

**KANTAR PUBLIC**



# REGULATING OUR FUTURE CONSUMER PANEL

## Report

December 2017

James MacGregor, Anna Cordes, Lindsay Abbassian

JN 260139526

# Contents

<b>1. Executive Summary</b>	<b>1</b>
<b>2. Introduction</b>	<b>4</b>
<b>3. Panellists' responses to the notion of the Regulating our Future programme</b>	<b>6</b>
<b>4. Responses to different elements and iterations of the Target Operating Model</b>	<b>10</b>
<b>5. Spotlight on Co-design</b>	<b>16</b>
<b>6. Conclusions</b>	<b>19</b>
<b>Appendix A – First iteration of the Target Operating Model</b>	<b>21</b>
<b>Appendix B – Final iteration of the Target Operating Model</b>	<b>22</b>

# 1. Executive Summary

The Food Standards Agency (FSA) is responsible for delivering an effective regulatory regime that verifies that food businesses meet their obligation to ensure food is safe and what it says it is. The current regulatory model has remained broadly the same for the last 30 years. While it has provided effective protection for consumers and businesses within the food chain, it does not take advantage of technological innovations or reflect how the UK food system has changed during this time. In light of this, the FSA is reforming the existing regulatory model as part of its Regulating our Future (RoF) programme.

Before 2017, the FSA commissioned a range of insight and engagement activities to ensure the future regulatory system reflects the needs and interests of different stakeholder groups (consumers, food businesses, and local and national government). In light of these activities, the FSA developed a Target Operating Model (TOM) outlining its vision for how the UK food system is regulated.

The TOM had four key elements: Enhanced Registration (ER) / Permission to Trade (PtT) (businesses will receive more support at set-up and provide more information to the FSA about what they are doing and how they are doing it); Segmentation (businesses will be segmented according to risk and treated in accordance with that risk); Assurance (businesses will provide evidence that they are meeting regulatory requirements and the FSA will take evidence from third parties into account); and, Event / Intervention (regulators will hold businesses to account and intervene if businesses are found to be non-compliant).

To support the development of the TOM, the FSA ran a series of engagement activities with consumers, food businesses and other parts of local and national government throughout 2017. Kantar Public was commissioned to manage the delivery of the FSA's Consumer Panel.

The Consumer Panel was small in scale. It had 14 members of the public and an FSA appointed Chair, Diane Cook. It was intended to provide a sense-check on the FSA's plans and help refine the TOM, rather than provide detailed or representative research findings.

The panel met four times in 2017, with meetings taking place after the FSA's directly- managed expert business and regulator panels. Relevant representatives from the FSA attended Consumer Panel meetings to present information about the TOM and the Consumer Panel Chair attended the other panel meetings to support information sharing between panels.

## 1.1 Findings

### 1.1.1 Overall reactions to the RoF programme and the TOM

Panellists felt that the RoF programme was necessary. Although at the start of the research panellists knew little about how food businesses are regulated in the UK, once panellists learnt that many of their presumptions about the UK food system were incorrect (for instance, that all businesses are inspected annually), they felt that it was necessary for the UK food system to be modernised.

When considering the current operating model, panellists spontaneously suggested changes that aligned with those suggested by the FSA in the TOM. Panellists wanted more inspections to take place, for businesses to be required to register or be inspected prior to opening, and for greater use to be made of existing feedback mechanisms (e.g. the Food Hygiene Rating Scheme (FHRS)).

Panellists broadly endorsed the TOM when the FSA outlined it in the first meeting of the Consumer Panel. Although they had questions and concerns, panellists welcomed the introduction of PtT and ER, and the move to take a more segmented, targeted approach to inspecting businesses. This general support was sustained across the life of the Consumer Panel.

### **1.1.2 Responses to specific elements of the TOM**

Following the first Consumer Panel meeting, the FSA revised the TOM in line with stakeholder feedback and wider events (such as the UK's decision to leave the EU). Across sessions, conversations focused on PtT and ER, and Assurance. Segmentation and Event / Intervention were discussed to a lesser extent.

Panellists' responses are summarised below:

#### **PtT and ER**

The FSA made policy changes to PtT and ER during the life of the Consumer Panel. In the first Consumer Panel meeting PtT was described as requiring businesses to register before set up, with some high-risk businesses needing a permit before they could serve consumers. This was strongly supported by panellists, but would require legislative changes to implement.

In response to the UK's decision to leave the EU, the FSA had to make changes to PtT. This was because the UK's decision to leave the EU is anticipated to require substantial parliamentary time and the FSA did not feel the legislative changes required to make PtT feasible would be achievable in the immediate future.

As a result, the FSA changed PtT to ER. The FSA anticipated that ER would provide the benefits of PtT without requiring legislative changes. The FSA would still request businesses to register, but there would be no pre-trade permit.

Although panellists preferred PtT and felt that this should be the ultimate goal for the FSA in the TOM, panellists felt ER was an improvement on the current system and could provide protection in the interim.

#### **Segmentation**

The FSA proposed to adopt a risk based approach to segmentation, taking into account a business's track record and specific features of a business (type of food handled, for instance) to assess risk.

Panellists supported this approach and felt it would lead to more targeted and proportionate interventions.

#### **Assurance**

The FSA proposed changing the way in which businesses provided evidence that they were complying with official controls. Changes included allowing businesses to contribute third party data and internal data to evidence compliance. It also involved the introduction of the Certified Regulatory Auditor (CRAs) concept; CRAs could be employed directly by food businesses to deliver inspections.

Panellists had mixed views on the FSA's proposed changes to assurance. They wanted to ensure that safeguards were in place to ensure that consumers were protected and that inappropriate relationships did not develop between businesses and CRAs. They felt that the FSA should remain ultimately accountable for the effectiveness of the UK food system. However, providing the use of the CRA would allow more inspections to take place and that Local Authorities (LA) would have a verification and enforcement role, then panellists supported their use.

#### **Event / intervention**

In the TOM, the FSA proposed that regulators would intervene and check businesses in response to specific events. “Events” included problems or concerns (such as cases of food poisoning) and more procedural changes in a business (for instance, a change in management).

Panellists supported this approach and felt it would ensure that there was feedback in the food regulation system. They felt it would be important for “events” to feed into any segmentation and that businesses be offered advice and guidance following an event.

## **1.2 Conclusions**

Overall, discussions during the Consumer Panel suggested that panellists’ broadly supported the FSA’s proposed changes to how food businesses are regulated and the key features of the TOM. Discussions also exposed several recurring themes that underpinned panellists’ reactions and which should be taken into account when making further revisions to the TOM.

