Achieving Business Compliance

FSA 24/09/05 - Report by Katie Pettifer & Carmel Lynskey

1. Summary

1.1. This paper provides an update on the progress of the Achieving Business Compliance (ABC) programme, as well as a comprehensive overview of the recent trial and proposed next steps for National Level Regulation.

1.2. The Board are asked to:

- **Note the success** of the ABC Programme in achieving its objectives. The formal programme is now coming to an end, but critical projects on local authorities and further work to support local authority delivery will continue within our Regulatory Compliance Division, and a new Business Compliance team will take forward ongoing work on new approaches to regulation.

- **Note the findings** from the trial and agree to the implementation of phase one for national level regulation, which can be achieved with no increase in resources. Future phases would require ministerial engagement and further Board approval.

2. ABC Programme Delivery

2.1. The ABC Programme was established in January 2021, and aimed to deliver against three key areas:

- Modernising the delivery of local authority regulation

- Testing new approaches to regulation

- Designing the blueprint for a future regulatory system

2.2. A programme is a structure for marshalling and running work which delivers change. It is by definition a temporary thing. All of the projects we established within the programme are successfully completed (or near to completion), so we will formally close the ABC programme, and transfer the remaining work into business-as-usual functions across the FSA. This paper sets out what the programme has delivered and outlines our proposed next steps.

Modernising the Delivery of Local Authority Regulation

2.3. The ABC Programme initiated a series of projects over the last three years that were designed to help modernise the delivery landscape for local authorities. FSA capacity meant that we had to prioritise which modernisation activity we could pursue, and we did this in liaison with local authorities to ensure we were supporting them to deliver. We have designed and piloted a new Food Standards model, which is being implemented now in England and Northern Ireland. We have also piloted this new Food Standards model in Wales and are awaiting the final evaluation of the pilot. We worked with local authorities to identify targeted changes to the food hygiene model, and to develop a set of actions to help with ongoing resource challenges, such as a review of the FSA competency framework and the development of new routes to qualification. We have also identified a new way to gather and analyse local authority data and are progressing with procurement. The fact that the ABC programme is ending does not mean we will stop looking for ways to support better local authority delivery, so all of this ongoing work has been transitioned into business-as-usual activity within the Regulatory Compliance Division, and updates on progress are provided in the LA Performance paper.

2.4. Under this strand, we also updated the Safer Food Better Business (SFBB) guidance, which is used by small and medium food businesses. The SFBB pack is the most downloaded content on the FSA website, and local authorities often signpost businesses towards it. In 2023 there were more than 600,000 page views to the SFBB pages of the FSA website and nearly 550,000 downloads of the guidance. A full review was undertaken for the first time in over five years to update specific areas of policy, and there was significant change to add and update allergens information for businesses to follow. The pack will now form part of business-as-usual activity in the Business Compliance team and will be kept updated accordingly.

Testing New Approaches to Regulation

2.5. At the outset of the programme, we considered options available to test new approaches to regulation. Based on the evidence available, there were two key areas for consideration: 1) large, highly compliant businesses, where there was potential for increasing FSA oversight through better use of data, whilst creating efficiency in the system; and 2) in the online space, where there were new business models that were not captured by the existing regulatory framework.

2.6. For the large, highly compliant businesses we developed a proof-of-concept trial to test enterprise level regulation with five large retailers in England. This is covered in more detail from section 3 onwards, where we propose the next steps on national level regulation, following conclusion of the trial in March 2024. It summarises our findings from the trial, explores what our longer-term ambition might be, and explains how a phased implementation might work.

2.7. In the online space we researched the emerging business models and assessed the potential impact on consumer risk. We concluded that food sold from UK food businesses through online platforms was not inherently riskier, as the originating premises were still being inspected. However, in buying food online, consumers lose the ability to see the premises themselves, and therefore we wanted to explore how we could continue to support consumers to make informed choices. In engaging some of the food delivery platforms (or aggregators) we identified an opportunity to proactively harness their influence on the tens of thousands of businesses using their platforms, to benefit consumers.

