MINUTES OF CLOSED FSA BOARD MEETING HELD ON 20 JUNE AT JURY'S INN HOTEL, LIVERPOOL FROM 15:45-17:00hrs

Present:
Heather Hancock, Chair; David Brooks; Ram Gidoomal; Rosie Glazebrook; Ruth Hussey; Stewart Houston; Colm McKenna; Paul Williams

Officials attending:
Rod Ainsworth, FSA Director of Regulatory and Legal Strategy
Jason Feeney, FSA Chief Executive Officer
Maria Jennings, FSA Director of Northern Ireland and Organisational Development
Nina Purcell, FSA Director of Wales and Regulatory Delivery Division
Steve Wearne, FSA Director of Policy

WELCOME AND ANNOUNCEMENTS

1. The Chair welcomed everyone. There were no apologies for absence. There were no conflicts of interest declared. The Chair explained that this closed, private meeting of the Board was specifically to discuss the FSA's approach to the UK's exit from the EU. The Chair invited the FSA's Director of Regulatory and Legal Strategy to lead the discussion.

EU EXIT

2. The Director of Regulatory and Legal Strategy said this was the first discussion the Board had had about the UK's exit from the EU since a private briefing during their Board Retreat in January 2017. Since then there had been important external events and the FSA now had a single plan or narrative from which he would share the highlights.

3. The key element of our work in this area had been engaging and negotiating with other government departments (OGDs) and it was the Executive's need to confirm that the Board were confident with the Executive's approach to this engagement which had necessitated this closed Board meeting.

4. Article 50 had been served and negotiations with the EU had started on 19 June. We had been asked for information; to design negotiating tools; and to plan for various options.

5. The Director of Regulatory and Legal Strategy said we had established our internal governance structures with a Programme Board including the Chair of the FSA Board. In developing our thinking on the key issues for the FSA, we had produced a number of interdependent project plans. To shape each of these plans, we needed a single overall plan or story. The context for this was the Repeal Bill which would enact all EU legislation, including all 6 000 pages of food legislation, as UK legislation with the caveat of 'fixing the inoperabilities'; for example replacing references to the EU Commission and EU Member States.

6. In developing our overall plan we had engaged with OGDs to get a sense of whether we were going in the right direction and with industry and stakeholders in order to hear their concerns and 'reality check' our plans. The Director of Regulatory and Legal Strategy then went through the key issues for the FSA.

7. The Chief Executive Officer (CEO) confirmed for Board members that c.90% of the operations veterinary workforce we directly employed were from the 27 other EU countries, and 85% of vets employed by our contractor, Eville and Jones were also from the other 27 EU member states.

8. The CEO agreed with the Board that access to EU workers was also an issue for the wider food industry. He said there were 4 points on this issue that we had to focus on delivering: the scale of the food industry and its value to 'UK PLC'; the scale of dependency on EU workers; the range of skills involved; and that the work was not just seasonal. We were liaising with the Food and Drink Federation (FDF) and other industry groups on this issue.

9. The Director of Regulatory and Legal Strategy said we understood under Government plans at the moment, vets were on the list of professions deemed appropriate to be given the right to stay in the UK and it was our focus to ensure vets remained on that list.

10. It was important to note that we were currently reliant on EU systems in relation to food safety and once the UK left the EU those systems would no longer apply to goods coming into the UK from the EU. Around 60% of food consumed in the UK was imported; half of that came from the EU; and much of that came through Dover. There was no time to build the infrastructure in ports like Liverpool at Dover.

11. With regards access to EFSA (European Food Safety Authority) in the 'no deal' scenario this was a less troubling element because of the strength of our own scientific resources. The Chair clarified that while taking on risk assessment from EFSA was possible for the FSA, we could not yet be clear that this was the Government's preferred solution. The Director of Regulatory and Legal Strategy said it was also possible that the FSA could take on work currently done by the European Commission Directorate General for Health and Food Safety, SANTE F.

