

# Audit of Operational Delivery Division and the Scottish Food Crime and Incidents Unit

## Escalation of Enforcement Action – Referrals for Investigation

2022/2023 - Quarter 2

Final Report issued: October 2022



# Foreword

Audits of Food Standards Scotland's Operational Delivery Division and the Scottish Food Crime and Incidents Unit and are part of the arrangements to improve consumer protection and confidence in relation to food and feed.

The audit scope was detailed in the audit brief and plan issued to the Heads of the Operational Delivery Division and the Scottish Food Crime and Incidents Unit on the 5<sup>th</sup> August 2022. The aim of the audit is to maintain and improve consumer protection and confidence by ensuring that FSS are providing an effective food law enforcement service.

Food Standards Scotland audits assess conformance against retained Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law and the FSS Manual for Official Controls. The provisions for conducting audits are provided for in Article 6 of retained Regulation (EU) 2017/625.

The Audit scheme also provides the opportunity to identify and disseminate good practice and provide information to inform Food Standards Scotland policy on food safety, standards and feeding stuffs.

Specifically, this audit aimed to establish:

- Verification that official controls are carried out in compliance with planned arrangements.
- Verification that planned arrangements are applied effectively.
- Verification that planned arrangements are suitable to achieve the objectives of official controls.

Following the audit, it is expected that for any recommended points for action, the Operational Delivery Division and the Scottish Food Crime and Incidents Unit will prepare and implement a combined action plan, which will incorporate a root cause analysis of any non-compliance. A list of recommendations is provided in the action plan template at the end of this report.

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## 1.0 Introduction

- 1.1 Food Standards Scotland (FSS) has responsibility for the enforcement of legislation in Scotland relating to public health, animal welfare at slaughter and animal health controls in approved establishments under veterinary control – Slaughterhouses, Cutting Plants and Game Handling Establishments (GHE).
- 1.2 This report records the outcomes of the audit of FSS's Operational Delivery Division and the Scottish Food Crime and Incidents Unit (SFCIU), with regards to their delivery of the Referral for Investigation process as part of the escalation of the enforcement action taken against Food Business Operators (FBOs) contravening regulatory requirements.
- 1.3 As per information provided during the audit, FSS's Operational Delivery Division has escalated enforcement action in approved establishments to a referral for investigation on 13 instances during the period October 2018 to date, with an outcome of four cases having been referred to the Procurator Fiscal (PF) for consideration once the investigation was concluded.
- 1.4 The guidance relating to the current planned arrangements referred to throughout this report is the primary policy implementation and procedural references within:
  - Chapter 7 of the [FSS's Scottish Manual for Official Controls](#), referred to as the SMOC.
- 1.5 The audit focused on the verification of the suitability and implementation of those operational arrangements developed by FSS to meet its enforcement responsibilities.

### **Reason for the Audit**

- 1.6 As detailed in the Foreword, Article 6 of retained Regulation (EU) 2017/625 requires Competent Authorities to carry out internal audits or have audits carried out on themselves.
- 1.7 The audit programme covering the official controls delivered by FSS is carried out as an internal audit by FSS's Audit Assurance Division. This audit forms part of that audit programme.

### **Scope of the Audit**

- 1.8 It was agreed that the audit scope would cover:
  - An assessment of local plans, policies and procedures.
  - The verification of application of, and adherence to, documented policies, plans and procedures.
  - The identification and dissemination of good practice.
  - The provision of information to aid future FSS policy and operational development.

## 2.0 Executive Summary

- 2.1 The review of the three referral for investigation cases selected for the purpose of this audit, shows that these were delivered in a timely manner and that the objective of this process was achieved and supported with a documented decision having been made on conclusion of the investigation.
- 2.2 The period audited covers the delivery of the referral for investigation processes from 2018 to date. During this period, there is evidence of continuous improvements and enhancements of the process audited, being directly linked to a positive level of communication and cooperation between both divisions at Management and Operational levels.
- 2.3 The Audit Team acknowledges the current work being undertaken by the Operational Delivery Division, in cooperation with the SFCIU, in the revision of the operational guidance given in sections 4.10 to 4.12 of the Enforcement Chapter within the Scottish Manual for Official Controls (SMOC). This revised guidance is intended for publication shortly after the finalisation of this audit. It is anticipated that most of the recommendations will be embedded in the revised document.
- 2.4 Review of the guidance used for the purpose of this audit indicated that these operational instructions could benefit from further development in order to provide more clarity in general and, in particular, on some of the key process steps to the intended audience.
- 2.5 The review of the three referral for investigation cases selected showed some inconsistency in the adherence to the current guidance, when a degree of flexibility and/or deviation from these procedures were agreed between the Operational Delivery Division and the SFCIU on individual cases. Whilst deviation was very likely justified, the Audit Team would encourage this avenue for flexibility included in the guidance itself.
- 2.6 There is also evidence of continuous improvements in the delivery of the cases reviewed where some process enhancements have been embedded in the overall process, however, the final guidance incorporating these additional points has not been published yet. Of particular interest is the initial meeting arranged between the SFCIU and the Operational Delivery Division to initially discuss and agree on the way to progress each potential referral case before being officially instigated. These initial meetings seem to have facilitated and improved the overall management of the cases.
- 2.7 Several process steps have been identified as areas for improvement and for further development of the current guidance. In particular, the consideration within the guidance of mechanisms for the acknowledgement and feedback of the plant level recommendations made by the SFCIU in the final recommendation report, and also for the follow up between the SFCIU and Operational Delivery Division of those cases having been referred to the Crown Office and Procurator Fiscal Service (COPFS).