2.8. The aggregators food safety charter has resulted in improved outcomes for consumers. The aggregators committed to accept only registered food businesses onto their platforms and to require a minimum FHRS rating to operate on the platform (currently 2 for Deliveroo and UberEats, 3 for JustEat). This gives a significant incentive for these businesses to register and to improve their standards if their FHRS ratings fall below these minimums. Our analysis shows that broadly compliant premises (3 and above) have a smaller chance of a foodborne disease outbreak than those that are not broadly compliant (2 and below), so driving up compliance for those selling online is a positive step for public health. All three aggregators display FHRS ratings to customers, and both Deliveroo and JustEat allow customers to filter by FHRS ratings.

They have also all committed to use their channels to share food safety information and guidance, and to work with restaurants to support customers with food hypersensitivities. Under these commitments they have shared and promoted FSA guidance on allergens management across c170k small and medium businesses, and supported local authorities in ensuring new businesses are correctly registered and sign-posted to appropriate guidance. Between January and May 2024 all three aggregator platforms sent out the FSA allergen training via email to all their restaurant partners in the UK and NI, resulting in the highest number of users since the training was launched in September 2020. Over 22k new users registered during this period – a 36% increase on the same period in 2023.

2.9. The ongoing relationship with Deliveroo, JustEat, and UberEats who have collectively signed up to the charter is now a business-as-usual activity in the Business Compliance team, with our focus to date on FHRS and allergens. We aim to continue developing the charter by looking at other elements of their operating models where enhanced or targeted guidance may assist. For example, targeting allergens training at delivery drivers. We also intend to engage further online platforms with signing up to this new approach.

Designing the Blueprint and Next Steps

2.10. In December 2023, following a process of engagement with stakeholders and experts we outlined a potential blueprint for the future of food regulation, consisting of a series of building blocks:

- National level regulation
- An enhanced registration process
- Centralised collection, coordination and sharing of intelligence
- The right enforcement toolkit
- A high-quality guidance hub

2.11. We were clear at the time that delivery of these building blocks would require substantial resource investment and indeed legislation. However, together they provide a vision that we can work towards in the future, depending on the resources and legislative opportunities available.

2.12. The next steps on national level regulation are set out below. We will also continue to work with local authorities to explore the case for an enhanced registration process and to identify areas in which the enforcement toolkit might be improved. The speed and scale of our ambitions in this area will depend on the resources available, and on the extent to which ministers might consider legislative changes. We will want to work closely with the UK, Welsh and Northern Ireland governments, as well as with local authority delivery partners and wider stakeholders. We will report back to the Board on this.

3. The Case for National Level Regulation

3.1. The current regulatory framework for food hygiene has been in place for several decades. It uses a “one size fits all” approach. Every food business premises is regulated by the local authority where it is based, through regular inspections or interventions by environmental health officers in the local authority food team. The frequency of interventions will differ for different

businesses, but the same basic model applies whether the premises is a small independent café, a factory, a school canteen or a branch of a large national supermarket chain. This system of checks – and the widely recognised Food Hygiene Rating Scheme that is based on it – helps to protect public health and to enable consumers to have confidence that the food they buy is safe.

3.2. In December, the Board heard about the research we carried out with a wide range of businesses, delivery partners and other actors in the food system. We heard that this local system has great benefit for many smaller businesses, for whom local authority food teams are an important source of guidance and expertise. But the resourcing challenges and backlogs faced by many local authorities (set out in detail in our parallel December Board paper on local authority delivery) put at risk their ability to provide the same level of guidance and support in future.

3.3. We also heard that unlike small businesses, many larger businesses tend to have a centralised risk oversight function, with their own internal expertise and assurance systems, as well as drawing on third party assurance. For the largest – particularly large national chains with a lot of central controls – local authority inspections form only one of many different audit and assurance processes designed to drive good food hygiene practices in individual stores. The 10 largest supermarket chains in the UK are a good example of this. They tend to be very highly compliant (with a combined average FHRS rating of 4.9/5), with centralised data, robust risk controls, and standardised food safety management systems.

