

London Food Co-ordinating Group's Approvals Sub Group

Minutes of Meeting held on 18 September 2008

City of London offices, Walbrook Wharf, EC4

Food authority	Officer attending	Apologies
Barking & Dagenham		Hope Robinson
Barnet	Mark Stanbury	
Brent	Shamsul Islam	
Camden	Yinka Fagbohunka	
Camden		Sarah Page
Croydon	Brian Griffiths	
Enfield		Rob Bartlett
Hackney	Nigel Whiteley (Chair)	
Haringay		Simon Thomas
Havering	Andy Bourlet	
Islington	Carole Milligan	
Kensington & Chelsea		Linda Wheeler
Kingston	Keith Fowler (Minutes)	
Lambeth		Carol Stewart-Williams
Lewisham	Ken Giles	
Newham	Bill Adolph	
Redbridge	Henry Katsande	
Richmond		Karen Alvey
Waltham Forest	Pip Broad	
Wandsworth		Peter Reddell
Westminster	Dorota Nowakowska	
Westminster	Laura Parrott	
Brentwood DC		Lindsay Hewitt
Chelmsford BC	Roy Perry	

Items

- 1 - Minutes of Approvals Group meeting on 1 July – matters arising
- 2 - London Food Co-ordinating Group (LFCG) meeting on 19 August – matters arising
- 3 – FSA proposed guidance on Approvals, and LACORS proposed FHFG Approvals Sub Group
- 4 – Sushi update
- 5 – Matters for the Regional Veterinary Meat Hygiene Advisor to inform the group about
- 6 - Cutting plants and the Illegal Meat Task Force
- 7 - FSA guidance on the safety and shelf-life of vacuum and modified atmosphere packed chilled foods with respect to non-proteolytic Clostridium botulinum
- 8 – Procedure on Approvals
- 9 – Regulator's Compliance Code
- 10 – Amendment of Regulation 853/2004 by Regulation 1662/2006
- 11 – Approval of storage & transport establishments
- 12 – Approval of establishments manufacturing egg products from eggs and products of plant origin
- 13 – FSA lists of Approved establishments
- 14 - Two establishments in one premises, one requiring approval
- 15 - Consultation on the Primary Authorities scheme
- 16 - Revision of the HPA Microbiological guidelines for ready-to-eat foods
- 17 - Training on the approval of food establishments
- 18 - Waste cooking oil

1 - Minutes of Approvals Group meeting on 1 July – matters arising

NW proposed the distribution of draft minutes to those attending meetings to allow comment before they were finalised.

This was agreed.

(Item 3) - Guidance on 'Selecting a Microbiological Testing Laboratory'

CM said she had received a lot of responses to her draft leaflet on 'Selecting a Microbiological Testing Laboratory', and advised she has incorporated some of these in an amended version.

NW said that this leaflet, (and the one on 'Selecting a HACCP Consultant') was a valuable piece of work, and he has already given a copy to one FBO.

Action - To forward the amended leaflet to NW for distribution to all in the group.

(Item 5) – CFA Guidance on microbiological criteria, testing, and interpretation

KF advised that he had found the two guidance documents produced by the Chilled Food Association, (one on the Practical Implementation of the EC Regulation, and the other on Microbiological Testing & Interpretation) were informative and provided useful reference guides with practical advice on interpretation of the EC Regulation for Microbiological Criteria for Foodstuffs.

(Item 6) – Hygiene Emergency Prohibition Orders (HEPO) update

BA advised that in Newham the Magistrates Courts were taking a pragmatic approach and he had not encountered problems in getting an application for an order listed.

LP said the issue of applying for an order within 3 days was raised at the South East London Sector Food Liaison Group, where it was agreed that Beryl Morgan will meet the FSA to discuss the issue further.

BG advised that he had written to John Barnes, the head of the FSA Central Region (London) on the issues of applying for a HEPO, with a request to include them in the Practice Guidance.

(Item 9) – New Food Law Code of Practice, June 2008

CM advised that she had read through the new FSA Food Law Code of Practice since our last meeting and that it contained no further changes on Approvals to those we have previously discussed.

LP advised that, following the inclusion of approved establishments in the Food hygiene scoring system in the new CoP, (in A5.3, Part 1, A), she had received a request from an approved business in Westminster for a SotD rating. SotD ratings were now provided for approved businesses when asked for.

