Regulating Our Future

By Heather Hancock, Chairman of the Food Standards Agency

Food We Can Trust
The FSA’s bold new approach to regulating our future

Regulatory Update
Ian Thomas provides another regulatory update for the Focus

Updates from SOFHT
2017 Annual General Meeting plus Upcoming SOFHT Events
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THOUGHTS FROM THE EDITOR...

In this edition we are featuring the Food Standards Agency strategy on the future of food law enforcement practice in the UK. I am grateful to the FSA’s Chair Heather Hancock, for giving us permission to run her article that featured in the EHN early this year and to Michelle Hardy-King, Director, Retail – Supply Chain at NSF International, giving us an industry view of the FSA’s ‘Food We Can trust’ programme. I am also grateful to Ian Thomas who has once again provided a regulatory round up on matters around food safety. As always, I am delighted to hear from readers on topics or articles that they would like to hear more on from SOFHT.

All of us at SOFHT look forward to seeing our members and their guests at the Soiree on 13th July and wish everyone in the industry a safe and happy summer!

Fiona Kibby, Editor SOFHT Focus

IN THIS ISSUE

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INTRODUCTION

IAN BOOTH, SOFHT CHAIRMAN

I would like to take this opportunity to recognise the depth of industry related topics which continue to be covered within SOFHT Focus. Under Fiona editorship this continues to be a real benefit to members, and supports in keeping us all abreast of key topics and trends within the industry.

I would also like to welcome Dianne Waite, Technical Account Manager at NSF International as Assistant Editor. Thank you to all those who contribute to the articles and industry news. The Society’s Council of Directors, made up of volunteers from the food Industry constantly challenge ourselves to ensure we continually support member’s needs. As a previous SOFHT Focus Editor, I recognise the work required to produce each edition. With this in mind, please do share this with you colleagues, to raise both their awareness of current challenges and issues, but also that they may see one of the many supporting areas offered by the Society which may help them in the own development. SOFHT Focus provides many examples of training and networking opportunities to all.

We are pleased to welcome the following members to SOFHT who have joined since the last issue of SOFHT Focus.

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The Society continues to be recognised throughout the industry as a professional body covering all aspects of food hygiene including hygiene technologies and management techniques, as well as related technical management requirements such as food legislation and quality management systems. SOFHT is committed to supporting awareness of hygiene and related technologies practices. Within the strategy presented in the last edition in March, I outlined the focus on developing member benefits in areas such as events and conferences, as well as the Training Academy and Breakfast Clubs. Sukhbir Kaur, Senior Technical Manager at Reynolds Catering Supplies has recently developed a range of Breakfast Clubs that are very relevant to those within the industry. I thank Sukhbir for this fresh approach, and depth of topics.

The Society must continue to ensure that we represent the interests of all members and we take this into account when developing events and training. If you feel that the sector that you represent could be further supported, please do contact the office. We hope that you can see the continued benefits of your membership with SOFHT. We always welcome involvement of members through our range of activity, as a speaker, joining working parties or the opportunities to collaborate with other people within the food industry.

Ian Booth
SOFHT AGM 2017

The Society held its annual AGM on the 21st June 2017. The Chairman’s report, as detailed in full in the SOFHT Annual Report 2017, was well received by Council and presented a healthy and positive outlook for The Society for the coming year.

Neil Griffiths

There were some significant changes to Council members this year, notably the retirement from Council of Neil Griffiths the former Chair and Treasurer. Neil joined the SOFHT Council originally in June 1999 and served until 2008. During this time he was a fantastic and very active Chairman from 2003-2005. In 2010, Neil re-joined Council as Treasurer until stepping down this year. Neil has been instrumental in the development of The Society and especially for the formation of the Supporting Company Membership group. He has also supported by speaking at a number of events and writing articles for the SOFHT Focus. Already a Fellow of SOFHT, he will be missed by all at Council and the membership and we gratefully thank him for all he has done and wish him the best for the future.

Mike McCorkell

Replacing Neil as Treasurer is Mike McCorkell. Mike works as business consultant in the North-West of England, working mainly with SMEs in science and technology. Mike hopes his commercial experience and finance background will enable him to carry on Neil Griffiths’ good work in the Treasurer role.

Previously Mike worked for ALcontrol Laboratories for 17 years, including 7 years as Managing Director of their UK food and water testing business. The customer group was food manufacturers, providing microbiology, chemistry and molecular biology testing to support food safety, quality and label information. Through ALcontrol, Mike was a member of the SOFHT sponsoring companies group for several years.

