



## **DRAFT MINUTES OF THE OPEN BOARD MEETING, 13 JULY 2006, CARDIFF MARRIOTT HOTEL, CARDIFF**

### **OPEN SESSION, 09:00– 12:35**

#### Present:

Dame Deirdre Hutton, Chair  
Julia Unwin, Deputy Chair  
Richard Ayre  
Chrissie Dunn  
Maureen Edmondson  
Valerie Howarth  
Graeme Millar  
Christopher Pomfret  
Bill Reilly  
Ian Reynolds  
Sandra Walbran  
Nelisha Wickremasinghe

#### Officials attending:

John Harwood, Chief Executive  
Clair Baynton, Head of Novel Foods, Additives and Supplements Division (item 3.1 only)  
Julie Monk, Head of Enforcement Division (item 3.2 only)  
David Statham, Director of Enforcement (item 3.3 only)  
Chris Lawson, Chief Executive Meat Hygiene Service (Item 3.4 only)  
Alison Gleadle, Head of TSE<sup>1</sup> Division (items 1.1 and 3.5 only)  
David Carruthers, TSE Division (item 3.5 only)  
Keith Gregory, Board Secretariat  
Claire Voller, Board Secretariat

### **Chair's Introduction**

1. The Chair welcomed all observers attending the open Board meeting.
2. The Chair invited the Deputy Chair to introduce the meeting. The Deputy Chair reminded those attending and watching the webcast that the FSA Board discussed policy issues at its open meetings to meet its commitment to transparency and accessibility. There would be an opportunity for questions immediately after the formal session and those watching the webcast could also send questions to the Board.

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<sup>1</sup> Transmissible Spongiform Encephalopathies

3. The Chair noted that apologies had been received from new Board member, Michael Parker.
4. The Chair informed Board members that Alan Gardner had taken the decision to resign from the Board as his conflicts of interest as a primary producer were preventing him from taking an active part in a large number of important Board discussions. As a result, he felt unable properly to represent the views of Wales.
5. The Chair reminded Board members of their obligation to declare interests before discussion of relevant items.
6. There was one item raised for discussion under Any Other Business:
  - Information papers (including consumer engagement) and standing order papers (Chair).

## **Item 1 - Minutes and Oral reports**

### **1.1 - Minutes of Open Meeting on 15 June 2006, Jurys Hotel, Bristol.**

*(FSA 06/07/01)*

7. The Board agreed the Minutes of the meeting held on 15 June 2006 at Jurys Hotel, Bristol as an accurate record subject to the following comments and requests for clarification:

Paragraph 38 – it was important to ensure that the primary focus should be on protecting UK public health.

Paragraph 41 – Graeme Millar sought clarification on the rewording of the FSA's current advice on the consumption of meat from sheep and goats. The Chair invited Alison Gleadle (Head of TSE Division) to the table to respond. Alison Gleadle confirmed that the FSA's advice had not changed and the FSA was not advising against the consumption of meat from sheep. The paper on atypical scrapie considered at the last meeting had taken account of the views of consumer focus groups and stakeholders. The advice would be developed further in the coming weeks by the FSA's Communications Division, in particular the language and delivery of the message. It would then be cleared with Board members.

**Action: Terrence Collis**

Paragraph 70 - the existing FSA policy on Board briefings and the naming of food brands or companies should be clarified. It was agreed that a short note would be provided to Board Members intersessionally setting out the *status quo*.

**Action: Alan Harvey**

## **1.2 - Actions Arising**

(FSA 06/07/02)

8. The Board noted the table of follow up actions.

## **1.3 - Chair's Report**

9. The Chair informed Board members that details of her engagements from 16 June to 12 July were provided in the standing order papers (SO 06/07/04).

10. The Chair and Board members congratulated the Deputy Chair on her appointment to the prestigious position of Director of the Joseph Rowntree Foundation, and also for receiving a CBE in the Queen's Birthday Honours. The Deputy Chair would be leaving the FSA at the end of the year. The Chair also congratulated Jon Bell, the former Chief Executive of the FSA, on being awarded the CB.

### Meeting with LACORS/LGA

11. The Chair informed Board members that she had met with LACORS<sup>2</sup>/LGA<sup>3</sup> and it had been agreed that it would be useful to undertake more partnership work together, particularly since local authorities were major delivery agents for the FSA. There had been a useful discussion on whether there should be a joint "statement of intent" between LACORS/LGA and the FSA. This would also provide opportunities for agreed priorities in advance of any similar arrangements that might come out of the LBRO process.

### Signpost Labelling

12. The Chair informed Board members that there had been continuing activity on signpost labelling, and that she had had numerous meetings with senior industry members. As a result of this, a policy had been agreed to focus on embarking on a research project to establish the best approach and most effective way of informing consumers.

## **Item 2 - Reports from the Executive**

### **2.1 - Chief Executive's Report**

#### Cadbury's food incident - *Salmonella Montevideo*

13. The Chief Executive updated Board members on developments following the withdrawal of chocolate bars from seven product lines as a result of unusually high cases of *Salmonella montevideo* illness in Great Britain. The Chief

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<sup>2</sup> Local Authorities Co-ordinators of Regulatory Services

<sup>3</sup> Local Government Association

Executive informed Board members that this was a complex and wide-scale investigation involving Cadburys and 3 local authorities (Birmingham, Herefordshire, and Bath and North East Somerset). The main emphasis now was on how to prevent such food incidents occurring in the future.

