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**DRAFT MINUTES OF THE FSA OPEN BOARD MEETING HELD ON 05 March 2013 AT AVIATION HOUSE, LONDON, FROM 13.00 TO 16.30**

**Present:**

Jeff Rooker, Chair; Tim Bennett, Deputy Chair; Margaret Gilmore; Jeff Halliwell; John Spence; Jim Wildgoose; Paul Wiles; Liz Breckenridge; Henrietta Campbell, Sue Atkinson

**Officials attending:**

Catherine Brown, Chief Executive  
Andrew Wadge, Chief Scientist

**Also attending:**

Pippa Brown, FSA Board Secretary  
Andrew Rhodes, FSA Director of Operations  
Alison Gleadle, FSA Director of Food Safety  
Catherine Bowles, FSA Review of Delivery of Official Controls (RDOC) Programme Manager  
Gael O'Neill, FSA RDOC Evidence Programme Manager  
Steve Wearne, FSA Director Wales  
Charles Milne, FSA Director Scotland  
Rod Ainsworth, FSA Director of Legal Services  
Alison Spalding, FSA Head of Better Regulation and Sustainability

**WELCOME AND ANNOUNCEMENTS**

1. The Chair welcomed all to the meeting including observers both in the room and online. The Chair welcomed Sue Atkinson back from her sabbatical in the field of Public Health in New York and announced the extension of her term until 31 December 2013. The Chair acknowledged that this had been due to be John Spence's last Board meeting; however he had agreed to extend his term until the end of May 2013. The Chair reminded Board Members to declare any relevant interests before discussions.
2. Under Any Other Business (AoB), the Chair said John Spence had given notice of his intention to raise the FSA's advice to the Department of Health (DH) regarding Folic Acid and the exchanges at Prime Minister's Questions on 27 February 2013.

**MINUTES OF MEETING HELD ON 22 JANUARY 2013 (FSA 13/03/01)**

3. A Board Member asked the Chief Executive for an update on the campylobacter "summit" referred to at paragraph 50 of the minutes. The Chief Executive replied that a meeting was still to be convened, although discussions at senior level with industry continued to take place.

**ACTION: Chief Executive**

4. Pippa Brown, Board Secretary, raised two minor corrections to the minutes. In paragraphs 28 and 30, it should read the Social Science Research Committee rather than the Social Science Advisory Committee and in paragraphs 60 and 64, the word "student" should be omitted. The Board agreed the minutes subject to these amendments.

**ACTION: Board Secretariat**

**ACTIONS ARISING (FSA 13/03/02)**

5. A Board Member asked for an update on Action 22Jan13/O/76 about the Food Hygiene Rating Scheme (FHRS) at the next Open Board meeting. Andrew Rhodes, Director of Operations, agreed to include an update in the next Operations Group Report. The Chair mentioned that he had been invited to meet with Rutland Council in the next couple of weeks and would use the opportunity to try to persuade them to adopt the FHRS.

**ACTION: Director of Operations**

**CHAIR'S ORAL REPORT**

6. The Chair reported that since the last Board meeting:
- He had, together with the Chief Executive, appeared in front of House of Commons Environment, Food and Rural Affairs (EFRA) Select Committee on 30 January 2013
  - Either he, or the Deputy Chair, had been present at the meetings Owen Paterson, Secretary of State and David Heath, Minister of State for Agriculture and Food, of the Department for the Environment, Food and Rural Affairs (Defra) had held with the food industry regarding the horsemeat incident
  - On 19 February 2013 he had visited the Worcestershire County Council Scientific Services laboratory in Worcester which was giving evidence to the EFRA Select Committee on 5 March 2013
  - He had attended the Scottish Food Advisory Committee (SFAC) in Aberdeen on 26 February 2013
  - He had, with Liz Breckenridge, visited Macphie, the largest independent food ingredients manufacturer in the UK in Stonehaven on 26 February 2013 and encouraged other Board members to visit
  - On 27 February 2013 he had appeared with the Chief Executive and the FSA Director Wales in front of the National Assembly for Wales Environment and Sustainability Committee regarding the horsemeat incident
7. Scottish Government Consultation on Creating a New Food Body for Scotland  
The Chair said that on 28 February 2013 the Scottish Government had published its three month consultation on the creation of a new food body for Scotland. He had agreed informally with Scottish Ministers that the FSA would not contribute to the consultation as the FSA was not an ordinary stakeholder, rather part of the subject of the consultation. At the end of the consultation, the FSA would be ready to offer its opinion to the Scottish Government on views gathered during the consultation. The Chair said Scottish Ministers had been clear, open and consistent in saying that the creation of the new food body was not part of the Scottish independence agenda nor was it due to the horsemeat incident. Scottish Public Health Minister Michael Matheson had been very clear in stating to the Scottish Parliament that the impetus had come from the 2010 Westminster machinery of government changes on which Scottish Ministers had not been consulted. Scottish Ministers wanted a holistic food body at arm's length from Ministers which did not deal with the economic sponsorship of food.