Before ALcontrol, Mike worked in the water industry in various financial and project management roles. He qualified as an accountant whilst working with Yorkshire Water in 1996 and he remains a Fellow of the Chartered Association of Certified Accountants. Although he likes to imagine he has escaped from accountancy, he hopes he knows enough be of some use in the Treasurer role.

Mike is 47 and lives near Chester with his partner Margaret and their two boys, aged 15 and 11, and he is their taxi driver to and from kids’ sports and activities. Away from family and work, he is a keen runner with a preference for going off-road. In May he ran the Excalibur Marathon in Clwydian Hills in North Wales and is training for the Limestone Way Ultra.

Mike is often stopped in the street and asked ‘are you the guy from Countryfile?’. He is still not quite sure if they mean Tom or Adam, but he had the chance to compare (or perhaps contrast) in person at the 2015 SOFHT Annual Luncheon as Tom Heap was one of the speakers.

SOFHT awards Fellowship to Ian Thomas

We are delighted to announce Ian Thomas of 6 Pump Court, London has been made a Fellow of The Society in recognition of his work and support in food safety and for SOFHT over many years.

Specialising in food law, his practices in Ireland and England are renowned for specialising in food hygiene and safety court cases as well as advisory and training services across the spectrum of food law.

Bring your Dog to Work day!

Bill was very pleased to see that Su was making a special effort to look like her dog by dressing in her ‘Westie Whites’ on ‘Bring your Dog to Work’ day on 23rd June. Not recommended hygiene practice for any of our food business members out there but a great idea for dogs and owners who can! We are all jealous of Su and Bill...
Last year, I spoke at the launch of the Food Standards Agency’s four year programme to investigate, design and introduce a more effective and efficient food regulation system in the UK. We set out our ambition to harness new technologies, data and business transparency to deliver a regime that reflects, and adapts to, changes in the global food system, as well as in consumer habits and business behaviour.

Since then, our commitment to change has strengthened. The Board has identified this programme as one of our two overriding priorities – along with preparing for the consequences of EU Exit - through to 2020. We want to be recognised as an excellent, modern and accountable regulator. The ‘Regulating Our Future’ programme (ROF) is central to being able to optimise public protection and right-sized regulation outside the EU, because it gives us a fresh look at smarter ways to achieve the right results for consumers, to anticipate new risks, and to focus our resources where public health is threatened. I am confident that we can create a robust and rigorous model, one that makes it easier for businesses to comply, and in which the public can have confidence – and that offers better value for money. These changes aren’t just about what we want others in the food regulation system to do, they go to the heart of how we the FSA organise and operate, and how we discharge the role and responsibilities we hold as the UK’s Central Competent Authority.

We are in the vanguard of changes that other parts of government are being asked to address. The Cabinet Office’s Regulatory Futures Review, published in January this year, spells out the opportunity for companies and regulators, recommending that: ‘regulators should move as far as practicable towards an outcome-based approach to regulation.’ The desire to improve regulatory frameworks is also evident at international level. The FSA is playing a leading role in discussions at the Codex Alimentarius Commission, the pre-eminent international food standards setting body recognised by the World Trade Organisation. Specifically, we have co-authored a discussion paper and new work proposal with Canadian colleagues on the role of third party assurance schemes and the potential opportunities they might offer to strengthen a country’s national food control system to the benefit of consumers, businesses and regulators. I am struck by the level of international interest and enthusiasm there is for the route we are taking.

Of course, as with any ambitious change, the myths are already building. I know that as the next levels of detail are shared, some of those will be dispelled. But the one I do want to tackle here is that the FSA is in some way handing over regulation to industry. That is not our plan.
“It seems eminently sensible to me that information that is collected regularly is used to help give the public more confidence and understanding, and to give the regulatory bodies better data on which to judge compliance, risk and effective responses.”

Food businesses always have been and always will be responsible for food being safe and authentic. That is part of their job. Many responsible food businesses go to considerable lengths to gain their own assurance that they are discharging those obligations to their customers. What we want to do is to make more and better use of that first line of defence that the food business itself provides. It seems eminently sensible to me that information that is collected regularly, often daily, is used to help give the public more confidence and understanding, and to give the regulatory bodies better data on which to judge compliance, risk and effective responses. This would be a major change, and one that needs careful planning, but its subtext is not self-regulation.

“Food businesses always have been and always will be responsible for food being safe and authentic.”

