

Summary of FSA consultation responses on enhanced powers for the NFCU

The Food Standards Agency (FSA) has sought views on the proposal that the National Food Crime Unit (NFCU) should be granted additional investigatory powers to enable it to detect and investigate serious criminal offences, such as fraud, that may impact the safety or authenticity of food more effectively. Secondary legislation would be required to provide such powers to the FSA.

Introduction

The FSA believes further investigatory powers are necessary for the NFCU to be able to execute its remit and mandate to lead criminal investigations into complex food crimes, for prosecution by the Crown Prosecution Service (CPS), independently. The proposed powers concern the ability to apply for search warrants, seize evidence and interview suspects who are under arrest.

These powers have been made accessible to other non-police bodies such as the Gangmasters and Labour Abuse Authority (GLAA) and the Welsh Revenue Authority.

The use of investigatory powers is a serious responsibility which must be carefully exercised, controlled and monitored to retain public confidence and prevent misuse. For this reason, the powers of search and seizure require the judicial authorisation of a search warrant. The FSA are engaging with the Home Office on the appropriate additional accountability and governance arrangements for the exercise of these powers, given their intrusive nature.

The FSA already has access to a range of investigatory powers and has extensive experience in exercising them in a proportionate manner that is consistent with relevant safeguards and professional standards and is subject to independent oversight. Despite the wide-ranging powers available under PACE, the FSA have objectively assessed which specific powers are required to deliver the NFCU's mandate most effectively. The NFCU is proposing that only a proportionate and limited number of powers to be made available to food crime officers. These do not, for example, include powers of arrest.

The responses to this consultation have been supportive of NFCU's acquisition of these powers, and of the introduction of appropriate oversight for the use of these powers.

About this consultation

This consultation was issued on 26 May 2022 and closed on 18 August 2022.

The purpose of the consultation was to gather stakeholders' views across England and Wales on the FSA plans to seek enhanced investigatory powers for the NFCU. Separate legislation governing investigatory powers applies in Northern Ireland. The Food Standards Agency intends to hold a consultation for Northern Ireland in due course.

The FSA believes enhanced legal powers are necessary for the NFCU to be able to execute its remit and mandate to lead investigations and to prosecute serious, organised, and complex food crimes independently. The powers sought concern the ability to apply for search warrants, seize evidence and interview suspects.

By exploring the views of stakeholders through consultation, we wish to satisfy the principles of necessity and proportionality. We also wish to ensure that the proposed safeguards are sufficient to ensure civil liberties are appropriately protected.

The FSA is grateful to those stakeholders who responded.

The key questions on which the consultation sought views were:

- to what extent do you agree or disagree with the proposal on whether the FSA should be granted the powers under the Police and Criminal Evidence Act 1984, the Criminal Justice and Police Act 2001 and the Criminal Justice and Public Order Act 1994?
- to what extent do you agree or disagree that the existing and future proposed safeguards and governance arrangements listed in the consultation will enable the NFCU to achieve its mission under appropriate oversight?
- are there any specific considerations that should be borne in mind in relation to the extension of these investigatory powers to the FSA in England and Wales?

We received 20 responses from a range of academics, industry, local authorities, and individuals.

Analysis of respondents

Sector	Number of respondents	%
Academic	1	5%
Industry	3	15%
Local Authority	13	65%
Campaigners	1	5%
Individual	2	10%
Total	20	-

Summary of stakeholder responses

Q1. To what extent do you agree or disagree with the proposal on whether the FSA should be granted the powers under the Police and Criminal Evidence Act 1984, the Criminal Justice and Police Act 2001 and the Criminal Justice and Public Order Act 1994?

There was broad support for FSA to be granted the powers under the Police and Criminal Evidence Act 1984, the Criminal Justice and Police Act 2001 and the Criminal Justice and Public Order Act 1994.

Agreement	Number of respondents	Overall percentage
Strongly agree	9	45%

Agreement	Number of respondents	Overall percentage
Agree	5	25%
Neither agree nor disagree	0	0%
Disagree	0	0%
Strongly disagree	0	0%
Alternative response provided	6	30%

Most respondents were **in agreement or strong agreement** that the FSA should be granted powers. None of the respondents disagreed with the proposal.

