

REVIEW OF THE NATIONAL FOOD CRIME UNIT

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1 SUMMARY

1.1 The attached paper presents the findings and recommendations of the review of the National Food Crime Unit (NFCU) initiated after the Board's May 2016 meeting.

1.2 The Board is asked to:

- Note and accept the report, and thank the members of the Review for their input, advice and expertise.
- Note the clear feedback from the Review and the stakeholders consulted that there is a need for the establishment of an investigative capability to deal with food crime in an appropriate way that safeguards the interests of consumers.
- Agree to instruct the Executive to carry out further work on the business case for implementing the recommendations of the Review, subject to the agreement of HM Treasury and wider government and to securing the required funding.
- This work should include the development of costed options for
 - do minimum
 - an Arms Length Body approach as recommended by the Review
 - an alternative approach to delivering “operational distance in a light touch low cost way” (paragraph 37) while maximising the benefits of the NFCU being hosted within the FSA
- Work should also be carried out to review and refine protocols for intelligence handling to ensure that whatever version of the NFCU emerges from wider Government assessment of the Business Case stakeholders can be assured of “appropriate sensitivity” in intelligence handling.

2 DISCUSSION

- 2.1 The paper makes a number of recommendations to the FSA on the future of the NFCU including that

The NFCU have an investigative capability;
The NFCU be set up as an Arm's Length Body of the FSA;
A detailed business case be prepared for submission to HM Treasury.

- 2.2 The paper identifies at paragraph 10 the desire expressed by stakeholders for the NFCU to be part of the FSA, and the simultaneous desire to have assurances that within the context of an open and transparent FSA the NFCU can handle intelligence with appropriate sensitivity.

- 2.3 It is suggested therefore that in addition to putting together the Business Case for Phase 2 of the development of the NFCU the Board also task the Executive with reviewing and clarifying the protocol for intelligence handling.

- 2.4 There will also need to be work scoped, planned and in the case that the Business Case for Phase 2 is agreed by the Treasury, carried out to obtain the necessary statutory mandate and legal powers for the NFCU to have effective investigative capabilities

- 2.5 There will also need to be in depth consultation with devolved governments and stakeholders in Wales and Northern Ireland, to ensure that a future NFCU with investigative capacity takes into account devolved enforcement arrangements and the need for local political accountability.

- 2.6 The Business Case will be required to address the risks as well as the benefits associated with the various options

- 2.7 If the FSA is unable to obtain additional funding, the costs for an expanded NFCU could not be met from within the FSA's existing budget without significant reductions in other activity.

3 TIMETABLE

- 3.1 If the Board gives the FSA Executive a mandate for this work, a project team would be put in place with the aim of putting together the Business Case in consultation with other government departments for submission to Treasury by the end of the financial year.

REVIEW OF THE NATIONAL FOOD CRIME UNIT

This paper presents the findings and recommendations of the review of the NFCU initiated after the Board's May 2016 discussion.

1 Background and terms of reference for this review

1.1 In its response to the Elliott review of the integrity and assurance of food supply networks, the Government agreed to establish a Food Crime Unit to give a focus to enforcement efforts against fraud and criminality in the food chain. The FSA has implemented the first phase of this work, building the intelligence and evidence picture of the risks and the nature of food fraud and food crime in the UK. Since it was established in December 2014, the NFCU has been in the first evidence gathering phase and is currently performing the following functions:

- a) managing the receipt, evaluation and dissemination of criminal intelligence;
- b) producing strategic intelligence products to drive the business of the unit;
- c) gathering and developing tactical intelligence to instigate criminal justice and other interventions by and with partners;
- d) advising, supporting and coordinating national and local law enforcement partners in respect of their criminal justice interventions.

1.2 The Government, in its response to the Elliott review, agreed there should be a review of progress and likely future need after 2 years.

1.3 The review has considered the following issues:

- a) Current and likely future reactive demand from food crime;
- b) Current and likely future proactive opportunities to disrupt and prevent food crime;
- c) Gaps between reactive/proactive demand and current response;
- d) The current and future role of local authorities, the police service, other government departments/agencies and the wider food crime response landscape, including the international response and cross border collaboration post EU exit;
- e) Value for money of current and potential responses;
- f) The current form and function of the NFCU, and whether this meets current and future demand.