BG considered the FSA Food Law Practice Guidance should give additional guidance on approvals, when published.

(Item 11) - How can officers reduce the time they spend on interventions under the Approval procedure?

NW had raised this item, and it was agreed by those present that the Approval process was time consuming for officers, especially when the FBO had little or no knowledge of hygiene requirements.

BA felt the only effective way to reduce the time spent was to put the onus on the FBO to prepare the documents and to put matters in place for the food business to reach the required standard. CM said that for officers to check HACCP-based procedures took time, even when a consultant was engaged by the FBO, as the consultant often had an incomplete knowledge of the specific requirements.

(Item 12) - Draft guidance on approval for small and medium bakeries

BG referred to the two versions previously distributed to the Group which led to a discussion on how much information to provide to FBOs – a broad outline, or a more detailed guidance document. He had only had responses from his colleagues in Croydon. One consultant EHO told BG that found the leaflet useful because he had not understood approvals.

BA considered that both versions had merit according to the circumstances.

Agreed that both leaflets, the shorter and the more detailed, would be helpful in assisting FBOs with obtaining Approval.

2 - London Food Co-ordinating Group (LFCG) meeting on 19 August – matters arising

Score on the Doors (SotD). BG advised that the FSA London Region had held a meeting with the LFCG on Score on the Doors, at which it emerged that, due to the large response to the FSA consultation, the matter was unlikely to go before the FSA Board until December 2008. The FSA were of the view that the London 5 stars scheme constituted “gold plating” and were unlikely to adopt this scheme. They apparently were cautious of a legal challenge by big businesses. Rick Mason of the LFCG welcomed such a challenge.

BG also informed us that the CIEH were taking over the production of the SotD stickers using a slightly modified format.

3 – FSA proposed guidance on Approvals, and LACORS proposed FHFG Approvals Sub Group

Officers continued their discussion from the last Approvals Group meeting, (in item 3).

NW had emailed Gemma Cantelo (GC) of LACORS for an update and she subsequently sent him a reply, which he read excerpts from.

GC wrote that the LACORS Approvals Group was being established.

GC also advised that the FSA were conducting a workshop session at the Food Hygiene Focus Group (FHFG) meeting on 18th September. This meeting would look at: areas of inconsistencies across food sectors in the approach to Approval; areas where further clarification was needed due to ambiguity in the legislation/existing guidance leading to inconsistent approaches; an overview of usual reasons for not granting Approval, extending conditional Approval, suspending/withdrawing Approval; whether the Approvals process could be simplified, and whether the Approvals process provides necessary additional controls on those businesses subject to Regulation 853/2004 (in addition to those controls already present under Regulation 852/2004). There would also be discussion where exemptions may and may not apply so as to identify circumstances where exempting business from Approval could lessen public health protection. The aim is to look at issues such as the definition of ‘establishment’ and Approval of hub/satellite kitchens.

The FSA is drafting the scenarios. Any guidance produced by the FSA would be broad brush and focus on areas where clarification was required.

GC further advised that after this workshop she planned to put together a paper with the FSA covering the main issues discussed in the workshop and circulate this more widely to the LACORS Approvals Group and Liaison Groups. Feed back could be fed into any guidance the FSA produce.

GC anticipated that the LACORS Approvals Group would come into its own once the FSA have started the drafting process and needed ongoing feedback. In addition, LACORS would find the expertise of the Group invaluable in drafting any accompanying guidance on enforcement or respond to more specific queries from LAs and Liaison Groups.

CM expressed concern that the FHFG had not invited anyone from our Group to the initial discussions, particularly as there were well known differences on interpretation of the law with the FHFG.

BA reinforced this view, pointing out that our Group was not able to contribute to the initial thinking and would be confined to commenting on the proposals, once formulated, and helping to develop guidance notes at a later stage.

NW informed that GC wanted to attend one of the Approvals training sessions he was giving to gain an insight into the processes.

4 – Sushi update

Officers continued their discussion from the last Approvals Group meeting, (in item 1).

