

MINUTES OF THE EXTRAORDINARY FSA BOARD MEETING ON 8 APRIL 2020

Virtual meeting by video link, Chaired from Arncliffe, North Yorkshire

Present:

Heather Hancock, Chair; David Brooks; Margaret Gilmore; Colm McKenna; Mary Quicke Timothy Riley; Stuart Reid; Mark Rolfe.

Apologies:

Ruth Hussey.

Officials attending:

Emily Miles	-	Chief Executive
Martin Evans	-	Acting Chief Operating Officer
Michael Jackson	-	Head of Regulatory Compliance
Maria Jennings	-	Director of Regulatory Compliance, People and Northern Ireland
Chris McGarvey	-	Head of Legal Services
Julie Pierce	-	Director of Openness, Data and Digital
Guy Poppy	-	Chief Scientific Adviser
David Self	-	Head of Private Office
Rebecca Sudworth	-	Director of Policy
Colin Sullivan	-	Director of Incident Response - COVID-19
Steve Wearne	-	Director - Global Affairs

1. Welcome and Introductions

- 1.1 The Chair welcomed everyone to meeting and confirmed those attending and observing the meeting. She explained that this urgent extraordinary Board meeting had been called in the light of the coronavirus public health crisis. It was being held in closed session as the Board would be considering legally privileged advice that could not be discussed publicly. She confirmed that the meeting was being minuted and that the minute may be published in due course.
- 1.2 The CE presented an overview of the FSA's COVID-19 response. She said that it was important to have on the record the ways in which the FSA had responded to COVID-19 and the way in which social distancing measures had impacted on how the department worked. She praised the work of FSA staff, the work staff of Eville and Jones performed on the FSA's behalf and that of Defra staff in carrying out their duties.
- 1.3 The CE set out the strategic intent around protecting public health and the consumer interest in relation to food. She set out five main areas of activity including: advice to businesses and consumers; ensuring meat plants had the capacity to operate; supporting Local Authorities (LAs) and Port Health Authorities (PHAs); progressing urgent policy work; and the health and wellbeing of FSA staff and the staff of Eville and Jones working on the FSA's

behalf. She then gave a brief overview of the work that FSA was doing within these areas of activity.

- 1.4 The Chair added that Board Members had been able to keep in contact throughout the period through keeping-in-touch calls and Board circulations and that she and the CE had held frequent meetings to discuss issues relevant to the management of risk and the COVID-19 response.

2. COVID-19 Response: Temporary Changes to Enforcement of Labelling Requirements and Approach to Managing Risk (CLO 20/04/01)

- 2.1 The CE introduced the paper. She raised the labelling issues emerging in the COVID-19 response and the possible risks emerging from this outlined in the paper, acknowledging that this had been circulated to Board Members only a few hours earlier. She explained that significant changes to the food supply arising from the outbreak had the potential to create shortages and the FSA had been asked whether there was scope for flexibility in relation to food labelling issues in order to help address this. She emphasised that the FSA's priority would remain focussed on public health and being ready for possible risks, rather than necessarily responding to those that had already emerged. She stressed that in a volatile, uncertain environment potentially small issues would need to be addressed quickly and taken seriously to prevent unintended consequences. She asked Rebecca Sudworth to give an overview of issues outlined in the paper.

- 2.2 Rebecca gave a summary of issues arising from disruption to the food supply. These included the decline in the wholesale distribution trade; the drop in demand for milk products; and changes in consumer behaviour. She also summarised the principles the FSA was adopting when taking decisions about the COVID-19 response and explained that these were intended to guide future decisions and ensure the agreed FSA risk appetite was observed. These principles were:

- to protect consumers interests and support the supply of safe food by taking a proportionate risk-based approach to ensure that critical FSA and local authority/port health authority functions and their supporting services remain operational and appropriately resourced;
- to support FSA staff to protect themselves and others, following current government advice and guidance;
- to apply risk management measures within the risk appetite set by the Board, seeking Board approval if decisions alone or in combination would require a deviation from this framework
- to apply risk management measures (including any easements) for as short a time as needed to manage the impact of Covid-19;
- to retain control and accountability at all times, with clear mechanisms for recording measures in place and monitoring the impact;
- to ensure consistency as far as possible between countries and regions, whilst taking into account specific local needs; and

- to work in partnership with stakeholders across government, the wider public sector and food business operators and representatives to ensure that measures are integrated within the whole of government response.