**CHIEF EXECUTIVE'S REPORT (inc quarterly management report) (FSA 13/03/03)**

8. General Activity Update

The Chief Executive highlighted two particularly useful meetings from her written report; the British Meat Processors Association Management Council Dinner and the Trading Standards Institute (TSI)/Chartered Institute of Environmental Health (CIEH) Year Ahead conference.

9. In response to a question the Chief Executive confirmed that during her meeting with Marks & Spencer's, they had discussed interpretations of the EU Food Information Regulations with regard to allergen labelling. The Chief Executive said legal advice differed and the situation might only be clarified a case came to court in the future.

10. Testing alternative controls to prevent cross contamination proposed by stakeholders

The Chief Executive clarified that the letter to businesses and Local Authorities (LAs) regarding the testing of alternative controls to cross contamination was to gather ideas before the study of alternatives started. The Chief Executive said the study would take some time but progress was being made at an appropriate pace.

11. Food Hygiene Rating Scheme (FHRS) and Food Hygiene Information Scheme (FHIS)

A Board Member asked whether, despite the UK wide PR campaign to promote the FHRS and FHIS, the relevant rating in the FSA performance management report should have been changed from green/amber to green as there was no UK wide advertising campaign. The Chief Executive said green did not mean a case of "job done" and a strategic paper on the FHRS/FHIS, which would include objectives for the scheme and measures of its success, was already planned to come to a future Board meeting.

**ORAL REPORT ON HORSEMEAT INCIDENT**

12. In introducing this item, the Chair drew attention to the critical work that the FSA and its delivery partners did in protecting public health from risks associated with food. Food safety remained the FSA's top priority and focus area, as approximately ten people died every week from a foodborne disease. The FSA, in conjunction with LAs, was involved in approximately 35 food incidents per week. The FSA published an annual report on food incidents. So far as food coming into the UK was concerned over 80% came in via four Border Inspection Posts, Felixstowe, Heathrow, Tilbury and Southampton and special checks were carried out on third country imports e.g. from outside the EU.
13. The Chair listed examples of food which had been prevented from entering the UK in January-February 2013: grape soda from the USA, pistachio powder from Turkey, peanuts from China, strawberries from Egypt, red chillies from India, groundnuts from Brazil and fresh mint from Morocco. The Chair said as part of its day to day work, the FSA also re-called products with allergen information missing or produced in unhygienic premises. Consumers should be reassured that authorities' vigilance on food safety was never ending, even when it did not make it into the media.

14. The Chair paid tribute to the civil servants, LAs and members of the food industry who had all worked hard since 15 January 2013 to deal with the incident in a proportionate manner and reassure consumers.
15. The Chief Executive gave an oral update report on the horsemeat incident to the Board, a copy of which can be found at Annexe A.
16. A Board Member asked for reassurance that Phenylbutazone, known as bute, in horsemeat did not make this a food safety incident. The Chief Scientist said it was clear on the evidence available that horsemeat was not per se intrinsically more risky than other meats. The incident involved horsemeat produced legitimately although sold under false pretences. The incident was about consumers being misled not food safety. None of the products including horse meat that had been tested for bute had shown any bute present, and the FSA's risk assessment, with which the CMO agreed, suggested that even if bute were ingested the risk to humans would be very low.
17. The Chief Scientist said bute was a common veterinary medicine the use of which should be recorded on the horse passport. Separately to the current incident, the FSA had started investigating the horse passport system in 2012. In a survey of horse carcasses 5% had been found positive for bute. The FSA had therefore increased checks on abattoirs and at the end of January 2013 the system of positive release had been introduced.
18. A Board member asked if products other than beef were being tested for adulteration. Andrew Rhodes, Director of Operations, said that although the priority was beef, testing by industry had looked at some non-beef products. The FSA had, in the past, tested lamb and would continue to do so. The FSA expected the food industry to secure its supply chain across the board.
19. A Board member suggested five areas to consider in the future to ensure such an incident did not happen again and re-build consumer trust in the food supply chain:
  - lessons learned from management of the incident itself
  - the complexity of long supply chains; any risks from shorter chains and industry's controls of its supply chains
  - the FSA's role as a strong, independent regulator vis-a-vis industry's responsibilities; how to continue information sharing outside the context of an emergency
  - the machinery of government changes; the need for greater clarity on roles and any other powers the FSA may need
  - the FSA's risk-based approach; a smarter way to focus on evidence; better horizon scanning; proper identification of strategic risks
20. The Chief Executive agreed that there were many different models of supply chains, all designed to maximise profits, and, as the regulator, the FSA needed to understand the controls industry had in place throughout these chains to protect the consumer.
21. A Board member said it was reassuring that the incident was not a food safety one but what if it had been? She asked if the FSA's focus on the consumer had

prevented relations with industry being established which in turn had prevented the FSA from acquiring knowledge about changes in technology, or to the food supply chain due to economic pressures, which could have better informed horizon spotting.