Firstly, panellists generally supported changing the current regulatory model when they became aware of the realities of the current system. Panellists did not consider current requirements or processes to be stringent enough and, as a result, felt there should be reforms. While this led panellists to support the FSA’s proposed changes, this may not be the reaction of members of the wider public who may not be aware of how food businesses are currently regulated. The FSA should consider this awareness gap when publicising its reforms.

Secondly, panellists found elements of the TOM particularly attractive if they perceived that they would make standards more stringent. This underpinned panellists’ support for PtT and the use of CRAs. Panellists anticipated these measures would ensure more inspections occur more regularly in the future and that businesses would be given more specialist and targeted support. They anticipated that this would lead to higher standards across the UK food system.

Panellists’ desire for more stringent standards, also fed into a recurring call for the FSA to put suitable safeguards in place in the future system. While panellists accepted a degree of privatisation and the use of CRAs, they wanted to ensure that public sector bodies and the FSA remained ultimately accountable for the effective functioning of the system. Primarily, the FSA wanted to ensure that inappropriate relationships did not develop between food businesses and regulators.

Finally, panellists did not want to lose the diversity of the current UK food system. Although panellists felt that it was appropriate for businesses to meet the cost of regulation (particularly in light of strained public sector resources), they felt that costs should be proportionate. They were conscious that small businesses may not be able to afford to employ CRAs or pay to register as part of PtT. They therefore felt that the FSA should provide support (lower registration costs, advice and guidance) should be available for smaller businesses and that size be taken into account when setting registration fees.

# 2. Introduction

## 2.1 Background and aims

The Food Standards Agency (FSA) is an independent government department responsible for protecting consumer interests in relation to food. As part of this, the FSA works to ensure an effective regulatory regime is in place to verify that food businesses meet their obligations to ensure food is safe and what it says it is.

The current regulatory model has served consumers well for the last 30 years. Face-to-face inspections delivered through Local Authorities (LA) have been the backbone of this system. Through these inspections, LAs assess food businesses' compliance with food laws (known as official controls). These inspections are then translated into a Food Hygiene Rating Scheme (FHRS) score. If standards are felt to be inadequate, a LA may decide to take enforcement action against a business.

While this system of regulation has been effective at regulating food businesses in the past, the current method of delivering official controls was not designed with the current food system in mind. Supply chains are increasingly complex, public sector resources are increasingly stretched, and developments in technology may enable cost savings and quality improvements to the system.

The FSA is collaborating with key stakeholders to modernise how food businesses are regulated in the UK. Throughout 2017, the FSA has run a series of engagement activities with consumers, food businesses and other parts of local and national government to ensure the future regulatory model meets stakeholders' needs and inspires confidence in consumers. In November 2016, the FSA commissioned Kantar Public to convene and manage one component of these activities: the FSA's Consumer Panel.

The Consumer Panel was convened to support the development of potential options for the future regulation of food businesses and act as a testing ground for the FSA. It was not designed to present a set of findings representative of the UK population as a whole. Findings in this report are therefore representative of the views of the consumers who were members of the panel.

## 2.2 Approach

The Regulating Our Future (RoF) Consumer Panel was a series of four reconvened engagement meetings with 14 consumers and relevant representatives from the FSA. Meetings took place on Saturdays in January, April, July and October, lasted for three hours and were hosted in Kantar's London offices.

Consumer Panel meetings were held following meetings of the FSA's expert business and regulator panels, so that findings and points of discussion from the other panels could be discussed by the Consumer Panel. The FSA also appointed an independent Consumer Panel chair, Diane Cook. The Chair's role was to ensure that the views of consumers were reflected at the other panel meetings, and also that insights from other stakeholder groups were reflected in the Consumer Panel itself. The Chair attended each of the four Consumer Panel meetings and also the meetings of the other panels.

Having FSA representatives from relevant practice areas attend each meeting of the Consumer Panel allowed the FSA to present the latest iteration in the development of the new regulatory system. It also ensured panel members' questions were addressed in real time. At different panel meetings, the representatives presented various information on the current operating model, the Target Operating Model (TOM) and the rationale for any amendments to potential future options made since the last meeting. The

FSA wanted to hear how consumers responded to the new model to learn how the TOM could be refined to meet consumers' needs and ensure consumers were confident in the effectiveness of the new system. The FSA's attendance at the meetings also communicated the key role the panel played in supporting the FSA's thinking and the future direction of the regulatory model.

Kantar Public supported the FSA in developing meeting content and Kantar Public researchers facilitated all face-to-face meetings. This included the development of discussion guides and stimulus to structure the conversations taking place and ensure content relating to RoF was in consumer-friendly language.

To ensure all Consumer Panel members had a base level of understanding of the UK food system, Kantar Public worked with the FSA to develop a briefing pack that panel members received before the first panel meeting. The content of the briefing pack varied between different Consumer Panel meetings, but typically included contextual information about the current regulatory environment, challenges in the current regulatory model, and the FSA's vision for the future regulatory model.

### 2.3 Sample and Recruitment

To form the panel, we re-engaged some consumers who participated in previous FSA RoF research, as well as recruiting new participants. This approach allowed us to continue the conversation around food regulation with consumers who were already informed about, and engaged with the issues and future trends, but also ensured a range of views were represented.

Recruitment for the Consumer Panel started with those consumers who expressed an interest in participating in further research. Of the 40 consumers who participated in the previous research, 13 gave consent to be contacted about further research and four ultimately agreed to participate in the Consumer Panel. The remaining 11 participants were recruited using a free-find approach, for a total of 15 participants.

One of the recruited participants did not attend the first meeting of the Consumer Panel. Kantar Public and the FSA made the decision to exclude this participant from future meetings to ensure consistency between panels, as a fresh recruit would have missed the information and discussion from the first meeting. Ensuring consistent attendance across meetings of the Consumer Panel was important due to the complex, technical nature of the topics under discussion. Kantar Public and the FSA wanted to understand how consumers' views changed overtime and, as a result, working with the same group of people was crucial. The breakdown of Consumer Panel members by location is as follows:

Location	Number of Participants
<b>Bexley Heath</b>	4
<b>Bangor (NI)</b>	2
<b>Cardiff</b>	2
<b>London</b>	4
<b>Manchester</b>	2
<b>TOTAL</b>	14

# 3. Panellists' responses to the notion of the Regulating our Future programme

In this section, we outline panellists' responses to the notion of the RoF programme and their initial reactions to the FSA's Target Operating Model (TOM). It draws on insights from the first panel meeting in February 2017. This report discusses panellists' considered reactions to the TOM in more detail in Chapter 4.

