent complaints mechanism relating specifically to the operation of FHRS safeguards. Complaints relating to FHRS were sometimes received but these had been related to individual officers and their general approach rather than the authority's delivery of safeguards.
56. Overall, I have concluded that there is currently a lack of effective central FSA oversight on the operation of safeguards and little central comparative analyses of their delivery and use by businesses. FSA officials in Wales, Northern Ireland and England responsible for the operation of FHRS do routinely meet to discuss policy, but ongoing comparative analyses of relevant safeguard data does not form part of this process. Certainly, for England no central safeguard data is routinely collected to enable such discussion. As such, there is no robust quantitative information for the majority of businesses potentially accessing these safeguards to evidence whether local authorities are currently applying the safeguards fairly and effectively.
57. English local authorities I interviewed confirmed that they would support more central reporting on the use and outcomes of safeguards, similar to that operated in Wales and Northern Ireland, provided the reporting process was not burdensome. It is seen as potentially useful for local benchmarking purposes. Better reporting in England would also be consistent with wider Regulating our Future proposals for the FSA to have better central oversight of local authority activity.
58. I found the current lack of central FSA oversight and transparency inconsistent with (a) the flagship nature of FHRS; (b) the commercial implications of ratings for individual businesses; and (c) the continued pressure on local authority resources likely to impact their delivery of the safeguards.
59. I am aware that the FSA has been mindful to avoid excessive data burdens and costs on local authorities in relation to FHRS, especially in the case of England where FHRS remains a voluntary scheme. I also accept the difficulty getting industry or consumer representation at routine Implementation Working Group meetings and that any meeting must have substantive issues to discuss.
60. However, there is an overwhelming perception by industry that currently there is little central oversight of local authority delivery of FHRS safeguards and no apparent consequences for local authorities who fail to operate them effectively. Industry representatives confirmed that they find it difficult to access official information on the ongoing delivery and outcomes of safeguard

decisions, given the different reporting arrangements and data available. I saw no effective formal mechanism or current FHRS forum to allow industry or external stakeholders to safely and routinely raise concerns with the FSA or discuss relevant data.

61. Currently there is insufficient quantitative and qualitative oversight on local authority delivery of the FHRS safeguards. I would emphasise that I have not identified nor was I alerted to any systemic failings in local authority delivery or business access to the safeguards. It is simply that the current lack of robust data in England in my view presents a significant risk of reputational damage to FSA and to the FHRS Brand. It is also inconsistent with the need for a good evidence base on the routine operation of the safeguards as part of, or as a precursor to, any statutory FHRS scheme in England.

Recommendations

Recommendation 2 - There is insufficient data on the number and outcomes of requested re-rating inspections and appeals determined by local authorities in England. This is in contrast to the current position in Wales and Northern Ireland. The FSA should as a priority consider mechanisms to revise the current arrangements so that local authorities in England routinely provide this information to the FSA. Arrangements should be automated as far as possible to avoid burdens on individual local authorities.

Recommendation 3 - There is little oversight by the FSA on the implementation of FHRS safeguards in England and a lack of comparative analyses by the FSA of safeguard data and information currently provided by local authorities. Mechanisms should be put in place to collate and analyse relevant data for Wales, Northern Ireland and England to ensure the safeguards are being applied objectively and fairly to provide the FSA with a good evidence base and learning, and to support proposals for a statutory scheme and mandatory FHRS display in England.

Recommendation 4 - Little qualitative information on the implementation of safeguards is available and there is no routine mechanism or forum outside of individual local authorities for industry to raise and discuss important safeguard issues or concerns about local implementation. The UK FHRS Steering Group has not met for over 2 years. This Steering Group should be reconvened and qualitative and quantitative information on the ongoing use and delivery of safeguards generated from improved reporting and oversight arrangements should be routinely considered by the Group.

Recommendation 5 - Given the flagship nature of FHRS and the importance of transparency to improve understanding and maintain trust, consideration should be given to an annual FHRS Report or similar which includes collated and robust information on the take-up, use and outcomes of the FHRS safeguards across Wales, Northern Ireland and England

Recommendation 6 - Given the importance of effective FHRs safeguard delivery, the commercial importance the business of the rating and the positive impact FHRs generally is having on hygiene standards and consumer protection, there should be more FSA oversight on this area. Also, any future local authority Balanced Scorecard should include relevant Performance Indicators relating to safeguard processes, such as adherence to time limits, participation in consistency training, and required data reporting.

