

The introduction of the ban on swill feeding



Parliamentary
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Ombudsman

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Report by the Parliamentary
Commissioner for Administration
(the Ombudsman) to

The Rt Hon Stephen Dorrell MP

of the results of an investigation into a
complaint against the Department for
the Environment, Food and Rural Affairs
made by

Associated Swill Users
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The foreword

I am laying before Parliament under section 10(4) of the Parliamentary Commissioner Act 1967 this report, which contains the results of my investigation into the complaint made by Associated Swill Users (ASU), on behalf of all their members, against the Department for Environment, Food and Rural Affairs (Defra) in relation to the introduction of the ban on swill feeding, following the outbreak of Foot and Mouth Disease (FMD) in 2001. Although I have not upheld the complaint, it seemed to me that the level of interest in the subject matter, and in particular the link to the outbreak of FMD, meant that it was important that the report in its entirety should be put into the public domain.

There were a number of aspects to ASU's complaint. They contended that the consultation had been fundamentally flawed and the results had been misrepresented; there had been an inadequate rationale behind the decision to introduce the ban; Defra had been unclear about the scope of the ban and its application; swill farmers had been given very limited time for compliance; and, finally, and most significantly, that Defra's refusal to award compensation to former swill feeders had been based on a failure to recognise the true impact of the ban on swill farmers.

ASU subsequently extended their complaint to include the contention that failures in the inspection regime at a swill farm in Heddon-on-the-Wall had effectively allowed illegal feeding activities to go unchecked and thereby led to the outbreak of FMD, which had in turn led to the hasty imposition of the ban. ASU concluded that the decision to ban swill feeding, combined with the limited consultation prior to the ban and the speed with which it was implemented, had caused their members to suffer severe injustice in terms of significant financial loss and, in some cases, the loss of their livelihoods, and that many of those farmers had been left to suffer severe hardship.

For the reasons explained in the report, I have found that the decision on compensation for swill users made by Ministers when considering the introduction of a ban in May 2001 was not taken in the full light of the facts, and was therefore maladministrative. I have also found that the failure of the Defra inspector to follow proper procedures, and to make and submit appropriate records in relation to animal welfare matters, was also sufficiently serious as to constitute maladministration. However, I have not found that that maladministration can be said to have resulted in an unremedied injustice to ASU members. That is because it is clear to me that Ministers have since revisited their decision on compensation in the full light of the facts; and because I do not see that it is possible to conclude that the failures in the inspection regime identified in this report led to the outbreak of FMD, and hence the hasty imposition of the ban. Accordingly, I have reached the view that I have no grounds on which I might legitimately ask Defra to reconsider their decision not to pay any form of compensation to the former swill users, however harsh that decision might seem.

Ann Abraham

Parliamentary and Health Service Ombudsman

December 2007

The Complaint

1.

The Associated Swill Users (ASU – which is an association of 62 former swill farmers and waste collectors) complained about the actions of the now Department for Environment, Food and Rural Affairs (Defra) in relation to the decision to impose a ban on the feeding of waste food to pigs at the time of the outbreak of foot and mouth disease (FMD) in 2001. The particular issues raised were:

- a. the consultation was flawed, both in terms of the adequacy of the consultation document itself and the period allowed for consultation;
- b. the results of the ban were misrepresented to Ministers, and by Ministers to Parliament;
- c. the inadequate rationale behind the ban, meaning that the decision was not sound;
- d. Defra's lack of clarity about the scope of the ban and its application to individual establishments;
- e. the limited time given to swill farmers for compliance with the ban; and
- f. Defra's failure to recognise the true impact of the ban on swill farmers and their consequent refusal to award compensation to former swill feeders.

These various elements are described in more detail in paragraphs 53 to 65 below.

2.

ASU subsequently extended their complaint to include the contention that there had been failures in the inspection regime at Burnside Farm, Heddon-on-the-Wall, which had effectively allowed illegal feeding activities to go unchecked and thereby led to the outbreak of FMD, which in turn led to the hasty imposition of the ban.

3.

The complainants contend that the decision to ban swill feeding, combined with the limited consultation prior to the ban and the speed with which it was implemented, has caused them to suffer severe injustice in terms of significant financial loss and, in some cases, the loss of their livelihoods. They said that for many former swill feeders it was not simply the case, as Defra had implied, of changing the pigs' feed (although that in itself carried a heavy cost as the cost of proprietary feed was almost double that of swill feeding). A significant number of former swill feeders would have had to convert buildings and adapt them to new feeding equipment if they chose to continue to keep pigs (and some might not be able to get the relevant permissions for that, either from the landowner or the planning authority). Others would have to scrap equipment, some of which was still being purchased. For those who were waste food collectors, they could not compete with the collection charges of the bigger waste collection concerns; some had had to continue to honour collection contracts and pay to dispose of the waste food (whereas before they had had a cost-free means of disposal).

4.

ASU concluded that many of the farmers in question had been left to suffer severe hardship, and the help that was eventually offered by the Government, in terms of business advice on how to diversify, had either been unrealistic given the farmers' circumstances, or come far too late to be of real help. They contended that, when introducing the ban, Defra had failed to appreciate the true extent of the impact on the swill farmers. In the light of that, and of the fact that Defra's own failings in the inspection regime had allowed the illegal feeding of unprocessed swill and therefore led to the hasty introduction of the ban, they claim that appropriate financial redress should be paid.

The Ombudsman's jurisdiction

5.

It is not for me to question the merits of the Government's policy decision to ban swill feeding, nor the content of the legislation implementing that ban; those are properly matters for Parliament. I can, however, consider Defra's general handling of the consultation and ban, including how departmental officials presented the consultation responses to Ministers, and whether there were shortcomings in respect of the adequacy of the inspection regime at Burnside Farm such that they constituted maladministration, and whether that led to an unremedied injustice. Local authorities and the actions of their officers are not within my remit. I refer to their actions solely in context the actions of the Defra officers.

6.

I should also explain that the decision taken by Ministers on the question of compensation for swill users was a discretionary one. A complaint about the exercise of that discretion does fall within my remit. However, my powers in respect of discretionary decisions are limited. I can investigate such decisions but can only question the merits of them if I find maladministration in the way in which they were taken. The likely outcome of upholding such a complaint would be to ask the relevant Department, in this case Defra, to consider the decision again, as it would be inappropriate for me to seek to substitute my judgment for that of Defra Ministers.

The remit, powers and duties of the relevant bodies

7.

One of Defra's key responsibilities, as set out in their own publications, is to work with the farming industry with the aim of delivering a better environment, improved animal health and welfare, safer food and working conditions and a sustainable industry. Defra also administers support policies for the industry agreed by the European Union (EU) which provide around £3 billion to UK agriculture.

8.

The **State Veterinary Service (SVS)** was one of Defra's executive agencies. (Since the events in this case, the SVS has been renamed Animal Health, but I shall refer to it as the SVS throughout this report for simplicity.) The SVS was responsible for delivering agreed services in public health and animal health and welfare within Great Britain. SVS field staff were qualified veterinarians (vets) and trained technicians (animal health officers). They worked from 24 Animal Health Divisional Offices throughout the country. There were around 1,400 staff in the SVS, covering approximately 350,000 livestock premises. Through the services it provided (mainly to keepers of livestock, who are generally – but not exclusively – farmers) the SVS's objective was to keep animals healthy and free from disease and ensure that they were well looked after, which in turn helped to ensure that animal products were also free from diseases that might affect humans or other animals that consumed them. The majority of SVS work was therefore focused on the prevention, detection and management of animal diseases in livestock, and took the form of regulation (through inspection and programmes of regular testing of animals to check that they remain disease free), advice and support.