2.3 Rebecca outlined the main points of the proposals, and the red lines that had been developed to ensure that food safety would not be compromised. These included flexibilities being contingent upon having a genuine benefit that would outweigh risks in terms of a reduction in accuracy of consumer information; and all other measures having been implemented to ensure food safety was maintained. She added that traceability would also be protected and mandatory information, such as allergen labelling, would be required as was currently the case. Rebecca then asked Chris McGarvey to explain the legal implications of labelling flexibility measures.

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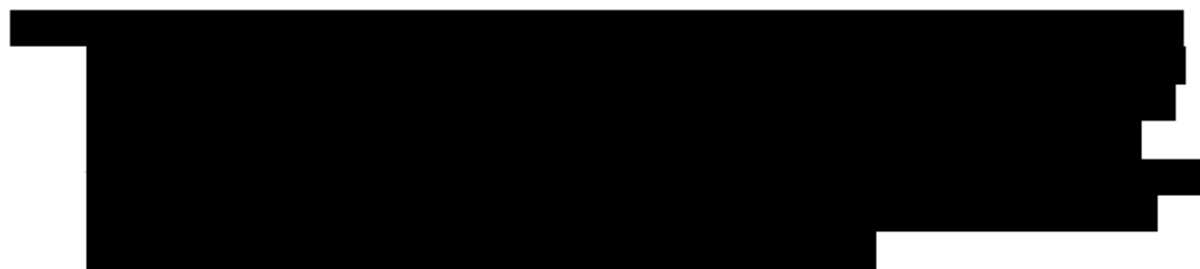
2.6 Steve Wearne explained that similar issues were being faced in several EU Member States. He explained that the Swedish National Food Agency had produced guidance saying that there should be flexibility for labelling provided no risk was presented for public health. Norway's approach had been to produce guidelines on requests for exemptions. In Finland, some restaurants had begun selling their foods as Pre-Packed for Direct Sale (PPDS) items. He said that other Member States were also asking the Commission for flexibility. He explained that in the United States, the USFDA were assessing cases individually. He explained that they were not objecting to the sale of unlabelled foods providing there was no risk to health presented.

2.7 The Chair said that labelling was an issue that was of growing significance. She had written to Environment Secretary George Eustice seeking Defra's analysis of the need for easements to support the effective operation of the supply chain, to enable consumers to have access to that supply, and to reduce good waste. This had also been discussed in a meeting with the Parliamentary Under-Secretary of State for Rural Affairs and Biosecurity Lord Gardiner. She emphasised that Ministers fully agreed with the need for clear red lines around the issues of food safety and traceability. She asked Board Members for comments and questions.

