



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Food Hygiene Rating Bill: Pubs of Ulster

21 January 2015

The scheme was also sold initially as being a competitive thing; it was about people competing for better rates. We believe that this is fundamentally the wrong way to go. Businesses should not be competing with one another over food hygiene. It should be top of your list, regardless of where you are going. We had some other issues about how the voluntary scheme was developed initially. The statutory bodies in Northern Ireland engaged with the GB ones and the GB private sector, not us, early on. It is fair to say that that situation has been resolved, and I know that the Food Standards Agency (FSA) is in the Gallery today. I have to commend it because it has engaged with us as the Bill has moved along. That has, in our reckoning, improved the Bill. We have moved our position. We actually now welcome the Bill. We feel that there are a couple of elements in it that still need to be changed, but we welcome the fact that it is now in this format.

Briefly, our issues lie in the scoring process and in how the scheme is promoted. It is not just the case that we have taken a bit of a ring-round on this. As part of the DETI review of red tape, the hospitality sector was chosen as a pilot and, indeed, I chaired the review workshops for DETI. So, it was an extensive consultation, and food hygiene was one of the pilot areas they looked at. So, there is extensive evidence, through DETI and then through our own organisation, on the views of the members. What came through strongly in that process was a real desire for the statutory agencies to work in partnership with the business community to actually deliver stuff like this. Doing things together is much better than having something done to you. We believe that compliance is always better than an enforcement model.

If we take the current scheme, then we have concerns about the scoring process. There are two options. Let me put it into the simple terms that our guys use. The hygiene officer will come from the council and give a score; let us say he gives you a 3 rating. You can appeal that; you have 21 days to do so, and while your appeal is going on your score does not change. However, to appeal it is a hard thing to do for many in our industry, so they will just take what they are given. They do not want to be seen to be challenging someone who — as one of the terms you hear goes — could get you in the long grass. They do not want to call such a person into question. So, that leaves people settling for whatever score they get because, if they appeal it, they will be getting into a whole confrontational situation.

The other option is that you can ask for a rerating within 21 days; but that can take up to three months and, in the meantime, your score goes down on what it was. The FSA's point is that this is actually a well-promoted and well-recognised scheme. However, for three months, your rating will go down for what was maybe one bad day, when everything was just not coming together for an inspection. This leaves you damaged for three months, if the scheme is as highly popular as we believe it to be.

What we would like to see, and where we would like to come from on this, is working together. We believe that the inspection process should come with an incentive to improve, along the lines of a visiting environmental health officer (EHO) coming along and saying: "You are a 3 rating and, if you do A, B and C, you could be a 4 rating. You have got a period of grace of six weeks: go for the 4 rating". This would encourage businesses to improve; this is working together. There is no confrontation; it would be more a case that, "if I want to keep in, I will do those things". There would be an incentive to drive on while, in the meantime, keeping your current score.

It would keep an awful lot of the adversarial role out of this, because there is huge evidence that people will just not take on their EHO. The system laid out in the Bill is that it is not even that person who looks at it. So, at the end of the day, the person who scores you will know that you have appealed and will be your EHO long after that appeal is over. We believe that our suggestion will actually incentivise people and drive up the scores within the process, as opposed to people settling for what they get. My understanding is that people are already achieving high scores in this. I think that, if it is there, it should be structured in such a way that it encourages people to actually improve.

The other area we have concerns with is customer awareness. In fairness, the FSA says it has the research to say that there is awareness. Our research says that there is confusion about what the rating means, particularly when you go into somewhere that does not do food yet has a five-star rating, because it says "Food hygiene" rather than just "Hygiene". The FSA, which is a UK-wide body, has something like 20,000 followers on Twitter. Twitter is a huge marketing tool: I have five followers, and I am nobody and live in Larne. This is their marketing tool, yet they are sitting with about 7,000 friends on Facebook: my son has more than that. So, they are not engaging to promote the scheme: there is confusion there.

We ask, if the Bill goes through, that there is some element put in that which requires either the FSA or the local authority to promote the scheme. We do not want confusion along the lines of, "Is that

five-star food?" or "Is that a rating of five for your food or five for your hygiene?". Remember, these ratings are in the Spar shop, they are in the chip van; they are everywhere. So, it is not as though having a high rating means you have a really upmarket restaurant or that you serve really high level cuisine. We do not want that confusion.