Environmental health professionals reading this article are well aware of the current and potential risks in a global food system that is getting ever more complex, in a national diet becoming much more varied, and in changes such as increased tendency to eat outside the home. I know from my many conversations with EHPs that you want to be able to focus on the biggest risks, to be able to deal more quickly and robustly with those businesses compromising on hygiene or standards. We are all agreed that those businesses are the ones we need to work with to ensure consumer protection. Local authorities already employ a variety of approaches to discharging their own food regulation duties, and there are also important differences between England, Wales and Northern Ireland. There’s a difference in the scale of the problem and practical issues, and we don’t want to dictate a one size fits all solution. We anticipate that the future model will offer delivery choices – including single local authorities, collaborations between authorities, opportunities to use regulated private assurance and combinations of all three. I and my board have always been clear that this flexibility is essential in a system that is fit for purpose, attuned to national needs and – critically – future proof.

A major difference between the three countries is that in Wales and Northern Ireland it is mandatory to display FHRS ratings. We’ll maintain this important benefit for the public and businesses. In England FHRS rating display isn’t mandatory. We remain committed to bringing England into line with Northern Ireland and Wales, so our new model must ensure that arrangements in England provide a robust, credible and sustainable basis upon which we make the case for mandation.

RoF is a big and complicated programme. The FSA is committed to openness and transparency, which means stakeholders are involved, and also can see how our thinking is developing and changing over time. We have been delighted to get so much help and support from EHPs and to have so much input into our discussions and meetings. I’m particularly pleased that we have been able to engage with the profession through our Expert Advisory Groups which had very positive sessions in March and June.

We are working to a Target Operating Model with four key components. We have done most work so far on assurance and on Permit to Trade – on how we get that essential first step of being there before a food business begins to operate, so they can get it right from the start and we reduce the number of unregistered food businesses in operation. We are beginning to outline our approach to segmentation and intervention. Whilst we have set ourselves a target of 2020 for the whole system to be designed, we are implementing improvements to the system over time where possible and consistent with the aims of the programme.

Permit to Trade

In conversation with all our stakeholders the idea of having a more effective approach to food registration has been widely welcomed. In particular the ability for the FSA and LAs to have central oversight of food businesses in England, Wales and Northern Ireland is seen as a very positive move. We know that a Permit to Trade regime, if we conclude this is right, would require legislative change; to build the case for a change in the law, we will need clear evidence, and to have worked through all the interim steps that could get us closer to this goal.

We’re therefore starting by putting together an enhanced registration scheme, one that will give us the information we need to make our model work. And while we will do this we’ll develop arrangements for how we can secure central oversight of all food businesses. This also gives us the opportunity to explore opportunities to better join up the process of registering a food business with requirements of other government departments who may also wish to know essential information about how a business is run.
Assurance

At the core of the new regulatory system will be more and better ways that we can gain assurance about businesses delivering on their responsibility to protect the public.

One of the key proposals the FSA Board discussed recently was the concept of the Certified Regulatory Auditor (CRA). I think this is a really important development in the programme’s evolution, and one where we have learned from other assurance regimes. The CRA would be a certified individual, in the private sector, who obtains direct evidence of business compliance. The CRA could also be authorised by LAs and used by them to complement their own assurance activities.

But the really key point about the CRA concept is that the FSA, as the central competent authority, will be setting the standards which this person must meet and follow, and seeking assurance that those standards are delivered including standards about independent and conflicts of interest.

In this new system I see an evolving and important role for Local Authorities. I expect them to continue to play a fundamental role in delivering official controls. And I see them taking appropriate, robust and timely enforcement action where businesses do not meet their obligations to produce food that is safe and what it says it is.

Furthermore we are developing, in conjunction with the Department for Business Energy and Industrial Strategy, an approach to implementing national inspection strategies for food hygiene and food standards, as part of the Primary Authority scheme. In essence, this means that a local authority, acting as a primary authority, makes an assessment of businesses’ compliance with relevant food safety law, and uses this to determine the number, frequency and type of local authority interventions, including verification checks being undertaken where requested by the Primary Authority.

LA expertise is important. An EHP’s role is much wider and deeper than food business inspection. We want LAs to put their resources in the places where they are most needed. We’ve said it before but we need the expertise, help and enthusiasm of the whole professional community to make a new best in class system of regulation.