12. Regulatory equivalence with the EU was the easiest issue to fix on day one of the UK no longer being in the EU as through our work on the Repeal Bill we would have the same legislative and regulatory code as the rest of the EU. However, the Executive realised that regulatory equivalence was only part of the challenge and this was where they needed the Board's support; we needed to have an equivalent regulator too.

13. The regulator now was the European Commission with collective input from Member States through negotiations in policy working groups to reach EU-wide decisions. The replacement for that regulator for FSA consumers was the starting point of the FSA's narrative. Therefore, the Executive had returned to consider the basic functions of a regulator.

14. The current 'factory' for European food legislation was Brussels, not just the Commission; the question was where that factory would be in the future. Once

regulations had been manufactured, they had to be enforced which involved us undertaking interventions to make sure the regulations were complied with. Was that still what we wanted? Or was that system out of date?

15. Currently we did surveillance and risk assessment, but we did not decide what the regulations should look like. This issue affected the entire organisation and the FSA's policy directorate had been addressing it.

16. The FSA's Director of Policy said other food authority bodies outside the EU, and UK regulatory bodies in domains other than food, such as the Health and Safety Executive (HSE), would each recognise the map of functions required for a well-functioning regulatory system: risk identification, assessment, management and communication; and the design, execution and evaluation of regulatory and other interventions. Where the FSA was unusual was that we occupied each part of the map of the regulatory system and we wanted to continue to argue for an integrated end to end system for regulation setting and enforcing. The Chair confirmed that this was not about simply preserving the status quo; we had gone back to the Food Standards Act 1999, which had established the FSA, and intended to be true to its intent.

17. The Director of Policy said we wanted primary legislative powers that we currently did not have but would allow us to continue to oversee an end to end regulatory system outside of the EU. We wanted the legal powers to deliver what the EU currently did; not in the same way, but to deliver the same outcomes.

18. A Board member asked if we were looking to interpret the EU regulations, which we were going to transpose into UK legislation, differently in relation to exports. The Director of Policy replied that we had to separate two things: on day one of the UK no longer being in the EU, as Central Competent Authority (CCA), we would need to apply the regulations that had been transposed into domestic law, and our analysis was that we did not have the powers to do that; and secondly there would need to be political determination on the extent and speed at which the domestic regulatory system diverged from that point with the EU system, which was part of the new approach we envisaged in the Regulating our Future programme. The Chair clarified that there was no point in the Board discussing the speed at which we may diverge from EU regulations as that would be a political issue that went beyond food and so would be beyond our control.

19. The Director of Regulatory and Legal Strategy said as we could not know the outcome of negotiations, we had to get on with plans for 1 April 2019. Therefore, we were focusing on developing a neutral model in terms of outcome. Whether the legislation stayed the same or not, we would be out of the EU regulatory system as of 1 April 2019. Should the equivalent regulator to the EU be the FSA; if not, where should the function of regulator sit?

20. The Director of Policy confirmed that, even to maintain the regulatory status quo, we did not have the necessary powers, which was why we had identified the powers we believed we would need, and if the Board were content we would be focusing on securing these. He also confirmed that not every change we envisaged would require primary legislation; for example, the creation of a National Food Crime Unit with the

expanded powers recommended by the recent review could be achieved by Ministerial direction or by secondary legislation.

21. There were three areas to address: technical standards; official controls; and ancillary activities. The first question we asked was "who should do what?". We believed the FSA should be empowered by primary legislation to undertake the same ancillary and official controls activities as we currently did. With regards to technical standards, we believed the divisions within the current political framework at the EU level should be reflected in future arrangements at the domestic level. That is, Ministers should set the broad legislative framework with which the FSA would be empowered to make regulations relating to technical standards, paralleling the work currently undertaken in the EU by standing committees and by tertiary legislation. The FSA would advise Ministers in respect of authorisations and approvals, such as those relating to novel foods and practices, and Ministers would decide. We believed this approach secured democratic accountability.

22. The Chair confirmed that our proposed model, with the FSA becoming the rule-making regulator in a framework set by Ministers, did incorporate flexibility and allowed for future change; there could well be good reasons to improve or alter it in the future, but it was a sensible, comparable and deliverable starting point that ought to operate well.