9.

The work of the SVS was also governed at the time of the events in question by the Protection

of Animals Act 1911, which contained the general law relating to cruelty to animals, including by causing them unnecessary suffering. (Since then that Act has been replaced by the Animal Welfare Act 2006.) The welfare of all farmed livestock on agricultural land is further protected by the Agricultural (Miscellaneous Provisions) Act 1968 which provides for codes of recommendations relating to welfare of different livestock groups (there are, for example, different codes relating to cattle, sheep, pigs and hens) to be drawn up. These 'welfare codes', as they are usually referred to, do not lay down statutory requirements, but all livestock farmers and employers are required by law to ensure that all those attending to their livestock are familiar with, and have access to, the relevant codes. SVS field staff carried out inspections of farms, markets, animals during transport and abattoirs to ensure that conditions were appropriate and that animals were suffering no cruelty, or unacceptable levels of stress or discomfort. Welfare inspections on farms were required to check that the relevant legislation and welfare codes were being followed. In addition to spot checks and planned visits, SVS field staff were required to follow up complaints and allegations of poor welfare on specific farms as a matter of urgency. Further, in addition to the animal welfare codes, the SVS issued broad guidance to field officers on welfare matters and when to recommend formal action on welfare grounds (broadly, if they come across a similar welfare problem on the same farm on three different occasions).

10.

Where welfare problems were found, advice or warnings were given to bring about the necessary improvements, and follow-up visits were made to check on this. However, where necessary, and where the evidence was available, Defra could initiate prosecution action against farmers for welfare offences. SVS staff were given

instructions and guidance on enforcement and legal proceedings, which set out the relevant legislation and powers under which enforcement action could be taken and the process to be followed. The guidance said that in every case where SVS staff found an apparent contravention of legislation they should inform the person concerned that the matter would be reported to the Divisional Veterinary Manager (DVM). A report should then be submitted promptly in writing and the DVM would then consult his or her Regional Manager on the line of action to be taken. The guidance reminded staff that, in addition to the normal reports that they prepared in the course of their work, when offences were suspected, they should be aware that detailed recording of evidence might be required for the future preparation of statements. Conversations with persons related to the possible offences should be recorded, and the time when the record was completed should be noted and the notebook signed. That guidance also explained that enforcement is entrusted to certain local authorities in almost all the legislation in which Defra staff are involved (see paragraph 13), and that the police also have enforcement powers under the Animal Health Act 1981.

11.

The SVS also had duties in relation to animal by-products and catering waste. SVS officers were responsible for inspecting premises and works that processed animal carcasses, either to produce other products or to dispose of them, and for ensuring that catering waste containing meat or other by-products was appropriately disposed of. Their aim was to help ensure that the relevant legislation (primarily the Animal By-Products Order 1999 – see paragraph 15) and best practice were being followed and that the risk of contamination was minimal. Before swill feeding was banned, it was also the role of the SVS to

approve and issue the relevant licences to swill processors and feeders (see paragraphs 15 to 17 below), and to monitor compliance with those licences through inspections. At each inspection the SVS vet would also check the swill farmer's records of swill movement and use (to confirm that they were purchasing sufficient processed swill to feed their pigs). It was established practice for the SVS to inspect swill feeders twice a year; swill processors were inspected four times a year: once by a vet and three times by a technical officer (see paragraph 9).

12.

There was, however, no specific guidance on action to be taken in relation to licensing matters. The SVS staff interviewed in connection with this investigation told my officers that their practice was to follow the same process as in relation to welfare matters, namely that if there was an obvious transgression, then the farmer would be given a warning and follow-up visits made to monitor the situation. If there was insufficient improvement, or if the transgression was very serious, then a report would be prepared for the Divisional Veterinary Manager recommending prosecution. Once again, however, the SVS were not the formal enforcing or prosecuting body; that was the local authority (in line with Regulation 33 of the Animal By-Products Order 1999). If, therefore, the Divisional Veterinary Manager agreed that formal action was required, the SVS would have to pursue the matter with the local authority.

13.

Local Authorities (LAs) are the primary enforcement body under the Animal Health Act 1981 (which provides for the control of animal diseases that can be caught by humans and for the welfare of animals on the farm, in transit and at market), as well as other animal health and welfare legislation. These functions are normally carried out, depending upon the type and

structure of the LA, within a Trading Standards Service or Environmental Health Service or equivalent. LA inspectors have a statutory duty to enforce a wide range of legislation controlling the quantity, quality, price, description, and safety of most goods and services, as well as animal health. To ensure compliance LA inspectors investigate complaints, undertake visits to businesses, advise traders and consumers, and sample, test and survey goods and services. As part of the LAs' role in enforcing animal health and welfare legislation (including the Animal Health Act 1981 and the Protection of Animals Act 1911 – see paragraph 9) LA inspectors regularly inspect points in the farm-to-fork chain, including farms, abattoirs, and in-transit movements to check compliance with the range of animal health and welfare legislation for which they are responsible. This includes livestock records, identification and movements to ensure animals can be quickly traced in the event of an outbreak of notifiable disease, such as FMD or swine fever. They also inspect animal feed producers and test the quality of feeding stuffs, in line with their enforcement responsibilities under the Animal By-Products Order 1999 (see paragraphs 15 and 16 on page 9).

The investigation

14.

My officers have examined Defra's papers (including the responses to the consultation on the ban and the submissions to Ministers) and considered the Permanent Secretary's comments on the complaint, as well as the various reports produced in relation to the FMD outbreak, including those produced by the Anderson Inquiry (see paragraph 26) and the National Audit Office. They have also met on a number of occasions with ASU representatives, and received evidence and representations from them. In addition, my officers have interviewed Defra staff, including the SVS veterinary officer who was responsible for inspecting the farm where FMD is generally believed to have originated, James Dring, and the LA inspector who visited the farm with Mr Dring. I have taken account of comments received from ASU and Defra on a draft of this report in coming to my decision. I have not included in this report all the information considered during the course of the investigation, but I am satisfied that nothing of significance to the complaint and my findings has been omitted.

Legislative and administrative background

Relevant provisions relating to swill processors and feeders

15.

At the time of the outbreak of FMD in February 2001 the production of swill as animal feed was controlled by the **Animal By-Products Order 1999**. Under this Order operators approved by Defra were permitted to (i) process catering waste and (ii) render non-mammalian waste for

feeding to pigs as swill. Approval (which took the form of a licence) could only be granted if the premises complied with the relevant structural and operational requirements of the Order. Not all farmers who fed swill to their animals had the equipment to process, and the Order allowed Defra to licence those farmers to consign (transfer) swill from the premises of a licensed processor to their own farm and feed it to animals there. In 2001, 74 premises in the UK were licensed to process swill and 93 (including all the 74 licensed processors) were licensed to feed it.

16.

Article 21(2) of the Animal By-Products Order 1999 made it an offence to bring unprocessed catering waste onto any premises where ruminant animals, pigs or poultry were kept. (Pigs were kept on the premises at Burnside Farm.) Article 21(1)(c) required any person collecting or transporting unprocessed catering waste intended for feeding to pigs or poultry to take it without undue delay to approved premises.

17.

SVS instructions said that operators who **processed** catering waste into swill had to be inspected four times a year (once by an SVS vet and three times by a technical officer). Operators who did not process catering waste, but who collected fully processed catering waste (swill) for **feeding** to their pigs, had to be inspected twice a year (by a SVS vet), in order to ensure that they were keeping to the conditions set out in their licences. As mentioned earlier (paragraph 12) there was no specific guidance to SVS staff as to how they were to carry out such inspections.