3.4. Given the critical importance of food safety to public health, it is important that all businesses are subject to effective regulation, and that consumers can feel confident that businesses are following good food hygiene practices. But, for large national businesses, individual store inspection by local authorities may not be the most efficient way to check they are following the rules, or indeed the most effective way to drive good practices. And whilst a local authority can react to any issues in an individual premises, they cannot see the picture across the entire business, or access the levers to influence this proactively at a national level. If we can develop a better method for regulating these businesses, we can enhance this level of oversight and develop a more proactive approach, whilst maintaining consumer protection. Doing so would also provide the opportunity to free up local authorities to spend more of their time with the businesses who most need their support and scrutiny. Our enterprise level regulation trial, described below, was designed to test out another method.

3.5. The case for national regulation is about improving the current regulatory system, through increased oversight and improved equality of arms. The food sector has evolved rapidly over the last few decades and continues to do so. There are over 600,000 food businesses in the UK, mostly small and micro-businesses. But within these, there is a subset of very large businesses (whether in retail, manufacturing or hospitality) who dominate the sector and wield huge influence over their supply chains and over consumers. For example, 95% of the food people buy in grocery shopping comes from just ten large supermarket chains.

3.6. At the moment, big businesses in the food system are regulated by many separate local authorities, based on where they have premises. They might also pay for a primary authority partnership with a chosen local authority e.g. Luton for Tesco, Newham Borough Council for Amazon, Wakefield for Deliveroo. Businesses operating in both England and Wales will need to create a partnership arrangement in both countries in relation to devolved matters, including food. These primary authorities can charge businesses to provide them with assured, expert advice on technical food safety issues, but they are not necessarily in a position to influence how the business operates at a strategic level. Primary authorities can guide enforcing authorities in how they should regulate businesses. This can sometimes result in primary authorities blocking enforcement action from local authorities, which might end in formal challenge under the Office for Product Safety and Standards determination process. To date, all challenges from enforcing authorities against primary authorities have been successful.

3.7. Given their influence and impact on consumers and other businesses, we believe there is a case in principle for more strategic, national-level regulatory assurance of the biggest, most influential businesses. A national level regulator could leverage these relationships to tackle non-compliance at a business, rather than local store level; to understand risk better across the food system, and to convene large businesses to share best practice on food safety.

4. Trial Evaluation

4.1. To explore this idea, we have been carrying out a trial exercise over the past year. The Enterprise Level Proof of Concept trial took place from April 2023 to March 2024, with five participating large retailers (footnote 1) in England only. The trial ran in a sandbox environment, meaning that Local Authorities continued to inspect stores as normal during this period. This allowed us to test the concept of national regulation without introducing any additional risk to consumers.

4.2. The trial was designed to test whether regular analysis of business data, supported by closer working and a small number of verification checks, can provide an accurate picture of the effectiveness of the retailers' food safety management systems and processes, rather than relying solely on many premises level compliance checks. In the trial, the retailers provided data on a monthly basis to the FSA and their primary authority. The FSA undertook detailed analysis, producing a summary dashboard of trends and areas for further scrutiny, which were discussed on an ad hoc basis where appropriate, or via the quarterly assurance review. This enabled a holistic view of risks and management controls across the whole business. The FSA commissioned a series of checks to a number of premises, to verify if the data we had received was accurate, and if it was able to provide a true reflection of the situation in an individual premises. The evaluation has provided assurance that this is the case.

4.3. An independent evaluation, based on quantitative and qualitative findings has produced the following headline findings:

- The trial was designed and implemented well.
- Strong relationships have grown over time between the LRs and the FSA.
- The FSA had routine access to LR data, and the data accurately represented the situation in LR premises.
- The data went beyond what the FSA can access from current routine inspections.
- Overall, the trial was successful in enabling the FSA to draw conclusions for a future ELR, with all success measures met or partially met.

