Minutes of the extraordinary FSA board meeting on 8 May 2019

CHURCH HOUSE, DEANS YARD, WESTMINSTER, LONDON SW1P 3NZ

Present:
Heather Hancock, Chair; David Brooks; Stewart Houston; Ruth Hussey; Colm McKenna; Mary Quicke; Paul Williams.

Apologies:
Stuart Reid

Officials attending:

Rod Ainsworth	-	Director of Strategy Legal & Governance
Stuart Armstrong	-	Head of Chemical Safety Unit
Chun-Han Chan	-	Food Allergy and Intolerance Policy
Chris Hitchen	-	Director of Finance and Performance
Maria Jennings	-	Director of Regulatory Compliance, People and Northern Ireland (NI)
Julie Pierce	-	Director of Openness, Data & Digital and Wales
Steven Pollock	-	Director of Communications (for Questions)
Guy Poppy	-	Chief Scientific Adviser
Rebecca Sudworth	-	Director of Policy
Colin Sullivan	-	Chief Operating Officer
Steve Wearne	-	Director of Science
Michael Wight	-	Head of Policy

Apologies

Jason Feeney	-	Chief Executive

Welcome and Announcements

1. The Chair welcomed everyone to the meeting, explaining that this was an extraordinary meeting of the FSA Board arranged to focus on a single issue, which was Food Hypersensitivity and the Government's Allergen Labelling Review. She noted apologies from Stuart Reid, who was hosting a royal visit at the Royal Veterinary College and also from the Chief Executive, noting that Julie Pierce would be deputising for this meeting.

2. The Chair explained that public questions would usually be taken at the end of a Board meeting but, due to the nature of this single issue, extraordinary meeting, these would be taken ahead of the discussion along with written questions submitted by correspondence. She asked that journalists keep their questions until the end of the meeting. No questions were raised by audience members and the Chair invited Steven Pollock to read out any written questions received ahead of the meeting.

3. Steven explained that one question had been received. The question along with an answer was posted on the FSA website:

   Link to be added once available.

4. The Chair explained that the issues involved in the question would be picked up as the discussion progressed. The Chair asked Board Members to declare any interests in the subject matter, noting that she has coeliac disease and was a member of Coeliac UK. Ruth Hussey noted that she also has a food hypersensitivity. The Chief Scientific Adviser (CSA) noted that his wife has a tree nut allergy.

5. The Chair explained that there would be no full Chair's report but provided an update on recent engagements relevant to the discussion at the meeting. These meetings included:

   - A meeting with Vaughan Gething, Welsh Minister for Health and Social Services;
   - A meeting with Mr and Mrs Ednan-Laperouse whose daughter Natasha died, tragically, from a reaction to consumption of a baguette containing sesame;
   - Coeliac UK;
   - Allergy UK;
   - Henry Dimbleby, co-founder of Leon Restaurants and non-executive Board Member of the Department for Environment, Food and Rural Affairs (Defra);
   - Michael Gove, Secretary of State for Environment, Food and Rural Affairs;
   - David Rutley, Parliamentary Under-Secretary of State for Food and Animal Welfare;
   - An appearance at the EFRA Select Committee at which allergens were discussed along with the FSA's work in general; and
   - Industry representatives at an FSA stakeholder event.

Food Hypersensitivity and the Government's Allergen Labelling Review

6. The Chair welcomed the following FSA officials to the table to discuss the paper: Stuart Armstrong, Head of Chemical Safety Unit; Chun-Han Chan, Food Allergy and Intolerance Policy and Michael Wight, Head of Policy. She explained that the FSA had the policy lead in England Wales and Northern Ireland for allergy and intolerance and advice from this meeting on the Government's allergen labelling review formed part of the FSA's broader responsibilities to protect public health and the consumer interest. She explained that the discussion would take place in two parts. The first would be a discussion of issues generally affecting the lives of those with food hypersensitivity and secondly, the consultation on the labelling review.

7. On behalf of the Board and the Executive Team the Chair paid tribute to the campaigning of the Ednan-Laperouse family, following the loss of their daughter, and noted that other families had also suffered the loss of loved ones as a result of food hypersensitivity. She then invited Rebecca Sudworth, Director of Policy, to introduce the paper.

8. Rebecca explained that the paper brought together planned work as well as measures already taken and outlined the options presented in the consultation on the Government's review of allergen labelling. She mentioned that the FSA would be refreshing their strategy over the summer and the paper set out a longer-term ambition that the UK would become the best place in the world to be a food-hypersensitive consumer. She invited comments from the Board.