CM advised the Group about the meeting held at the FSA with representatives from: the FSA Fish and Shellfish (Kevin Haagen), Microbiology, and Enforcement (Colin Houston); LACORS (Gemma Cantelo); the Centre for Environment, Fisheries and Aquaculture Science (CEFAS); the Public Analyst (Duncan Arthur, DA), the LFCG (Peter Scott), and two EHOs from L B Islington. CMi set the agenda and told them of her 'wish list'. The meeting was productive.

4.1 - Sushi rice

They discussed the storage and display in catering establishments of the cooked rice, for extended periods at ambient air temperatures.

CM said that the protocol had been agreed between FSA and Leatherhead Food International, although DA will do more studies on vinegars. They looked at other protocols, and the FSA officials liked the one produced by the New Zealand Food Safety Authority (NZFSA). This involves pH meters for monitoring, which are quick to use.

She advised that cooked rice kept for long periods, without any other control measures, must be kept under temperature control. In respect of any defence available under the FH (E) Regulations 2006 for the holding of rice at ambient air temperature, the FSA were of the opinion that the rice was a cooked food and therefore the 2 hour limit would apply. This was on the basis that the product, sushi rice, is not intended to be chilled in catering establishments. Controls that are used to control the growth of micro-organisms and the formation of toxins were discussed – mainly the use of vinegar to reduce the pH.

4.2 - Parasites in raw fishery products

In respect of the raw fishery products used in sushi CM advised that they discussed the incidence, infectivity and allergenicity of parasites (including Anisakis), and also the reluctance of FBOs to freeze fish, particularly salmon, (which is expressly required by Reg 853/2004 to kill parasites).

They discussed alternative controls to freezing, e.g., the sushi chef can be trained to look for nematode larvae, using 'candling', or by slicing fish thinly. These alternative controls will be in the final guidance.

The exemption from the requirement for freezing of cold smoked farmed salmon was discussed, because cold smoking on its own is not sufficient to kill nematodes. (Link to FSA enforcement letter on cold smoked farmed salmon: <http://www.food.gov.uk/multimedia/pdfs/enfe07045.pdf>).

4.3 - Published guidance

In conclusion CM said that the FSA agreed to write the guidance, simplified for the trade and enforcers, to cover both sushi rice and parasites in raw fishery products. The FSA must allow 3 months for public consultation. The recipe used by the sushi business in Islington will be included in the guidance, because that business has a well-founded scientific assessment of the safety of the rice used in its recipe.

4.4 - Training on sushi

Training for enforcement officers would also be considered. CM gets phone calls about sushi from other officers, (so there is a need for such training).

NW raised the topic of training by Alun Barnes of Ascensis and LP informed us that Alun had not taken up her offer of a free venue for training in London as of yet.

5 – Matters for the Regional Veterinary Meat Hygiene Advisor to inform the group about

AB had met Mr Lawson Wood (LW), a RVMHA, and Charles McLean of the FSA, during an approval visit to a cutting plant. AB found the visit educational, but the letter they wrote afterwards was rather casual, without reference to the regulations or the Meat Industry Guide. LW works for the Meat Hygiene Service (MHS) and works from home.

LW offered to explain the approval process for meat plants to our Group. NW had written to him accepting his offer, and suggesting some matters he could speak on. NW asked officers what other points they would like LW to cover.

CM raised the issue of the FSA contracting out Approval inspections to the consultants CMi, which has raised strong resistance from a business in Islington who saw a potential "conflict of interest".

AB felt that LW should outline the Approval procedure from the FSA viewpoint. CM suggested: the advice that officers could give to meat businesses awaiting assessment for approval, the timeframe for approval by the FSA, (currently many months), and the LA's ongoing enforcement role pending any approval by the FSA.

NW said it was clear that some businesses had no prospect of meeting the high standards for approval, and wants to ask LW whether we should even be putting them forward to the FSA for their appraisal.

Actions

- NW requested that any more suggestions on what LW could speak about be emailed to him.
- MS expressed the view that the presentation by LW is eligible for CPD hours, and he offered to prepare the certificates. This was agreed.

6 - Cutting plants and the Illegal Meat Task Force

BG thought referring poorly-run cutting plants to the FSA for appraisal for approval could drive some businesses underground. He referred to a business supplying raw chicken portions to take-

aways in Croydon which had “disappeared” after he gave them similar advice. MS added that one plant cutting pig meat relocated in just two days, taking away a large walk-in chiller.

