

MINUTES OF THE FSA BOARD MEETING ON 26 MAY 2021

Via Zoom from the Chair's Residence, Liverpool

Present:

Ruth Hussey, Interim Chair; Margaret Gilmore; Colm McKenna; Peter Price; Timothy Riley; Mark Rolfe.

Officials Attending

Emily Miles	-	Chief Executive
Justin Everard	-	Director of Communications (For Questions for the Board)
Chris Hitchen	-	Director of Finance and Performance
Michael Jackson	-	Head of Regulatory Compliance Division (for paper FSA 21/05/02)
Maria Jennings	-	Director of Regulatory Compliance, People and Northern Ireland (NI)
Carmel Lynskey	-	Head of Achieving Business Compliance Programme (for paper FSA 21/05/03)
Professor Robin May	-	Chief Scientific Adviser (CSA)
Julie Pierce	-	Director Openness, Data, Digital, Science and Wales
Steven Pollock	-	Interim Director of Strategy, Legal, Communications and Governance
Colin Sullivan	-	Chief Operating Officer
Richard Wynn-Davies	-	Head of Operational Transformation (for paper FSA 21/05/04)

Apologies

Rick Mumford	-	Deputy Director of Science
Rebecca Sudworth	-	Director of Policy

1. Welcome and Introductions

- 1.1 The Chair welcomed everyone to the meeting noting apologies from Rick Mumford and Rebecca Sudworth. She asked Board Members to declare any conflicts of interest emerging from the agenda. Timothy Riley explained that, while it did not constitute a conflict with any of the items on the agenda, he had been appointed as a non-executive director and Chair of the audit committee for the Veterinary Medicines Directorate.
- 1.2 The Chair invited Justin Everard, Director of Communications, to read out the questions received from the public ahead of the meeting. A full list of the questions, with answers would be published on the FSA website.

2. Chairs Report (Oral Report)

2.1 The Chair said that two new Board Members: Fiona Gately and Lord Blencathra would begin their appointments to the Board from 1st June. The Health and Social Care Select Committee meeting to approve the appointment of the preferred candidate for FSA Chair Susan Jebb would take place on 8th June and it was anticipated, subject to the outcome of the appointment hearing, that she would Chair her first meeting of the FSA Board in September. A list of the Chair's engagements would be published ahead of the June Board meeting. Some joint meetings with the Chief Executive (CE) were noted in the CE's Report to the Board (FSA 21/05/01).

3. Chief Executive's Report to the Board (FSA 21/05/01)

3.1 The CE highlighted areas of her Report to the Board. These included the ongoing effects of EU Exit across various workstreams; applications for regulated products; the reference in her report to issues with some import controls at Dover for sanitary and phytosanitary (SPS) products; concerns over the retention and supply of official veterinarians (OVs); and the classification of waters for the harvesting of live bivalve molluscs for export.

3.2 Margaret Gilmore asked about the supply and retention of OVs, whether the provision of additional monthly payments to the service delivery partner was a temporary measure and if alternatives had been considered. Colm McKenna asked whether costs for this laid out in the report were expected to continue for a full year and whether that had been fully budgeted for.

3.3 The CE explained that, in terms of alternatives, the FSA was in a three-year contract with Eville and Jones (E&J) starting from April 2020. There had been detailed negotiations about the appropriate payment level and while the temporary measure was for a maximum of 12 months, it would be kept under review. The FSA had been aware of the additional budget pressure since February and was therefore able to include that in the budget for the year.

3.4 Colin Sullivan said that a Task and Finish Group had been commissioned with staff from across the FSA to help work through the options around OV retention. The FSA had also commissioned a pay specialist as an adviser, with various options considered. The requirement was being kept under review with a notice period to E&J of two months. Colm added that as Chair of the Audit and Risk Assurance Committee (ARAC), a piece of work had been commissioned to conduct a deep-dive session on the E&J contract, which ARAC would consider around late summer.

3.5 Margaret asked why SPS checks could not be carried out at Dover and Mark Rolfe asked about the confidence that issues where SPS products had come through Dover were not more widespread and that measures were in place to identify where this occurred intentionally.