2.8 The high quality content, structure and detail of the information in the recommendation reports is recognised as an area of good practice.

**Level of Assurance**

2.9 As detailed in the FSS’s Official Feed and Food Controls Delivery Audit Charter, the audit outcome has been assigned below:

2.10 The Recommendations within this report detail the weaknesses in the controls that the Operational Delivery Division and the SFCIU should address.

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| <p><b>Reasonable Assurance</b></p> <p><b>Controls are adequate but require improvement.</b></p> | <p>Some improvements are required to enhance the adequacy and effectiveness of procedures. There are weakness in the risk, governance and/or control procedures in place but not of a significant nature.</p> |
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**Audit Opinions**

2.11 The rating above is based upon four categories of audit assurance level that is applied in relation to individual reports.

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| <p><b>Substantial Assurance</b></p> <p><b>Controls are robust and well managed</b></p>         | <p>Risk, governance and control procedures are effective in supporting the delivery of any related objectives. Any exposure to potential weakness is low and the materiality of any consequent risk is negligible</p> |
| <p><b>Reasonable Assurance</b></p> <p><b>Controls are adequate but require improvement</b></p> | <p>Some improvements are required to enhance the adequacy and effectiveness of procedures. There are weaknesses in the risk, governance and/or control procedures in place but not of a significant nature.</p>       |
| <p><b>Limited Assurance</b></p>  | <p>There are weaknesses in the current risk, governance and/or</p>  |

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| <p><b>Controls are developing but weak</b></p>  | <p>control procedures that either do, or could, affect the delivery of any related objectives. Exposure to the weaknesses identified is moderate and being mitigated.</p>  |
| <p><b>Insufficient Assurance</b><br/><b>Controls are not acceptable and have notable weaknesses</b></p> | <p>There are significant weaknesses in the current risk, governance and/or control procedures, to the extent that the delivery of objectives is at risk. Exposure to the weaknesses identified is sizeable and requires urgent mitigating action</p> |

### 3.0 Audit Methodology

- 3.1 The guidance in the SMOC current at the time of the audit was reviewed against its suitability to deliver the process audited and the identification of areas for improvement. To note, a revised SMOC Chapter 7 was issued during the internal audit and some recommendations may have been already addressed.
- 3.2 A representative sample size and individual referral for investigation cases for review were agreed with the auditees. A total of three cases from the period 2018 to date were chosen for full review and verification against the operational procedures detailed in the SMOC, Chapter 7, amendment 16.
- 3.3 The criteria to select these cases was based on the nature of the contravention, the outcome of the investigation, the FSS operational area and the year. For the purpose of this audit, one of the referrals for investigation concluded in a submission report to the Procurator Fiscal (PF), while the other two resulted in recommendation reports issued to the Operational Delivery Division without the need for a referral to the PF.
- 3.4 Available evidence referring to the three cases selected was provided by the Operational Delivery Division and the SFCIU and reviewed through a desktop exercise by the Audit Team. For this purpose, a number of questions relevant to the different steps in the process were developed by the audit team and cross-checked against the evidence provided.

3.5 Two members of staff from the Operational Delivery Division and similarly two from the SFCIU involved in the delivery of the selected cases and general management input in the process audited, were interviewed.

