

MINUTES OF THE FSA BOARD MEETING ON 16 SEPTEMBER 2020

Via Zoom from the Chair's Residence, Cambridge

Present:

Heather Hancock, Chair; Ruth Hussey, Deputy Chair; David Brooks; Margaret Gilmore; Colm McKenna; Peter Price; Timothy Riley; Mark Rolfe.

Attending

Emily Miles	-	Chief Executive
Darren Davies	-	Head of National Food Crime Unit (NFCU)
Theo Hawkins	-	Head of EU Transition and Devolution (for FSA 20/09/04)
Chris Hitchen	-	Director of Finance and Performance
Maria Jennings	-	Director of Regulatory Compliance, People and Northern Ireland (NI)
Professor Robin May	-	Chief Scientific Adviser (CSA)
Paul Morrison	-	Director of Strategy, Legal, Communications and Governance
Rick Mumford	-	Deputy Director of Science
Julie Pierce	-	Director Openness, Data, Digital, Science and Wales
Steven Pollock	-	Director of Communications
Rebecca Sudworth	-	Director of Policy
Colin Sullivan	-	Chief Operating Officer
Dr Paul Turner	-	Chair of the Science Council Working Group on Hypersensitivity (For FSA 20/09/06)

1. Welcome and Introductions

- 1.1 The Chair welcomed everyone to the meeting. There were no apologies for this meeting, and she welcomed Peter Price to his first meeting of the FSA Board since being appointed as the Board Member for Wales and Chair of the Welsh Food Advisory Committee on 1 September. She asked Board Members to raise any conflicts of interest related to any of the items for discussion and whether any Members wished to raise any other business; no interests were declared, and no other business was raised by the Board.
- 1.2 Steven Pollock, Director of communications, said that two questions had been received from members of the public. The questions, and the answers provided, would be published on the FSA's website within 14 days of the meeting.

2. Minutes of 26 August 2020 (FSA 20/09/01)

- 2.1 The Chair said that the minutes of the Board meeting of 26 August had been circulated in draft to Board Members and asked if the Board were content that they represented an accurate account of the discussions at that meeting. The Board indicated that they were content, and the minutes were approved for publication.

3. Actions Arising (FSA 20/09/02)

- 3.1 The Chair asked Board Members if they had any comments on any of the actions; the Board had no comments on the actions.

4. Chair's Report

- 4.1 The Chair explained that her engagements had been published on the FSA website and there had been only one since the previous meeting, which was a meeting with Henry Dimbleby considering next steps for the National Food Strategy. There had been no further progress in advertising the role of the Chair of the FSA but she hoped that this would go out to advert soon, clarifying that responsibility for that lay with the Ministerial departments and was not in the hands of the FSA.

5. Chief Executive's Report to the Board (FSA 20/09/03)

- 5.1 The CE said that her report covered the FSA's current priorities of the COVID-19 response, EU Exit, Campylobacter testing, the FSA's recent cannabidiol seminar, and discussions with the Home Office on DNP. She updated the Board on some things that had occurred since the publication of the report. On COVID-19 she said that there had been a recent increase in cases and there would be a need to be prepared for an increase in staff absence and flexibilities with the food industry to ensure the food supply. Detailed contingency planning was ongoing and our emergency response would be stepped up later in the year.
- 5.2 The CE mentioned the survey of Local Authorities (LAs) on the impact of COVID-19 and their resourcing saying initial analysis confirmed intelligence from LAs that resource had been diverted from food safety into COVID-19. She said the number of professional posts for dealing with food safety work had been reduced to less than half in England and to around three quarters in Northern Ireland but there was wide variation around those averages. In Wales there had been a reduction in staff available to conduct food official controls and data from a subset of LAs suggested there had been a 70% reduction in staff available to conduct food controls. Guidance had been given throughout the pandemic to prioritise the highest risk food interventions but there was a backlog of lower priority work. There had been significant changes in the food industry throughout the pandemic with business models changing and new businesses emerging. The CE highlighted the LA role in supporting and guiding businesses to ensure consumers had food they could trust.
- 5.3 On health and identity marks the CE noted a question from the public on this subject and said the FSA had been working across government, to find solutions to the challenges of applying new markings and labels to food, apologising for the time it had taken to work through the legal complexities.