1.4 The review has been overseen by an independent steering group with the following members:

- David Kenworthy QPM DL (current Chair of UK Anti Doping and former Chief Constable of North Yorkshire Police)
- Richard Lloyd (former Executive Director at Which?)
- Paul Willgoss (Director, Food Technology at Marks and Spencer).

- 1.5 The steering group has met regularly during the review to provide rigour, challenge and independence to the review.

2 Methodology

- 2.1 The review team has gathered evidence from a range of stakeholders, including representatives from local authorities, other law enforcement agencies, industry and consumer representatives and academia. The FSA operates in England, Wales and Northern Ireland, and have taken evidence from stakeholders in all three countries. The review team would like to thank everybody who has taken the time to contribute their views and expertise, often at short notice.
- 2.2 This review was not intended to be an in depth assessment of the current and future demands of food crime. Instead, it has used existing evidence where it is available, either from academic sources or the NFCU's Food Crime Annual Strategic Assessment¹. In this assessment the NFCU highlighted the limitations of current intelligence and reporting, and the difficulties in estimating the scale and impact of food crime. The review has therefore taken these limitations into account when considering the current and future demands and opportunities, and made reasonable judgements where evidence is incomplete or lacking.

3 Findings

- 3.1 The key findings were:
- a. There was broad consensus among all types of stakeholder that ***crime exists within the food chain*** but in common with other types of fraud, intelligence and data on the scale and nature of food crime across the food chain is often limited;
 - b. There was a strong view from all types of stakeholders that it was ***important to detect and prevent food crime***, although due to the hidden nature of offending it can be hard always to find tangible evidence of consumer detriment in addition to the cost to industry;
 - c. Both industry and consumer stakeholders emphasised the ***important role the NFCU needs to play in protecting the food supply chain from criminality***. This gives consumers greater confidence in the food they are buying, which is essential for the success of manufacturers and retailers alike.
 - d. There was overwhelming consensus among local authority stakeholders, particularly in England, that there are ***local and regional capability issues which are affecting the enforcement response to food crime***. Issues ranged from lack of training in intelligence gathering and fraud investigation; lack of officers and specialist skills to deliver complex fraud investigations alongside

¹ <https://www.food.gov.uk/sites/default/files/fsa-food-crime-assessment-2016.pdf>

competing priorities; and competing demands limiting authorities' ability to absorb the legal costs of those investigations.

- e. Local authorities and other law enforcement partners in England highlighted a **lack of co-ordination across authority boundaries and organisational remits**, and a need for an NFCU which has a clear, national strategic co-ordinating role in investigations. These partners also highlighted the **importance of maintaining and developing partnerships**, and the need for clarity of roles and responsibilities to prevent duplication.
 - f. There was broad consensus among all of the key stakeholder groups consulted that **the NFCU should have investigative capacity**. Industry and consumer representatives wanted an NFCU "with teeth" to tackle food crime, to protect consumers and the legitimate supply chain, and to make some high profile prosecutions to create a deterrent effect. The Food Industry Intelligence Network created by industry as a response to the Elliot Report believe that an effective NFCU working in partnership with industry will be able to make a significant contribution to making the UK food supply chain more robust. Local authority and law enforcement partners thought that an NFCU with investigative capacity would fill an important gap in the food law enforcement landscape, and provide strategic, professional leadership on a specialist area of criminal law enforcement.
 - g. Stakeholders in Wales and Northern Ireland highlighted the current **differences in devolved enforcement arrangements**, which have many positive aspects. While stakeholders in both countries thought that the NFCU needed its own investigative capacity, and should provide national strategic leadership on food crime, it was also felt that an expanded NFCU should not have a negative impact on existing arrangements which suit local circumstances and which have local political accountability.
 - h. There was unanimous agreement from consumer representatives, industry, enforcement partners and professional bodies that **the work of the NFCU is a good strategic fit for the FSA**, with many quoting from the FSA's strategy "Food is safe and what it says it is" to demonstrate that the work of the NFCU is central to the FSA's strategic objectives. Industry stakeholders, while generally supportive of the NFCU being located within the FSA, wanted assurance about how in future an open and transparent organisation such as the FSA can handle intelligence with appropriate sensitivity. Consumer representatives and other law enforcement bodies saw a need to preserve links between the NFCU and the rest of the FSA's business.
- 3.2 Many stakeholders gave extremely helpful feedback on the detail of the NFCU's operations, and how these might be improved in the future. This input should be used to develop the detail of the NFCU's future structure and operations.