## 4.0 Audit Findings

- 4.1 The findings reported below detail both corrective and preventive actions which are not confined to addressing specific technical requirements, but also include system-wide measures. Conclusions address the compliance with the planned arrangements, the effectiveness of their implementation and the suitability of the planned arrangements to achieve the stated objectives as appropriate.
- 4.2 The Audit Team acknowledges the continuous ongoing work by the Operational Delivery Division to review and amend the guidance provided in the SMOC. The drafted version of the sections related to the delivery of the processes audited was presented to the Audit Team during the audit, and the final version was published at the time of the completion of this report. There is clear evidence of the valuable input from the SFCIU team during this revision period. This reflects on the positive direction observed by the Audit Team in the continuous enhancement of communication and cooperation channels between these two Divisions when delivering the referral for investigation processes.
- 4.3 Planned arrangements detailing the process audited and used for the purpose of this audit are incorporated in sections 4.10 to 4.12 within Chapter 7 – Enforcement - of the SMOC. Evidence showed references in this guidance to a number of acronyms and terms which are not current.

### Recommendation

1. The referral for investigation section within the SMOC to be updated with the current acronyms and terms in line with FSS's organisational chart.

4.4 While acknowledging and agreeing with the non-prescriptive nature of this Operational guidance in line with the Operational Delivery Division's and the SFCIU's aims, the Audit Team considers that these operational instructions could benefit from further development in order to provide more clarity in general and, in particular, on some of the key process steps, to the intended audience. Consideration should be given to providing an initial flow diagram for easy reference and understanding. Clarification of responsibilities, communication and reporting channels should be enhanced as necessary. Consideration as to whether it is appropriate or acceptable to apply flexibility to divert from or omit some of the steps should also be given, in particular, to the submission of the referral for investigation form and the issuing of the unique reference number. These actions should ensure better understanding and greater consistency in the delivery of the process by both management and field staff.



## Recommendation

2. Referral for investigation section within the SMOC to be revised with the aim being to provide more clarity on some of the steps.

4.5 Findings of the review of the three referral for investigation cases selected to assess whether the appropriate policies and procedures had been followed.

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| Question 1     | <b>Was the hierarchy of the enforcement programme and the suggested criteria which would merit referral for investigation followed?</b>   |
| Audit findings | Evidence provided showed that the nature and severity of the FBO contravention fell within the suggested criteria stated in the SMOC. The hierarchy of the enforcement action taken by the authorised officer was in compliance with FSS’s Enforcement Policy in all the cases.   |
| Question 2     | <b>Was the referral action noted in the enforcement programme of the establishment – 11/5 form?</b>   |
| Audit findings | Although the need for this action is not stated in point 4.10 “Referral for investigation” section of Chapter 7, this is noted throughout the chapter as a means to keep this enforcement document “live”.<br><br>The referral for investigation action was correctly noted in the 11/5 for two of the cases reviewed.  |
| Question 3     | <b>Was there consultation with the area’s Technical Lead prior to the decision to refer the case for investigation?</b>   |
| Audit findings | This consultation occurred in each case and it is captured in the three recommendation reports produced by the SFCIU. It is also supported by emails in two of the cases reviewed. It was noted that some email correspondence for the oldest of the cases reviewed was not available due to FSS’s Information Management Policy. The SFCIU is now using and has been for a number of years, the Clue system to manage and store communications referred to each individual referral for investigation cases. |
| Question 4     | <b>Has 11/6 “Referral for Investigation form” been submitted within 10 working days of the offence being identified?</b>  |
| Audit findings | Evidence showed that the Referral for Investigation form, 11/6, was only completed and submitted to SFCIU in one of the cases reviewed. In the other two cases, it was decided that sufficient information had been made available to the SFCIU by the Operational Delivery Division without the need to submit this form. This is supported by emails and recorded in the final recommendation report when describing the sequence of events during the investigation.                                       |