9. The Chair invited the CSA to give a perspective on the broader strategic direction outlined in the paper. The CSA explained a model, frequently discussed by Chief Scientific Advisers across government relating to the proportionality of impact, resource and required evidence base. He explained that if these three factors were to be imagined as the three sides of a triangle, it should be equilateral such that where an issue had a large impact, the size of the required evidence base and the scale of the resources committed to addressing it would increase proportionately. He noted that food hypersensitivity accounted for two out of every three food related hospital admissions. He also noted the significant impact on Quality-Adjusted Life Years (QALYs) of food hypersensitivity, in research emerging from the FSA but not yet published. This showed that the impact of food hypersensitivity on public health, when considering all these aspects, justified a proportionately large evidence base to be established as well as proportionately high levels of resource to be allocated to the issue.

10. The Chair invited Ruth Hussey to comment and to outline the views expressed when the issue had been discussed by the Welsh Food Advisory Committee (WFAC). Ruth explained that WFAC had held a meeting covering all aspects of food hypersensitivity with a particular focus on Wales and had also held a meeting, by teleconference, following the publication of the paper. She explained that WFAC had welcomed the strategic focus of the paper, noting the complexity of the subject as well as the potential for tragic, individual consequences for those affected and their families. She explained that WFAC had noted the need for establishing a robust evidence base around the epidemiology of food hypersensitivity that extended beyond the 14 recognised allergens. She explained that WFAC welcomed the adult survey and had expressed an interest in other reporting mechanisms such as the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) as used by the Health and Safety Executive and adverse reaction to drugs system used by MRHA. They had also raised questions around why food hypersensitivity was increasing and whether this was linked to changes in food processing methods. It had also been noted that 17% of the population reported having a food allergy or intolerance while only 2% had had a clinical diagnosis. The need for people to have the benefit of a clinical diagnosis reinforced the importance of the NHS as a partner for the FSA to work with when taking the lead in

addressing the issues around food hypersensitivity. WFAC had highlighted that the new business registration process afforded the FSA an early opportunity to make businesses aware of their responsibilities around food hypersensitivity. It was suggested that this was something that could be built into the ongoing pilot of the business registration process Ruth also mentioned the procurement of catering services in schools and care homes and the need to ensure that an awareness of the importance of food standards was clearly embedded in these institutions. WFAC had also raised food poverty and food insecurity as a possible driver of riskier behaviour.

11. The Chair thanked Ruth for this update and commented on the issue of clinical diagnosis, explaining that without this, consumers may be taking the wrong measures in an attempt to keep safe. She invited Colm McKenna to outline the discussions of the Northern Ireland Food Advisory Committee (NIFAC) on allergens.

12. Colm explained that NIFAC had met on 10 April and had also held a teleconference to discuss the specific issues in the Board paper. NIFAC had welcomed the focus of the paper and had strongly expressed a view that option one of the consultation proposals should be something that takes place in any event. He also outlined the position in the Republic of Ireland where they had strong regulations around allergen labelling but that the levels of compliance were generally low. This was considered to be a risky scenario for consumers and reinforced that whatever the outcome of the consultation, the regulations must be enforced appropriately. NIFAC had also noted that the profile of the catering industry in Northern Ireland was dominated by smaller businesses who may face challenges in implementation and may require additional assistance to do so. He explained that NIFAC had noted consumers in Northern Ireland would be affected by the variation with Ireland in the presentation of information, particularly around border areas where they may regularly encounter information provided in line with regulations from both sides. NIFAC had also reinforced the view that the FSA must ensure that the message that it was the food businesses' responsibility to provide food that is safe for its customers was widely understood.

13. The Chair invited comments from other Board members. Paul Williams noted the levels of hospitalisations relating to food hypersensitivity. He asked whether there was thought to be a significant level of under reporting and if consideration had been given to the resources required to get the information that could be missing. Rebecca Sudworth explained that seeking more accurate information was part of future plans. Chun-Han Chan confirmed that it was known that there currently was underreporting. The CSA explained that conversations had been undertaken with clinicians and epidemiologists around improving reporting mechanisms to address this issue. The Chair indicated that this would be an area that could benefit from a Science Council overview. Steve Wearne explained that conversations about this were underway, looking also at issues around surveillance. The Chair noted that this would be a valuable step and asked about the role of social science. Julie Pierce explained that there was an opportunity to bring together social and clinical

sciences explaining that there was a current paucity of data but that uncovering valuable data sources was becoming easier and that new analytical tools meant that more value could be extracted from the data available.