4 Current and likely future reactive demand from food crime

- 4.1 Whilst no legal definition exists, both the NFCU and this report use the term ‘food crime’ to describe any criminal conduct involving dishonesty that impacts on the safety or authenticity of food. This definition includes but is not limited to fraud offending. The term food crime does not encompass violations of food law and other forms of regulatory non-compliance unless the offending is accompanied by dishonesty.
- 4.2 As noted in the Food Crime Annual Strategic Assessment assessing the level of food crime in the food industry is difficult in part because of lack of reporting by consumers: “In all but the most obvious scenarios, recognising that a food product is not what it says it is can be almost impossible for the consumer. If food criminality is well executed, it is unlikely to be detected at all at the point of consumption”². Consumer and industry reporting to the NFCU is also likely to be affected by low awareness of the NFCU, the complex enforcement landscape and concerns about confidentiality. Discovery of food crime will most likely occur when there is a clear manifestation of harm to consumers or producers or there is reliable intelligence from a source within the industry.
- 4.3 Building the intelligence picture for food crime takes time, and is dependent on having the right people and systems in place. In September 2016 the NFCU processed 144 intelligence reports, up from 72 in January 2016 when the Receipt, Evaluation and Dissemination team of the NFCU became operational. There has been a corresponding increase in the number of intelligence reports disseminated to law enforcement partners, with 72 disseminated in September compared to 10 in January 2016.
- 4.4 The NFCU has developed a total of 18 cases from that intelligence in 2016. 8 of these cases have been tasked as operations, i.e. at least one criminal investigation coordinated or supported by the NFCU every month since it became fully operational. Given the limitations of its current mandate and the lack of its own investigative capacity, the unit has provided financial, and/or tactical and strategic support to the local authorities which own the investigations.
- 4.5 This gradual increase in intelligence leading to active investigations supports the findings of Food Standards Scotland and the experience of the Netherlands Food and Consumer Product Safety Authority’s Intelligence and Criminal Investigations Service. The true level of food crime will only be discovered by diligent intelligence analysis and focussed investigation.
- 4.6 Consumer insight in this area shows that there is clearly scope to improve consumer perception of and trust in the food chain. The FSA’s campaign tracker monitors consumers’ general perception and awareness of food issues. In the latest wave³

²Food Crime Annual Strategic Assessment 2016, p.12

³June 2016, <https://www.food.gov.uk/sites/default/files/campaign-tracker-june-2016.pdf>

41% do not feel that food is what it says it is and has accurate labelling. Only 45% think the authorities are effectively preventing and detecting food fraud and only 56% trust the authenticity of the food they buy and eat. During the horsemeat incidents, consumer confidence in the food industry was heavily affected. FSA consumer insight found that almost three-quarters of consumers (73%) claimed to be less confident in the safety of processed meat⁴. Consumer research carried out by the FSA in January 2014⁵ to inform the development of its 2015-2020 strategy found that 61% of respondents believed that food fraud & lack of authenticity falls within the responsibility of the Government, with 78% of respondents believing that the Government should prioritise this topic, higher than food safety and hygiene, and food technology (the second and third priority issues at 71%).

5 Proactive opportunities

- 5.1 In the absence of an alternative competent body, responsibility for disrupting and preventing food crime currently rests, by default, largely with local authorities. The stakeholder analysis has shown that the levels of expertise and the resources available vary greatly. Almost all current activity in disruption and prevention of food crime is reactive with varying degrees of support provided by the NFCU. To successfully tackle food crime, a proactive approach is required that is absent at the moment.

