

**DRAFT MINUTES OF THE OPEN BOARD MEETING, 21 SEPTEMBER 2006, THE CONGRESS CENTRE, LONDON**

**Executive Summary**

1. Draft Minutes of the open Board meeting held on 21 September 2006 at the Congress Centre, London are attached.
2. The Board is asked to **confirm** that the Minutes are a true and accurate record of the meeting.

**Board Secretariat**

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## **DRAFT MINUTES OF THE OPEN BOARD MEETING, 21 SEPTEMBER 2006, THE CONGRESS CENTRE, LONDON**

### **OPEN SESSION, 09:00– 12:50**

#### Present:

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

#### Officials attending:

John Harwood, Chief Executive  
Andrew Wadge, Chief Scientist  
Michael Wight, Head of Consumer Choice, Food Standards and Special Projects Division (item 3.1)  
Anthony Flower, Head of Food Labelling and Marketing Terms Branch (item 3.1 )  
Clair Baynton, Head of Novel Foods, Additives and Supplements Division (item 3.2)  
Cath Mulholland, Toxicology of Food Chemicals Branch (item 3.2 only)  
Steve Wearne, Head of Regulation, International and Openness Division (items 3.3, 3.4 and 3.5)  
Philip Clarke, Head of Better Regulation and Consultation Branch (items 3.4 and 3.5)  
David Statham, Director of Enforcement (item 4)  
Keith Gregory, Board Secretariat  
Claire Voller, Board Secretariat

#### Others attending:

John Alty, Director General, Fair Markets, Department of Trade & Industry (item 3.6)

### **Chair's Introduction**

1. The Chair welcomed all observers attending the open Board meeting.
2. The Chair welcomed new Board member Michael Parker to his first Board meeting. Michael Parker has a background in business, finance and the NHS.

He is currently the Chairman of King's College Hospital NHS Trust, chairs the Finance Committee and is a member of the Performance and the Equality and Diversity Committees. Michael would bring many skills and experience to the Board on finance, risk, audit and ethnic minority issues.

3. The Chair also welcomed Andrew Wadge to the table, informing Board members that he had now been formally appointed as the FSA's Chief Scientist.
4. 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.
5. The Deputy Chair informed those watching by webcast, that the FSA would be trialling live and on-demand versions in different formats during this meeting and the next two open meetings. It would therefore be helpful if webcast and on-demand users could take the time to complete the online feedback forms to allow the FSA to gauge their preference.
6. The Chair noted that apologies had been received from Sandra Walbran due to illness.
7. The Chair reminded Board members of their obligation to declare interests before discussion of relevant items.

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

### **1.1 - Minutes of Open Meeting on 13 July 2006, Cardiff Marriott Hotel, Cardiff** (FSA 06/09/01)

8. The Board agreed the Minutes of the meeting held on 13 July 2006 at the Cardiff Marriott Hotel, Cardiff as an accurate record, subject to the reference to "200,000 farms" in the first full bullet point at the top of page 8 being corrected to read "20,000 livestock farms".

### **1.2 - Actions Arising** (FSA 06/09/02)

9. The Board noted the table of follow up actions and requested further information regarding the examination of the statistical validity and methodology of the survey results of hygiene standards in food premises in 2005 and the referral of the methodology to the Advisory Committee on Research (*Index 13July06/O/297*). The Chief Executive confirmed that information had been provided to Board members following further analysis of the response rate and sampling frame.

This had shown that the results had been broadly derived from a representative distribution of responses across the UK, in terms of size and geographical distribution. The statistical results had been sufficiently robust, and had not been biased towards those that had responded. However, advice on future surveys would be sought from the Advisory Committee on Research.

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

#### Meeting with the European Commission

10. The Chair informed Board members that, along with the Chief Executive and the (then acting) Chief Scientist, she had met with the European Commission<sup>1</sup> on 13 September. This had been a positive meeting with a strong emphasis on constructive working, and the European Commission had expressed general satisfaction with the UK's approach to risk-based enforcement. High level discussion had focussed on the UK's approach to nutrition and dietary health, and the European Commission had been particularly interested in the FSA's approach to front of pack labelling.

#### Meeting with LGA<sup>2</sup>

11. The Chair informed Board members that, accompanied by the Deputy Chair and Chief Executive, she had attended a very productive meeting with the Chair and Chief Executive of the LGA. This had been useful in starting off high level discussions to improve the way the FSA and Local Authorities cooperate and work together.

#### Keighley EHO visit

12. The Chair was grateful to Board member Sandra Walbran for arranging a most informative visit to Keighley, West Yorkshire to meet Environmental Health Officers (EHOs) and accompany them on an inspection visit to a takeaway. This had brought home the difficulties faced by EHOs on the ground, the number of small outlets they had to visit and the amount of effort and work EHOs put into providing advice to these outlets.