14. Cadburys had agreed a programme of remedial action to address issues identified at its Marlbrook plant with the FSA and the local authorities. This included comprehensive cleaning, the introduction of a positive release system (with product only being released for onward distribution and use after it had tested negative for salmonella), and increased sampling and testing to levels that would provide a higher degree of reassurance.
15. The Chief Executive stressed that investigations were continuing and that no decision had yet been taken in respect of any prosecutions under food law. He reassured the Board that any such decision to prosecute would be taken in accordance with CPS<sup>4</sup> guidelines.
16. The Chief Executive informed Board members that the FSA was considering the lessons to be learnt from this incident, and would be organising a series of seminars with the industry and with local authorities to consider the testing regimes for microbiological safety.
17. Board members made the following comments during the discussion:
  - There was a clear imbalance in the way the law operated for laboratories dealing with samples from third parties, specifically where laboratories protected the confidentiality of their clients by not passing information relevant to food incident investigations to regulatory authorities when requested. However, in-house laboratories of food companies were obliged under law to notify the FSA automatically in the event of samples showing positive results for food borne diseases.
  - It was important to send the message to all laboratories testing on behalf of clients that they were expected to act in the public interest and should be aware of the consequences of not releasing such information.
  - It was pleasing that the FSA would be taking forward the lessons learnt constructively with stakeholders. The FSA's Communications team should ensure the message was passed as widely as possible to all trade organisations.
  - Clarification was sought as to whether the FSA was confident that any further Cadbury's products being consumed were not affected.

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<sup>4</sup> Crown Prosecution Service

18. The Chief Executive responded to this last point by explaining that investigations were still ongoing with the full co-operation of Cadbury's and depending on the outcome, decisions would be made on whether any further products should be recalled. It was important to await the conclusions of these investigations before taking further action.

### Avian Influenza

19. The Chief Executive updated Board members on cases of avian flu in birds. There were no new developments to report in the UK since the last Board meeting. On 7 July, Spain had confirmed its first case of H5N1 in a wild bird, in the Basque country. A 3km protection zone and 10km surveillance zone had been set up around the site where the bird had been discovered. There were no commercial poultry farms within the surveillance zone, and no further cases had been reported.

20. The Chief Executive informed Board members that, in respect of human cases of avian flu, WHO<sup>5</sup> had confirmed 229 cases with 131 deaths.

### E.coli O157 outbreak in Leeds

21. The Chief Executive informed Board members that there had been an outbreak of *E.coli* O157 in Leeds. 22 cases had been reported to date affecting people aged between 5 and 82 years of age. The first case had been reported on 23 June with the most recent case on 11 July. Investigations had traced the source of the outbreak to a Butcher's shop in Leeds. Most cases had been hospitalised and no deaths had been reported.

22. The Chief Executive confirmed that the incident was being dealt with by a local outbreak team rather than at a national level.

### Eves Report

23. The Chief Executive informed Board Members that David Eves, the former Deputy Director of the HSE<sup>6</sup>, had completed a review of the Defra<sup>7</sup> Animal Health and Welfare (AHW) Delivery Landscape. The review had considered the roles, responsibilities and relationships on regulatory and enforcement activities for animal health and welfare in England undertaken by Local Authorities, the MHS, the Rural Payments Agency and the State Veterinary Service.

24. From the review, David Eves had concluded that the delivery landscape was too complex and fragmented; all the organisations were under considerable pressure

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<sup>5</sup> World Health Organization

<sup>6</sup> Health and Safety Executive

<sup>7</sup> Department for Environment, Food and Rural Affairs

and facing a high level of change; and that while there was some evidence of good collaborative working this was an exception. Key recommendations were:

- that greater transparency and accountability was needed with enhanced performance management to provide greater assurance about outcomes; and
- that a national AHW inspectorate should be formed with the SVS at the core i.e. a thematic regulator as envisaged by Hampton.

25. The Chief Executive advised that the latter recommendation was not specific in scope, and clearly if accepted - and depending on the scope of the body - could have implications for the MHS. The Chief Executive indicated that he would be meeting Debby Reynolds (the Chief Veterinary Officer at Defra) in the near future to discuss this.

26. The Chief Executive agreed to circulate copies of the Eves Report to Board members.

**Action: Board Secretariat**

## **2.2 - Report from the Director of FSA Wales**

27. The Chair welcomed the Director of FSA Wales to the table and invited her to present her report to the Board.

28. The Director of FSA Wales gave a presentation to Board Members covering the following points:

- Wales had a population of 2.9 million, with a higher proportion of older people than the UK.
- Average weekly household incomes were lower than the UK (£460 compared with £554) and levels of long term limiting illness were significantly higher.
- From the 2001 census, 21% of people could speak Welsh, with a significant proportion having Welsh as their first language.
- There was a lower percentage of people from black and ethnic minorities in Wales compared to England, with these concentrated in Cardiff and main cities.
- Only 41% of Welsh households had internet access. A recent survey had shown that internet access had reached a plateau or even reduced in some areas and some population groups.
- There were currently 34,000 food business registered in Wales, with a large number of these being seasonal and very small (many consisting of one or

two people) particularly since tourism was an important source of revenue and employment.