A key theme among the responses was that additional powers are much needed by the Unit, and will enable the NFCU to operate more effectively on food fraud matters. The NFCU will also be better placed to lead on the overall response to food fraud. Respondents observed that it was right for NFCU to have access to powers as a centralised, national and internationally focused crime unit with a greater degree of autonomy and consistency.

Another theme within responses was that powers will reduce the strain on law enforcement and local authority partners, who the NFCU currently rely on for support with their tasked investigations.

Several stakeholders also felt that additional powers would act as an effective, high-level deterrent for criminals and organised crime groups.

Some stakeholders, while in agreement that the NFCU should have powers, raised the following points/concerns. These have been tabulated against FSA's observations on the points raised.

Response	FSA Observations
Academics from Manchester Metropolitan University and the University of Manchester raised a point that NFCU officers will need appropriate (re)training to ensure legal standards are maintained.	<p>Training and the planning of Continued Professional Development (CPD) will be critical to the preparatory activity the Unit will undertake ahead of discharging these new powers, once regulations granting access to them have been laid.</p> <p>Many NFCU investigators joined from law enforcement careers and will have already received training and have extensive experience of using these powers.</p>
The same respondents expressed concern about powers granted under sections 36 and 37 of the Criminal Justice and Public Order Act (CJPO) 1994, providing an example where "some individuals may be more willing or confident in explaining their circumstances over others, depending on factors such as language barriers, type of position (managerial, trainee), and type of legal or employer support available to them in dealing with law enforcement".	<p>We anticipate that the reservations expressed here could in theory also apply to others within the law enforcement community.</p> <p>Consequently, we will engage further with those who currently avail themselves of these powers to determine the latest in professional practice and incorporate this into training, CPD and operating procedures.</p>
They also highlighted concerns that "the use of these powers targets only a specific group of individuals and businesses (i.e., the 'usual suspects'), leaving outside this scope others who do not prescribe to preconceived notions of food fraud, the products/sectors more vulnerable/profitable for frauds to occur, and the actors involved in the commission of those frauds...Therefore, there may be a sector of business operators that would be targeted more under these powers, leading to a (mis)understanding that a specific kind of business operator/product/sector has more potential to commit food frauds – and not the result of more targeted action in such a sector that may obscure the reality of food frauds occurring in other business operators/sectors that are not within the highest risk categorisation".	<p>We anticipate that the reservations expressed here could in theory also apply to others within the law enforcement community.</p> <p>Consequently, we will engage further with those who currently avail themselves of these powers to determine the latest in professional practice and incorporate this into training, CPD and operating procedures.</p>
A respondent from the Association of Chief Trading Standards Officers (ACTSO) sought clarity on whether the granting of powers to the NFCU via a "police based" route rather than via specific food safety based legislation will limit the type of offences the unit can investigate, and what 'level' of issues/criminality will be considered by the NFCU going forward.	<p>It is not the FSA's intention to depart from its current food crime definition in terms of considering whether offences are suitable for investigative adoption by the Unit. These decisions continue to be taken on a case-by-case basis, informed by the scale, complexity and associated harm of the criminality in question.</p> <p>Some existing NFCU staff already have access to a number of food related legislative powers. The granting of additional powers are to enhance our existing capability, not to replace it.</p> <p>Section 54 of the Police, Crime, Sentencing and Courts Act permits the laying of regulations around access to these powers within 'investigations of offences conducted by food crime officers'.</p> <p>The NFCU has sought to focus on the investigation of food crime - which we currently define as 'serious fraud and related criminality within food supply chains'.</p>

Although not in direct response to Q1, **Trading Standards South East (TSSE)**, a partnership of 19 Local Authorities, and **Leicester County Council Trading Standards Service** indicated that they were supportive of powers and that the extension of powers to the NFCU is a positive step forward, needed to help the NFCU better tackle food crime at a national level.