At the start of this article, I talked about two overriding priorities for the FSA, the second being EU Exit. Modernising regulation and the process of leaving the EU are inextricably entwined. I believe the FSA has a duty to have a fit for purpose, sustainable and risk-led approach to food safety and standards, before the actual regulations return from the European Union. We have to be match-fit for the new arrangements that will follow, including much greater demands around import controls and from businesses that wish to export.

As I always say, we want to engage with all parties with an interest in food regulation and we remain committed to discussion. Please get in touch with us through FutureDelivery@foodstandards.gsi.gov.uk and be part of finding the best realisation of our ambition.
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Food we can trust – the FSA’s bold new approach to regulating our future

Michelle Hardy-King, Director, Retail – Supply Chain at NSF International, examines the key planks of the FSA’s Regulating Our Future programme and how it may affect the UK food industry. There is still time for businesses big and small to actively participate in the debate.

The Food Standards Agency’s (FSA’s) mission is to provide ‘food we can trust’ and the aim of the Regulating Our Future (ROF) programme is to deliver this in ways that are appropriate, proportionate and fit for the future. It is one of the Agency’s top two priorities, the other being preparing for Brexit.

ROF is a recognition that the current regulatory delivery model which is based largely on physical inspections is no longer fit for purpose and doesn’t always provide the level of confidence consumers need to see in the production and provenance of their food. The programme also sits in the context of the government’s overall desire to drive down the costs of regulation, both for the regulators and business, and to cut red tape where unnecessary regulations stifle competition and hamper economic growth.

Brexit adds a further dimension. The thousands of laws, regulations, codes of practice and guidance which govern the processing, distribution, retail, packaging and labelling of food all now face uncertainty and over the next few years will be closely scrutinised from the perspective of whether the UK wishes to keep, cancel or amend them. Now is a perfect opportunity to reform regulation while future proofing it for Brexit and for fast flow of innovations in the world of food. It also presents an unprecedented opportunity for businesses to influence and shape the developing regulatory framework and legislation.

Data has been transformative

The single factor that has completely transformed the potential for a complete redesign of the regulatory structure in the food and other industries is the availability of data and the ability to share it and analyse it for new insights. The food industry is awash with data from regulatory inspections, third-party assurance schemes, first- and second-party audit records and supply chain data. No wonder businesses complain about duplication and over-regulation. There is also data from wider sources including national and international criminal fraud records, reporting databases such as RASSF and public health records. Together, all of these

**SEGMENTATION**
We will tailor regulation depending on the level of risk. This means making better use of all available information when deciding which businesses present the greatest risk. We’ll also recognise those that have demonstrated that they can consistently comply with requirements that are needed to protect health.

**ENHANCED REGISTRATION**
Knowing more about each business, who they are and what they do, is critical. This will allow us to ensure businesses understand what is expected of them and are supported to get it right from the start.

**ASSURANCE & STANDARDS**
The FSA will set the standards as the central competent authority. Our fundamental principle is that businesses are expected to comply with food law. We will take account of appropriate sources of information to evidence a business’s ability to ensure food is safe and what it says it is.

**EVENT**
Intervention will happen where businesses fail to meet standards, and their assurance system will be reviewed. We will strengthen enforcement where businesses fail to do the right thing for consumers and revisit sanctions to tackle those who don’t comply.
can now make a significant contribution to a better understanding of the safety of our food.

The FSA has adopted a bold approach, which combines a refreshing openness and a commitment to working collaboratively with stakeholders to hammer out the best methods of regulation through pilots, hothousing and pathfinder projects in order to gain an overall consensus.

**The key principles**

The ROF strategy is based on five key principles:

- Businesses are responsible for producing food that is safe and what it says it is, and they should be able to demonstrate that they are doing this. Nina Purcell stressed the need to get this message across, especially to small businesses where their responsibilities are less well understood.

- FSA and regulatory partners’ decisions should be tailored, proportionate (particularly when it concerns small businesses) and based on a clear picture of UK food businesses. Individual local authorities hold a lot of information, but the FSA does not have oversight of all establishments and this presents significant limitations on their ability to effectively manage risk across the system, particularly in respect of businesses that trade across local authority boundaries. This aspect is being addressed as a priority within development of the new model.

- The regulator should take into account all available sources of information. This includes using innovative techniques such as predictive analysis that are coming through the private sector, as well as understanding what their business stakeholders are doing in food safety and taking into account inspection data from sources other than their own.

