

BIRMINGHAM CITY COUNCIL

**REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

17 JANUARY 2018
ALL WARDS

**THE EFFECT OF REDUCING THE FREQUENCY OF FOOD HYGIENE
INSPECTIONS AND THE FUTURE ROLE OF FOOD REGULATION**

1. Summary

- 1.1 As a result of an Audit conducted by the Food Standards Agency, a number of food businesses were identified as being overdue for a Food Hygiene Inspection (referred to as 'overdue businesses'). These businesses were subject to a full inspection between April 2015 and March 2016.
- 1.2 The data and results of the food hygiene inspections were collated and analysed and compared against a random sample of food businesses which had received scheduled food hygiene inspections (referred to as 'scheduled businesses'). This report highlights the differences in the standards found.
- 1.3 In 2017 The Food Standards Agency (FSA) released a new vision that states the existing system of food regulation has not kept pace with technological changes and is not flexible enough to adapt to the changing environment, with the view that "one size doesn't fit all". The paper, 'Regulating our Future' was released in 2017 and contains a number of radical changes that could potentially weaken regulatory control further.

2. Recommendation

- 2.1 Based on our findings that the Chair of Licensing and Public Protection Committee write to the Food Standards Agency and the Secretary of State for Health outlining our concerns that a reduced regulatory system could weaken food safety and protection for consumers.

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3. Background

- 3.1 At the time the report was compiled, there were 7,606 Birmingham food businesses registered on our database. The Environmental Health Division is responsible for undertaking periodic food safety and hygiene inspections at all of these businesses.
- 3.2 All food businesses are risk-rated after an inspection and receive a risk rating of “A” (high risk) through to “E” (low risk). Factors affecting the risk rating are set out in the Food Standards Agency’s Food Law Code of Practice and Brand Standard Guidance (the Food Hygiene Rating Scheme).
- 3.3 The risk rating awarded to a business will also determine the Food Hygiene Rating Score (FHRS) which they receive; the score can range from “0” (urgent improvement necessary) to “5” (excellent standards). A score of “3” is considered ‘generally compliant’ with all food legislation requirements.
- 3.4 In April 2015 Birmingham City Council was subject to a random audit by the Food Standards Agency to verify the accuracy of our performance data and systems in place to discharge our duty with regard to food inspections and other interventions. At this time we and the agency identified a number of premises that had not been inspected due to the way the old data-base operated. The new data-base immediately identified them as not being inspected and an inspection programme was put in place to rectify this. This report relates to those premises which included a broad spectrum of medium and high risk premises.

4. Food Standards Agency Audit

- 4.1 The 2015 audit highlighted 103 food businesses across Birmingham which were overdue an intervention and had been previously risk rated A – C (high to medium risk).
- 4.2 An Environmental Health Officer was tasked with undertaking the food hygiene inspections (and taking necessary follow up/enforcement action) within these businesses to ensure a consistent approach. Of the 103 businesses which were overdue an inspection, 72 were still trading and were inspected with each business being provided with an up to date Food Hygiene Rating. The remaining 31 businesses were found to have closed down or the businesses had changed and were either no longer a food business or were registered, under their new name, as a food business and in our current database.
- 4.3 Although we would not want to intentionally have overdue and late inspections this did give us a unique insight into what happens in food businesses when they are not subject to regular inspection. The sample size (72) and the fact that some businesses had not been inspected for 5 years, gave us a

statistical sample size which was much more meaningful than anything we had done before.

