

Food Hygiene Rating Scheme Appeals and Right to Reply Policy

As part of its Food Hygiene Rating Scheme (FHRS) consistency framework, Derbyshire Dales District Council has an appeals procedure to ensure fairness to businesses. This policy covers the appeals procedure for Food Business Operators (FBOs) to dispute the food hygiene rating given in respect of their establishment if they consider it to be unjust.

Introduction

Following a food hygiene inspection of an establishment by an officer from the District Council, the FBO will be told in writing within 14 days (this includes weekends and public holidays) what the establishment food hygiene rating is.

If an FBO considers that the food hygiene rating given by the inspecting officer is unjust, they may appeal the rating to the Principal Officer in Environmental Health, or in their absence the Head of Regulatory Services.

Prior to any appeal we would encourage informal discussion between the FBO and the inspecting officer, but where an individual case cannot be resolved then this policy shall apply.

The appeals policy applies to appeals against food hygiene ratings given at an initial inspection and at any subsequent re-inspection, including a re-inspection requested by the FBO in connection with an appeal. An appeal is **not appropriate** in circumstances where an FBO has requested a re-inspection for re-rating on the basis that non-compliance(s) identified at the time of the initial intervention have been rectified.

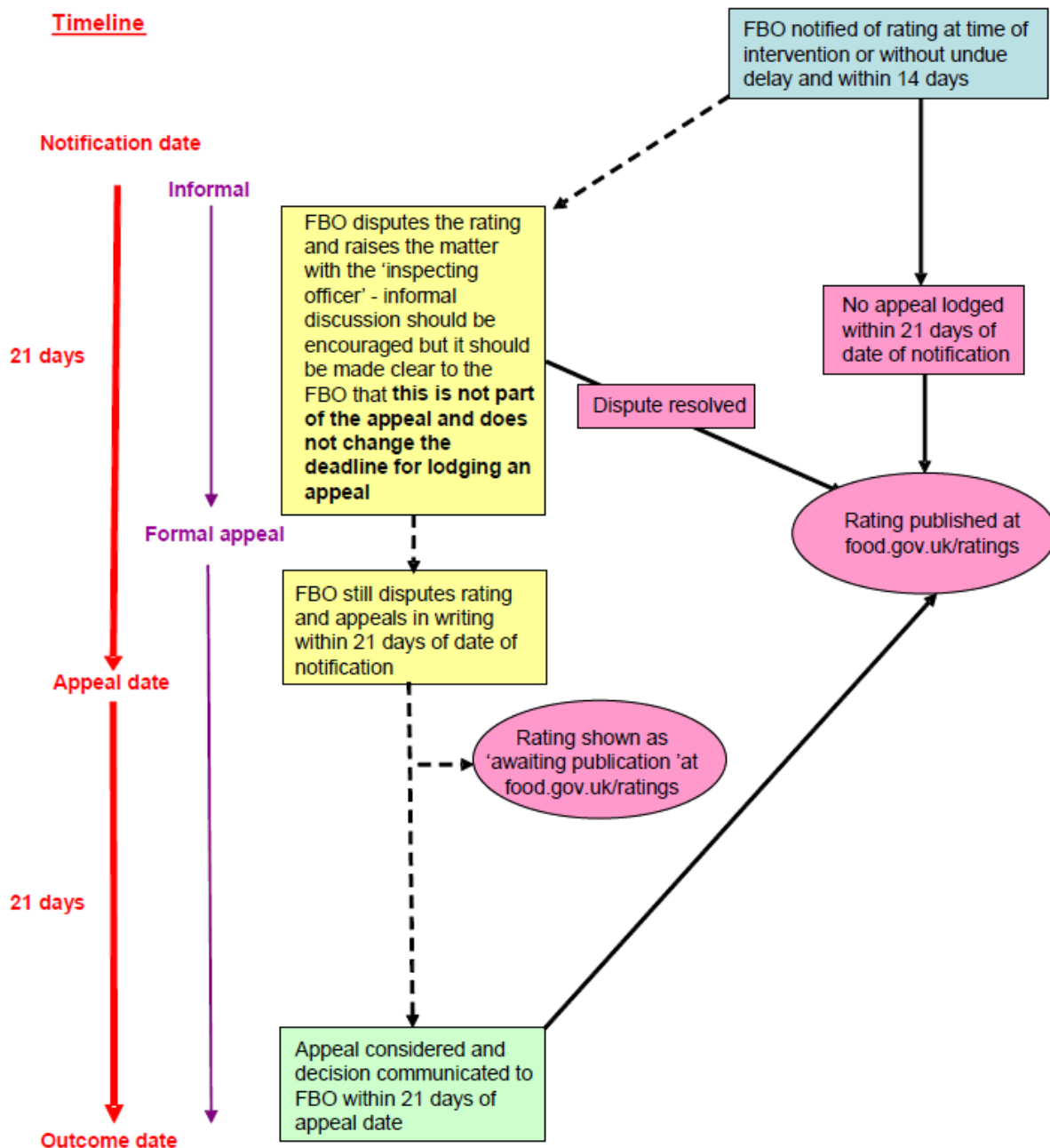
The appeals policy and procedure apply from the point in time at which an appeal is considered to have been made in accordance with the requirements below, and continue to apply until the appeal has been determined by the nominated officer.