## 3.1 Overview of the Regulating Our Future (RoF) programme

The FSA wants to modernise how food businesses are regulated in the England, Wales and Northern Ireland. The current regulatory system has remained broadly the same for the last 30 years. While it has proved effective, the system was developed at a time when food systems were less global, has not kept pace with technological change in the food industry, and takes a one-size fits all approach food businesses. The FSA wants to change this through the RoF programme.

The FSA identified five principles to inform the design of the new regulatory model, which were refined and tested by Kantar Public during 2016 and 2017 in other research projects.<sup>1</sup> These are that:

- Businesses are responsible for producing food that is safe and what it says it is
- The FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of UK food businesses
- The regulator should take into account all available sources of information
- Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not
- Businesses should meet the costs of regulation, which should be no more than they need to be

The FSA developed a TOM based on these principles. The TOM has four key elements and aims to help businesses meet their obligations to consumers and produce food which is safe and what it says it is.

We describe the four elements of the TOM and how the FSA revised them in the following chapters. In summary, they are:

1. **Permission to Trade (PtT) / Enhanced Registration (ER):** businesses will receive more support at set-up and provide more information to the FSA about what they are doing and how they are doing it
2. **Segmentation:** businesses will be segmented based on risk and treated in accordance with that risk
3. **Assurance:** businesses will provide evidence that they are meeting regulatory requirements and the FSA will take evidence from third parties into account

---

<sup>1</sup> Kantar Public (2016), 'Regulating our Future: Research with food business operators', <https://www.food.gov.uk/sites/default/files/rofsmallfoodbusinessoperatorsreport.pdf> ; Kantar Public, (2016), 'Regulating our Future: Research with the public', <https://www.food.gov.uk/sites/default/files/rofresearchwiththepublic.pdf>



4. **Event / Intervention:** regulators will hold businesses to account and intervene if businesses are found to be non-compliant

Panellists' reactions to RoF and the TOM are discussed below:

### 3.2 Panellists' reactions to the RoF programme

Overall, panellists responded positively to the FSA's proposal to change how food businesses are regulated. Panellists' positivity was sustained when they realised that many of their presumptions about how food businesses are regulated in the UK were inaccurate.

At the first Consumer Panel meeting, most participants knew little about how food businesses are regulated. Panellists presumed the food they buy is safe, that "*checks*" or "*inspections*" take place and were generally aware of consumer facing elements of the food regulatory system. Many panellists knew about the Food Hygiene Rating Scheme (FHRS) and some food labelling requirements, such as the food traffic light system, for instance. Panellists knew little beyond this.

Panellists had very low awareness, or understanding, of who was responsible for regulating food businesses, how regularly food businesses are inspected or what factors are taken into account during inspections. They presumed that standards are high, and that inspections are rigorous and frequent, due to their perception that food poisoning incidents and food "*scandals*" are comparatively rare. However, they had little detailed knowledge of what takes place "*behind the scenes*".

*"We think about what we buy at the counter but we don't really know the vast kind of systems that are behind that and also the power of global food giants"*

Many panellists' had their presumptions challenged when they considered information about the current regulatory model. Panellists were surprised to learn that:

- all food businesses are treated in the same way
- inspections take place irregularly
- businesses can start trading before the LA has assessed their systems or food safety plan
- the system is currently primarily delivered at a local level

Given this, panellists agreed with the FSA that the existing regulatory model needed to be changed. When considering the current regulatory model, panellists raised particular concerns about business registration and set up, inspections, and the adaptability of the current model:

- **Set-up:** Although panellists were impressed that all food businesses are registered and inspected (at least in theory) and that the consumer is involved in the regulatory process by being able to trigger an inspection, panellists were very concerned that businesses are able to trade without being "*approved*" by a suitable regulatory body. Some worried about businesses being able to open, close and then re-open under a different name without being subject to an inspection. This was particularly the case for businesses that had shut because of a poor reputation or customer complaints. If a business was not registered, there would be no formal record of any 'issues' and, as a result, the authorities may not be aware that the business represents a risk.
- **Inspections:** Panellists felt inspections were too infrequent to ensure adequate compliance. Panellists understood that inspections were only a snapshot of the business on the day of the inspection. As a result, they may not fairly represent what takes place "*normally*". There were also prominent concerns about whether, for example, having inspections once every six to 24 months in some cases, was adequate.

- **Adaptability:** Panellists also worried about whether the current system was responsive enough for food businesses' different needs and changing circumstances. For instance, some panellists were concerned that the current system does not reflect changes in the businesses' management or capture information on food workers' aptitudes in food, health and safety.

Having considered the current model, and before they were introduced to the TOM, panellists suggested improvements to existing enforcement mechanisms. Panellists felt there was a gap in consumers' awareness of regulations and regulatory mechanisms. Panellists felt the FSA could make more effective use of existing tools, such as FHRS scores, to increase public awareness. For instance, panellists felt displaying FHRS should be mandatory and that they could include more information on how scores had been calculated.<sup>2</sup> Panellists also felt they would be reassured that the regulatory system was working if they were more aware of sanctions being levied against non-compliant businesses.

In addition, panellists felt the face-to-face inspections should continue and be increased. In particular, they felt that businesses should not be able to trade without being inspected and that inspections should take place on a more regular basis.

Panellists' spontaneous suggestions for how to improve the currently regulatory model gave an early indication that the principles underlying the TOM and the TOM model itself would have some appeal to panel members.

### 3.3 Panellists' initial reactions to the TOM as a whole

Once panellists had reflected on the current regulatory model, the FSA presented information on the proposed TOM (see section 3.1).

Panellists' initial reactions to the TOM as a whole were positive (we discuss responses to elements within the TOM in Chapter 4). For the most part, panellists felt that the TOM would address or overcome some of the perceived weaknesses of the current regulatory model and create a system that was both proportionate and safe.

Panellists were particularly reassured about the introduction of PtT / ER. They felt that this would ensure businesses have demonstrated they can meet existing regulatory standards before they are able to serve the public. Panellists also liked the introduction of segmentation. Panellists recognised that not all businesses have the same risk profile and, as such, felt that it was appropriate to take a targeted and proportionate approach to inspections.

