MINUTES OF THE MEETING OF THE FOOD STANDARDS SCOTLAND BOARD HELD 07 DECEMBER 2022 FROM 10:30 – 16:00 HYBRID – PILGRIM HOUSE, ABERDEEN

Present

FSS Board	**FSS Executive**
Heather Kelman, Chair	Geoff Ogle, Chief Executive
Louise Welsh, Deputy Chair	Ian McWatt, DCE and Director of Policy Science & Operations
Aileen Brown	Julie Hesketh-Laird, DCE and Director of Strategy & Corporate Affairs
Alban Denton	David Gally, Chief Scientific Advisor
Carol Evans	Garry McEwan, Head of Governance & Infrastructure
Carrie Ruxton	Kate Smith, Head of Comms & Marketing
Phillip Couser	Diane Strachan, Head of Private Office
Sue Walker	Joanne Smith, Board Secretary

1. Introduction, apologies, matters arising

1.1 The Chair welcomed everyone to the Food Standards Scotland Board meeting, in particular Phillip Couser who joined the Board on 14 November and Jennifer Forsyth from Obesity Action Scotland who was observing. She also welcomed everyone attending via Teams and in the public gallery.

1.2 There were no apologies received.

2. Declaration of Conflict of Interest

2.1 No conflicts of interest were declared by Board members.

3. FSS Reprioritisation Exercise – 221201

3.1 The Chair invited Geoff Ogle to present the Reprioritisation Exercise paper outlining proposals to the Board on FSS priorities for 2023/24 financial year and beyond.

3.2 Geoff started off by giving thanks to staff for all the hard work undertaken during the exercise and to Natalie Greenland, in particular, for facilitating the workshops and pulling the report together.

3.3 For the benefit of our new Board Member, Phillip Couser, Geoff explained the background to the reprioritisation exercise. Earlier this year FSS asked for funding for an additional 56 posts for EU consequentials work, this was rejected, thereby leaving a large gap in resources and expertise. In addition to this, the Scottish Government's (SG) Resource Spending Review (RSR), delivered in May 2022, has resulted in a real-terms cut to our budget of around 12.5% through to 2026/7,

therefore the Executive Leadership Team (ELT) have had to take a tactical approach to manage the budget this year and have used the second half of the year to re-set and re-plan for future years.

3.4 The Board asked whether it would be worth approaching Ministers to ask for a specific investment fund to be made available across SG to improve digital and data and Geoff responded that he has already made that suggestion to SG.

3.5 The Chair asked whether there is anything in the priorities giving Board Members discomfort? It was acknowledged that, although it was an uncomfortable exercise to have undertaken, on the whole the Board are comfortable with the output which will provide direction on FSS priorities.

3.6 The Board also stressed how important it will be to have open and transparent communication with Ministers to ensure they are aware that this is a 'best case' scenario and there could be severe disruption to public health if further resources are diverted from it.

3.7 The Board suggested a further principle be added to the 4 existing ones, to say that FSS are positive about reviewing REUL, however this should be done in an appropriate timescale and have positive benefits. Geoff agreed to reflect on this.

3.8 It was agreed that the Chair would write to Ministers to outline the proposals regarding FSS prioritisation agreed at today's meeting.

3.9 Following a thorough discussion the Board:

- Noted the predicted financial challenges we face, noted in Section 4;
- Considered the proposed priorities and commented on any specific proposals, noting the ambiguity on the Scottish Veterinary Service (SVS) and Retained European Union Law (REUL); and
- Agreed the proposed priorities for 2023/24 (in Annex B to F)

4. Retained EU Law (Reform and Revocation Bill) (REUL) – FSS Position – 221202

4.1 The Chair invited Jenny Howie Head of UK Frameworks to present her paper which invited the Board to agree the principles that will inform FSS discussions with UK Government departments on proposals for revoking and amending food and feed law using powers under the REUL Bill and our subsequent advice to Scottish Ministers.

4.2 Regarding the principles set out at 6.3, relating to consumer protection and stakeholder views, the Board asked how consumer or trading partner confidence will be measured when it comes to removing or amending provisions and were advised that this would be tricky. we could assess the potential for measures to undermine confidence were food safety or standards requirements arbitrarily removed by the sunsetting provision, but ultimately we would rely on feedback from those stakeholders direct as to how much confidence they continued to have in our regulatory system.

4.3 Following discussion the Board:

- Noted that the Bill is moving at pace and that the landscape for delivery may change;
- Noted that the Bill poses a significant risk to the regulatory landscape for food and feed in Scotland;
- Agreed a set of principles that will guide our approach to discussions on any changes to legislation proposed using the powers in the Bill; and
- Agreed FSS communications should continue to highlight our concerns with the proposals in this Bill

4.4 The Board also stated they supported the review of policy and proposing amendments to law in line with good policy practice, but the Bill undermined that approach due to the default sunsetting clause.

