

MINUTES OF THE MEETING OF THE FOOD STANDARDS SCOTLAND BOARD HELD ON 15th MAY 2019 FROM 10.30 AM TO 15.00 PM AT PILGRIM HOUSE, ABERDEEN

Present:

FSS Board

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

FSS Executive

Geoff Ogle, Chief Executive
Elspeth MacDonald, Deputy Chief Executive
Ian McWatt, Chief Operating Officer
Garry Mournian, Corporate Services Director
Karen McCallum-Smith, Head of Private Office
Norval Strachan, Chief Scientific Adviser
Hazel Stead, Board Secretary

1 Introduction, Apologies

1.1 The Chair, Ross Finnie welcomed everyone to the Food Standards Scotland (FSS) Board meeting. Apologies were received from Louise Welsh, Board Member and Katherine Goodwin, Head of Communications and Marketing.

2 Declaration of Conflict of Interest

2.1 The Chair asked for any conflicts of interest to be declared. Norval Strachan, Chief Scientific Adviser declared his work at the University of Aberdeen in campylobacter research which is funded by Biotechnology and Biological Sciences Research Council; Defra; FSS and Food Standards Agency (FSA) and the Scottish Government. Sue Walker, Board Member, declared that her daughter had accepted a position as Policy Officer at Defra and would update her entry in the register of interests.

3 Matters Arising

3.1 In matters arising, the Chair noted an amendment in the agenda to allow for him to take part in media interviews on the allergens board paper.

3.2 The Chair and Board Members congratulated Elspeth MacDonald, Deputy Chief Executive on her appointment as the new Chief Executive of the Scottish Fishermen's Federation (SFF) and wished her every success for the future.

4 Minutes of Meeting – 20th February 2019 19/05/01, and 20th March 2019 19/05/02 & Action Log – 19/05/03

4.1 There was one amendment in paragraph 10.1 of the minutes of 20th February 2019 in relation to the dates of board members appointments to the Audit and Risk Committee. There were no amendments to the minutes of 20th March 2019. The Chair gave an update on Action points 2019/01, 2019/02 and 2019/03 which are carried forward. The Board accepted the minutes and action log as accurate records.

5 Chair's Report

5.1 In his report, the Chair referred to the joint FSS and FSA Chair's and Chief Executive's meeting he had attended with Geoff. The Chair noted he had written to Heather Hancock, FSA Chair concerning FSS's participation in the Advisory Forum on Food and Feed following the Board's consideration at its March meeting. The Chair gave a brief update from the

Scottish Association of Meat Wholesalers conference he had attended with Ian McWatt, Chief Operating Officer.

6 Chief Executive's Report – 19/05/04

6.1 In his introduction, Geoff thanked Elspeth for her outstanding support and leadership during her time at FSS and previously at the Food Standards Agency in Scotland and he congratulated her appointment to the SFF.

6.2 Geoff confirmed with regards to the request to the Scottish Government for additional funding for Brexit consequential, subject to agreement by the Scottish Cabinet, FSS is to receive additional funding for financial year 2019-20 of up to £3.5 million. Geoff advised that since the date for Brexit was extended until 31st October 2019, no-deal planning had lessened, but is ready to be reactivated if necessary. He noted however, other preparations continue including work on UK Frameworks and the changes to the Official Controls Regulation.

6.3 Geoff noted the discussion with the Chief Executive of Dundee City Council regarding Public Analyst laboratory provision, where they agreed to arrange a meeting with the four Chief Executives of Local Authorities in Scotland. Geoff explained that the provision of Public Analyst laboratories in Scotland has been a risk on the FSS Strategic Risk Register for some time. Geoff noted that two senior leaders at FSA, Jason Feeney, Chief Executive and Rod Ainsworth, Director of Strategy, Legal and Governance will leave the agency in the summer of 2019.

6.4 George Brechin thanked Geoff for seeking additional funding from Scottish Government. He sought and received clarification from the Executive on how up to £3.5 million of additional funding would be allocated - to deliver capacity and capability for a number of Brexit-related functions, e.g. policy, scientific risk assessment and risk management.

7 Campylobacter – 19/05/05

7.1 The Chair invited Jacqui McElhiney, Head of Food Protection, Science and Surveillance and Jane Horne, Senior Scientific Advisor to introduce this paper to the Board. In her introduction, Jacqui noted that preventing campylobacter infection is a key priority for FSS and chicken continues to be a major source of campylobacter in Scotland. Jacqui noted the downward trend in the reducing numbers of campylobacter in fresh chicken, however no corresponding reduction was evident in the numbers of human cases of campylobacter being reported in Scotland.