*"I like the idea of Permission to Trade, being certified that you're able and competent and also that the equipment is right and akin to that particular business."*

After the initial presentation of the TOM, however, panellists did have some concerns. Some felt small, independent businesses would be squeezed out of the market if businesses would need to meet the costs of regulation. They therefore felt that costs should be low or based on business size. Some were also concerned about the effectiveness of the new model. They doubted whether LAs would be able to manage ER / PtT given existing pressures on LAs. They also questioned whether small businesses would be able to collect the required information or afford to employ a third party auditor. Ultimately, panellists felt that they needed to know more before they could make a considered judgement on the TOM as whole.

*"You're saying that at the moment it can take up to two years for a new business to receive an inspection. If the permission to set up is going to be issued beforehand, doesn't that mean they'll be*

---

<sup>2</sup> It is mandatory for food businesses in Wales and Northern Ireland to display their FHRS score. However, it is not mandatory in England.

*thousands of businesses and small businesses, waiting to set up when they'll want that done quickly?"*

Fundamentally, however, panellists endorsed the FSA's RoF programme and the broad outline of the TOM. Although panellists wanted more information on elements of the TOM before they could provide detailed feedback, at the end of the first meeting panellists broadly supported the principles of the approach the FSA was taking to change the system. They particularly liked the fact that the future model was dynamic and provided feedback more often to businesses. This broad support for the RoF programme and the TOM remained consistent throughout the life of the panel.

*"I quite like the fact that it backtracks. If they get one section wrong, it can have a knock-on effect right back to the beginning, instead of it just being, okay, we've made this mistake, don't do it again. But in this one it's if you make that mistake, well then, you've got to make assurances that it's not going to happen again, and then they'll take a look at the risks. I think that's quite good."*

# 4. Responses to different elements and iterations of the Target Operating Model

In this section, we look at each element of the TOM in turn and discuss panellists' responses to each element. We also discuss how the FSA revised the model in response to feedback from the consumer and other panels, and panellists' views on these changes.

## 4.1 Structural overview

As described in section 3.1, the FSA developed a TOM for the RoF programme based on principles identified through and validated by research with consumers, and food business operators. Across 2017, the FSA presented information about the TOM to members of the consumer and other panels. The FSA's first iteration of the TOM is shown in the image to the right.

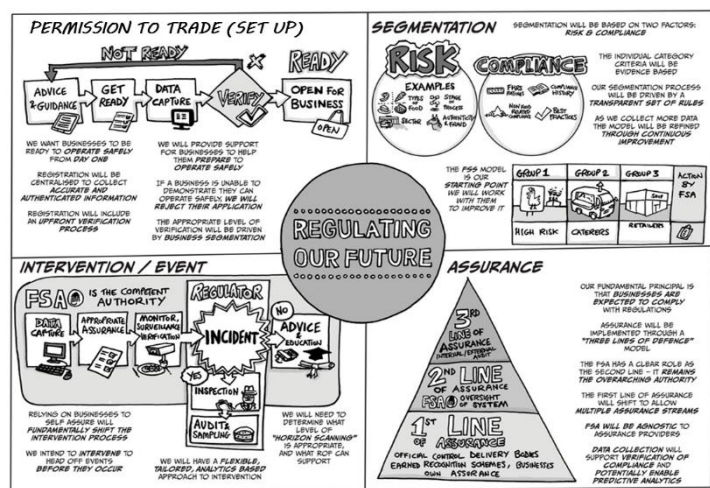
This chapter describes how elements of the TOM changed in response to feedback and wider events (such as the UK's decision to leave the EU). We also reflect on panellists' responses to these changes.

The FSA focused on different elements of the TOM in different meetings of the Consumer Panel. The first meeting of the panel introduced the current operating model and the TOM. In the second meeting, the FSA focused on PtT and ER, and Assurance. As part of Assurance, the FSA gave additional detail on the role of Certified Regulatory Auditors (CRA). In the third meeting, the FSA also focused on PtT and ER and Assurance and the impact of changes on the LAs' role in Assurance. In the fourth and final meeting of the Consumer Panel, the FSA presented the most recent version of the TOM. Panellist were also given an opportunity to co-design what their ideal TOM would be. This report explores findings from the co-design in Chapter 5.

As discussed, the Consumer Panel served a consultative function. Its purpose was to give the FSA a view on consumers' reactions to changes to the way food businesses are regulated rather than present findings representative of the UK population as a whole. The below sections describe the reactions of Consumer Panel members to the TOM.

## 4.2 Permission to Trade (PtT) and Enhanced Registration (ER)

Figure 1 Diagram outlining the TOM as described in the first meeting of the Consumer Panel

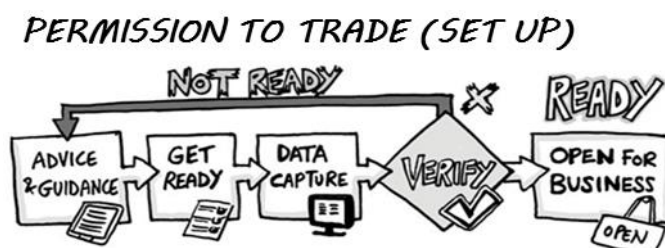


#### 4.2.1 Initial presentation and reactions to PtT and ER in the first Consumer Panel meeting

The FSA introduced PtT as part of the first Consumer Panel meeting and provided more detail on the concept in the second and third meetings.

In the first Consumer Panel meeting, the FSA described PtT as businesses being legally required to provide information to their Local Authority (LA) about their businesses (see Figure 2 below). The FSA would develop a centralised, digitally-enabled registration process, which would include online information to support new business start-ups. Businesses would need to pay a fee to register. The business's LA would verify information supplied by the business and businesses would update the information annually. Some businesses would need a 'permit to trade' before they could start trading. They would need to demonstrate they have robust arrangements in place for ensuring food is safe and making sure food is what it says it is. Some low risk businesses might not require inspection following registration.

Figure 2 PtT element of the TOM as described in the first meeting of the Consumer Panel



Overall, panellists responded positively to the idea of PtT. Panellists felt a weakness of the current system is that food businesses can start trading without an inspection, and that PtT would be an improvement. Panellists felt this would help businesses to operate safely from the very beginning:

*"I like the idea of a Permission to Trade, being certified that you're able and competent, and also that the equipment is right and akin to that particular business."*

However, panellists questioned whether LAs would have the resources to deliver PtT. This was raised once panellists learnt that some initial inspections do not take place, in part, because of resource pressures on LAs in the current system.