That was a very quick summary. In the red tape review and in the pilot in the hospitality sector, there were an awful lot of other elements recommended — not particularly relating to this Bill — that would make the system work better. That will be published soon, and I ask that the Committee takes time to have a look at it.

The Chairperson (Ms Maeve McLaughlin): Thank you, Colin. You talked about the issues that cause some concern, some of which you suggest have been advanced a bit.

Mr Neill: Yes. Chair, we are really down to the scoring bit. Compared to our original submission, we are now pretty much in line with the FSA. We think this is a good idea, but it would work better if it was refined and if the scoring approach was done together in an incentivised way to improve things rather than just saying, "There's your score. Take me on if you want".

The Chairperson (Ms Maeve McLaughlin): On the scoring issue, the sense of what I was hearing from you was that there was a concern that businesses may be afraid to appeal.

Mr Neill: They are afraid. We have evidence of that. We have done work on that, and the DETI report highlighted the same from all of its engagement.

The Chairperson (Ms Maeve McLaughlin): That is an issue that it is important for the Committee to reflect on, because this is not about sanctions on businesses that are struggling. We were very clear about the appeal process. I note that the legislation states:

"The appeal must be made in writing to the district council which produced the rating; but no officer of the council who was involved in the production of the rating, or in the inspection on which the rating is based, may be involved in the determination of the appeal."

Is that not strong enough?

Mr Neill: The problem is that a person may do your appeal, but it will be the same EHO who will look after you day on day and year on year after you have called them into question. There is fear in the industry; so, you do whatever the EHO says. You do not take them on: you do not go there. So, straight away there is a barrier, and people will say, "I'm not even going to question him, never mind if the appeal is independent". The appeal process is there, and we accept that. However, if your EHO were saying to you, "Here you are, let's work together over the next four weeks to get you higher", that would incentivise people.

The Chairperson (Ms Maeve McLaughlin): It might be useful, as this develops, for your organisation to look at how to strengthen the wording.

Mr Neill: I am keen to do that.

The Chairperson (Ms Maeve McLaughlin): The other thing we picked up on was an indication in your submission that the Bill could result in costs to businesses. Could you give us a sense of that or examples of how that it could cost businesses?

Mr Neill: There are obviously appeal costs. The bigger cost would be if the scheme becomes widely known and you have that one day, which everyone has, when things do not come together, you are down in numbers etc. It is not that you are a hygiene risk: you are not at a 1 rating going down to a zero and being shut. You are in an area where, although your score is fluctuating, your hygiene standards are still high. If the scheme is promoted heavily, it will reduce costs. People always think of these things in the context of Belfast, but if you go into a small provincial town, then people talk and know about what is going on in their local pub, restaurant, hotel or whatever. Again, we are against any sort of charges and a process of appeal. Small businesses are struggling. What seems to be not a lot of money, such as £50 a week, can be critical to someone. They are working to really tight margins and tight deadlines.

The Chairperson (Ms Maeve McLaughlin): The cost would effectively be from the appeal process.

Mr Neill: The appeal processes and the negative impact of an unjustified score.

The Chairperson (Ms Maeve McLaughlin): I assume there is no cost to the appeal process.

Mr Neill: Obviously, we have engaged with the FSA, and we are not so worried about that element now. It is more the cost of promotion and customer awareness.

The Chairperson (Ms Maeve McLaughlin): Thank you.

Mrs Cameron: Thank you, Colin, for coming to the Committee today. In your submission you talked about colour-coded stickers. Could you tell me what you see as the purpose of colour-coding as opposed to what is already in place?

Mr Neill: That came from the DETI research and the working groups involved in that. All trades said they would like differentiation within the system. I am not knocking Spar, but I will use it as an example. If I am Michael Deane and I have a 5 rating and the Spar on the corner is also at a 5 rating, that degrades what the Michael Deanes of this world are trying to promote, because there is a level of confusion about the meaning. It was just a case of having an orange sticker. I am going to go orange and green: maybe that is a bad place to start! A fast food venue is coming from a different background and is a different entity. We want to try and take away some of the confusion. A lot of that came from the industry submission, which was quite a wide process involving 120 or 130 different businesses.