- Businesses that are doing the right thing for consumers should be recognised; action will be taken against those that are not. However, while recognising those businesses doing the right thing means a lighter regulatory touch, this the FSA stresses, is not self-regulation. The FSA will set the standards for assurance that will be taken into account and retain a firm guiding hand with the checks and balances that the consumer wishes to see.

- Businesses should meet the costs of regulation, but these should be no more than they need to be. Where the FSA does need to intervene there should there be a cost for non-compliant businesses.

**Current initiatives**

The aim is to develop a flexible and agile regulatory system by 2020. So what is in prospect in the next three years and what will it mean for food businesses? Specific initiatives include:

- Segmentation and risk rating of businesses. Recognising that one size does not fit all, the FSA is proposing a more flexible approach, with regulatory regimes proportionate to the risks presented by individual businesses.

- Enhanced registration. Currently the registration system for food businesses is relatively lax. The FSA does not have enough information about food operators to implement a truly risk-based segmentation approach and is proposing a system of ‘Enhanced Registration’. This would be combined with pre- and post-registration tools and information such as access to expert resources, for example on labelling, which would help SMEs understand their responsibilities and the regulatory expectations they should focus on. Further work is underway to understand how the FSA can obtain the verified information they need and achieve compliance through voluntary measures and awareness raising without going as far as legislation. They also intend to explore opportunities to better join up the process of registering a food business with the information requirements of other government departments on the basis of ‘only tell us once’.

- Accreditation of private sector FHRS or equivalent inspections. The privatisation of inspections that could lead to issue of FHRS ratings would have the double advantage of freeing up local authority resources to focus on the poor performers, while also incentivising smaller businesses to improve their food hygiene by providing them with the ability to have their FHRS rating reviewed more regularly than at present and qualify for less frequent or intense inspections.

- Acceptance of third party assurance and internal inspection data. The Agency is examining how, as part of a new segmented and flexible approach, businesses that are willing to share the results of existing food assurance schemes such as BRC and IFS and even first-party and second-party audit data, could be relieved of the burden of regulatory inspections. Recent pilot studies carried out with Mitchells & Butlers and Tesco showed that industry data could potentially be used by enforcement officers to inform assessment of compliance of food businesses. However, the studies concluded that further work is necessary to establish precisely how private sector audit data could be used to provide assurance that businesses are complying with food law.

**“Now is a perfect opportunity to reform regulation while future proofing it for Brexit”**

Now is a perfect opportunity to reform regulation while future proofing it for Brexit”
“The aim is to develop a flexible and agile regulatory system by 2020”

While this is potentially of more value to larger businesses, it would also be possible for smaller businesses to, for example, present the results of third party or other accredited private sector inspections as evidence of good practices.

- **Incorporating Primary Authority National Inspection Strategies into the regulated food safety regime.** This would essentially give Primary Authorities, at the request of partner businesses, responsibility to assess the robustness of the business controls, while relieving the business of regulatory inspections.

- **Certified Regulatory Auditors.** A CRA would be a centrally authorised competent person in the private sector who obtains direct evidence of business compliance and could also be authorised by local authorities to undertake other activities within their areas of responsibility. This concept is at an early stage of development but is key to the idea of accrediting private sector inspections, for example for FHRS. A governance system for auditors would mean that anyone using a CRA could be assured that they are competent to verify compliance. The detail of how this could operate will be explored in the next phase of development.

Where are the benefits for industry?

Amongst all these initiatives it is easy to see where larger businesses, both retail and manufacturers, with established and sophisticated food safety regimes will benefit; less so for smaller businesses. Privatised paid-for inspections may look more like the regulators simply shifting costs onto the private sector. However, by placing emphasis on their responsibilities, the FSA is also giving businesses control over their food safety strategies and the ability to use these in competitive marketing. The FSA aspires to making FHRS mandatory in England as it is in Wales and Northern Ireland, where it has already been hugely effective in influencing consumer choices about where to eat. The proposed provision of a package of expert resources to assist small businesses with compliance could also potentially represent cost savings to them. Most manufacturing businesses in the food supply chain have BRC or other food assurance certification and potentially will be able to use this as evidence of regulatory compliance.

The developing ROF framework is complex and involves many interrelated aspects which the FSA is working through. As the Agency refines its thinking in consultation with stakeholders, the details will be pinned down within the next three years. The timetable is tight but businesses still have plenty of opportunity to get involved. (See details below.)