#### 4.2.2 Revised presentation and reactions to PtT and ER in the second and third Consumer Panel meetings

Between the first and second meetings of the Consumer Panel, the FSA made several changes to the PtT element of the TOM, one of which was to rename it "Enhanced Registration (ER)". Under ER, LAs would collect more information from businesses at set up than in the current model. Businesses would be expected to register voluntarily.

The change from PtT to ER was driven, in part, by the likely dominance of parliamentary time by legislation related to leaving the EU. As the approach to PtT envisaged in the first panel session would likely require primary legislation, it was necessary to change it. Although, ultimately, the FSA intends to work towards building the evidence to establish a system of PtT, ER was believed by panellists to provide some of the benefits of PtT, without requiring legislative changes.

Panellists were disappointed by the FSA's decision to move towards ER because they strongly supported the principle that businesses should not be allowed to trade without first being approved or inspected. They also felt changes to the food regulatory system should be a priority:

*"I am curious to know, did this not come from the Government down? They ask you to come up with a new way of doing the inspections, and now you're saying the Government haven't got time to do it."*

Panellists were reassured by the message that, when it became possible, the FSA would be working towards PtT, and that in the near future ER would create the evidence base to support the development of PtT. Even with the FSA's recalibration of its plans, panellists felt strongly that businesses should be inspected before trading.

*“Can you not still do checks on people without Permit [to Trade] – I mean obviously we're going to get Permit [to Trade], but just to be able to open and carry on until that happens?”*

Panel members felt that ER should collect relevant information about a business, provide advice and guidance to food businesses, and, where possible, should involve an inspection before food businesses begin trading. Panellists felt that, ideally, the FSA should position itself as the first port of call for people considering starting a food businesses and looking to understand their legal requirements.

In addition to their reservations about ER as an approach, panellists also raised concerns about how ER would be financed. There was concern that regulation fees might be a burden to small businesses and therefore a view that fees should be based on the size of the business. Panellists also feared that any additional costs of regulation charged to a food business would ultimately be passed onto customers.

In the third meeting of the Consumer Panel, the FSA reiterated information about ER and discussed the financial implications for LAs. This is discussed in section 4.3.2 below.

## 4.3 Assurance

### 4.3.1 Initial presentation and reactions to Assurance in the first Consumer Panel meeting

In the first Consumer Panel meeting, the FSA introduced Assurance as the means through which regulators understand whether a business is “*doing the right thing*” and complying with food regulations.

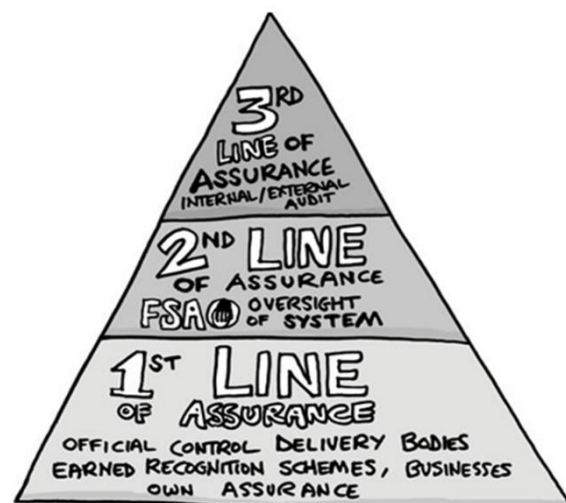
The FSA explained that there are three main lines of assurance in the new TOM. The first line of assurance consists of food laws (official controls), earned recognition schemes, and businesses' own assurance (such as, business's self-assessment of their own systems and processes). For instance, a business may send information to a central database for regulators to review, or be part of a large scheme (Red Tractor, for instance) which would demonstrate compliance with a certain set of standards.

The second line of assurance consists of FSA oversight of the system as a whole. The FSA would remain the overarching authority for LAs or other regulatory bodies and ensure that standards were consistently applied.

The third line of assurance would be internal and external audits where data is collected and submitted by a food business to a regulatory body to demonstrate compliance. As part of this, the FSA introduced the idea of having a Certified Regulatory Auditor (CRA), which in the first meeting of the Consumer Panel was referred to as “*third party assurers*”. This referred to the idea that a business would directly contract with a regulatory auditor that would be responsible for confirming a business was compliant.

Panellists saw benefits to the new assurance measures. They felt it may increase standards and mean that inspections may take place more regularly. Panellists also anticipated that there could be different levels of assurance, which would help ensure the system was proportionate and provided the right level of risk assessment for the business.

Figure 3 Assurance element of the TOM as described in the first meeting of the Consumer Panel



However, panellists expressed concerns they felt would need to be addressed for them to be confident in the new system. Primarily, panellists wanted to ensure that physical inspections would continue to take place and that these inspections would be random and come as a surprise to the inspected business. Panellists felt that there should be clear penalties for businesses being non-compliant and that businesses would be held to account. Panellists felt the repercussions for non-compliance were unclear in the TOM.

Some panellists were uncomfortable with businesses engaging in perceived self-assurance and doubted that all businesses could be trusted to be honest at all times. Similarly, some felt the introduction of the CRA would risk collusion between regulators and businesses. Panellists felt regulators would need to be inspected by the FSA to ensure that they were maintaining high standards and were auditing compliance with regulations in a consistent way.

In light of the above concerns, panellists wanted more information about CRAs before they were confident in the effectiveness of the approach and were able to provide detailed feedback.

#### **4.3.2 Revised presentation and reactions to Assurance in the second Consumer Panel meetings**

Following feedback from the consumer and other panels, the FSA revised and provided further detail on Assurance.

In the second meeting of the Consumer Panel, the FSA provided additional information on the CRA to address panellists' concerns and empower them to give detailed feedback. In the second meeting, the FSA described the CRA as a trained and certified individual who is employed to check food businesses meet regulatory standards. The FSA explained that LAs currently use qualified consultants, inspectors or agency staff to conduct inspections on their behalf. These are all authorized and paid for by the LA. The LA is also responsible for monitoring the quality of their work. In the future, a business could employ a CRA directly and pay the CRA to audit the business. The CRA could then give the business an FHRS rating. However, the CRA would not be able to take action or enforce any recommendations it makes to a business.

This additional information on the CRA reassured many panellists. However, some remained concerned that businesses and CRAs may have conflicts of interest, as they would be serving the needs of the FSA and the business, which might at times be in conflict. For most panellists, as long as safeguards were introduced, the CRA system could provide consumers with effective protection. However, there was no consensus within the group on this point, with a small number of panellists continuing to consider the CRA to be a fundamentally flawed model because of the inherent conflicts of interest.