Mrs Cameron: You do not think that would cause more confusion.

Mr Neill: I do not think so. We are still early enough. It is only the people who know about it know about it. It depends how you market and promote this as you go.

Mrs Cameron: What about the sticker itself? I think it should be visible wherever possible in the premises or the business. I would also like to see it on websites or social media pages — wherever people can order food from. What is your opinion?

Mr Neill: Some say, "I have a really fancy door, and I do not want to put any stickers on it". That is a bit of a false argument. If the scheme is right and people understand it, then having the sticker in a prominent place is an advantage. The problem arises from confusion, where people do not understand the scheme, the customer, and the end user. If I scored you at a 3 rating, and we worked together to get a 4 rating, you would almost be keen to put it up somewhere, because you would have just achieved something. It creates that motivation within the system.

Ms P Bradley: Thank you, Colin. I will go back to clause 3 and the 21-days' grace. First, Colin, it seems to me that there has been a lot of consultation among your members before you made your submission. How many members do you have roughly?

Mr Neill: It varies on any given day. As I often say, I represent them all and some of them pay me. About 70% of pubs, 50% of hotels and a significant number of restaurants are members. It rocks round about the 1,000 mark, and that is steadily growing. We are doing OK.

Ms P Bradley: Then you have consulted a significant number of businesses before making your submission. I understand where you are coming from when you say that the 21 days would encourage restaurateurs and landlords to look at getting a higher score; and I take it from what you have said, and your consultation, that they would all be very eager. We see many businesses that would be quite happy with a 3 rating or even a 4 rating, but they want to achieve the very highest standards.

Mr Neill: They do buy in. The hospitality sector in Northern Ireland is changing rapidly and growing. People understand that the quality product is key and that that quality product includes health and hygiene ratings and the whole cocktail of measures by which you are graded. There is huge buy-in from the industry.

If I am honest, the DETI workshops were actually quite good. I went into them with the idea that everybody would want to scrap every law going, but it was the opposite: they wanted to improve how it worked. The FSA bought in during that process and we got closer to them. We are even talking to them now about starting up a regular group to meet together and talk about things coming down the line. That is a much better way to do things, develop new legislation and solve challenges. I just think the alteration comes late. Maybe if we had gotten in early enough — if we had been involved in the trials in England and the talks as a trade — we might have been able to influence it.

Ms P Bradley: Do we have to worry about businesses that will not pay too much attention until the first inspection, if this goes the way you are hoping for, where they then have a period of grace to make any upgrades? That would be a concern. What do you think of that?

Mr Neill: We are talking about such a short period of grace. A business may say that its score is down because it was having a bad day. However, such businesses will be fundamentally flawed. A business that scores a 4 or 6 rating will never get its act cleaned up in that grace period. It is an ethos. There is a lot more to the Bill than just carrying out the procedures as a whole. There is also the question; "Is there the right management attitude to running this?". I would nearly go the other way and say that, if you are down at a 1 rating, you should be shut. You should not even be opening if you are at that level; you should not be there, because you are on the border of being —

Ms P Bradley: But there is a determination among your members to achieve the very highest standards.

Mr Neill: Absolutely. I think that that is borne out. The FSA are over my shoulders, and I do not like to talk for them, but they tell me that those who are participating are getting very high scores now. As an industry body, we would like to be on board and encourage this, because we want everyone to be 5 rating and have that really high level of customer experience. Tourism is the growth market for all member sectors, because we cannot sell more food and drink to the same people: we need more people, and that is about — if they put on their business heads — delivering a fantastic experience. It also means that you can charge a premium price, which is where we want to get to. It is about prosperous businesses.

Ms P Bradley: Finally, the Chair mentioned earlier that your members are nervous about appealing, for fear that they may be penalised. Is there any evidence, at present, that this has happened during the voluntary scheme or any other scheme?

Mr Neill: The DETI review of red tape is still in draft and has not been released yet. There were workshops across the Province. They were not here but were in Derry/Londonderry. We had workshops all over the place. Everyone who came through that said, "No, I am not going to challenge my EHO. They will get me in the long grass". Probably, they would not do so. I am not saying they are bad people. It is just that you have to work with them, therefore you do not challenge them. You just take what you are given and accept it. This means you are not encouraging anybody to get better. You are actually encouraging them to stay where they are.