MS said that any cases of this nature should be referred to the Illegal Meat Task Force for information and possible follow up action. See:

<http://www.food.gov.uk/enforcement/laresource/foodfraud/lafoodfraud/Illegalmeattaskforce>

7 - FSA guidance on the safety and shelf-life of vacuum and modified atmosphere packed chilled foods with respect to non-proteolytic *Clostridium botulinum*

This guidance was published in July 2008. CM referred to the table in the draft guidance which had listed many helpful examples of low, medium and high risk foods associated with *Clostridium botulinum*, whereas the table in the final guidance had been significantly reduced in scope. See: <http://www.food.gov.uk/multimedia/pdfs/publication/vacpacguide.pdf>

CM also drew attention to the increasing practice of packing fruits, vegetables and herbs in oil and then setting a long shelf life at ambient temperature. FSA advice on the preservation of foods in oil can be found at: <http://www.food.gov.uk/multimedia/pdfs/Acm562.pdf>

8 – Procedure on Approvals

NW introduced three documents which he had prepared on the procedure on approvals, and had emailed to Group members on 17 September for their information and comments. He had substantially revised the procedure written by the old Approvals Group, based on his experiences of several recent approvals.

1. Procedure for the Approval of food business establishments – a procedural note for food authorities like Hackney which contained advice on both the legal requirements to be met and on good practice for authorised officers.
2. Letter to an applicant for a business not yet operating, setting out the application procedure for Approval for an establishment handling products of animal origin. An advisory letter informing the applicant from the outset as to the key points of the Approval process.
3. Letter to an applicant accompanying the grant of Conditional Approval, and explaining what the FBO had to do now, and before being granted Full Approval.

NW said that both these letters could be improved on and put into plainer language, but his key aim was to notify FBOs from the outset of the legal and practical requirements to be met before Approval could be granted.

9 – Regulator’s Compliance Code

NW introduced this statutory code by reading extracts from the article in EHN entitled 'Rules of engagement', (18th July 2008, page 9). For the BERR webpage on this code see:

<http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html>

In summary:

The Regulators’ Compliance Code, ‘the Code’, came into force on 6 April 2008. It is a statutory code of practice that forms a central part of the government’s better regulation agenda.

The code is intended to minimise the burden of regulation on business through a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement.

LAs must take into account the code's provisions and give them due weight when developing their own policies or principles, or in setting standards or giving guidance.

Failure to 'have regard to the code' could result in challenges, from abuse of process cases to applications for judicial review.

The code does not apply directly to individual cases.

There are several specific obligations of the code. Some are particularly relevant to our Approvals Group:

- LAs should consider the impact that their regulatory interventions may have on economic progress.

- LAs should take account of the circumstances of small businesses, including any difficulties they may have in achieving compliance.

NW raised a question over "economic progress". AB saw parallels with Health & Safety guidance on enforcement action against small businesses, e.g. an assessment of the social consequences of a proposed enforcement action, (in the Enforcement Management Module). Discussion took place on the application of the Code to a business requiring approval but operating without approval. NW was of the view that Regulation 853/2004, (article 4.3-4.4), was tightly drawn and left little room for discretion by food authorities. It was generally considered difficult how to interpret the Code's requirement to take "economic progress" into account.

10 – Amendment of Regulation 853/2004 by Regulation 1662/2006

CM reminded the group on the following amendments introduced by Regulation 1662/2006:

- Unless expressly indicated and for control reasons, products of animal origin should not bear more than one identification mark.
- The complete skinning of carcasses is required except for the muzzle and lips of bovine animals and feet of bovine, ovine and caprine animals. Heads, including muzzle and lips, and feet must be handled in such a way as to avoid contamination.
- Tonsils of bovine solipeds and porcine animals to be removed
- Requirements for fish oil for human consumption are added.
- Requirements for dairy products and raw milk also include colostrum and colostrum-based products.
- Levels of antibiotic residues in milk added
- Pasteurisation and UHT time / temperature controls added

11 – Approval of storage & transport establishments

CM had discussed this question at length with the FSA, and they agreed that Regulation 853/2004 does require the approval of non-retail establishments which both store and transport products of animal origin, (article 4.2), even though the EC Guidance Document on Regulation 853/2004 contradicts this, (section 3.5).