- Primary production was important. There were 200,000 farms and around 10 million sheep in Wales. 97% of food-producing farms in Wales had livestock compared to 65% in England.
- The consumer attitude survey in Wales had indicated that there had been a significant annual increase in the take up of the eating 5 fruit/vegetables a day message, an increase in self-reported healthy eating, slightly increased food safety concerns in 2005 (perhaps partly owing to the *E.coli* outbreak which had largely coincided with the survey), and high consumer awareness of the FSA, with 53% confident in the FSA's role in protecting health.
- In terms of the political context, the National Assembly for Wales was responsible for making legislation in Wales. The next Assembly elections would take place in May 2007, which could significantly change the political landscape.
- The Government of Wales Bill would provide legal separation of the Executive and Legislature, new legislation powers and electoral changes. Its aim was to provide greater accountability and clarity leading to increased scrutiny of policy. New provisions would allow the National Assembly to apply for powers to make primary legislation in specified fields which could include food, although in reality this was mostly controlled by EU food legislation.
- On policy context, the Welsh Assembly Government took the most restrictive approach possible to the commercialisation and growing of GM crops in Wales within current UK and EU legislation. It was accepted however, that Wales could not be legally declared GM free. Although the Welsh Assembly Government was in favour of sourcing non-GM feed, a high proportion of compound feeds contain GM.
- There was focus on local, Welsh, organic and quality products, in particular the Assembly was considering seeking PDO<sup>8</sup> status for lamb.
- The sustainability of small local abattoirs in Wales was a high profile issue. Two meat plants had recently closed for commercial reasons. The Welsh

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<sup>8</sup> The European Union identifies two types of food quality names (under Council Regulation 2081/92) based on their geographical origin: the protected geographical indication (PGI) and the protected designation of origin (PDO) The PDO means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

- originating in that region, specific place or country, and  
- the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

Minister for Agriculture had recently requested a health check on all remaining abattoirs in Wales. In relation to the FSA's approval strategy, the FSA in Wales had been working closely with the MHS to ensure appropriate enforcement action and remedial action plans were in place, and was grateful for this support from MHS colleagues.

- FSA Wales worked with the Welsh Assembly on diet and health work. The Welsh Assembly's policy focused on young people and exercise, so it was important to ensure there was not duplication of work between FSA and the Assembly.
- In respect of the FSA Wales staff allocation by aim, the priority (in accordance with the FSA strategic plan) was food safety (Aim 1), which received 62% of staff allocation, with 15% for Eating for Health (Aim 2) and 23% for Choice (Aim 3). Limited resources had led to the FSA prioritising its activity within Wales. Were additional resources available, the FSA would want to deliver policy and initiatives more specifically tailored to Welsh needs and circumstances. The follow-up work in relation to the *E.coli* outbreak, investigation and Inquiry also posed a resource challenge. The Director of FSA Wales was currently discussing these challenges with Welsh Assembly colleagues, and expected to receive a positive response

29. In discussion, Board Members raised the following comments:

- It was worrying that internet access was low in Wales; how was the FSA in Wales addressing this, given that the FSA relied heavily on the internet for communicating its messages?
- Partnership working was a useful way of stretching a budget further, particularly when resources for FSA Wales were limited. It would be interesting to hear the lessons learnt in this area.

30. In response to addressing lower internet access, the FSA Director for Wales said that they had successfully used other forms of communication to target deprived areas e.g. the initiative "Healthy Nosh For Less Dosh" which provided advice on how to eat healthily on a low budget. FSA Wales had also funded dieticians to train local people to work directly in communities to provide advice to their peers. However, there was still further work that needed to be done.

31. On partnership working, the FSA Director for Wales gave examples such as the Get Cooking project, a joint initiative by the FSA and the Women's Institute which had targeted young, single mothers. This had now attracted substantial interest and funding from the Welsh Assembly. FSA Wales was planning to talk to the new FSA regional teams to share experiences and lessons learnt in respect of partnership working.

32. The Chair thanked the Director of FSA Wales for her useful and informative presentation. It was reassuring to hear that there was likely to be a positive outcome from the Welsh Assembly on the funding issue. In respect of partnership working, it was important to ensure this worked with the constitutional arrangements within the devolved territories.
33. The Chair added that the Board had been delighted that Jane Davidson, the Welsh Minister for Education, had attended the dinner the previous evening, and shown her commitment to improving nutrition in schools.