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| Question 5     | <b>Did the AO (Authorised Officer) ensure that all inspection teams at the plant were aware of the issues subject to referral?</b>   |
| Audit findings | This action is evidenced by relevant entries in the daybook, plant team meeting notes, and through email communication.  |
| Question 6     | <b>Was the FBO informed of the intention to refer the contravention for further investigation?</b>   |
| Audit findings | In the three cases reviewed, the FBO was informed of the intention by the AO to refer the contravention for further investigation. This was recorded in the daybook in two of the cases and supported by an advisory letter to the FBO in one of the cases.  |
| Question 6     | <b>Was a unique reference number allocated to the referral for investigation by the Operational Delivery Division?</b>   |
| Audit findings | None of the cases reviewed were allocated a unique reference number by the Operational Delivery Division. A unique name was given by the SFCIU to one of the cases.<br><br>While it is recognised by both units that referral for investigation cases should be traceable and easily identified for management and recording purposes, there appears to be a degree of non-clarity as to who is responsible, and on the format for implementing this step. As a mitigating factor, the Audit Team acknowledges the relatively low number of cases where enforcement action has been escalated to a referral for investigation, which facilitates their overall traceability. |
| Question 7     | <b>Did the Operational Delivery Division forward the referral to the SFCIU for consideration of formal investigation?</b>  |
| Audit findings | This is supported by email correspondence in two of the cases reviewed and the general assumption is that this action took place as all cases were accepted and taken forward by the SFCIU.  |
| Question 8     | <b>Was an Investigator Officer appointed by the SFCIU?</b>   |
| Audit findings | There is clear evidence of improvements in the period of time considered by this audit in appointing an Investigator Officer (IO), by SFCIU. This took nearly a month in the oldest case reviewed, while in the other two cases, this action was completed immediately after the case was formally reported to the SFCIU for investigation. This appears to have been the result of an increase in capacity levels within the SFCIU team.  |
| Question 9     | <b>Was there communication between the SFCIU and Operational Delivery Division (Official Veterinarian, Meat Hygiene Inspector Team, Area Veterinary Managers, etc)?</b>  |
| Audit findings | This was demonstrated and supported by extensive email correspondence between all parties and plant visits conducted by the IO during the investigation. Evidence also indicated   |

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|                | improvements in this regard as a result of what appears to be a better level of familiarity between both IOs and AOs.   |
| Question 10    | <b>Did the IO check all documents sent as evidence?</b>   |
| Audit findings | There is evidence that the IO reviewed all documents provided by the AO. An administrative mistake in one of the formal enforcement notices presented as evidence for one of the cases was also highlighted by the IO as part of these checks. There is also evidence of communication between the IOs and the AOs on discussions on the evidence submitted and requested for each case.                |
| Question 11    | <b>Did the IO liaise with the FBO as part of the investigation?</b>   |
| Audit findings | This is supported by email correspondence and also noted in the recommendation report issued by the SFCIU. Plant visits were conducted by the IO in all cases.  |
| Question 12    | <b>Was a decision made by SFCIU and communicated to the Operational Delivery Division once the investigation was complete?</b>  |
| Audit findings | Following the investigation, the SFCIU made a decision and informed the Operational Delivery Division on the next steps in progressing each of the referral cases. Evidence indicated that this is accomplished by the issuing of a recommendation report by the SFCIU, however, the means and format of the way this decision is passed to the Operations Delivery Division is not stated in the SMOC. |
| Question 13    | <b>Was the decision made by the Procurator Fiscal (PF) communicated to the Operational Delivery Division including the reasons when the case was not taken forward?</b>   |
| Audit findings | One of the cases reviewed was referred to the PF office for consideration in 2019. Evidence indicated that those members of the Operational Delivery Division interviewed were not aware of the resolution and progress on this case to date. Evidence on the decision by the PF on this case was obtained by the IO during the course of this audit and provided to the Audit Team.                    |

4.6 The review of the three referral for investigation cases selected shows that these were delivered in a timely manner and that the objective of this process was achieved and supported with a documented decision having been made on conclusion of the investigation.

4.7 It appears that there has been some inconsistency in the adherence to the current guidance, SMOC, when a degree of flexibility and/or deviation from these

procedures was agreed between the Operational Delivery Division and the SFCIU on individual cases. This is particularly evidenced in the questions above referring to the referral for investigation form and the unique reference number. See [Recommendation 2](#).

- 4.8 There is also evidence of continuous improvements in the delivery of the cases reviewed where some process enhancements have been embedded in the overall process. While the Audit Team recognises the significant value and impact of these new steps, we consider that the SMOC should reflect them in order to provide accurate guidance to operational staff. Of particular interest is the initial meeting arranged between the SFCIU and the Operational Delivery Division to initially discuss and agree the way forward for each potential referral case before being officially instigated. These initial meetings seem to have facilitated and improved the overall management of the cases.

#### Recommendation

3. Consideration to be given to the need to formalise in the guidance an initial discussion between the SFCIU and the Operational Delivery Division to preliminarily assess any potential referral for investigation case.

- 4.9 Although this is not contemplated in the current guidance, the recommendation reports issued by the SFCIU may include, when appropriate, a number of recommendations for consideration and implementation by the Operational Delivery Division at plant level. This is recognised by the Audit Team as another valuable development of the general process. The SFCIU's recommendations are likely to add value, particularly for those referrals which are passed to the Crown Office and Procurator Fiscal Service (COPFS) for consideration. Evidence indicated that there are no clear and documented planned arrangements for the acknowledgement and the feedback on the progress of these recommendations to the SFCIU. This has been identified as an area for improvement and development of the current guidance.