- 3.6 The CE said that the reason that Dover could not be used for most SPS checks was due to a space capacity issue for carrying out the checks; Dover had never been a potential site as a relevant designated border control post immediately after the end of the transition period, because of these space constraints. Colin explained that Dover was a designated port for some high-risk foods not of animal origin. A plan to create a port with the capacity for SPS checks at Whitecliffs, near Dover, was under consideration. For the incident where foods of animal origin were brought through Dover, the FSA had contacted all involved importers and highlighted the non-compliance.
- 3.7 Mark asked what a digital solution to the SPS imports issue would look like. The CE explained that a digital solution would involve the HMRC system automatically prohibiting the registration of those kinds of products at non-designated ports. This would require some work on the system and communications were ongoing with importers in the interim.
- 3.8 Mark noted the paragraph in the report relating to Capita and the Food and Environment Research Agency (FERA) laboratory structure. He asked about the potential impacts following the loss of access to reference and control laboratories in the EU. The CE said she was not concerned about the resilience of FERA and was confident that the FSA would retain access to the same checks.
- 3.9 Julie Pierce said that there was a close working relationship with FERA and whether there was a need for remedial action was under consideration. There was also an approach to look at the longer-term needs for laboratory provision. The Chief Scientific Adviser (CSA) Robin May added that he sat on the FERA Science Committee and that there was an interest in sharing best practice internationally on that committee.
- 3.10 Colm asked about the effects of the Northern Ireland Protocol (NIP) in relation to small divergences that were starting to occur between the UK and the EU and how the horizon scanning work of the FSA was able to mitigate negative impacts from that. The CE said that the horizon scanning function was working well. There was a team within the Policy Directorate that monitored EU food and feed issues such as the recent EU risk assessment in relation to titanium dioxide, enabling the FSA to commission its own risk assessment.
- 3.11 On allergens, Margaret made a comment that she had experienced an improvement across the catering sector in how businesses accommodate the needs of food hypersensitive consumers.

4. Local Authority Recovery Roadmap (FSA 21/05/02)

- 4.1 Maria Jennings gave a brief introduction to the key issues for consideration before inviting Michael Jackson to give greater detail on the roadmap. Michael gave an overview of the plan to return Local Authorities (LAs) to conducting inspections in line with the Food Law Code of Practice; the impact on the Food Hygiene Rating Scheme (FHRS); the timelines for achieving milestones; latest

figures on LA resourcing across the nations and the ongoing impacts of COVID-19; consultation with LAs; measures to monitor progress and support LAs to deliver the plan.

- 4.2 Timothy Riley noted the challenges for LAs seeking clarification of where the resource implications outlined in the report could impact on the FSA. Michael said that in normal circumstances, the FSA had a team responsible for LA performance monitoring. This team represented a resource that will be applied to this work, meaning that there was no additional resource implication.
- 4.3 Timothy asked about the communications around the FHRS to enable assurance to the public. Michael said that the businesses that would be prioritised for inspection would be those where FHRS would be of the greatest value to consumers.
- 4.4 Mark Rolfe noted that intelligence-led systems tend to flag issues that were already known, emphasising the importance of pro-active surveillance. Michael said that feedback from LAs indicated that there was a lack of understanding now of what this would entail and that this would be spelled out in the Q&A document for LAs.
- 4.5 Mark noted the competing influences on LAs and asked how the FSA could ensure that the FSA was able to influence LAs behaviour effectively. Michael noted the various influences and added that further assistance would be provided to LAs, including engagement through focus groups.
- 4.6 Mark mentioned if there was a system for flagging with LAs where they are performing well, to provide recognition of good practice. Michael said that a future report to the Board would provide a balanced view, highlighting where performance was thought to be good as well as where there were issues of concern.
- 4.7 Colm McKenna said that LAs in Northern Ireland had a smaller range of responsibilities to those in England and that this could make it look like a low level of non-compliance was better than it really was. The two phases of the plan and the fact that in Northern Ireland, the hospitality sector had opened later also meant that there would be limited time to complete Phase One. Peter Price noted the importance of engagement with the LAs to monitor progress given the complexity of the landscape across the three nations and between LAs. Michael acknowledged that restrictions relating to the pandemic had eased at different rates across the three nations and explained that the FSA would be looking at all of the activities in the recovery plan that LAs were engaged in and, through ongoing engagement, it was known that managers were looking to pull resource back as quickly as possible.
- 4.8 Colm asked whether there was concern about the ability for resource to be found in terms of LAs finding qualified personnel and Peter asked about LA training needs. Michael said that a new Food Law Code of Practice in Northern Ireland and England amended the base-line qualifications which should help LAs with flexibility over who could be employed to deliver food controls.