#### City Food Lecture

13. The Chair informed Board members that the City Food Lecture, due to take place in January 2007, would be sponsored for the first time by the FSA, and would be on the subject of organic food and the range of values that consumers now bring to the purchase of food. These lectures, previously sponsored by Sainsbury's, attracted an audience of senior industry people and provided an opportunity for challenging and stimulating debate. The Chair emphasised that the choice of

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<sup>1</sup> DG Sanco ( European Commission Directorate General for Health and Consumer Protection)

<sup>2</sup> Local Government Association

subject did not imply that the FSA's position had changed on organic food (neutrality based on the latest scientific evidence). Lord Peter Melchett, Policy Director of the Soil Association, would be the main speaker, but as much time would be devoted to a panel discussion involving a range of speakers representing the full spectrum of views.

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

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

14. The Chief Executive informed Board members that a written report had been tabled for today's session for the first time. The report would be published on the FSA's website. In future, written reports would also be made available to the public at the meeting.

#### Euro Freeze Ltd

15. The Chief Executive informed Board members that on 24 August a condemnation order had been signed by the Resident Magistrate (RM) in respect of 254 of the 257 pallets of material that were the subject of the first condemnation application. The three pallets for which a condemnation order had not been granted were pallets of quality control samples belonging to a third party that were clearly marked as not intended for human consumption. The owner of these three pallets had agreed voluntarily to surrender them and they would be disposed of with the other 254 pallets in due course.

16. Although a condemnation order had been granted by the RM, the material would not be destroyed immediately as the defendant had a period of 6 weeks from the date of the order in which to appeal against the decision of the RM by way of "case stated" to the High Court. An announcement was still awaited on the date of the second condemnation application. The Chief Executive would keep Board members informed of developments.

#### ABP Newry

17. The Chief Executive informed Board members that the Department of Agriculture and Rural Development (DARD) in Northern Ireland had reported to the FSA, that staff at the AFBI<sup>3</sup> Veterinary Science Division laboratory had found two BSE test samples that had not looked as fresh as the others. The samples had come from a batch submitted by an approved abattoir, ABP Newry. DARD had suspended the plant's approval to process OTM<sup>4</sup> cattle and had instigated an investigation. It was hoped that this investigation would be finalised in late September. ABP Newry had appealed against the suspension by DARD of their approval to slaughter bovine animals over 30 months of age for human consumption. The

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<sup>3</sup> Agri-Food Biosciences Institute for Northern Ireland

<sup>4</sup> Over Thirty Months

European Commission had been informed of this incident and kept advised of developments.

18. Some Board members asked for assurance that the alleged practice of substitution was not widespread, and that there were sufficient audit and control mechanisms in place to detect and prevent this from happening. One Board Member asked whether the Implementation Review Group (IRG) was examining this issue and considering the option of random DNA testing to identify any attempted sample substitution.
19. The Chief Executive commented that he would report back on whether the IRG was examining this issue<sup>5</sup>. However it was not possible to provide further details in view of the ongoing investigation.

### Cadbury's

20. The Chief Executive informed Board members that the investigations into the contamination of Cadbury's products with Salmonella were continuing. Requests for support with investigations had been received from Herefordshire Council, which had been approved, and Birmingham City Council, which was still under consideration. The likely time scale for decisions on prosecutions was within the next two months.

### GM Rice

21. The Chief Executive informed Board members that, on 1 September, the FSA had announced it was taking action to ensure that testing and monitoring was carried out on consignments of American long grain rice in the UK.
22. The announcement followed the statement by the United States' authorities that trace amounts of genetically modified (GM) rice had been found in a sample of rice in the US. According to information provided by the UK's Rice Association, GM material had been detected at very low levels and could be present in imports already in the UK. No GM rice had been approved for sale in the EU and therefore GM varieties should not be present in imported rice.
23. The FSA had taken this action to ensure that future supplies of rice were GM free. The FSA had sought advice on the safety implications of this rice from members of its independent scientific advisory committee on GM, the Advisory Committee on Novel Foods and Processes. They had advised that, on the basis of current evidence, the presence of low levels of this GM material in the food supply was not a health concern.

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<sup>5</sup> Later in the meeting, the Chief Executive confirmed that the Implementation Review Group had considered the issue of brainstem sample substitution at its most recent meeting. These discussions included the consideration of the use of DNA testing.

24. EFSA<sup>6</sup>'s Genetically Modified Organism (GMO) panel had also concluded, on the basis of the available molecular and compositional data, that the consumption of imported long grain rice containing trace levels of this rice strain<sup>7</sup> was not likely to pose an imminent safety concern to humans or animals.
25. All imports of long grain rice were being held at ports until they could be certified to be free of GM. The European Commission was leading discussions with the US authorities to ensure that no further products containing unauthorised GM material were exported to Europe. The presence of this GM material in rice on sale in the UK was illegal under European law, even at extremely low levels. Food retailers were responsible for ensuring that the food they sold did not contain unauthorised GM material.
26. In the light of the independent scientific expert advice, the FSA had advised people who had long grain rice from the US at home that they could continue to eat it.
27. One Board member noted that, although experts had advised that there was no food safety risk, there might still be consumers who did not want to eat rice containing GM material. There were also concerns that this situation relied on the US advising the FSA of GM material, rather than the FSA being proactive in picking this up. It would be sensible for the UK to have a more rigorous GM testing regime for imports into the UK.
28. Some Board members asked about the quality of the testing used by the laboratories to assess if products were GM free, and whether sampling levels were sufficiently sensitive.
29. The Chair of the Welsh Food Advisory Committee, whilst accepting there was no immediate danger to human health, stressed the seriousness with which this issue was viewed in Wales and the political pressure that was being placed on Welsh Ministers to introduce a ban. This issue would need to be considered carefully at the meeting he and the FSA Chair were due to have with the Welsh Minister the following week. It was important to ensure that all the facts of the case were available and considered appropriately.
30. The Chief Scientist confirmed that that the FSA had taken appropriate and timely action as soon as the US authorities had announced that they had found trace amounts of GM rice in a sample of rice in the US. This had included an assessment of the safety implications and risks, and a response that was proportionate to the risks. The FSA had taken action to prevent rice containing GM entering the food chain by ensuring that rice held at mills could not leave until it had been tested and shown to be GM free. The FSA had also made it clear to retailers that it was their legal responsibility under General Food Law provisions