She explained the recommendation to Health Ministers in England that a 21-month period of adjustment should be applied to allow the GB industry to continue using packaging and wrapping materials that carried the UK/EC identification mark after the transition period finished for products of animal origin destined for the GB market. This would not apply to health marks as they were applied at point of slaughter with no stocks of packaging to use up. If approved, the FSA would need to amend a 2019 Statutory Instrument for England. In Wales, the same recommendation would go to Ministers in relation to health and ID marks but would likely take longer to implement due to the need for a 21-month adjustment period for ID marks in general labelling requiring a change in the law. The new identification marks would also be acceptable before the end of the transition period provided appropriate safeguards were in place to prevent pre-labelled stock being placed on the market.

- 5.4 For Northern Ireland, legal advice had been received that legislative periods of adjustment were not applicable under the terms of the Withdrawal Agreement and the Northern Ireland protocol. Further legal advice had been requested and flexibilities were being explored with other government departments. She added that it was hoped that guidance could be published by the end of September, noting that the FSA would need to take a phased approach, updating the guidance as further issues – like the Northern Ireland ones – became clearer.
- 5.5 Mark Rolfe asked a question about inbound checks on imported food between the end of the transition period and July 2021, expressing concern about checks at short strait ports. He asked whether there would have been market surveillance carried out to ensure that people were not bringing non-compliant goods into the country from the EU during that period.
- 5.6 The CE said that the level of risk would not increase on day one following the end of the transition period. She outlined the intention for controls to be implemented gradually to address any risk. Julie Pierce mentioned the sophisticated surveillance that was taking place adding that it would be monitored for necessary improvements. She offered to provide further detail outside of the meeting.

Action 1 - Julie Pierce to provide Board Members with further detail on surveillance operating at ports following the transition period.

- 5.7 David Brooks asked whether there was a target date for returning to the FSA’s planned programme of work and, if delayed, whether that created undue risk. He asked how long the impact on LA workforce numbers could be sustained without creating an unacceptable level of risk in the food system. He asked, with relation to the Northern Ireland Protocol, when it was expected that the risks outlined in the report could materialise. He also asked whether the FSA intended to publish data about small business sampling on Campylobacter, and when.
- 5.8 Ruth Hussey said that the impact of the reduction of staffing numbers on LAs seemed significant with the sector under pressure. She asked whether it was possible to feed this information about what resource LAs would need going forward into the Comprehensive Spending Review.
- 5.9 Colm McKenna asked what LAs were doing to address staffing shortages and what the FSA could do to help. He also asked about health marks for Northern Ireland, noting the complexity brought about by the NI protocol and asked whether all those who needed to be alert to these issues were aware of the complexities. Margaret Gilmore asked what was meant in the report by the phrase “design decisions” in relation to the Import of Products, Animals, Food and Feed System (IPAFFS).
- 5.10 In response to David’s questions, the CE said that it was not yet possible to say when a return to the FSA’s previous work plan would be possible. Currently, preparation work was under way for the end of the transition period and the unpredictable nature of the pandemic meant that the FSA needed to be agile in how it prioritised work. From February onwards, she hoped that resources could be allocated to some of the priorities of the previous work plan but time would tell. She noted that the pandemic did not only impact on junior staff levels but had the effect of decreasing bandwidth for decision making at more senior levels as well. The Chair said that this had been raised at a recent meeting with the Chair, Deputy Chair, CE and CSA. The anxiety was about the ability of the senior leadership team to continue to be resilient as pressures from the pandemic increased toward the winter. The CE added there had been areas where double duty was possible, meaning that reform was being progressed because it also helped with COVID-19 response. One example was operational transformation, where meat hygiene staff were using resources in a risk-focused way through easements. Another was with LAs where they were

being encouraged to focus particularly on risky premises rather than low risk work.

- 5.11 In response to the point about LA resourcing the CE said that the analysis of the data had been received that morning and would be considered to ensure that the FSA's understanding of the situation was accurate. In terms of the sustainability of the situation, she said that this would be considered along with the analysis of the survey results. This would be fed into the Spending Review, noting that it was not the FSA that bid for money on LA's behalf but the Ministry of Housing, Community and Local Government and that representations would be made to that department. Julie Pierce added that similar conversations were also taking place with Welsh Government.
- 5.12 On health marks for Northern Ireland, the CE explained that she was content that those who needed to be aware were apprised of the issue and its urgency for business and were engaged in seeking clarity and resolution. Paul Morrison said that, the design decisions, which Margaret had asked about, were specific issues around decisions for the Department of Agriculture, Environment and Rural Affairs (DAERA) working with DEFRA, about how the systems would interact across the range of IT platforms such as IPAFFS and the EU systems necessarily involved by the NI Protocol. Paul noted the FSA was involved in those discussions. Maria Jennings said that she sat on the programme board, managed by the DAERA Permanent Secretary and that mitigations were being sought to make sure that issues arising from the complexity of the numerous systems involved were addressed. On the LA resourcing question, Maria said that the competency framework was being fast-tracked to ensure that LAs had at their disposal the people with the skills that they required to do different jobs within the system to alleviate pressures.
- 5.13 Rebecca Sudworth said that the figures for the Campylobacter survey were currently being verified and that they would be published in due course.
- 5.14 The Chair told the Board that following the transition period, she had asked the CE to develop proposals for a regular published assessment giving the FSA view on food standards generally. This would be an important commitment to openness and transparency, and public assurance in an emotive and a high-profile area of public interest.

