

Chief Executive's Report to the Business Committee

FSA BC 24/06/03

Incidents

1. Since my last report to the Committee in March, the Incidents and Resilience Unit has been co-ordinating the FSA's response to highly pathogenic avian influenza H5N1, discovered in dairy cattle in the United States. Avian flu has now mutated to be hosted in a mammal, though so far has only caused mastitis. It has been passed to a farm worker, who had conjunctivitis symptoms only, and to farm cats on an affected farm in the USA. The US authorities found virus particles in milk, but further testing confirmed that pasteurisation inactivates the virus. The FSA undertook a [rapid risk assessment](#), published on 9 May, which confirmed our advice that avian flu poses a very low food safety risk to UK consumers. This finding is based on our knowledge about the H5N1 virus and its transmission routes which are not normally through food or the gut, and the fact that the small amounts of imported milk and colostrum from the US are almost entirely pasteurised or freeze-dried. We are working closely with Defra, the Animal and Plant Health Agency (APHA) and the UK Health Security Agency (UKHSA) to monitor the situation within the context of public health, food safety and workplace safety. Defra is leading the UK response, as it is presenting as an animal health issue.

2. The Incidents and Prevention teams have been involved in a response to an outbreak of *Shiga*-toxin producing *E. coli* (STEC) first notified in November 2023, and to which 36 confirmed cases across the UK have been linked. Consumer consumption histories indicated a possible, but unconfirmed, link to raisins from Turkey. We have contacted Turkish authorities to gain assurance around the production processes involved and we are also liaising with UK retailers to obtain assurances that ready-to-eat (RTE) raisin products more generally being placed on the market are safe. We are keeping our risk management advice under review along with consideration of any potential proactive communications that may be needed. Border Control Posts have also been appropriately advised via the Imports Early Warning System to look out for this commodity from Turkey and encouraged to carry out surveillance sampling.

3. The Incidents team have been investigating the re-emergence of an outbreak of *Listeria monocytogenes* after a new case was detected in January, bringing the total number of confirmed cases linked to this particular cluster to ten. Nine of those cases have required hospitalisation, and sadly four people have died with the cause of death being recorded as *Listeria* infection in two instances. We have been working with UKHSA, local authorities, retailers and food business operators directly in light of the seriousness of the outbreak. FSA food chain analysis identified a RTE chicken manufacturer, which led to product and environmental sampling, and in turn the detection of the outbreak strain in the environment of the production facility. The site has since ceased operations, on a permanent basis, but not as a direct link to the outbreak findings.

Imported High Risk Food and feed Not of Animal Origin (HRFNAO) - Review Three

4. We have a statutory requirement to review imported HRFNAO on a six-monthly basis. Since EU-Exit, the FSA has completed two reviews and our last update 2024/120 came into force on

the 7 March 2024. While decisions on these changes are proposed by the executive and signed off by ministers through the process of laying a statutory instrument, I have now agreed with the Chair of the FSA and the Chair of Business Committee that these changes will be reported to the Business Committee. The third review is underway, and we are proposing to make 25 changes to the controls that we apply at the border.

The 25 proposed changes in the third review are:

- five commodities will have controls removed or reduced because we have seen improved compliance at the border. These are groundnuts from Brazil (pesticide residues), and guar gum (pesticides), nutmeg (aflatoxins), peppers (aflatoxins) and sesamum seeds (pesticides), all from India.
- two commodities: tea from China (pesticides) and sesamum seeds from India (salmonella) which we already control, will have checks increased due to poor compliance at the border.
- We will be introducing controls on 15 new commodities due to concerns that they present a risk to public health. These commodities have been identified through the Early Warning System (EWS), which is an internal FSA report that brings together a range of information and data on imported food compliance, as well as sampling data and intelligence from other sources. The 15 commodities include nuts from Georgia (aflatoxins); cumin seeds, fenugreek leaves and yardlong beans from India (pesticides); basil and mint from Israel (pesticides); mukunuwenna from Sri Lanka (pesticides); grapefruits from Turkey (pesticides); sesamum seeds and tahini from Turkey (salmonella); groundnuts paste from Madagascar (aflatoxins); groundnuts paste from Argentina (aflatoxins).
- Three commodities already under control will have Combined Nomenclature (CN) codes updated, extending the range of commodities that are subject to checks at the border. For example, if we control imported peanuts, which has a defined CN code, we may also wish to control crushed peanuts or peanuts that are milled into flour, all of which have different CN codes. CN codes are TARIC (TARif Intégré Communautaire; Integrated Tariff of the European Communities) codes, which are used to identify imported commodities for Customs purposes to help ensure the correct tariffs are applied. CN codes are used by HMRC to hold the consignment at the port until the Port Health Authority (PHA) have completed food safety checks.