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<sup>6</sup> European Food Safety Authority

<sup>7</sup> LLRICE601

to ensure that the products they sold did not contain any unauthorised GM material.

31. In terms of being aware of GM contamination incidents, the Chief Scientist confirmed that the FSA worked hard at European and international levels, and with the food industry, to ensure it acted on intelligence and priorities in a proportionate way. Further meetings were due to place at European level and the FSA would seek to ensure that a more proactive approach was taken in the future to reduce the risk of further imports of products containing unauthorised GM material.
32. The Chief Scientist agreed to provide a note to Board members on the testing regimes and assurance that sampling levels were adequate. This note would be made available to the public.

**Action: Andrew Wadge**

### Sudan I

33. The Chief Executive reminded Board members that a number of investigations had been undertaken in relation to the Sudan I incident<sup>8</sup>. The Chief Executive informed Board members that Lincolnshire County Council had now decided not to take legal action against Premier Ambient Foods (UK) Ltd for possible offences under the Trade Descriptions Act 1968.
34. One Board member expressed frustration that such a public exercise of withdrawing unsafe products should have resulted in no prosecutions having been taken to date. The Chief Executive reminded Board members that one other investigation - by Derbyshire County Council - was still ongoing and that, once that investigation had been completed, there would be a proper examination of the whole incident.

### Organic milk

35. The Chief Executive informed Board members that copies of the letter from the University of Glasgow to the Chair on the nutritional composition of organic milk, and of the Chair's reply, had been tabled at this meeting and had been published on the FSA's website.
36. Bill Reilly declared an interest in this issue as a visiting Professor at Glasgow University.

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<sup>8</sup> In February 2005, a contaminated batch of chilli powder was supplied to a manufacturer of Worcester Sauce (Premier Ambient Products (UK) (Ltd) in 2002. The Worcester sauce was then supplied to a large number of other companies in several hundred different food products. This resulted in the large-scale withdrawal of those products. It is a criminal offence for food business operators to place unsafe food on the market.

## Milk with antibiotic residues

37. The Chief Executive updated Board members on the latest developments regarding discussions on the testing regimes for detecting antibiotic residues, following the FVO<sup>9</sup> mission earlier in the year. The FSA had previously accepted as reasonably appropriate the legitimacy of using a short initial screening test to identify milk where residues were present, followed by a longer more complex test on samples where residues were present. New information from the Community Reference Laboratory (CRL) had prompted the FSA to re-evaluate this procedure. Two factors had emerged. First, CRL had advised that the evidence suggested that, if a test sample of milk tested positive for antibiotic residue in a short screening test, there was a high probability that the antibiotic residue would be above the MRL. Secondly, the CRL had advised that the second, longer test was also simply a screening test and could not be used to override the first test.
38. The effect of this new information had been that the FSA had needed to revise its view on the acceptability of the current practice for testing milk before reprocessing, and there were larger questions about the overall screening arrangements for milk. This was being discussed among member states at a European level.
39. One Board member commented on the need to ensure that the evidence and science used in cases such as these were robust. Better mechanisms were needed to ensure that bodies such as the CRL promulgated its advice and evidence to all interested parties appropriately.
40. The Chief Executive would keep Board members informed of developments.

## Report from WWF<sup>10</sup> on toxins in diets

41. The Chief Scientist informed Board members that the WWF had published a report that day indicating that man-made pollutants and chemicals had been found in all 27 food products tested by experts in a survey. The chemicals found in the food were organochlorine pesticides, polychlorinated biphenyls, brominated flame retardants, perflourinated chemicals, phthalates, organotins, alkylphenols and artificial musks. The FSA agreed with the WWF conclusion that all of the levels found in the samples were at low levels, within legal limits, and did not pose a threat to public health. However, there remained a concern that even at low levels within legal limits, the chemicals may represent a risk when combined together, termed as the “cocktail” effect
42. Some Board members asked for details of the research that was being carried out by the FSA on the “cocktail” effect of these chemicals in the body. One Board

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<sup>9</sup> Food and Veterinary Office

<sup>10</sup> World Wide Fund for Nature

member asked that the principle of sustainability for food, though complex, should also be included in any consideration of this matter.