7.2 In discussion, board members noted there has been very little change in the attribution of human illness to chicken related strains of campylobacter since 2005. Board members sought and received clarification on whether other countries had used interventions (e.g. decontamination of carcasses) and what the lessons learned are; and also whether (as a commercial benefit) poultry farmers could be encouraged to further enhance on-farm biosecurity.

7.3 Jacqui explained that New Zealand (NZ) uses interventions which are not permitted in the EU and they have different hygiene controls, when levels of campylobacter increase, they take a proactive approach to identify and remedy the issue. Norval Strachan, Chief Scientific Adviser advised that as NZ uses a number of different interventions at the same time, it is difficult to identify which method was the most effective. There was further discussion on the findings from research that has been undertaken by HPS which identified the population groups which report the highest incidence of Campylobacter infection in

Scotland. It was agreed that there was a need for further work to explore how to promote behaviour change in people who are at risk of more serious infection.

7.4 The Board :

- **Noted** the progress made in understanding the key sources and risk factors for campylobacter infection in Scotland and the impact of industry interventions for reducing levels of contamination in UK produced chicken
- **Agreed** that the future focus for tackling campylobacter in Scotland should be based on:
 - Collaborating with Food Standards Agency to drive further reductions in campylobacter in UK produced chicken by promoting sustained action by the major retailers, and supporting farmers and smaller producers/retailers in Scotland and the rest of the UK in controlling the risks.
 - Working with Health Protection Scotland and health services in Scotland to develop understanding of the epidemiology of campylobacter and identify avenues for ensuring at risk groups are appropriately informed about the risk of infection and how to avoid it.
 - Reviewing our consumer advice on the 4C's (cooking, chilling, cleaning and avoiding cross-contamination) and methods for communicating it to consumers to ensure it is targeted effectively and reaches those who are at greatest risk from campylobacter infection and its impacts
 - Strengthening our evidence base on the sources and prevalence campylobacter by undertaking surveillance of the Scottish food chain, to support risk assessment and the identification of interventions for reducing transmission through non-chicken sources.

8 Allergen information for Consumers on Pre-Packed For Direct Sale Foods – 19/05/06

8.1 The Chair invited Elspeth MacDonald, Deputy Chief Executive and Stephen Hendry, Senior Policy Adviser to introduce the paper. Elspeth gave a brief introduction noting the high profile case of Natasha Ednam-Laperouse and that the FSA Board discussed a paper on these issues at their meeting on 8th May 2019. Stephen explained that about 4 ½ years ago, the need for allergen information about pre-packed foods was extended to non-prepacked foods, e.g. loose foods; catering and food sold pre-packed for direct sale (PPDS). Stephen noted that Natasha's case led to a review of allergen information for pre-packed for direct sale foods, which was agreed by Ministers across the UK agreed that consultation should be undertaken on options to improve for the provision of allergen information for consumers on PPDS foods. Last week, the FSA Board considered the outcomes of the public consultation and recommended to Ministers in England, Northern Ireland and Wales that full ingredient information should be available for consumers purchasing PPDS foods

8.2 Norval Strachan, Chief Scientific Adviser highlighted the scale and scope of the problem, in that UK data shows that 1-2% of adults and between 5-8% of children have a food allergy, approximately 2 million people in total, which represents a significant number of the population. Figures in the latest FSS Tracker Survey show around 15% households in Scotland claim a food allergy. Norval noted the lack of evidence around how effective the policy options might be and that incomplete evidence exists along with understanding any unintended consequences associated with each of the policy options.

8.3 In discussion, the Board agreed that the introduction of mandatory labelling of the 14 most common food allergens listed in the European Union Food Information to Consumers (FIC) (Option 3) would be a significant step change in strengthening consumer protection and confidence in relating to PPDS foods. However, the Board also recognised that to provide the certainty needed to deliver the confidence that consumers seek in allergen labelling, businesses that supply PPDS foods will need to be able to provide accurate full ingredient labelling on a consistent basis, and recognised that to do so will be more challenging for some businesses than others. In short, whilst full ingredient listing is the approach that the majority of consumer support, it is not without risks and challenges, and is likely to have impacts on the businesses involved. In addition, the Board acknowledged the overwhelming consumer support for full ingredient listing (Option 4) which would provide a higher degree of certainty and confidence for individuals with food intolerance or hypersensitivity and would represent the best level of protection for consumers. Option 4 would also reduce the incidence of food-related allergenic reactions as with the other policy options, but it will not eradicate the risk completely.

