

MINUTES OF THE MEETING OF THE FOOD STANDARDS SCOTLAND BOARD HELD ON 16th MAY 2018 FROM 10.30 AM TO 15.25 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
Elsbeth MacDonald, Deputy Chief Executive
Ian McWatt, Director of Operations
Garry Mournian, Head of Corporate Services
Katherine Goodwin, Head of Communications
& Marketing
Karen McCallum-Smith, Head of Private Office
Hazel Stead, Board Secretary

1 Introduction, Apologies

1.1 The Chair, Ross Finnie welcomed everyone to the Food Standards Scotland (FSS) Board meeting.

1.2 Apologies were received from Louise Welsh, Deputy Chair and Norval Strachan, Chief Scientific Advisor.

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 Meeting - 16th May 2018 18/05/01 & Action Log – 18/05/02

3.1 There were no amendments to the minutes or action log. The Board accepted the minutes and action log as accurate records.

4 Matters Arising

4.1 In matters arising, George Brechin sought assurance from the Executive on the expected timing of implementation of the new delivery model for animal feed inspections in Scotland. Ian McWatt, Director of Operations explained FSS is working closely with Scottish Government (SG) Procurement team and a few potential contractors had been identified and that the model would be in place from 1st April 2019.

5 Chair's Report

5.1 In his report, the Chair referred to the meetings he had attended in the past few months with members of the Executive, including the Scottish Association of Meat Wholesalers Annual General Meeting and the Royal Environmental Health Institute of Scotland Conference.

6 Chief Executive's Report – 18/05/03

6.1 The Chair invited Geoff Ogle, Chief Executive (CE) to provide an oral update on a number of topics. Geoff advised that he had taken up a position on the Scottish Government (SG) Public Health Reform Programme Board. He advised that FSS had been asked to endorse a set of public health priorities which have been agreed in principle. He intended to invite SG officials to speak to Board members about the Public Health Reform Programme Board.

6.2 He moved onto a media article by the BBC regarding a recall of haggis pakoras by the food business operator (FBO), Mrs Uni's, which had wrongly reported that FSS had ordered the recall. He confirmed that FSS had not ordered Mrs Uni's to recall the affected food product and that Mrs's Uni's had been compliant and had worked with FSS to take the necessary steps to resolve the incident. He had therefore asked for the BBC to correct the media article.

6.3 Geoff explained that the reason why there was not a board paper on the agenda for Independent Scrutiny of FSS Audit of Official Controls by Local Authorities. Geoff has approached Michael Jackson, Head of Standards and Assurance of Food Standards Agency (FSA) to provide the independent scrutiny function for FSS and he has agreed.

6.4 Geoff invited Ian McWatt, Director of Operations provide an oral update to the Board on the FSS and FSA Joint UK Review of Cutting Plants and Cold Stores programme board meeting which took place immediately prior to the FSS Board meeting. Ian introduced Colin Sullivan, Chief Operating Officer from FSA, who is the Senior Responsible Officer. Ian explained the background to the review and the overall aim is to improve levels of consumer confidence in the meat sector and that a briefing note would be circulated to board members and a stakeholder challenge group have been appointed to scrutinise the review. Colin outlined the three phases of the review and explained that a board paper will be produced and shared with both FSS and FSA Boards in June 2018 and the outcomes and recommendations of the review will be shared in September 2018.

7 Incident Preparedness Review and Incident Communications Plan – 18/05/04

7.1 In his introduction, the Chair referred to the Incident Management workshop held on 14th May 2018 with Deloitte which was to clarify the role of the Board during a non-routine incident. He explained that the Scheme of Delegation would need to be amended to take into account the Board that would be responsible for approving the Incident Management Framework (IMF). The executive was responsible for managing an incident, therefore the Board must delegate the function to the Executive to implement.

ACTION POINT – 2018/01 : CHAIR

7.2 Ross invited Ian McWatt, Director of Operations to introduce this paper and Jackie McCann, Food Emergency Planning Manager and Katherine Goodwin, Head of Communications and Marketing to present the paper and the Incident Communications Plan.

7.3 Jackie gave an overview of the incident preparedness review, the key findings and that phase 1 and 2 of the review had been completed. She explained as part of phase 3, a desktop exercise with staff had been completed at the beginning of May 2018, which involved using a scenario to set up an Operational Incidents Team and Strategic Incidents Team. Geoff explained that the Executive consider the risk appetite using either low, medium and high tolerances to formulate the management approach for incidents.

7.4 Katherine explained the Incidents Communications Plan (ICP) had been developed alongside and in alignment with the Deloitte work on the IMF and that the aim was for the ICP to be owned by the Communications and Marketing team.

