

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

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1. Summary

- 1.1 This annual report informs the Business Committee's oversight of these three areas of work. The Business Committee is asked to **agree** the priorities set out below.

2. Introduction

- 2.1 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 and raising a concern' cases. Delivering to high standards in each of these areas, whilst at the same time keeping processes under review and learning appropriate lessons, is integral to the FSA being an open and transparent organisation and delivering the day job exceptionally well.

3. Evidence and Discussion

- 3.1 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 and raising a concern' reports are routinely submitted to the Cabinet Office and Civil Service Employee Policy, respectively. All data shown applies to **calendar** years (refer to Annex, Tables 1 and 2).

Freedom of Information

- 3.2 Table 1 shows that in 2019 the FSA processed 170 FOI requests. There were a further 44 requests received but these were dealt with as 'business as usual' where the FSA responded in full without recourse to the FOI process. 92% of all requests were responded to within the statutory time limit, and 99%, where a permitted time extension was applied. A now fully implemented review of request handling processes, together with training delivered to FOI business leads, should ensure future performance in this area continues at or above these levels.
- 3.3 Table 1 also provides an outline of the use of FOI exemptions by the FSA, and whilst 2019 was not remarkable in terms of the range of exemptions engaged,

there was a consistent use of the section 31 exemption (law enforcement). This is not reflective of any change in approach by the FSA, rather the number of requests made relating to the work of the National Food Crime Unit, food business operator audits and others.

- 3.4 The number of appeals against decisions to withhold information continued to fall with only 2 cases registered in 2019. The lesson learnt from the 1 partially upheld case related to the interpretation of the information caught within scope of the request, and the FSA's subsequent use of a section 31 exemption.
- 3.5 In 2019, no case was escalated by a requestor to the Information Commissioner's Office (ICO) and with this, the number of requests processed over a 4-year period approached the 700 mark, with only 1 case being referred to the ICO throughout this time (with a 'no further action' outcome).

Complaints

- 3.6 The FSA's external Complaints Policy applies to formal expressions of dissatisfaction with the FSA, whether that be with its policy, its service, conduct of its staff or other. Details of the FSA's Complaints Policy are available here:

<https://www.food.gov.uk/contactconsumersfeedback/complaints-and-comments-about-the-fsa>

- 3.7 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 Head of Governance). If the complainant remains dissatisfied, they can then escalate their complaint to the FSA Chief Executive. After the FSA's complaints procedure is exhausted a complainant may then ask a Member of Parliament to refer their case to the Parliamentary and Health Service Ombudsman (PHSO).¹
- 3.8 Table 2 shows a decrease in the number of complaints responded to at local level in 2019 when compared to previous years. This decrease was also reflected in the number managed by the Complaints Co-ordinator (four in total, two through escalation from local level).
- 3.9 The Chief Executive's office received 3 of these 4 cases on escalation through to the final stage of the FSA's complaints process. Two of these were partially upheld. A lesson learned, as a result of this, is the need to ensure that the operation at one site by two food business operators is subject to clear written agreements between all parties.
- 3.10 In 2019, no case was investigated by the PHSO.

¹ <https://www.ombudsman.org.uk/>

- 3.11 The FSA introduced a new complaints process in April 2019. This followed a comprehensive review of complaint handling, which saw the publication of a new external-facing Complaints Policy, the development of extensive guidance for complaint respondents, improved accessibility to the complaints process, a mechanism to obtain feedback from complainants on the management of their case and the centralisation of complaint administration and quality assurance. These changes in part, arose – from recognised best practice within government.
- 3.12 Twelve of the 15 complaints responded to at local level were received after the inception of the new complaints process and none were escalated. It is difficult to say with certainty why there have been no escalations in this period as there is no pattern to the nature of complaints received. The lack of escalations despite none of the complaints being fully upheld would suggest that complainants believe they are being treated fairly, even if they had not received their desired outcome. As most complaints relate to the work of Field Operations, the overall fall in complaint numbers is felt to be attributed to improved and broader levels of communication and engagement, which itself has been informed by past complaints experience.
- 3.13 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 continues to maintain a high degree of alignment against this standard. The PHSO are on course to publish their new framework in 2020 and the FSA, on invitation, is part of a reference group helping to shape this product. The FSA also remains a very active member of the Cross-Government Complaints Forum.