Action 2 - Officials to return to Board with proposals for a regular published assessment giving the FSA view on food standards.

6. Food and Feed Safety and Hygiene Common Framework Update (FSA 20/09/04)

- 6.1 Paul Morrison introduced the paper, giving an overview of the progress around the common frameworks on food and feed safety and hygiene; the risk of divergence across the nations of the UK; the UK Internal Market Bill; and the ask of the Board. The Chair explained that she had written to Ministers in Westminster, Wales and Northern Ireland explaining that the risk of divergence

remained but that there was confidence that, in the arrangements of the frameworks, there was a mechanism to mitigate and minimise those risks.

- 6.2 David Brooks asked whether, since the framework allowed for the four nations of the UK to make their own decisions in relation to food and feed safety as identified through risk assessment, it could be the case that a product made in one of the nations could be placed onto the market of another where it could not be produced as a result of a divergence of decisions to allow production. He asked about the implications of this on issues such as raw drinking milk (RDM) which currently could not be sold in Scotland. David also asked whether the framework altered the Board's role in assessing risk and offering advice to Ministers. Paul said that existing regulatory differences, such as with RDM would not be affected by the UK Internal Market Bill, which would cover future decision making only. David asked whether this meant that a business would only need approval within one of the four nations of the UK for its product to be sold UK wide. Paul acknowledged that this was theoretically the case, but the framework covered arrangements between officials and Ministers and while there was a risk of divergence, the FSA would be working closely and aligning the risk analysis that informed decisions. Northern Ireland would also continue to be involved in the processes and discussions, noting that decision making there would be limited by the Northern Ireland Protocol.
- 6.3 The Chair said that the framework had always been part of the system being developed following EU Exit but was now coming under greater scrutiny as the end of the transition period came closer. Margaret Gilmore asked about the potential for situations where Ministers made decisions that were contrary to FSA advice. Colm McKenna asked for more detail in terms of how the framework would operate in relation to Northern Ireland. He also asked about a dispute resolution role and whether there was the potential for the FSA to be dragged, inadvertently, into political discussions.
- 6.4 Theo Hawkins explained that where Ministers made decisions contrary to FSA advice, further mitigations were referred to in the paper that related to work the FSA had been carrying out with the Department for Business, Energy & Industrial Strategy (BEIS) on the UK internal market exclusion for food safety, which it was not possible to include in the paper in detail due to timing. He explained that the exclusion allowed Ministers in any one of the four countries to act quickly in the event of a serious risk to public health and it was not expected that any Minister would take a decision to place unsafe food on the market.
- 6.5 The CSA said that much of the conversation had been about the regulatory and policy impact but the paper also provided a formal interaction between the four countries of the UK as well as data sharing.
- 6.6 Ruth Hussey said that the Welsh Food Advisory Committee (WFAC) had recently emphasised, in consideration of this paper, that the commitment to evidence-based decision making and transparency and openness were, and would continue to be, a key part of the process of operating frameworks. The Chair said that the FSA's input would be made on the basis of evidence and

science but that the operation of the framework was a matter for the UK Government, and they would therefore be in control of the extent of openness and transparency. The RDM issue demonstrated that divergence was already possible, and Ministers could take different decisions about the way in which they accepted FSA advice. The key to making it unlikely that divergence would occur would be to make sure that the science, evidence and consumer insight was presented in the context of the situations in three nations the FSA operated in and Scotland.

- 6.7 Timothy Riley noted that at the operational level there tended to be a lag between what was agreed within a framework and what those delivering the controls understood and implemented on the ground. The Chair agreed that this would likely form a frequent element of Board discussions for future agendas. She said that it had been a useful discussion and an opportunity to highlight the framework arrangements. She said there was no decision required of the Board at this point but that it would be important to recognise the role that they would play in future. She said the Board endorsed and supported that role and that the common framework was a constructive mechanism to try to mitigate any risks of divergence which were unwarranted or did not serve the consumer interest.