Identification marks for storage & transport establishments? CM outlined a problem in Islington where a food business was importing, storing and transporting meat products. The meat products already have an identification mark on the wrapping and/or packaging, and the food business undertaking the storage and transport may have its own identification mark, (in Reg 853/2004,

article 5.1 and Annex II, Sec I, para 2). This means products could have 2 identification marks, contrary to Reg 1662/2006, (see para 10 above). The advice from the FSA was to put the approval code of the storage and transport establishment on the invoice. CM advised that the matter had yet to be satisfactorily resolved.

12 – Approval of establishments manufacturing egg products from eggs and products of plant origin

NW read from the email from Simon Petty, of the FSA Primary Production Division, (forwarded to all in the group on 04/08/2008 by NW). He was replying to the question NW had put on behalf of the group. (See the minutes of our meeting on 4 April, item 7.3). He stated that:

“... it was not the (Commission's) intention for the use of eggs in foodstuffs to render the food subject to the requirements for egg products. Certainly, the Agency has no intention to seek that Approval be required in such cases. The Commission has indicated that it will bring forward a proposal which will clarify that it is not the intention. ... ”

13 – FSA lists of Approved establishments

13.1 – FSA single point of contact for food authorities

AB referred to FSA delays on entering new approvals onto the website listings, and the various contacts listed in this respect at the FSA. AB suggested a single point of contact for LAs at the FSA, and to simplify and speed up the process. Mel Bedi of L B Hillingdon made the same suggestion to NW.

13.2 – What information does the FSA require from food authorities on Approved establishments?

AB also suggested that the FSA has a downloadable form for LAs to use, listing the information that the FSA requires on each approved establishment. NW said that the EC has prescribed what information each Member State must put on its website. He referred to the request from the FSA for information on the fish species processed by each approved fishery product establishment. CM advised that she had written to the FSA seeking clarification on this but had not yet received a response.

Action - NW suggested making these two proposals to the FSA Local Authority Hygiene Technical Support section at the FSA. This was agreed.

14 - Two establishments in one premises, one requiring approval

BA referred to a garage in Newham where, at the same business premises, two separate businesses were operating, both owned by the same FBO and using the same staff, but with different accounts and customers. One business, producing chicken kofte kebabs for supply to other restaurants, required approval, whereas the other, producing chicken samosas for supply to the final consumer from his mobile van at markets, did not. BA served a Remedial Action Notice on the business making kebabs to cease its activities, and is taking action under 852/2004 on the samosa business.

15 - Consultation on the Primary Authorities scheme

BG referred to the 'Regulatory Enforcement and Sanctions Act 2008 - Consultation on the Primary Authority Scheme', from the Department for Business Enterprise and Regulatory Reform (BERR). The closing date is 3 December. See: <http://www.berr.gov.uk/consultations/page47808.html>

He noted that some sanctions were not included in the listings of action for referral to the Primary Authority for multi-site businesses. This meant that Remedial Action Notices, the refusal to approve an establishment, and the seizure of food, fell outside the scope of the proposed scheme. BR thought that food authorities should inform the Primary Authority of these sanctions.

16 - Revision of the HPA Microbiological guidelines for ready-to-eat foods

KF told us that the Health Protection Agency (HPA) are revising this document, and are consulting on it. See the slide show 'Revision of the HPA Microbiological guidelines for ready-to-eat foods' 2006 at: http://www.hpa.org.uk/web/HPAwebFile/HPAweb_C/1194947316876

17 - Training on the approval of food establishments

NW described how the one day course he has prepared had started. Earlier this year he had trained his colleagues in Hackney, over a course of six hours. They suggested that he offered this course to other food officers, and two Food Liaison Groups have booked him to train officers in their areas, Essex and South West London.

18 - Waste cooking oil

NW introduced a simplified information sheet he had written for FBOs on the storage and collection of waste cooking oil. (Although it was aimed at FBOs in catering establishments, it is still relevant to some manufacturing and approved establishments).

Several officers said that their authorities kept lists of registered waste oil carriers, including Westminster and Waltham Forest. BA said that Thames Water had provided free grease traps for some businesses in Newham as a pilot scheme, but that the businesses had not maintained them.

Date of Next Meeting: Wednesday 19 November 2008, 09:30 – 13:00, Walbrook Wharf offices, EC4