ACTION – 2022/02 – Geoff Ogle

5. Food Standards Scotland / Public Health Scotland Partnership Agreement – 221203

5.1 The Chair invited Jenny Howie to present a paper which invited the Board to agree the proposals for a Strategic Partnership Agreement (SPA) with Public Health Scotland (PHS) and to note how we intend to deliver agreed priorities.

5.2 Claire Hyslop from PHS was in attendance via Teams and the Chair invited her to share her thoughts. Claire verified that it is a great opportunity for FSS and PHS to formalise and strengthen their working relationship.

5.3 The Chair and wider Board welcomed the formal working partnership agreement and the opportunities it will present, particularly as PHS have greater capacity when it comes to data and digital.

5.4 Following discussion the Board:

- Agreed the SPA and proposed governance arrangements, and
- Noted the more detailed proposals for delivery of the SPA which will be set out in an Action Plan (to be agreed by officials)

Break

6. Date Labelling: FSS public position on ‘Use by’ and ‘Best Before’ dates - 221204

6.1 The Chair invited Stephen Hendry, Head of Labelling Standards and Lynn Robertson, Senior Policy Officer to present a paper which updated the Board on FSS position following food manufacturers and retailers making changes to the way certain prepacked foods are labelled.

6.2 The Board queried whether labels could be re-designed so that ‘use by’ dates are more prominent, however Geoff explained that getting the whole industry to collectively change labelling would be difficult in practice, and instead FSS should concentrate on raising consumer awareness.

6.3 Following discussion the Board:

- Noted the paper and general direction of travel for industry, and
- Provided their views on the proposed statement at Annex A requesting some additional text be added: incorporating the words 'best practice' when advising businesses to discuss their plans with local authority enforcement officers, emphasising the difference between 'use-by' and 'best before' dates and the importance of businesses providing easy access information on shelf life and storage conditions.

ACTION – 2022/03 – Lynn Robertson / Steven Hendry

7. Wave 14 Tracker and cost of living survey – 221205

7.1 The Chair invited Kate Smith, Head of Comms and Marketing to present key findings of the recent consumer tracker survey and an additional one exploring consumer behavioural change in in relation to food response to the rising cost of living, and the resulting actions taken and future plans.

7.2 The Board asked whether Kantar, who FSS use for other research purposes, would be able to undertake work to compare the cost of a healthy balanced diet versus a diet of junk food and Kate invited Gillian Purdon, Head of Nutrition to comment. Gillian explained that Kantar have already been asked to do this and the results are awaited.

7.3 The Board agreed that it is within FSS remit, and morally right, that we use all opportunities available to encourage and promote a healthy diet as the current crisis in the health system due to diabetes and obesity, driven by poor diet, is only going to increase. This should include routes such as building relationships with key stakeholders and third parties, as well as encouraging retailers to adopt best practice, for example by reducing promotions on discretionary products.

7.4 The Board agreed we should present any evidence we have as a lever, and including cost of living analysis within the FSS and FSA Joint Annual Report will also help raise awareness.

7.5 It was agreed that today's conversation will also help inform and focus future discussion on the Diet and Nutrition Strategy being presented to the Board in March.

7.6 The Board:

- Noted the approach and resulting activity, and
- Considered and discussed FSS future position and engagement in relation to the cost of living crisis, and gave their full support to press ahead.

8. Update on FSS Science Programme: Key Outputs and Future Priorities – 221206

8.1 The Chair invited Jacqui McElhiney, Head of Science to present a paper reviewing FSS science programme since the publication of our strategy for 2021-26.

8.2 The Board asked whether the proposal for the Chief Scientific Advisor to review FSS's science programme would align with the recent reprioritisation exercise and were informed that a key driver would be to ensure our research activities and science strategy are focussed on current priorities. The review will also look at efficiencies, such as developing policy to make best use of the data we already have access to and promoting collaboration strengthen our evidence base and optimise resources.

8.3 A question was raised regarding the reference in the paper to the £50 million budget for the Scottish Government's strategic research programme and our ability to access this for FSS research. Jacqui clarified that FSS had been given the opportunity to set the requirements for a theme within this programme on diet and food safety which has enabled us to steer research activities across 15 projects.

8.4 The Board asked what would be covered under the theme in the FSS research programme, mentioned in Annex A, titled 'Understanding and Mitigating Risks to the Food Chain' and Jacqui clarified that this would cover food surveillance activities including the food sampling work undertaken by Public Analyst laboratories.