7. Risk Analysis Process: Update (FSA 20/09/05)

- 7.1 Rebecca Sudworth introduced an update to the Board on progress in the design and delivery of the risk analysis process before Phil Flaherty explained the detail of the paper, focussing on prioritisation and transparency.
- 7.2 The Chair mentioned that there had been an action from the Board to introduce a triage system for risk analysis and that this was included in the paper. The Board indicated that they were content that this had been done. The Chair said the Board had asked that the risk analysis flow chart include the commitments to publication of material and it would be important that that happened. The Chair said the Board would also like to see the end-to-end process more clearly outlined in the diagram, starting when a risk was identified in the system, and finishing when it was no longer a risk. She added that it could also aid public understanding to include cases where there was a Ministerial element towards the end. Rebecca noted the comments on the diagram and said that it would be revised to incorporate these suggestions. It was challenging to meet everyone's needs in one format and so the team was considering different products for different audiences.

Action 3 - Rebecca Sudworth to update Risk Analysis Flow Chart to include the commitments to publication of material and more clearly set out the end-to-end process.

- 7.3 The Chair clarified that the route for publishing advice would not usually be through the Board as the vast majority of the issues were technical and routine. The Board would address only the more significant, novel, high-profile, or complex cases.

- 7.4 The Chair noted that aside from these points, the Board were content that the paper reflected the input they had made at previous discussions, including the line of sight, the triage process and how things were to be decided. In terms of next steps, a paper had been scheduled for the December Board meeting for the first annual review of risk management. Since the process was not in operation that would need to be pushed back until it had had a chance to operate. It would remain a feature on the forward agenda for the FSA Board in terms of assurance that the system was working in the way that it was intended. Rebecca said that she would include an update in the Chief Executive's report for December to provide a readiness review and give assurance that the right staff were available, and the right resources in place.

Action 4 - Rebecca Sudworth to include Risk Analysis Readiness Review update for the Chief Executive's report to the December Board meeting.

8. Update on Science Council Working Group 5 on Food Hypersensitivity (FSA 20/09/06)

- 8.1 Julie Pierce explained that Dr Paul Turner, the Chair of the Science Council Working Group 5 on Hypersensitivity, was present to talk through his interim findings from Working Group 5. She explained that the insights from this work were being fed into the FSA's Food Hypersensitivity Programme. Dr Turner then delivered a presentation giving a summary of the findings of the Working Group. Rick Mumford then gave an overview of the response from the FSA to the working group's recommendations.
- 8.2 The Chair said that the Board had made a commitment on hypersensitivity and these lessons would impact not only on hypersensitivity strategy but provide valuable learning for the FSA's wider approach to how science was commissioned and used. She noted that it was an interim report and said that the Board could endorse the direction but that this paper was not to instigate a wider debate about the FSA's approach on hypersensitivity.
- 8.3 Timothy Riley asked a question about access to health service data sets and how the FSA was collaborating and cooperating in terms of protocols with those data sets to ensure that General Data Protection Regulations (GDPR) could be complied with, without obstructing necessary access, and allowing for more economic use of available resources.
- 8.4 Dr Turner declared an interest in this area as he was employed to extensively investigate NHS data in terms of the use of NHS facilities for people with food hypersensitivity. He said that the fact that the data was anonymised, made GDPR less of an issue. Where it was an issue was for data that was not de-identified, that was residing in the Department of Health or NHS databases. He said that GDPR legislation was not intended to impede research but could have that effect and the Information Commissioner's Office (ICO) had not provided guidance on research and GDPR. He suggested that the FSA and UK

Research and Innovation (UKRI) and other organisations make a collective approach to ICO, with the support of certain key politicians to help get some guidance. The CSA offered support on the GDPR issue and suggested it could be something considered through the CSA network.