5. As with all changes to food law, a public consultation took place on these proposed changes between 14 March and 25 April 2024. The consultation received eight responses and overall, our proposed amendments have been welcomed by industry. Consultation responses raised issues such as the sampling capacity of PHAs who are responsible for checks on imported HRFNAO, justification for the inclusion of basil and mint from Israel into Annex I and clarification as to whether there are any exemptions available on Chinese tea which had already been sampled when placed on the EU or NI market. Concerns were also raised on potential costs associated with increased checks at the border applied to imported tea from China.

6. We will be shortly making a notification of our proposed amendments to the World Trade Organisation and, post-election and subject to ministerial clearance, our intention is to lay the Statutory Instrument (SI) in England and Wales around October. We would expect it to become operable in November 2024. Food Standards Scotland are taking the same steps in Scotland.

National Food Crime Unit

5. **Operation Hawk** is a fraud investigation concerning the misrepresentation of origin of cooked meats which attracted significant media interest in 2023. An initial evidential file has now been submitted to the Crown Prosecution Service (CPS) for their review. Pre-charge engagement regarding our disclosure obligations continues.

6. **Operation Atlas** was an ongoing Proceeds of Crime Act investigation that has led to a successful confiscation order against Jack Finney who was convicted of supplying DNP (2,4-Dinitrophenol), Class C drugs in the form of steroids and other controlled drugs and prescription only medicines. £15,000 was recovered and paid to the HM Courts and Tribunals Service. Under the Proceeds of Crime incentivisation scheme, a percentage of this (approximately £2,800) will be paid back to the FSA.

7. **Operation Mantis.** Following a lengthy and complex investigation into the production, supply, and distribution of “Smokies” to towns and cities across the UK, the CPS has authorised charges against four suspects. The offences include conspiracy to supply unsafe meat to the market, causing unnecessary suffering to animals and money laundering offences. The defendants were due to appear in court in May 2024.

Field Operations

8. In recent months we have been attempting to mitigate the impact of new Home Office immigration policy changes that have increased minimum salaries for overseas skilled workers applying for new visas. This is covered elsewhere in the Business Committee agenda.

9. Operations have continued to achieve 100% service delivery throughout the final period of 2023/24 for planned and unannounced inspection visits and audit activity as scheduled across approved establishments, including slaughterhouses, game handling establishments and cutting plants in England and Wales. There were 824 establishments approved as of 31 March 2023/24, compared with 861 on 31 March 2023 - a 4% decrease. Q4 throughput data for cattle and sheep indicates a 6% decrease on this time last year and a 2% decrease for pigs, although we have seen a 2% increase for poultry.

10. In Northern Ireland, the *Department of Agriculture, Environment and Rural Affairs* has delivered scheduled service across the 55 approved premises they cover. Cattle throughput is up 3%, while sheep, pigs and poultry all show decreased throughput at -7%, -3% and -1% respectively when compared with Q4 2022/23.

11. The audit performance report shows that we continue to exceed our 90% target for audits of FSA approved meat premises in England and Wales and during 2023/24 we have completed 606 full audits and 276 partial audits.

Prosecutions and litigation

12. Since the last report in March 2024, the FSA received the judgment in the Monk Fruit challenge. This was the first regulated product Judicial Review for the UK, and we were unsuccessful in defending it. The novel food consultation process (also known as an Article 4 consultation request) is available to businesses who are unsure of the novel food status of their product(s) and have evidence of a significant history of consumption of the food in the UK or European Union (EU) prior to May 1997. The FSA had determined in 2022 that monk fruit decoctions would be considered to be a novel food and therefore did not have a significant history of consumption. The court found the FSA misdirected itself when we applied the relevant legal tests to prove history of consumption and quashed the decision. Costs were ordered against the FSA. The deadline for the reconsideration of the decision is 21 June 2024, and is in train.

