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## Section 6: Appeals

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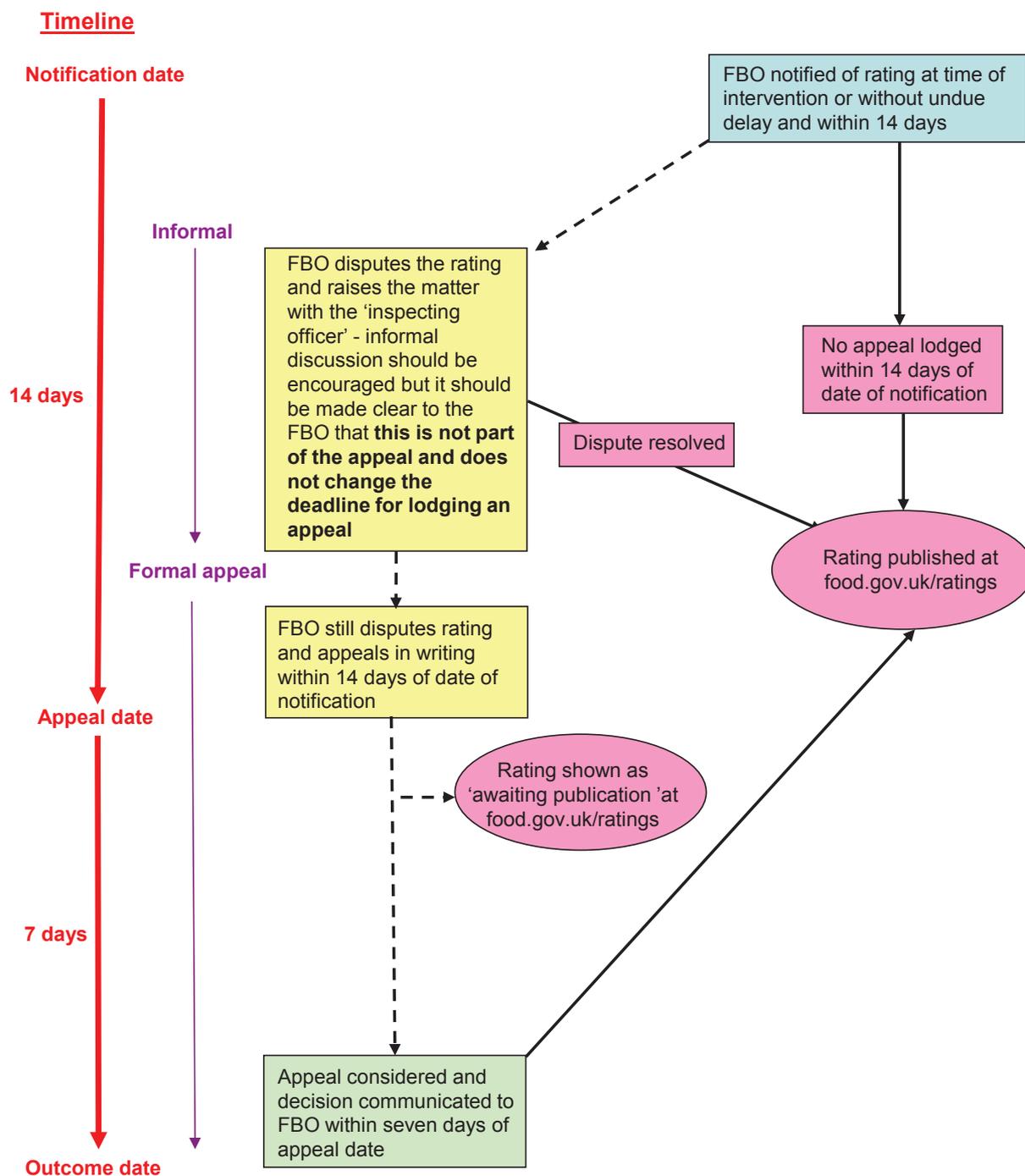
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### Introduction

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- 6.1 To ensure fairness to businesses, local authorities must have an appeal procedure in place for FBOs to dispute the food hygiene rating given in respect of their establishment.
- 6.2 The FHRS appeal procedure is illustrated in the following flow chart. In essence, if an FBO wishes to dispute the food hygiene rating given by the 'inspecting officer' (i.e. the officer undertaking the intervention) on behalf of the local authority, the FBO may appeal this. The appeal should be determined either by the local authority's Lead Officer for Food or by a designated deputy or by the Lead Officer for Food or a designated deputy in another authority that is also operating the FHRS. No officer involved in the production of the rating, or in the inspection on which the rating is based should consider the appeal.
- 6.3 An FBO disputing a rating should be encouraged to discuss this informally first with the 'inspecting officer' so that there is an opportunity to help explain to the FBO how the rating was worked out as this may help resolve the matter without the FBO having to lodge an appeal. Any such discussions do not form part of the formal appeal process and do not change the deadline within which an appeal must be lodged. This should be made clear to the FBO so that they may lodge an appeal, and may subsequently withdraw it, if they wish.
- 6.4 Guidance in Q&A format is provided below to assist local authorities in operating the appeals procedure and in providing information to businesses about this.