It is clear though that ROF requires a major shift in mind-set by both regulators and business. Openness, transparency, sharing and working together, are all phrases which crop up frequently in FSA communications. The FSA wants to a step change in their relationships with industry. As Nina Purcell said, “Trust us. Don’t hide problems. Come forward because we can work together and it will be better for you. Don’t make us come and ask you questions.” That will be a culture change indeed.

GET INVOLVED what the FSA says:

We want to continue to listen to the views of those with an interest in food standards and safety and to capture the insights and knowledge that already exists in an open and transparent way.

Here is link to our monthly newsletter and podcast: [https://www.food.gov.uk/about-us/about-the-fsa/regulating-our-future/regulating-our-future-newsletter/regulating-our-future-october-newsletter](https://www.food.gov.uk/about-us/about-the-fsa/regulating-our-future/regulating-our-future-newsletter/regulating-our-future-october-newsletter) where you can also sign up to received regular updates and communication on the RoF programme.

Continue the discussions by joining the conversation #foodregulation or email directly: FutureDelivery@foodstandards.gis.gov.uk
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REGULATORY UPDATE

In practice the Sentencing Guideline for food cases remains a key issue and continues to have severe ramifications for food businesses.

Brexit and the implications for the food sector is a frequent topic of discussion. How will food legislation ‘look and feel’? How will trade be affected? Will there be tariffs, customs hurdles and delays at borders?

Of particular interest is the future operation of the border between Northern Ireland and the Republic of Ireland.

Sentencing in Food Cases

The Definitive Guideline has been effective since 1st February 2016. It was introduced to increase penalties which were perceived to be too low and to create greater consistency in the sentencing process. To a large extent the former aim has been achieved but, in my experience, not the latter.

Of course each case is different and fact specific but recent fines have shown that “ordinary” food hygiene offences are now attracting fines in the hundreds of thousands of pounds, even after allowing a full reduction for guilty pleas.

A search of the Food Standard’s Agency’s food law prosecution database and the internet will quickly highlight the level of fines. Well-known and well-respected high street food businesses have been ‘hit’ with fines of £500,000.00 and more.

The impact of the Guideline is perhaps more keenly felt when I have represented individual food business operators. Although imprisonment is only a starting point sentence for the very worst category of offence (very high culpability/category 1 harm), custody is within the range for almost half of the sentences set out on page 41 of the Guideline.

This requires the prosecution to be very clear about the evidence it needs to present in order to substantiate its submissions on culpability and harm. This requires careful thought by individual prosecutors and it is simply no longer good enough to make bold assertions about the seriousness of a case; not when the implications for FBOs are so serious.

A recent case heard in Cardiff Magistrates’ Court provides a good example of where the custody threshold was passed. The prosecution was bought against a bakery (corporate FBO) and a director. The offences included the ‘ordinary’ hygiene breaches (poor personal hygiene, failing to control rodents, food at risk of contamination and storing high-risk food out of temperature control), failing to comply with eight hygiene improvement
notices and offences of placing unsafe food on the market.

When imposing sentence the District Judge stated that the defendants showed a "flagrant disregard for the law" (making it a very high culpability case). Financial penalties exceeding £10,000.00 were imposed.

The director was given a four month sentence of imprisonment suspended for 12 months for placing unsafe food on the market (possible in the Magistrates’ Court in Wales, but not in England). He was also sentenced to a community order and banned from participating in the management of a food business for 10 years.

The company was also fined for failing to display its food hygiene rating certificate, which brings me neatly to my next topic.

Food Hygiene Rating System

Mandatory ‘scores on the doors’ has been a feature of life in Wales (since November 2013) and more recently in Northern Ireland (since October 2016).

Where food business operators have failed to display their food hygiene rating sticker food authorities in Wales have instituted prosecutions when fixed penalty notices have been ignored.

In one case the owner of a kebab shop whose premises had been given a ‘1’ rating was ordered to pay £590.00 in court fines, prosecution costs and the victim surcharge. In another case the owner of a pub was issued with a £200.00 fixed penalty notice for failing to display the rating (a score of ‘2’). This was not paid and magistrates imposed a total financial penalty of £790.00.

Although in England displaying the rating is not mandatory, food business operators should take note. I acted for a food business operator in a food hygiene case in which the local authority commenced a prosecution for fraud by asserting that an outdated food hygiene rating certificate was on display. There was nothing in the case and it was not pursued but it is worthy of mention in that a conviction for fraud in a food case could have serious repercussions for holders of alcohol licences.

Scotland has introduced the Food Hygiene Information Scheme, similar to the system in the other UK countries.