18.

The Animal By-Products Order 1999 was amended by the enactment of the **Animal By-Products (Amendment) (England) Order 2001** on 24 May 2001. This banned the feeding as swill to livestock of catering waste which contained, or had been

in contact with, or originated from any premises where any animal carcasses, parts of animal carcasses (including blood) or products of animal origin were handled, or where foodstuffs containing, or coming into contact with any of the same, were prepared or produced. In addition it maintained the ban on the feeding to any livestock of any catering waste imported into Great Britain and originally intended for consumption on the means of transport in which it was imported, or any feeding stuffs that might have been in contact with it. In practice the provisions of this Order excluded virtually all waste produced by food outlets from being used as swill, and made it virtually impossible for farmers who had previously fed swill to continue to do so.

19.

When the Animal By-Products (Amendment) (England) Order 2001 came into force on 24 May 2001, licences issued under the Animal By-Products Order 1999 were no longer valid. An Emergency Instruction was therefore issued to the SVS on 11 May 2001 with a pro forma revocation notice which was to be completed by the Divisional Veterinary Manager and sent to each licensed swill feeder, consignor and processor. An Action Note (2001/29) issued to SVS field staff on 23 May 2001 provided further advice on the extent of the ban and on the options available to former swill feeders. It noted that an Emergency Instruction (which had required the SVS to visit all swill premises to inspect all FMD-susceptible livestock on the premises at fortnightly intervals) would lapse as soon as the ban on swill feeding came into force and asked Divisional Veterinary Managers to ensure that those visits were replaced by a series of follow-up visits. The visits should be unannounced and undertaken in conjunction with the local authority (as the enforcement body – see paragraph 13 on page 7-8) wherever possible.

The visits were to check whether there was any evidence of swill processing or feeding and to assess the health of the pigs by clinical inspection. A programme of visits was established, and a report form provided. Advice on action to be taken in the event of non-compliance, and on the availability of the Livestock (Welfare) Disposal Scheme for swill-fed pigs, was also provided. (That advice said that that Scheme was only available to those farmers whose stock were suffering poor welfare as a result of the movement restraints imposed as a result of FMD.)

20.

The code of practice on written consultation published by the Cabinet Office in December 2000 said that 12 weeks should be the standard minimum period for a consultation, although there would sometimes be circumstances which unavoidably required a consultation period of less than 12 weeks. The code said 'The nature of the problem dealt with may also occasionally mean that urgency is in the public interest'. The Government document 'Guidance on Implementation Periods' also says that guidance on new legislation should be issued at least 12 weeks before it comes into force. This document says that departure from the 12-week period will require the consent of Ministers and will only be allowed in exceptional circumstances. It then specifies those circumstances, which include 'legislation required to deal with emergency situations e.g. risks to health'.

The Pig Industry Restructuring Scheme 2000

21.

The Pig Industry Restructuring Scheme (launched in November 2000) was a Government-funded scheme designed to offer short-term assistance to pig producers, and was developed by Defra in consultation with the pig industry. The Outgoers element of the scheme (the Pig Outgoers Scheme) aimed to reduce pig breeding capacity in the UK by 16% from that of June 1998. Aid was provided to successful applicants who could prove they were engaged in pig breeding in June 1998 and were prepared to end their involvement in all pig production for a period of ten years. Applicants were invited to submit a sealed tender for the amount of aid required to compensate for the loss of value of assets following the decommissioning or rendering unusable of all pig breeding facilities on the holding(s), owned by or under the control of the applicant(s). Successful bids were those judged by Defra to represent best value for money in terms of cost per sow place. Aid payable to the successful applicants was 60% of the tendered amount. By applying to the scheme applicants agreed to inspections being carried out to confirm that the terms and conditions were adhered to. There were two Outgoers schemes. The first (pre FMD) closed to applications on 3 March 2001. The second (post the outbreak of FMD) closed to applications on 20 April 2001.

General Background

22.

In 2001 the United Kingdom suffered an FMD epidemic that was one of the largest in history. According to a report by the National Audit Office, it took 221 days to eradicate, cost the country about £8 billion in total, and in containing the disease at least six million animals were slaughtered.

23.

The Ministry responsible for dealing with FMD was the Ministry of Agriculture, Fisheries and Food, which later became Defra. For ease of reference, throughout this report I shall refer to both as Defra.

24.

At the time of the start of the FMD epidemic (in February 2001), it was lawful for licensed farmers to feed livestock on swill that had been processed in licensed premises. In reality 'livestock' meant pigs because these were the animals predominantly fed on swill. 'Swill' was waste food collected from restaurants and other catering establishments which could be used as feed for licensed feeders if it was cooked for one hour at a temperature not falling below 100 degrees centigrade or processed by an alternative method specified in the swill processor's licence. This cooking process, usually done in large tanks with associated boilers, inactivated viruses, such as FMD, making processed swill safe to feed to livestock.

25.

Almost from the start of the epidemic there were strong grounds for supposing that the FMD outbreak had been caused by feeding unprocessed waste food to pigs at Burnside Farm, Heddon-on-the-Wall, Northumberland. Following a two-week consultation (concluding on 10 April 2001) on a number of proposals to ban catering waste from being fed to animals, Defra decided to introduce a ban on feeding meat

related catering waste to pigs and poultry. This was done by statutory instrument on 3 May 2001, which came into force on 24 May 2001 to allow a three week phase-in period for alternative feeds to be introduced.

26.

Later inquiries into the FMD outbreak, including that by Dr Iain Anderson (the Anderson Inquiry) suggested that, although it was not possible to establish for certain the cause of the outbreak, the first or 'index' case of FMD had probably occurred on Burnside Farm, and that the most likely cause of that case was that illegally imported meat infected with the FMD virus had been collected as waste and fed to pigs on the farm without being properly processed. The operators of this farm, two brothers, were licensed to feed processed swill to pigs; one of them was later convicted of the offence of feeding unprocessed swill (a decision was taken not to pursue the other brother as he was by then terminally ill).

Key Events

27.

For clarity I propose to deal with the two aspects of ASU's complaint separately.

Part 1: Defra's actions in relation to the ban

28.

A more detailed chronology of the relevant events is set out in Annex A. Defra have explained that this is not a complete record because, due to the national emergency conditions at the time, no record was made of a number of relevant meetings and discussions. A brief summary of the key events follows.

29.

On 19 February 2001 evidence of FMD was identified at an abattoir in Essex. A swill-feeding pig farm at Heddon-on-the-Wall, Northumberland was identified subsequently as the likely source of the infected animals. Shortly afterwards Defra began to consider, as part of their consideration as to how best to contain the spread of FMD, whether swill feeding should be banned. On 22 March 2001 a draft submission on a proposed ban on swill feeding was circulated within Defra seeking comments. The Chief Veterinary Officer and the Veterinary Head of the Exotic Diseases Team both replied indicating their support for a proposal to introduce a ban. There was a discussion about whether the ban should be implemented immediately, or whether there should be public consultation prior to its implementation. In the event the Minister decided that there would be a two-week

consultation period from 27 March to 10 April 2001 in order to determine whether there was appetite for the ban and, if so, what should be banned. Defra recognised that the ban on swill would impact significantly on swill users and the question of compensation was considered, but it was decided that farmers had never previously been compensated for changes in feeding regimes and that it would therefore be inappropriate to do so now.

30.