43. The Chief Scientist confirmed that the European Food Safety Authority was actively considering this issue. The FSA was currently funding two research projects covering the “cocktail” effect of chemicals in the diet and the methods for carrying out risk assessments on the effects of additives, which were expected to report next Spring.

### BSE testing

44. One Board member sought clarification in respect of the three positive BSE test results that had been reported over the past three months from the testing of Over Thirty Month cattle for the food chain. Defra<sup>11</sup> had issued a press release when the first positive test result had been found, but this had not occurred for the two subsequent findings. It was clearly important to make sure the public was kept aware that the system was working well and that the MHS<sup>12</sup> was working effectively in this area. The Chief Scientist confirmed that this was for Defra to lead on, and that the first positive result had been publicised. The FSA would consider what action needed to be taken to ensure that information on subsequent positive results was made publicly available. It was FSA policy to make sure that information such as this was made publicly available.<sup>13</sup>

**Action: Alison Gleadle**

## **Item 3 - Discussion Items**

### **3.1 - EU Food Labelling Review**

*(Paper FSA 06/09/03)*

45. The Chair welcomed Michael Wight (Head of Consumer Choice, Food Standards and Special Projects Division) and Anthony Flower (Head of Food Labelling and Marketing Terms Branch) to the table to introduce this paper and answer questions.
46. Michael Wight reminded Board members that the European Commission had published a consultation document in February 2006. This had been subject to public consultation in the UK and a Government response setting out initial comments had been sent to the Commission in July. This response had indicated that the UK would be exploring some of the issues in more depth in the coming months to provide more detailed views to the Commission.

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<sup>11</sup> Department for Environment, Food and Rural Affairs

<sup>12</sup> Meat Hygiene Service

<sup>13</sup> Defra publishes details of all BSE cases born on or after 1 August 1996, including cases found in OTM cattle slaughtered for human consumption. These can be found at [www.defra.gov.uk/animalh/bse/controls-eradication/feedban-bornafterban.html](http://www.defra.gov.uk/animalh/bse/controls-eradication/feedban-bornafterban.html)

47. Michael Wight stressed that the review was still at a very early stage. The Commission had only recently started to look at the responses received from Member States and a wide range of stakeholders. The earliest a new proposal could be expected from the Commission was mid to late 2007. The purpose of this paper was to seek the Board's views on key strategic issues related to the EU Labelling Review. Key principles to consider were:

- how to 'future-proof' labelling;
- whether the types of information currently required were still relevant or needed to be streamlined or clarified; and
- alternative "off-label" methods by which information might be conveyed.

Risks and benefits of different approaches had been highlighted in the paper. The outcome of the Board's discussion at this meeting would be conveyed to the European Commission to inform its future deliberations. A workshop was also being planned for Board members later in the year, covering the current legislative background and the practical problems

48. Board members raised the following points during the discussion:

- A mechanism was needed to establish what the future labelling information needs of consumers might be, including usage of the information currently provided on labels. This should include research as to what information *could* be given to consumers on the label or elsewhere, what information *must* be given to consumers on the label somewhere and what information *must be provided on the front of the label*.
- Front of pack labelling was the most important area to consider. This should include signpost labelling.
- Information provided on labels to safeguard consumers against fraud and protect their safety clearly needed to be maintained.
- Sustainability issues needed to be addressed to encourage businesses to use less packaging. This would allow a reduction in the administrative burdens on the industry.
- The Chair of the Scottish Food Advisory Committee asked that some of the members of that Committee might also be invited to attend the labelling workshop planned for Board members.
- In respect of providing information "off-label", analogies were drawn with the pharmaceutical industry, where useful precedents had already been created (helplines; information sheets provided inside packaging). Similar systems

could be used to provide information on foodstuffs e.g. information on additives in food.

- Current legislation on labelling was too complex and disjointed. It needed to be streamlined and consolidated. Furthermore, it was not clear whether consumers wanted or used the “principal food labelling requirements” described in Annex 1 to the paper.
- Consumers often bought the same portfolio of goods, only checking the labelling perhaps the first or second time they bought them.
- It was not clear why messages such as “packaged in a protected atmosphere” needed to go on the label.
- There could be a method by which barcodes on products could contain all the information on a product and consumers could choose to scan the information from this.
- It was essential to ensure that any information provided “off-label” would be available equally to all consumers.
- It was important to ask consumers directly, rather than consumer lobby groups, what their views were on this. The Sheila McKechnie award winners might provide a useful source of information in developing thinking.
- Clarification was needed on whether these proposals would cover printed labels affixed to products, rather than just pre-printed packaging.
- Effective communication was key to ensuring that messages or information provided on labels were meaningful to consumers.
- It could not be assumed that the internet provided an effective method of conveying off-label information to consumers.
- Although it was acknowledged that this would be a long process, clarity was sought on the best way to influence the proposals that would come out of Europe.

49. In terms of the process and speed of the consultation, Michael Wight confirmed that this stage involved looking at the strategic aims and areas of commonality. The FSA was liaising bilaterally with other Member States and consulting stakeholders to ensure that it was influencing all stages of the process. He confirmed that the focus was on rationalising the information found on printed packs e.g. on ready-made meals. For small companies that used stick-on labels, the current exemption for food that was sold loose or pre-packed for direct sale would continue to apply. In terms of the mandatory information provided on the

front of pack, it was agreed that this needed to be thoroughly reviewed and updated. The Board had made some useful contributions to the debate, and their views would be passed on to the European Commission.