22. A Board member said the Memorandum of Understanding (MoU) with the Republic of Ireland (RoI) had not worked and barriers to co-operation would have to be overcome to build confidence in other EU Member States to share information on food incidents early.
23. A Board member said the fact that no one in the EU had picked up on the meat adulteration earlier was a failing of the European food system; the fact that deviance, fraud and criminality came as a consequence of rules and regulations should have been considered.
24. The Chief Executive agreed the FSA needed to understand why the MoU with the RoI had not worked and work with the RoI to make it better. The Chief Executive said the Defra Secretary of State had been leading the way in the EU to develop better early reporting of non-safety related food incidents. The Chief Scientist said that although none of the European food agencies had picked up on the meat adulteration earlier and information sharing would have to improve, a huge amount of sharing of data to prevent incidents did already take place across the EU through the European Food Safety Authority (EFSA) Advisory Forum, meetings of the EU Heads of Agencies and the Rapid Alert System for Food and Feed (RASFF) system.
25. A Board member said that if the food industry wanted to re-build consumer confidence and prevent further frauds, it would have to continue sharing information with the authorities in the UK and internationally. The Chief Executive agreed that the FSA could help industry overcome its reluctance to share commercially sensitive information by reviewing methods of submitting it and keeping it in confidence.
26. A Board member said the scale of fraud across the EU meant that the food industry's control of the supply chain had broken down reflecting inadequate auditing. The supply chain had become commoditised, driven by price rather than trust between the customer and the supplier. The FSA needed to engage with industry to engender change in this culture; otherwise the risk of fraud to consumers would continue.
27. The Chief Executive said a change in culture had already implicitly started; over the last few weeks, the FSA had been talking to industry about them taking full responsibility and getting outcomes, rather than the FSA assessing risks and installing processes to address them. Similar discussions had also been taking place about *Campylobacter*. In response to a Board member's concern that the FSA had been too complacent in seeking voluntary co-operation from industry, the Chief Executive said there was no evidence that the FSA had been complacent, rather there was evidence that the FSA had been alert to risks and taken action to prevent incidents. Nevertheless, it was always sensible to reflect on the cultural relationship between the regulator and the regulated.

28. The Deputy Chair said the supply chain had been discussed at the Board's recent strategic review, when the Board had identified the global nature of the chain and economic pressures on consumers as a high-level risk, but had not identified all the threats at a lower level. He said that it would be dangerous for the FSA, as the regulator, to stand back from industry and lessons learned from the incident would need to focus on what the chain would look like going forward rather than what the chain looked like before the incident. The Deputy Chair said consumers wanted good surveillance of the traceability of the supply chain and the Board should have been more robust when suspicions on the horse passport system arose as the FSA could not only think about consumers in the UK.
29. The Chief Executive agreed lessons learned would involve collaboration with all relevant parties and would focus on the changing situation. Andrew Rhodes agreed the FSA needed to consider consumers regardless of where they were.
30. Board members expressed sympathy with consumers confused as to the current division of responsibilities for food standards between UK government departments and across the four nations of the UK. For example, the FSA did not have responsibility for standards in food authenticity in England. Board members recognised that although the current arrangements had not prevented close working across departments to handle the incident effectively, it was a separate issue to reflect on whether the current arrangements gave the consumer enough clarity and reassurance. Board members expressed concern about the current division of food standards policy from its implementation and the difficulties that brought for those who bore the risks.
31. Board members agreed that expecting the market alone to protect consumers was not sufficient and was even dangerous. There had to be regulation for big and small businesses. This did not mean more inspectors, rather smarter regulation. The issue with risk-based regulation was that it created gaps for issues to fall through and more systematic regulation was required. The FSA was a regulator in a political climate which decried the "burden of regulation". However, the horsemeat incident had shown that there was a distinction between burdensome regulation and necessary regulation as a cost of running the food industry
32. The Chief Executive agreed that the incident had been a wake-up call around the need for good regulation. Food businesses had given spontaneous affirmation of the importance of a strong, clear-sighted independent regulator.
33. In response to questions from Board members about the incident itself, Andrew Rhodes said that the FSA did not know why the RoI had carried out its original tests for horsemeat; that the lessons learned about the FSA's relationship with the RoI after the cross-border dioxins issue had been tested under pressure and more lessons on sharing of information between countries would have to be learned.
34. A Board member summarised three areas the FSA needed to look at as part of its lessons learned exercise:
  - An incident management review; how the meat adulteration took place; a review of the FSA's internal incident management capability
  - Risk analysis; dealing with a complex food chain; the adequacy or otherwise

of the FSA's risk management systems; prioritisation of authenticity; making the best use of intelligence; using a risk-based approach and horizon scanning

- Right powers and structures; the need to clarify them across government; consider if the machinery of government changes (moving labelling to Defra) had left the FSA in the best place to protect consumers; the FSA's relationship with industry; industry's responsibilities; how LAs fit in; consider if the FSA needed greater powers of audit; consider the need for a cultural shift