Right to reply

62. To ensure fairness to businesses, local authorities must have procedures in place to provide a 'right to reply' for FBOs to be published with their rating. This is to provide FBOs with an opportunity to explain to potential customers any actions they have taken to improve hygiene standards after a food hygiene rating has been given or to explain whether there were any particular circumstances at the time of the inspection that might have affected their rating.
63. A standard template form FBOs can use is available on the FSA website and local authorities are able to co-brand that document and make it available on their own website or in hard copy if requested by the business. The text can be edited by the local authority before it is uploaded to the FSA website to remove, if necessary, inappropriate or offensive remarks. Where texts are edited by the authority a copy of the revised text should be provided to the FBO for an opportunity to comment its prior to its publication. 'Right to reply' submissions should be processed and published as 'soon as possible and without undue delay'
64. Local authorities appear to be effectively highlighting this safeguard to relevant businesses in line with FSA guidance and no substantive concerns or issues about the 'right to reply' safeguard were raised by external stakeholders or local authorities during interviews.
65. Recent BMG research for the FSA which reported in April 2018 shows a good awareness of the 'right to reply' safeguard in businesses (77% in England, 75% in Wales and 83% in Northern Ireland). Despite this, the 'right to reply' is infrequently used and at the time of my review there were a total of 72 live 'right to reply' notifications posted on the FSA website. To access the 'right to reply' text, users need to click onto a separate page from the search results. I was informed that approximately only 15% of users do this, although it does indicate that the business has commented by showing 'what the business says' in the search result.
66. The BMG research, predominantly with individual traders, provided some background on why businesses do not use the 'right to reply' safeguard. The most common reasons (from an acknowledged small cohort), were either the business was waiting for improvements or they did not want to invest time on it. NB in Northern Ireland 30% of businesses said that they were not aware of the option although this finding was a bit of an outlier and not consistent with the other findings of the BMG research nor the general findings of this review.
67. My evidence, in contrast to the BMG research, was predominantly from trade bodies and representatives of national chains. No substantive concerns or issues were raised by them about the 'right to reply' safeguard. The general view from industry to explain the low take up was that their focus is on improving the rating as quickly as possible not spending time and resources in justifying a poor rating. There were also comments that replies can sometimes

be taken by local media as an admission of guilt and used as a soft quote, so there can be internal policy advice restricting an individual outlet's use of the facility.

68. Whilst the 'right to reply' safeguard is the least used of the three, I heard no comments for change or that the facility was no longer useful. Local authorities cited examples where they had encouraged FBOs to use their 'right to reply' to explain and help mitigate the impact of a low rating, where there had been exceptional circumstances. As such, most felt that this option should remain available in spite of its low take-up.
69. Given my findings, I have made no recommendations for improvement or change in relation to the current 'right to reply' safeguard.

Re-rating inspections

70. Local authorities must have a procedure in place for undertaking re-inspections or re-visits at the request of the FBO for re-assessing the food hygiene rating of their establishment.
71. This safeguard applies in cases where the FBO has been given a FHRs rating between '0' to '4' and has made the necessary improvements to address non-compliances identified during the local authority's original planned intervention.
72. Requests for a re-rating were the most used of the FHRs safeguards. Between 28th Nov 2016 and 27th November 2017 local authorities in Wales received 815 requests for re-rating inspections, representing approximately 15% of the 5,424 establishments rated 0-4. Data for Northern Ireland is yet to be officially collated and published. No data is currently held centrally for English authorities.
73. The arrangements in the statutory schemes operating in Wales and Northern Ireland for requested re-rating inspections differ significantly from the arrangements operated in some English authorities. The statutory schemes introduced a charge for requested re-rating inspections and removed the 3-month 'standstill' period before the re-rating inspection could be carried out, which previously operated in the voluntary scheme. Now, on payment of the relevant fee and once the business confirms the necessary actions have been completed, the authority is required to carry out the re-visit with a 3-month period. There is also no limit on the number of re-visits that the business is able to request to improve their rating, providing the relevant fee for each requested re-rating inspection is paid.
74. The statutory schemes operating in Wales and Northern Ireland have introduced consistency in the implementation of this safeguard and the fees charged by local authorities (£160 in Wales and £150 in Northern Ireland). In England, which still operates on a voluntary basis, changes were made to the Brand Standard in 2017 enabling local authorities in England to adopt a similar approach. It highlights that local authorities may use general powers in the Localism Act 2011 to charge a fee, on a cost recovery basis, for re-rating inspections.
75. In practice this usually involves the officers submitting a report to the relevant council committee to adopt the powers. Where the local authority charges a fee for the requested re-rating visit, the standstill period is not applicable, and the visit should take place within three months of the request being made. As in Wales and Northern Ireland, where a fee is charged there is no limit to the number of requested re-rating inspections, providing the conditions are met.
76. The approach to requested re-rating inspections in Wales and Northern Ireland and the recent changes to the Brand Standard in England regarding the Localism Act 2011 powers have been well received by industry and local

authorities alike. Industry stakeholders see a key benefit in being able to get a prompt re-rating inspection once they have made the necessary improvements, rather than wait for 3 months or longer. This chargeable service and no limit to the number of requested re-rating inspections is viewed very positively and seen as an important driver to improving standards.