6 Gaps between reactive/proactive demand and current response

- 6.1 The lack of firm data noted by both Elliott and the Food Crime Annual Strategic Assessment makes it difficult to judge the gaps between current demand and the enforcement response. There is a widespread view among stakeholders, including industry sources with their own data, that these gaps exist and that much could be done if there was a national co-ordinating body with the investigative capacity to deal with food crime.
- 6.2 As noted above, during 2016 the NFCU has been involved in 8 operations. This has given the unit some experience of the current gaps between demands and response, and has highlighted some of the existing difficulties. Some intelligence packages developed by NFCU were not taken forward by police forces, due to competing local priorities. On most operations where local authorities have had the lead, the NFCU has provided de facto leadership even without its own investigative capacity. Despite the goodwill of all involved this has approach has been problematic and has not been the most efficient or effective way for an investigation to be progressed.

7 Current and future role of LAs, police, other government departments/agencies etc.

⁴ <https://www.food.gov.uk/sites/default/files/multimedia/pdfs/horse-meat-consumera.pdf>

⁵ <https://www.food.gov.uk/sites/default/files/fsa-strategy-omnibus-survey.pdf>

- 7.1 As noted above local authorities identified a variety of issues they currently face in tackling food crime. It is clear that in England in particular they would welcome additional resource, expertise and coordination.
- 7.2 Police activity has been reactive but the review has shown that there is reluctance on the part of police forces, including at a national level, to take a lead on food crime, due to the large number of competing demands on their resources and the limited public profile of this type of crime. The City of London Police took forward the investigation of offences relating to the horsemeat incident, but this was funded by the FSA at a cost of c. £410K to date.
- 7.3 UK wide collaboration reflects the patchwork of bodies across the UK with a stake in the investigation of food crime. There is currently lack of co-ordination of investigations in England therefore the investigation of crime which crosses local authority or national boundaries is dealt with on a haphazard basis. Scotland has national investigative capacity in the form of the Scottish Food Crime and Incidents Unit (SFCIU), which is the investigative arm of Food Standards Scotland. In Wales, the Welsh Food Fraud Coordination Unit (WFFCU) was established in 2004 with funding provided by Welsh Government via FSA in Wales. It provides co-ordination for the food fraud enforcement actions of the 22 unitary authorities in Wales. This includes both intelligence and support and coordination of investigation functions. Additionally, it liaises with the FSA in relation to incidents and investigations; provides support and advice on food fraud issues to Welsh Local Authorities; develops standard protocols and procedures; and develops and maintains a food fraud lead officer network and other stakeholder networks. Investigation and prosecution of cases remains the responsibility of local authorities or police forces. In Northern Ireland, FSA Northern Ireland has recently appointed a food fraud liaison officer. The purpose of this role is to collect intelligence for collation/development by NFCU, and to then work with partners to progress intelligence packages developed locally or supplied by the NFCU for investigation.
- 7.4 Criminals do not have regard to boundaries of any kind. Whilst local authorities might be able to co-operate on regulatory offences straddling multiple local authority areas, there can be no meaningful co-operation in the prevention and investigation of true cross border crime. This failing leaves consumers and the legitimate food supply chain at risk. The NFCU must in future be resourced to provide national strategic leadership on the prevention and investigation of food crime while working with partners accountable to devolved governments.
- 7.5 There is a growing awareness of the need to increase investigative expertise internationally. The Netherlands, Denmark and Ireland have set up investigative bodies to deal with food crime, and the USA is seeking assistance to set up something similar. The Netherlands, seen as a leader in this field, has an Intelligence and Criminal Investigations Service within its Food and Consumer Product Safety Authority. This unit has existed in various forms for the past 60 years. It currently has a budget of €60m with 125 FTE staff. The resources at this unit's

disposal reflect the position of the Netherlands as a major hub for the transport of food products.

- 7.6 Whilst it is too early to say what effect the UK's EU exit will have on the food supply chain and existing law enforcement agreements and protocols, the food industry needs to position itself so that it is able to exploit commercial opportunities that become available, while maintaining a high level of consumer protection. While industry has a large part to play in that, an expert national body on food crime is needed to provide reassurance to both consumers and international partners on the integrity of the UK food supply chain.