35. In summing up, the Chair said:

- The incident was still ongoing and the first information from the LA sampling exercise would be published in week commencing 4 March 2013
- The FSA would continue to consider lessons they could learn from the incident
- Problems with bute and the horse passport system had been identified, acted on and resolved before the horsemeat incident had occurred but while there was only one authority for cattle passports, there were 70 for horse passports
- If retailers chose to change their supply chains in months to come, as they had indicated, then the FSA would need to work with other regulators to look even more closely at meat leaving abattoirs and cutting plants in the UK
- If the incident had been one of food safety, would the FSA have had the necessary powers to act; the FSA had not had the powers to act on food authenticity
- Ownership of big food companies by venture capitalists could increase the risk of corners being cut to maximise short term profits
- The Scottish Government was taking positive steps towards creating a holistic food body from which the Westminster Government may wish to learn in the future
- There may have been confusion in the media as to who was responsible for what but there was none among government departments evidenced by the close and effective working during the incident; however, the separation of policy from enforcement was not sustainable
- A further report on the incident would come to the April Open Board meeting

**ACTION: Chief Executive**

#### **REVIEW OF DELIVERY OF OFFICIAL CONTROLS (RDOC) – FOURTH PROGRESS REPORT (FSA 13/03/04)**

36. The Chair welcomed Alison Gleadle, Director of Food Safety, Catherine Bowles, RDOC Programme Manager and Gael O'Neil, RDOC Evidence Programme Manager to the table. Alison Gleadle explained that the paper brought emerging findings from the Review to the Board for discussion and thanked colleagues and stakeholders in LAs who had taken the time to provide the data. Alison Gleadle took the Board through a power point presentation which focused on two areas: delivery by LAs to establish a baseline and work to look at FSA as the Central Competent Authority (CCA).

37. The Chair of the Northern Ireland Food Advisory Committee (NIFAC) said NIFAC were pleased to see that food safety was being protected in NI but given the upcoming re-organisation of LA delivery of food safety, what was wanted from this evidence was guidance on how to put structures together again in a way that really delivered. She said NIFAC had been surprised that the FSA did not already have this information as relationships with delivery partners in NI were very close. NIFAC thought the FSA could use its regional structure to get closer to its delivery partners.
38. The Chair of NIFAC said NIFAC recognised the huge amount of work that had been done but thought the FSA could not afford to do it again. Therefore, the next stage of work had to be the identification of high-level indicators that could be easily collected to allow the FSA to see what was happening with its delivery partners year on year. She said paragraph 12.2 of the paper was contradictory as it said the Review should be closed down but then that further work should be taken forward and sought clarification on what that further work would be. She said she would like to see a move from talking about reviewing to strengthening support of the delivery of official controls.
39. The Chair of the Scottish Advisory Food Committee (SFAC) said SFAC welcomed the collaborative tenor of the paper but noted that the question of pressure on LA resources was not going away. He said SFAC supported the points made in paragraph 5.7 of the paper. He said that while it would be for the Chief Executive to decide on structures he felt it would be useful to appoint a single person in the FSA Executive team with responsibility for LAs who could update the Board. He said the RDOC data, like the Local Authority Enforcement Monitoring System (LAEMS) data, would need to be kept up to date and not allowed to diminish.
40. The Chair of the Welsh Food Advisory Committee (WFAC) said WFAC supported the paper and hoped the data gathered would be used as a benchmark for robust controls. He said the view expressed in paragraph 5.2 of the paper that the current delivery system was fragile had not been the majority view. He said he was concerned that the accumulation of data may continue as if the decision to close down the Review had not been taken.
41. The Chief Executive clarified that with the decision to close the Review, the issue of how the FSA worked better with LAs would remain but this strategic issue would no longer be addressed by large scale data gathering and a review of structures only, rather by a whole systems approach. The Chief Executive said a paper on how to take forward a whole systems approach as outlined in paragraph 5.7 and the consequent resourcing and organisational structure implications would come to the Board at a future meeting.
42. A Board member asked if the FSA was using the 37 obligations of being the CCA to measure performance. Gael O'Neil said the obligations had been used to do a systems analysis of how effectively the FSA was delivering on its function as a CCA both for the FSA and for LAs. However, as part of the legacy of the data gathering, continued use of the 37 obligations was being considered across the FSA.

43. The Board asked if the FSA would be able to use the data to identify a struggling LA. Gael O'Neil said cross-question analysis of the data collected via the LA survey should help to identify indicators that could be used for that purpose.
44. The Board identified two emerging themes: leadership and collaboration. While there was wide variation among LAs, the merger of regulatory functions in LAs was taking place and the Board asked if the data gathered could show if such mergers were beneficial. The FSA could show leadership if it shared best practice with LAs. The FSA should also pay attention to the movement of public health functions into local government in England as this could lead, for example, to the merger of nutrition with food safety in LAs. The Deputy Chair paid tribute to the Regional Presence Units who contributed to the positive attitude of LAs to working with the FSA.
45. The Deputy Chair proposed the second paragraph at 12.2 be divided into two; the first part to be about the decision to close down the Review and the second to ask the Board to consider a paper, as outlined by the Chief Executive, with proposals on how to develop future work on working with local authorities. The Chief Executive said she was keen for the Board to acknowledge in that second part that it affirmed its commitment to this issue as a strategic objective and that the paper would present proposals on how to work with LAs to maintain it as such. The Board asked that reference to moving from reviewing to strengthening the delivery of official controls also be included in that second part .
46. The Chief Executive agreed that the data gathered under the Review would be shared with the four Local Government departments across the UK.
47. The Chair concluded that the Board agreed to the closure of the Review. The Board also agreed that the second paragraph in 12.2 should stop after "down" and the rest of the wording should be deleted. A third paragraph should then be added which referred to: moving from reviewing to strengthening the delivery of official controls; the Board's continuing commitment to this issue as a strategic objective and the agreement to consider a paper on how to work with LAs, also in the area of feed controls, to take forward learning from the Review.