Reduction in Sentence for a Guilty plea – another definitive guideline

This guideline applies to all cases involving adult defendants and organisations where the first hearing took place on or after 1st June 2017.

Although this Guideline is not meant to put ‘pressure’ on FBOs to plead guilty, the implications of this Guideline must be taken into account when advising clients in respect of the Sentencing Guideline.

This new Guilty Plea Guideline states:

1. Plea indicated at the first stage of the proceedings – reduction of one-third should be made; and

2. Plea indicated after the first stage of the proceedings – maximum one quarter reduction – with a sliding scale of reduction thereafter (to one tenth or even zero if a guilty plea is entered during a trial)

The difference between a sentence being reduced by a third and by quarter could be very significant.

There are a number of exceptions to this general principle, including where further information, assistance or advice is necessary before indicating a plea.

In food cases it might be possible to persuade the court that a guilty plea entered after the first stage of proceedings should still attract the full one-third discount. I envisage this being the subject of different interpretation by different courts.

Brexit

Now that the ‘trigger’ has been pulled, negotiations are underway.

The ‘Great Repeal Bill’ will start the process of getting rid of the European Communities Act 1972 and will end the applicability of EU law.

The UK will cease to be bound by decisions of the Court of Justice of the European Union which requires national bodies to have regard to the purpose and intention of EU law rather than applying a strict interpretation of the words used. If UK food law is a direct copy of current EU food law then we need to know whether the current rules will continue to apply to the interpretation, application, regulation and enforcement of domestic law. The answer may be obvious; but clarity needs to be provided sooner than later.

In due course the UK will no doubt introduce ‘UK-specific’ food law and we will need to be clear as to how these new laws will be applied. Future UK law must not be so different from the laws of its main trading partners that it creates obstacles to trade or requires ‘UK-only’ food labels. Any increased powers granted to the devolved institutions following the taking back of power from Brussels must not adversely impact on UK-wide food law.

It is essential that action is taken now to ensure that the transition to a post-Brexit
REGULATORY UPDATE

The world is as seamless for them, their businesses, their employees and their customers. This might involve identifying prospective new suppliers or customers, expanding or reducing product lines and ensuring that they have advisers on the ground who can provide strategic planning and legal compliance advice.

Consumer information

Based on my own practice, FIC (or FIR if you prefer) continues to raise real and practical issues for food businesses. One of these concerns the provision of allergen information to consumers on prepacked foods. In respect of non-prepacked foods, there appears to be a particular issue. A recent survey undertaken by the Food Safety Authority of Ireland in respect of allergen information on non-prepacked food found:

- 32% of food businesses did not provide any written allergen information;
- of the food business that provided written allergen information only 24% actually provided accurate allergen information;
- twenty six food businesses had either left out a foodstuff or incorrectly recorded the allergen content of the food; and
- 88% of the businesses audited had findings that required corrective action.


Although only 50 food businesses were audited, the findings are a great cause for concern and may be indicative of problems in the UK as well. The fatal consequences of failings in the use and declaration of allergens are clear and well-known.

The interpretation and application of the rules relating to health claims remains a key issue for some food businesses and regulators.

Summary

There are many challenges facing the UK food industry.

Food safety and hygiene cases are certainly becoming more complex; and that’s just when there are guilty pleas! Brexit will not be easy but it brings significant opportunities for food businesses who proactively plan for the transition.

Food is and will remain an essential commodity no matter what happens after Brexit.

Food quality, food safety and food hygiene must not suffer and the domestic regulatory and enforcement regime must not provide opportunities in which they might suffer.

Consumers must not be failed by whatever post-Brexit system is put in place.

Author’s biography (Ian Thomas)

Ian Thomas is a barrister in England and Wales (Chambers of Stephen Hockman QC at 6 Pump Court, Temple, London).

Ian is also a solicitor in the Republic of Ireland (being the Principal in his own law firm) and has been so well before ‘Brexit’ was even a twinkle in a politician’s eye!

He specialises in food law and his practice, in both jurisdictions, involves advocacy and general advisory work.

Ian’s recent court work has been dominated by general food hygiene and food safety matters (including significant food poisoning cases where serious illness and death have been involved). He has also been instructed in a number of animal welfare cases.

His advisory work includes food supplements, borderline products, food information to consumers, health claims, recalls, as well as general hygiene and safety related issues.

Ian is often asked to speak at food law events and he is a legal trainer in England and Wales and in Ireland.