On 27 March 2001 the Secretary of State, in a statement to the House of Commons, proposed a ban on swill feeding. On the same day Defra issued a public consultation document about the proposed ban (a copy of the consultation document is attached at Annex B) and a consultation letter was sent to around 650 interested organisations and individuals, including all swill processors and feeders. On 10 April 2001 the consultation period closed. On 26 April 2001 the Secretary of State said, in a Commons statement, that about 150 responses had been received, nearly all of which favoured a ban.

31.

On 1 May 2001 a full submission on the ban was put to the Minister. On the question of compensation, the submission said that a number of respondents had called for compensation but that Defra 'have not compensated farmers in the past for changes in feed material available for their livestock and do not consider it appropriate to start now. The only difference in this case is that farmers may need to scrap equipment, convert buildings and adapt to new feeding equipment if they choose to continue to keep pigs; others will stop operating. Nevertheless it is not usual to compensate farmers for making such changes required by legislation. Others will also face additional costs; food factories estimate a 40% increase in costs to send pie waste to landfill, whilst restaurants will have to pay higher

disposal charges ... Any business having swill production as their sole or main enterprise, might, however, have a slightly stronger case than those simply facing increased business costs if they were left with worthless, or near worthless equipment and were able to quantify their losses. If compensation were decided on state aids [EU] clearance would be needed'.

32.

On 2 May 2001 a Defra Minister met ASU representatives and told them that a swill ban would be imposed from 24 May 2001 and that there would be no extension of that period or compensation paid. On 3 May 2001 the Secretary of State, in a Commons statement, said that a ban on the feeding of catering waste (which contained or had been in contact with meat) as swill to livestock would be introduced. The ban would apply from 24 May 2001, allowing a three-week phase-in period for alternative feeds to be introduced. An Order amending the relevant legislation was made that day.

33.

On 30 October 2002 a Defra Minister (in answer to a written question) said that the Government did not intend to compensate pig farmers for changes to the feed material available to their livestock following the swill ban. On 7 November 2002 a Defra Minister (in answer to a written question) said that Defra had received a total of 351 replies to the consultation on the swill ban. Of those only a minority had objected to a ban.

34.

On 5 September 2003 the Secretary of State wrote to one of the MPs who had been pressing the Government to reconsider the question of compensation for swill feeders (following a number of representations and meetings on this issue) saying that it was not the Government's policy to pay compensation or make decommissioning payments in respect of changes

in the law and the costs of compliance with it. Former swill feeders could continue to rear pigs (although not by feeding catering waste) and to collect and dispose of catering waste (other than by feeding it to animals). Free business advice had been offered and financial assistance to diversify might be available from the Rural Enterprise Scheme.

35.

On 30 March 2004, in response to a further Parliamentary Question, a Defra Minister stated that there had been 357 responses to the consultation. This statement was corrected on 19 May 2004, when it was stated that 330 responses had been received, 208 of which (63%) had supported a ban. In this later response Defra apologised for the previous incorrect answer which was due to double counting of some responses and because of the way in which respondents had decided to comment on the range of questions asked and the options offered in the Regulatory Impact Assessment.

Defra's comments in response to the complaint

36.

In his comments on the complaint the then Permanent Secretary of Defra (the Permanent Secretary) said that it was important that Defra's actions in relation to the ban on swill feeding were seen in the context of the prevailing conditions. The country had been in the midst of an outbreak of FMD, the index case for which was believed to be on a farm on which swill was fed, and where the farmer was later successfully prosecuted for feeding unprocessed catering waste to his pigs. The Department's resources had been stretched to the limit, particularly on the veterinary side, in tackling the disease and – under clear direction from Ministers – Defra had been determined to take any steps necessary to bring the disease under control as rapidly as possible.

37.

Turning first to the length of the consultation period, the Permanent Secretary said that, in the light of the emergency circumstances in February 2001, there had been much discussion within the Department and other parts of the Government about the origins of the disease and the actions that could be taken to tackle it. Because the index case for the outbreak was believed to have been from a farm on which catering waste was fed as swill, the discussions had included the possibility of a ban on swill feeding. The decision on the consultation period had been taken in discussion with Ministers and in the light of the need to introduce any new arrangements as quickly as possible. (The Permanent Secretary did not comment on ASU's complaint about the adequacy of the consultation document itself.)

38.

The Permanent Secretary said that, although ASU took the view that there was not overwhelming support in the responses to the consultation for a ban on the feeding of catering waste containing meat, Defra considered that there was a clear

majority in favour of a ban. The responses had revealed support for the ban from associations that represented large memberships, including the National Farmers' Union (NFU), the Tenant Farmers Association, the British Pig Association, the Royal Association of British Dairy Farmers, the National Beef Association, and qualified support from the National Pig Association. The Permanent Secretary said that the general message from those organisations had been that swill feeding was a minority activity and that the majority of farmers wanted to see it prohibited.

39.

As for the consultation responses overall, in total they had received 330 responses. Because of the number of questions asked, not all responses were clearly for or against a particular option. However, Defra's assessment was that 90 had been against and 152 in favour of a ban on the swill feeding of catering waste that contained meat or meat products. A further 56 had been against extending the ban to include non-meat waste foods and an additional 32 had expressed no particular preference. The Permanent Secretary said that he fully accepted that the Minister had given incorrect figures in an oral response to the House on 26 April 2001, when he had said that around 150 replies had been received, the majority of which favoured a ban on swill feeding. That figure had apparently been taken from an internal minute written by the head of the Transmissible Spongiform Encephalopathies (TSE) Directorate, but they had been unable to find out where the figure had originated. In any event, the submission to the Minister on 1 May 2001, outlining the results of the consultation and recommending that she sign the Order to ban swill feeding, had said that there were 87 respondents in favour of a ban on feeding catering waste containing meat, and 83 against it.

40.

The Permanent Secretary said that the proposal for a ban had primarily been based on veterinary advice, as set out in the concerns raised by the Chief Veterinary Officer (CVO) and the former CVO in their minutes of 5 and 6 April 2001. That advice was effectively that, whilst properly operated swill feeding would not normally be a threat to animal health, it was felt to pose a risk during the outbreak of FMD. (This was based on the assumption that there was bound to be FMD-infected meat in the food chain from 'pre-control February', and therefore the risks of recycling the disease were all the more real at that time.) As for the impact in terms of the numbers of pigs and the amount of catering waste involved, the figures cited in the Regulatory Impact Assessment accorded with those given by the National Pig Association in their response to the consultation of 27 March 2001. Some respondents had expressed the view that swill feeding was a more environmentally friendly disposal route, and that disposal to landfill posed potentially greater health risks than swill feeding. Although it was recognised that that was an issue which required some further thought, Defra suspected that only a relatively small proportion of catering premises supplied swill feeders. The impact of the ban was therefore likely to be relatively small, both in terms of the cost to the industry and of the environmental impact of disposing of additional material to landfill.

41.

The consultation document had indicated that, although EU rules did not ban swill feeding at that time, the EU had been considering such a ban in the context of discussions on the draft Animal By-Products Regulation. By the time the Minister was asked to sign the 2001 Order banning swill feeding, Defra had understood that six countries had already banned it. An EU-wide ban followed and came into force on 1 November

2002. Germany and Austria had subsequently negotiated a transitional measure to allow their processors until 31 October 2006 to phase out swill feeding.

42.