#### Recommendation

4. Consideration to be given to formalise the acknowledgment and feedback mechanism on the recommendations enclosed in the SFCIU report issued to Operational Delivery on conclusion of the investigation.

#### Good Practice: Recommendation reports

The high quality content, structure and detail of the information in the Recommendation reports, is recognised as an area of good practice developed by the SFCIU. It is also recognised that this would have not been possible to accomplish without the high quality of the evidence provided by the Official

Veterinarians (OVs), Meat Hygiene Inspectors (MHIs) and Managers within Operational Delivery Division, and the continuous enhancement in communication and cooperation between both divisions.

- 4.10 Although this is not contemplated in the current guidance, there is no evidence of planned arrangements between Operational Delivery and the SFCIU for the follow up of those cases which have been passed to the COPFS. This was significant in the case reviewed which was passed to the PF for consideration in 2019 and for which and to date of this audit, the Operational Delivery Division was not aware of its resolution. This has been identified as an area for Improvement and development in the current guidance.

#### Recommendation

5. To include within the current communication arrangements between Operation Delivery Division and the SFCIU the follow up of those cases having been referred to the PF.

## 5.0 Annex A – Action Plan

### Action Plan for the Operational Delivery Division and the Scottish Food Crime and Incidents Unit: Escalation of Enforcement Action – Referrals for Investigation.

| Recommended Point for Action  | Planned actions   | Target date for completion   | Responsible Officer(s)    |
|---|---|--|---------------------------|
| <p>1. The referral for investigation section within the SMOC to be updated with the current acronyms and terms in line with FSS's organisational chart.</p> <p><b><u>Priority: Low</u></b></p>                                    | <p>SMOC Chapter 7 to be reviewed as per the new Operation Delivery Division structure – already addressed via Amendment 17.</p>     | <p>N/A</p> <p>Amendment 17 of the SMOC was published on the 9<sup>th</sup> of September 2022 and this recommendation is closed at the time of this report.</p> | <p>N/A</p>                |
| <p>2. Referral for investigation section within the SMOC to be revised with the aim being to provide more clarity on some of the steps.</p> <p><b><u>Priority: Medium</u></b></p>   | <p>SMOC Chapter 7 to be reviewed and clarity on process to be included.</p>   | <p>31 Dec 2022</p>   | <p>Veterinary Advisor</p> |
| <p>3. Consideration to be given to the need to formalise in the guidance an initial discussion between the SFCIU and the Operational Delivery Division to preliminarily assess any potential referral for investigation case.</p> | <p>SMOC Chapter 7 to be reviewed and the initial discussion between the Operation Delivery Division and SFCIU to be documented.</p> | <p>31 Dec 2022</p>   | <p>Veterinary Advisor</p> |

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| <b><u>Priority: Medium</u></b>  |  |             |  |
| <p>4. Consideration to be given to formalise the acknowledgment and feedback mechanism on the recommendations enclosed in the SFCIU report issued to Operational Delivery on conclusion of the investigation.</p> <p><b><u>Priority: Medium</u></b></p> | Template report to be revised to this effect.  | 31 Dec 2022 | Senior Investigator/<br>Veterinary Advisor |
| <p>5. To include within the current communication arrangements between Operation Delivery Division and the SFCIU the follow up of those cases having been referred to the PF. <b><u>Priority: Low</u></b></p>   | A forum for regular dialogue between the two Divisions already exists and Investigators will be added into those meetings. | 31 Dec 2022 | Head Veterinarian                          |
| <p><b>All actions were completed following the receipt of evidence from the Operational Delivery Division and the Scottish Food Crime and Incidents Unit – February 2023</b></p>  |  |             |  |

## 6.0 Acknowledgements

The Audit Assurance Team would like to acknowledge the help and co-operation of FSS Operational Delivery Division and the SFCIU staff for their assistance with the conducting of this audit.

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Audit Assurance Division



## Abbreviations

|              |  |
|--------------|--|
| <b>AO</b>    | Authorised Officer                         |
| <b>AVM</b>   | Area Veterinary Manager                    |
| <b>COPFS</b> | Crown Office and Procurator Fiscal Service |
| <b>EU</b>    | European Union                             |
| <b>FBO</b>   | Food Business Operator                     |
| <b>FSS</b>   | Food Standards Scotland                    |
| <b>IO</b>    | Investigation Officer                      |
| <b>MHI</b>   | Meat Hygiene Inspector                     |
| <b>OV</b>    | Official Veterinarian                      |
| <b>PF</b>    | Procurator Fiscal                          |
| <b>SFCIU</b> | Scottish Food Crime and Incidents Unit     |
| <b>SMOC</b>  | Scottish Manual for Official Controls      |