### **Item 3 - Discussion Items**

#### **3.1 - Vitamins and Minerals in Food Supplements and Fortified Foods – update on stakeholder engagement on the EC discussion document**

*(Paper FSA 06/07/07)*

34. The Chair welcomed Clair Baynton (Head of Novel Foods, Additives and Supplements Division) to the table to introduce this paper and answer questions.
35. Clair Baynton reminded Board members that the setting of maximum levels of vitamins and minerals in food supplements had been discussed at the September 2005 meeting. This discussion had taken place in the absence of any proposals from the Commission but provided an opportunity for the Board to consider how these levels might be set in the future. The Board had asked for more information regarding the extent to which advisory statements were being used by the industry and the UK market for higher dose supplements, in particular in respect of children.
36. It had been recognised, at the time of its discussion, that the Board may need to revisit this issue pending proposals from the Commission. Before issuing formal proposals, the Commission had published a discussion document on 6 June and was seeking comments from stakeholders and member states by 30 September. The Commission then planned to publish proposals within 2 years from this date, which would form the basis for negotiations with member states. The questions raised by the Commission were consistent with those raised by the Board in September 2005 in agreeing its positions and principles proposed. For example, the Commission was asking what information was available on intake levels of vitamins and minerals in member states and whether the intake was different.
37. The FSA was keen to hear stakeholders' view, and officials proposed consulting them in two meetings planned for July and September. It was then proposed that the FSA position, to be agreed by the Board at its September meeting, would inform the UK Government response to the Commission.

38. The Board had agreed in June that the FSA should articulate its overriding principles in advance of discussions with stakeholders. The four principles (paragraph 6 of the paper) proposed by officials were:

- Consumers should have a right to make an informed choice unless their safety is compromised;
- An evidence base is necessary to ensure consumer safety is safeguarded;
- The evidence base needs to take into account the risk assessment by scientific experts;
- There is a need for ongoing monitoring in the market place to continue to inform the evidence base.

39. The focus of the FSA's policy in relation to food supplements therefore continued to be safety and consumer choice, while seeking a proportionate evidence-based approach to setting maximum levels of vitamins and minerals in food supplements.

40. Board members raised the following points during the discussion on the survey:

- The survey results provided in the intersessional paper (INT 06/07/03) had been broad-based and did not provide the requested detail on the effect on children. It was acknowledged that it was very difficult to know how to assess the impact on children, but the FSA nonetheless had a responsibility to address this.
- Current research and data on paediatric medicine (EU Directive) should be factored in to this process. The British National Formulary (paediatric version) would provide a useful reference source on maximum and minimum dosages of substances for particular age ranges.
- Information should be sought on how consumers make informed choices, and what they found helpful. The engagement with stakeholders and consumers planned should be helpful in this respect.
- Stakeholders' views should be presented to the Board in September for consideration.
- Could any further action be taken in terms of the engagement strategy to broaden the range of industry groups taking part?
- A mechanism was needed to ensure stakeholders were aware of this consultation.

- It was reasonable to expect the main discussion regarding stakeholder views to take place in September.
41. Clair Baynton responded that the survey results on children provided by the National Diet and Nutrition Survey contained information on dietary intake of vitamins and minerals for children. There were difficulties nevertheless on obtaining information on children's diets. However the FSA would consider what further work could be done in this area, taking account of approaches used in paediatric medicine.
42. Clair Baynton confirmed that input via stakeholder meetings had been proposed, rather than by written comments, in view of the Commission's tight timeframe. However, if Board members felt strongly that a written consultation should take place, that could be arranged. After the stakeholder meetings had taken place, the FSA would ensure all relevant parties received copies of this. Although a large number of stakeholders had been invited to a July meeting, the number agreeing to attend had been lower than hoped. A better response was expected for a meeting to be held in September, which would provide another opportunity for input by stakeholders. Clair Baynton agreed that the FSA should take on board comments ensuring that all stakeholders were aware of the engagement strategy. As this was a European Commission consultation, stakeholders and member states would also have a further opportunity to respond directly to the Commission if they were not able to meet the FSA timescales.
43. In respect of the four principles proposed, on which the FSA would take forward discussions with stakeholders, Board members made the following comments:
- A strong evidence-base was required covering toxicity data, intakes of food ingredients and foods, as well as an understanding of the market. It was disappointing that the industry had not been more co-operative in taking part in the survey, and further work should be undertaken to encourage the industry to provide this information.
  - There needed to be a specific emphasis on protecting consumers against fraud.
  - On the evidence base, it was important to build in a fast track method on which products can be re-assessed if new information comes to light – the method for checking EU legislation was complex and impractical at present for dealing with this.
  - More generally, some Board members thought there was a need for greater consistency in the way the FSA handled and approached policy as a whole. However other Board members thought this should be an aim rather than a principle.

44. In summary, the Chair noted that the Board had:

- Agreed the engagement strategy with stakeholders, provided written inputs were requested and welcomed and that the FSA position put to the Board in September should clearly present the evidence received from stakeholders. It was agreed that the Board should be provided with further information on the FSA strategy for informing stakeholders.

**Action: Clair Baynton**

- Agreed the principles on which discussions (paragraph 6 of the paper) would be taken forward with stakeholders, subject to the removal of the words “unless their safety is compromised” from the first bullet point to widen its coverage to protect consumers against fraud.
- Agreed that the need for consistency should be an aim, rather than a principle, and that the Executive should take this into account during the engagement process with stakeholders and the drawing up of the draft FSA response. The coverage of minimum standards and a fast track method for making changes to the levels should also be considered during the process.
- Agreed that more information was required on children’s intakes of vitamin and minerals, and the inclusion of data from studies on paediatric medicine.

**Action: Clair Baynton**

45. The Chair added that she had had some discussion with Ministers, and that they were aware of the two-tier approach which the FSA Board had agreed in September 2005, and which had been adopted as the government line. The setting of levels would be the responsibility of the FSA.