4.4. The findings have been scrutinised in detail and lead us to the conclusion that an enterprise level approach to regulation for this type of business is suitably robust and proportionate, offering greater insight to compliance within these businesses than the current system can provide. In particular:

- It continues to provide **strong protection for consumers**. Under the enterprise level regulation model, the retailers' data was scrutinised on a monthly basis, whereas supermarket stores are typically inspected every 1-3 years. Accessing system wide data in

the trial enabled the FSA to observe holistic trends in performance that cannot be identified on a premises-by-premises approach, and to seek assurance that businesses are tackling dips in performance before they become a problem.

- It is **risk-based and proportionate** –- moving away from a one-size fits all model is proportionate to the individual businesses, and better aligns with smarter regulation guidance. It increases the insight into large businesses in a way that the current system could not achieve – for example, during the trial period FSA had access to data from over 10,000 store audits, compared to around 1500 local authority inspections of stores in the same period.

- It **makes better use of limited local authority resources**, by creating the opportunity to remove a small number of inspections from the local authority workload, enabling them to redirect this resource to other priority areas and potentially spend more time supporting smaller businesses.

- It provides **greater consistency for businesses** being regulated this way, who will be assessed at a single source, as opposed to across hundreds of local authority boundaries, where consistency in approach can be difficult to achieve.

- It **creates potential opportunities for positive influence on supply chains** – greater insight to large business compliance will create opportunities for a knock-on effect to companies within their supply chain, particularly if we were to apply this model to other types of regulation (e.g. food standards as well as food hygiene).

4.5. We believe that this evaluation supports the case for national level regulation for large retailers in England and propose a phased implementation of this using existing opportunities within the current legal framework, as set out below. We would also like to explore the case for national level regulation of these retailers in Wales and Northern Ireland, with the relevant governments and other stakeholders. We are talking to Food Standards Scotland about similar opportunities too.

4.6. More work would be needed to establish the case for national level regulation in other parts of the food sector (e.g. manufacturers or food to go) or in food standards rather than food hygiene.

5. Proposed next steps on national regulation

5.1. It is possible to imagine a long-term scenario in which FSA acts as the direct regulator for a subset of very large, national businesses which have strong compliance records, centralised data systems and risk management controls, and clear internal accountabilities. This might even be possible across all three nations, or four in collaboration with FSS, and we will continue to explore this. But this system would need legislation to implement fully, and would need appropriate funding, so any future proposals would ultimately be a matter for ministers to consider in the governments in all relevant parts of the UK. It would take several years to develop and deliver such changes, in consultation with a wide group of stakeholders.

5.2. In the meantime, there are steps we can take towards national regulation by undertaking a phased implementation on a smaller scale, using the tools available within the existing legal framework, and then through amendments to the Food Law Code of Practice and potential secondary legislation. The draft map at Annex A illustrates how we might do this, while simultaneously exploring with stakeholders how we could develop the model further.

5.3. We could begin by continuing to operate a form of national level regulation in England with the businesses who have participated in the existing trial, and potentially offering entry to those other large retailers who formed part of the original scope. Working in partnership with the primary authorities, as we have done so far, we can utilise existing provisions in legislation (for example, those allowing for primary authority inspection plans) as the first stage in a gradual move away from reliance on local inspection and towards a business-level assessment of data for these businesses. This would reduce a very small number, c2500 per year, of both planned and reactive inspections required by local authorities. However, it would be dependent on participating primary authorities being entirely assured that the new approach is a robust alternative, and feeling engaged with the process, as we would depend on mechanisms only available through the primary authority function. This is phase one on the map at annex A and could be achieved within existing resources in 24/25.

5.4. Starting gradually like this would enable the FSA to continue to learn and iterate this concept, building confidence and providing assurance in an alternative approach, whilst building a greater understanding of the wider implications. It would enable the tools and resource needs to be better understood and provided. For example, during the trial, the account manager had to manually check all of the data received from the businesses, which was a labour-intensive process. We intend to partly automate some of this, utilising the Insight Engine currently being scoped and procured to access and store local authority performance data.