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

- requested that the Executive establish a set of priorities for labelling, which was based on criteria around safety and nutrition issues.
- expressed the desire that research be commissioned to establish real consumer behaviour in terms of reading labels and the type and best way of providing information to consumers which was understandable by everyone.
- noted that when providing “off-label” information, assumptions should not be made that using the internet was the best way of communicating to all consumers. It would be useful to consult IT futurologists to ensure that any proposals were based on long-term requirements and accessibility to all consumers.
- The review should be taken as an opportunity to reduce the burdens on the industry and consolidate and clarify the labelling provisions.
- Some of the SWaNI Food Advisory Committee members should be invited to attend the labelling workshop to help inform the debate further.

**Action: Michael Wight**

### **3.2 - Food Supplements: Response to EC Consultation**

*(Paper FSA 06/09/04)*

51. The Chair welcomed Clair Baynton (Head of Novel Foods, Additives and Supplements Division) and Cath Mulholland (Toxicology of Food Chemicals Branch) to the table to introduce the paper and answer questions.

52. Clair Baynton informed Board members that this paper sought the Board’s agreement to the proposed response to the questions raised by the European Commission in their discussion paper on the setting of minimum and maximum levels for vitamins and minerals in foodstuffs. At its July meeting, the Board had agreed a set of four principles to underpin discussions on the questions raised in the discussion document. Two meetings with stakeholders had taken place to help inform the FSA’s response. The response had been considered by the SWaNI Food Advisory Committees, and the Chair and members of the Northern Ireland Food Advisory Committee had attended one of the stakeholder meetings via video-link. The draft FSA response indicated where there had been divergent views by stakeholders. Different views had been expressed on whether there was a need to set maximum levels for vitamins and minerals where, at high levels of intake, the risk of adverse effects was extremely low or non-existent; and

whether and how levels should be allocated for use in food supplements and fortified foods. The FSA's overall opinion on these divergent views had been provided in the draft response. On setting maximum levels for vitamins and minerals where there was no risk of adverse effects, the Board's views were requested on whether the response as drafted was proportionate and consistent with the principles of better regulation, and would not create additional legislative burdens on business.

53. Following the Board's discussion, the draft response would be amended to take into account the Board's comments and those from Ministers of other Government departments. The revised response would then be forwarded for clearance to Health Ministers as the UK Government's response to the European Commission. When the Commission brought forward proposals in the future on setting levels of vitamins and minerals in foodstuffs, the Board would be consulted on these.

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

- the response to question 6 (covering intake from different population groups) should specifically mention children.
- the issue of consumers making "informed choices" needed to be included in the draft response.
- the EVM<sup>14</sup> had adopted a precautionary line for setting maximum levels for vitamins and minerals for which there was no evidence of adverse risk at high levels. The Board in agreeing this, would therefore be taking a cautious approach by adopting this line, but had to be guided by the advice of its expert panel.

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

- agreed the draft response to the questions raised by the Commission subject to including specific reference to children in the response to question 6, and exploring further what "informed choice" means.

**Action: Clair Baynton**

### **3.3 - Review of Openness**

*(Paper FSA 06/09/05)*

56. The Chair welcomed Steve Wearne (Head of Regulation, International and Openness Division) to the table to introduce the paper and answer questions.

57. Steve Wearne informed Board members that this paper set out the plan of how the review on openness would be conducted, as requested by the Board at its

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<sup>14</sup> UK Expert Group on Vitamins and Minerals

June meeting. Being open and transparent was one of the core values of the FSA. Openness operated at all levels within the FSA from engagement with stakeholders to decisions on matters of strategic food safety only being taken at open meetings.

58. The paper outlined the proposed scope of the review, which included

- establishing what openness means for the FSA;
- benchmarking the FSA's performance on openness against that of other comparable organisations;
- analysing the extent to which the FSA has met its statutory obligations and other relevant expectations; and
- identifying the costs, benefits and risks of how the FSA currently demonstrated openness.

59. Subject to any amendments from today's discussion, the scope of the review would be published on the FSA's website, and evidence from stakeholders would be invited to inform the review further. The review was being led by an external consultant and the final report would be sent to Board members in advance of the December Board meeting. The Executive would prepare a short, covering paper for the December Board which would propose recommendations for action in the light of the review's conclusions.

60. In discussion on the scope of the review, Board members made the following points.

- There was some good practice on openness that could be learned from other organisations in the private and community sector.
- The review should be as comprehensive as possible including opportunities for making open meetings more cost effective, and assessing changes needed to the FSA's overall approach.
- The point that openness was sometimes perceived by the industry to constitute a form of regulation or "regulatory creep" needed to be addressed.
- It would be helpful to seek and factor in views from those the FSA did not work closely with, including detractors and critics of the FSA.
- Healthcare Commission and NHS Trusts would be helpful to include as benchmark organisations.
- There should be reference to openness being based on consumer interests, and how the FSA operated and impacted with its partners and stakeholders.

- There needed to be consistency with how the FSA dealt with the naming of brands in surveys.
- The review of openness should be about the whole of the FSA as an organisation, not just the Board.
- A rigorous assessment of costs and risks would be needed in the review, as well as good understanding and rationale for judging when there were exceptions against being open.
- Openness only added value if it added benefit to decision making; was there evidence to suggest that openness is beneficial in affecting the way the FSA operates?
- The outcomes of the review would be useful to promulgate to other small service providers, who did not have the resources to carry out such reviews but could learn from the overall principles.

61. One Board member sought further details on the appointment of the external consultant. Steve Wearne confirmed that Mandy Bailey, a retired civil servant, had been appointed as the external consultant; she had a background in this area and would bring the expertise and capacity needed to conduct this review.

62. The Chief Executive noted that it was helpful to have the Board's views on the scope of the review, to ensure it included all their areas of concern and issues for inclusion. A key issue that needed to be factored in was the boundaries on openness, and the justification for these.

63. Steve Wearne informed Board members that the scope of the review would be amended to take account of Board members' comments and then published on the FSA's website.

64. In summary the Chair noted that the Board had approved the scope of the review, subject to the inclusion of the points that had been raised during the discussion.

### **3.4 - FSA Simplification Plan**

### **3.5 - The Administrative Burdens Reduction Programme**

*(FSA 06/09/06ADD)*

65. The Chair welcomed Steve Wearne (Head of Regulation, International and Openness Division) and Philip Clarke (Head of Better Regulation and Consultation Branch) to the table to introduce this and the subsequent two papers and answer questions.

66. Steve Wearne set out the context to the next two discussion papers on the FSA Simplification Plan and the Administrative Burdens Reductions Programme, which were related. It was possible to reduce administrative and policy burdens without compromising the outcomes for public health. Burden reduction also provided opportunities for business to improve compliance with food law. The proposals in these papers were not seeking to dilute the FSA's strategy or regulation to protect public health and consumer's other interests in relation to food and drink. The Executive was aware that the FSA would be judged rightly not only on the basis of its actions to protect consumers, but also on how it did this in a way that avoided unnecessary burdens on the private, public and voluntary sectors.

### **3.5 – The Administrative Burdens Reduction Programme**

*(FSA 06/09/07)*

67. Philip Clarke informed Board members that the administrative burdens reduction programme was a sub-set of the paper on simplification. This paper set out the results of the major exercise the FSA had been involved in over the last year to measure the burdens its regulations imposed on businesses, charities and the voluntary sector. All Government Departments had been carrying out similar exercises, using the Standard Cost Model, which had been developed by the Dutch Government when it carried out this exercise. The Standard Cost Model was acknowledged not to produce statistically robust figures, but did provide useful indicative figures of the size of administrative burdens. It also divided burdens into three categories:

Category A – EU regulations over which the FSA has no discretion;  
Category B – EU regulations over which the FSA has some discretion; and  
Category C – purely domestic regulations over which the FSA had total discretion.

The Board was invited to comment on the findings of the administrative burdens measurement exercise.

68. The second part of this paper responded to the Government's request for the FSA to set a target to reduce the administrative burdens of its regulations. Hilary Armstrong had written to the Chair recommending that the FSA set itself a target to reduce the net administrative burden of food regulation by £11.9 million by April 2010. This would be equivalent to a 25 per cent reduction in the burden of Category B and C regulations. Such a target would be challenging but it was believed to be achievable. It was not, at this stage, recommended that the Board set a target for Category A regulations, but revisit this once the European Commission had indicated how it would deliver its own 25% per cent reduction in administrative burdens, which was expected in spring next year. The Board was asked to provide comments on the target and the action plan.

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

- When assessing administrative burdens, it was not clear how accurate the baseline data could be assumed to be, and whether there had been a proper assessment of risks and links to the spending review.
- A key issue here was to balance the burdens the FSA placed on the industry with the need to protect public health.

70. The Chief Executive responded that the Executive was advising that the target of achieving a 25 per cent reduction in the burden of Category B and C regulations was achievable based on current assessments and data. However, if it became apparent that the situation had changed and the target could not be met without risk to public health protection, the Executive would have a duty to come back to the Board.

71. The Chair noted that the Board had:

- agreed the recommendation that the FSA should set a target of reducing the net administrative burden of food regulation by £11.9 million by April 2010. However, this was subject to the Executive's caveat that if it became apparent that the FSA priority of protecting public health and consumers was going to be put in jeopardy, the issue would be returned to the Board.
- agreed that the 25% target should exclude Category A costs, and that these would be considered once the European Commission had indicated how it would deliver its own 25% per cent reduction in administrative burdens due in spring next year.
- noted that there could be benefits in reducing the administrative burdens on business which would be passed to consumers, but a clearer assessment of consumer benefits needed to be demonstrated when considering this.
- agreed that the Executive should respond accordingly on the basis of this discussion.

### **3.4 - FSA Simplification Plan: Approval for Publication**

(FSA 06/09/06)

72. Philip Clarke informed Board members that the overall objective of simplification was not about changing the policy objectives of regulation, but to focus on their administrative and policy costs. This paper detailed the comments received on the version of the Plan the Board approved in June and which had been sent to others in Government for comment. The paper set out how the FSA might handle the comments in revising the plan before publication, and an updated version of the Plan that incorporated the majority of comments received. It was for the

Board to decide how it would take the comments into account and give final approval to publish the plan.

73. There was one area that had not been amended in the plan. This related to the results of the FSA's administrative burdens measurement exercise considered in the previous item. The Government had asked that the Simplification Plan set out how the FSA intended to meet 60 per cent of its reduction target. It was difficult to meet this request given the short amount of time the FSA had had to analyse the data and develop a robust action plan.

74. Once the final version of the Plan had been agreed, with final clearance delegated to the Chair, the FSA intended to publish it by the end of October. However the Chair would send courtesy copies of the Plan to the Board and others in Government before publication.

75. In discussion Board members made the following comments on the simplification plan:

- It was vital to ensure the main aim of protecting public health and consumer confidence was the key priority.
- It would not be possible to show in the plan how the FSA would deliver 60% of the targeted reductions in administrative burdens.
- The plan made the point that reducing burdens on businesses was beneficial to consumers but this needed to be underlined further and given greater emphasis.
- The executive summary of the simplification plan did not sufficiently capture the breadth of the simplification initiatives, as had been requested by Hilary Armstrong. It would benefit from further work.
- Concern was expressed that this plan could be construed as efficiency savings and impact adversely on the protection of consumers. It would therefore be useful to include some measurement of the impact and costs to consumers in the table on outcomes and benefits in the simplification plan.
- Concerns by Hilary Armstrong that two of the simplification initiatives in the Plan would provide benefits for the public sector (Local Authorities) rather than business should be seen instead in the context of reducing burdens on council tax payers and hence consumers.
- In terms of risk assessment, it could not always be assumed that larger organisations posed less threat to consumer safety.

- Caution was urged in respect of viewing traceability as a significant burden and cost. This may be for good reason. Traceability was vital for businesses particularly in terms of dealing effectively with food incidents and protecting public health.
- It was important to separate out outcomes from processes, and to ensure that it was clear that this was not just about reducing burdens across the UK, but also the EU.
- In terms of the future direction of travel, there needed to be clearer evidence on which to make judgements.
- The information provided on page 26 of the Simplification Plan (using a derogation to allow removal of SRM in butchers shops) would need to be reviewed to reflect the current position more accurately.
- The Board should be able to sign off the final draft of the simplification plan before it was sent to the Chancellor of the Duchy of Lancaster and published.

76. On traceability, Steve Wearne confirmed that that the issue was to consider reductions in the administrative burdens placed on the industry (e.g. more efficient record keeping, less duplication) without any dilution of the measures on traceability required under European legislation. Steve Wearne also said that the Executive Summary would be reviewed to see if it could be improved further.

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

- noted that the benefits to Local Authorities should not be dismissed, as these also impacted positively on consumers.
- agreed that it was too early to show in the plan how the FSA would deliver 60% of the targeted reductions in administrative burdens.
- agreed that improvements were needed to tighten up the executive summary of the simplification plan.
- noted that, in making regulations more effective and efficient, there needed to be clearer criteria for making judgements.
- requested that the final draft of the simplification plan (with changes highlighted in bold) be cleared with Board members, before it was submitted to the Chancellor of the Duchy of Lancaster.

### **Item 3.6 - Establishing the Local Better Regulation Office (LBRO)**

78. The Chair welcomed John Alty (Director General, Fair Markets, Department of Trade and Industry) to the table and invited him to give his presentation.
79. John Alty informed Board members that, in addition to his responsibility for the setting up the LBRO, he also had regulatory responsibility for consumer protection, employment policy, company law and better regulation. He was currently engaging with stakeholders on proposals for establishing the LBRO, and it was therefore timely to be able to present to the FSA Board in open session the background and latest developments on this issue.
80. John Alty outlined the background to setting up the LBRO, which had evolved from the Hampton Report, and the Government's better regulation agenda. As a result, the Chancellor - in his Pre-Budget Report - had announced plans to set up the LBRO. The LBRO would have a clear mission to reduce burdens on businesses, ensuring a single set of priorities and improve co-ordination and consistency for all businesses. There would be a co-ordinated set of national priorities across trading standards and environmental health services, with sufficient flexibility to allow local priorities as well.
81. One of the problems Local Authorities faced were conflicting demands and priorities placed on them by Government departments and agencies. Providing Local Authorities with a delivery statement of central priorities would allow a more coherent approach to local regulatory services. DTI was aware of concerns that the FSA and other regulators had expressed on the setting up of a separate body that could compromise regulators' independence. DTI would continue to engage with the FSA and other regulators on this issue to ensure the LBRO was set in the right context and perspective. However, there would be a reciprocal duty placed on the LBRO, departments and regulators to co-operate with each other.
82. The LBRO would drive forward best practice to ensure delivery of services were risk-based, joined up, and consistent, in particular for businesses that operated across local authority boundaries. It would also aim to ensure better advice was provided to businesses, and allow a better evidence base for reducing burdens on businesses. Pilots carried out in the retail sector covering two local authorities had so far shown positive results in ensuring resources were joined up and focussed on priority areas. The LBRO would also expand on the principle of the Home Authority, which provided a framework to establish a consistent and risk based approach to the delivery of services to multi-site businesses.
83. The LBRO would work to improve performance standards within the local government performance framework and different territories of the UK to help environmental health officers and trading standards deliver in accordance with the Hampton principles. LBRO's role would be to embed behaviour into local performance arrangements by working within the existing frameworks in each

territory. DTI was liaising with devolved territories separately to ensure this took account of their needs.