Panellists responded particularly warmly to the concept of the CRA when the FSA presented the rebalanced remit for LAs in the third session of the Consumer Panel and it was explained that having CRAs may result in more inspections taking place overall (see Figure 4 below). They also identified benefits to businesses being inspected by CRAs that have expertise in particular areas of food safety. For instance, having sushi restaurants inspected by specialist regulators.

Panellists emphasised in both the second and third meetings of the CRA that a number of safeguards would need to be in place for them to have confidence in the CRA. Panellists felt the FSA (or a similar suitable body) should have oversight of CRAs to ensure inspections are rigorous and that standards are consistently applied. The panel also wanted to have a penalty system in place for CRAs that do not uphold regulatory standards or who are found to be in collusion with businesses. The FSA should have the power to revoke private assurers' accreditation to inspect businesses, for instance.

Panellist also wanted to retain "*random*" elements of the current Assurance system. Panellists liked that businesses do not know when they will be inspected in the current system. There was a general belief that "*randomness*" keeps businesses honest and ensures that they are consistently compliant. With directly contracted CRAs, panellists perceived a risk that businesses would know when an inspection was going to take place and make special efforts to comply.

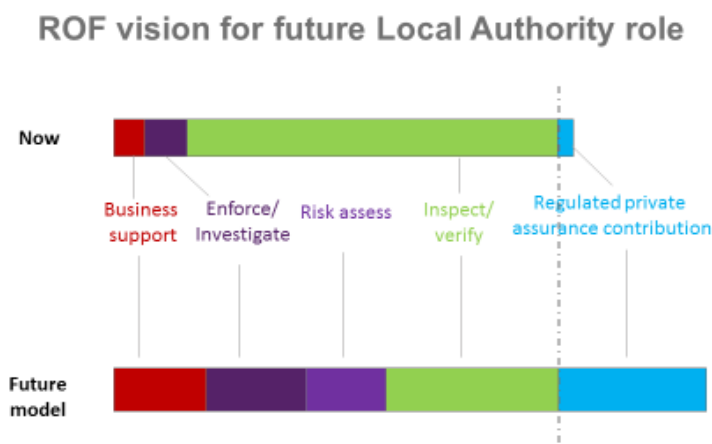
*“Randomised inspections are important; not any [unclear] notice that it’s going to happen.”*

Providing the above safeguards were in place, panellists were broadly happy with the introduction of CRAs.

### 4.3.3 Revised presentation and reactions to Assurance in the third Consumer Panel meetings

At the third meeting of the Consumer Panel, the FSA introduced further information on the role of the LA in Assurance. In the current model, LA are responsible for regulating businesses and conducting inspections. With the introduction of the CRA, this role may change. LAs may instead play a greater role in supporting businesses during set-up as part of ER (see section 4.2 above). Although a LA may conduct initial inspections or be responsible for inspecting small businesses that may not be able to afford to employ a CRA, the LA would conduct fewer inspections overall. However, the overall number of inspections taking place may increase as food businesses would be required to pay CRAs to inspect them.

Figure 4 Projected changes to the role of the LA under the new TOM as described in the third meeting of the Consumer Panel



Although panellists were broadly happy with changing the role of LAs, some wanted reassurance that there would still be clear accountability in the future regulatory system and that the system, as a whole, was not being privatised. The third meeting of the Consumer Panel took place just after the Grenfell Tower fire.<sup>3</sup> Panel members wanted to know who would be ultimately culpable if something were to “go wrong” in a food business or if a CRA was found to be negligent in the future system. Panellists felt that the FSA should be responsible for overseeing food businesses and that the FSA should be held accountable if something were to go wrong.

*“If heads are going to roll, heads are going to roll in the FSA. You can’t farm off responsibility.”*

## 4.4 Segmentation

### 4.4.1 Initial presentation and reactions to Segmentation in the first Consumer Panel meeting

The FSA introduced Segmentation as part of the first Consumer Panel meeting. Although Segmentation was referred back to during subsequent panel meetings, it was not discussed in depth beyond this.

The FSA explained that they planned to segment businesses based on two factors: risk (type of food handled, sector, and size) and compliance (FHRS rating, compliance history, non-food regulated compliance). The individual category criteria would be evidence-based and the segmentation process would be transparent. Once the FSA had gathered information about a particular business that business would be assigned to a high, medium or low risk category.

<sup>3</sup> Guardian (2017), ‘Grenfell Tower’, <https://www.theguardian.com/uk-news/grenfell-tower-fire>



Panellists liked that the future segmentation would be based on risk as this seemed rational and familiar. They were also positive about the compliance aspect of the future segmentation and imagined the system to be points-based, much like the current system for driving offenses, where a driver accumulates penalty points on their driving licenses when convicted of motoring offenses.

#### **4.4.2 Revised presentation and reactions to Segmentation in subsequent Consumer Panel meetings**

Panellists did not discuss Segmentation at length in subsequent meetings of the Consumer Panel. However, it was touched on briefly as part of discussions about ER and Assurance. Participants continued to be positive about segmenting businesses based on risk. They particularly liked the fact that businesses' risk profiles would be revised if an incident occurred. For instance, a business may be considered a higher risk and be inspected more often if there were examples of non-compliance or instances of illness linked to the food business.

### **4.5 Intervention / Event**

#### **4.5.1 Initial presentation and reactions to Intervention / Event in the first Consumer Panel meeting**

In the first Consumer Panel meeting, the FSA introduced Intervention / Event as something that would trigger an inspection or other action from the regulator. Events could take different forms. Some events may indicate that something is "*wrong*" in a business. For instance, a series of customer complaints or incidences of food poisoning may suggest that a business is non-compliant. Other events may indicate something has changed that might impact a business's risk profile. For instance, a business's management may change, or a business might change the type of food they are handling (for example, raw fish). In the future system, an inspection may take place because of an "event". This inspection may in turn influence the business' risk profile and, as a result, how frequently regulators inspect the food business.

Panellists felt that the potential Interventions / Events outlined by the FSA would result in greater protection. They particularly liked that changes in internal management would potentially require businesses to supply regulators with additional information. Some thought that the role of the consumer should be increased and that opportunities for consumers to trigger interventions be retained.