5.5. In the medium term (around two years hence) we could move into phase two, seeking changes to the Food Law Code of Practice, and potentially secondary legislation, to enable the FSA itself to become the competent authority delivering official controls for the large retailers in scope of the original trial, and remove the need for planned local authority food hygiene inspections to these premises. This would still only be a step on the journey. The current legal framework would limit the model – for example, the FSA would not have access to the specific enforcement powers we might consider most appropriate for these businesses – and without additional funding we could only operate this model for a small number of businesses. But it would enable ongoing development of the new approach, maintain the relationships developed during the course of the trial, and remove further burden from the local authority workload. We can return to Board with further updates on phase two proposals as they develop in response to phase one.

5.6. In parallel with the phased implementation in England we plan to actively engage stakeholders in Wales and Northern Ireland with the findings of the trial and explore the appetite for future trials. The context in both countries is different, with smaller numbers of large retailer premises and a different set of requirements outlined in the Food Law Code of Practice. In Northern Ireland, there is no Primary Authority function for food, the LR footprint is much smaller, and FHRS is mandatory, as it is in Wales. However, the opportunities for the FSA to be able to have oversight across the entire business enterprise (as opposed to just stores operating in England) would significantly increase our influence and leverage and would standardise the regulatory expectations for businesses.

6. Managing the Risks of National Level Regulation

6.1. Direct regulation of food businesses is not a new concept for the FSA, as we already directly deliver controls in meat, dairy and wine. However, a national level regulation model would see the FSA take on direct regulation of a much larger proportion of the food sector in terms of market share and consumer reach. It would fundamentally alter our strategic risk profile.

6.2. The trial has given us confidence that the new model can protect consumers well. If we are going to implement national level regulation, it is important that the public, regulatory delivery partners and trading partners can have confidence in it too. We will need a clear articulation of the evidence and a plan which builds in the time to take others with us. It will be particularly

important to explain how we will provide transparency to consumers, and how the widely recognised and used Food Hygiene Ratings Scheme might evolve with the new model. We know from our research that consumers like the simplicity of all businesses having to display an FHRS rating. However, they were unsure supermarkets were included and said they would be less likely to check supermarket ratings. This scheme is predicated on premises-based inspection and is therefore incompatible with the national level regulation in its current form, but we are exploring how we could develop the scheme in future to maintain the current levels of consumer information.

6.3. We also need to ensure that the FSA has the expertise and resources to do the job well. The trial has given us some very valuable learning, but it is important that we continue to build our understanding as we move towards implementation, and to test and trial new elements, as necessary. The phased approach to implementation set out above is very important in that respect. Without additional resources, and specifically the technology that will enable the FSA to undertake this role with only a very small team, there will be a limit to how far the FSA can and should go towards national level regulation.

7. Conclusions

7.1. The ABC Programme has achieved its objectives and reached a natural conclusion to allow formal closure. The outstanding work relating to the Food Standards Delivery Model, local authority data, and the ongoing local authority resource challenges will transition to business-as-usual activity in the FSA.

7.2. The trial in England to test a new approach for regulating large retailers was a success, and a plan is in place to enable a small-scale phased implementation, returning to Board in 2025 with an update on four-country working and longer-term plans. These plans will require engagement with and support from Ministers in each of the countries.

7.3. The Board are asked to:

- **Note the success** of the ABC Programme in achieving its objectives. The formal programme is now coming to an end, but critical projects on local authorities will continue within our Regulatory Compliance Division, and a new Business Compliance team will take forward ongoing work on new approaches to regulation.

- **Note the findings** from the trial and agree to the implementation of phase one for national level regulation, which can be achieved with no increase in resources. Future phases would require ministerial engagement and further Board approval.

Annex A

1. Aldi, Asda, Sainsburys, Tesco, Waitrose