8 Value for money

- 8.1 The NFCU budget for 2016-17 is £1.24m. The unit has very limited capability dealing with reactive intelligence and providing ad hoc support to external investigations. As shown above, the response to food crime, particularly in England, is inadequate.
- 8.2 The potential costs of food crime and food fraud are substantial. A global loss rate for all types of fraud is estimated at 3.4%⁶ of expenditure. In 2013 the National Fraud Authority estimated the loss to the UK economy from all types of fraud to be £52bn⁷ (or 3% of GDP). The size of the UK food, drink and catering sector is around £201bn⁸ so a loss rate of 3% would represent a cost of £6bn per annum.
- 8.3 Studies of the specific costs of fraud in the food industry suggest that the rate might be higher than global fraud estimates. A 2013 report⁹ from PKF Littlejohn LLP and the University of Portsmouth's Centre for Counter Fraud Studies used a loss rate of 5.47%, and estimated 2013 losses to FTSE registered food and drink companies of £11.2 billion, equivalent to more than 85% of the total profits of these companies.
- 8.4 Against these figures, and the future economic benefits expected to be gained from an ability to do more to protect consumers and safeguard the integrity of the UK's food supply chain, it appears obvious that the likely cost of a more effective NFCU would represent very good value for money.

9 Current form and function

⁶ Gee, J., and Button, M. (2013) *The Financial Cost of Fraud Report 2013*. This figure is the average percentage loss reported; the range is 0.05% to 21.54% and almost 67% of exercises showed losses of more than 3%.

⁷ National Fraud Authority (2013) *The Annual Fraud Indicator June 2013*. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206552/nfa-annual-fraud-indicator-2013.pdf

⁸ Defra Food Statistics Pocket Book 2016. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553390/foodpocketbook-2016report-rev-15sep16.pdf

⁹ Gee, J., Jack, L. and Button, M. (2014) *Minimising fraud and Maximising Value in the UK Food and Drink Sector*.

- 9.1 The NFCU was set up at the end of 2014 and achieved full staffing levels in August 2016. As shown above in para 12 intelligence flows have increased and some investigations have been passed to other bodies, principally local authorities. Experience of similar units to the NFCU shows that it takes a considerable time to establish flows of intelligence, to gain the confidence of law enforcement partners and consumers, and to make sense of the intelligence gained. Systems need to be refined to provide a clearer picture of criminal activity. This includes the “Food Crime Confidential” reporting hotline which was launched in June 2016. The facility is particularly targeted at those working in or around the UK food industry and has already increased the intelligence coming in to the team, but more needs to be done to publicise the facility to those who may have useful information. There would also be value in exploring working with partners such as Crimestoppers in the future.
- 9.2 It has been clear to the review team and the steering group that the NFCU has built up much expertise and capacity in intelligence gathering. This is borne out by comments from stakeholders. What is also clear is that there is no investigative capability to match the intelligence function. Much of the work of the NFCU is currently wasted.

10 CONSIDERATIONS AND RECOMMENDATIONS

Additional capabilities including an investigative capability

- 10.1 Elliott recommended that the NFCU should have an investigative capability. In the light of this and of the evidence gained, the review has considered and rejected maintaining the status quo as an option. Continuing as an intelligence hub without investigative capacity would fail to properly address food crime, and would fail to provide an appropriate level of protection to consumers. The NFCU would be gathering intelligence on criminal offences where there was no prospect of investigation or prosecution. This would be a significant missed opportunity to disrupt food crime and protect consumers and call into question the government’s commitment to ensure integrity in the UK food supply chain.
- 10.2 In addition, there is a clear need for the NFCU to act as a trusted advisor to partners in industry and law enforcement on best practice in the prevention and pursuit of food crime. Even with a significant increase in resources and its own investigative capacity, the NFCU would continue to be reliant on partners for intelligence. Local authority partners would remain responsible for investigating food law violations in their local areas that does not meet the threshold for NFCU involvement. Regulatory non-compliance at a local level can often be a symptom of or a precursor to food crime offending. It is therefore vital that the NFCU has an active engagement programme with industry and enforcement partners, and training for local authority enforcement officers to address some of the capability issues in food crime awareness and intelligence handling identified by stakeholders at the local level. Such a programme already exists in Wales and Scotland and might provide a useful model for England and Northern Ireland.