- 4.9 On training, Michael said that the FSA was working on its approach to LA training and support and would work to identify and remedy skills gaps where possible.
- 4.10 Colm noted that the standards outlined in the plan were minimum standards rather than maximums. The Chair endorsed this clarification saying that for LAs that could go faster, this was encouraged.
- 4.11 Margaret asked if there was now more evidence of the effectiveness of remote inspections. Michael said that LAs would be allowed to continue using remote assessment as they had been doing throughout the pandemic. Guidance on how this can be best utilised without compromising food safety would be provided to LAs. Margaret asked about an evaluation timetable for remote assessment. Michael said that some evaluation had already taken place and colleagues were assessing its use in slaughterhouses and meat-plants and advised that a cross-FSA working group has recently been established to consider the use of remote assessment across the assurance landscape. Julie Pierce added that there was an opportunity to take advantage of the technologies in the longer term to gain more frequent insight alongside on-site inspection. The CE clarified that here were some issues that required an on-site presence but a hybrid system incorporating remote and on-site inspection could give improved outcomes.
- 4.12 The Chair asked whether work on LA monitoring was being aligned with the LA audit programme. Michael said that it would be explicitly focused on measuring against the expectations in the recovery plan. Chris Hitchen said that the internal audit team had put together a proposal for auditing of LAs that would be looked at by the Executive Management Team. In usual circumstances the audit team would be reviewing the work of LAs but as the work was going to increase, the use of the audit resource would need to be monitored to ensure that it adds value.
- 4.13 The Chair noted the points that the paper asked the Board to agree and comment on, noting that there had been agreement on all points.

5. Achieving Business Compliance Programme (FSA 21/05/03)

- 5.1 Steven Pollock introduced the paper highlighting challenges encountered over the past year and the case for change before Carmel Lynskey gave an overview of the issues covered including the programme structure and the focus for the coming year.
- 5.2 Peter Price noted that work would be required to ensure maximum consistency across the nations of the UK. He said that the Welsh Food Advisory Committee (WFAC) had advised the inclusion of a Welsh LA in the pilot study and to include Wales in the consumer research. He also welcomed the recent introduction of a Welsh Language version of the Register a Food Business

service. Carmel said that there was a Welsh LA on standby for inclusion in the pilot pending upcoming changes to the Welsh Food Law Code of Practice.

- 5.3 Mark Rolfe expressed reservations about the Enterprise Level Regulatory Approach accepting that larger retailers were in general high-scorers in terms of compliance but cautioned that this did not represent the full story since, in terms of risk, they also had the potential for causing a greater level of harm due to their scale. Complete compliance should therefore be considered a minimum standard for very large businesses. It was also important to ensure that major players did not exert undue influence over regulatory practice, allowing them a competitive advantage.
- 5.4 Colm McKenna cautioned that there was a risk that the proposals could appear like a form of self-regulation. He asked how these criticisms could be addressed.
- 5.5 Carmel replied to these points from Mark, and Colm accepting that the approach was bold and would need to be implemented carefully but the evidence suggested that it could be done effectively. She emphasised that the Enterprise Level Regulatory Approach was not about self-regulation or lowering standards, but about taking a wider view of very large food businesses with a large number of outlets to reduce the duplication of work being carried out across a number of LAs, remaining mindful of the impacts that could arise from an incident involving a large scale retailer. Julie Pierce said that the FSA had also been engaging with other government departments on the issue of regulatory approaches to online platforms to ensure that whatever was developed was consistent with work being done elsewhere in government.
- 5.6 Timothy Riley said it would be important to protect existing relationships across retailers and businesses of various sizes, mindful of the cost implications for smaller businesses. Carmel said that smaller businesses were being considered and that the targeted and proportionate approach would help smaller businesses by ensuring inspection was proportionate to risk. Julie added that with modern digital tools, there was now a less uneven situation than had previously been the case. The CE noted that small businesses are often suppliers to the larger retailers, giving the large retailers significant influence and placing smaller businesses under pressure from both the large retailers and LAs. The whole food chain would be considered when developing practice with a focus on the consumer interest.
- 5.7 Margaret Gilmore asked about the thinking behind the minimum FHRS rating of two for inclusion by online aggregators. Carmel said that it would be better if aggregators were only advertising businesses with a three rating or above but that the minimum of a rating of two was a good-will gesture from those businesses as there was no obligation for them to request any level of rating.
- 5.8 The Chair said that the Board had considered the progress made, agreed to the direction of travel and the workstreams and had noted the 2021 delivery plan, adding that the Board were keen to see progress on this programme.