77. On the basis of feedback from industry and LA stakeholders, most local authorities in England now appear to be charging for re-rating inspections as it is seen as beneficial to local businesses and it helps to resource local authority controls more generally, but not all do. I spoke to a number of local authorities as part of the review who do not charge for re-visits and had no immediate plans to do so.
78. Currently, there is no complete central data on the number of English authorities charging for requested re-rating inspections, nor complete information on the amount charged by individual local authorities. A FSA questionnaire in 2017 to English authorities showed a significant variation in charges (between £100 and £330). However, a significant number of authorities did not respond to the questionnaire and no doubt charges will be subject locally to periodic review.
79. Industry raised substantive concerns about the FSA's perceived 'hands-off' policy in England, as the ability to secure a prompt re-rating is viewed as a commercially important safeguard and one which encourages improvement. Certainly, the requested re-rating safeguard is generally favoured by industry over making an appeal. The FSA has no legal basis to compel local authorities to use the powers available under the Localism Act 2011 nor to set a central charge. This has resulted in an inconsistent approach and access to this commercially important safeguard. The current post code lottery to requested re-rating inspections in England, in terms of access and cost, is generating considerable frustration in industry. There is an overwhelming industry view, which I share, that access to this safeguard in England is inconsistent and unfair.
80. I also heard a number of comments that consideration could be given to a graduated fee structure for re-visits, where a higher payment might secure a priority re-visit eg a higher price for a faster service. I have made no recommendations in relation to this as I can see many problems with such an approach, not least fairness. But I heard enough comments to make me put the observation in this report. That aside, the concept of consistent and transparent charging is a feature of the wider government Better Regulation agenda, and the current FSA approach in England does not seem to align with this.
81. I understand that currently there are no powers enabling the FSA to interfere with LA charging structures although a statutory scheme would allow greater opportunity for the FSA to make charging mandatory. Even so, prior to any statutory scheme in England, consideration should be given to developing additional guidance for authorities on appropriate charges and achieving more

transparency on current local arrangements and the fees charged in individual authorities. This might help address the current lack of data and extensive variation.

82. A number of local authorities highlighted difficulties where businesses receive an improved rating, but not an FHRS 5. In these situations, the new rating cannot be displayed on the FSA website until after the appropriate 21-day appeal period has lapsed. There is currently no flexibility to override this hold period even where businesses confirm they will not appeal their rating and are keen for the rating to be published promptly. This hold period creates an inconsistency between the rating displayed at local establishments and the relevant information on the FHRS website. I heard that this had on occasions led to problems with local media, which used FSA website data to generate articles but those articles did not reflect current (improved) conditions at the relevant business. The automatic delay is also seen by some local authorities as inconsistent with the increasingly speedy services they provide to re-rate businesses to encourage prompt improvements and the increasing demand from consumers for timely and accurate data.
83. Industry and local authorities – albeit not all local authorities - saw a benefit from greater flexibility to allow a local authority to override the 21-day holding period where a business is willing to confirm they do not want to appeal their rating. The proviso was that any arrangement should be administratively simple and IT enabled. Consumer representatives I spoke to also accept this flexibility is reasonable on the basis that more consistent and accurate rating information would be provided to consumers.
84. I am not aware of any legal reasons preventing such a procedure although in terms of practicality I was advised that a standard form, signed by the FBO, might assist this process locally and that it might be useful to include this 'waiver' when uploading the rating so it is clear to the FSA. This would require a change to existing legislation in Wales and Northern Ireland as the 21-day appeal period is aligned to the statutory time periods, which I was informed cannot be by-passed by the completion of a waiver. The potential for inconsistency across the three countries might impact on any immediate consideration of this change in England but potentially it is something for future consideration as it was a point raised by many local authorities and unanimously supported by industry.

Recommendations

Recommendation 7 - The current requested re-rating safeguard arrangements in England are inconsistent and unfair to businesses. Although it is not for the FSA to decide whether English authorities should charge for requested re-rating inspections or on the amount of any charge, the FSA should as a priority consider mechanisms to get routine data for England on the adoption by authorities of powers under the Localism Act 2011 to provide a charge based requested re-rating service, and on the

charge being applied by individual authorities. This information should be published to provide greater transparency and challenge to the process.