The Permanent Secretary then turned to the question of whether there had been a lack of clarity on Defra's part in relation to the scope of the ban. ASU had complained that Defra had incorrectly prevented the continuation of fish rendering and had given conflicting advice about the type of material that could be fed following the ban on swill feeding. In his comments the Permanent Secretary explained that before the ban on swill feeding, the Animal By-Products Order 1999 had permitted non-mammalian by-products to be rendered for the production of swill for feedings to pigs or poultry. When swill feeding was banned by the Animal By-Products (Amendment) (England) Order 2001, the rendering of non-mammalian animal by-products (including fish and crustaceans) to produce swill was prohibited. The question of whether fish and fish in batter could be fed to pigs was addressed in guidance of 25 May 2001 which was circulated to interested parties. The guidance was revised on 14 June 2001, and again once the Processed Animal Protection Regulations 2001 had been introduced. The guidance noted that:

- (i) fishmeal could be fed to non-ruminant livestock (i.e. to pigs and poultry) as long as the meal had been produced in dedicated rendering premises which had been approved for that purpose under the Animal By-Products Order 1999. Once the Processed Animal Protein Regulations 2001 came into force the feeding of fishmeal to ruminants was to be prohibited; and

- (ii) originally the advice noted that batter or breadcrumb material (e.g. from fish finger production) could be rendered with fish and fed to livestock, providing it had been rendered in a plant that was approved under the Animal By-Products Order 1999. However, following discussions about the impact of the Processed Animal Protein Regulations 2001 (which applied from 1 August 2001), the advice was altered to reflect the fact that the inclusion of batter or breadcrumb waste meant that the product would be compound feed (i.e. containing other feed materials in addition to fish protein). Under the Processed Animal Protein (England) Regulations 2001, which include a ban on fishmeal being used in ruminant feed, the one specific exemption is for fishmeal produced at a plant dedicated wholly to the purpose (i.e. not for producing compound feed) and fed to non ruminant livestock. This requirement for dedicated production precluded the inclusion of batter, or anything which was not 'whole or parts of fish' in the ingredients for producing fishmeal intended for non ruminant feed purposes.

43.

The Permanent Secretary then went on to address the issue of the refusal of compensation. He dealt first with the question of whether swill feeders could have diversified their activities following the ban. He noted ASU's assertions that it had not been economically viable for swill feeders to become waste operators or to switch to alternative feeds. He said that he recognised that swill feeders had only a short time to adapt to the ban, and that that might have reduced the initial opportunities for diversification. However, Defra could not agree that it was not economically viable for swill feeders to either

become waste collectors or to switch to compound feeds or other permissible feeds such as brewers grain. Operators had not been prevented from collecting and disposing of catering waste. However, they were no longer permitted to feed that material to their pigs, and would have had to dispose of it by incineration or landfill (more recently approved composting or biogas plants had become permitted outlets). To that extent their costs increased to the same level as those faced by other collectors of catering waste. Operators were also able to continue to rear pigs. They were not able to feed them on catering waste, but could have changed to alternative wet feeds, such as brewers' waste. Alternatively, they could have chosen to feed them on proprietary feed. It was possible that there might have been consequential costs resulting from the need to upgrade the pigs' accommodation, but again their costs would have been increased to the level faced by others in the pig industry. Reports from visits carried out one year after the ban (which my officers have seen) had shown that many former swill feeders had succeeded in making this change. In mid-2002 the (92) former swill feeders were behaving in the following ways (note, it is mentioned earlier that there were 93 swill feeders in 2001; the assessment here excludes the brothers, who had their stock slaughtered because of FMD):

- a) 50 were still keeping pigs (3 of those were now approved to operate rendering plants as well, with the rendering unit on separate premises)
- b) 3 of those who were still keeping pigs also continued to collect waste food (although only one of these was using a legitimate disposal route);

- c) 3 of those who no longer kept pigs continued to collect waste food; and
- d) 1 of those who no longer kept pigs rendered fish waste.

44.

They understood that 42 former swill feeders were no longer keeping pigs and most did not seem to be operating any other business (Defra said that they understood that a number had taken the opportunity to retire).

45.

Although not a direct result of the short phase-in period, Defra said that they did recognise that swill feeders who were tenants might have faced limited diversification opportunities if their tenancy agreement did not permit such developments. Others might have been unable to gain the necessary planning permission for their proposed changes.

46.

In response to a request from the then Parliamentary Secretary (Commons), following a meeting with ASU on 20 November 2001 (no official note of the meeting seems to have been made), Defra had arranged for the provision of free independent business advice to former swill feeders. However, because such advice was considered to be a State Aid, it had been necessary to obtain clearance from the European Commission, and resolving that and other issues had taken some time. The advice was provided by the Agricultural Development and Advisory Service (ADAS) from October 2002 and closed to new applicants on 28 February 2003. It had been made available to all former swill feeders who wished to take advantage of it. Thirty-nine former swill feeders had taken up this advice, although some of those had not been prepared to discuss their business and only wanted to know about their compensation claims.

47.

Defra had not seen the detailed advice that ADAS had provided to individuals, as for commercial reasons that was confidential, but the general feedback in July 2003 had been that some businesses had evolved to generate income in other ways, while others had found alternative employment. Some of those who were still involved in pig production had needed to make changes, in particular in relation to the housing of the pigs, as many pigs had previously been kept in poorly designed housing with little or no insulation. However, those still involved in farming had in the main been experiencing financial difficulties.

48.

In providing advice to the former swill feeders, ADAS had highlighted the Rural Enterprise Scheme, which was part of the England Rural Development Programme and could provide financial assistance to any farmer wishing to consider diversifying their business into non-mainstream agricultural activities or enterprises outside agriculture. (This had been available to farmers in England; other schemes operated in Scotland and Wales.) For a variety of reasons the majority had considered that it was not appropriate for them. Of those who did decide to pursue an application under the scheme, ADAS mentored them through the process of undertaking research and preparing plans. For those who spent at least 75% of their time in agriculture, free business advice was also available from the Farm Business Advisory Service (albeit on a first come, first served basis). However, many of the former swill feeders would not have been eligible as they did not spend 75% of their time in agriculture; in any case, ADAS considered that they were getting a better service through the free advice that Defra were providing specifically for the former swill feeders.

49.

The Permanent Secretary said that he understood ASU's contention to be that the business advice offered had not in reality offered practical solutions to their difficulties after the ban, and that Defra had failed to recognise that and to offer a proper system of compensation. However, in their response of 9 April 2001 to the consultation exercise, the NFU had said that swill feeders would need to alter feeding regimes and move to more expensive feeds, and that swill processors would be forced out of business. In their response, the National Pig Association had also commented that the issue of compensation had been underestimated in the consultation paper, as no allowance had been made for the scrapping of processing equipment, the associated redundancies, the adaptation to new feeding equipment and conversion of buildings on the affected farms. In consequence, in the submission to the Minister of 1 May 2001, Defra officials had noted that a number of respondents had called for compensation, considering that they would no longer be able to continue in business if they could not feed their pigs on swill. However, the submission had also noted that Defra had not in the past compensated any other farmers for changes in the feed material available, and did not consider that it would be appropriate to start with the ban on swill feeding. It was not usual to compensate farmers for making such changes if legislation required them to do so.

50.