Ms P Bradley: Most of us have a local council background; that is where most of us started our training. We understand the need for EHOs and the great job they do.

Mr Neill: We agree. It is not about what they do, it is just that —

Ms P Bradley: As elected representatives and ex-councillors, we would like to believe that they are doing everything fairly and are not penalising people. I am concerned that you even raised that.

Mr Neill: It came up time and again right the way through the DETI research. It is a bit like not challenging a policeman. You will maybe not do anything, but it is the old attitude test of not spoiling a relationship, and so accepting things, which means, I suppose, that people just accept a 3 rating rather than strive to improve.

Ms P Bradley: I suppose it is slightly different if it is your livelihood or your business. This is what is paying your mortgage and everything else. I understand that.

Mr Neill: Yes.

Ms P Bradley: Thank you, Colin.

Mr Brady: Thanks. Once a councillor always a councillor. Thankfully I never was one. Some businesses have been advised that they may not be able to achieve the uprating because of the nature or design of their premises, even though they want to. It seems a bit peculiar.

Mr Neill: That evidence came up again in the DETI research. When you talk to EHOs and the FSA then, in principle, the premises should not matter, provided you reach the standard; but people are coming to an open workshop with statutory bodies in it and saying that they have experienced that first hand.

Mr Brady: Have they given any examples of the type of premises that might not get that because of the design?

Mr Neill: I will not quote particular premises on the record without their permission, but I know of one in Belfast that has a very high ornate ceiling. Unless they were prepared to put in an R-sealed ceiling, they were not getting the rating, which is not really the ethos behind what this is about. The thing is sealed; it is just way up there. We are always left to interpretation. I appreciate that no matter how decent someone is, at the end of the day, everyone interprets the legislation or how they enforce it slightly differently. That is the nature of it.

Mr Brady: I presume that the ceiling is a feature of the premises and one of its attractions.

Mr Neill: Yes. The last thing you would want to do is cover it up. There is that process.

One of the things that has come up, and it is not particularly for this Bill, but in the research — and I am sorry that I am quoting a report that is not even out yet, but it is not in my gift to put it out or I would do so — in GB, they have primary or principal authority. If there are a number of premises straddling different council areas, they can choose which authority they want to be in. That is your benchmark. We would be keen to see that coming in here, if nothing else to make councils a bit more aware. If owners were to choose one council, the other council could question why they would want to do so, which would help as well.

Mrs Dobson: Thank you for your briefing, Colin. I note that you talked about gold-plating, which is a bugbear of mine too. You also talked about red tape. Can you give us any further examples of what you feel is too much gold-plating? I know that it has been touched on, but I would like to hear a bit more about the experience of your members regarding the physical size of the premises. You referred to a chip van, a corner shop and a large restaurant and the limitation on the premises impacting on the rating. Can you give an outline of that because that is concerning?

Mr Neill: I am not a chef, and I accept that there are wiser authorities on this, but my understanding is that the whole scoring system is supposed to be about the methodology and procedures you have in place to ensure that your hygiene is right. What we pick up from our members when we talk to them is that they are told that their kitchen is far too small or their ceiling is too high. You get interpretations. I had premises where there is a very small kitchen. They worked with the EHO to put the ice machine outside and put a rodent guard, or whatever the fancy term is for it, over it. Then their EHO told them that that was totally unacceptable. You have that inconsistency going on, and maybe people reading more into what will be counted in.

Mrs Dobson: So, it is the inconsistency factor, whether you have a restaurant or a corner shop and not knowing exactly where you stand with it.

Mr Neill: Yes.

Mrs Dobson: I know that you are concerned about inconsistencies, and you have a right to be. I was quite concerned when you talked about the potential of leaving a business damaged for three months because of one bad day. Is there any way of getting round that? If you were designing it from the start, what would you recommend?

Mr Neill: At the moment, you get your score and then you have the whole appeal process or review. If you consent to a review, then your score goes down. I outlined earlier that the EHO could come in and say, "I have gone through this today and your premises scored a 3 rating. However, these are the

three things that are keeping you at that level. If you fix them, you will be a 4 rating". Rather than the score just going down for three months, you would not be taking down their rating or saying, "Well, you are normally a 4 rating. Today would take you to a 3, but if you fix things, I will be back in two weeks and you will stay at a 4 rating". My understanding is that local authorities would like a six-month period to turn it round because of the workload, but, in the private sector, three days is a long time, never mind three months. Our guys are saying, "What do I need to fix? I will fix it now. Can you wait?". They are keen.

