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## **ANNUAL REPORT: FREEDOM OF INFORMATION REQUESTS, EXTERNAL COMPLAINTS AND INTERNAL WHISTLEBLOWING**

Report by Noel Sykes FOI, Complaints and Transparency Manager

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### **SUMMARY**

The Business Committee is asked to:

- **Discuss** this report and note the future priorities.

### **INTRODUCTION**

1. This report presents data and commentary on the FSA's management of requests made under the Freedom of Information Act 2000 (FOI), external complaints and internal whistleblowing cases. Delivering to high standards in each of these areas, whilst at the same time keeping processes under review, is integral to the FSA being an open and transparent government department and delivering the day job exceptionally well.

### **EVIDENCE**

2. Data used to inform this report is drawn from the records managed by the FOI, Complaints and Transparency Team. Using the same data, FOI and whistleblowing reports are routinely submitted to the Cabinet Office and Civil Service Employee Policy (CSEP), respectively. All data shown applies to **calendar** years.

### **DISCUSSION**

#### **Freedom of Information**

3. At 170 for the year, in 2017 the FSA saw an increased number of requests and issued responses to all of these within the permitted time limits, although in respect of cases for which we could not legitimately extend the response time, we drifted nearer to the minimum 90% compliance rate expected of all government departments. Through strengthening our case tracker arrangements and delivering refresher training to all FOI local leads we believe we have now put in place the necessary arrangements to avoid this issue becoming a greater challenge beyond the routine.
4. 48% of requests were responded to in full. There was a small increase to 9% of cases where we withheld all information. The number of appeals against

decisions (known as 'internal reviews'), increased slightly to total 7 in the year, none of which were upheld. Only 1 case was escalated by the requestor to the Information Commissioner's Office (ICO), with the outcome still pending, although in responding to the ICO, the FSA made available to the requestor almost all the information first requested. This arose because with the passage of time, the prejudice which the FSA had first protected itself against had largely subsided.

5. We continued to receive requests which justified the engagement of exemptions intended to protect investigations and proceedings and/or enforcement by the FSA or local authorities. These decisions, alongside our use of exemptions aimed at protecting the commercial interests of third parties, mainly food business operators, continue to result in requestors challenging the FSA.
6. Whilst the FSA is routinely publishing more data than ever before (through 'open data'), it remains the case that it must very carefully consider the important public interest tests applicable to many FOI requests. More recently, whilst we have clearly seen 'open data' resulting in a reduction of some types of request e.g. animal welfare data and to an extent, food business audit data, it remains the case that the appetite for information will not always be served by routine publication. We have seen little evidence that routine publication results in new FOI requests which suggest dataset content and design are serving their intended purpose.
7. Going forward we will continue to use FOI data to inform our decisions about what we routinely publish. This must be set within a context of how transparent the FSA already is in its work. A useful gauge to offer here is the low number of requests we have received about the Regulating our Future programme, a programme which through its design and delivery has routinely involved the sharing of large amounts of information.

### Complaints

8. The FSA's external complaints procedure applies to formal expressions of dissatisfaction with the FSA, whether that be its policy, its service, conduct of its staff or other. Details of the FSA's complaints procedure are available here;

<https://www.food.gov.uk/contact/consumers/feedback/complaints-and-comments>

9. Most complaints are treated as 'local' in the first instance, with usually an operational or policy area responding. If a complainant is dissatisfied with this response, they can escalate their case to the FSA Complaints Co-ordinator (the FOI, Complaints and Transparency Manager). If the complainant remains dissatisfied, they can then escalate their complaint to the FSA Chief Executive. After the FSA's complaint procedure is exhausted a complainant may then ask a

Member of Parliament to refer their case to the Parliamentary and Health Service Ombudsman (PHSO).<sup>1</sup>

10. **Figure 1** presents complaints data for the three years 2015-2017 including numbers handled at what stage and outcomes. The priority in 2017 was to ensure that we continued to resolve complaints at the nearest point to delivery and keep to a minimum those cases which were escalated. This was achieved through the continued close working that occurs between the central advisory team and local complaint responders.

**Figure 1 – Complaints Response and Outcomes**

	2015	2016	2017
<b>Responded to at local level</b>	<b>30</b>	<b>24</b>	<b>26</b>
<b>Responded to by the Complaints Co-ordinator</b>	<b>20</b>	<b>3</b>	<b>2</b>
Not Upheld / Dismissed	15	1	2
Upheld	1	0	0
Partially Upheld	4	2	0
Withdrawn / Unresolved	0	0	0
<b>Responded to by the Chief Executive</b>	<b>6</b>	<b>0</b>	<b>1</b>
Not Upheld / Dismissed	4	0	1
Upheld	1	0	0
Withdrawn / Unresolved	1	0	0
<b>Referred to the Parliamentary and Health Service Ombudsman</b>	<b>1</b>	<b>1</b>	<b>0</b>
Not Upheld	0	1	0

11. We recognise that complaints offer the opportunity to learn. Arising from complaint handling, the FSA identified the need or opportunity to make changes in a number of areas, examples being;
- complaint case tracking;
  - consultation with third parties on FOI requests;
  - how it manages complaints made about contractors;
  - the provision of advice to local authorities on drink products traded as 'sparkling'; and
  - how the design of its website helps a complainant understand the division of responsibility between the FSA and local authorities.
12. The FSA continues to be an active member of the Cross-Government Complaints Forum and is a member of its sub-group looking at how the digital landscape including social media impacts on complaint handling. Going forward we see a real opportunity to gather complaint intelligence from such platforms.