### **3.2 - UK Survey of Hygiene Standards in Food Premises 2005**

*(Paper FSA 06/07/03)*

46. The Chair welcomed Julie Monk (Head of Enforcement Division) to the table to introduce the paper and answer questions.

47. Julie Monk informed Board members that this paper reported the results of the UK Survey of Food Premises 2005 and how the FSA proposed to use the information. The last survey of this type had been conducted by the Audit Commission and had been published in 1990.

48. The full report of the FSA’s food premises survey was included in Annex A to the paper. Julie Monk recorded the FSA’s thanks to the local authorities (LAs) which had taken part in this voluntary survey.

49. The survey had requested information from inspections on hygiene management and implementations in a representative sample of all types of food premises.

Returns had been received from 316 local authorities representing 67% of total UK LAs. 13% of the premises surveyed showed major non-compliance with statutory hygiene obligations. However, LAs have a hierarchy of powers at their disposal to take action which range from closure or prosecution of the business where there is an imminent risk to health, to the issue of improvement notices or advice where breaches are considered to be less serious. The FSA was driving a wide range of initiatives to reduce levels of non-compliance e.g. Safer Food Better Business (SFFB)<sup>9</sup> and Scores on the Doors pilots, which provide information to consumers about how a food business performed at its last hygiene inspection, which in turn provides an incentive to business for positive compliance.

50. The principal use of the data would be to shape and set targets for the new enforcement strategy to improve compliance, and to act as a baseline to measure the effects of all initiatives to improve compliance. It would also inform future surveys to measure the effectiveness and performance of FSA and LA interventions, and the level of compliance with hygiene legislation.

51. In discussion, Board members made the following points:

- Although a response of 67% was good, the rationale for making this survey voluntary was unclear;
- This was a worthwhile study which had provided useful data and should be repeated again at regular intervals. But how confident was the FSA that these results were representative, objective and statistically valid? Should the survey be referred to the Advisory Committee on Research?
- It would be helpful to be provided with further information on the methodology and research used in this survey.
- The Scores on the Doors initiative was welcomed, which would allow consumers to make informed choices based on hygiene inspection results.
- It was inconsistent not to be able to publish information on businesses that were non-compliant, as this occurred in other FSA surveys where brands and companies were named. This should be addressed when the Board reviewed its full policy on openness.
- It would be helpful to include an assessment of the impact on ethnic minority businesses.
- It was particularly worrying that 1 in 5 takeaways apparently presented an imminent health risk.

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<sup>9</sup> SFFB provides resources to LAs to give targeted advice to caterers and independent retailers.

- A significantly higher number of LAs from devolved countries had contributed to the survey compared to LAs in England. Were there any conclusions to be drawn on those LAs that did not take part in the survey?
- Had there been any specific analysis of the results from non-compliant premises to see if there were any messages to be learnt e.g. good hand-washing facilities leads to better compliance overall? This could provide helpful information on where to target and focus resources.
- More information was needed in the main paper on the implications for devolved territories.
- It would be helpful to have more information on the action plan proposed, in particular resources, priorities and targeted actions. This should cover the messages that could be sent to consumers as well as the actions for LAs.
- Clarity was sought on how the SFBB initiative would be used in the devolved territories.
- How would the 7% of premises found to present a serious health risk be dealt with?

52. In response to these points and questions, Julie Monk emphasised that the aim of the survey had been to provide a baseline, and not to identify the performance of LAs for which there were already other mechanisms in place. The survey had been done on a voluntary basis to encourage a free flow of information from LAs; the response rate and sample size of data received from the whole of the UK had been assured by statisticians as robust. It was planned that the survey would be conducted every two years. This survey would be in addition to the existing annual monitoring returns from LAs on enforcement activity.

53. In respect of analysing the results on how to ensure more effective compliance e.g. by targeting improvement on hand washing facilities, a strategy was being developed to provide better research (by King's College, London) on what drives up compliance. In respect of data on the impact to ethnic minorities, this could be built into future surveys. However, the SFBB initiative had taken into account the needs of ethnic minorities.

54. Julie Monk confirmed that the SFBB initiative was a UK-wide scheme and that material was therefore available for Scotland, Northern Ireland and Wales to use, although use of the grants available for any generic schemes was a matter for devolved territories.<sup>10</sup> As regards action concerning the 7% of premises found to present a high risk to public health, the LAs had already taken action within the

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<sup>10</sup> The other Agency tools available are "Cooksafe in Scotland", "Safe Catering" in Northern Ireland and the HACCP Implementation Strategy in Wales.

means at their disposal (from revisiting to ensure non-compliances had been put right to closure and prosecution).

55. The Chief Executive commented that while keeping the scale of the exercise within reasonable bounds, the FSA had tried to ensure the data from the survey was statistically valid. Assuming that it was, it was worrying that 7% of premises were considered to present a high risk. The FSA had therefore decided to allocate an extra £1million as grants to LAs for the SFBB programme to help food businesses comply with the law and further improve food hygiene standards. The Chief Executive also noted that the FSA needed to work with LAs to improve standards, and a voluntary survey was therefore more conducive to this partnership approach.

56. The Chief Executive agreed to write providing further information to Board members on the statistical validity and methodology of the survey results, and the way in which individuals were assessed and identified.