Internal Whistleblowing and Raising a Concern

- 3.14 The FSA's Whistleblowing and Raising a Concern (WBaRC) Policy, provides staff the mechanism for reporting internal wrongdoing under the Public Interest Disclosure Act 1998 and/or breaches of the Civil Service Code ('the Code')².
- 3.15 In the calendar year 2019, one formal referral was made under the Whistleblowing and Raising a Concern Policy (WARCP). This related to an alleged misrepresentation. No wrongdoing was found but some learning in relation to management development was identified. The FSA's 'Nominated Officer' (the Head of Governance), periodically receives contacts from members of staff who wish to use a 'safe place' to discuss a concern (there are approximately 10 contacts each year). This conversation normally resolves the matter or serves as a signpost to another route.
- 3.15 The annual Civil Service People Survey provides insight into staff perceptions of WBaRC. The survey includes three questions under the Code. The first

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

question concerns the level of awareness of the Code and the second, the level of awareness of how to raise a concern under the Code. The third question concerns the level of confidence that staff have that a case would be investigated properly. Whilst there is variance across Directorates, at corporate level the FSA now sits amongst the Civil Service high performers for all three questions (95%, 73% and 76% respectively). For the latter question, the FSA has lifted by 9% over the last two years.

3.16 In 2019 directly targeted communications had a positive impact on these results and this approach continues together with the hosting of the annual FSA-wide WBaRC awareness campaign and the launch of a revised Raising a Concern Policy in 2020. These measures all support the overall system the FSA makes available to staff to enable them to speak out, and this will continue to utilise recognised good practice within government. To date this has helped inform the structure of this system, the content of our guidance, how we engage with and feed back to the individual and how we investigate cases.

4. Conclusions

4.1 Throughout 2019 the FSA has continued to strengthen its arrangements in these three important areas. Its priorities for the future are:

- Maintain the high levels of performance in its management of FOI requests, continuing to explore how requests might inform decisions on the routine publishing of open data;
- To continue to ensure that we identify learning from complaints and track the implementation, and impact, of agreed change; and
- Continue to use a targeted approach to ensure that more staff have confidence in 'speaking up', being assured that when they do the matter will be dealt with properly.

ANNEX

Table 1: Requests made under the Freedom of Information Act 2000 – key statistics

	2017	2018	2019
Requests dealt with as BAU	20	28	44
Initial Requests			
Received	170	190	170
Responded to within 20 working days	155 (91%)	171 (90%)	157 (92%)
Responded to within permitted extension	170 (100%)	186 (98%)	168 (99%)
No information held	9%	24%	20%
Information supplied in full	48%	38%	43%
Information supplied in part	18%	23%	17%
All information withheld	9%	6%	5%
Internal Reviews (appeals against the original response)			
Number of Reviews	7	5	2
Original decision upheld	7	2	1
Appeal partially upheld	0	1	1
Appeal fully upheld	0	2	0
Complaints to the Information Commissioner's Office			
Number of ICO referrals	1	0	0
Decision	No further action – overturned by FSA	-	-
The number of times certain exemptions were engaged by the FSA			
s.35 Information relates to the	2	1	1

formulation of government policy			
s.36 Prejudice to the effective conduct of public affairs (requiring express agreement of the FSA Chair)	1 (on appeal)	0	1
s.30 Information relating to investigations and proceedings	5	14	9
s.31 Information relating to law enforcement	10	18	17
s.40 Personal information, as protected by the Data Protection Act (DPA, and GDPR from 2018)	20	15	13
s.43 Commercial interests	10	16	11
Subject of the FOI request – examples			
Horsemeat	3%	1%	2%
Meat operations	26%	21%	9%
Business process – procurement, IT, telephony etc	23%	11.5%	14%
Food hygiene inspections	4%	4%	4%
Food safety	9%	3%	1%
Campylobacter	1%	0%	0%
Food law prosecutions	5%	3%	2.3%
EU Exit	3.5%	4%	2%
Food crime	3.5%	4%	5%
Staff expenses	1%	1%	1%
DNA test speciation	5%	4%	0.5%
Other notable subjects			

Religious slaughter/meat – halal, shechita etc		4%	0.5%
Microplastics		1.5%	
Salmonella		4%	2.3%
Workplace bullying/harassment		5%	
Other	16%	29%	25%

Table 2: Complaints about the FSA - response and outcomes

	2017	2018	2019
Responded to at local level	26	25	15
Responded to by the Complaints Co-ordinator (either on escalation from 'local' or directly)	2	11	4
Not Upheld / Dismissed	2	5	2
Upheld	0	0	0
Partially Upheld	0	5	2
Withdrawn / Unresolved	0	1	0
Responded to by the Chief Executive	1	3	3
Not Upheld / Dismissed	1	2	1
Upheld	0	0	0
Partially Upheld	0	0	2
Withdrawn / Unresolved	0	1	0
Referred to the Parliamentary and Health Service Ombudsman	0	1	0
Declined	0	1	0