The submission had pointed out that others, such as food factories and restaurants, would also face increased costs resulting from the requirement to send their waste food to landfill, instead of to swill feeding (food factories estimated a 40% increase in costs to send pie waste to landfill). The submission had commented that it had been considered whether the European Convention on Human Rights led to any requirement to pay

compensation. On balance, and taking into account legal advice, it had been felt that the case for compensation was not strong. The Minister had also been advised that the Livestock Welfare (Disposal) Scheme would not provide compensation for those farmers who wanted to leave the industry. That had been a last resort option for those farmers whose stock had been suffering poor welfare as a result of FMD movement restrictions. The Permanent Secretary said that he could not accept that the former swill feeders' situation was analogous with that applying to fishermen or mink farmers. The change to the legislation did not prevent former swill feeders from continuing with the core elements of their business; to collect and dispose of catering waste and to rear pigs. That was in contrast to the ban on mink farming, which had removed producers' ability to continue to farm mink under any circumstances. Similarly, the aid to the fishing industry was not compensation, but rather encouragement to adopt more sustainable fishing practices and to rationalise the industry in order to ensure its long-term survival. The package of aid was partly for retraining and rejuvenation at fishing ports, partly in grants to improve the quality and value of fish catches and the use of environmentally sensitive gear, and partly to aid the restructuring of the industry by way of decommissioning and the like.

51.

The Permanent Secretary said that Defra did not compensate people for changes that they had to make to equipment and buildings as a result of legislative changes. For instance, they had not compensated the many operators who had had to alter procedures, equipment and/or buildings to comply with the requirements of the Animal By-Products Regulation (EC) 1774/2002. As well as introducing an EU-wide ban on swill feeding, the Regulation had tightened the controls on other animal by-product operations such as rendering

plants, pet food plants and hunt kennels, and introduced new controls on others such as incinerators and intermediate plants.

52.

The Permanent Secretary went on to say that, prior to and following the ban on swill feeding, a number of meetings had been held with former swill feeders to discuss the implementation and enforcement of the ban as well as the possibility of compensation. However, Defra had remained of the view that it would be inappropriate to pay compensation in these circumstances.

Further comments from ASU

53.

My officers met with ASU to discuss the different aspects of their complaint, and to get their response to some of the points made by Defra. Looking first at the length of the consultation period, ASU said that they felt that the two weeks that Defra had allowed for consultation about implementing a ban was too short and essentially meaningless, as it was clear that Defra had already decided to go ahead with a ban. ASU were asked if they were satisfied that all relevant parties had been included in the consultation. They said that they were not, as contrary to what Defra had claimed, the consultation letter of 27 March 2001 had been sent to every processor, but not to feeders under Article 26 of the Animal By-Products Order 1999.

54.

Turning to the rationale behind the ban, ASU expressed concern that Defra officials had not properly considered, or advised Ministers on, the rationale behind the recommendation for a ban. They said that, if the Government had really believed that swill feeding was as unsafe as was claimed, it should have been banned immediately. If not, there should have been a proper consultation period, with tightened controls during the consultation. ASU said that, in their view, the consultation had been a whitewash, as most respondents had not favoured a ban; by their assessment only 31% had been in favour. ASU felt that their views had not been taken into consideration. The rationale behind the ban had not been properly explained and the questionnaire had been misleading. People who had shown no preference, or who were against the ban, had not been clear what they were responding to, and even those in favour had thought farmers should be compensated. ASU disputed the Permanent Secretary's assertion that the assessment of the impact had been correctly presented in the Regulatory Impact Assessment.

tonnage of waste being disposed of to landfill sites and the number of swill-fed pigs, which in 2001 had been 130,000 (the Regulatory Impact Assessment had said there were around 82,000). They also disputed the Permanent Secretary's comments (paragraph 43) that swill feeders could easily have switched to brewers grain. They said that brewers grain was not always available, but was in any event high fibre and low energy, making it only suitable for ruminants. It was not an alternative to swill.

55.

ASU said that they believed that the apparent confusion regarding the reason for proposing a ban had been reflected in the consultation document. Because Defra's rationale for proposing a ban had not been clear, consultees had been unsure what they were being asked to comment on. A particular flaw in the consultation had been the omission of any reference to the possibility of raising industry standards even higher either by introducing more regulations, or properly enforcing existing regulations. ASU went on to say that the consultation could also have considered whether there were scientific ways to improve swill feeding. My officers pointed out that the Defra papers suggested that the problem was not considered to be with the scientific standards of swill feeding, but with the enforcement of the regulations. It was considered to be almost impossible in practice to monitor compliance to ensure safe swill feeding and ensure that rogue operators were closed down. ASU commented that one illegal feeder did not represent a case for shutting down the legitimate farmers who, in their view, had been made the scapegoats for the FMD outbreak.

56.

ASU next turned to the length of time given for swill feeders to comply with the ban.

They said that it had grossly underestimated the Views within Defra had varied as to the time that should be given for compliance, and it had settled upon three weeks. However, after notices had been sent out, some farmers had effectively had much less than three weeks, and so it had been agreed not to enforce or prosecute immediately, in order to give everyone sufficient time to comply. ASU said that Defra should not have allowed time to phase in compliance. Had the ban been enforced immediately, all of the stock would have been eligible for the Livestock (Welfare) Disposal Scheme (paragraph 19) – a scheme which paid out for animals trapped under FMD regulations, which could be based on ability to feed animals. Because time was allowed for compliance it no longer became a welfare issue, and so ASU members had become ineligible. ASU said that the consultation, phasing in, and grace periods, rather than an immediate ban, had effectively led to the slow and painful death of their industry.

57.

ASU went on to say that an appropriate phasing-in period would have been five months. That would have allowed them to empty the farms up, selling off stock at a proper market price. It was pointed out that that was an economic argument, whereas Defra had decided the phasing-in period based upon how long it would take to change the diet of a pig. ASU, however, said that in their view it was also an animal welfare issue, because if fed on other matter, the pigs' accommodation would no longer be suitable.

58.

ASU said that in recommending a ban, Defra had failed to take into account a number of relevant considerations, the result of which had been a failure to advise Ministers of the real consequences of a ban for those affected by it. Defra officials had, for example, apparently advised Ministers that swill feeders could simply

switch to some other form of feed. One of the reasons for the three-week delay was said to be that it reflected how long it would take to change the diet of the pig. However, this advice failed to take into account the price of feed compared with that of swill. One member of ASU had calculated that feed cost £98-£130 per tonne compared to £12-£14 per tonne for swill. Moreover, because swill feeders were unable to afford to feed their pigs, they had to be sold off quickly at 'fire sale' prices. Defra had also suggested that alternative sources of food, such as vegetable waste, could have been used. Unfortunately, however, that was not correct. Vegetable waste might be appropriate for ruminants, but it contained insufficient nutrients for a growing pig and in any event was not available in sufficient quantities.

59.

But in any event, even if it had been possible for swill feeders to switch to an alternative form of feed, Defra had failed to appreciate that they would still have needed to incur the significant expense of providing different forms of accommodation for their stock. Pigs fed on swill generated more body heat than those fed on other food, and so buildings needed little insulation; changing the feed would have meant having to insulate the buildings, or even build new accommodation.

tonnage of waste being disposed of to landfill sites and the number of swill-fed pigs, which in 2001 had been 130,000 (the Regulatory Impact Assessment had said there were around 82,000). They also disputed the Permanent Secretary's comments (paragraph 43) that swill feeders could easily have switched to brewers grain. They said that brewers grain was not always available, but was in any event high fibre and low energy, making it only suitable for ruminants. It was not an alternative to swill.

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56.

ASU next turned to the length of time given for swill feeders to comply with the ban. Defra had also failed to appreciate the lack of alternative uses for swill processing equipment. Defra officials had advised Ministers in their comprehensive submission that the equipment used in processing had some alternative use, and so some of the losses swill users would otherwise incur could be offset. However, Defra had never said what that alternative use was, and ASU did not believe that there was one. This had been demonstrated by the fact that that equipment was still, more than four years later, sitting around unused. The only possible way of getting any

return on the amounts invested in equipment was by selling it as scrap.