**Action: John Harwood**

57. In summary, the Chair noted that the Board had:

- Noted the results of the survey and, although there were some doubts about the nature of the evidence, was supportive of the results and of this being a good starting point;
- Expressed concern that there should be more detail of what action would be taken as a result of the findings of this survey, in particular clarity on how this would affect the way that the FSA operates;
- Agreed that more information needed to be provided to the public to allow them to make informed choices, which could be tied in with Scores on the Doors;

In addition, the Chair noted that the Board had made the following further points:

- Agreed that the emphasis on catering establishments was right, but the survey results should be referred to the Advisory Committee for Research to check the methodology used and the robustness of data;
- It was important to ensure that devolved issues were taken properly into account and that the views from devolved territories were incorporated into main papers, including advice from Food Advisory Committees. Food safety was a concern for all UK businesses.

58. The Chief Executive also agreed to write to Board members with further information about the LAs that did and did not respond, together with details of

individual assessments to ensure statistics from non-respondees were sufficiently different.

**Action: John Harwood**

### **3.3 - FSA Response to the Macrory Review – Regulatory Justice: Sanctioning in a post-Hampton World**

*(Paper FSA 06/07/04)*

59. The Chair welcomed David Statham (Director of Enforcement) to the table to introduce the paper and answer questions.

60. David Statham informed Board members that, in September 2005, Professor Macrory had been asked by the then Chancellor of the Duchy of Lancaster, John Hutton, to carry out a review of the existing system of regulatory sanctions to ensure that they were consistent and appropriate for the risk based approach to regulation and enforcement as set out in the Hampton review. At the end of May 2006, Professor Macrory had published a consultation document on his initial findings and proposals for a modernised system of regulatory sanctions. The deadline for responses was 18 August.

61. This paper set out Macrory's proposals for the Board, with the Executive's initial assessment of these. Following the discussion at today's meeting, it was proposed that a full response would be prepared taking into account the issues raised by the Board. This would then be circulated to all Board members for further comment and approval before onward submission to Professor Macrory in time to meet his deadline.

62. The Chair noted that the timing of this consultation was unhelpful, particularly with the deadline being in August. The Chair of the Scottish Food Advisory Committee commented that the Committee had wished to consider this, but this had not been possible given the difficult timescales. The Chair asked that David Statham request an extension to the deadline so that the FSA and Food Advisory Committees in Scotland, Wales and Northern Ireland could be allowed time to consider this properly.

63. David Statham provided a brief overview of the proposals in Professor Macrory's report. Macrory was proposing that prosecutions should only be used for serious offences, and that there should be greater reliance on administrative penalties and statutory notices. However, a key concern here was how persistent offenders should be dealt with, and whether they should be subject to prosecution. The annex to the paper provided details of the proposed elements for reform of the penalties system. However, David Statham noted that there were conflicts between Macrory's proposals and the Government's statutory Compliance Code. In particular that the proposed penalty principles would apply at the enforcement (i.e. individual) level whilst the Compliance Code applied at the policy/regulator level. It was not acceptable to have conflicting principles

which would cause difficulties for enforcers. The penalties proposed were variable and it was not clear how these would be attributed and who would pay for the proposed Regulatory Appeals Tribunals. Macrory's interest in using statutory notices and formal cautions did not conflict with the FSA's line; these were already widely used. In terms of Macrory's recommendation for greater use of restorative justice<sup>11</sup>, this was unlikely to be applicable in the food area. In cases, for example, of food poisoning it was difficult to establish beyond reasonable doubt the exact cause or source of the poisoning. However, requiring offenders to produce statements of apology might be a useful tool. The devolution aspects would be complex to take into account, but what was needed here was consistency of approach within a flexible framework.

64. In discussion, Board members asked the following questions.

- How burdensome would the proposed system be on the courts, in particular the proposed Regulatory Appeals Tribunal process?
- What was the distinction between an enforcement notice and an enforceable undertaking?
- Would MHS be included in the FSA's consultation process?

65. In response, David Statham confirmed that it was not possible to assess the number of appeals against administrative penalties. However if local authorities gave out a significant number of notices, this could result in a significant number of appeals. This was the reason for setting up a separate Regulatory Appeals Tribunal; the existing systems of appeals placed considerable pressure on the Courts. In respect of statutory notices, David Statham confirmed that an enforcement notice described action by a business that needed to be undertaken, and, if not, penalties were applied. An enforceable undertaking was a contract between a business and enforcers and could be wider than that which could be included in notices. David Statham confirmed that he would be seeking comments from the MHS to ensure a broad view was obtained and their experience and advice was taken into account in the final FSA response.

66. The Chair invited Board members to consider the questions set out in the paper. It was agreed that the Board responses to these should be as follows:

*Does the Board agree with Professor Macrory's overall conclusions about the current penalty system, and that his proposal for an enhanced penalties toolkit should be welcomed.? (para 4)*

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<sup>11</sup> Process whereby those most directly affected by a wrong-doing come together to determine what needs to be done to repair the harm and prevent an occurrence.

Board response: Yes. Some examples of where current frustrations lay could be provided in the FSA response and how the proposed penalty system would address these.