6. FSA Operational Transformation Programme - Development of the Operational Future Delivery Model (FSA 21/05/04)

- 6.1 Colin Sullivan introduced the paper, explaining that the Operational Transformation Programme (OTP) aimed to modernise the regulatory framework for meat, dairy, and wine; and covered the need for change; the rate of progress to date; and the reasons for consulting on the elements of the proposed delivery model.
- 6.2 Margaret Gilmore asked about any reduction in trade union engagement and about the risk of the FSA failing to embrace collaborative working with compliant parts of the industry. Colin said there was a detailed engagement programme with trade unions and staff were a central element. He also noted that whilst the FSA was the regulator, and that distinction was not being removed, there would be a segmented approach with businesses that were consistently compliant being recognised. Richard Wynn-Davies added that there was regular engagement with unions and field operations colleagues including through the Change Champions team.
- 6.3 Margaret asked about attracting vets to work in the public sector and whether or not the most cost-effective means of employment would be to employ them directly. Colin indicated that one element within the OTP was a project that was looking at the best means of providing Official Veterinarians over the longer term. Richard Wynn-Davis said that there was an awareness of resource pressures and that there could be insourcing and/or outsourcing in the future delivery model and the CE explained that no decision had yet been made about whether, or to what extent, Official Veterinarians would be insourced in any future model and this would be subject to an assessment through a business case.
- 6.4 Margaret asked about charging and whether there would be financial assistance to implement new technologies to assist with this. Peter Price asked if there was assurance that there would be no duplication in relation to charges. Colin noted that there was an awareness of the duplication issue and that if industry took on aspects of the assurance work, this would not be duplicated by the FSA but would be overseen. Richard said that there would be a bid in the spending review for investment in digital tools and that the programme was aiming to enable and give the opportunity to Industry to invest in and implement technological solutions that could make inspection more efficient and effective.
- 6.5 Margaret said that FHRS showed the benefits to the consumer of publishing food production data and that this should be considered for FSA Operations. Peter suggested that this information could include traceability and method of slaughter. Colin said that the issue around data was central to the segmentation model that was being developed and that the FSA currently published the outcomes of veterinary audits and there was opportunity to do more of this.

- 6.6 Peter mentioned that Wales had a higher proportion of small businesses and that this would need to be considered when assessing consistency. Colin recognised this aspect and said that as the programme unfolded it was important there was a close relationship with large and small scale businesses and an awareness of the needs of each whilst not compromising the role as regulator.
- 6.7 Peter recommended that engagement with the Agriculture and Horticulture Development Board and Hybu Cig Cymru/Meat Promotion Wales as well as farmers markets and smaller sustainable producers. Richard thanked Peter for highlighting these stakeholders explaining that the detailed list provided in the paper was not exhaustive and would be expanded.
- 6.8 Colm McKenna said that the Northern Ireland Food Advisory Committee (NIFAC) had recently heard a presentation from the Northern Ireland Meat Exporters Association (NIMEA) noting that they had been part of the consultation process and had flagged that Northern Ireland was still operating under EU rules and that if there were divergence, this could impact on the market for Northern Ireland significantly. He emphasised that both NIFAC and NIMEA were supportive of the programme. Colin stated that the impact of the Northern Ireland Protocol (NIP) was an aspect that needed to be worked through and he highlighted that NIMEA were one of the bodies that the FSA would continue to engage with.
- 6.9 Timothy Riley asked about assurance in the supply chain for meat, noting that health standards could be limited by the level of detail in the information that was fed back to producers. Julie Pierce said that she was a Board Member for the Livestock Information Programme and could feed into discussions in that respect. She accepted that Openness and Transparency would require more consideration in this area.
- 6.10 The Chair concluded that the Board welcomed the paper, recognised the complexity of the programme, endorsed the key elements of the draft model, and agreed to progressing to external consultation.

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

- 7.1 Colm McKenna said that it had been a busy period for NIFAC with the recruitment of three new Members: Ellen Findlay, who had a background in food poverty and nutrition, Cathal McDonnell who had a food industry background and Dr Lynne McMullan who had a background in education with a focus on food and nutrition. NIFAC held a meeting on 20 April on the Food and You Survey where they heard from Lucy King and Beth Armstrong of the Social Science team as well as Michelle Shirlow, the Chief Executive of Food NI. The CE had also joined the meeting. NIFAC met again on 21 May to discuss the Board papers. There would be another meeting on 9 June ahead to discuss the Board papers followed by a meeting on 23 June on Food Hypersensitivity.

7.2 Peter Price said WFAC had met in April as well as on 19 May to discuss the Board papers for this meeting. WFAC's next meeting would also focus on Food Hypersensitivity as well as the papers for the June Board.

8. Any Other Business

8.1 No further business was raised, and the business was closed. The next meeting would take place at 9 am on 16th June via Zoom.