Mrs Dobson: You feel that there should be flexibility.

Mr Neill: Yes. That would be much better. I appreciate that, in our industry, we work across all the regulatory bodies, but I am a great believer, whether it is on the policing side, that it is much easier and you get far better results doing things with people than doing it to them.

Mrs Dobson: In particular, I want to highlight rural business as well and the fact that £50 in the takings can make the difference between that business still being viable or not. So, those flexibilities are very important. We need the highest of standards, but we want to ensure that the businesses are supported and that people are not being seen as being too heavy-handed. There should be more of a guiding hand, rather than being too heavy-handed with them.

Mr Neill: I totally agree. I live on the coast near a small village, and if the score of the small pub/restaurant there went down, everybody in the village would know that day, because it is that sort of place: it would probably be the biggest news of the day in the area. However, if the inspector said, "Look, you are at risk of losing your score. You've got a couple of weeks, and if you sort out this and that I will be back", then straight away the business owner would be fixing it. With the greatest respect to everybody, no matter where you are, you get a bad day. You might be short-staffed, you might not have got something right or whatever, but that does not mean you have gone from a 3 rating to a zero rating and endangered people's health.

Mrs Dobson: The reputation they have built up over years could be damaged because of that.

Mr Neill: Absolutely. I appreciate that the document says that the rating is for that day, but it will stay up for 21 days if you formally appeal. The council then has 21 days to sort that out, so you have 40-odd days where that rating could stay up if you are appealing the decision. What we are saying is this; if we are doing this let us do it together. If that happens, I honestly feel that we will be sitting here in a few years saying it has driven up the scores because we have worked together as opposed to having it done to us.

Mrs Dobson: That makes sense.

Mr McKinney: Colin, earlier you mentioned the methodology being under examination as much as the kitchen and preparation area. In relation to the grace period that you are talking about, is there not very limited room for failing on the day? This is not about examining the day, it is about examining the whole process: temperature, transportation and all of the issues around how food is prepared and staff are trained. So, is there not very limited room for getting it wrong on the day?

Mr Neill: The score is based on the day the FSA measures the premises; it is not about what you did before or after it. It also measures management's attitude to hygiene. If you do not have the senior chef there because he is off sick, there could be a younger person in that day who does not quite know where all the logbooks are, because it is not his thing to do. In a small business, whether we like it or not, that happens. The young person can probably cook to the best and keep everything as hygienic as he needs to, but he is just not sure how to interpret everything.

Mr McKinney: We spend most of our time on the eating side of the kitchen, but we were invited in downstairs not that long ago. We donned our white coats and got very good instruction on what makes up a test. From that, I formed the opinion that the rating is not based just on the day. Have you done the test or been involved in one?

Mr Neill: I have seen a couple of them.

Mr McKinney: I suggest that, given the examination process and the depth to which inspectors go, there is little room for rectifying problems within the short period that you are talking about. Do you agree?

Mr Neill: There is room. This is not about trying to take somebody from a one to a five. In the voluntary scheme, I have a team of students who will go in and take you from a 2 rating to a 4 rating within six weeks. We charge our members and send them in, so it can be done. It is just about getting it right. I am not talking about trying to take someone who is terrible and saying, "You have six weeks to come up from a one to a four"; I am talking about cases where you are a four and for some reason you have slipped down one score, which could potentially damage your business. Instead, the owner should be told, "We'll work with you, and get you backup".

Mr McKinney: You talk about encouraging people. Do people not need something more than encouragement? We do not have as many people on the voluntary scheme as we should.

Mr Neill: The voluntary scheme is not promoted to the level that people see it as being an important part of their business. If it is not a key part of your business and it confuses your customer message, you do not go there. That is why it needs to come with a promotional requirement. It has to be promoted and explained.

The Chairperson (Ms Maeve McLaughlin): Colin, thank you very much for your evidence. We will reflect on that. Thank you for your time.

Mr Neill: Thank you.