

MINUTES OF THE MEETING OF THE FOOD STANDARDS SCOTLAND BOARD HELD ON 21st NOVEMBER 2018 FROM 11.00 AM TO 14:30 PM AT PILGRIM HOUSE, ABERDEEN**Present:****FSS Board**

Ross Finnie, Chair
George Brechin
Marieke Dwarshuis
Heather Kelman
Carrie Ruxton
Sue Walker
Anne Maree Wallace
Louise Welsh

FSS Executive

Geoff Ogle, Chief Executive
Elspeth MacDonald, Deputy Chief Executive
Ian McWatt, Director of Operations
Garry Mournian, Head of Corporate Services
Katherine Goodwin, Head of Communications
& Marketing (via telephone link)
Norval Strachan, Chief Scientific Adviser
Karen McCallum-Smith, Head of Private Office

1 Introduction, Apologies

1.1 The Chair, Ross Finnie welcomed everyone to the Food Standards Scotland (FSS) Board meeting, and apologised for the late start to the meeting due to travel difficulties.

1.2 There were no apologies received.

2 Declaration of Conflict of Interest

2.1 The Chair asked for any conflicts of interest to be declared. None were declared.

3 Minutes of Meetings – 22nd August 2018 (18/11/01), 17th October 2018 (18/11/02), Action Log (18/02/03) – and matters arising

3.1 There were no amendments to the minutes of either Board meeting or action log, and the Board accepted all three documents as accurate records.

3.2 George Brechin asked for an update on the animal feed tender exercise. Ian McWatt, Director of Operations, reported that the evaluation of tenders was currently under way. He was expecting a report and recommendations in the following week. A procurement exercise for the underpinning IT was also in process. Ian was confident that FSS will have a contract in place for 2019/20.

3.3 George noted the success of the joint FSS/Food Standards Agency Board meeting, and Board members agreed.

4 Chair's Report

4.1 The Chair reported that he and members of the Executive had taken part in meetings with the Minister for Public Health, Sport and Wellbeing to discuss Brexit, and to discuss the Out of Home consultation shortly to be launched by FSS. Together with the Chief Executive, the Chair had also had a constructive meeting with Brian Whittle MSP, to discuss the Errington Cheese court case.

4.2 The Chair noted that those FSS Board members whose terms of office were due to end in 2019 had met with the Minister and had been reappointed. The Chair's term of appointment was also due to end in 2019, and the Chair informed the Board of his decision to serve for a further 3

years, explaining that this was intended to ensure that his replacement would have the opportunity to be fully involved in the appointment of future Board members.

5 Chief Executive's Report – 18/11/04

5.1 The Chair invited Geoff Ogle, Chief Executive (CE) to provide an oral update to supplement his written report. Geoff took the opportunity to congratulate Board members on their reappointments, and to welcome their continuing presence on the FSS Board. He highlighted his meeting with the UK Government's Department for Health and Social Care, which had been very productive. Geoff also referred to the meeting with the Minister regarding the Scottish Government's Healthy Weight strategy and the Out of Home consultation work being undertaken by FSS, and noted the advantages of moving forward together with the rest of the UK where possible and where that was in the best interests of Scottish consumers. Geoff also referred to recent publicity with respect to allergens. He noted that there were too many allergen-related recalls – there was more to be done by industry, and FSS would also review their own work on allergens. Geoff informed the Board that FSS had received an invitation to appear before the Scottish Parliament's Health and Sport Committee to talk about Brexit and the FSS remit. Finally, Geoff reported that the latest figures from the FSS Consumer tracking survey showed an 81% confidence rating, which was a welcome upward trend, and positive indication of confidence in FSS.

5.2 The CE report prompted a request for clarification about promotion of the Scottish Food Crime Hotline, and Geoff confirmed that there were other routes by which FSS received information, but that there were advantages to using the hotline, and so the objective was to maintain visibility and awareness. Board members also picked up on the allergen issue, and a short discussion ensued in which Board members expressed concerns about the use of 'disclaimers', the Executive explained the legal framework and noted the relevance of a Hazard Analysis Critical Control Point (HACCP) plan, and it was suggested that allergen work could be woven into the work on the Out of Home strategy. Board members also expressed an interest in a wider focus which encompassed reasons why allergies are increasing, and Norval Strachan, the FSS Chief Scientific Adviser noted that there was an increasing amount of information in the scientific literature on the subject.

5.3 The Chair drew attention to item 2 in the CE report. He informed the Board that Geoff intended to impart further information about the court proceedings relating to Errington Cheese Limited, and that due to the legal confidential nature of the information, the Chair would move that this item be taken in private. This was agreed by the Board.

6 Public Health Priorities for Scotland – 18/11/05

6.1 The Chair invited Geoff to introduce the paper.

6.2 Geoff explained that FSS had been asked to endorse the set of public health priorities that had been developed by the Scottish Government and the Convention of Scottish Local Authorities (COSLA). The Executive was seeking the Board's agreement to endorse the priorities.

6.3 The Board :

- **Agreed** that FSS formally endorse the Public Health Priorities for Scotland as published by the Scottish Government and Convention of Scottish Local Authorities (COSLA) in June 2018.

7 Leaving the European Union – 18/11/06

7.1 The Chair invited Elspeth MacDonald, Deputy Chief Executive to introduce this paper.

7.2 Elspeth explained that this agenda item had been scheduled some time ago, and she had hoped for more certainty at this stage. However, the draft agreement had only just been reached with the European Commission, and the referral to the European Council and to the UK Parliament had still to take place. FSS preparations are continuing meanwhile, and the paper summarises that work. Elspeth highlighted that the legislative preparations were the current priority, in case there is a no deal outcome. She also drew the Board's attention to the work being taken forward on common frameworks, where FSS was working with the UK Government (UKG), Wales and Northern Ireland to look at how arrangements could work in future, without prejudice to Ministers' views and in accordance with Joint Ministerial Committee (JMC) principles. She noted that the UKG's recent update report states that due to the progress made on common frameworks and collaborative work on legislation, the UKG has concluded that regulations under section 12 of the EU Withdrawal Act are not needed at this time. Finally, Elspeth highlighted FSS's contingency planning – a number of workstreams were focused on arrangements post transition, while also planning for no deal. FSS was contributing to cross-government planning, and was factoring in challenges of EU exit to FSS planning.

7.3 Discussion centred upon resourcing, risk management, planning and preparedness. The Executive confirmed that FSS was assessing capacity and capability, working with counterparts in the Scottish Government, and would be contributing to a centrally-co-ordinated process for planning. FSS would not be able to take on additional functions without additional resource. The Executive intended to bring a paper on planning to the Board in February 2019, but the level of detail would depend on what information was available to them. Risk registers were being updated as Brexit risks materialised and became clearer.

7.4 The Board asked about the status of the UK-wide frameworks, and expressed concern that the devolution settlement, and FSS's status as a devolved body, must be recognised. Elspeth assured the Board that how the frameworks would work while protecting FSS's ability to address questions that may need to be addressed for Scotland was at the forefront of minds. She explained that there were as yet no proposals for underpinning legislation – the food hygiene framework was the most advanced, and at present those working on it were looking to the FSA/FSS memorandum of understanding as the basis of the underpinning mechanism.

7.5 Some concern was expressed regarding potential vulnerability in food safety areas where the local authorities are in the lead, due to stretched resources and competing pressures, e.g. export certification. The Executive confirmed that this risk had been registered, and referred to ongoing discussions at, and engagement with, the Scottish Food Enforcement Liaison Committee (SFELC), whose Chair was a member of the FSS Programme Board.

7.6 The Board congratulated Elspeth and colleagues on how far the framework discussions had progressed, and the Chair also expressed thanks for the meticulous preparation and work being done to prepare and steer Statutory Instruments through the Parliamentary Committee.

7.7 The Board :

- **Noted** that consumer perceptions in Scotland continue to be negative on how leaving the EU may affect their interests in relation to food;
- **Noted** the progress being made in UK Frameworks discussions with Food Standards Agency (FSA), Department of Health and Social Care (DHSC) and Defra;

- **Noted** the work to secure the Scottish Parliament's consent to the UK fixing SI's in FSS policy areas;
- **Noted** the range of work underway across FSS, working with others, on operational readiness

8 Annual Strategic Risk Register Review – 18/11/07

8.1 The Chair invited Garry Mournian, Head of Corporate Services to introduce the paper.

8.2 Garry said that the paper was intended to support the Board's role with regard to its annual review of strategic risks, and that he had therefore included an outline of the background to FSS's risk management arrangements (Section 2), and a reminder of FSS's current risk management policy (Annex B). The paper gave the Board the opportunity to review FSS's risk appetite statement (Annex C), and to discuss the strategic risk register (Annex A).

8.3 Garry highlighted that 3 risks were rated very high/red, and that discussion on these was particularly welcome, but also on others that the Board might consider needed to be scored differently, or added, or removed. Garry asked the Board in particular to consider whether risk 1 was decreasing; whether risk 7 should be managed at Executive, rather than strategic level; and whether a new risk associated with the implications of recent legal judgements when local authorities are taking enforcement action to protect public health. Garry noted that a Brexit risk register was used to manage Brexit risks at a programme level, but that Brexit was also recognised at a strategic level in the strategic risk register.

8.4 Finally, Garry informed the Board that the Executive was undertaking a review of the risk management process, taking into account the recent Scottish Government review, but was not planning fundamental changes or change to the scoring mechanism.

8.5 The Board confirmed that it remained content with the risk appetite statement, and then turned to discuss the strategic risk register. The Board considered whether risks 2 and 3 were scored too high, and whether risk 2 was no longer strategic, and should be managed at Executive level. In discussion, there was an inclination to retain risk 2 pending establishment of the new Public Health body and clarity on its remit and relationships, and the Board decided to remit consideration of risks 2 and 3 to the Audit and Risk Committee (ARC). The Board agreed that risk 7 could be removed from the Strategic Risk Register, and, acknowledging the importance of keeping sight of changes to trust in FSS, that the scoring for risk 1 should be reviewed by the ARC.

ACTION POINT – 2018/02 : EXECUTIVE

8.6 On the suggested new risk, Geoff explained that there were 2 aspects: businesses might decide that the risk from Shiga Toxin-producing Escherichia-coli (STEC) is less, given recent court decisions; and the potential impact of legal actions and costs on the willingness of local authorities to take enforcement action. The Chair emphasised the importance within the new Incident Management Plan of continuing to ensure that the evidence supported Executive decisions where a Food Alert For Action was being considered and that legal colleagues were involved in the decision making. The Executive agreed to articulate a risk to be considered by ARC and in due course by the Board.

ACTION POINT – 2018/03 : EXECUTIVE

8.7 Finally, the Board noted that all 3 'red' risks were Brexit related, and commented that in articulating such risks, especially risk 13, consideration should be given to the impact beyond the point of exit.

8.8 The Board:

- **Noted** the continued development and implementation of the FSS Risk Management Policy and framework which shows that risks are being managed, reported and escalated in an effective and timely manner
- **Agreed** the risk appetite statement as still being applicable to FSS and for the executive to continue to use it to support FSS decision making
- **Agreed** that the existing process for reviewing, reporting and escalation of risk should continue through the Audit and Risk Committee (quarterly) and Board (annually)
- **Agreed** to remove risk 7 from the Strategic Risk Register
- **Agreed** to remit consideration of risks 1, 2 and 3 to the ARC

9 Audit and Risk Committee Oral Update

9.1 The Chair invited Sue Walker, Audit and Risk Committee Chair to give an oral update on the meeting held on 26th September 2018.

9.2 Sue noted that most of matters discussed at the ARC meeting had already been covered on the Board agenda. A range of issues had been discussed at the ARC meeting, including the ongoing problems with shared services referred to in the CE update. Internal audit plans were on schedule. The Hazard Analysis Critical Control Point (HACCP) audit had produced a moderate opinion, and actions were to be taken forward. The ARC had suggested that the Executive should consider how food business operators could be reminded of their HACCP responsibilities at the point where their business received approval. Audit Scotland had advised that they were beginning the planning process for next year's audit. Risk matters were discussed.

9.3 Finally, Sue informed the Board of the process for the ARC's annual effectiveness review, which would be discussed at the ARC's November meeting, and would for first time involve internal & external audit partners.

9.4 A question was raised regarding whether the Cutting Plant and Cold Store Review recommendations would be overseen by the ARC. The Chair confirmed that this was a matter for the Board, and progress reports would be expected. In relation to risk, the Board noted that reports and discussions on Brexit and on the Strategic Risk Register meet the Board's need to have sight of Brexit risks.

10 Outcomes Report – 18/11/08

10.1 The Chair invited Ruth Dewar, Business Reporting Officer, to introduce this paper. Ruth explained that this was the third edition of the Six monthly Outcomes report, and welcomed comments on form and content.

10.2 In discussion, the Board raised a number of points. The Board would like part year figures to be flagged as such, and requested clarification on the methodology behind the red/amber/green ratings – did they relate to trends or were they comparisons to the 2015/16 baseline? The Executive explained that the intention was to demonstrate trends, and noted that there would be a need to include thinking about strategic reporting when undertaking a review of the Strategic Plan. In response to a question regarding the report of zero food fraud incidents, the Executive explained that the figure was unlikely to remain at zero for the full year; it took

some time to investigate such incidents. The Board sought, and received, clarification on the efficiency measure, and suggested that the healthy diet measure should relate to actions rather than awareness. The Board questioned the use of combined food safety and authenticity sample figures to demonstrate authenticity, and also asked if it was a concern that the number of samples appeared to be decreasing every year. The Executive explained that the investment in local authorities (LAs) was unchanged, but the cost of samples and sampling had increased. FSS was in discussion with the local authorities. The Board also asked if it was possible to identify allergen incidents separately.