8.5 The Chair and Board thanked Jacqui for her very informative report, particularly noting the continuous work on risk assessment and campylobacter, and look forward to hearing the results of the Chief Scientific Advisor review.

8.6 Following discussion the Board:

- Noted progress with the development of our science functions and research programme since the publication of FSS strategy for 2021-26;
- Considered how science outputs have been used to underpin our strategic goals during this period, and provided views on our proposed priorities for science and evidence in 2023/24; and
- Agreed that FSS Chief Scientific Advisor should undertake a detailed review of our science and evidence needs, taking account of FSS recent prioritisation exercise, and present his findings to the Board in March 2023.

Break

9. Minutes arising from meeting held 25 October 2022 – 221207

9.1 The Minutes of the meeting held 25 October were agreed as an accurate record.

9.2 The Board asked whether the 8 vacancies that exist within Comms and Marketing were proceeding with, following Board discussion at the October meeting, and were advised that these are with the Resourcing Panel for consideration.

10. Action Log – 221208

10.1 The Action Log was discussed.

11. Chair and Chief Executive Reports – 221209

11.1 In the period between 31 October and 22 November the Chair attended meetings and events as per the Chairs Report

11.2 The FSS Chair invited Geoff Ogle to provide an oral update to supplement his written report.

11.3 Geoff advised that he continues to meet with Maree Todd MSP on a regular basis. He also met with Finlay Carson, Convenor of the Rural Affairs, Islands and Natural Environment Committee (RAINE). Geoff has asked that, as FSS are accountable to parliament, we be added to the parliamentary work programme.

11.4 The second joint FSS/FSA Annual Report will be published in October with a small launch event taking place.

11.5 Geoff also highlighted the capability review which Marion McArthur, Head of Audit Assurance, and her team undertook. This looked at strategy, leadership and delivery capability as part of the reprioritisation work to ensure FSS are in a fit state for the year ahead.

11.6 The Board asked whether businesses are charged for work to risk assess regulated products such as novel foods and were surprised to hear they aren't. Ian McWatt explained that this work was previously undertaken by the European Food Safety Authority and the Commission is now exploring the ability to charge, this would need to apply on a 4 country basis.

11.7 The Board noted the oral reports, there were no questions.

12. Risk Appetite Statement – 221210

12.1 The Chair invited Diane Strachan, Head of Private office to present the updated Risk Appetite Statement, the purpose of which was to consider whether FSS Risk Appetite Statement, last agreed following the Board meeting on 17 February 2021, continues to provide FSS Board and Executive with an adequate foundation / framework / underpinning to support effective risk management. This is particularly important given the spending review challenges the organisation currently faces.

12.2 With reference to point 4.3, when asked, Geoff Ogle explained that FSS will put effort into not diverging on decisions where that is in the interest of Scottish consumers however we also need to accept that is an increasing possibility, with the REUL bill and Internal Market Act. However he assured the Board that we will not diverge for the sake of it.

12.3 The Board requested that at 4.2 'positively' be added between 'could' and 'impact'.

ACTION – 2022/04 – Diane Strachan

12.4 The Board asked whether animal welfare, specifically, should be added to Public Health / Consumer Protection and Ian McWatt advised that FSS have a well published approach to zero tolerance where animal welfare is concerned, we enforce the law and Food Business Operators and haulage companies are required to demonstrate adherence. Geoff advised that since we are averse to risk relating to animal welfare this could be added to the statement to confirm our position.

12.5 The Board queried the overall low appetite for public health, but Annex A talks about health improvement, the risk appetite around protection being different to improving. The ELT will consider this.

ACTION – 2022/05 – ELT

12.6 Following discussion the Board:

- Discussed and provided a view on whether the Risk Appetite Statement remains fit for purpose;
- Agreed the suggested wording for the additional entry in the financial section of the Risk Appetite Statement at point 4.1;
- Agreed to adopt the change from Open to Hungry for the entry in the financial section at point 4.2 with the addition of the work 'positively'; and
- Agreed to adopt the additional entry suggested in the external factors section at 4.3.

13. Annual Review of Strategic Risk Register and Strategic Issue Register – 221211/11a/11b

13.1 The Chair invited Garry McEwan to present to the Board an update on the management of the Strategic Risk Register as well as the ongoing development and management of a new Strategic Issue Register to aid the management of strategic issues.

13.2 The Board asked whether animal disease, ie avian flu, should be considered as a food security risk and Ian McWatt agreed to amend one of the categories to explicitly state this as a risk.