7.5 In discussion, board members welcomed the IMF and the ICP. Board members sought and received clarification that the IMF and ICP would be reviewed annually and would include the lessons learned from any non-routine incident; and expressed concerns on recommendation 24 regarding provision of public analysts and reference laboratories. The Executive noted the

board's concerns and are taking work forward on public analysts; engaging with Local Authorities at Chief Executive level and that we will continue to lobby SG.

7.6 In regards to the discussion on risk appetite, Geoff explained that in a low risk appetite, it is important to take a more proactive and not a reactive stance which requires being more prepared to share what information we do and don't have. It is important to ensure that consumers, via the media understand the context within which incidents are managed so even if we are unable to comment in detail on an on-going incident that doesn't meant information cannot be shared. Experience had shown that being early and evidence based in our communications was important in retaining consumer trust and confidence. In summary, the Chair noted that the risk appetite statement should be redrafted to explain the principles governing the move from medium to low tolerance.

7.7 The Board :

- **Noted** the progress on incident management and the on-going work undertaken to develop FSS non-routine incident communications capability and response
- **Noted** the Deloitte Incident Preparedness Review report; the recommendations and the proposed Incident Management Structures being developed to address the key recommendations
- **Noted** the progress made against each of the review report recommendations and the executive's intention to provide regular updates on progress
- **Noted** the Incident Communications Plan
- **Agreed** that the Executive return to the Board with the Incident Management Framework and the revised risk appetite statement at the Board meeting on 22nd August 2018
- **Agreed** that the Scheme of Delegation to be amended to include approval of Incident Management Framework by the Board and the function delegated to the Executive to implement.

8 Outcomes Report – 18/05/05

8.1 The Chair invited Ruth Dewar, Business Reporting Officer to introduce this paper. Ruth explained that this was the second edition of the six monthly Outcomes report.

8.2 In discussion, board members suggested specifying the numbers of FSS approved establishments in the number of formal enforcement notices issued; noted that some indicators are relevant to more than one outcome; noted the difficulties in finding appropriate indicators for Outcome 4 and questioned the value on an ongoing basis for using a metric for numbers of senior management meetings for Outcome 3. This had been a useful indicator when FSS started and was establishing its credentials in this area but the organisation was in a different place now. In response to the discussion on the use of coloured arrows to explain the outcome trends and using a metric for the number of senior management meetings, the Executive agreed to take these points away for further thought.

8.3 The Board :

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

9 Performance Reporting – 18/05/06

9.1 The Chair invited Ian McWatt, Director of Operations to introduce the paper. He introduced Laurentiu Patea, Veterinary Manager to answer queries on the Animal Welfare metrics. Ian referred to the Scottish Livestock Welfare Group, which is chaired by the Chief

Veterinary Officer for Scotland which involves government agencies and stakeholders with an interest in Animal Welfare. He noted a declining trend of Score 4 incidents and that in Quarter 4, action had been taken to suspend Certificates of Competence for three members of staff.

9.2 In discussion, board members sought and received clarification on whether each animal welfare incident involved one or more animals and that the animal welfare incident metrics should specify where animal welfare incidents occurred - on-farm/in transport/at slaughter. To take account of this point, the Executive intended to amend the narrative future reports.

9.3 The Board :

- **Noted** the information provided

10 Annual Report : Freedom of Information Requests and Complaints – 18/05/07

10.1 The Chair invited Ruth Dewar to introduce the paper. Ruth explained that this was the second summary Annual Report on Freedom of Information Requests and Complaints and that she intended to review the format of the report for the next year.

10.2 In discussion, board members sought and received clarification that the information sought under freedom of information requests was in the main, in regards to current investigations by Scottish Food Crime and Incidents Unit. Overall, the Board was pleased to note that FSS had not received many complaints during 2017-2018.

10.3 The Board :

- **Noted** the information provided

11 General Data Protection Regulations (GDPR) – 18/05/08

11.1 In his introduction, Garry Mournian thanked Tigan Daspan, Jennifer Shaw and the Communications and Marketing team for their work on GDPR. The Chair invited Tigan Daspan, Records Manager to introduce the paper. Tigan gave a brief summary of the paper and confirmed that FSS is already compliant with GDPR.

11.2 In discussion, board members suggested publishing a webstory to highlight that FSS is compliant with GDPR and that the Executive intended to return to the board with an update paper in six months' time.

11.3 The Board :

- **Noted** the FSS GDPR compliance progress in relation to the UK Information Commissioner's Office recommendation
- **Agreed** the recommendations for the ways by which FSS can continue to earn the trust and confidence of our stakeholders in the appropriate use of their personal data in line with the new data protection law.