14. Stewart Houston suggested that given the FSA's focus on food safety, the points raised by the CSA should provide all the necessary motivation for the FSA to act. The Chair agreed, adding that this was a significant area of work that should be expected to become a regular part of future Board agendas.

15. David Brooks commended the ambition demonstrated in the paper and emphasised that there was a need to provide consumers with clarity. He noted that research in Northern Ireland had established the overlap with food safety and this demonstrated the onus on the FSA to be the department to provide that clarity. He commented that the procurement of catering services in schools and care homes, mentioned by Ruth, would provide a prompt and an incentive to businesses. Maria Jennings, Director of Regulatory Compliance, People and NI explained that the key difference in Northern Ireland was that the official controls work around food standards was carried out by Environmental Health Officers (EHOs) rather than specialised Trading Standards Officers (TSOs). A more fundamental look at food standards official controls delivery was currently underway as part of the Regulating our Future programme of work.

16. The Chair thanked Maria for this clarification and noted that there had been some discussion around whether the Food Hygiene Rating Scheme (FHRS) could incorporate aspects of food standards inspections. Colm explained that this had been discussed by NIFAC and it had been suggested that incorporating food standards into FHRS could undermine the scheme and confuse consumers. NIFAC had proposed that, should there be a desire for a scheme that would alert consumers to a business' performance in ensuring that allergy information was accurate, a parallel scheme would be preferable to using FHRS. Maria Jennings added that incorporating this information into a FHRS score would fundamentally alter the nature of the scheme, explaining that allergy sufferers required specific information that could not easily be communicated in a single zero-to-five rating. She proposed that she take an action from the meeting to explore the possibility of a parallel scheme. David Brooks expressed uncertainty about the merits of having a separate parallel scheme. He noted that the majority of recalls of food products arose from issues of cross-contamination and that this was also the key issue for allergens and that if FHRS was able to incorporate information from one form of cross-contamination, then other forms of cross-contamination should be able to be taken into account. He added that the additional signage that would accompany a parallel scheme could serve to confuse consumers.

17. Mary Quicke suggested it could be possible to use FHRS to encourage businesses to adopt a model of ingredient labelling such as that outlined in option four of the Government's Allergen Labelling Review by ensuring that incomplete disclosure would impact on their rating. Stewart agreed with David and explained that he considered that starting a scheme from scratch could be

too great a challenge. The Chair explained that whether a scheme such as FHRS might be used to present consumer information and whether that would be better done through FHRS or a parallel scheme, evidence would be required to show where the split in responsibilities between TSOs and EHOs was problematic. She suggested that the question was how best to give the consumer an awareness about business performance.

18. Colm asked a question about examples of best practice from other countries. Rebecca explained that, in relation to Pre-packed for Direct Sale (PPDS) goods, practice, as well as the accepted definition of PPDS itself was variable and that approaches were also likely to be evolving elsewhere as this was an emerging area everywhere. Michael Wight explained that the EU regulations in this area were drawn sufficiently broad to allow Member States to develop their own mechanisms within the principle that whatever the mechanism used, consumers should be able to get the necessary information.

19. The Chair explained that at a recent industry stakeholder event, a good level of collaboration between businesses to share best practice had been evident. She noted that the impression was that the FSA was not pushing at a locked door and the willingness to be honest and share experience was positive. She noted the particular risk to 16-24 year olds, pointing out that this was a different demographic to that usually thought of when considering vulnerable groups, which on other issues, tended to be the very young and the elderly. She explained that it would be important to keep this group in focus when considering the approach to allergens. Julie Pierce noted feedback from Codex that showed the importance of transparency throughout the supply chain, suggesting that if this could be tapped into, it would go a considerable way towards addressing the allergen question.

20. The Chair summarised the Board's agreement on the wider approach to food hypersensitivity:

- They agreed with the Chief Scientific Adviser's analysis that a high priority needed to be given to addressing food hypersensitivity;
- the Board expected pace and progress in addressing this issue, acknowledging the gaps that existed in the current evidence base;
- the Board wished to see the FSA develop better connections with clinicians, and across public sector bodies, to address this from the perspective of the patient experience;
- the Science Council would be commissioned to conduct a review of the science and evidence base for addressing food hypersensitivity, the part the FSA and others should play in enhancing knowledge, and a view on priorities.
- the Advisory Committee on Social Sciences would be asked to consider the behavioural aspects that affect business and individual approaches to food hypersensitivity.
- the Board noted the activities undertaken around reporting mechanisms to gather data on allergic reactions in catering to deliver more intelligence

and help identify businesses that pose the greatest risk, and design specific inspection and other measures to address that risk;