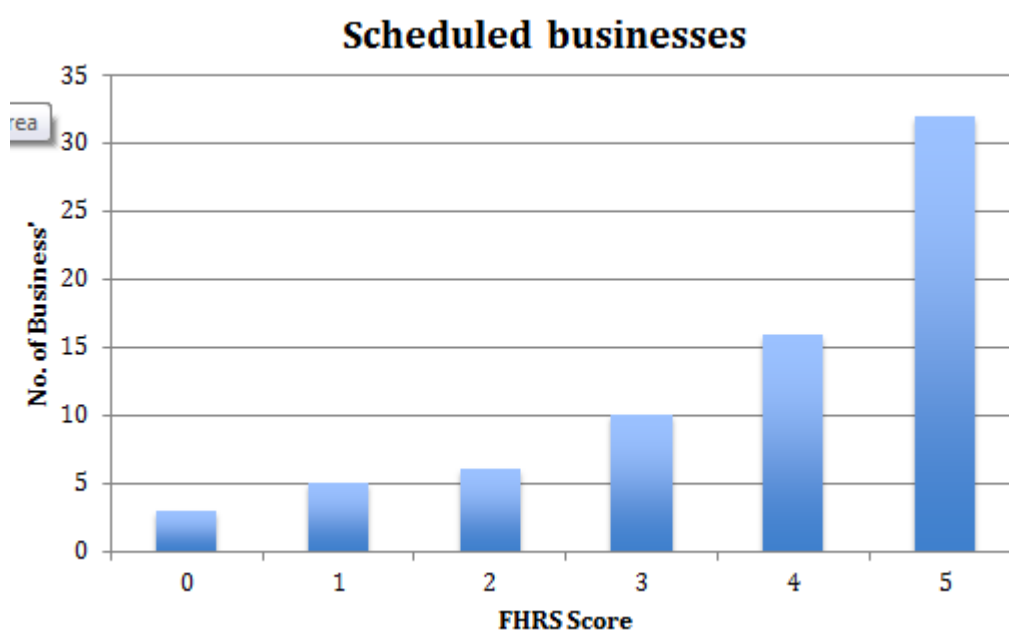
5. Data Collection and Results

5.1 The following sets of data have been gathered to determine the effect that the frequency of inspection poses on the Food Hygiene Rating of a business:

- Current FHRs score for overdue business (as a result of this project).
- Previous FHRs score for overdue business.
- Previous and current scores broken down into structure, hygiene and confidence in management.
- Length of time between interventions for overdue and scheduled inspections.

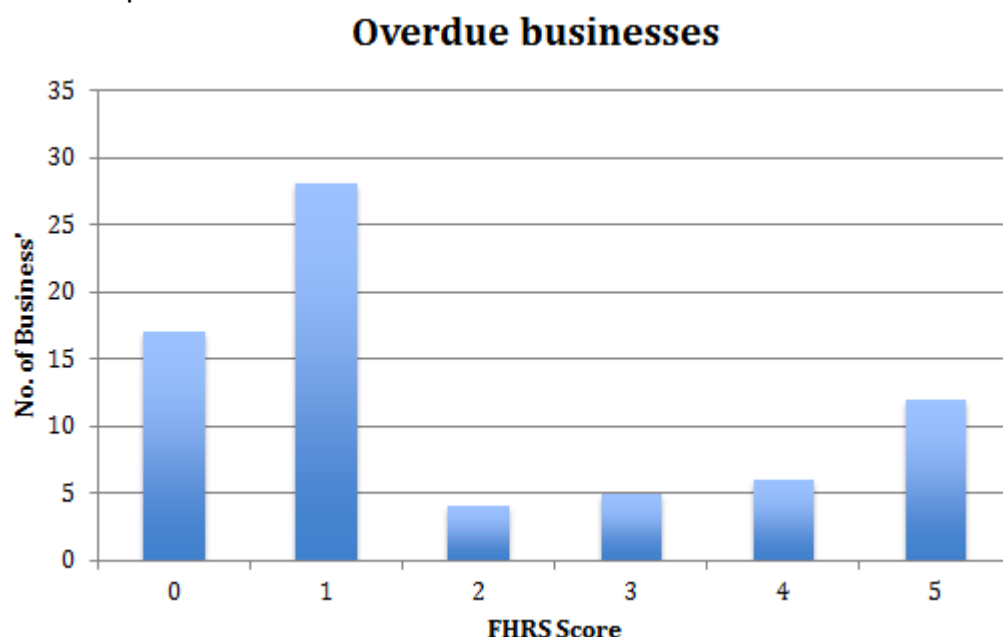
5.2 The FHRs score achieved by scheduled businesses and overdue businesses on the most recent inspection differed dramatically.

