

WRS Board: 16 February 2023

Food interventions: Post pandemic recovery programme and next steps

Recommendation | **That the Board notes the Report and that members use the contents of the information provided in their own reporting back to fellow members of the partner authorities.**

Background | Members will be aware that the six district councils are responsible for delivering official food safety controls and related activities in most food establishments in Worcestershire to ensure that businesses are complying with the relevant requirements of food law and to enforce those requirements where necessary. WRS undertakes these activities on behalf of all six local authorities. These control activities include inspections, audits, surveillance, sampling and other types of interventions such as projects and questionnaires. Prior to the pandemic, Local Authorities were expected to undertake all official controls and related activities prescribed in specific legislation and those contained within specific FSA guidance and Codes of Practice.

At the beginning of the pandemic response, the FSA suspended the routine food hygiene intervention programme in recognition of the challenges local regulatory services faced in protecting our communities from COVID-19. The suspension also reflected the changing business landscape, with many food businesses closing or changing operations due to the Covid control regime.

At its Board Meeting 26 May 2021, the FSA set out its plan for the recovery of local authority (LA) programmed food interventions and related activities. The plan described two phases running from 1 July 2021 to April 2023 and beyond. It focussed on re-starting the regulatory delivery system in line with the Food Law Codes of Practice for the highest risk establishments while providing greater flexibility for lower risk establishments. The plan also set out arrangements for monitoring LA delivery during the recovery period. This report describes the progress WRS is making in implementing the recovery plan locally.

Report | We are now in the final phase of the two-year FSA Recovery programme introduced post pandemic . Every Local Authority had a long list of overdue inspections. The timeline and action set out by FSA is as below together with WRS outcomes.

We have regularly provided quarterly progress reports to the FSA on behalf of Partners

The total of overdue interventions across the county at the start of the 2022-23 financial year was over 3,500 existing registered businesses. During any year we also expect to deal with 700-900 new businesses. As we have always had a high level of FHRS compliance, the numbers with Category A and B (low Food Hygiene Rating Scheme: FHRS) scores were <5% of our total. Officers have, therefore, been able to conduct a wide range of visits across all FHRS ratings.



In reading this report members should note that:

- Business compliance rates remain high with some 98% of business still scoring FHRS Levels 3 to 5 meaning that they are deemed generally compliant.
- Food inspection reports left by officers with the food business operator are not subject to Freedom of information requests but are freely releasable on request under the FHRS Brand Standard (www.food.gov.uk/brandstandard) The local press frequently reports on poorly performing businesses which we believe assists in driving up standards generally.
- Where a business changes hands the previous rating immediately ceases.

Current Competent Officer Status

Inspections of high-risk premises (restaurants, cafes, pubs, schools, care homes, retail, mobiles) always requires a physical presence. Each inspection takes approximately two to three hours to complete allowing for travel time and the detailed recording of visits which is required to fulfil both FSA reporting and internal intelligence gathering requirements.

Resources available to carry out increasingly complex food work will always remain an issue when the demand across the whole of the Environmental Health Service is taken into account (especially nuisance complaints which seem to rise each year). Food inspectors have specific (high level) competency requirements under the FSA Food Law Code of Practice. On any one day we are unlikely to have more than 6 competent officers available. During 2022-23 we have been able to continue with some backfill during the latter stages of Covid support funding. However, the pool of competent contractors is much reduced, and we can no longer rely on immediate availability even if we are able to backfill.

Regulatory Support Officers (RSO)

To support our Environmental Health Practitioners who undertake wider duties (i.e. nuisance, public health, health and safety) we piloted a dedicated food RSO role to the service early in 2022. Most were former Covid advisers. We now have one person left to support CEH team. This has proved to be a high value role enabling WRS to undertake the low risk food visits, sampling and FHRS sticker compliance checks that we would lack time to undertake on a regular basis.

Changing Landscape

Covid brought major challenges to food businesses, although many were able to diversify and survive. Now businesses face an economic crisis with staff shortages, increased fuel costs and inflationary food costs of up to 20%, all in a declining market. Premises are adapting by reducing opening hours, changing from restaurant to takeaway, changing menus and suppliers. There are signs of increasing closures of businesses although currently the numbers are being replaced by new premises registrations.