13. We have reviewed the judgment carefully. We have improved our processes significantly since 2022 when this decision was being considered. These include:

a. **Operational Delivery.** Internal guidance is now provided for each stage of the process, (including the order the steps need to happen in and the importance of this).

- b. **Record keeping.** All information relevant to a decision (correspondence, meetings, internal discussions and decisions) are captured on our system in a central location and can be accessible to an auditor reviewing it at a later date.
- c. **Capability.** We now have more experience of article 4 requests. We are also now providing formal and on-the-job training for risk managers that was not available at the time of this decision.
- d. **Capacity.** We have significantly increased the capacity of the novel foods team to reflect the caseload of CBD (Cannabidiol) (which placed a strain on the team in 2022).
- e. **Communication.** We have established a dedicated stakeholder engagement team within the regulated product service and have a more formal approach to engaging applicants (both in meetings and via correspondence) that should reduce the chance of miscommunication occurring.

14. There was a successful criminal prosecution concerning the sale of Raw Cow's Drinking Milk. Two food business operators who operated as a partnership, pleaded guilty to placing unsafe food on the market and were fined £1,360 collectively and were ordered to pay the FSA's legal costs of £8000.

15. There have been no unsuccessful prosecutions in the last period.

Finance

16. As of 31 March 2024, the FSA reported a full year provisional outturn of £141.4m against a limit of £145.6m (excluding depreciation). This equates to £4.2m, or 3%, underspend against budget. No HM Treasury (HMT) budget limits have been breached.

17. Of this £4.2m underspend, £3.9m relates to Westminster (£2.2m RDEL and £1.7m CDEL); £0.2m to Wales; and £0.1m to Northern Ireland. In total, this represents a £0.7m increase in the overall underspend position since our last reported figures as of January 2024.

18. When factoring in HMT cost classification, and separating out the devolved nations, we had an overall Westminster underspend of £2.2m (2%) against our resource budgets (RDEL), and underspend of £1.7m (13%) against our capital budgets (CDEL). These results are provisional, as they remain subject to year-end adjustments and to audit. You will recall that, as standard, HMT expect departments' final outturn to land within 1% of budget.

19. In the last Business Committee, we reported a P10 position of a £1.5m RDEL underspend. Since then, the RDEL forecast spend dropped by a further £0.7m, leading to the final provisional outturn of £109.4m (£2.2m below budget). The £0.7m net reduction comprised:

- a) £0.5m headroom reduction. As a matter of course, we hold £0.5m headroom in our RDEL budgets in case of unforeseen audit adjustments – which may still materialise as National Audit Office (NAO) undertake the year-end audit. Replacing the forecast with actual figures at P12 means this naturally falls out of our provisional outturn.
- b) £0.4m staff cost reduction. This included several small differences between P10 forecast and full year actuals (£0.2m) and the annual leave accrual required for accounting purposes (£0.2m). The latter cannot be posted in the accounts until full year staff costs are known, and so will be adjusted for. The current estimate of this is £0.2m for Westminster, which will counteract the reduction.
- c) £0.3m local authority spend reduction. £0.15m of this reduction relates to new burdens liabilities linked to delivery of food standards controls, as the FSA do not have the legal authority to issue payments directly to the local authorities under Department for Levelling Up, Housing and

Communities (DLUHC) new burdens guidance. The finance team are working with the Regulatory Compliance team and DLUHC colleagues to identify a resolution to this. The remaining £0.18m relates to lower uptake from local authorities than expected on directed sampling and official controls grants.

d) £0.4m increase, due to legal costs incurred in Q4.

20. Whilst the CDEL underspend appears large proportionately (13% vs budget), the budget is split against four areas, three of which are ringfenced, therefore the ability to repurpose underspends is limited. The final provisional outturn is broadly in line with that forecast at the end of January (£11.8m vs £11.9m).