- 2.8 Mark Rolfe asked three questions. The first of these was about how inconsistencies between LAs could be addressed. The second question related to the proportions of ingredients and how it could be ensured that unscrupulous producers would not exploit the easements for financial gain by increasing the proportions of cheaper ingredients. His third question related to the impact on mandatory nutrition labelling.
- 2.9 Colm McKenna said he had two questions. He explained the first was related to Mark's point about consistency across LAs about how consistency could be maintained across national, devolved, jurisdictions within the UK. His second question related to the time limits that would be imposed on the easements.
- 2.10 David Brooks asked about the involvement of Food Standards Scotland (FSS) and whether they were replicating the FSA's discussions with their Board. He also asked whether the time restrictions placed on labelling easements would define how long products could be made for or for how long they could be sold. He asked for clarity around the lead LA with responsibility for ensuring the labelling requirements were being adhered to and whether this would be the one in which the food was produced or sold. He also asked about the impacts on issues like shelf life resulting from reformulations on the basis of labelling easements. He added that he supported the need to be flexible.
- 2.11 Michael Jackson answered the questions relating to geographical consistency, explaining that guidance would be prepared for LAs outlining the principles and how they would be applied. In terms of capacity and resource, he explained that whilst there were concerns about LA performance around delivery of food standards official controls, LAs were prioritising these for the manufacturing sector and had positive working relationships with this type of business. He explained that on the issue of Primary Authority, he did not expect a conflict to arise in responsibilities between LAs from the guidance as labelling issues were normally addressed without difficulties between Primary Authorities and enforcement authorities.
- 2.12 Michael then addressed the issues relating to the time-bound nature of the proposed easements. He said that if the easements were in place for more than a few weeks, the business would be expected to produce new, updated packaging reflecting the new formulation of the product. He also explained that FSS had been involved in discussions around easements from the outset but that they would be taking their own legal advice with a view to providing similar guidance to LAs in Scotland.
- 2.13 Rebecca added that on the four-nations approach, it could be that the risk-appetite would vary across jurisdictions but that the evidence they were receiving from EU Member States meant there was an increasing likelihood of the Commission sanctioning the easements. David Brooks said that this could mean that, if the easements were made in one jurisdiction of the UK but not in another, products produced in that territory that took advantage of the easements would not be able to be sold in the other jurisdiction. He also asked

whether importers would be able to take advantage as, if not, this would significantly limit the benefits.

- 2.14 Michael said that the focus had been on UK based food producers rather than on importers because it was in this area that concern had been raised. No concern had yet been raised about the need for easements from importers, but further consideration would be given to this.
- 2.15 Timothy Riley said that he was supportive of the proposals for flexibility but asked whether the reputational impacts of a successful legal challenge had been considered. Stuart Reid asked whether it was known if the rest of the EU were considering similar proposals to those outlined in the paper. Mary Quicke expressed her support for the proposals but said she was cautious about possible unintended consequences and the need to establish feedback loops to receive information about impacts as the situation emerged.
- 2.16 Margaret Gilmore said that she was supportive of the proposals and agreed that LAs would need guidance on how principles should be applied. She requested that the guidance make it explicit that allergen labelling requirements must still be adhered to.



- 2.18 Steve explained that six other EU Member States had already started taking actions similar to those proposed in the paper and were pushing for easements from the Commission. It was not unlikely that this could be given within a short time. Michael added that there was no consideration of compromise on the labelling requirements around allergens.
- 2.19 The Chair noted that in the main, the issues arising from Covid-19 were being resolved by officials as a standard part of incident management. The CE said that the next step would be to ensure that Ministers in Wales and Northern Ireland were clear about the proposals and then to issue guidance to LAs.
- 2.20 The Chief Scientific Adviser (CSA) highlighted the food safety and public health risks that could emerge from inaction. He said that by acting proportionately, red lines such as allergen labelling could be better enforced. He said there would be a balance in the outcomes for health between action and inaction, using the example that staying at home could have some negative health outcomes but that balanced against the negative health outcomes for failing to observe social distancing measures, staying at home was the right thing to do.

2.21 The Chair summed up the discussion saying that the Board endorsed the principles set out in the paper guiding the Executive in their response to the Covid-19 incident with an emphasis on public health protections. The Board concluded that, subject to Ministerial approvals in Wales and Northern Ireland, the CE should proceed with implementing the policy in relation to labelling and local authority guidance, as set out in the paper. In terms of offering practical, clear and consistent guidance to LAs enabling them to tackle labelling issues on a case by case basis, the Board were confident that public health could be ensured but recognised that there were other consumer interests, which a level of easement would help to address effectively in the face of an unprecedented challenge.