**ACTION: Director of Food Safety**

**CORPORATE PRIORITIES FOR 2013/14 (FSA 13/03/05)**

48. The Chair welcomed Steve Wearne, FSA Director Wales, to the table. Steve Wearne explained that the short paper asked for the Board's agreement to the six FSA corporate priorities for 2013/14 which reflected the Executive's assessment of where a different approach or focus should improve our impact. If agreed, these priorities would inform detailed business planning across the organisation.
49. The Chair of NIFAC said the Committee were happy with the paper. She asked for "and continue to improve our identification and management of risk" to be added to priority 4. She asked for "our priority is consumer engagement" to be added to priority 5 and for priority 5 to be moved to the position of priority 1 in the list.
50. The Board asked that the priority "reducing foodborne disease" be placed higher in the list than "productive relationships with others".

51. The Board agreed that FHRS/FHIS had been delivered and so asked that priority 5 have words added to it about how the FSA would measure the success of FHRS/FHIS going forward and what that success would look like.
52. The Chair of WFAC said the Committee broadly supported the proposals but there needed to be read across between the priorities, the Strategic Plan and the Capability Review so the Board could check delivery of the priorities. He said he agreed with the focus on higher risks in priority 4 but earned recognition required clear internal measures to be in place to ensure standards were maintained. He said intelligence from consumers should be able to be fed into the FSA's ability to judge if premises were compliant and the FSA needed to do more work to ensure that consumers knew how to make complaints about businesses.
53. A Board member asked that the priority "productive relationships with others" make reference to the shift of public health into local government in England.
54. The Chair of SFAC said that the wording of priority 4 needed to be tightened in the wake of the horsemeat incident to refer to the smarter, more complex thinking about regulation that needed to take place. He said priority 5 needed to be widened out from consumers to refer to "purchasers" or the equivalent to reflect the idea of systematic purchaser empowerment throughout the chain going forward as part of the change of focus in regulation.
55. The Board asked if it was right to be agreeing these priorities ahead of the lessons learned from the horsemeat incident which would potentially change the Strategic Plan and the priorities. The Chief Executive said the priorities were not static and would be refined following the lessons learned but it was important to have a consensus on provisional priorities now. The Deputy Chair agreed it was not good governance to wait until the next financial year to agree the priorities for that year.
56. The Chair concluded that the priorities would be updated to take account of the points made by the Board that they would then be used to inform business planning for 2013/14 across the organisation.

**ACTION: FSA Director Wales**

**USE OF INTERSESSIONAL PAPERS (FSA 13/03/06)**

57. The Chair welcomed Charles Milne, FSA Director Scotland, to the table. Charles Milne said the paper covered two issues: firstly, the need for an intersessional paper about the FSA's advice to Ministers in Scotland and Northern Ireland on a UK wide scheme for Front of Pack nutrition labelling (FoP) to come to the Board between the March and April 2013 Board meetings; and secondly, a discussion of the use of intersessional papers for information items on a more regular basis.
58. With regard to the FoP intersessional paper, the Board said the need for it was less than ideal given Board members' availability. There was also the issue of the Chairs of the FACs speaking to their members about it within a tight timescale. However, the Chair of NIFAC said she would be concerned if advice were to go to the NI Minister without NIFAC seeing it first. The Board agreed they only wanted to receive intersessional papers for decision in exceptional circumstances as having a full and open debate together was important in making Board decisions.

59. Charles Milne agreed that the FoP intersessional paper was exceptional as the timescale for advice to go to the Welsh and Westminster Parliaments was not within the remit of the FSA to control.
60. The Board said it was not willing to accept intersessional papers for information on a more regular basis. The Board felt that having intersessional papers which then had to come to the Board meeting was unnecessary and it was not open and transparent nor helpful to the public for papers to appear on the FSA website between Board meetings.
61. The Chair concluded that the Board did not agree to receive intersessional papers for information on a more regular basis. He said the Board only wanted to receive intersessional papers for decision in exceptional circumstances and would be unhappy if there was more than one intersessional paper for decision in a year. The Board agreed that the Ministers in NI and Scotland should not miss out on advice from the FSA simply because the FSA was not in charge of the timetable. Therefore, the Board would accept an intersessional paper on FoP between the March and April Board meetings.

