

Annual Report: Freedom of Information Requests, External Complaints, and Internal Whistleblowing

FSA 23-09-05 - This annual report informs the Board's oversight of these three areas of work. The Board is asked to agree the priorities set out below.

1. Introduction

1.1 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.

2. Evidence and Discussion

2.1 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 (see Annex).

3. Freedom of Information

3.1 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.

3.2 In the last year, the KIMS team have improved the operating procedure for managing FOI requests. This has clarified roles so that the business area is responsible for searching for information and providing expert advice, and the KIMS team are responsible for the request consideration, decision, and response drafting. This has reduced the burden on business areas.

3.3 Refer to **Table 1**. In 2022 the FSA recorded 157 FOI requests and have recorded 117 in the first half of 2023. The figures show that the trend of requests decreasing year on year for the last four years has ceased and that requests have started to rise again this year. This could indicate an increased awareness of FSA activities from consumers and businesses but can also be partly explained by an increase in 'round robin' requests to government seeking commercial and organisational information.

3.4 The trend across all monitored bodies was a rise in 2022 of 17%. Similar statistics are not yet available for 2023. For the FSA there was no material difference in request numbers between 2021 and 2022, but for 2023 we appear to be in line with the national pattern with an indicative increase of 33% so far.

3.5 The FSA's compliance with the statutory timescales for answering requests remains high at 100% for 2022 and 99% so far for 2023. This compares to the 2022 average of 89% across 41 government departments.

3.6 In 2022, two FSA decisions were escalated by a requestor to the Information Commissioner's Office (ICO). As 157 requests were recorded in 2022, this constitutes a 1.3% referral rate, which remains lower than the average for Government Departments at 1.7%. The FSA's decision on disclosure of information was upheld by the ICO in both cases. In the first case, the ICO upheld the disclosure decision but advised that the initial handling of the request was incorrect. We have now improved our processes to prevent this from recurring. In the first half of 2023, the FSA has not been notified of any appeals to the ICO.

3.7 The subjects addressed by FOI requests are very diverse, however, the two most popular topics remain animal welfare/meat, specifically around animal welfare breaches and volumes of animals slaughtered, and general requests relating to the technology products we use and when we intend to replace them.

3.8 As part of continuous improvement of the FOI service the priorities for the next year are to:

- implement a case management system to drive improved data collation.
- focus on training and engagement; ensuring colleagues at all levels throughout the FSA can recognise and understand how to effectively escalate statutory requests for information under the amended process.

4. External Complaints

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

4.2 Most formal complaints are managed 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).¹

4.3 Refer to **Table 2**. In 2022, the number of complaints that entered the formal process remained low and continued a reducing trend seen over the preceding two years. This is set against a backdrop of continuing efforts to improve accessibility and the process experience for those wishing to express dissatisfaction with the FSA.

4.4 This is reflected in the increased number of cases handled as 'business as usual' (BAU) which reached 56 in 2022. In making the judgement to respond to a complaint as a BAU item, rather than refer the issue through to the formal complaints process, one or more of several factors are considered. 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 typically be connected to a live food incident in which higher volume contacts are being received across the FSA).

4.5 This approach helps ensure that issues are responded to quickly and at the first point of contact, without recourse to a formal process, but at the same time not limiting access to it. An indication of this approach working effectively is that in 2022 only one complainant asked that their concern be tracked into the formal process after they received a BAU response.

4.6 As work continues to build on this approach, in May 2023, the FSA launched internal guidance on resolving complaints informally and before they are escalated to a formal route. Alongside this, the Complaints Team began delivering sessions for public-facing teams across

the FSA, to emphasise best practices in complaint handling and improve consistency for complainants.

4.7 The formal complaints addressed in 2022 and within the first two quarters of 2023 concerned the following topics: advice provided by the Helpline; the behaviour of an official whilst attending a food business; the extent to which a food business was being properly regulated; consultation and transparency on charge rates; novel food assessment; and the management of applications to place Cannabidiol (CBD) product on the market.

4.8 Lessons learnt from these cases included: how initial complaints are processed at a team level to minimise the extent to which the complainant is passed to other referral points; maintaining better communication with stakeholders when processes are experiencing a delay; clearer communications at the point of delivering official controls and the related use of the official Day Book; the need to review a reporting template used within Field Operations; and ensuring that formal complaints are referred to the central team for advice immediately.