- 8.5 Margaret Gilmore said she would welcome further work on the use of precautionary allergen labelling to help consumers make informed decisions. David Brooks asked about assurance that the appropriate level of responsibility was being accepted by the FSA, noting that this had been something that had been done well on issues such as Antimicrobial Resistance and had been effective in ensuring that other agencies undertook their share of research. He also asked whether the FSA's activities were proportionate, given other food-borne risks, which may be less high profile but equally, or more, damaging to the public health.
- 8.6 Rebecca Sudworth said that the important outcome would be to make sure that the science and evidence base led to understanding and action to improve the lives of hypersensitive consumers. A report on progress for the strategy and programme would be received by the Board in December. On precautionary labelling, she said the FSA was considering the UK approach as well as working internationally through CODEX to look at standards globally and an update on that would be included in the December report. In response to David's questions, she explained that work on the Cost of Illness would enable an analysis of food-borne disease and food hypersensitivity and allow a sense of their relative public health impacts. She suggested it could be the case that hypersensitivity had not previously been given sufficient attention and that the Cost of Illness work could strengthen the case for greater focus.
- 8.7 The Chair said that the Board considered the interim report to be highly valuable and noted the longstanding commitment to reduce the impact of food hypersensitivity. The Board accepted the recommendations on the interim report that had arisen from the review to date. She noted a video briefing that Dr Turner delivered on the FSA website and recommended it for additional context of what was known and the research that had been done around food hypersensitivity. The videoconference can be found through this link: [The Food Allergy and Intolerance Research Programme - Dr Paul Turner](#).

9. National Food Crime Unit – Food Crime Strategic Assessment (FSA 20/09/07)

- 9.1 Colin Sullivan introduced the paper giving a summary of the FSA's food crime strategic assessment, which had been developed by the National Food Crime Unit (NFCU). Darren Davies then delivered an overview of some of the detail contained in the paper.
- 9.2 The Chair reminded the Board there would be a full NFCU Board paper later in the year. Colm McKenna noted and welcomed the intention to publish the operational control strategy for the NFCU. He asked about the risk of an increase in serious organised crime, particularly in Northern Ireland with the

land border becoming an EU border, post EU-Exit. He asked whether the right contacts had been made with colleagues in Ireland. Darren explained that the NFCU had been working with colleagues in the Police Service of Northern Ireland (PSNI) and had close links with officials in the Food Safety Authority of Ireland (FSAI). The public information from them was incorporated into the assessments and data presented within the report.

- 9.3 Mark Rolfe asked why there was no mention of investigation and enforcement noted in the task activities. Darren said that investigation and enforcement was a key element of the NFCU's work and that there were in excess of 40 ongoing investigations. Many cases were complex and involved large-scale fraud activity. The NFCU was liaising with the Crown Prosecution Service to take suitable cases through the criminal justice process. The Chair said that the report in December would include more detail on that, noting that it could be one of the rare occasions where a report contained information that could not be put into the public domain.

10. Report from the Chair of the Audit and Risk Assurance Committee (ARAC) (INFO 20/09/01)

- 10.1 Colm McKenna gave an update on the ARAC meeting of 8 September, explaining that they were just able to meet quoracy requirements with 3 ARAC Members being in attendance, noting that Peter would be joining the Committee ahead of their next meeting on 11 November. He explained the agenda for the meeting. He explained that the accounts had been laid for Northern Ireland and Wales but that the Westminster and Consolidated accounts had been further delayed by the lack of a resolution to an issue with the London Pension Fund Authority. He said that the FSA's interest in that pension fund was small but that the accounts could not be finalised until it was resolved.

11. Reports from the Chairs of the Food Advisory Committees (FACs) (Oral Reports)

- 11.1 Ruth Hussey updated the Board on discussions and activities with WFAC since the last Board meeting. She explained that Peter Price would Chair WFAC meetings in future but that he attended the most recent one as an observer due to it taking place so soon after his appointment. She explained that WFAC's comments had informed her comments on this Board discussion. In terms of future work, she explained that the Safe, Sustainable Authentic Food Wales group would meet the following week. The group was a useful source of intelligence about food system issues in Wales, particularly the impact of COVID-19. The next open WFAC meeting would be to review the policy landscape in Wales and was arranged for October.
- 11.2 Colm McKenna explained that the Northern Ireland Food Advisory Committee (NIFAC) had similarly considered the papers for this meeting and helped to inform his comments on the papers. The next NIFAC meeting was planned for

the third week in October. He said it was hoped that Joy Alexander, Head of Food Technology at the College of Agriculture and Rural Enterprise, who is leading on the Northern Ireland food strategy would attend, along with the Chair of the Northern Ireland Food and Drink Association. He mentioned that NIFAC was also recruiting new members and the letters to go from the FSA Chair to Minister would be ready by the middle of next week.

12. Any Other Business

- 12.1 The Chair noted that no other business had been raised. The next FSA Board meeting would take place on Wednesday 18 November at 9:30 by Zoom. Prior to that, there would be a meeting of the FSA Business Committee meeting on 23 September, at 10:30, also via Zoom. Anyone who wished to watch those proceedings would find the details as usual on the FSA website.