**ACTION: FSA Director Scotland**

**BALANCE OF COMPETENCE REVIEW (FSA 13/03/07)**

62. The Chair welcomed Rod Ainsworth, FSA Director of Legal Services and Alison Spalding, FSA Head of Better Regulation and Sustainability to the table. Alison Spalding said there had been over 50 responses to the FSA's call for evidence from stakeholders. The main view of industry and enforcers was that EU competence in the area of food safety was good as it promoted trade, increased confidence in buying from other countries and protected consumers. However, there were concerns about differing levels of interpretation of the rules and enforcement between countries which could impact on fair trade. The FSA Consumer Advisory Panel also saw benefits to the UK from EU legislation. An online consumer survey taken between 19-24 February 2013 had shown that few people knew the EU had competence in food law and most preferred the UK Government to make it; however some consumers saw the benefit from EU legislation when given more information about it.
63. The Board said a summary of the consumers' views should be added into the body of the FSA's submission to the Governments' review.
64. The Board said this was an instance when the Board was recommending something consumers did not want because the Board thought it was in consumers' best interests. The Board asked that a paragraph be added to the submission to make it clear that the more information the consumer was given about European competence in food law, the more supportive they were of it.
65. A Board member referred to paragraph 7 of the submission which stated "similar protections could be delivered by national law" and paragraph 10 which stated ""would a national system be in consumers' best interests?" He said that one or the other reference must be deleted. He referred to paragraph 14 and suggested that in light of the horsemeat incident it should be removed.

66. The Board asked that it be made clearer in the submission that it was intended to contribute to both the report on Animal Health, Welfare and Food Safety and the report on Health.
67. A Board member asked that more be added to the reference in paragraph 22 that “We do not always agree with their interpretation”. She also asked that reference be made in paragraph 25 to the fact that although national legislation would not be significantly different, it would require a lot more resource and effort from each individual Member State.
68. The Deputy Chair felt that the theme of science and evidence in food law was not strong enough throughout the submission as there was a lack of scientific debate in Europe. The need to work within the EU framework denied consumers access to beneficial food technologies which the UK would have moved faster on without the EU framework.
69. The Chair concluded that the Board agreed to the submission of the text subject to the following changes:
  - Addition of a summary of consumers’ views making it clear that the more information the consumer was given about European competence in food law, the more supportive they were of it
  - Deletion of either “similar protections could be delivered by national law” in paragraph 7 or “would a national system be in consumers’ best interests?” in paragraph 10
  - Removal of paragraph 14
  - Clearer reference that the text contributed to both the report on Animal Health, Welfare and Food Safety and the report on Health
  - Additional information to the reference in paragraph 22 that “We do not always agree with their interpretation”
  - Reference in paragraph 25 to the fact that although national legislation would not be significantly different, it would require a lot more resource and effort from each individual Member State
  - Strengthening of the theme of science and evidence in the text

**ACTION: Director of Legal Services**

**REPORTS FROM THE CHAIRS OF THE FOOD ADVISORY COMMITTEES  
(INFO 13/03/01-03)**

70. The Board accepted, without discussion, the reports from the Chairs of NIFAC, SFAC and WFAC.

**ANY OTHER BUSINESS**

71. John Spence said on 27 February 2013 Mr Stewart Jackson MP had asked the following question at Prime Ministers’ Question Time: “It is 22 years since the landmark Medical Research Council report made a direct link between folic acid use by childbearing women and the prevention of neural tube defects such as spina bifida. Scores of countries have fortified their basic food stuffs, but the policy in this country is mired in bureaucracy between the Food Standards Agency, the Department of Health and others. Will the Prime Minister reassure the House that he will do everything he can to unblock the logjam to prevent the entirely preventable conditions of hydrocephalus and spina bifida?”

The Prime Minister had replied: "I will look very carefully at what my hon. Friend has said. It is certainly true that the levels of conditions such as spina bifida have come down and that folic acid has an important role to play. I shall look at the specific points he makes and the bureaucratic problem he identifies and perhaps get the Department of Health to write to him about it."

72. John Spence said although the FSA currently had no responsibility for nutrition in England and Wales, it did in Scotland and Northern Ireland. John Spence said Mr Jackson's question was welcome, even if inaccurate, as it brought to light an issue which had been on the back burner for years. In 2007 the FSA had gathered information from the Scientific Advisory Committee on Nutrition and industry and, in conclusion, the FSA Board had advised UK Health Ministers to support mandatory fortification with folic acid with certain provisos. This advice was sent to the then UK Health Ministers and Chief Medical Officers; however, there had been no Government action on the issue since then.
73. John Spence said Mr Jackson had the right to complain about the bureaucratic logjam but that logjam was not with the FSA. John Spence said he wanted to press this issue again just as he had done in his role as Vice-Chair of Public Health Wales.
74. A Board member said NI had high rates of neural tube defects due to nutritional deficiency and agreed that Ministers for NI and Scotland should be reminded that they had responsibility for nutrition in those countries. The Board agreed it was frustrating that this issue had not been pursued for such a long time and asked if there had been any recent research that should be looked at.
75. The Chair said he would write a letter to Mr Jackson who had acted as a one man Health Select Committee on this issue for years to offer the FSA's support. The letter would be copied to the Prime Minister and the Health Secretary. The Chair also agreed to write to the NI and Scotland Ministers and to copy the letters to the relevant Chief Medical Officers.