#### **4.5.2 Revised presentation and reactions to Interventions / Events in subsequent Consumer Panel meetings**

As with Segmentation, panellists did not discuss Intervention / Events at length in subsequent meetings of the Consumer Panel. However, panellists did discuss Interventions / Events throughout the other Consumer Panel meetings as part of conversations about different elements of the TOM. Throughout, panellists reiterated that they liked that information would feedback from regulators to businesses and that there would be support available for businesses that had identified areas for improvement.

# 5. Spotlight on Co-design

In this section, we look at panellists' own designs and priorities for the future regulatory model. Panellists were asked to describe how they would approach structuring three elements of the TOM: Enhanced Registration (ER), Segmentation, and the Certified Regulatory Auditor (CRA).

## 5.1 Introduction

During the final meeting of the Consumer Panel, panel members were tasked with designing their ideal model. Kantar Public asked panellists to imagine that they worked for the FSA and that this was part of their job role. They were told that there were no restrictions on their budget. The purpose of this exercise was to understand what was most important to panellists in the design of a future regulatory model.

Kantar Public divided panellists into three groups. Each group had 30 minutes to design their ideal version of three elements of the future regulatory model: ER, Segmentation, and the CRA.

Consumer Panellists' visions for the future are described below:

## 5.2 ER

Consumer Panel members wanted to collect a range of information from businesses as part of the set up process. This included:

- What food is being prepared or produced
- Whether the businesses' premises were suitable
- How many people a business employed and what qualifications staff had
- The experience of managers and business owners in the food sector
- Whether food business operator had prior compliance issues
- Whether food businesses have adequate systems in place for food safety and health and safety
- Whether they had complaints procedures in place

Panellists also considered how they would encourage businesses to register. They felt that the key to this would be offering free advice and guidance to food business. This would have the added benefit of ensuring businesses were getting things right from the start.

*“So, if the company or the food chain or whatever is coming to the FSA to register, that the FSA will offer the guidance. So, say they come with questions and things they're not sure of- they're given the advice that they need. It will help with the removal of bad businesses.”*

Panellists also felt ER could be strengthened by the FSA issuing stickers that businesses could display in their front window to show that they are a registered business. Consumer Panel members also felt engaging third parties, like online food delivery businesses, could support the concept of ER by requiring food businesses to register with the FSA in order to sell online.

Panellists felt that holding more information about a food business would increase accountability and allow risks to be dealt with efficiently, which made them feel reassured and confident in the new system.

*“We of course felt that this was a positive thing. In all aspects of the food supply, enhanced accountability would mean that if there are any problems flagged up from a consumer point of view, the FSA, for example, could identify whether it’s a producer, supplier or retailer problem.”*

They did however feel that ER ultimately needed to be obligatory in order to have the most impact on businesses’ behaviour:

*“We appreciate why it’s not being done at the moment, but the expression is a bit like a toothless tiger. So, it needs legislative powers so that [the FSA] can come down harder and actually force businesses to behave in a certain way. But, in the meantime, while that isn’t happening, we think that this is a system that would give consumers and businesses alike more confidence.”*

Panellists still presented their strong support for having PtT in place.

### **5.3 Segmentation**

Consumer Panel members ultimately felt that a risk based approach was an appropriate way to approach segmentation. However, participants disagreed over what represented a ‘risk’ and what the FSA should take into account when assessing businesses.

One panellist felt strongly that regulators should factor business size into any segmentation. A few panellists felt big businesses were profit-driven and, as a result, were predisposed to cut-corners when it came to regulation. Some panellists believed that large businesses should be a priority for inspection because they have the potential to do harm to more people.

*“So, we thought about it in relation to priorities, and [big supermarkets] was our first priority because we thought that the risk involved dealing with, say, a chain of kebab shops, looked very different when you considered scale.”*

Others felt this wasn’t the case, and that it was equally as likely for someone to fall ill after eating at a small food business as from a large supermarket chain.

With that said, there was agreement among the group that the FSA’s segmentation should be based on businesses’ risk profiles linked to what kind of food is being prepared and in what ways. More broadly, as with ER, panellists felt legislation was needed for changes to have an impact:

*“It must be frustrating for [the FSA] to not have that legislation, to drive home the improvements that you’re trying to make. So I think ultimately legislation has to be a key part of what you’re trying to achieve.”*

### **5.4 CRA**

Panellists tasked with designing the role of a CRA felt that oversight of LAs was central to the success of this element of the new regulatory model. They wanted CRAs to be registered with LAs and to have appropriate certifications. Panellists suggested CRAs would need a registration card to practice and undergo periodic testing to keep standards up to date and consistent. They felt very strongly that the system be transparent and CRAs are sharing all information with LAs:

*“One of the main kind of themes that runs through every point is constant communication with local authorities – making sure they are constantly flagging things with local authorities, making sure everything is kind of shared and transparent.”*

They envisioned that transparent information sharing would be made easier by the FSA's plans for a digital solution.

Some panellists suggested that CRAs should specialise so they would be experts in the risks for particular food businesses. For example, CRAs could specialise either in restaurants or food manufacturing.

*“So, in the current system, the example was that at the moment someone might one day go into a sweet shop and then the next day go and check a meat-packing operation and then the next day do something completely different. So we'd like it tiered so people know kind of the high-risk element; they know what they should be looking for.”*

Panellists felt strongly that assignment of CRAs for inspections should be random so food businesses do not form friendly relationships with the people inspecting them. They hoped this would avoid situations where a CRA might not report events to LAs. Panellists also felt that enforcement powers should remain with LAs and that sharing information on a central digital system would enable LAs to act efficiently.

Panellists felt that businesses should meet the costs of inspection because, ultimately, it is in business's interest to have good food safety, as low FHSR scores discourage customers. They felt that LAs could incentivise the desired behaviours among businesses by reducing inspection fees for businesses that demonstrate good food safety over a period of time.

## 6. Conclusions

The Consumer Panel has enabled the FSA to incorporate consumer views and feedback into the refinement of the TOM. Panellists' reactions to the RoF programme overall and to iterations of the TOM have exposed a number of themes which may further shape developments in the TOM, and suggest overall approval for the FSA's proposed changes.

The themes below stood out as factors which should continue to inform the FSA's development of the TOM:

### **Panellists agreed that the current regulatory model needed to change**

Panellists recognised that there is a need for the current regulatory system to be modernised. When they learnt that many of their presumptions about how food businesses are regulated were incorrect (for instance, that food businesses are inspected annually), panellists were surprised about a number of features of the current regulatory model and made several suggestions for how the current system could be improved and made more stringent. These aligned to those suggested by the FSA under the TOM.