Q2. To what extent do you agree or disagree that the existing and future proposed safeguards and governance arrangements listed in the consultation will enable the NFCU to achieve its mission under appropriate oversight?

There was broad agreement that the existing and proposed safeguards would enable the NFCU to achieve its mission under appropriate oversight.

Agreement	Number of respondents	Overall percentage
Strongly agree	4	20%
Agree	10	50%
Neither agree nor disagree	0	0%
Disagree	0	0%
Strongly disagree	0	0%
Alternative response provided	6	30%

The majority of respondents were in **agreement** that the existing and future proposed safeguards and governance arrangements listed in the consultation will enable the NFCU to achieve its mission under appropriate oversight. None of the respondents disagreed with this proposal.

Most of the additional comments relating to this question voiced agreement that the safeguards and governance arrangements were appropriate and proportionate for the powers (and use of) that will require them. There was also wide acknowledgment that oversight and scrutiny of the NFCU's use of powers are a necessary requirement to enable the NFCU to carry out its duties successfully.

Some stakeholders raised concerns qualifying their support which are tabulated below along with the FSA's observations.

Response	FSA observations
Academics from Manchester Metropolitan University and the University of Manchester suggested that it "may be helpful to plan for complaint handling procedures for allegations of PACE 'overreach', whether such complaints stem from an individual or an organisation...In many ways, use of PACE powers will be different when tackling food frauds when compared to other policing contexts, but larger businesses may be more willing and able to challenge potential misuse of such powers".	We agree that these procedures should be in place and the new legislation (in section 54 (4)) creates the power for the Secretary of State to lay regulations bringing the activity of food crime officers (where related to these new powers) under the complaint handling procedures of the Independent Office for Police Conduct (IOPC). This can involve complaints being handled by IOPC in full, being supervised by IOPC while being investigated within the organisation or being explored internally without IOPC involvement.
A respondent from Association of Chief Trading Standards Officers (ACTSO) commented that "it remains imperative that there is prior notification and then ongoing close liaison with any local authority where a food business under investigation is based, alongside effective intelligence sharing". ACTSO also want to know of plans for the NFCU to publish an enforcement policy and to what extent the Regulator's Code would apply.	Engagement with local authorities is a key feature of NFCU's current investigative approach. We continue to recognise the value and necessity of collaborative approaches in many investigations and our intelligence development work. There will be occasions where owing to operational sensitivities, it will not be possible to engage in this way. We anticipate this will only ever be in a minority of investigations. We note the relevance of the Regulator's Code to aspects of our response. We do not have intentions currently to publish an enforcement policy.
Although not in response to Q2, a respondent representing Trading Standards South East (TSSE) , commented that the NFCU should operate under a documented Code of Practice, or equivalent, with a similar status to the Food and Feed Codes.	The legislation which relates to the majority of the powers sought, the Police and Criminal Evidence (PACE) Act 1984, is supported by Codes of Practice which would inform NFCU's use of those powers. Adherence to these Codes and the maintenance of understanding of them will be a key feature of Unit training, CPD and operational review.

Response	FSA observations
An individual responding in a personal capacity commented that "we cannot rely on the public to complain to enforcers about illegal practices because the practices are too well hidden within the industry. Similarly, pre-planned inspections do not identify illegal practices which are deliberately hidden from view".	The NFCU receives intelligence and information from a wide range of provenances with regards to identifying food crime and can draw on a substantial body of techniques to develop this information further in ways that may not include pre-planned inspections.

Question 3: Are there any specific considerations that should be borne in mind in relation to the extension of these investigatory powers to the FSA in England and Wales?

Considerations of the role that Local Authorities would continue to play alongside the NFCU were raised by many respondents, alongside knowledge and CPD and the consideration of Primary Authority Partnerships.