5.3 The FHRs scores achieved by (a random sample of) scheduled businesses on the most recent inspection can be seen below:



- 32 out of 72 businesses achieved an FHRs score of 5 (44%).
- Only 3 out of 72 businesses achieved an FHRs score of 0 (4%).
- 58 out of 72 businesses achieved an FHRs score of 3 or more meaning that 81% were considered broadly compliant.
- 14 out of 72 businesses received an FHRs score of 0, 1 and 2 meaning that 19% required improvement.
- There is a clear upward trend in the results towards compliance.

5.4 The FHRs scores achieved by the 72 overdue businesses on the most recent inspection can be seen below:



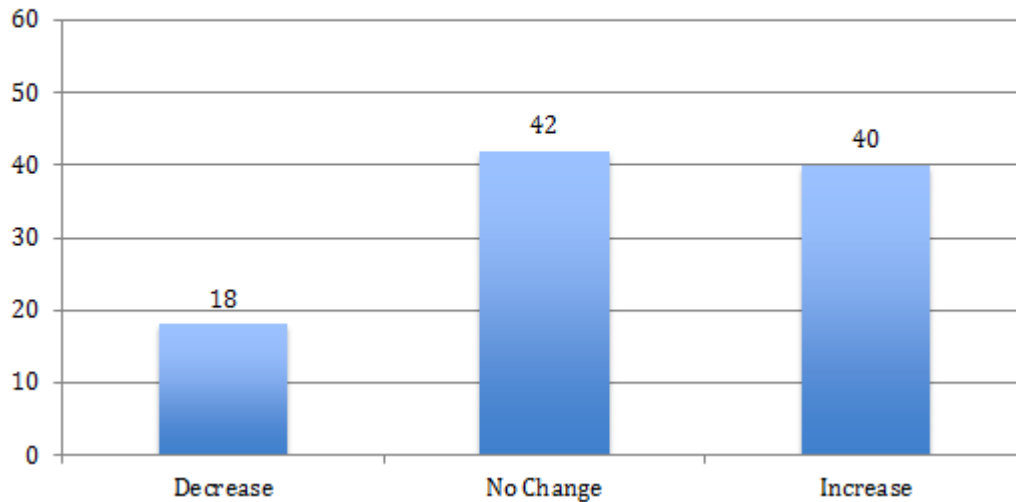
- 12 out of 72 overdue businesses received an FHRs score of 5 (16%).
- 17 out of 72 overdue businesses received an FHRs score of 0 (24%).
- 23 out of 72 overdue businesses received an FHRs score of 3 or more meaning that only 32% were considered broadly compliant.
- 49 out of 72 businesses received an FHRs score of 0, 1 and 2 meaning that 68% required improvement.
- Clearly more overdue premises received an FHRs score of 0 or 1.

Comparison of scores:

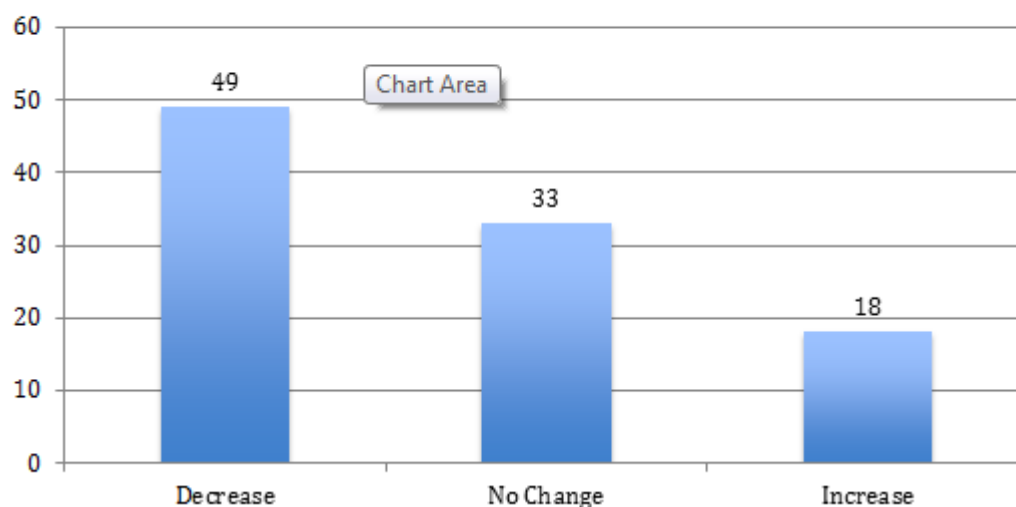
	Inspected on Time Group	Overdue Inspection Group
FHRs Score 5 (Higher is Best)	44%	16%
FHRs Score 0 (Lower is Best)	4%	24%
FHRs Score >3 (Higher is Best)	81%	32%
FHRs Score <2 (Lower is Best)	19%	68%

5.5 The differences in changes of FHRs scores can be seen in the graphs below for overdue premises and scheduled premises. It can be seen that premises which are inspected on time generally maintained or improved their FHRs score compared with over due businesses which 49% decreased their score meaning that standards had fallen.

% of businesses with change in FHRS for scheduled premises



% of businesses with change in FHRS for overdue premises



6. Food Hygiene Rating Analysis

- 6.1 32% of overdue businesses were classified as 'broadly compliant' (FHRS of 3, generally satisfactory, or above) compared with 81% of scheduled businesses; this implies that businesses subject to regular food hygiene interventions are more likely to be compliant with food safety regulations. The rate of broad compliance in all premises in Birmingham is currently 84%.
- 6.2 49% of overdue businesses saw a decrease in their score compared with 18% of scheduled businesses; this indicates that a lack of regular inspections enables food hygiene standards to decline.

- 6.3 40% of scheduled businesses saw an improvement in their score compared with only 18% of overdue businesses; this suggests a link between inspection frequency and higher standards.
- 6.4 The further difference in standards is illustrated by the amount of enforcement action required in overdue premises compared to those inspected on time. Of the 72 overdue inspections, 19 resulted in emergency closure action, a rate of 26%. The average rate of closures in remaining premises is 2.52%. Inspections of the overdue premises also resulted in the service of 27 Hygiene Improvement notices, 2 Health & Safety Improvement notices and 22 Health & Safety Prohibition notices, all rates considerably higher than in the scheduled visits. All this additional enforcement work takes up considerable time and resources in terms of documentation, court attendance, revisits and further investigation to consider if additional legal action is appropriate.

7. Potential Bias in the Study

- 7.1 Although there can always be some bias in any study we have tried to eliminate this. The FHRS scores for overdue businesses were awarded by one EHO for all of the premises to ensure consistency. However, the FHRS scores awarded to scheduled businesses were by a number of Environmental Health Officers. This identified bias in officer scoring is reduced through training in application of the Food Standards Agency guidance on the use of the brand Standard scoring system (how FHRS scores are calculated).

8. Conclusion

- 8.1 The following outcomes were established as a result of this project:
- 49% more of the scheduled businesses were 'broadly compliant' than the overdue businesses.
 - 31% more of the overdue businesses decreased their FHRS score than the scheduled businesses.
 - 22% more of the scheduled businesses increased their FHRS score than the overdue businesses.
 - There was greater decline in compliance with all standards in overdue businesses than no change or increase.
 - Scheduled businesses had the higher levels of increase or no change in standards than decrease overall.
 - The rate of closures in overdue premises was approximately 10 times higher than that in scheduled visits.
- 8.2 The analysis of the above data proves that the frequency of inspection has an effect on food safety compliance in food business within Birmingham City Council specifically with regard to the Food Hygiene Rating Score awarded to them.