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SOFHT TRAINING

Upcoming Events

July - November 2017 – SOFHT Training Academy
Level 4 Food Safety Carousel
SOFHT Conference Room, Middleton House Farm

This food safety training (for both food manufacturers and caterers) is provided by the Society of Food Hygiene and Technology in a flexible 'carousel' format to enable busy senior managers in the food industry to secure quality training without having to leave their business for consecutive days at a time.

Day 1 Food Hazards (20 July 2017)
Day 2 Food Safety Microbial Hazards (24 August 2017)
Day 3 Operational Requirements and Controls (28 September 2017)
Day 4 Food Safety Management Procedures and Compliance with Food Safety Legislation (26 October 2017)
Day 5 Revision, discussion and exam. (16 November 2017)
[Day 5 can only be attended by candidates that have received the minimum of 40 hours directed studies].

7 September 2017 – SOFHT Training Academy
Internal Auditing
SOFHT Conference Room, Middleton House Farm

This one day course is designed to ensure that attendees gain an understanding of the skills and techniques required to get the most out of internal auditing. The course will suit internal auditors seeking a formal qualification, those who wish to become internal auditors and managers of internal audit programmes.

12 – 14 September 2017 – SOFHT Training Academy
Food Safety Level 3
SOFHT Conference Room, Middleton House Farm

This three day course is suitable for those working in either the catering or manufacturing sector. The candidate will gain practical knowledge of food safety and learn how to effectively motivate and support food handlers to follow company food safety policies and procedures. It is recommended that you have completed a level 2 food safety course prior to enrolment although this is not essential.

21 September 2017 – SOFHT Training Academy
Allergens Unravelled
SOFHT Conference Room, Middleton House Farm

Working with experts in the field of allergen risk assessment and management, SOFHT are pleased to offer this all embracing training course which will give you an up to date and comprehensive insight into the complex subject of food allergen management along with practical instruction in risk assessment. In particular we are pleased to be working with a trainer who is both the author of current published risk assessment guidance and a major contributor to retailer allergen codes of practice and training sessions.

26 September 2017
Food Safety Conference
Doncaster Race Course, Doncaster, DN2 6BB

This autumn, The Society of Food Hygiene and Technology and Highfield are joining forces to hold the must-attend food safety conference of the year at Doncaster Racecourse on Tuesday 26 September.

Speakers will include Dr. Chris Elliott – Author of the Elliott Review, Andy Morling recently appointed Head of the Food Standards Agency’s Food Crime Unit, John Figgins – BRC Technical Specialist providing an insight into compliance with newly issued food safety standards and also speaking is SOFHT’s Director Peter Littleton.
Food Fraud, Culture & Modern Catering Processes

Tuesday 26 September 2017
Doncaster Racecourse

Speakers confirmed so far:

- Richard Sprenger (Highfield Qualifications)
- Professor Chris Elliott (Queens University, Belfast)
- Andy Morling (Food Standards Agency)
- Sterling Crew (Kolak Snack Foods Ltd)
- Peter Littleton (Klenzan)
- Simon Flanagan (RSSL)
- Dr Andy Bowles (ABC Food Law)

Book your place now!

Events@highfieldabc.com
01302 363277 | 0845 2260350

If you are a SOFHT member then please contact the SOFHT office to book your place(s)

admin@sofht.co.uk
01827 872500

For exhibition opportunities

Please contact:
Phil Shaw on: 07818 571261
phil@plsenvironmentalservices.co.uk

Early-bird ticket prices:

£130 + VAT – Highfield centres
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The Society of Food Hygiene & Technology pride themselves on bringing their members and industry colleagues up-to-date with new developments within the food industry for over 30 years. Whilst the basic foundations to providing wholesome safe and consistent products remain the same, technology, research, best practice and the products & services available to us constantly move on.

The Society have developed this conference with 6 high profile and respected industry leading speakers to present the latest developments in the key building blocks of our every day working day within the food and drinks industry.

Delegates will hear first hand about the latest research and technology on Hand Hygiene & Technology, Allergen Controls and Risks, Pest Control threats and Emerging Technology, Cleaning Technology and Verification, Labelling and Coding Verification Systems and Error Preventative Measures and Training Shortfalls and Solutions.

These presentations coupled with an extensive exhibition of 20 businesses show casing their products and services will facilitate an excellent atmosphere where delegates can learn from the experts, network informally throughout the day as well as visiting our exhibitors.