*Does the Board agree with Macrory's comments on prosecutions? (para 6)*

Board response: Macrory believes that prosecutions should be limited to the most serious breaches in particular where there was evidence of intentional or reckless behaviour or where the actual or potential consequences are so serious that the public demands a prosecution. It was agreed that there should be a clearer definition for what constituted a serious breach, and for this to provide greater flexibility to enforcers. In particular it was important to have the option of prosecuting persistent lawbreakers.

*Does the Board agree with the assessment of the risk relating to the proposed penalties principles (para 8)*

Board response: there was a fundamental concern that Macrory's proposed penalty principles (to apply at the enforcement i.e. individual level) would be confusing in that they would conflict with the principles set out in the Government's statutory compliance code (applying at the policy/regulator level). There would also be further confusion in that they would add to another set of principles which already existed for regulators (the Principles of Good Regulation; the Hampton Principles).

*Does the Board agree that both fixed and variable administrative penalties should be included in the toolkit for breaches of food law? (para 9)*

Board response: variable penalties should not be based on the ability of the businesses to pay, which could be viewed negatively by businesses in terms of arbitrary justice and revenue raising. Further details on how the variable penalties system would work should be requested.

*Does the Board agree that enforceable undertakings should be part of the penalties toolkit? (para 10)*

Board response: Yes. The only caveat to this was that the ability to choose penalties should remain with the regulator.

*Does the Board agree that restorative justice has a place in the penalties toolkit? (para 11)*

Board response: overall, there was uncertainty in respect of the use of restorative justice but it would be an area worth exploring further. It could be given a more

imaginative application by broadening it to e.g. include measures whereby offenders (in particular SMEs<sup>12</sup>) have apologised to their local community.

Does the Board agree with this assessment of Macrory's tribunal proposals? (para 12)

Board response: Yes, provided the Tribunals were properly resourced so that they could function effectively.

Does the Board wish to raise any devolution issues with Macrory now? (para 13)

Board response: The Chair of SFAC<sup>13</sup> requested time to be able to consult the office of the Procurator Fiscal, given the different legal system which applied in Scotland, and also to be able to consider this at the next SFAC meeting. It was noted that the devolution issues would go wider than the FSA's remit.

67. In summary the Chair noted that the Board had:

- Agreed that an extension to the deadline for responding to the Macrory review should be sought immediately, given the need for Food Advisory Committees in Scotland, Wales and Northern Ireland to be provided with sufficient time to consider the proposals and the implications for the devolved territories.

**Action: David Statham**

- Agreed that the final FSA response should be cleared intersessionally with Board members.

**Action: David Statham**

### **3.4 - Report from the Chair of the MHS Governing Board**

*(FSA 06/07/05)*

68. The Chair welcomed the Chief Executive of the MHS to the table for this item and invited the Chair of the MHS Board (Chrissie Dunn) to present her report.

69. The Chair of the MHS Board advised Board members that this was the third report presented to the FSA Board, as part of the accountability arrangements of the MHS Board to the FSA Board. The report set out the work of the MHS Board between December 2005 and June 2006.

70. The Chair of the MHS Board advised Board members that MHS performance against its high level targets and aims for 2005/06 were considered at the MHS Board meeting in May. The MHS Board's assessment was that the MHS had fully met four of its five targets, and partially met the remaining target.

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<sup>12</sup> Small and Medium Sized Enterprises

<sup>13</sup> Scottish Food Advisory Committee

71. The Chair of the MHS Board updated Board members on the MHS Business Plan and Corporate Targets for 2006/07. The MHS Board had agreed that the MHS should take the lead in proposing its own corporate targets for 2006/07. The MHS subsequently proposed and consulted informally on a performance management framework based on the balanced scorecard. Following consultation, the MHS Board approved 6 key objectives for the MHS for 2006/07. This included amending the vision and including reference to consumers in the MHS's purpose to underline that consumer protection is at the heart of MHS work. Progress on achieving the objectives would be measured by a Balanced Scorecard approach, which would deliver improved focus and transparency. Progress against the objectives would be published quarterly on the FSA website.
72. The current MHS Strategic Plan for 2004/05 – 2008/09 had been produced by the MHS in 2003. Since then there had been fundamental changes to the strategic environment that the MHS operated in, notably changes to the roles and responsibilities of the MHS and Food Business Operators introduced by the new EU Food Hygiene Regulations implemented on 1 January 2006. A new strategic plan for 2007-2010 would be produced jointly by the MHS and MHS Board in consultation with stakeholders. The lifespan of the MHS Strategic Plan would be to 2010, to align it with the FSA's Strategic Plan
73. The new MHS Strategic Plan would build on the work started by the MHS Board in 2005, and would be integrated into the MHS Board's programme of meetings during 2006/2007. This would include a reference to the MHS Board's second stakeholder meeting, to be held in Cardiff in July 2006. Progress would be shared with the FSA Board in December 2006. The new Strategic Plan would then be published.
74. Future challenges facing the MHS over the next 6 months were the approval of meat plants (required under the new food hygiene regulations) and the proposal to phase in charges for controls on the removal of SRM.
75. Valerie Howarth, as a Board member of the MHS, commented on the cultural changes that had taken place in the MHS, in particular the move from a service that supported the industry to one where the emphasis was on the industry taking responsibility. The Chief Executive of the MHS agreed that there had been some progress, but emphasised that considerable further work was needed on this issue.
76. In discussion Board members made the following points:
- Did the MHS process for reviewing its Strategic Plan cover Northern Ireland?
  - When would the results of the external review of the FSA and MHS Audit Committee arrangements be available?