Response	FSA observation
<p>Respondents from Manchester City Council, City of London Corporation, East of England Trading Standards Authority and Luton Borough Council raised similar points about the need for Local Authorities to be kept informed of any intelligence work, investigation or enforcement activity being undertaken by the NFCU upon food businesses in their areas. In their view, the extension of powers to the NFCU should not signal the loss of a role for Local Authorities; additionally, the NFCU should complement the work of Local Authorities, not subvert it.</p> <p>On a similar note, a respondent from Lancashire County Council Trading Standards wants regular liaison with the food authorities in whose areas the NFCU are conducting their investigation to be in place and shared their experience of some government agencies being unwilling to reciprocate the sharing of intelligence or details of investigations with them.</p> <p>Although not in direct response to Q3, Trading Standards South East (TSSE) and Leicester County Council Trading Standards Service commented on the need for the NFCU to coordinate with the relevant Authorities when using powers within those Authority areas, except in exceptional circumstances. Effective coordination with Local Authorities was also seen as a critical factor to the success of this new layer of enforcement.</p>	<p>The Unit's regional intelligence officer network allows for both routine and operationally specific engagement with local authorities around ongoing intelligence and investigation work. It will in most cases be appropriate to share information around ongoing investigations and this will be our default position - but in a small number of cases it may be necessary not to do so, or to do so at a later juncture.</p> <p>There is no intention for NFCU's investigators to supplant the activity of, or lead to the removal of powers from, local authority officers. These additional powers will further strengthen the overall response to food fraud, without diminishing the mandate or capabilities of local authorities to be active in the investigation of these offences.</p>
<p>A respondent from ACTSO commented that consideration needs to be given to the application of the Regulatory and Enforcement Sanctions Act 2008 and Primary Authority relationships.</p>	<p>The NFCU recognises the requirements of the 2008 Act on local authorities with regards to Primary Authority engagement prior to enforcement (with exceptions), and such engagement may form part of an investigative plan.</p> <p>However, this is not a legal requirement for the FSA for criminal investigations in the way that it is for local authorities with regulatory enforcement.</p>
<p>A respondent from Luton Borough Council commented on the importance of NFCU officers having an understanding and appreciation of food law and associated crime.</p> <p>A respondent from Norfolk County Council raised a concern about the CPD requirements for officers in the NFCU, which they felt were not referenced clearly in the consultation. CPD is a requirement for all food officers in competent authorities.</p>	<p>An understanding and appreciation of food law is clearly an asset for NFCU investigators. Experts in the FSA are able to deliver CPD on this area and to offer specific operational advice where appropriate.</p> <p>The maintenance of skills and knowledge around the application of any new powers which are afforded to NFCU will be a critical feature of ongoing CPD.</p>
<p>A respondent from West Devon Borough Council felt that the extension of powers does not go far enough. Most food crime is across multiple authorities and Local Authorities are currently working on skeleton staff.</p> <p>The NFCU needs to have an oversight over the whole web of the criminal operation and in particular have powers to stop and search vehicles. It is whilst on the road that food is 'out in the open' and not hidden in remote farm buildings or anonymous industrial units.</p>	<p>The NFCU will continue, in some instances, to require support in some more specialist capabilities from other law enforcement bodies such as the police. The Unit has arrangements in place to be able to request and, where possible, to draw upon such support.</p>

Academics from **Manchester Metropolitan University** and the **University of Manchester** raised the following specific considerations:

Response	FSA observations
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Concerns about the framing of NFCU's response strategy within the UK's Home Office Serious and Organised Crime Strategy, as this has implications for the framing and response to food fraud. The NFCU would align itself to strategies developed in response to organised crime, even though the NFCU has asserted that whilst there are exceptions, there does not seem to be any consistent organised crime activity in food fraud.	<p>We assess that the 4P approach is important for all serious crime including organised crime (undertaken by traditional criminals) and for crimes that are organised, even where those responsible are less recognisable as career criminals. Food crime can fall within both categories, with tangible impacts in terms of many forms of harm.</p> <p>Current NFCU investigations underway span national and international boundaries; these crimes are complex and involve large sums of money and large-scale deception of legitimate businesses and consumers. We are also aware of occasions where groups linked to food crime are linked to serious organised criminals active in other forms of offending.</p> <p>The comments from the respondents are noted.</p>
<p>Training and vetting NFCU officers who are executing the investigative powers is an important safeguard. However, the structure and staffing of investigative crime units, usually with ex-law enforcement officers, enables a predisposition to pursue criminal offending as exceptional offences by individuals or businesses.</p> <p>While this is important, it diverts attention from structural and cultural reform of the food system – for instance, alternative ownership models that reduce opportunities for food fraud.</p>	<p>The comments from the respondents were noted.</p>
The enforcement tension between the criminalisation of food fraud and food law/regulation foregrounded on food safety. Investigations on food frauds are limited by the conceptualisation of food fraud and food crime, which are subjected to a test of seriousness determined by the degree of planning and coordination, geographical scope, as well as the financial loss and harm to the public and industry. Furthermore, the NFCU focuses on seven types of food crimes, which narrows the scope of food fraud to certain acts. So, while increasing the NFCU's investigative powers will enable the NFCU to fulfil its remit more accurately, structural limitations will remain from preconceived ideas about food frauds, the type of activities and actors that these comprise, and the mismatch between the criminalisation of food frauds and the legal/regulatory framework.	<p>The NFCU's 'seven types of food crime' are descriptive terms relating to regularly observed techniques which feature within food crime, rather than being prescriptive features of whether an offence is a food crime or not.</p> <p>We remain open to the consideration and categorisation of further forms of food crime.</p>
The respondents recommended the 'designing in' of evaluation mechanisms alongside the collection of robust before, during and after data, so that the effects of any investigative intervention can be properly assessed against the stated objectives of their implementation. This will enable a better understanding of 'what works', under which conditions, and why.	<p>The review of operational progress against stated objectives is a key feature of NFCU's investigative cycle and internal management processes, including the Unit's tasking and co-ordination processes. We are in full agreement that due consideration of the efficacy of interventions will be important in ensuring the Unit's budget is well spent and achieves the best results it can.</p> <p>NFCU performance measures are publicly available as part of broader FSA reporting.</p> <p>The FSA has recently commissioned a study to explore 'what works' in the context of food crime prevention, which aims to explore successful approaches both in other jurisdictions and in other similar areas of fraud.</p>

Responses provided outside the consultation questionnaire

Some responders added some additional comments to the questionnaire answers or responded directly by email with their views, which are set out below.

An individual who is a **campaigner around E. coli 157**, commented that the NFCU should have access to powers. Having powers of arrest would make for a more holistic and efficient toolbox for enforcement. Hopefully recent comments from NFU and CIEH around delays with import checks will be taken into consideration during this process.

A respondent representing the **10 Greater Manchester Local Authorities Food Liaison Group** commented that they strongly agree with the FSA being granted specified powers outlined in the consultation. They stated that it has been a frustration for some time for the NFCU to be asking Local Authorities to investigate significant cross-border food crimes when they had been assured previously that was in fact one of the functions of the unit.

A respondent from the **Wine and Spirit Trade Association** commented that they were generally in favour of the extension of powers. Food crime in relation to wines and spirits often sits uncomfortably between the police, Trading Standards, the IPO and HMRC. It would be of significant benefit if the NFCU had more operational ability to lead in this area.

An **individual responding in a private capacity** commented that they were in total support of the need for increased powers for the NFCU and FSA, and that they are necessary to expedite cases of inappropriate food processing and the fraud that may well be going on behind such

ventures.

Next steps

The FSA will ensure that local authority partners are alerted to this publication and to the reassurances it contains around NFCU's interactions with local authorities.

The FSA will also be continuing to work with partners across government in pursuit of further primary legislation required to place HMICFRS oversight of aspects of the work of food crime officers on an appropriate legislative grounding.

In the event that secondary legislation is tabled which equips FSA food crime officers with the additional powers described earlier in this consultation, the NFCU will devise and deliver a clear implementation plan.

This will take into consideration the concerns expressed within these responses, for example around training and CPD.

The findings of this consultation will also be used to inform the early stages of any activity to develop and take forward legislation to equip food crime officers with similar powers in Northern Ireland.