Recommendation 8 - No robust data is currently held on the number and outcome of requested re-rating inspections in England. It is important to ensure there is consistent and fair access to this safeguard. As such, the FSA should consider appropriate non-burdensome mechanisms to routinely collect this data to help track and monitor the business use of this safeguard and its effective implementation by authorities.

Recommendation 9 – The approach to requested re-rating inspections in Wales and Northern Ireland and the recent changes to the Brand Standard in England to allow charging and remove the three- month ‘standstill’ period have been well received by industry and local authorities alike. In advance of any statutory scheme in England, the FSA should consider mechanisms to encourage and monitor local authority adoption of the Localism Act 2011 powers with the aim of improving transparency and consider providing further guidance and benchmark information to reduce the variation in both access to, and the cost of, requested re-rating inspections.

Recommendation 10 - The current automatic 21-day hold – the time in which the business operator may appeal the rating - before any rating below FHRS 5 is displayed on the FSA website has created occasional local problems and inconsistencies. It means that ratings displayed at establishments can differ from the information about the business on the FHRS website for a period. This is seen by industry and many local authorities as an unnecessary restriction on the accuracy of information to consumers and at odds with the prompt re-rating service now available, particularly where a business does not want to appeal their new rating and wants their rating published promptly. Consideration should be given to the scheme having greater flexibility for businesses to formally waive their right to appeal allowing the new rating to be published online without undue delay.

Appeals

85. Local authorities must have an appeal procedure in place for FBOs to dispute the food hygiene rating in respect of their establishment. Following the revisions to the Brand Standard in 2017, Wales, Northern Ireland and England now operate the same arrangements and timescales in relation to this safeguard
86. If an FBO wants to dispute a rating given by the inspecting officer, the FBO may appeal this. The appeal should be determined by the local authority's Lead Officer for food or by a designated deputy or by the Lead Officer for food or designated deputy in another authority. No officer involved in the production of the rating, or the inspection on which the rating is based should consider the appeal. The guidance is clear that the inspecting officer should have no role in any appeal and the appeal should be determined based on the paperwork evidencing standards found at the inspection. In some circumstances a visit to the premises might be necessary and is allowed, but it is the evidence of the standards of the premises at the time of the original inspection which will be considered.
87. In the first instance the FBO disputing their rating should be encouraged to discuss the issue informally with the inspecting officer to provide an opportunity to get further explanation of how the rating was derived and to potentially help address the matter without the FBO needing to formally lodge an appeal. All local authority correspondence examined and the feedback from stakeholders confirmed that considerable emphasis is placed on these informal discussions. Such discussion is considered time well spent by officers as it can avoid formal appeals which some Lead Officers reckoned on average took approximately 0.5 days of officer time.
88. FBOs have 21 days to lodge and appeal and any appeal must be considered by the authority and the decision communicated to the FBO within 21 days of the appeal date. During this time period the rating is not published on www.food.gov.uk/ratings
89. Appeals remain the most contentious of the safeguard provisions with industry perceiving the process as lacking independence from the rating authority. That aside, no substantive concerns were raised that appeals were not being processed and determined within required 21-day time limit. Local authorities and Lead Officers clearly view appeals as an important safeguard and appear to be prioritising resources accordingly. Data from Wales, where local authorities are required to provide this information as part of the statutory arrangements, show that a small number of appeals were not being determined by local authorities within the 21-day period (4 of 100 appeals processed between Nov 2016 and Nov 2017) and the data confirms that all appeals were determined within 25 days. Some delay is allowed for in the legislation in exceptional circumstances. In general, the available data and feedback shows this aspect of the safeguard appears to be working well.