- As the MHS was part of the FSA, it was important to ensure that the two separate Strategic Plans for the MHS and the FSA worked together. The FSA Board would also need to sign off the MHS Strategic Plan.
- More information should be provided in the report on performance management including details of performance against targets met, and work relating to the strategic risk register.

77. The Chair confirmed that the results of the review of the FSA and MHS Audit Committees would be available within the next few weeks. It was hoped that this would provide useful linkages between the FSA and the MHS Audit and Risk Committees, to address MHS Board members' concerns in respect of risk ownership.

78. The Chief Executive agreed that it would be useful to review how the two Strategic Plans for the MHS and the FSA fitted together. The plan was for the FSA Strategic Plan to be considered by the Board in the autumn, and the MHS Strategic Plan in the new year. There was a need to ensure appropriate linkage between the two. The Chair of the MHS Board stressed the importance of ensuring a correct process of consulting stakeholders, consumer organisations and the industry, and confirmed that the final MHS Strategic Plan would be a subset of the FSA's Strategic Plan and would be presented to the FSA Board for their approval.

79. It was agreed that future MHS reports to the Board should include details on performance management and progress against targets, in line with those provided for the FSA. In addition, future reports should be presented in two parts, with performance management considered at the closed meeting, and policy issues at the open session.

### **3.5 - Interim Report from the Independent Review Group on OTM Rule Change** (Paper FSA 06/07/06)

80. The Chair welcomed Alison Gleadle (Head of TSE Division) and David Carruthers (TSE Division) to the table to introduce this paper and answer questions.

81. Alison Gleadle reminded Board members that, from 7 November 2005, BSE testing for over thirty months (OTM) cattle slaughtered for food had replaced the ban on the entry of all OTM animals into the UK food supply. When taking this decision, Ministers had agreed that the FSA should report to them on the first 6 months of implementation of BSE testing following the change.

82. As agreed by the Board, the Implementation Review Group (IRG) had been set up to oversee and report on implementation of the BSE testing system for the first 12 months of its operation. This paper presented the IRG's interim report. The

FSA had commissioned DNV Consulting to provide an independent review of the first six months of implementation, and its report was attached as Annex C to the paper. The IRG had scrutinised performance data, ensuring any lessons learnt were applied and considered DNV's thorough review, which included the audit of a broad representative sample of abattoirs approved to slaughter cattle. The operation of the testing system had been closely monitored by MHS (or DARD in Northern Ireland) veterinary staff. IRG had closely monitored data and reports from this monitoring and audit activity.

83. The IRG had concluded that the BSE testing regime had been implemented in the UK in a sufficiently robust manner and was generally positive about the way the regime had put in place. One issue of concern was the continuing consignment to abattoirs by some producers of cattle born in the UK before 1 August 1996, which were ineligible to enter the food chain. The IRG had concluded that while current controls had proved effective in preventing such animals from entering the food chain so far, continued vigilance and pressure on the industry needed to be maintained.

84. In discussion Board members made the following comments:

- The interim report showed pleasing results and progress in respect of implementing the BSE testing scheme.
- It was noted that no positive result had been obtained so far. Could this be because the risk assessment was too conservative?
- Strong action should be taken in respect of those farmers that were presenting animals born before 1 August 1996 e.g. prosecution.
- What would happen when IRG was disbanded at the end of its 12 months term? Would there be any replacement monitoring arrangements?

85. Alison Gleadle confirmed that no proceedings against farmers presenting ineligible animals to the scheme had yet been taken. The Chair added that such action would be most effective against repeat offenders. In respect of the risk assessment, Alison Gleadle confirmed that the IRG had always expected that there would be some positive results, but that the effect of changes to the rules on emergency slaughter is likely to have been beneficial in reducing the BSE risk in OTM cattle entering the food supply. As for the post-IRG era, the Board would be invited to consider any recommendations for follow up arrangements at the meeting when the final report from IRG on the first 12 months of operation of BSE testing were produced.

86. The Board noted that the current system had stood up well to date and agreed that the FSA should advise Ministers that implementation of the testing system in UK abattoirs had proceeded satisfactorily.

**Action: Alison Gleadle**

#### **Item 4 - Any Other Business**

##### Information Papers and Standing Order Papers

87. The Chair drew Board members' attention to the 4 Information Papers and the 6 Standing Order papers provided in the papers for this open Board meeting.

88. The Chair informed Board members that these papers included an information paper on consumer engagement<sup>14</sup>. That topic had last been discussed by Board members in September 2005. This information paper provided the first part of the update. A more comprehensive paper outlining the possible options for a consumer engagement model would be presented to the Board at its October meeting.

89. One Board member requested that a fourth group of consumers be added to Annex A, page 7 of the paper as follows:

- Those consumers that don't know they should eat healthily but are doing so anyway.

##### **Date of next meeting**

90. The next scheduled open meeting would be held in London on 21 September 2006.

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<sup>14</sup> INFO/06/07/01