12 Financial Performance Update – 18/05/09

12.1 The Chair invited Elaine McLaughlin, Project Finance Manager to introduce the paper. Elaine referred to the £15.2 m provisional outturn against an agreed budget of £15.3 m which was reported at the end of Quarter 4. She explained that this figure represents less than 1% underspend against budget. She advised that the Annually Managed Expenditure budget for the financial year 2018/19 had not yet been agreed and that FSS will place a bid at the

in-year Spring Budget Review.

12.2 In discussion, board members welcomed FSS achieving a 1% underspend against the Budget; were reassured that the level of outstanding debt had decreased and recognised it was important for FSS to continue to reduce levels of outstanding debts.

12.3 The Board:

- **Noted** the financial information reported as at 31st March 2018

13 Audit and Risk Committee Annual Report to the Board – 18/05/10

13.1 The Chair emphasised the key role of the Audit and Risk Committee in providing assurance to the Board on corporate governance. He invited Sue Walker, Audit and Risk Committee Chair to introduce the paper. There were no comments from the Board on the Audit and Risk Committee Annual Report to the Board.

13.2 The Board:

- **Noted** the work that has been undertaken by the ARC during the period April 2017 to March 2018

14 Brexit – 18/05/11

14.1 The Chair invited Bill Adamson, Head of Regulatory Policy to introduce the paper. Bill provided the background information on 'single market' principles and how these relate to the development of UK frameworks in the area of food law. It described the principles of single market rules and discussed the balance between the principles of harmonisation and mutual recognition which underpin those rules, drawing on examples from the FSS policy area to help illustrate the importance of ensuring flexibility is available in Scotland. It also described that it was important to maintain the ability to apply different rules in Scotland, when necessary and proportionate, to ensure the protection of the health of the Scottish population, whilst generally supporting the retention of European Union (EU) rules across the whole of the UK post Brexit.

14.2 As part of a wide-ranging discussion on this paper, four questions were raised by the Board:

Question 1. Could we put on record the recent exchange of letters on Brexit between the Chair and Mike Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe?

Question 2. To ask whether our Scottish legislative planning for the post-Brexit world is sufficient if Parliament's powers are restricted as in the Chair's letter and, if not what action is necessary when?

Question 3. To invite the Executive to confirm for the Board post-Brexit, assuming the scenario set out in the letter comes to pass, the continuation of existing local authority powers to secure food safety?

Question 4. To seek reassurance about any necessary contingency planning for transfer of staff under Transfer of Undertakings (Protection of Employment) Regulations of policy advice responsibility, of contracts for services (shellfish and meat inspection), of research contracts and of other matters e.g. pension liabilities?

14.3 In response to Question 1, the Chair was content to put on record he had written to and received a reply from Mike Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe, highlighting his concerns about the risks and potential detriment to consumers in

Scotland of the UK Government's (UKG) proposals to take control of devolved responsibilities following Brexit, including areas relating to food standards¹.

14.4 In response to Question 2, Elspeth MacDonald, the Deputy Chief Executive explained that FSS is working closely with the SG on the legislative consequences of Brexit, to ensure that FSS is prepared for whatever will be required, depending on the legislative mechanism for the changes that will be needed to the statute book in Scotland. She explained that if Clause 11 (now Clause 15) of the EU Withdrawal Bill goes ahead as currently drafted, then our legislation would simply mimic England's for all elements where UKG kept the reservation and we would have to change those which are specific to us, e.g. enforcement under Scottish law. However, these issues are dependent on further Parliamentary and legal proceedings before we can be clear about what we can and cannot do in law.

14.5 In response to Question 3, Elspeth explained that Local Authorities (LA) are designated as competent authorities for food law in Scottish Statutory Instruments and the Scottish Food Law Code of Practice may need to be adapted to reflect whatever outcome is reached between UKG and SG. Working on the basis of 'as is' i.e. repatriating the EU legislation onto the domestic statute book without policy changes, then the LA role would be expected to remain the same after exit. There is no intention to change who is responsible for executing and enforcing food law, and this will be captured in the legal consequences work.

14.6 In response to Question 4, the Executive explained that we are not yet in that position. The EU Withdrawal Bill as drafted would fundamentally undermine Scotland's ability to make policy, it doesn't get rid of the organisation, it does however, raise questions about how FSS would operate in the future should competence be reserved to the UK.

14.7 The Board:

- **Noted** the information contained in the discussion paper
- **Agreed** to formally adopt the Chair's letter on Brexit to Mike Russell, Minister for UK Negotiations on Scotland's Place in Europe

15 Question and Answers

15.1 There were no members of the public or stakeholders in the audience. The Chair closed the meeting.

¹ <https://news.gov.scot/news/protecting-food-standards>