90. The Welsh data⁶ shows there were 100 appeals made between 19 November 2016 and 27 December 2017, representing less than 2% of the 5,424 businesses rated less than FHR5 5.
91. Industry stakeholders stressed that their primary focus is to improve their rating and not appeal an individual rating decision, except in exceptional cases. There was also an underlying perception in industry that little is likely to change following an appeal. As such, their focus is on addressing any necessary actions and requesting a prompt re-rating inspection. This might account for the low number of appeals.
92. Local authorities emphasised that they encourage, both verbally and in FHR5 correspondence, informal discussion between the business and Inspecting or Lead Officer following any inspection resulting in a rating below FHR5 5. Local authorities felt that these informal discussions, their increasing use of digital photos (to evidence standards seen) and confidence in their rating quality control procedures tends to push business discussions toward requesting a re-rating rather than an appeal. In many instances I was informed that these discussions helped to clarify to FBOs that they were actually seeking a re-rating, not querying the standards found at the time of the inspection or the rating decision.
93. I heard persuasive evidence and looked at the findings of the 2016 FSA focused audit of FHR5 delivery in England, that some officers are not putting sufficient or clear enough information in their FHR5 notification reports and correspondence. Indeed, some Lead Officers confirmed that they have occasionally required additional information from the rating officer to effectively determine appeals they handled. In these cases Lead Officers did not uphold the appeal from the business - presumably because the conditions found by the officer and ultimately explained to the Lead Officer, justified the rating. However, this approach is not in line with the Brand Standard or statutory guidance so it is understandable that these cases can generate a lack of industry trust in the process
94. Some industry representatives commented that the reason for the low number of appeals was the perception that the determination process lacked independence and that officers of the council would invariably support officer decisions. Their perception is that appeals rarely resulted in a successful outcome for the business or a change to the rating.
95. The data, where available, paints a different picture. Welsh safeguard data confirmed that 15 of the 100 appeals determined between Nov 2016 and Nov 2017 resulted in a higher rating, with 1 appeal resulting in a lower rating. The self-reported 2018 BMG data from telephone interviews with businesses that had lodged appeals with local authorities, whilst less robust than the Welsh data, puts the number of appeals resulting in a changed and improved rating much higher. Additionally, the majority of businesses interviewed as part of the

⁶ <http://www.assembly.wales/laid%20documents/gen-ld11433/gen-ld11433-e.pdf>

BMG research felt their appeal was dealt with fairly or very fairly. See Figures 3 and 4 below:

Figure 3: Results of appeals as reported by businesses

| Result of appeal | England | Northern Ireland | Wales |
|------------------------------|---------|------------------|-------|
| Awarded a higher rating | 7 | 10 | 16 |
| Rating stayed the same | 3 | 1 | 2 |
| Awarded a lower rating | - | - | 1 |
| Waiting to hear back from LA | 6 | 5 | 10 |
| Don't know/other | 2 | - | 2 |

C5: And what was the result of this appeal?

Base: All long interview respondents that appealed the rating (England 18, NI 16, Wales 31)

Figure 4: Perceptions of fairness of appeals process

| Dealing with appeal | England | Northern Ireland | Wales |
|-----------------------------|---------|------------------|-------|
| Very fairly | 7 | 6 | 8 |
| Fairly | 5 | 7 | 17 |
| Neither fairly nor unfairly | 1 | - | 1 |
| Not very fairly | - | 1 | 1 |
| Not at all fairly | 1 | - | 2 |
| Don't know/ can't remember | 4 | 2 | 3 |

C6: And thinking about your appeal, how fairly do you think your appeal was dealt with by the local authority?

Base: All long interview respondents that appealed the rating (England 18, NI 16, Wales 31)

96. My interviews with Lead Officers led me to the view that there was no professional or collegiate resistance to upholding business appeals. Indeed, most officers readily acknowledged that inconsistencies can occur between officers and mistakes can be made. Hence the emphasis they placed on consistency exercises and training.
97. Industry stakeholders appeared mostly unaware that appeals can and in some cases do result in a higher rating – in the case of Wales 15% result in a changed and improved rating. Data for Northern Ireland are due to be published later this year albeit no data is collected for England. This general lack of transparency on the number and outcomes of appeals – the most contentious of the FHRS safeguards - has the potential to perpetuate concerns and mistrust. This lack of transparency needs to be addressed as a priority.

98. The ability for businesses to get a prompt requested re-rating inspection in Wales, Northern Ireland and many areas of England appears to have encouraged businesses toward the requested re-rating rather than appeal safeguard option. This has to an extent toned down previous calls from industry to have an FHRS appeal process fully independent of the rating authority.
99. A primary aim for industry stakeholders is to have a positive ongoing relationship with their local authority. I heard frequent references to a reluctance to challenge or appeal a low rating, even where the business thought it justified because it could risk undermining the relationship with the authority and a fear of potential wider consequences.
100. Industry stakeholders stressed that any appeal system needed to be quick, effective and fair. The majority view was that setting up an appeal panel independent of the rating authority had the potential to both increase costs and introduce delays. Local authorities, whilst not universally against having an independent appeal mechanism outside the authority (because appeals were so resource intensive) shared the concerns that it could introduce excessive paperwork, slow down the process and make the 21-day deadline much more difficult to achieve.
101. I am aware that many public sector bodies and regulators operate internal appeals and complaints processes, including schools, hospitals and the FSA's own review mechanism for meat approvals. This reflects a general trust in public services to take decisions that are fair and not conflicted. However, some industry reservations on the independence of the process remain, particularly given their perception that there is little effective FSA oversight or challenge in exceptional cases.
102. Whatever changes are considered, care is needed to ensure the changes do not obfuscate current local authority responsibilities to apply the FHRS ratings and safeguards effectively, and for appeals to be determined within appropriate deadlines - as currently. Given wider industry concerns about appeals upsetting ongoing relationship with local authorities, any changes which raise the stakes of appeals might also in practice discourage rather than encourage appeals.
103. Given, the issues and the findings outlined above, especially the preference for appeals to be quick and avoid creating a new 'appeals industry' (as some industry stakeholders warned against) I have not recommended an independent appeal mechanism outside of local authorities following my review.
104. The Brand Standard and statutory guidance currently allows local authorities to use officers from another authority to determine appeals. This adds a degree of further independence to the process, and a number of authorities told me that they are managing some of their appeals this way. No central FSA data is held on local authority approaches to individual appeals, so it is unclear how many authorities are using or have used this option. Certainly, industry seems largely unaware about developments in this area. This is unfortunate given it is seen