- 8.3 It is proven that regular, planned interventions increase the likelihood of compliance with food law and reduces the need for costly enforcement interventions. It, therefore, follows that a lack of inspections is likely to enable a decrease standards in food businesses.

9. FSA – Regulating Our Future Proposals

- 9.1 The full details of the above proposals by the FSA to re-organise food inspections will be the subject of a further committee report in the New Year. For the purpose of this report, information is limited to those sections relevant to this study.

- 9.2 The outline proposals in the paper are:

- Businesses are responsible for producing food that is safe and what it says it is, and should be able to demonstrate that they do so. Consumers have a right to information to help them make informed choices about the food they buy – businesses have a responsibility to be transparent and honest in their provision of that information.
- FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of UK food businesses.
- The regulator should take into account all available sources of information.
- Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not.
- Businesses should meet the costs of regulation, which should be no more than they need to be.

- 9.3 The following more specific concerns stem from this:

- Segmentation of the food safety regulatory regime as proposed by the FSA would effectively break the current system. There would be private assurance schemes, national inspection strategies, regulatory certified auditors and local authorities. Allowing several schemes to run at the same time will cause confusion and increase allegations of lack of consistency.
- The current food business inspection model is based on a risk assessment. It is proposed that this risk assessment will take into account information of compliance with other regulatory regimes such as VAT etc.
- The proposals also allow risk to be determined by a businesses' membership of third party quality assurance schemes. However, experience has shown that even national food companies, that have their own and third party auditing schemes still fail to comply with basic food safety requirements, such as having their premises free of vermin.
- Reference is made to the regulatory burden on businesses with third party Accreditation. It is difficult to understand how an independent

local authority inspection be a burden. For a major retailer a local authority intervention is typically once every two - three years and takes 90 minutes on site.

- Businesses will be encouraged to join private assurance schemes and thereby reduce the need for local authority inspection of their premises. This will only affect the larger food businesses, who can afford to belong to such schemes.
- It appears there is a proposal that privately employed “Certified Regulatory Auditors”(CRA) would be authorised to issue Food Hygiene Ratings (FHRS). It is inconceivable that any local authority would accept an inspection record from a private company and place the results on the FHRS website. This would infer acceptance and responsibility for findings which the local authority has no control over.

9.4 The effect of the above will be to reduce Local Authority control over food hygiene and food standards further, reducing the level of interventions and in some cases removing them altogether to be replaced by a privately bought in service. The detailed information in this report demonstrates how such a move could seriously impact on food hygiene standards in the city.

10. Implications for Resources

10.1 Whilst reducing the frequency of inspections may appear to free up resources for other activities, our study has shown that the increased rates of enforcement, advice and notice service in the premises inspected less frequently will lead to increased resources being required to reverse declining standards. Regular interventions enable advice to be given and where standards are seen to be falling. If the time frame between inspections is too great then the situation will have deteriorated to a level which cannot be reversed without resorting to enforcement to protect the public.

10.2 It is, therefore, likely that reducing food hygiene inspection rates will lead to lower standards in food premises and an undermining of confidence in our food businesses.

11. Implications for Policy Priorities

11.1 Compliant food businesses are not only crucial to the health and safety of citizens and visitors to the city but are also consistent with other policy priorities including economic success, staying safe and being healthy. Non-compliance with food law increases the likelihood of business customers contracting food poisoning and suffering ill health effects.

11.2 It is essential that all food businesses in Birmingham are subject to intervention on a regular basis in line with their risk rating.

- 11.3 Environmental Health departments must allocate sufficient resources to the food programme in order to drive up standards of food safety within food businesses in Birmingham and thus reduce the risk of customers becoming unwell.
- 11.4 It is important that all groups within Birmingham, as well as visitors to the city, are offered suitable safety standards in food businesses to allow them to eat out, safely, with confidence.

12. Public Sector Equality Duty

- 12.1 Equality issues are accounted for during activities carried out by officers.

Head of Environmental Health
on behalf of:

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil