

FSA 22-09-16 Annual report: Freedom of information requests, external complaints and internal whistleblowing cases

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1. Summary

1.1 This annual report informs the Business Committee's oversight of these three areas of work. The Business Committee is asked to agree the priorities set out below.

2. Introduction

2.1 This report presents data and commentary on the Food Standards Agency's (FSA) management of requests made under the Freedom of Information Act 2000 (FOI), external complaints and internal whistleblowing and raising a concern cases. Delivering to high standards in each of these areas, whilst at the same time keeping processes under review and learning appropriate lessons, is integral to the FSA being an open and transparent organisation.

3. Evidence and discussion

3.1 Data used to inform this report is drawn from the records managed by the FOI and Complaints and Transparency Teams. Using the same data, reports are routinely submitted to the Cabinet Office. All data provided applies to calendar years (refer to Annex).

4. Freedom of Information

4.1 The FOI function is delivered by the Knowledge and Information Management and Security Team (KIMS) who are responsible for all aspects of information governance and information rights legislation. This means that the KIMS team provide an integrated openness and privacy service across the FSA.

4.2 Refer to Table 1. In 2021 the FSA processed 130 FOI requests, and 63 in the first half of 2022. The data continues to show over time an overall slight decrease in the number of requests. It also shows an increase in the number of requests that are being handled as 'business as usual' (BAU) where the FSA responded in full without recourse to the FOI process. Compliance with the statutory timescales for answering requests remains high at 97% for 2021 and 100% so far for 2022. This compares to the average across 41 government departments for 2021 of 88%.

4.3 The subjects addressed by FOI requests are very diverse, however the two most popular topics remain meat operations and business process requests relating to the technology and suppliers we use etc. The KIMS team keep track of FSA priorities and events to be prepared to receive topical FOI requests relating to them.

4.4 In 2020, one case was escalated by a requestor to the Information Commissioner's Office (ICO). The FSA's decision was upheld by the ICO when it was finalised in 2021. In 2021 one case

was also referred to the ICO. The FSA took the opportunity to review the original outcome not to disclose information. After taking into account emerging factors that reduced the sensitivity of the data in scope, the decision was made to disclose the information. This meant that the ICO did not need to decide on the matter. Given that 509 requests have been processed over the last 3.5 years, there has been a low rate of referral to the ICO throughout this time.

4.5 The KIMS team continue to provide a quality service to the FSA to support Information Asset Owners to manage requests relating to the information in their remit in compliance with the legislation. As part of continuous improvement over the next six months the operating procedure for FOI requests will be improved to further simplify processes and make better use of collaboration tools.

5. External complaints

5.1 The FSA's external Complaints Policy applies to formal expressions of dissatisfaction with the FSA, whether that be with its policies, its service, conduct of its staff or other. Read the [FSA's Complaints Policy](#).

5.2 Most formal complaints are treated as local in the first instance, with usually an operational or policy area responding. If a complainant is dissatisfied with this response, they can escalate their case to the FSA Complaints Co-ordinator (the Head of Standards and Reward). If the complainant remains dissatisfied, they can then escalate their complaint to the FSA Chief Executive. After the FSA's complaints procedure is exhausted a complainant may then ask a Member of Parliament to refer their case to the [Parliamentary and Health Service Ombudsman \(PHSO\)](#).

5.3 Refer to Table 2. 2021 saw 10 complaints managed by the FSA through its formal process. Of these, 7 involved matters within Field Operations including the alleged loss of product and the conduct and/or decision making of staff. Escalations through the process remained very minimal throughout the year although all complaints were not fully upheld. This trend of a reducing number of escalated cases indicates the FSA's work to improve the quality of its responses continues to benefit both complainants and the FSA.

5.4 Efforts have also continued to improve both accessibility and the customer experience for those expressing dissatisfaction with the FSA. This is reflected in the increased number of cases handled as 'business as usual'.

5.5 In making the subjective judgement to respond to a complaint as a 'business as usual' item rather than refer the issue through to the formal complaints process, one or more of several factors will apply. These include; the issue is not complex; it requires minimal investigation; it can be answered relatively easily; the complainant is generally seeking clarification; or the FSA has already established lines on a particular subject which are being kept under review (this would include complaints relating to a live food incident in which higher volume contacts are being received across the FSA).

5.6 This approach helps ensure that issues are responded to quickly and at the first point of contact where possible without recourse to a formal process, but at the same time not limiting access to it.

5.7 In 2022, with no formal cases arising, the number of complaints managed through this 'business as usual' approach was 36 to the end of June, a marked increase on the previous year. Near half of these cases concerned the substitution of sunflower oil as a result of its global supply being impacted by the war in Ukraine. In the main, these cases concerned decisions made on product labelling.

5.8 Overall, across the whole profile of complaints, lessons learned were centred on customer service and clearer communication between all parties, some resulting in adjustment to process.

5.9 The case in 2021 which was responded to at the Chief Executive's level, involved a complex complaint which, at the request of the Chief Executive, was managed by a Director General from another government department. This concerned the FSA's management of a case involving the illegal sale of 2,4-dinitrophenol or DNP (sold as a diet pill), and led to a number of elements being upheld. Given its complexity this case was also referred to the Audit and Risk Assurance Committee who retain an oversight role in complaints. The Committee asked that the FSA review its approach to managing such complex cases and also commissioned more frequent briefings on complaint cases generally.

5.10 In 2021 the PHSO published new complaint standards for the NHS and are now progressing a similar product for government departments with an expected launch in September this year. These standards will replace an existing Complaints Assurance Framework (developed by departments supported by the Cabinet Office). On invitation, the FSA is a member of a working group that is helping shape this product.

5.11 It is expected that the FSA will already be closely aligned to these Standards, but it will be reviewing its arrangements to ensure this is the case.

6. Internal raising a concern and whistleblowing

6.1 Internal raising a concern and whistleblowing refers to issues raised within, and about the FSA, by a member of staff or contractor and usually relate to alleged breaches of the Civil Service Code ('the Code'). Cases known as 'qualifying disclosures' and meeting the definitions provided by the Public Interest Disclosure Act 1998 also fall within this category.

6.2 In 2021, three referrals were accepted for investigation. One case related to operational procedural matters, one to an alleged failure to comply with legal obligations and the other to an alleged misuse of official position.

6.3 In one case, a review by a senior manager concluded that wrongdoing may have occurred and in the other two cases no wrongdoing was identified.

6.4 Findings from one investigation, which found no wrongdoing, resulted in a number of recommendations being made to managers in several business areas in the FSA which are currently being progressed. In 2022 to date, no cases have been referred for investigation.

6.5 The annual Civil Service People Survey includes three questions relating to the Civil Service Code. The first question concerns the level of awareness of the Code and the second, the level of awareness of how to raise a concern under the Code. The third question concerns the level of confidence the respondent has that a concern raised would be investigated properly.

6.6 Whilst there is variance across FSA Directorates, for 2021 at corporate level, the FSA sat at or were above the Civil Service benchmark for all three questions (its results were 91%, 74% and 76% respectively). However, against the backdrop of what had been a sustained year-on-year improvement over several years, these results were each 3-4% lower than in 2020. This reflects the need for any organisation to maintain a sustained effort of communication and awareness in this space, and the opportunity to do this was affected by the need to divert resources toward the FSA's response to COVID-19.

6.7 Continuing in 2022 a targeted programme of communication, using a range of channels and refreshed resources, looks to address this issue and place the FSA back on a forward trajectory.

6.8 The FSA's overall approach continues to be supplemented by its annual assessment against central Government's best practice standard (known as the 'Health Check'). In 2022 this reflected new requirements for government departments as a result of a review of the Official Secrets Act 1989 undertaken by the Home Office. The FSA is addressing these new requirements via a review of its existing policy provisions for 'Raising a Concern and Whistleblowing'. Beyond this the FSA aligns well against the 'Health Check' although there is further consideration to be given to senior leaders challenging themselves on whether they have strong evidence of a 'Speak Up' culture.

7. Conclusions

7.1 The Business Committee is asked to note and agree the following priorities:

- to further simplify and improve the FOI request management service
- undertake an assessment against the new Government complaints standard when published and agree a plan of action to address any gaps identified
- continue to develop varying approaches to improve perceptions of 'Speak Up' within the FSA using People Survey and other data to inform the approach.

Annex

Table 1: Requests made under the Freedom of Information Act 200 - key statistics

| Requests | 2019 | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|-------------------------------|------|------|------|-----------------------|
| Requests dealt with as BAU | 44 | 51 | 59 | 28 |
| Requests dealt with under FOI | 170 | 146 | 130 | 63 |
| Total number received | 214 | 197 | 189 | 91 |

| Compliance | 2019 | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|--|-----------|-----------|-----------|-----------------------|
| FOI requests responded to within 20 working days or with a permitted extension to the deadline | 168 (99%) | 143 (98%) | 126 (97%) | 63 (100%) |

| Outcome of FOI requests | 2019 | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|--------------------------------|-------------|-------------|-------------|------------------------------|
| No information held | 20% | 13% | 16% | 9% |
| Information supplied in full | 43% | 32% | 23% | 46% |
| Information supplied in part | 17% | 27% | 33% | 18% |
| All information withheld | 5% | 10% | 13% | 9% |
| Advice and assistance provided | 14% | 16% | 14% | 16% |
| Withdrawn | 1% | 2% | 0% | 2% |

| Internal review (appeals against the original response) | 2019 | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|--|-------------|-------------|-------------|------------------------------|
| Number of reviews | 2 | 3 | 4 | 1 |
| Of these still in progress | 0 | 0 | 0 | 1 |
| Of those original decision upheld | 1 | 2 | 3 | 0 |
| Of those appeal partially upheld | 1 | 1 | 1 | 0 |
| Of those appeal full upheld | 0 | 0 | 0 | 0 |

| Complaints to the Information Commissioner's Office | 2019 | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|--|-------------|-------------|-------------|------------------------------|
| Number of ICO referrals | 0 | 1 | 1 | 0 |

| Complaints to the Information Commissioner's Office | 2019 | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|--|-------------|--------------|--|------------------------------|
| Decision | - | Fully upheld | FSA disclosed information negating the need for ICO decision | 0 |

| The number of times certain exemptions were engaged by the FSA | 2019 | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|---|-------------|-------------|-------------|------------------------------|
| s.35 formulation of government policy | 1 | 1 | 2 | 1 |
| s.36 prejudice to conduct of public affairs | 1 | 1 | 0 | 0 |
| s.30 investigations and proceedings | 9 | 4 | 5 | 2 |
| s.31 law enforcement | 17 | 8 | 13 | 2 |
| s.40 personal information | 13 | 28 | 18 | 8 |
| s.43 commercial interests | 11 | 19 | 22 | 5 |

| Subject of FOI requests (percentage) | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|--|-------------|-------------|------------------------------|
| Meat operations | 14 | 13 | 11 |
| Business process - procurement, IT, telephony etc. | 10 | 13 | 13 |
| Animal welfare | - | 10 | 3 |
| Staff pay/ethnicity/workforce | 7 | 9 | 4 |

| Subject of FOI requests (percentage) | 2020 | 2021 | 2022 (Quarter 1 to 2) |
|--|------|------|-----------------------|
| Food crime | 6 | 3 | 1 |
| Procurement | - | 7 | 7 |
| Covid-19 | 5 | 0 | 1 |
| Food hygiene inspections | 4 | 1 | 0 |
| Food law prosecutions | 1 | 1 | 1 |
| CBD products | 7 | 0 | 0 |
| EU exit | 3 | 1 | 0 |
| DNA test speciation | 1 | 0 | 0 |
| Religious slaughter/meat- halal, shechita etc. | 1 | 0 | 0 |
| Salmonella | 1 | 0 | 2 |
| Finance | - | 3 | 3 |
| Other | 40 | 39 | 54 |

Table 2: Complaints about the FSA response and outcomes

| Complaints and outcomes | 2019 | 2020 | 2021 | 2022 (Quarter 1 and 2) |
|---|------|------|------|------------------------|
| Total complaints received (escalations are not double counted) | - | 21 | 42 | 36 |
| Responded to as BAU correspondence | - | 9 | 33 | 36 |

Responded to within the formal complaints process at local level

| Complaints and outcomes | 2019 | 2020 | 2021 | 2022 (Quarter 1 and 2) |
|---|------|------|------|------------------------|
| Responded to within the formal complaints process at local level | 15 | 11 | 10 | 0 |
| Not upheld | 6 | 6 | 5 | 0 |
| Partially upheld | 9 | 4 | 3 | 0 |
| Upheld | - | 1 | 2 | 0 |

Responded to by the complaints co-ordinator (either on escalation from local or directly)

| Complaints and outcomes | 2019 | 2020 | 2021 | 2022 (Quarter 1 and 2) |
|--|------|------|------|------------------------|
| Responded to by the complaints co-ordinator (either on escalation from local or directly) | 4 | 2 | 1 | 0 |
| Not upheld/declined | 2 | 0 | 0 | 0 |
| Partially upheld | 2 | 1 | 1 | 0 |
| Upheld | 0 | 1 | 0 | 0 |
| Withdrawn/unresolved | 0 | 0 | 0 | 0 |

Responded to by the Chief Executive

| Complaints and outcomes | 2019 | 2020 | 2021 | 2022 (Quarter 1 and 2) |
|-------------------------|------|------|------|------------------------|
|-------------------------|------|------|------|------------------------|

| | | | | |
|--|---|---|---|---|
| Responded to by the Chief Executive | 3 | 0 | 1 | 1 |
| Not upheld/declined | 1 | 0 | 0 | 1 |
| Partially upheld | 2 | 0 | 1 | 0 |
| Upheld | 0 | 0 | 0 | 0 |
| Withdrawn/unresolved | 0 | 0 | 0 | 0 |

Referred to the Parliamentary and Health Service Ombudsman

| Complaints and outcomes | 2019 | 2020 | 2021 | 2022 (Quarter 1 and 2) |
|---|-------------|-------------|-------------|-------------------------------|
| Referred to the Parliamentary and Health Service Ombudsman | 0 | 2** | 0 | 0 |
| Partially upheld | 0 | 1 | 0 | 0 |
| Declined | 0 | 1 | 0 | 0 |

*36 BAU cases YTD 2022:

- 17 sunflower/rapeseed/other oil
- 8 other FSA policy related – CBD, thoroughly cooked beef burgers, tackling obesity, animal welfare
- 7 Local Authority issues – no response from LA so referring to FSA, hygiene ratings/inspections etc
- 2 website/email/text issues – text alerts and survey emails sent multiple times
- 2 product recall/incidents related – including a follow up re: pancytopenia in cats

**Both 2020 PHSO cases originated as complaints in 2019.