8.4 In considering consumer views, risks and business concerns, the Board took the view that as part of a robust evidence-based approach to policymaking, further research and analysis needs to be undertaken to understand in more detail the technical and regulatory compliance challenges that some businesses may face in moving towards full ingredient listing for PPDS foods. More specifically, to determine how this can be achieved and in ways that will provide the greater certainty that consumers seek, thereby confidence that risks to consumers can be reduced. Draft secondary legislation will also need to be prepared by the Executive to introduce any new mandatory measures for Scotland, modifying existing national flexibilities in the Food Information (Scotland) Regulations 2014. This will include an assessment of enforcement practicalities and the proportionality of sanctions for non-compliance. The draft legislation will be subject to full public consultation and accompanied by a detailed Business and Regulatory Impact Assessment (BRIA) building on the existing partial BRIA which informed the Board's discussion.

8.5 The Board **agreed** to recommend to Scottish Ministers that:

- government should continue to promote best practise within the current legislative arrangements;
- we should work, without undue delay, towards delivery of full ingredient listing on pre-packed foods for direct sale in Scotland (Option 4);
- further work be undertaken by FSS to assess the benefits, impacts, risks, enforcement practicalities and any unintended consequences for consumers, businesses and enforcement authorities;
- and from that, develop an implementation plan for Scotland, including where appropriate, piloting implementation in different types of businesses.

9 Outcomes Report – 19/05/07

9.1 The Chair invited Ruth Dewar, Business Reporting Officer to introduce this paper. Ruth noted that it contained the six monthly figures from 1st October 2018 to 31st March 2019. She noted that the report is based on the progress on trends of indicator data in the FSS Corporate Plan. She explained that minor adjustments to the format of the report to improve the presentation were made since the Board meeting on 21st November 2018.

9.2 In discussion, Board members sought and received clarification on whether any trends or conclusions could be drawn on the numbers of samples taken by local authorities, noting that the number of samples taken isn't indicative of the number of tests that are carried out,

as samples will often be analysed for a number of different purposes. The Executive confirmed the budget provided to Local Authorities to support sampling plans is flexible in line with strategic priorities and noted the total numbers of samples had reduced.

9.3 Board members noted some points of improvement for the presentation, to tighten up annual incidents data and the use of comparative figures; suggested annual benchmarking FSS performance data against others e.g. Food Standards Agency. The Chief Executive noted that the outcomes and indicators were developed after the strategy, there was an opportunity to revise these and ensure these are included in the next edition of the FSS Strategy. The Board sought and received clarification from the Executive that a comprehensive review of the Food Hygiene Information Scheme (FHIS) was necessary to ensure it is fit for purpose and would not be allowed to drift.

9.4 The Board :

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

10 Performance Reporting – 19/05/08

10.1 The Chair invited Ruth Dewar, to introduce this paper. Ruth explained that the paper provides the progress or trends of indicator data from 1st October 2018 to 31st March 2019.

10.2 In discussion, Carrie Ruxton noted concerns regarding no reduction in the number of animal welfare breaches on-farm and in-transport being recorded. Ian McWatt explained that animal welfare data is considered by the Scottish Livestock Welfare Group (SLWG), chaired by the Chief Veterinary Officer for Scotland and these breaches are referred to the relevant competent authority. Ian explained that a “triage” mechanism by Animal Plant Health Agency (APHA) had been introduced to review animal welfare breaches. Ian noted however, that whilst the powers to enforce lie with Local Authorities but they are not legally obliged to do so. Sandy McDougall, Head of Operational Delivery explained that where FSS has the enforcement authority, FSS staff investigate breaches in animal welfare and that proportionate and effective action is taken. Sandy noted that an improvement by the SLWG had been made, which has resulted in a reduction in the numbers of pregnant animals at the end of gestation being transported to slaughter.

10.3 The Board sought and received clarification from the Executive on improving the presentation of veterinary audit outcomes e.g. the numbers of food business operators who fall into the improvement required category and numbers of major non-compliances recorded; the possible reason for the increase in numbers of visibly contaminated sheep carcasses; insufficient assurance by Local Authorities and how FSS can help them to improve audit performance through the FSS capacity and capability audits.