ACTION POINT – 2018/04 : EXECUTIVE

10.3 The Chair acknowledged the evolution and development of the Outcomes Report and looked forward to its further development. The Board found the report helpful in understanding progress against strategy – was it also useful for the Executive? Geoff noted that it was a useful focus on strategic objectives, and that there was probably scope to use it more. The report had been retro-fitted to the existing strategy – there was scope for improvement, and in future outcomes reporting will be developed along with the development of strategy, with lower level Key Performance Indicators falling out of this process.

10.4 The Board :

- **Noted** the trends in the indicator data under each of the six FSS corporate outcomes

11 Performance Reporting – 18/11/09

11.1 The Chair invited Ruth Dewar to introduce the paper. Ruth flagged new arrangements for the shellfish monitoring programme, and minor presentational changes to the report, and invited comments on form and content.

11.2 The Board welcomed the report. They felt that the report could be clearer about the fact that no contaminated carcasses leave meat plants, and that FSS did not have statutory responsibility for animal welfare on farm or in transport, and the Executive agreed to consider how this could be done. There was concern about welfare compliance, and a request for a report on the significant actions and output of the multi-agency animal welfare group. The Board requested, and received, assurance that LA audits were followed up, and recommendations tracked, and the Executive undertook to discuss assurance on LA audits with the ARC.

11.3 The Chair commented that the report seemed to be a very useful tool in terms of being able to evaluate performance, and that the format was reasonably easily assimilable. He asked to what extent the report was used by, and of value to, management. The Executive explained that the report formed part of the basis for the Operations team monthly deliberation, and was very useful.

11.4 The Board :

- **Noted** the information provided

12 Financial Performance Update – 18/11/10

12.1 The Chair invited Elaine McLaughlin, Project Finance Manager to introduce the paper. Elaine noted that the paper presented the financial performance of FSS up to 30 September 2018. She highlighted a variance of 4% between actual spend and the Year to Date resource budget for quarter 2, referring to Figure 1 in Annex A to explain that the budget categories significantly contributing to the underspend were staff, capital and increased income.

12.2 In terms of the full year forecast, Elaine highlighted a projected 1% overspend against the agreed budget of £15.3m, and a projected 1% underspend against the £15.54m budget allocated in March 2018. She referred the Board to figure 2a for further detail, and explained that the balance of staff time between work programmes and core activities had not been as forecast, but that staff time spent on work programmes was expected to increase in quarters 3 and 4. On debt management, Elaine drew the Board's attention to a slight increase in the amount of debt over 31 days, attributable to the value of the invoices raised during the quarter.

12.3 Finally, Elaine noted that FSS had been allocated £885,000 for EU exit consequential in the Autumn Budget Revision, meaning that the FSS resource budget for 2018/19 would increase to £16.2m. FSS has subsequently requested an Annually Managed Expenditure (AME) budget requirement of £600,000, and this and any other transfers will take place at the Spring Budget Review in January 2019.

12.4 In discussion, Board members sought and received clarification on the underspend of capital, which Elaine confirmed was a timing issue, and would be rectified by the year end. The Board was also informed that spending of Brexit consequential funding was closely monitored and reported to the Scottish Government. The Board questioned the underspend on staff working on Work Programmes, and the Executive explained that initial allocation of staff time against programmes was done to the best of their knowledge at the time: there was now more data which should improve accuracy. The Board was keen to see debt managed closely, and questions were raised regarding how much of the long term debt FSS expected to recoup, and about FSS's credit terms. The Executive confirmed that some debtors were on payment plans, and 2 were in administration, and undertook to consider FSS's credit terms further.

12.5 The Board:

- **Noted** the financial information reported as at 30th September 2018.

13 Question and Answers

13.1 There were no questions from members of the public in the audience.

14 Motion

14.1 The Chair informed the Board that the CE had information to impart to the Board about the court proceedings relating to Errington Cheese Limited. Due to the legal confidential nature of the information, the Chair moved that this item be taken in closed session, and the motion was agreed by the Board. The Chair closed the open session of the meeting.

15 Errington Cheese Ltd

15.1 The CE updated the Board on the Executive's considerations with respect to the implications for public health and for food safety enforcement of the recent Court of Session decision regarding Errington Cheese Ltd. Notwithstanding the legal and confidential issues engaged by the ECL case the Executive was working on a public interest statement which it was hoped could be published in the near future.

15.2 The Board:

- **noted** the information provided.

15.3 No other business was discussed, and the meeting closed at 3:15 p.m.