## 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 that is also operating the FHRS). 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.

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

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

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

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

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

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

A3. The appeal has to be made in writing within the period of 14 days beginning with the date of notification.<sup>21</sup> The numbers of 'days' includes weekends and bank holidays.

A standard template form that FBOs may use to appeal the food hygiene rating is available [here](#). A version for co-branding is available on the FHS resources page of the FSA website at [www.food.gov.uk/fhrsresources](http://www.food.gov.uk/fhrsresources) so that local authorities may download it, add their logo and relevant contact details, and provide it to FBOs via their own websites or in hardcopy form if requested to do so - a copy is provided at [Appendix 2](#).

After the 14 day period has expired, the food hygiene rating will be published at [food.gov.uk/ratings](http://food.gov.uk/ratings) if no appeal has been lodged.

### **Q4. Should appeals lodged later than 14 days after the notification of the food hygiene rating be considered?**

A4. No. Appeals must be made within 14 days of the notification of the food hygiene rating. After this time, the rating should be published at [food.gov.uk/ratings](http://food.gov.uk/ratings).

For multi-site businesses, the start of the appeal period is triggered by the date of notification of the rating to the outlet.

### **Q5. Is there scope for informal discussion about ratings?**

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

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<sup>21</sup> The rule established by section 7 of the Interpretation Act 1978 will also be applied in respect of lodging of an appeal by the food business operator with the local authority Lead Officer for food (see also footnote 15). Under that rule as applied for the purposes of appealing the food hygiene rating, an appeal will be regarded as having been made by properly addressing, pre-paying and posting a letter informing the local authority Lead Officer for Food that an appeal is being made. It will be regarded as being effective at the time at which the letter would be delivered in the ordinary course of post.

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

**Q6. Where the food hygiene rating is being appealed, should the rating in dispute be published at [food.gov.uk/ratings](http://food.gov.uk/ratings) and displayed at the establishment?**

A6. Until the outcome of the appeal is determined, [food.gov.uk/ratings](http://food.gov.uk/ratings) should show that, for the establishment in question, the assessment of hygiene standards is 'awaiting publication'.

At the time of notification of the rating that is now in dispute, the business should be requested to destroy any sticker (and certificate) they have for the previous rating and reminded that to continue to display these after the appeal period may constitute an offence under trading standards legislation for example an offence under the Consumer Protection from Unfair Trading Regulations 2008 (see [Section 9](#), Q&A 3).

**Q7. Who should determine appeals?**

A7. Appeals should be considered by the Lead Officer for Food or a designated deputy or the Lead Officer for Food or a designated deputy in another local authority that is also operating the FHRS.

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

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

**Q9. How is the appeal determined?**

A9. The paperwork associated with the intervention and the food hygiene rating given should be considered.

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

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

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

**Q11. When will the food hygiene rating be published at [food.gov.uk/ratings](http://food.gov.uk/ratings) following an appeal?**

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

**Q12. Can an FBO appeal a ‘new’ food hygiene rating given following a re-inspection/re-visit that they have requested?**

A12. Yes. As with the initial assessment, an FBO may appeal in such cases if the ‘new’ food hygiene rating is disputed. Appeals must be made within 14 days of the notification of the rating. After that period has expired, the food hygiene rating should be published at [food.gov.uk/ratings](http://food.gov.uk/ratings) if no appeal has been lodged.

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

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

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

The FSA’s Independent Business Appeals Panel, which applies to businesses in England (see <http://food.gov.uk/business-industry/how-to-make-an-appeal/panel/>), is not a route for redress in cases of disputed food hygiene ratings.

**Q14. If an FBO challenges a decision via judicial review, what should be published at food.gov.uk/ratings?**

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

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

A15. No. Sufficient legal protection is given to FBOs if appeals against a disputed food hygiene rating are determined by the Lead Officer for Food or a designated deputy or the Lead Officer for Food or a designated deputy from another local authority that is also operating the FHRS. There is no legal requirement for the local authority complaints procedure to form part of the FHRS appeals procedure.

This does not, however, prevent an FBO from using the local authority’s complaints procedure where s/he wishes to complain about the process followed in delivery of a service.