10.4 The Board :

- **Noted** the information provided

11 Financial Performance Update – 19/05/09

11.1 The Chair invited Elaine McLaughlin, Senior Finance Manager to introduce the paper. Elaine drew attention to the actual spend when compared to the budget profile for Quarter 4 was £291k over budget with the reasons explained in the paper. The provisional outturn being reported for the year of £15.9m giving a £238k underspend against the resource budget of £16.2m. It was explained that the underspend is mainly due to savings within the programme budget for Official Controls work. She noted that this was the first year that FSS

has allocated budgets against programmes of work. She explained that the outturn for the Brexit work programme was £1m, which was £170k over the additional EU Exit budget allocated to FSS during the year.

11.2 In discussion, the Board sought and received clarification on the £400k expenditure on legal fees against the Brexit work programme was paid to Scottish Government Legal Directorate who provide FSS with legal advice. The Board sought and received clarification from the Executive that a systematic and planned approach was used to ensure the budget was spent in the months leading up to the end of the financial year.

11.3 The Board:

- **Noted** the financial information reported as at 31st March 2019
- **Noted** the review of the EU Exit budget funding as being one-off funding for the year and the additional activities carried out to deliver FSS outcomes

12 Strategic Risk Register – 19/05/10

12.1 The Chair invited Sue Walker, Audit and Risk Committee (ARC) Chair to introduce this paper. Sue referred to the decision by the Board at its November 2019 meeting for the ARC and Executive to discuss and agree the draft wording for two new risks for the Strategic Risk Register. She explained that at the March ARC, members had agreed the draft wording of the two new risks and these are presented for agreement by the Board at this meeting. There were no comments from board members.

12.2 The Board:

- **Agreed** the two new risks to be added to the Strategic Risk Register

13 Audit and Risk Committee Oral Report

13.1 The Chair invited Sue to give an oral update from the ARC meeting on 27th March 2019. The ARC were pleased that two FSS infographics had been recognised in the Audit Scotland Best Practice Guide on Performance Reporting for inclusion in Annual Reports and Accounts in public sector. She noted that a workaround for staff expense payments through Scottish Government Payroll had been implemented.

13.2 On internal audit matters, she advised that all internal audits would be cleared in time for the internal auditors' annual assurance reports. She noted that three Official Controls Audits in the annual audit plan were not undertaken, one of which, on Animal Identification Controls, was no longer relevant due to Scotland losing its BSE-free status earlier in the year. The other two audits were cancelled due to legal and contractual matters, however the ARC received assurance from Internal Audit and the Accountable Officer that losing these three audits did not compromise the level of annual assurance on Official Controls within FSS given the scope of audits completed. The ARC received the draft internal Annual Audit Plans for 2019/20, noting that these need to be more flexible than usual to reflect the pressures on resources and time being devoted to Brexit matters. The ARC and Executive commented on the draft plans and noted these would be tabled at the June ARC meeting.

13.3 On external audit matters, Audit Scotland presented the Management Report for 2018/19, which identified no significant weaknesses; appropriate and effective controls were in place and identified only two minor control issues. All recommendations from last year's audit were implemented by the Executive. Sue advised that the first draft of the FSS Annual

Report and Accounts 2018/19 would be circulated to ARC and Board Members for comments by the end of May 2019.

13.4 In terms of risk matters, the ARC discussed the Strategic Risk Register and acknowledged the two new risks to be included subject to Board agreement. The ARC noted the proximity of several very high risks, in particular the risk of budgetary pressures associated with Brexit. The ARC completed a 'deep-dive' into the Health Safety and Environment Risk Register, noting it had been reformulated to align with other FSS Risk Registers to allow greater comparability.

13.5 In other matters, the ARC was pleased with the assurance map report noting the continuing strong performance across the FSS assurance framework. The ARC received the Annual Report on Cases of Fraud and Significant Losses and was pleased that there were no cases of fraud to report. The ARC noted the £41k asset write-off for the IT desktop refresh. The ARC noted further attempts to reduce the levels of debt and consideration is being given to encourage prompt payments or dis-incentives for late payments. The ARC received the Annual Health and Safety and Environment Report, noting the introduction of Key Performance Indicators (KPI) and the good performance against these; noting that within the office there was less commitment to health and safety, efforts would be made to raise the profile of Health and Safety with office-based staff, noted the Carbon Management Plan and the plan to include KPI's for the FSS environmental footprint.

13.6 The Board sought and received clarification that risk matters would be escalated by the ARC to the Board when required; and that mental health awareness and support including employee assistance programmes are available for FSS staff.