- the FSA should undertake further engagement with Local Authorities to give support and advice for inspection and enforcement activities;
- the Board wanted stronger information about the impacts of work undertaken, so that it could identify measures of success and set appropriate goals and targets;
- Addressing food hypersensitivity would create challenges for business, but also new business opportunities;
- The Board requested further advice on achieving consumer awareness of a business' compliance with allergen and intolerance regulations, with a preference for this being via the established FHRS model. The food hypersensitivity issues should also be woven into the work underway on food standards, within the RoF programme; as should the need to clarify the competencies needed in front line professionals to reflect the rising importance of public health issues from allergens and intolerances.
- there was interest around national procurement services and whether the FSA could intervene here to ensure greater protection;
- the contribution of the Advisory Committee on Social Science on issues around riskier food choices and food poverty could help with understanding some of the surprising behavioural context; and
- The Board expected food hypersensitivity to become a regular part of Board agendas as progress was made on these fronts, and on the outcomes of the labelling consultation. The first step was to have an action plan with timelines for the June meeting.

21. The Chair invited Rebecca to introduce the second part of the discussion, which focussed on the consultation on the Government's Allergen Labelling Review. Rebecca explained that this would be a key strand of work for the FSA and expressed her thanks to all those who had contributed to the consultation, noting that more than 1,600 individuals responded to the consultation and the FSA had worked with around 150 people in stakeholder workshops. She added there had been a good response from public sector bodies including NHS and Local Authorities and 126 responses from businesses and also good responses from business representative bodies.

22. She explained that the paper clearly set out the results of the consultation, noting a strong desire among consumers, for full ingredient labelling. She noted that this option had not been the preferred choice of industry and that there would be a challenge in persuading businesses.

23. The Chair invited the CSA to comment. The CSA emphasised the importance of protecting public health and the importance of protecting the consumer interest noting the overwhelming support of consumers for a single option in the consultation. Since the consumer interest clearly lay in adopting option four from the consultation, he recommended that, in-line with the triangle model mentioned earlier in the discussion, a significant amount of resource would be required to ensure a successful implementation.

24. Stewart considered the options outlined in the consultation. He considered that good businesses should already be fulfilling option one. He considered option two to be non-exclusive of other options and could be retained and added to either option three or four. He suggested that option three would not require significantly less work to implement than option four but would retain a significantly higher risk to consumers and that therefore, option four would be the preferred outcome.

25. Paul noted that for consumers with food hypersensitivities, it was welcome that they should be able to ask about allergens in food but that the usefulness of this was dependent on the accuracy of the information then provided. He explained that it was known that information obtained in this way was not always accurate and was also deniable. The mechanisms for giving allergen information contained in options three and four of the consultation were checkable and provided evidence of what the consumer had been told. The responses to the consultation showed that option three appeared to be the preferred option among food businesses and that this appeared to be due to its enforceability. It was not necessarily the case that it would be any less onerous for businesses than option four.

26. Colm commented on the FSA's societal responsibility to ensure consumers' views were represented. He noted that option four was the clear preference of consumers in the consultation. He emphasised the scale of what would be required for this option to be properly implemented and enforced, noting the experience in the Republic of Ireland where there was strong legislation for the provision of allergen information but where compliance rates were lower than desirable. He suggested that this would be a poor outcome, commenting that it would not be possible for the FSA to successfully implement option four on its own but that it should take a lead role among partner organisations.

27. David said he understood why consumers would prefer option four but that the FSA's role should be to provide suitable consumer protection. He proposed that it would be possible to move faster in the implementation of option three. He suggested that it might be possible to move to the option four model at a later time and echoed Stewart's point that option two should not be excluded but rather implemented alongside the other options.

28. The Chair asked whether it was the case that both options three and four would require a full consultation period in order to implement. Michael explained that this would depend upon whether the FSA wanted to mandate the appearance of the sticker or the layout of the full ingredient list. The Chair commented that in the interests of consistency in the consumer experience and given feedback on this issue from industry and allergy NGOs, the FSA was likely to want to control this. David pointed out that industry would probably say that they would like to do option four but were not able to and would likely be less resistant to a consultation on option three. Stewart agreed that it would be possible to move faster with option three but cautioned against choosing the easier option at the expense of the best one. If option three were implemented initially, moving to

option four from there could require further legislation and consultation within a relatively short period of time.

29. Ruth emphasised the need to ensure behaviour change among businesses and the need to ensure a compliant approach across the sector. She explained that WFAC had voiced concerns over option two and about the reliability of information that would be communicated under this model. They also had reservations about a scenario where the burden of responsibility would be conferred upon often junior members of staff. Option 3 was considered as possibly more likely to support compliance.