61.

ASU went on to say that Defra officials had similarly failed to appreciate the lack of alternative uses for the swill farmers' land. The swill industry had had two distinct elements: the first was processing waste and the second was pig farming. To change the farm to a purely waste processing function would have constituted a material change in the use of land and as such would have required planning permission. In view of the fact that most swill processing units were small and near centres of population, so as to be near sources of waste food, it was unlikely that such permission would have been given. Similarly, the small size meant that it was generally impractical to change the land to purely agricultural use; few, if any, agricultural operations would be viable on such small acreages. The terms of standard agricultural tenancies also caused further difficulties. If the land was held under an Agricultural Holdings Act tenancy, diversification out of agriculture might constitute a breach justifying termination. Finally, any diversification would require a degree of financial investment, and banks were not willing to lend to an industry that found itself in the position of the swill processors.

62.

ASU again contended that if swill had been dangerous on 23 February 2001, then it should not have been allowed to have been fed to pigs for another three months. They pointed out that it was anomalous that it had not been thought dangerous the previous year, during the outbreak of Classical Swine Fever. The failure to adopt an immediate ban suggested that they did not really consider the matter as a serious public health concern. ASU said that they believed that this supported their view that there had been no real rationale for the ban other than political

expediency. They believed that the ban had been a direct result of pressure from the Prime Minister's Office on Defra to take action to give the impression that the Government was actively dealing with the FMD epidemic. They said that the evidence in support of this was a minute from the Prime Minister's Office to Defra which, they said, improperly pressured Defra into imposing a ban.

63.

Turning to the refusal to pay compensation, ASU said that they understood that the advice given to Defra Ministers was that it was not appropriate to compensate for changes in legislation on animal feed. However, the change was more fundamental than a change in feed, it was actually a change in the entire mode of production. This was evidenced by the fact that very few former swill feeders were still in business. ASU did not accept Defra's statement that 50 people were still keeping pigs; they had only 8 members in that position, and they were mainly doing so to comply with planning permission requirements. In any event it was simply not correct to say that Defra did not pay compensation following a ban on feed. Following the ban on Meat and Bone Meal being used as feed, in the light of representations made to the Prime Minister and others, the Government had successfully obtained the consent of the EU to pay compensation in the form of the Pig Outgoers and Ongoers Scheme. It was ASU's view that Defra were concerned that any payment might appear to be an admission of responsibility for FMD on Defra's part.

64.

ASU members also felt there had been a lack of clarity from Defra about the real scope of the ban, and a reluctance to put anything in writing. They said that they had received conflicting advice from SVS vets. For example, one member had received three copies of the Statutory

Instrument banning swill feeding, two of which gave advice on disposal of untreated swill by stationary spreading, the third of which did not. When they had contacted Defra, they had been unable to clarify which advice was correct. Another ASU member related how he had been advised by a vet to use his equipment to get waste ready for deep burial, but then the same vet wrote to say that that equipment was still part of the farm, even though kept separate, and if he was to use it for that purpose, the vet would advise the landlord and local authority of a change in land use.

65.

Finally, ASU felt that the business advice that Defra had provided had essentially been useless. By the time the advice had been available in November 2002 too much damage had been done to the swill feeders' businesses, some were out of business already, and closure was inevitable for most others. If the business advice was intended to compensate swill processors and feeders for the loss of their industry, it should have been part of the package available at the time the ban was implemented.

Findings

66.

I shall consider the different aspects of ASU's complaint under the headings set out in paragraph 1 of this report.

- a) **The consultation was flawed, both in terms of the adequacy of the consultation document itself and the period allowed for consultation**

67.

I agree with the Permanent Secretary (paragraph 36) that it is very important, when assessing the reasonableness of Defra's actions which are under scrutiny here, to keep in mind the prevailing conditions at the time of these events and the need for Defra to act as quickly as possible to do what they could to bring FMD under control. As a result it was, perhaps, inevitable that everything would not have been carried out as well as it might have been. The essential issue, however, is whether any flaws that I might identify were such that they rendered the consultation process so flawed as to constitute maladministration. For reasons which I shall go on to explain, I do not see that as being the case here.

68.

First, I do not agree with ASU that the consultation document was so unclear that consultees did not understand what they were being asked to comment on. The document seems to me to set out Defra's views on the reasons for and against banning swill feeding clearly, if succinctly. My officers have examined the responses, and saw nothing in them to indicate that respondees were particularly confused by the questions. Further, if they were, I note that the document gave contact details for any queries people might have. In the light of that, if respondees were confused by the consultation, but did not use that opportunity to clarify matters for themselves, I do not see how that could be Defra's fault. As I have already said,

it is true that the document was succinct, and it might not have included all the issues that ASU considered should have been specifically covered, such as whether, if there was a ban, former swill feeders should be compensated in some way. But I do not see that that was necessarily an appropriate question for this consultation, which was specifically about the terms of the proposed Animal By Products (Amendment) (England) Order 2001. In any event, respondees were invited to, and indeed some did, make any other comments they thought were particularly relevant.

69.

As for the amount of time that people were given to respond, whilst I fully accept that Cabinet Office guidance (paragraph 20) indicates that 12 weeks would normally be the appropriate period for consultation, these were clearly exceptional and extreme circumstances where normal rules simply did not apply. Further, Defra did seek and obtain Ministerial consent to the considerably shorter consultation period. I do accept that the two-week period was extremely brief, and was, in reality, less than two weeks because the earliest the document could have been received was on 28 March 2001 (the day after posting), so recipients would have had less than two weeks in which to respond. Nevertheless, there is clear evidence that Defra did consider all responses, including those returned after the end of the two week period, and I believe they were correct to do so. It is, of course, impossible to say if anyone was deterred from replying because they felt they could not meet the deadline, but I have seen no evidence to suggest that that was so, or that the brevity of the consultation period impacted in any other way on respondents' ability to put forward their views. I do not therefore consider that Defra were maladministrative in restricting the consultation period in this way.

70.

One possible failing I have identified, however, was that it would appear from ASU's account that not everyone whom Defra intended to receive a copy of the consultation document – specifically swill feeders as opposed to swill processors – did so. If that is indeed the case, then it is clear that some of them would thereby have lost an opportunity to contribute individually, which would have been unfortunate. However, it seems likely to me that most of them were aware of the consultation, and that they therefore could, if they had wished to contribute personally, have obtained a copy. As I understand it, however, from the note of the meeting that representatives from ASU had with a Minister on 2 May 2001, the swill users as a group had understood that the National Pig Association was effectively representing their interests in this matter and responding to the consultation on their behalf. At that meeting, however, they had expressed their concern that that Association had not properly represented their views, and they explained why that was. I note that that meeting was the day before the Government announced their decision in relation to the ban. Clearly, therefore, the Government were aware of the full details of ASU's views on the issues before they made a firm announcement. In the light of that I do not see that any specific injustice would have flowed from the fact that not every swill feeder might have received a personal invitation to contribute, or indeed, if a few additional swill feeders had commented individually, that it is possible to argue that that would have been likely to have significantly impacted on what happened subsequently.

71.

That does not, however, mean that I in any way accept, as ASU have contended, that the consultation was meaningless. Whilst I acknowledge that the Government had already

announced their intention to introduce a ban, the point of the consultation was primarily to canvass views on the scope of the proposed ban (how wide the ban should go and whether it should be permanent/temporary) to inform Ministers' consideration of these matters. It follows that I am not persuaded that the consultation was significantly flawed, as ASU have contended.

b) The results of the ban were misrepresented to Ministers, and by Ministers to Parliament

72.