84. In conclusion, John Alty said that once the LBRO had achieved its outcome of ensuring the Hampton culture had been embedded, there would be Ministerial power to wind up the LBRO.

85. In discussion, Board members made the following comments and asked the following questions:

- Although the aim of the LBRO was to minimise burdens on businesses in accordance with the Hampton report, the FSA's priority was to ensure the public had confidence in food safety and consumer concerns.
- The independence of the FSA would be compromised if the LBRO decided to overrule the FSA's priorities, which were evidence-based, and transparent to consumers. This could threaten the hard-won consumer confidence the FSA had achieved, particularly if the LBRO put in place measures that were neither transparent nor consultative.
- In setting up the LBRO, there could be risk of omissions and confusion in transferring work. What procedures or work had been put in place to minimise the risk of this happening, in particular for food incidents?
- How would the LBRO achieve public and consumer confidence, to assess when the measures had been achieved so that the LBRO could be wound up?
- It was not clear how the LBRO would balance having a central set of priorities, whilst ensuring local delivery needs were taken into account.
- Further information on how the governance of the LBRO would work was required, and assurance that this would not affect the independence of the FSA.
- DTI needed to ensure that, in developing the proposals for LBRO, it engaged with the administrations in Scotland, Wales and Northern Ireland as food safety and standards were devolved matters.

86. John Alty responded that the LBRO would ensure improved consistency by a co-ordinated set of central priorities, but this would allow sufficient flexibility for local priorities as well. DTI was still working through the detail of how this might work and would be working with regulators to consider the overriding principles and priorities. Food related emergencies would be treated as a separate issue, and would not come under the LBRO's responsibility. The LBRO would be accountable to Ministers to ensure an appropriate system of checks and

balances was in place, and any final analysis and decisions taken would be risk-based. There was likely to be divergent views on what different regulators wanted as central priorities and the DTI would have to handle this. However, from dialogues with regulators, the concerns did not appear to be too excessive in this area.

87. John Alty confirmed that the intention was for the LBRO to be set up as a Non-Departmental Body with its own Board. Board members remained concerned that this arrangement would threaten the independence of regulators such as the FSA, and suggested that the Chair of the FSA Board, and Chairs of the other regulators should constitute the Board of the LBRO, rather than setting up a new body for this.
88. The Chief Executive suggested that it would be helpful for the LBRO to consider how it would align with the UK's National Control Plan required under EU hygiene legislation, which would set out how the UK would improve the consistency and effectiveness of arrangements for monitoring compliance with, and enforcement of, feed and food law, and animal health and welfare. It would be helpful to receive comments from DTI on how the role of the LBRO should be incorporated into the current draft of the National Control Plan.
89. In addition, the Chief Executive noted that, if the LBRO was to regulate the FSA, it was highly likely that the European Commission would wish to audit the LBRO to ensure the UK was meeting its EU obligations of enforcing food law.
90. The Chair thanked John Alty for his presentation, which was helpful in providing further clarification, though the Board was not completely comfortable with the proposals to set up the LBRO. It would be easier for the Board to accept this, if the aims of the LBRO were focussed on benefits to consumers, rather than businesses. John Alty confirmed that he would consider the points and concerns that the Board had raised.

#### **Item 4 - Progress Reports**

##### **4.1 - Development of FSA Sponsored "Scores on the Doors" Pilot Schemes**

*(PRO 06/09/01)*

91. The Chair welcomed David Statham to the table to answer questions on this paper, which updated the Board on the FSA-sponsored "Scores on the Doors" pilot schemes, which were scheduled to be introduced shortly.
92. The Chair of the Scottish Food Advisory Committee informed Board members that there could be political pressure in Scotland to implement the scheme before the UK-wide pilots had been completed.

93. The Chair of the Welsh Food Advisory Committee highlighted concerns that Wales already had its own awards scheme for food hygiene which were very successful. The relationship between how the Welsh awards scheme would fit with the “Scores on the Doors” system would need to be reassessed.

94. The Chair of the Northern Ireland Food Advisory Committee commented that Northern Ireland also had a separate awards scheme which would need to be factored into the process. In addition, the legal position set out in the paper needed to be clarified to ensure it met the needs of Local Authorities.

95. In response David Statham confirmed that the legal position was clear, but it needed to be recognised that Local Authorities, as separate public bodies, would wish to seek their own separate advice.

96. The Chair concluded that the Board was content with the general direction of the pilot schemes and looked forward to seeing the results of the pilots.

#### **Any other business**

97. There were no other business items raised.

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

98. The next scheduled open meeting would be held in Belfast on 12 October 2006.