10.3 It will be necessary to ensure that the NFCU has statutory mandate for investigations and the appropriate legal powers necessary to lead investigations effectively.

10.4 *The review recommends that:*

1. The NFCU have an investigative capability;
2. The NFCU have as part of its remit, prevention of food crime;
3. The NFCU have as part of its remit the responsibility for setting standards for investigating food crime;
4. The NFCU have as part of its remit responsibility for training staff from partner agencies in food crime awareness and intelligence handling.

11 Hosting

11.1 The review has considered possible hosts for the NFCU, including the National Crime Agency. The NCA would be unlikely to have an appetite to take on responsibility for something that does not generally involve organised crime. A major drawback is that if the NFCU is located within any other body not related to the food industry and the wider food regulatory landscape, there is less opportunity for engagement in the prevention and investigation of food crime by the food industry and other stakeholders in the food system. Ownership and control of investigation passes from the food experts to the police. There would also be less opportunity for the NFCU's knowledge and experience of food crime and criminal behaviour to be absorbed into the FSA's wider thinking on food policy and regulatory enforcement, and for the FSA's expertise in food law and food science to be easily accessible to the NFCU.

11.2 This review considers that tackling food crime is a fundamental part of the FSA's core responsibility to protect consumers' interests in relation to food, and therefore considers that the FSA remains the natural 'home' for the NFCU. The FSA should commit to supporting the future work of the NFCU, but it needs to do so with an understanding of and respect for the different operating culture necessary to disrupt crime.

11.3 At a day to day working level the NFCU needs agility and freedom to make operational law enforcement decisions. At present the FSA carries out regulatory enforcement only, and criminal law enforcement would be a cultural shift for the organisation. The FSA prides itself on being an open body; transparent in all its work and open to public scrutiny. There is a tension between that ethos and the world of intelligence. Security is fundamental to good working relations within law enforcement, especially with the transfer of intelligence. Scrutiny and accountability are vital to the work of law enforcement bodies but this need's to be done on behalf of the public, not by the public.

- 11.4 Retaining investigative capacity within the FSA as it would change how the FSA engages with food businesses and other stakeholders. There would also be potentially significant changes in the level and types of risk that the organisation would need to manage. These would include the risks inherent in gathering intelligence (including covertly where necessary and proportionate to do so), running criminal investigations, and also the legal and reputational risks of bringing cases to prosecution. Operational independence would reduce the impact on the FSA's established ways of doing business, and allow the NFCU to take operational decisions separate from wider FSA policy or regulatory concerns, without fear or favour. Operational distance would also make it easier to develop protocols for sharing industry data and intelligence. It should be possible to create this operational independence in a relatively light touch, low cost way, which makes use of shared back office functions and other efficiencies.

The review recommends that:

5. The NFCU be set up as an Arm's Length Body of the FSA.

12 Governance

- 12.1 Arm's Length Bodies are operationally independent of their host bodies but subject to scrutiny by them. Good governance of the NFCU would demand a separate board with a clear reporting line back to the FSA Board. The FSA should, at regular intervals, assess the performance of the NFCU against agreed objectives.

13 *The review recommends that:*

6. There should be a small separate non-executive board of the NFCU;
7. The chair of the NFCU sits on the Board of the FSA as a non-executive director;
8. At regular intervals the FSA Chief Executive should assess the performance of the NFCU.

14 Future funding

- 14.1 To implement these recommendations there would need to be a financial investment, in staff, equipment and secure offices. An operationally independent NFCU would require an additional senior post to head the new body, and various back office support functions, although it is likely that a shared service model with the core FSA could be used for the majority of these, and thus the bureaucratic footprint of the NFCU would be modest.
- 14.2 Early soundings and examples of similar enforcement bodies suggest that expanding the NFCU to include a full, national investigative capacity could require up to £7-8m additional funding per annum. However, it is important to note that the review has not fully evaluated the costs and benefits of possible operational models against the NFCU's future strategic objectives. We therefore propose that further work to prepare

a full business case including value for money assessment should be undertaken immediately, in line with HMT guidance.

15 ***The review recommends that:***

9. A separate detailed business case be prepared for submission to the FSA Board and HM Treasury.