**ACTION: FSA Director Scotland**

**DATE OF THE NEXT MEETING**

76. The next open meeting of the FSA Board would be held on 17 April 2013 in Cardiff.

## Update to FSA Board on horse meat incident

5 March 2013

### Oral update by Catherine Brown, Chief Executive

I last updated the Board on the horse meat incident in open session on 22 January. At that point we were taking a robust approach to a single incident of gross contamination of a Tesco burger and a number of related cases of trace contamination of beef products with horse and pork DNA.

Since then the scale of the incident and our response has changed dramatically.

In this update I shall briefly describe the most significant developments in the incident and our response to it.

And I'll offer thoughts on implications, lessons learned and next steps for the FSA.

### Update on Developments

As you will remember, the day after FSA Ireland published their results, the Prime Minister asked us to investigate urgently. On the same day we issued a four point plan to address the incident and met with industry. We also commissioned our own surveillance sampling programme to be carried out by Local Authorities. This aimed to give us a robust indication of the scale of the incident, as well as being reliable in the courts should enforcement action be found to be appropriate.

The next significant development was on the 31<sup>st</sup> January, when the prison service informed us that their testing had identified pork DNA in 4 samples of halal product.

On the 4<sup>th</sup> February we met with industry to discuss their testing. We knew that they were doing an increased amount of testing to identify the scale of this problem, and we told them that they should share the results of that testing with us and consumers. Industry agreed to do this.

On the 7<sup>th</sup> February Findus recalled their beef lasagne which tests had shown to include over 60% horse meat. The Findus supply chain was quite different from that associated with the original Tesco burger.

At this point we took the decision that it was proportionate to require industry to carry out and share the results of full testing of all comminuted beef products. Over the last three weeks they have submitted 5430 results of which 20 products contained horse DNA at or above 1%. We will be agreeing quarterly reporting arrangements with industry so that consumers can be kept informed on what industry is doing to secure the food chain.

So moving on to our response, since the last Board meeting the scale of the incident we have been dealing with has changed.

In particular, the level of public and European interest has meant that Ministers across the UK have become closely involved with our response to the incident, and with engagement with the public and food businesses. The Secretary of State, Owen Paterson has also taken a leading role in raising the profile of the problem at EU level. Throughout recent weeks we have worked very closely and successfully with Defra, the Department of Health and with their counterparts in Scotland, Wales and Northern Ireland.

During this intense period we have remained focused on our core objective. That has been to protect consumers. To be vigilant to any potential threat to public health, but also to give consumers confidence in the food they buy.

The wording of the four-point action plan no longer reflects the breadth of the incident. But it still provides a good structure for consideration of the issues. The four-point plan proposed actions on:

- gross contamination
- trace contamination
- enforcement action
- and our own independent local authority survey of beef products

Let me describe where we are on each part of the plan.

1. Gross contamination

We have identified 20 products affected by what we have described as gross contamination with horse, where the level of horse DNA detected exceeds 1%.

We think that such levels of horse DNA indicate either gross negligence or deliberate substitution of one meat for another. Where horse is detected at or above 1% we require the business to withdraw the product from sale and institute a product recall. We also require the sample to be tested for the presence of bute, as that presents a potential food safety risk, albeit a very low risk. So far all bute testing results have been negative.

We then use information from the company and traceability records to identify the supply chain for the product. In some cases that is a straightforward process. In others, more complex and requires action from our counterparts in other member states. That work is demanding and labour intensive, but is progressing well.

The progress of the investigations into gross contamination is also relevant to the question of enforcement action. So let me cover that point of the plan next.

We have taken a rigorous approach to our investigations. In some cases activity has been triggered by supply chain investigation following cases of gross contamination. In other cases we have obtained and followed up specific intelligence. You will have seen that in recent weeks there have been a number of premises entered and arrests made. This means that we are limited in what we can now say about this part of our investigation. All I can add is that we are continuing to gather information. We remain committed to taking enforcement action, or supporting the police to do so, where the evidence allows.

We have also played a central role in pushing for a joined-up approach across Europe. We provided the first full briefing to Europol of any Member State to help ensure effective co-ordination of investigations across member states.

## 2. Trace contamination

In addition to the cases of gross contamination there have been cases of trace contamination. This is where very low levels of other species, including pork and horse, have been found in beef products. It is recognised that this may occur where a processing or cutting plant is dealing with more than one species. Even with thorough cleaning and good hygiene practice, traces of DNA of one species can carry-over to other products.

At present we are using a 1% threshold as a pragmatic level to determine the difference between gross and trace contamination. The question that we want to explore is what levels are achievable, detectable and acceptable.

We therefore have three pieces of work underway to explore this issue, on which we are working closely with Defra.

First we have commissioned the Laboratory of the Government Chemist to look at what is achievable. What levels of cross-over occur in a well-run plant, processing more than one species?

A second piece of work is looking at testing methodologies so that there is a clearer understanding of the levels that are detectable and robust tests that deliver consistent results all over the country

Finally there is a question of consumer acceptability. We need to have a better understanding of how consumers view trace contamination. Is it acceptable at certain low levels? If not what are the trade offs between costs and trace? We are undertaking a series of citizens forums to explore these issues with consumers.

Separately Defra are working in conjunction with DCLG to explore the implications for faith groups, acknowledging that for certain groups any level of trace contamination, however low, is unacceptable.

Finally, a brief progress report on survey work. We indicated in our plan that we would undertake our own independent local authority delivered surveillance programme to assess the scale of the contamination problem. The first results will be available later this week.

This programme has also been supplemented by the European Commission surveillance initiative involving all member states. We have also considered imports into Europe and have this week begun a programme of testing a sample of beef imports into the UK at Border Inspection Posts. These are imports from outside the European Union.

In addition, industry testing is continuing. The figures we published last Friday showed that the very large majority of products have now been baseline tested,

although more test results will continue to come in to complete the baseline and to take forward new and enhanced programmes of ongoing checks.

Those activities are ongoing but we now have a clear grasp of the scale of the problem. Our independent sampling programme will provide an excellent validation of the results which industry has provided. Once we have completed that programme and produced a complete report on that work I hope that we will be in a position to bring to an end this phase of the incident.

I expect we will reach that point before the end of April and so our aim at that time would also be to provide our report to the Prime Minister on the incident.

So now is a good opportunity to reflect on lessons learned and begin thinking about the long term implications of this incident. I'd like to set out initial thoughts on some key themes, and will be interested to hear the Board's views on these.

#### Incident response

First some reflections on the scale of the incident response. Faced with this challenge to the integrity of the food chain we have instituted a review of food supply systems, and authenticity testing, on a colossal scale. Over 6,000 tests completed in six weeks, with more to come. The reverberations of this activity will be felt throughout the supply chain for many months to come.

We have also seen investigations and actions on the ground in many parts of the country. This level of activity dwarfs the response in other European countries.

It is a reflection of a lot of focused hard work by people in central and local government, the food industry and laboratories.

And so I must thank all of those who have been involved in that effort. And particularly I would like to thank colleagues throughout the FSA who have put in long hours and faced considerable disruption over the last few weeks. This has been helped by a strong level of collaboration between the FSA and colleagues in other government departments in all four nations.

One of the things we will think about in the lessons learned process is the question of whether we should have spotted this.

We have been irritated by suggestions that in some way we were asleep on the job. Suggestions that come from those who speak with the advantage of hindsight. I have yet to see any evidence of someone highlighting, whether in public or private, that this was likely to happen. And this criticism ignores the fact that if we missed something, so did our counterparts in every European member state, and every food business in the UK and in Europe.

But if we are irritated by the criticism we also have to reflect on whether we could have been more alert to this risk. We must consider the mechanisms we have to use our analysis of risks to identify specific threats. As part of this we have for some time acknowledged the risk of fraud in the food chain. In the future we need to work better with industry to share information and ideas and potential hazards and problems in the supply chain. My initial conversations with business in recent weeks suggest there is a willingness to consider this now in a more open way than previously.

But there are also questions that need to be asked about the Regulatory implications

Over the last few weeks we have undertaken a huge amount of work, with and through industry, with police forces and Local Authorities all over the UK, and with organisations around Europe. Overall our interactions have been overwhelmingly positive. People and organisations have come together to root out this problem, and have been willing to do things to contribute to that objective that we have no powers to require them to do. We and others will need to reflect on whether our powers are adequate – or whether had a company, for example, refused to comply with our requests for information or action, the consumer might justifiably have felt let down. I propose to bring a short paper on possible changes to the FSA's powers to the next Board meeting for a discussion.

There are also important questions about how we work with international sister organisations, particularly our relationship with the Republic of Ireland, the only Member State with whom we share a land border. The evidence that my counterpart there gave to the Irish Parliament recently made it clear that they were aware of the possibility of horse meat having made its way into products, several weeks before they shared that intelligence with us. As part of our lessons learned we will be exploring with them what we can do to improve mechanisms for information exchange, strongly in the interests of both parties.

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Finally some thoughts on the implications of all this for consumers. There remains no evidence to suggest that any of the incidents we have found have constituted any risk to the consumer's health.

But it clearly has had, and will continue to have, a significant effect on consumer attitudes. We conducted an online consumer survey as part of our preparations for the citizens forums. About half of the consumers we surveyed say they will purchase less processed meat or ready meals. The main reason for this was stated as a general lack of trust. 67% of people gave that as the reason; much more than the 35% who said that they don't want to eat horsemeat. And those general concerns have also now been reflected in sales figures.

So there is a real challenge for us and for the food industry to address consumer confidence in the coming months and make sure consumers can have well founded confidence in the food they eat.

I hope that has given the Board an oversight of the incident and some thoughts about the issues we face.

Soon it will be time for us to review the learning from this incident and the lessons we can draw from how we have handled it, working with others. We will also need to provide inputs to whatever review processes will be established by industry and by governments.

I anticipate that the chairman and I will be discussing in the coming weeks with Ministers how these questions might best be addressed in a joined-up way across the UK, while respecting the independence both of the Agency and of the different governments to whom we report.

One learning that several key industry players have reiterated to me in recent weeks is the importance of a strong independent regulator in whom consumers can have confidence when the food chain is called into question. I know the Board will be keen to take up the challenge of ensuring that we play that role in the most effective possible way to protect the consumer and support and challenge industry to rebuild confidence in the food supply chain.