14 Audit and Risk Committee Annual Report to the Board – 19/05/11

14.1 The Chair invited Sue to introduce this paper. Sue drew attention to some internal audit reports from 2017/18 being considered in June 2018 as they were unavailable for the spring ARC meeting which had been brought forward from March to February 2018. However, this did not compromise 2017/18 annual assurance opinions. In discussion on the paper, the Chair noted it would be useful to review the list of corporate reporting requirements which applied to FSS, and Sue agreed to take this away for further thought. There were no further comments.

14.2 The Board:

- **Noted** the work undertaken by the ARC during the period April 2018 to March 2019

15 Annual Report : Freedom of Information Requests and Complaints – 19/05/12

15.1 The Chair invited Ruth Dewar to introduce the paper. In discussion, the Board noted the highly creditable performance and were reassured that FSS had not received many complaints during 2018-2019. Anne Maree Wallace noted that no pattern emerged in the types of Freedom of Information (FOI) requests being submitted, asked whether there was any other data which could be published to prevent future FOI requests. The Executive explained that thought had been given to publish animal welfare data but due to a number of factors, this is work in progress.

15.2 The Board :

- **Noted** the information provided

16 Budget Update 2019/20 – 19/05/13

16.1 The Chair invited Garry Mournian, Corporate Services Director, to introduce the paper. Garry noted that a revised budget request of up to £3.5m was put forward by the Executive to Scottish Government (SG) officials and subsequently put forward by SG Health and Finance officials to the Scottish Cabinet on 14th May 2019. Whilst SG officials have indicated to the Executive that additional funding up to £3.5 million will be provided to FSS for financial year 2019-20, formal confirmation has not yet been received. Garry explained that the additional funding will ensure that we progress the work to ensure we are operationally ready for Brexit and mitigate the risk around delivery of our statutory functions and strategic objectives. Garry noted that SG officials have recognised the additional costs of Brexit are not restricted to this financial year and on-going discussions will continue over the coming months.

16.2 He explained that for the Executive to prioritise and allocate the budget, high-level assumptions are being taken based on the scenario of a transition agreement with the EU. Garry noted the additional budget received for Brexit will be directed at a number of priority areas and this will potentially release additional resource from our existing budget allocation to be targeted at other priority areas such as delivering elements of our Regulatory Strategy. The Executive will progress the detailed planning work to review the overall resource allocation at its Corporate Leadership Group meeting on 20th and 21st May 2019.

16.3 The Board sought and received clarification on the recruitment strategy and how long it will take and how it will be resourced. The Executive said this will be discussed at the Corporate Leadership Group meeting and the workforce planning process is already underway, noting that this identifies capacity and capability gaps. With additional funding, the Executive have been able to secure a number of fixed-term appointments who support Brexit work and advised a 4-6 month window will likely be required to achieve a full complement of staff.

16.4 The Board:

- **Noted** that the Executive has progressed with the initial 19/20 budget allocation agreed by the Board at its February meeting to fund Regulatory Strategy and Nutrition work programmes and Brexit preparedness.
- **Noted** the SG is expected to confirm additional budget of up to £3.5 million provided for this financial year to fund Brexit preparedness and operational readiness.
- **Agreed** recommendation that Plan B as the most sensible approach at this time
- **Noted** that the Executive continue to maintain a 'watching brief' with regards to a no-deal Brexit.
- **Agreed** the prioritisation order outlined by the Executive summarised :
 - Up to £3.5m be allocated to priority areas for Brexit
 - Alongside essential core activity, any existing budget/resource reallocation can be made as a results of the Brexit funding or other in-year savings be focussed on delivery of new statutory requirements; the emerging priorities for the delivery and implementing the Official Controls Regulation and Allergens; followed by Regulatory Strategy Phase 1 and Phase 2
 - Funding other priorities associated with delivery of our Nutrition programme and proposed projects at a Branch level

- **Noted** that whilst the significant risks previously identified will be mitigated to an extent through additional resource being made available those risks remain, with an additional risk identified with regards to future budget requirements.
- **Noted** the next steps being taken forward by the Executive at its Corporate Leadership Group meeting in May 2019 to start the detailed planning (both short and long-term) that is now required to manage our overall resource allocation and prioritisation as a result of receiving the expected additional budget to fund Brexit consequential
- **Noted** that it's views and decisions made will be taken into account when the Executive updates the Financial Management Plan.

17 Question and Answers

17.1 There were no members of the public or stakeholders in the audience and the Chair closed the meeting.