Intelligence led

We no longer base our food intervention programmes on inspection dates set in the national Food Law Code of Practice which are automatically generated by our IT system. Instead, we record and consider intelligence through Tactical Assessment programmes. This opens up many options including sectoral approaches (e.g. geographical, new premises, ethnics, bakeries, small retail), specific projects (e.g. sampling, FHRs sticker checks, arising from complaints). The FSA is now considering a similar model as part of its ABC Review and in November they visited WRS to see how our system worked.

Inspections

Between April 2022 and the end of January 2023 WRS completed 1788 inspections. Whilst the data below indicates we continue to have high levels of compliance officers report that they are increasingly finding more premises with major non-compliances, particularly in the independent sector. As we enter 2023, we still need to complete over 600 interventions (including new premises) to meet the FSA Recovery Plan. About half of these are in the High-Risk category and we should be close to achieving this by end of March.

There is no doubt the majority of Food Business Operators value the personal contact of visits not only to provide them with support but to help ensure a level playing field across the sector. Resource constraints have reduced the supportive action we can give but we do offer a paid for advisory service of up to two hours, and the focus of our routine inspections is to provide support and advice to business unless circumstances are such that a more formal approach is needed to address serious non-compliance.

Visits carried out with FHRs rating			
FHRs	20/21 Full Year	21/22 Full Year	22/23 To end Jan 23
0	2	5	5
1	13	58	35
2	2	30	24
3	18	166	116
4	39	322	247
5	514	1500	1361
Total	588	2081	1788

47 Hygiene Improvement Notices have been served on 25 premises in the previous three-years. The breakdown of these by food hygiene rating is outlined below. As might be expected, most relate to lower scoring businesses but even better run businesses can make mistakes.

Food Notices Served by FHRS			
Notices Served	20/21 Full year	21/22 Full year	22/23 To end of Jan 23
L5	0	1	1
L4	1	2	0
L3	7	4	1
L2	0	1	1
L1	1	5	12
L0	0	4	6
Totals:	9	17	21

Food Hygiene Rating Scheme (FHRS)

The continuing importance of FHRS to the majority of businesses must not be underestimated. Bonuses are paid by some companies to managers who maintain Level 5 standards, for others it can ensure contracts or being accepted to operate at events. Inevitably, with the current pressures on hospitality, some food business operators are becoming more 'aggressive' when they get a reduced FHRS Score.

The outcome is more appeals and more re-rating requests. Re-ratings are only done for a fee (£165 rising to £178 from 1 April) and operators have been known to put considerable pressure on officers for immediate responses. For FHRS Level 4/Level 3 officers are authorised carry out the process, for Level 2-Level 0 there is a specific process undertaken through the Food Lead Officer. The revisit period can be up to three months if the premises has such a poor history that WRS feel it must prove it can now manage food safety effectively. Below is a snapshot of the FHRS ratings on 1 February 2023 for our 6066 food premises:

FHRS	Bromsgrove	Malvern Hills	Redditch	Worcester	Wychavon	Wyre Forest
L5	740	680	428	771	952	596
L4	116	112	70	96	156	125
L3	42	37	58	43	95	62
L2	2	4	6	3	9	7
L1	4	8	5	4	11	3
L0	1	0	1	0	1	1
Unrated	83	101	211	126	179	117
Total	988	942	779	1043	1403	911

There are also indicators from RSO visits that many businesses who get a reduced score do not remove the former higher FHRS sticker (they cannot be removed at the time of inspection because of the appeal period). We are implementing a new system which will enable us to carry out periodic checks. It could be an offence under the Consumer Protection from Unfair Trading Regulations 2008 to display an incorrect FHRS score, but to date advisory action has always led to compliance.

Poor performing businesses

Whilst the number of poor premises remains well below 5%, the time spent on these businesses is high, in some cases amounting to up to the equivalent of three weeks work to resolve issues (i.e. some 100 hours per premises). If the decision is made to prosecute then it can be further months of work to bring a case to the courts. Your Officers currently have four prosecutions pending with a Simple Caution having been issued to a Malvern food business in mid-January.

The common areas of non-compliance are food safety paperwork (having no food safety management system will immediately reduce FHRS to a Level 1- Level 2 maximum), poor cleaning, pest control, allergen safety and lack of staff training.