4.9 In 2022 one case partially upheld by the Chief Executive concerned the publication in March 2022 of charge rates for enforcement activity undertaken by the FSA within the meat sector. The Chief Executive concluded that at the time, the FSA could have provided more information when outlining the detail behind these charge rates. As remedial steps had been taken by the time the complaint was responded to, no additional action was required.

4.10 Looking forward, work continues to finalise an assessment against the new PHSO 'UK Central Government Complaint Standards.' Although the FSA generally aligns well against these (the FSA was a member of the working group the PHSO established when developing these standards), recommendations for additional action will next be tabled at the FSA's Business Development Group.

5. Internal Raising a Concern and Whistleblowing

5.1 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.

5.2 In 2022, after initial assessment and further discussion with the individuals, no referrals were accepted for investigation through this route. Typically, the reasons for not accepting a referral for investigation are it lacks a wider public interest context, there is insufficient specificity to scope further work around the allegation, or it is more relevant to an HR process e.g., it is a personal grievance. In 2023 so far, 2 cases have been accepted for investigation both of which are ongoing.

5.3 This route is not used to address personal concerns about alleged bullying, harassment, or discrimination (BHD). Separate HR processes exist to provide an individual with the mechanism and the support to raise such concerns. However, BHD is included within the wider subject area of 'Speak Up' and features within the process review/improvement and awareness-building activity the FSA undertakes in this area each year.

5.4 The annual Civil Service People Survey (CSPS) 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.

5.5 The table below presents the results, taken from the CSPS, for the last three years.

Civil Service People Survey FSA Results - CS Code Questions

CS People Survey Question	FSA 2020	FSA 2021	FSA 2022	CS Benchmark 2022
Are you aware of the Civil Service Code?	95%	91%	93%	89%
Are you aware of how to raise a concern under the Civil Service Code?	77%	74%	75%	68%
Are you confident that if you raised a concern under the Civil Service Code in the FSA it would be investigated properly?	79%	76%	79%	75%

5.6 The Covid pandemic did mean that momentum was lost as resources had to be directed elsewhere but 2022 presented the opportunity to return to focused awareness-building activity. Using an analysis of the above survey data, those teams that returned a lower result (when compared to the overall FSA score) or showed a year-on-year reduction were targeted for input from the Complaints and Transparency Team. These areas, in almost every case, subsequently saw an increase in their CSPA performance.

5.7 The same approach has been adopted in 2023 and to add to this the Head of Standards and Reward and the FSA's Inclusion Lead have commenced a series of meetings with staff network chairs to develop the discussion around 'Speak Up'. This work is in addition to the annual Civil Service 'Speak Up' awareness campaign?in November 2023, planning for which is underway. This campaign is informed by resources developed by the Cabinet Office, but which are tailored to meet FSA needs.

6. Conclusions

6.1 The Board is asked to note and agree on the following priorities:

- to raise awareness and ensure all colleagues are aware of how to recognise requests for recorded information and their responsibility to direct these to KIMS.
- through the use of CSPA data, engagement with staff networks, alignment with good practice shared across government and learning from individual cases, continue to focus on improving awareness of, and confidence in, the FSA's 'Speak Up' arrangements.

7. Annex

Table 1: Requests made under the Freedom of Information Act 2000 – key statistics (Requests).

Requests	2020	2021	2022	2023 (Q1 - Q2)
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Requests dealt with as BAU	51	59	8	7
Requests dealt with under FOI	146	130	157	117
Total no. received	197	189	165	124

Table 2: Requests made under the Freedom of Information Act 2000 – key statistics (Compliance).

Compliance	2020	2021	2022	2023 (Q1 - Q2)
FOI requests responded to within 20 working days or with a permitted extension to the deadline.	143 (98%)	126 (97%)	157 (100%)	116 (99%)

Table 3: Requests made under the Freedom of Information Act 2000 – key statistics (Outcome of FOI requests).

Outcome of FOI requests	2020	2021	2022	2023 (Q1 - Q2)
No information held	13%	16%	16%	21%
Information supplied in full	32%	23%	45%	39%
Information supplied in part	27%	33%	17%	16%
All information withheld	10%	13%	8%	9%
Advice and assistance provided	16%	14%	13%	12%
Withdrawn	2%	0%	1%	3%

Table 4: Requests made under the Freedom of Information Act 2000 – key statistics (Internal Reviews (appeals against the original response)).