by a number of key industry stakeholders as an available but unused facility and a way to address some of their concerns about independence.

105. Some local authority Lead Officers who told me that have used this option did so because it was not possible to find an officer in the authority who had not had some involvement in the particular rating being appealed. This usually reflected thin local resources and that their ongoing internal consistency control mechanisms can draw in all available officers, particularly when the awarding of a low rating is being considered.
106. I heard from one industry consultancy that had requested another authority determine the appeal after their relationship and confidence in the rating authority had broken down. I understand that this request was accepted and this helped to respond to some of their concern. Industry stakeholders overwhelmingly favoured more clarity and guidance from the FSA on this option with a view to businesses being more able to request this facility in certain cases. This should be examined by the FSA as it would provide a further degree of peer review of the current appeal arrangements as well as address some of the remaining concerns about independence.
107. Businesses unhappy with any safeguard decision can always complain to the council through formal complaint procedures that all councils must have in place. Businesses are also able to complain to the relevant Local Government Ombudsman or in extremis apply for Judicial Review, in all countries. External stakeholders seemed well aware of these further complaint and appeal mechanisms, although no local authority or industry representatives I spoke to could recollect any complaints or referrals on FHRS safeguard issues made through these arrangements. Some formal local authority complaints have been received about FHRS issues but these were about officer competency and general handling, not in relation to the implementation of safeguards.
108. Whilst my findings must be moderated by the absence of central reporting in this area by authorities, and the potentially discouraging cost associated with the business applying for Judicial Review, the absence of complaints or referrals would seem to reflect well on local authority handling of safeguards. However, the FSA should consider whether there are mechanisms through which it might be made more routinely aware of complaints through these wider local authority arrangements as they could be a powerful indicator of performance and an alert to significant concerns. That said, a more routine route needs to be in place for industry to raise any issues or concerns with the FSA.
109. Currently, there is insufficient transparency on the use and outcomes of appeals, particularly in England. Reports on the implementation of FHRS, including the use and outcomes of the safeguards are published in Wales and due to published in Northern Ireland in 2019. But, there is no report which draws this information together, indeed this would not be possible currently given the lack of data on the delivery of safeguards for England.

110. In cases where the local authority revises a hygiene rating following an appeal, the legislation in Wales and Northern Ireland requires the local authority to provide certain details to the FSA, including information on the original inspection report and rating decision. I am unclear why the legislation does not require this for all appeals determined by authorities, although I understand most authorities do in practice provide their complete appeal dataset. Having this appeal documentation centrally provides opportunity for FSA to more qualitatively review the process, although I was informed that currently limited priority is given to reviewing the documentation unless specific concerns or issues are raised by businesses.
111. Given appeals remain the most contentious safeguard, I was surprised that more central oversight was not in place. Currently, no appeal data is collected or analysed for England even though this represents most UK food businesses and resources in English authorities which would potentially impact on their delivery of FHRS are generally significantly lower than in Wales and Northern Ireland. Information on the use and outcomes of appeals for Wales, Northern Ireland and England would enable comparative analyses of the application of this safeguard between individual authorities and countries and on the approach and use of appeals by individual companies.
112. This lack of data and transparency has the potential to fuel industry mistrust in the process and it prevents effective monitoring, oversight and learning by the FSA.
113. Any push for a statutory scheme in England will inevitably sharpen attention on the appeal mechanism and could potentially increase the demand for appeals, which are resource intensive for authorities. More data on the use of and the outcomes of appeals, and FHRS safeguards generally, such as the number and outcomes of requested re-rating inspections, will provide a better and ongoing evidence base that the safeguards are being operated objectively and fairly. This will also allow more effective ongoing central monitoring and review of local authority delivery

Recommendations

Recommendation 11 - There remains a concern amongst key industry trade bodies that the current local authority appeal process lacks independence and oversight. Currently, rating authorities can use another authority to consider their appeals, but this seems an infrequent occurrence and no central data is collected on this. Industry stakeholders overwhelmingly favoured more clarity and guidance from the FSA with a view to businesses being given more opportunity to request this option in certain cases. This should be examined by the FSA as it would provide a further degree of peer review to the current appeal arrangements and help address some of the remaining concerns a number of industry stakeholders have about the independence of the process.