We operate a Food Lead review process in respect of premises where three consecutive poor FHRS scores have been issued i.e. Level 0- Level 3. For these premises, visits will be more frequent to ensure that standards improve. If they do not, they will either be informally interviewed or sent a letter from the Food Safety Lead. In most cases where these systems have been used, improvement has been made and maintained.

Enforcement Powers

There are several options available for enforcement, which can be found in the WRS Enforcement Policy endorsed by Members and available at the website. All businesses are left a written compliance report. The next steps for escalation include service of Hygiene Improvement Notices [HIN] and formal closure through a Hygiene Emergency Prohibition Notice [HEPN]. HINs can be issued by officers, HEPN must subsequently be approved by a court Order. We are also now responsible for recovering costs awarded by the Magistrates for such actions, which presents its own difficulties.

Many of the public ask why poor premises are not closed more often. The simple answer is that the FSA Food Law Code of Practice has very specific requirements for closure which set a very high bar and are not often met. Prosecution is the option of last resort in this graded enforcement approach. Unfortunately, we have had cause to pursue this latter course of action with four businesses in the past year (several cases are still *sub judice* so premises cannot be listed here by name but include a public house, a food manufacturer, a bakery and an ethnic restaurant).

New Premises

Despite the financial climate we continue to receive some 30 new food registrations per week across all sectors. On current registration numbers will be slightly down on the Covid years of 2020-early 2022. We continue to prioritise rating visits to this sector (unless we have intelligence to the contrary, we operate a policy of two months to achieve this which we feel is an appropriate time to allow the business to establish its operations).

There seems to be an emerging pattern of more businesses opening/re-opening without registering (which is free) with WRS (can easily be done online). We are currently finding 3-4 a week, some of which are businesses that have been closed for a period and then re-opened

under new management. It is impossible with limited resources to make physical checks on all, but we are looking to improve monitoring systems for the coming year. A table of new registrations by type is outlined below:

New Food Registrations by Premise Type			
Premise Type	20/21 Full year	21/22 Full year	22/23 To end Jan 23
Caring Premises	10	24	16
Distributors/Transporters	9	12	7
Hotel/Guest House	12	5	6
Importers/Exporters (EU)	4	16	7
Manufacturers and Packers	19	22	10
Mobile Food Unit	75	86	64
Primary Producers	7	3	3
Pub/Club	88	59	53
Restaurant/Cafe/Canteen	106	137	157
Restaurants and Caterers – Other	24	14	9
Retailer – Other	383	212	117
School/College	24	27	22
Small Retailer	61	63	41
Supermarket/Hypermarket	3	1	7
Takeaway	71	114	70
Total	896	795	589

This can be compared with those that have ceased trading.

Food Premises closed by Premise Type			
Premise Type	20/21 Full year	21/22 Full year	22/23 To end Jan 23
Caring Premises	8	32	49
Distributors/Transporters	6	8	15
Hotel/Guest House	12	25	19
Importers/Exporters (EU)	0	9	4
Manufacturers and Packers	7	23	12
Mobile Food Unit	36	57	105
Primary Producers	2	4	15
Pub/Club	73	74	79
Restaurant/Cafe/Canteen	70	122	122
Restaurants and Caterers - Other	16	29	63
Retailer – Other	55	165	231
School/College	16	25	26
Small Retailer	30	55	85
Supermarket/Hypermarket	0	3	4
Takeaway	50	96	81
Total	381	727	910

Service Requests

The table below outlines volumes of requests for service in the previous 3 years. As members will see, the volume of complaints about premises is roughly the same as the level of requests from the business community for support.

Service Requests	20/21 Full Year	21/22 Full Year	22/23 To end Jan 23
Food - Alert (FSA Notification Only)	6	28	8
Food - Business Re-Rating Request	16	72	48
Food – Complaint	401	533	308
Food Project for WRS	3	3	1
Food – Enquiry	542	698	387
Food - Export Health Certificates	74	98	72
Food - Hygiene of Premises Complaint	96	111	115
FHRS Appeal	-	8	9
Totals:	1138	1551	948

Food Sampling

We use our Regulatory Support Officers to assist in undertaking sampling. The majority of our samples are environmental e.g. surfaces, tea towels, sponges (the latter two produce consistently unsatisfactory results). During the run up to Christmas we also sampled pates, again with some Unsatisfactory results. In every case the business is advised of the outcome and appropriate advice given. Your team will be carrying out further sampling before the end

of March after which full analysis of the results will be available.