Internal Reviews (appeals against the original response)	2020	2021	2022	2023 (Q1 - Q2)
Number of Reviews	3	4	4	6
Of these still in progress	0	0	0	2
Of those original decision upheld	2	3	1	3
Of those appeal partially upheld	1	1	2	1
Of those appeal fully upheld	0	0	1	0

Table 5: Requests made under the Freedom of Information Act 2000 – key statistics (The number of times certain exemptions were engaged by the FSA).

Internal Reviews (appeals against the original response)	2020	2021	2022	2023 (Q2 - Q3)
s.22 Information intended for future publication.	1	4	3	1
s.30 Investigations and proceedings	4	5	6	5
s.31 law enforcement	8	13	5	7
s.35 Formulation of government policy	1	2	1	0
s.36 Prejudice to conduct of public affairs	1	0	0	0
s. 38 Health and Safety	2	4	3	1
s.40 Personal information	28	18	20	7
s.43 Commercial interests	19	22	12	8

Table 6: Requests made under the Freedom of Information Act 2000 – key statistics. (Subject of FOI Requests (Percentage)).

Subject of FOI Requests (Percentage)	2021	2022	2023 (Q1 - Q2)
Meat Operations/Animal Welfare	20	20	18
Enterprise IT	15	18	12
People, performance, pay and reward	14	11	9
Business, finance, and contracts	12	12	8
Food safety, incidents and foodborne disease	7	6	10
DNA speciation and Gene Modification	1	3	7
Enforcement and Prosecutions	6	4	5
Strategy, Policy, research, and reports	6	3	10
Labelling/Allergens/ingredients	2	6	5
Novel/Traditional Food Applications	0	4	4
Food Crime/Fraud	4	0	3
Other	13	13	9

Table 7: Complaints about the FSA - response and outcomes (Responded to as BAU correspondence).

Outcome	2020	2021	2022	2023 (to end of June)
Responded to as BAU correspondence	9	33	56 (footnote 1)	8

Table 8: Complaints about the FSA - response and outcomes (Responded to at 'Local' level).

Outcome	2020	2021	2022	2023 (to end of June)
Responded to at 'Local Level'	11	10	5	2
Not upheld	6	5	4	0
Partially upheld	4	3	1	2
Upheld	1	2	0	0

Table 9: Complaints about the FSA - response and outcomes (Responded to by the Complaints Co-ordinator (either on escalation from 'local' or directly)).

Outcome	2020	2021	2022	2023 (to end of June)
Responded to by the Complaints Co-ordinator (either on escalation from 'local' or directly)	2	1	4	2
Not Upheld / Declined	0	0	4	2
Upheld	1	0	0	0
Partially Upheld	1	1	0	0
Withdrawn / Unresolved	0	0	0	0

Table 10: Complaints about the FSA - response and outcomes (Responded to by the Chief Executive)

Outcome	2020	2021	2022	2023 (to end of June)
Responded to by the Chief Executive	0	1	3	1
Not Upheld / Declined	0	0	2	0

Outcome	2020	2021	2022	2023 (to end of June)
Upheld	0	0	0	0
Partially Upheld	0	1	1	1
Withdrawn / Unresolved	0	0	0	0

Table 11: Complaints about the FSA - response and outcomes (Accepted for investigation by the Parliamentary and Health Service Ombudsman).

Outcome	2020	2021	2022	2023 (to end of June)
Accepted for investigation by the Parliamentary and Health Service Ombudsman	2 (footnote 2)	0	0	0
Partially Upheld	1	0	0	0
Declined	1	0	0	0

1. 56 BAU cases in 2022:

- 22 Sunflower oil substitution
- 12 Local Authority issues (Hygiene ratings, complaints about LA service or practices)
- 6 CBD (product applications, not being on the public list)
- 4 product recalls or product related issues
- 3 Comms/website/survey/online service-related issues
- 2 pet food
- 2 health/food nutrition concerns
- 1 animal welfare
- 1 consultation concern

- 1 NFCU investigation issue
- 1 concern about fake certificates being sold online.
- 1 Trade Association/Field Ops working group issue.

2. Both 2020 PHSO cases originated as complaints in 2019