23. The Director of Policy said that it would be a mistake to think that when we left the EU there would be no legislation in place; the Food Safety Act 1990 and the Agriculture Act 1970, which had extensive provisions relating to food and animal feed regulation respectively, were still in force and would come to the fore.

24. In response to a question from a Board member about availability of necessary skill sets, the Director of Regulatory and Legal Strategy said we had a plan and we had been increasing resources incrementally and so far, we had matched what we needed. The FSA was an attractive body to work for and we had had lots of applicants, so we were confident of being able to meet the increasing need for skills.

25. The CEO said in addition we had become sharper at recycling underspends and prioritisation. We had re-allocated £500k to the Regulating our Future Programme and we were negotiating with Treasury for funds for the EU Exit Programme; skills could be harder to come by than funding.

26. A Board member commented that it would be easier on a day to day basis to make decisions without requiring the agreement of 27 other Member States. During discussion it was noted that we would therefore need a different set of skills going forward as we would have to be able to take robust decisions, without input from the EU, and be able to defend those decisions in public. The number of actors involved in making decisions might reduce but we would become responsible for work that we currently did not do and so the system would feel very different.

27. The Chair said for the Agency to do its day job in the future, we had no option but to ask for more powers, and even if the FSA were not the department to take over the responsibilities, additional legislative powers would still be needed. She saw it as the

duty of the Board, charged as it was with protecting the public interest in relation to food safety, to make this case.

28. In terms of considering the risks in the context of the new legislation recently introduced in Wales, the Director of Policy said we had no choice but to meet the requirements as set out by the legislation in Wales in relation for example to impact measures, and whatever other administrative procedures the Devolved Administrations set in the future.

29. He said there was also a risk in revisiting the Food Standards Act 1999 that others sought the opportunity to change aspects of our founding legislation other than those required to deliver a functioning regulatory system post-EU exit. This may be avoided by adding a package of clauses to an appropriate Bill from another department, should the necessary law-making powers not be secured in the Repeal Bill.

30. During further discussion the following points were made: as we were not asking for a freestanding Bill, we did not need to be in the Queen's Speech; if we were planning to add clauses to the Great Repeal Bill, we had to be clear on lead in times given the ramifications if we missed out; once we had a legislative slot, it would put extra demand on staff; the scale of the diversion from other work would depend on the controversy of the clauses we proposed; others could take the opportunity to tidy up policy areas, such as welfare or exports, but this would require political and industry support; we were not asking for any areas of responsibility other than those covered by the Food Standards Act 1999, which included labelling and nutrition.

31. The Director of Regulatory and Legal Strategy agreed to share the EU Exit Programme risk register with the Board.

ACTION: Director of Regulatory and Legal Strategy

32. The Chair said we would wait and see if we were able to discuss our plans at the September 2017 Board meeting. Once we were, we would be able to get political and industry stakeholders from all countries together to come up with the best workable solution. The CEO said we were waiting on DexEU to confirm when we could talk openly with stakeholders about our plans but already we were not short on offers of help with stress testing and impact assessments from industry when we were in a position to fully engage with them.

33. The Director of Regulatory and Legal Strategy said following this closed Board meeting, we would approach DexEU with the design of our neutral outcome model. The model would resolve problems regardless of the outcome of negotiations and it would be helpful to consumers and industry to know what would be in place as of 1 April 2019. If DexEU gave our position the go ahead, then hopefully we would be able to discuss it at the September 2017 Board meeting.

34. In concluding the Chair said the Board were:
    - Content with the Executive's direction of travel;

- In agreement with the Executive's analysis of the primary legislative we should seek in order to deliver the objectives that had been set out in relation to technical standards, official controls and ancillary activities;
- Supportive of the advice they had been given that the Agency should advise OGDs in central government of our plans;
- Keen to be open about our plans as soon as we could be;
- Supportive of pushing the boundaries of the regulatory system;
- Impressed with the quality and amount of work that had gone into the plans;
- Appreciative of the fact that the FSA was held in high regard by OGDs as a top provider of information to facilitate the negotiations.