Sampling			
District	20/21 Full Year	21/22 Full Year	22/23 To end Jan 23
Bromsgrove	0	43	13
Malvern	5	26	30
Redditch	5	14	13
Worcester	8	21	11
Wychavon	27	11	19
Wyre Forest	4	47	17
Primary Authority	0	1	0
Totals:	49	162	103

Low Risk Premises

Although not a priority in the FSA Recovery Programme your team continue to send out self-assessment questionnaires to low risk retail, cakemakers, community centres, sports clubs, wet bars, etc which make up some 30% of our registered businesses. Our RSO has also been able to make visits to premises some of which have not seen an officer for over 5 years. A common non-compliance in small retail premises has been sale of food past its "Use By Date". Again, we follow an advisory option in the first instance.

Interventions due 2023-24

1740 premises are listed, with an additional 750 New Premises plus any outstanding inspections from previous years. This continues to represent a very challenging area of our work in terms of significant demand and draw on resources.

Additional Food Work

Primary Authority (PA) Partnerships

We continue to offer Primary Authority Partnerships to several food businesses for which we recover costs. Our current partners, set up under the Enterprise Act and approved by the Secretary of State in BEIS, are with Aspens Food Services (over 450 mainly educational outlets), Alimenti Food Science (a small consultancy), Kelsius (providing food safety monitoring equipment internationally), Mindful Chef (on line food orders working out of Redditch), Servest (over 600 catering outlets), Venture Events (wedding and events operator with c 10 premises) and My E Chef (provides food safety management systems for small businesses).

In each case we are legally required to work with the business to ensure they comply with the law, holding regular meetings and providing advice on their systems.

The role of PA is likely to become more important under the FSA national review. Your Food Safety Lead currently chairs a national panel of Local Authorities for the Hospitality and Catering Sector. This is a new role which BEIS wish to develop as part of their relationship with local authorities.

Export Certificates

WRS continues to offer a paid for export certificate service, primarily to two companies (Microferm in Malvern and Dawn Foods in Wychavon) with whom we have a close working relationship. We have only experienced difficulties on two occasions to date, and these were with regard to imports into Turkey).

Allergens

Without doubt one of the biggest challenges for businesses and food officers remains achieving allergen compliance. As previously reported the major issue is not with larger businesses but with smaller independents who are still struggling to comply. Whilst many businesses constantly change suppliers due to costs, they do not update their allergen records. Our work in this area is done jointly with Trading Standards. We are currently reviewing how we advise businesses to achieve better compliance.

Conclusions

In common with all local authorities, the backlog of interventions across Worcestershire following the pandemic remains very challenging in terms of numbers, but Members can be assured that we have a very high base of 98% broadly compliant operations (i.e. businesses scoring 3 or more on the Food Hygiene Rating Scheme or FHRS.)

The prioritisation and initial inspection of new food businesses is a key concern given the numbers involved and the resource required.

We also face difficulties in recruiting new officers and contractor resource. It is anticipated that recent changes to the Codes of Practice in England and Northern Ireland, which widens the baseline qualifications that demonstrate competence and the implementation of an activity-based competency framework, will also help ease the situation. To this end we have been piloting a new role within the team of Regulatory Support Officer, whose purpose is to review and visit low risk premises and make verification visits, escalating issues to a food competent Environmental Health Officer where there are any significant concerns relating to food safety. RSOs have been trained in house and check lists have been provided. This model reflects that used during the pandemic by engaging Covid Advisors, who have successfully conducted visits and escalated serious issues to the dedicated enforcement team for action.

That said, this report shows that we continue to make good progress in our recovery plan, interventions being risk-based, and intelligence led, focusing resources where they add greatest value in providing safeguards for consumers and securing compliance. The focus continues to be on those businesses scoring lowest on FHRS and those found to be persistently non-compliant.

The Board agreed that an additional £25,000 from the 2020/21 underspend be carried forward to support the recovery plan and enable us to provide the resource to fulfil its requirements. It is intended that this spend will be made in the first half of 2023/24 to complete the plan. Food competent agency EHOs are in short supply and £25,000 buys around 17 weeks of competent officer time. As all local authorities continue to seek the same scarce resource to implement their plans, prices may become inflated further.

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