21. The Northern Ireland and Wales positions remain consistent with those reported at the last Business Committee and have been relatively stable across the year to date. Northern Ireland's provisional outturn shows a total underspend of £0.1m (1%) against budget. Wales's provisional outturn shows a total underspend of £0.15m (4%) against budget. The underspend will reduce to c.£0.1m following the posting of year-end adjustments.

22. All figures provided above remain subject to audit. The NAO prioritise the audit of the 13 largest government departments and therefore we anticipate the majority of FSA year-end audit work to take place in September and October. This should allow the NAO to issue their Audit Completion Report to be presented to Audit and Risk Assurance Committee in on 26 November, and for the accounts to be signed, certified and laid before Parliament in December.

23. Moving into 2024/25, we are in the process of reviewing our first forecasts of the financial year. The Westminster budgets have increased since last reported in March, due to the receipt of additional ringfenced funding via main estimates. This included £1.5m funding from Defra for Windsor Framework activity, and £1.3m of Shared Outcomes Funding from HMT for the continuation of the PATH-SAFE programme.

24. FSA Westminster started the year with a balanced budget, albeit with known pressures against science budgets. The budget will come under additional pressure from recent Home Office changes to minimum salary rules for overseas workers. The impact of this is still being assessed at the time of writing and is subject to a separate paper on the agenda.

25. FSA Wales and Northern Ireland have had their 24/25 budgets confirmed by Welsh Government and NI Department of Finance respectively, with both receiving settlements broadly in line with 23/24 (£5.2m and £12.5m respectively). All entities will therefore be under pressure to absorb the impact of pay and non-pay inflation with their budgets. FSA Northern Ireland have also submitted a bid to NI Department of Finance for an additional £4.5m of Windsor Framework funding, the outcome of which will be communicated in June.

26. The Chancellor's 2023 Autumn Statement included a commitment to cap Civil Service headcount at September 2023 levels, and to decrease back to 2019 levels by the end of the next Spending Review. FSA Westminster are therefore subject to a headcount limit for 2024/25, though the implications of missing this have yet to be formally communicated. We set 2024/25 headcount on the basis of affordable posts but recognise that we are carrying risk as this headcount level is higher than the HMT limit. The Executive Management Team (EMT) and I will continue to keep the headcount position under review as we progress through the year.

People & Resources

27. **Pay.** We are waiting for the Civil Service pay remit guidance for 2024 and expect it could be June before it is published. In advance of its publication, EMT are engaged in identifying priority areas and/or workforce issues where pay is a contributory factor. Although the FSA cannot

commence formal pay negotiations before our pay remit has been approved, discussions with trade unions can take place to help inform the content and nature of the FSA's pay remit. The FSA and its trade unions commenced informal pay discussions in April.

28. Reward and Recognition. The FSA Reward and Recognition Scheme makes use of a ring-fenced budget and enables us to reward excellent and exceptional one-off achievements. The year ending March 2024 saw a total of 2,786 awards totalling £407,250 made to 1,286 staff up to and including Grade 6. This compares to 3,016 awards costing £373,420 made to 1,516 employees in year ending March 2023.

29. Inclusion. We are now a Disability Confident Leader, the highest level of the Disability Confidence Scheme. This is a requirement of the National Disability Strategy for all Departments to achieve level 3. The scheme, which is externally validated by Business Disability Forum, looks at our processes within recruitment, learning and development and our Disability Champion and Networks. We had a particular commendation on our approach to recruitment and the design including the structure, content, and accessibility of our candidate packs.

30. Recruitment. Thirty-six campaigns have gone live during March and April. We are working towards our People Plan commitment to achieve 50% of Meat Hygiene Officers being employed Civil Servants (as of April 2024 44% are employed Civil Servants) campaigns are now live for the next Trainee Official Auxiliaries and Qualified Official Auxiliaries campaigns. We will be recruiting for 21 roles in total across the North, East and West regions.

31. People Plan 2023-2026. In quarter 4 of 2023/24, we confirmed our strategic capabilities forecast and the resultant corporate development plan for 24/25. EMT signed off our Leadership and Management Framework (FSA Ascend) in preparation for its launch during Q1 of 24/25. We also finalised and launched our FSA Management Charter which articulates our expectations of people managers in line with the newly developed Civil Service management standards: this lays the foundations for the introduction of our new mandatory management objective around performance management.