Recommendation 12 - There is a lack of central data on the number and outcome of appeals in England, and limited FSA oversight or peer review in all countries of the process and decision making in individual authorities. Greater comparative analyses of the use and outcomes of appeals in Wales, Northern Ireland and England will provide more robust mechanisms to assess the effective implementation of appeals between individual authorities and countries, and the use of the appeal safeguard by companies. FSA should consider mechanisms through which it can better monitor and review - but not re-determine – relevant local authority documentation relating to all appeals to improve central oversight and where appropriate provide challenge.

Out of scope issues raised

114. During the review a number of issues were raised, which although important, were out of the scope of my review. These are outlined below, for information
115. Some industry stakeholders raised concerns that the current Code of Practice and Brand Standard guidance on assessing and scoring Confidence in Management lacks clarity on the relative importance of corporate safety systems and their implementation locally. They believe that the Brand Standard – or the Food Law Code of Practice - should be reviewed to provide further advice in this issue to ensure a more consistent interpretation with appropriate account given to corporate safety arrangements and relevant Primary Authority assurance regarding processes or procedures when officers determine Confidence in Management scores in local units.
116. Some industry safety representatives felt their food safety management systems often worked against them. Rating officers used failings or issues identified from company checks or audits, which often went higher than legal requirements, to justify low ratings. This sometimes resulted in disproportionately large drops in the Confidence in Management score and therefore the FHRS rating for the local unit with an impact on the company Brand. Their concerns were that too little account was being taken in the local Confidence in Management score of the company's systems and ability to secure rapid improvement. For example, it often proved difficult to get a prompt re-rating inspection and improve the unit's rating because of a continuing low Confidence in Management score, regardless that the company was able to take swift and radical action to implement and monitor improvements made. There was a call for clearer guidance on the assessment and scoring of Confidence in Management in the Code of Practice and Brand Standard, especially given the greater role for Primary Authorities and National Inspection Strategies in the future.
117. The ability to get a prompt requested re-rating inspection and appeal are very important for mobile or event businesses. Receiving a low rating can prevent units trading as event contracts often require businesses to have specified (high) FHRS rating. Concerns were raised about how safeguards worked in practice for these businesses (also pop up caterers or 'Dark Kitchens') as they tend to operate across authorities, can be seasonal or occasional in nature and more difficult to accommodate into inspection programmes. Although this was not raised as a significant problem currently, the FSA should give this future consideration as the current safeguard arrangements and timelines do not appear to fit well with the demands of these growing sectors.

Annex 1 - Stakeholders contacted or interviewed as part of the Review

Stakeholders contacted via Letter

| | |
|---|--|
| ABM Catering Ltd | Lidl UK GmbH |
| Acoura | Local authorities in England |
| Age UK | Local Authority Caterers Association |
| Aldi Stores Limited | Local Government Association |
| Allergy UK | London Retail Meat Traders Association |
| Anaphylaxis Campaign UK | Marks and Spencer plc |
| Arena - The Hospitality Network | Marston's plc |
| Asda Stores Limited | McDonald's Restaurants Ltd |
| Association of Cereal Food Manufacturers | Mitchells & Butlers plc |
| Association of Convenience Stores | MITIE Facilities Management |
| Association of Independent Meat Suppliers | Moto Hospitality Ltd |
| Association of Licensed Multiple Retailers | MQM Consulting |
| Autograph Food Services | Nando's Chicken Restaurants Ltd |
| Baguette Express Franchise Limited | National Association of British and Irish Millers |
| Bangladesh Caterers Association UK | National Association of British Market Authorities |
| BaxterStorey Limited | National Association of Catering Butchers |
| Bay Restaurant Group | National Association of Master Bakers |
| Bed and Breakfast Association | National Childbirth Trust |
| Bidvest 3633 | National Consumer Federation |
| Boots UK Limited | National Council for Voluntary Organisations |
| Brakes Group | National Council of Women of Great Britain |
| Brewing, Food & Beverage Industry Suppliers Association | National Farmers Retail and Markets Association |
| British Beer and Pub Association | National Federation of Fish Friers |
| British Institute of Innkeeping | National Federation of Fishmongers Ltd |
| British Meat Processors Association | National Federation of Women's Institutes |
| British Nutrition Foundation | National Governors Association |
| British Retail Consortium | National Halal Food Group |
| British Sandwich Association | National Market Traders Federation |
| Burger King UK Limited | Nationwide Caterers Association |
| Caffe Nero Group Ltd | Netmums |
| CAMPDEN BRI | Nisa-Today's (Holdings) Ltd |
| Center Parcs | NSF International |
| CFS Compliance | OCS Group UK Ltd |
| Charlton House Catering Services Ltd | Office for Product Safety & Standards |
| Chartered Institute of Environmental Health | Olive Catering Service Limited |
| Chicken Cottage Limited | Orchid Group |
| Cinema Exhibitors Association | Patients Association |
| Citizens Advice Bureaux | Pizza Express Restaurants Ltd |
| Coeliac UK | Pizza Hut (UK) Limited |
| Compass Group UK & Ireland | Praxis42 Limited |
| Consortium of Caterers in Education | Pret A Manger (Europe) Ltd |
| Consumers For Health Choice | Provision Trade Federation |
| Co-operative Group | Punch Taverns Plc |
| | Radley Consulting |