30. Mary explained that as a business person who had previously gone through the implementation of requirements of the Food Information Regulations, she had an awareness of the scale of the challenge. In her food business, she had to establish what was in the food she produced and supplied to be able to correctly label it. She explained that this would be the case whether option three or four were chosen, so that the work required by a business to implement option three would not be significantly different to that required for option four.

31. The Chair noted that consumers had expressed a strong preference for option four and that this was clearly where their interests were. She explained that there would be a need to clarify to consumers that doing this would not always catch everything. Currently, there were recalls because of undeclared allergens and allergen labelling errors. These errors would not be eradicated by whatever option was chosen but that, given the strength of the consumer response, she was wary of advocating any other option. Colm noted there would need to be measures to manage unexpected consequences such as refusals to serve hypersensitive consumers.

32. The Chair sought an indication from Board Members of the extent to which they were content to say that full labelling was the appropriate outcome. She noted that the response included several Members indicating agreement and one who did not. David explained that he was cautious about the practicalities and how labelling errors could be detected, especially for allergens for which there was currently no effective test, other than by a food hypersensitive consumer becoming ill. The Chair acknowledged this and suggested that, with that caveat, the Board were indicating that option four should be the ultimate ambition. She explained that there would be work to do to ensure that a genuine sense of security, as opposed to a false sense of security, could be conferred to food hypersensitive consumers. This would impact on the timescale within which this could be made to happen. She noted that there would be pressure to make it happen quicker but that there would need to be time to gain certainty on approaches and that unintended consequences were avoided.

33. Colm noted that, when informing Ministers of the outcomes of this discussion, there would be a need to make it clear that the FSA would take the lead on this

but could not do it alone and there would be significant roles for the Department of Health and Social Care (DHSC), Defra and Local Authorities to play.

34. Maria noted the resource implications for Local Authorities. She suggested that proposals around enforcement should be brought back to the Board for consideration.

35. Steve Wearne mentioned the need to gather evidence around the impacts on small businesses to ensure that the best route to compliance could be identified and also to help gain an understanding of the nature and scale of unintended consequences if businesses moved away from PPDS foods and towards foods that were sold loose. The Chair explained that the consultation responses from micro-businesses had not provided detail on how they operated and therefore, how their business model would be impacted by option four. It would be important to get a clear understanding of this in order to be able to fully manage any unintended consequences. Julie Pierce noted the importance of aiming for a level playing field for small and larger scale businesses as well as for consumers.

36. The Chair summarised the Board's conclusions:

- it considered option four to be the preferred outcome for allergy labelling of PPDS food.
- It was the preference of 73% of individuals who responded to the consultation, and the views of organisations representing allergic consumers. This is a significant consumer voice;
- But the steps to successfully implement that option could not be done quickly and would require engagement with businesses to allow them to share their concerns;
- the Board encouraged businesses to engage with the FSA in the interim, to share their experience of the challenges involved, as well as to collaborate and share good practice and learning with each other;
- there would need to be work on the potential for risks emerging from cross contamination with the sale of loose foods;
- The Board was clear that Option 4 did not mean other protections could fall away. It considered it essential to have informed staff in catering premises who could answer customer queries around allergen content;
- Work was required on supply chain issues which could particularly affect smaller businesses
- Implementing the new regulation would require extra resource in LAs, to provide guidance and enforcement. Strong regulation with weak compliance would not provide the required protection. Early advice on this point would be welcomed by the board;
- option four contained its own risks but offered the overall best additional protection for public health; and
- the FSA would work with other government bodies in implementation.

37. The Chair explained that labelling responsibilities were not divided equally across England, Wales and Northern Ireland, but she would now write to the relevant Ministers about the outcomes of this discussion and would share that correspondence with the Board.

Any Other Business

38. The Chair noted that this was the last Board meeting for both Paul Williams and Stewart Houston commenting that this was a significant issue to be addressing as a final Board discussion. She recognised that they had made a significant contribution, particularly to the understanding of progressing controls in the meat sector and had both been engaged across the full range of FSA responsibilities. Stewart had brought a connection with the Agriculture and Horticulture Development Board (AHDB) and Defra colleagues, and an insight into issues such as the livestock information programme; Paul had brought his knowledge of the fish industry as well as the wider business perspective such as issues around gang-master licensing. She thanked them both for their contribution; they would be missed around the Board table.

39. No further matters were raised, and the Chair closed the meeting. The next scheduled Board meeting would take place on 19 June in Birmingham.