Although not part of the Food Hygiene Rating Scheme (FHRS) appeal procedure, the FBO may still use the District Council formal complaints procedure (including taking the matter to the Local Government Ombudsman where appropriate) if they are dissatisfied with any aspect of our services.

Means of Appeal

The appeals procedure is illustrated in the flowchart below.

Flowchart illustrating the appeals procedure



Notes

Any reference to numbers of 'days' includes weekends and bank holidays.

Sufficient legal protection is given to FBOs if appeals against a disputed food hygiene rating are determined by the Lead Officer for Food or a designated deputy (or by the Lead Officer for Food or a designated deputy in another authority). There is no legal requirement for the local authority's complaints procedure to form part of the FHRs appeals procedure. This does not, however, prevent an FBO from using the complaints procedure where s/he is dissatisfied with any aspect of the authority's services.

Notification of an appeal

1. An appeal must be made by the FBO in writing by:
 - a) fully completing the FHRS appeal form on the Derbyshire Dales District Council website and sending it to the Principal Officer, Environmental Health by an acceptable means of delivery; or
 - b) fully completing the template appeal form provided on the national FHRS website and sending it to the Principal Officer of Environmental Health by an acceptable means of delivery.
<http://www.food.gov.uk/multimedia/worddocs/fhrsappealform.doc>
2. Acceptable means of delivery of an appeal form includes:
 - a) giving by hand an appeal form to an authorised officer of Derbyshire Dales District Council;
 - b) posting an appeal form addressed to the Principal Officer, Environmental Health;
 - c) emailing an appeal form to the Principal Officer, Environmental Health at envhealth@derbyshiredales.gov.uk ; or
 - d) faxing an appeal form to the Principal Officer, Environmental Health on 01629 761165.

Time Limit for Appeals

1. An appeal must be made by the FBO within 21 days of the notification of the food hygiene rating. After the 21 day period has expired, the food hygiene rating will be published on www.food.gov.uk/ratings if no appeal has been lodged.
2. No appeals will be considered later than 21 days after notification, unless at the discretion of the nominated officer/s.
3. With respect to appeals sent by post, the rule established by Section 7 of the Interpretation Act 1978 will be applied.

An appeal will therefore be regarded as having been made by properly addressing, pre-paying and posting a letter informing the Principal Officer that an appeal is being made, so that the day on which the letter would be delivered in the ordinary course of post falls within 21 days of notification of the food hygiene rating. Proof of posting should therefore be retained by the FBO so that this can be verified if necessary.

It will be taken that delivery in the ordinary course of post was effected:-

- a) in the case of first class mail, on the second working day after posting;
 - b) in the case of second class mail, on the fourth working day after posting.
4. For delivery by email or fax, the appeal will be regarded as being made when a fully completed appeal form is received by Derbyshire Dales District Council by such means of delivery.

Determination of Appeals

1. Appeals will be determined by the nominated officer.
2. A visit, or visits, may be made to the food business to assist with the determination of an appeal.
3. If the FBO disagrees with the outcome of the appeal they can challenge the decision by means of judicial review, or they can have recourse to the District Council complaints procedure or the Local Government Ombudsman where appropriate.

Time Limit for Determining Appeals

1. Appeals will be determined as soon as possible, and within a maximum of 21 days from the date that the appeal was made.
2. Until the outcome of the appeal is determined, www.food.gov.uk/ratings will show that for the establishment in question the assessment of hygiene standards is 'awaiting publication'.

Right to Reply

1. FBOs have a 'right to reply'. The purpose is to enable the FBO 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 inspection. The 'right to reply' is not to complain about or criticise an inspecting officer.
2. Comments can only be accepted in writing by:
 - a. fully completing the FHRS 'right to reply' form on the Derbyshire Dales District Council website and posting, emailing or faxing it to the Principal Officer, Environmental Health; or
 - b. fully completing the template appeal form provided on the national FHRS website and posting, emailing or faxing it to the Principal Officer, Environmental Health.
<http://www.food.gov.uk/multimedia/worddocs/fhrsrighttoreplyform.doc>
3. The form will be reviewed by the nominated officer before publishing the text on www.food.gov.uk/ratings against the record for the establishment. Publishing of comments will be undertaken as soon as possible, and with a maximum of 1 month from receipt of the form. Any offensive, defamatory, clearly inaccurate or irrelevant remarks will be removed.
4. 'Right to reply' comments will automatically be removed from the establishment record at www.food.gov.uk/ratings when a rating from a more recent inspection or re-visit to the establishment is published.

Additional information

Further questions and answers regarding appeals and the 'right to reply' can be found in the FHRS 'Brand Standard' published by the Food Standards Agency and available at <http://www.food.gov.uk/enforcement/enfcomm/fhrssteeringgroup/hygieneratingsguidance/>

Definitions

"day" or "days" means any day or days of the week, including weekends and bank holidays.

"food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food;

"food business operator" (FBO) means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control;

Contact details

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