ACTION – 2022/06 – Ian McWatt

13.3 The Board:

- Discussed the information provided in this report and within the Strategic Risk Register, including the assessed levels of risk, direction of travel and action taken to mitigate any risks identified; and
- Discussed the information provided in the report and within the Strategic Issue Register, including the assessed levels of issues, direction of travel and action taken to mitigate any issues identified.

14. ARC – Terms of Reference

14.1 Given the changes which have occurred in the past 12 months, ie Deloitte replacing Audit Scotland, alongside new members joining, the ToR was discussed at the ARC meeting held 30 November where the Members agreed to the suggested changes.

14.2 It is for the FSS Board to have final sign off and they also agreed to the changes.

15. Audit and Risk Committee Oral Update

15.1 The Chair invited Sue Walker, Chair of ARC to provide an update on the Annual Effectiveness Review held 30 November 2022, the key points raised were:

- The ARC must continue to challenge ourselves to make sure papers and discussions are strategic and we have clarity between what are executive and non-executive matters;
- The ARC would like more opportunities for training, this has slipped since Covid and we should reintroduce the circulation of appropriate training opportunities; and
- It could be helpful for FSS staff and new audit staff to have an induction with ARC to establish what the committee expects.

15.2 The Chair also invited Sue Walker, Chair of ARC, to provide an oral update on the ARC meeting which took place on 30 November 2022.

15.3 The ARC noted that the Audit Programme for Corporate Services has gone well and that a planned audit of the People Strategy has been deferred until next year.

15.4 The ARC received 3 audit reports, one on Cyber Security and Resilience (limited assurance rating), one on procurement arrangements (reasonable assurance) and one on the FSS Audit Assurance Branch (substantial rating). Whilst a limited assurance rating is not ideal, all the recommendations have already been implemented and show the value of internal audits showing opportunities for process improvements. The implementation of recommendations in a timely way is something that FSS excels at.

15.5 The ARC noted that the Official Controls Audit programme remains on track.

15.6 The ARC received the Withdrawals and Recalls Audit Report, which received a substantial assurance outcome and also the Enforcement Action (Referrals for Investigation Audit Report, which received a reasonable assurance outcome.

15.7 The ARC discussed risk matters, already being discussed as part of today's Board Meeting.

15.8 The ARC received the Annual Report on FSS Environmental Performance which showed excellent progress towards net zero in a number of areas such as waste to landfill, the environmental impact of Pilgrim House and our fleet. It was noted that It will be a significant challenge going forward to reduce emissions from non-fleet transport.

15.9 The ARC proposed changes to the ARC Terms of Reference.

16. Finance and Business Committee Oral Update

16.1 The Chair invited Louise Welsh, Chair of the Finance and Business Committee (FBC) to provide an oral update on the second meeting of the FBC which held via video conference on 23 November 2022.

16.2 The FBC received the latest update on financial performance for the second quarter of the financial year 2022/23, where the majority of discussion centred around concerns over either overspend or underspend. The Chief Executive said that concerns around the scale of the underspend meant that overspend is highly unlikely.

16.3 In order to ensure any underspend is kept to a minimum the Executive Leadership Team (ELT) will look at one off expenditures that don't require procurement or agency staff leading up to the end of March next year, the underspend is not expected to be any higher than £100k.

16.4 The FBC heard the pay award was extremely late this year and higher than expected at 5%, and it had been difficult to get the balance correct based on forecast assumptions.

16.5 Layla Mooney, Head of Human Resources presented on the work of the newly created FSS People Board which has oversight of delivery and management of people performance and experience of staff at FSS. The committee heard detail on the reporting structure and that Garry McEwan leads the Board which in turn reports to the Direct Governance Group and the ELT.

16.6 There was discussion around the performance measurement element and the FBC asked if there is currently a structured approach to annual appraisals. Layla explained that this is problematic as the information from appraisal activity is actually held by Scottish Government, FSS does not have access to the system and are supplied with limited data.

16.7 The committee was in favour of the executive pursuing a more effective way of using the annual appraisal to link to performance.

16.8 The final presentation was an update on FSS strategic performance indicators for Q1 and Q2 for the year 2022/23.

16.9 There was a brief discussion on the use of MenuCal and whether it would be the go to tool if mandatory calorie labelling is introduced. The Chief Executive advised that an exit strategy is being looked into as there is private sector options available and FSS should not be funding this.

16.10 In conclusion the FBC noted the agreement to reconvene the previously established short life working group between January and March 2023 to provide

feedback on the SPIs currently being reported and consider next steps in relation to target and trend setting ahead of the new performance year.

17. Questions from Public

17.1 Nil

18. AOB

18.1 No other business was discussed and the meeting was closed.