Department for Business, Energy & Industrial Strategy
 Diabetes UK
 Dolphin Public Health Limited
 Domino's Pizza Group Limited
 EAT Ltd
 Elior UK
 Federation of Bakers
 Federation of Small Businesses
 Federation of Small Businesses - Wales
 Finsbury Limited
 Food and Drink Federation
 Food Ethics Council
 Food Alert
 Food Score Limited
 Food Solutions Publishing Ltd
 Forum of Private Business
 Glaxosmithkline
 Gondola Group Limited
 Greater London Forum for Older People
 Greenstreet Berman Ltd
 Greggs plc
 Guild of Bangladeshi Restaurateurs
 Haemolytic Uraemic Syndrome Help
 Harbour & Jones Ltd
 Horticultural Trades Association
 Iceland Foods Limited
 Innpacked Training Consultants
 Institute of Hospitality
 International Meat Traders Association
 ISS Eaton Limited
 ISS Facility Services Healthcare
 J D Wetherspoon plc
 J Sainsbury plc
 John Lewis Partnership
 Just Eat
 K M B Caterers Ltd
 Kentucky Fried Chicken (UK and Ireland)
 Lexington Catering Company
 Restaurant Group plc
 Rural Shops Alliance
 Safer Food Scores
 SAI Global
 Scottish Bakers
 Scottish Retail Consortium
 Servest Catering Ltd
 Shield Safety Group
 Snack, Nut & Crisps Manufacturers Association
 Sodexo UK & Ireland
 Spar (UK) Ltd
 Spirit Pub Company
 SSP UK Limited
 Starbucks Coffee Company
 Stroke Association
 Subway International
 Support, Training & Services plc
 SVA Ltd
 Taylors of Harrogate
 Tesco Stores plc
 Trading Standards Institute
 Tragus Group Limited
 TransparencyData Ltd
 UK Health Forum
 UK Food Safety
 UK Hospitality
 Vegan Society
 Vegetarian Society of the United Kingdom
 Venners
 Waitrose Limited
 Web-Labs Ltd
 Wellbeing of Women
 Western Group Environmental Health
 Which?
 Whitbread Group plc
 Wimpy UK
 Wm Morrison Supermarkets plc
 YO! Sushi

Responses received by Letter

Anaphylaxis Campaign
 ASDA
 Borough of Poole
 Boston Borough Council
 Braintree District Council
 Chichester District Council
 Derbyshire Dales
 Greggs
 Innovate Services Ltd
 London Retail Meat Traders Association
 Marston's PLC
 National Craft Butchers
 Safer Food Scores Ltd
 South Derbyshire
 The British Sandwich & Food to Go Association

Organisations\Stakeholder's Interviewed

| | |
|---|---------------------------|
| Antrim and Newtownabbey Borough Council | Liverpool City Council |
| Ashford Borough Council | NCASS |
| Birmingham City Council | NIFDA |
| Camden Council | Norwich City Council |
| CIEH | NSF |
| City of York Council | Reading Borough Council |
| Food Alert Ltd | Salford City Council |
| FSA - Legal | Shield Safety Group |
| FSA - Regulating Our Future | SOFHT |
| FSA - Standards and Assurance Division | South Norfolk Council |
| FSA Wales | Tamworth Borough Council |
| FSA Northern Ireland | UKH Food Experts Group |
| Federation of Small Businesses | Welsh FHRs Steering Group |
| Isle of Wight Council | Which? |
| JUST EAT | |
| London Food Coordinating Group | |
| Retailer's Health & Safety Benchmarking Group | |