### **Panellists found elements of the TOM particularly attractive if they perceived that measures would result in more stringent standards**

Panellists were concerned by the perceived weakness of the current system, such as businesses being able to open or trade without an inspection, and businesses being able to close and re-open without having ever been registered.

Panellists anticipated features of the TOM, particularly PtT and ER, would increase standards and help businesses "*get it right*" from when they opened. Panellists were disappointed by the FSA's need to move away from PtT and towards ER as they felt that it was morally wrong that businesses would be allowed to trade without being registered or inspected.

Panellists felt that the use of CRAs would increase the number of inspections taking place. They also saw opportunities for CRAs to provide more specialised advice and guidance to businesses with similar needs or handling similar foods. Although panellists felt that there would need to be safeguards in place, and a few felt that the model of businesses paying for inspections directly was inherently flawed, panellists were generally open to the use of CRAs.

### **Panellists accepted a degree of regulated private assurance**

Panellists recognised that the current system is under financial pressure. Currently official controls are delivered by LAs. Panellists became aware through information presented by the FSA at the panel meetings that some inspections do not occur, or do not occur as frequently as would be ideal, due to stretched resources and were very concerned about this.

In light of this, panellists were open to including measures in the future regulatory model which would reduce the burden on the public purse. For instance, panellists accepted the increased use of CRAs, in principle, and the idea of businesses meeting the costs of regulation.

However, some panellists did question whether LAs would have the resources to deliver new elements of the TOM, even with the introduction of the CRA and other measures.

### **Panellists felt strongly that here should be safeguards in place to ensure consumers are protected**

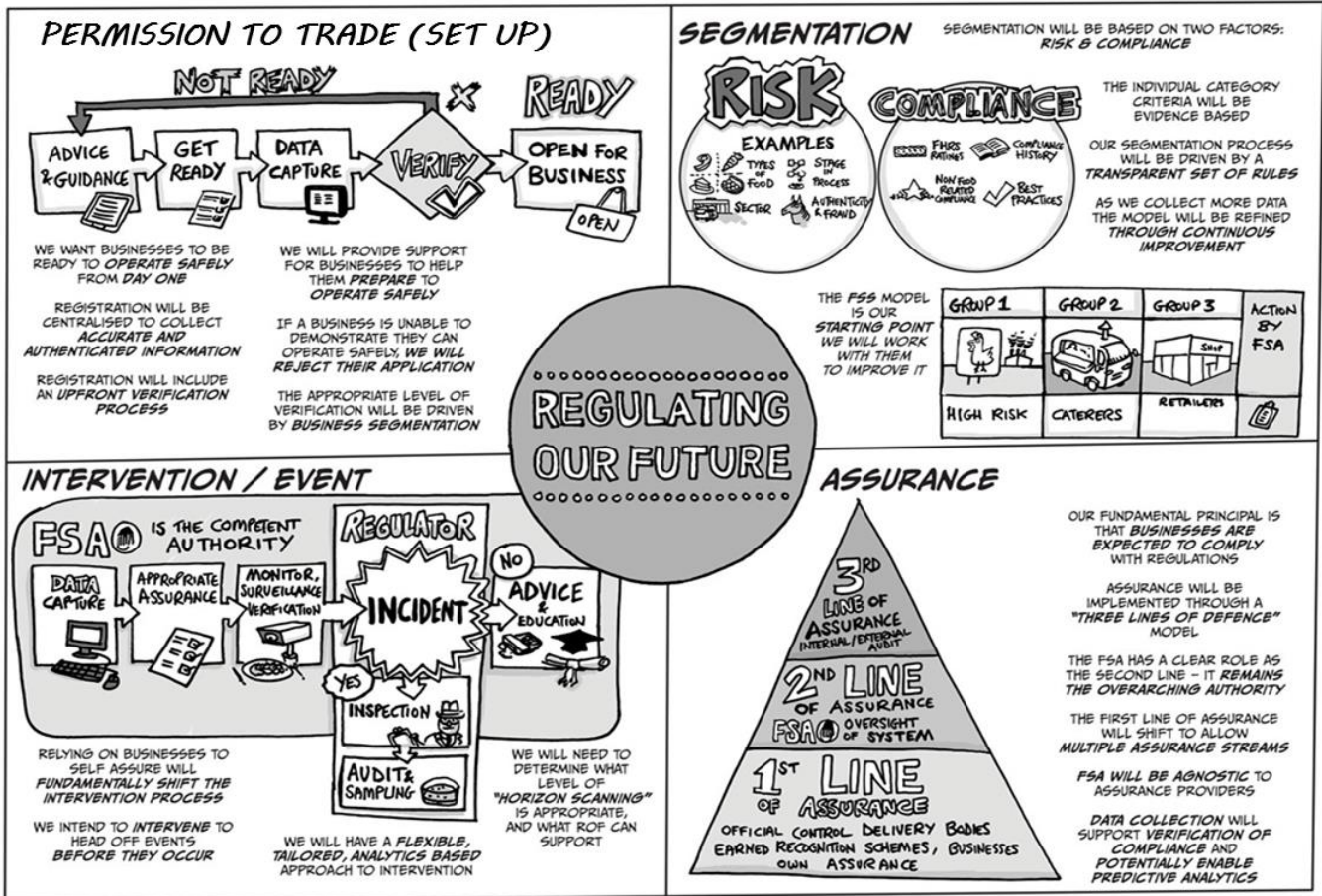
Although open to the use of CRAs and a degree of business self-assurance, panellists wanted the reassurance that public bodies would still be involved in the future regulatory model. For instance, panellists wanted to know that the FSA would be ultimately responsible for ensuring that CRAs are properly certified and that standards are consistent across CRAs.

Panellists were concerned that there would be a conflict of interest between CRAs and businesses, who in the new model would directly pay for inspections. Panellists wanted the TOM to include measures that would prevent collusion, such as the FSA assigning suitable CRAs to businesses. Panellists wanted to retain an element of “*randomness*” in the future system and did not want businesses to know when they would be inspected.

**Panellists did not want to lose the diversity of the current UK food system**

Panellists felt that some elements of the TOM could penalise small, independent food businesses. They doubted that small businesses would be able to afford to employ a CRA and felt that any start-up or registration costs should be minimal and proportionate to business size. Through the panel, there was a vocal minority of panellists that were concerned about the role of “*big business*” in the UK food system and a concern that such businesses are able to manipulate the regulatory system.

# Appendix A – First iteration of the Target Operating Model



# Appendix B – Final iteration of the Target Operating Model