<sup>1</sup> More detail about the work of the PHSO is available here; <https://www.ombudsman.org.uk/making-complaint>

13. The FSA continues to assess its arrangements against the Complaints Assurance Framework a standard developed to offer all government departments a benchmark to work to. The FSA has now achieved a high degree of alignment against this standard and has plans in place to address the small number of development areas that remain.

#### Internal Whistleblowing and Raising a Concern

14. The FSA's Whistleblowing and Raising a Concern (WBarC) Policy, exists to provide staff the mechanism for reporting internal wrongdoing under the Public Interest Disclosure Act or breaches of the Civil Service Code<sup>2</sup>.
15. In 2017 there were no new cases raised so activity focused on reviewing policy, guidance and other. This has now resulted in a re-published WBarC Policy and supporting guidance, FAQs for staff, an investigating officer's person specification and a communications cascade for use by local managers. To address the challenge of being able to access appropriate investigation skills when facing complex cases (including those raised under the WBarC Policy), the FSA has trained 16 managers to form a cadre of investigating officers with a broad mix of portfolio experience. This will ensure a prompt and thorough response to cases as they arise.
16. The annual Civil Service People Survey provides insight into staff perceptions of WBarC. The survey includes three questions under the header of the Civil Service Code ('the Code'). The first two questions concern the level of awareness of the Code and the level of awareness of how to raise a concern under the Code. Whilst there is variance across Directorates, at corporate level the FSA returned a result that saw them sit amongst the Civil Service high performers for both these questions (95% and 77% respectively). The third question concerns the level of confidence that staff report in a case being investigated properly. At a corporate level of 67%, although a 1 percentile point improvement on the 2016 result, the FSA sits 3 percentile points below the Civil Service median and 9 percentile points below the Civil Service high performers. Through delivering the measures outlined above it is now hoped that the results for the 2018 survey (due November), show real improvement against this indicator. It is also hoped that what is now an annual WBarC awareness day in September will also have a positive impact.
17. Over the last two years the FSA has continued to review its arrangements against the central-Government WBarC 'Heath Check' and we have now reached the position of a high degree of alignment against this benchmark. We recognise however that systems and process alignment will only serve its proper purpose if staff feel confident in how the Policy is applied.

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<sup>2</sup> <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

## **CONCLUSION AND RECOMMENDATIONS**

18. Throughout 2017 the FSA has continued to strengthen its arrangements in these three important areas. The priorities for the future are:

- ensuring FOI request data is used to inform decisions about what is routinely published as 'open data';
- monitoring the levels of confidence amongst staff in the investigation processes underpinning the WBaRC Policy. Where needed, specific and targeted interventions will be delivered to address this issue; and
- deliver a continuous improvement review of complaint handling across the FSA to ensure that processes deliver the most effective service and that opportunities for organisational learning are not missed.

**Annex 1**

**Requests made under the Freedom of Information Act 2000 – key statistics**

	2015	2016	2017
<b>Initial Requests</b>			
Received	162	158	170
Response within 20 Working Days	155 (96%)	145 (92%)	155 (91%)
Response within permitted extension	159 (98%)	158 (100%)	170 (100%)
No information held	13%	25%	9%
Information supplied in full	49%	37%	48%
Information supplied in part	23%	17%	18%
All information withheld	6%	7%	9%
<b>Internal Reviews (appeals against the response)</b>			
Number of Reviews	3	6	7
Original decision upheld	2	4	7
Appeal partially upheld	0	2	0
Appeal fully upheld	1	0	0
<b>Referrals to Information Commissioner's Office</b>			
Number of ICO referrals	0	0	1
Decision	-	-	Pending
<b>Examples of Exemptions Engaged by the FSA</b>			
s.35 Information relates to the formulation of government policy	1	2	2
s.36 Prejudice to the effective conduct of public affairs (requiring express agreement of	1	0	0

the FSA Chair)			
s.30 Information relating to investigations and proceedings	4	4	5
s.31 Information relating to law enforcement	15	13	10
s.40 Personal information, as protected by the Data Protection Act (DPA in 2017, now GDPR)	20	16	20
s.43 Commercial interests	9	8	10
<b>Subject of Request</b>			
Horsemeat	5%	1%	3%
Meat operations	15%	18%	26%
Business process – procurement, IT, telephony etc	26%	25%	23%
Food hygiene inspections	3%	8%	4%
Food safety	15%	9%	9%
Campylobacter	1%	0%	1%
Food law prosecutions	-	3%	5%
EU Exit	-	2%	3.5%
Food crime	-	4%	3.5%
Staff expenses	-	3%	1%
DNA test speciation	-	3%	5%
Other	35%	25%	16%