It is clear that Defra and ASU formed very different views on what the responses to the consultation as a whole showed. Those responses were made available to the public at the time, and my staff have seen a number of different views put forward, in the papers they have examined, on how the responses might best be interpreted, including an analysis of the responses put forward for consideration by ASU. In point of fact, the way the consultation was framed, and the way people responded, meant that it was quite difficult to say in simple numerical terms what the precise outcome was in the sense of whether people were for or against a ban. Further, for my part, I can see some legitimacy in Defra's view (paragraph 38) that comments from larger associations would have carried greater weight; in which case, the question as to how many of the actual responses were for or against a ban was not a determining factor. All that apart, however, I see little point in revisiting those responses after the event and seeking to establish a definitive analysis of the responses. Consultations are not democratic votes, nor are Ministers in any way bound by the results. Given the context, even if the vast majority of the responses had been against a ban, Ministers could have still quite legitimately, and

against the then prevailing background not unreasonably in my view, have proposed a ban.

I am, however, satisfied that the submission to the Minister did not misrepresent the broad overall position, which seems to me to be the key point here.

73.

As for how Ministers described the outcome of the consultation to Parliament, I note that Defra accepted that the response to a Parliamentary Question given on 26 April 2001 had been inaccurate. I agree that that was unfortunate, but again, I do not see that it is possible to argue that, had the correct figures been given on that day, it would necessarily have had any impact on the steps the Government took subsequently. Nor is there anything in the papers to suggest that that error was anything other than unintentional. Indeed, given that the Government had committed from the outset to making the responses public, I do not see that there would have been anything to be gained from intentionally misrepresenting the outcome. As for the other alleged 'misrepresentations' that ASU contend were made to Parliament, I note that those all happened much later. Again, I do not see, therefore, that those could be said to have influenced events in any way either. The most significant issue, as I have already indicated, was that Ministers, when reaching their decision on a ban, had a proper understanding of the overall views being expressed in the responses.

c) The inadequate rationale behind the ban, meaning that the decision was unsound

74.

Defra have said that, whilst the feeding of properly processed swill to livestock was safe, the feeding of unprocessed swill was known to be high risk and could easily cause the outbreak of diseases, such as FMD. It was therefore their view that, as only a very small percentage of the nation's pigs were swill-fed, so the risk of infection far outweighed any benefits gained from swill feeding. Furthermore, after the FMD outbreak, the risks from swill feeding had greatly increased. This was because, whilst previously the key risk had been from imported infected meat products, for some time to come after the FMD outbreak there would be a greater risk of infection from domestic meat used as swill. According to Defra, their rationale for a ban was accordingly based primarily on the professional veterinary advice they received to the above effect.

75.

It is evident from the papers that the concern raised by Defra's professional veterinary advisers, which was shared by Ministers, that a failure to ban swill feeding would allow FMD to be passed on through the food chain and recur, was seen as the most pressing issue, and was a strong influence on Ministers' decisions. It is clear that within Defra a ban on swill feeding was being actively discussed by a number of different officials. That said, I do find it surprising that there is not more evidence of that professional advice, or indeed discussion of it, in the Defra papers. Whilst I accept that the FMD emergency put great pressure on Defra staff and they might well not have had time to make detailed written records of discussions, I do find it a matter of concern that there is no written record of any official veterinary opinion before the draft

proposal of 22 March 2001, and only the two short opinions afterwards from the Veterinary Head, Exotic Disease and the Chief Veterinary Officer; the latter effectively being a simple repeat of the views of his predecessor. It seems to me that, despite the emergency circumstances, whilst not everything might be fully documented, departments should have clear records of key advice supporting changes in legislation.

76.

Furthermore, whilst both the above-mentioned veterinarian opinions supported a ban, neither referred in any detail to the likely impact that the ban would have on swill farmers, or indeed on the wider environment. ASU's argument that the decision was unsound largely rests on the fact that they contend that all the implications had not been properly researched and included in the submissions on the proposed ban for Ministers to consider, and such information as was gathered was inaccurate. They point in particular to the figures in the Regulatory Impact Assessment for the increased tonnage of catering waste going to landfill, and the numbers of pigs involved, which they contend grossly misrepresent the reality of the situation (see paragraph 53). I do not see that it would be possible now to establish with any level of certainty which of those sets of figures was most likely to be correct. On the one hand, I agree with the Permanent Secretary that the figures used by Defra in the Assessment appear to accord with those cited by the British Pig Association in their response to the consultation, which would seem to give them some credence. On the other hand, ASU should have been in a better position than Defra accurately to assess the scale of their members' activities. The key question, however, is whether, had ASU's figures been contained within the submission to Ministers, it would have significantly changed Ministers' views. In the light of the Minister's

comments on 26 March 2001 questioning whether there was a need for a consultation on a ban, given that the arguments for one were so strong, I very much doubt it.

77.

But in any event, regardless of the information provided to Ministers in the relevant submissions, it seems to me that it would be very difficult successfully to argue that the decision to ban swill feeding was so fundamentally irrational as to be maladministrative, when the EU subsequently decided that there was a need for an EU-wide ban beginning the following year. Further, whilst I have no grounds to disagree with ASU's assertion that it was the actions of one swill feeder alone that caused the situation that Defra were responding to, I do not see that that automatically renders Defra's recommendations to ban all swill feeding as irrational, as ASU contend. On the contrary, the FMD outbreak would appear to show the devastating and widespread impact that just one swill farmer acting illegally could have. That in turn reinforces the difficulty – if not impossibility – of being able to monitor sufficiently closely all swill feeders' compliance with the Regulations, to be able to provide any guarantee that future risk would be reduced to an acceptable level.

78.

There is one further matter raised by ASU that I should address here. In their evidence to my Office ASU have strongly contended (paragraph 62) that the ban on swill feeding was imposed as a result of direct pressure from the Prime Minister's Office on Defra. They claim that the ban was nothing more than a political expedient in a general election year to give the impression that the Government was actively dealing with the FMD epidemic. In support of this, ASU have referred to a minute which they say went from the Prime Minister's Office to Defra, and which improperly pressurised Defra into arbitrarily

imposing a ban. In the light of those contentions, I think it is important for me to make very clear that my staff have found no such minute or reference to such a minute, or indeed any written communication between the Prime Minister's Office and Defra, relating to the ban. Indeed, the only reference to any contact about the matter was the Head of the Animal Health & Environment Directorate's minute of 23 March 2001, referring to telephone calls from the Prime Minister's Press Office. I should add that Defra do not dispute that throughout the epidemic they did have regular contact with the Prime Minister's Office. However, given the scale of the emergency it seems to me that it would have been surprising, and indeed inappropriate, had that not been the case.

d) Defra's lack of clarity about the scope of the ban and its application to individual establishments

79.

I note the Permanent Secretary's comments (paragraph 43) that the guidance on the scope of the ban did change as discussions progressed after the new legislation had been put in place. Again, given the context of a national emergency, and the speed with which the changes had to be introduced, I do not find it at all surprising that emerging advice should change, or that officials might have occasionally had to revisit advice that they had given whilst out in the field. I therefore see no reason to doubt ASU's evidence (paragraph 64) that there was conflicting advice given to some farmers in the period after the introduction of the new provisions. However, whilst that must have been difficult and frustrating for them, I do not see this as indicative of a serious, general lack of clarity as to the meaning of the ban. I do not therefore

consider it to be maladministrative. Nor do I see that it would have led to a continuing injustice to those farmers affected by it.

e) The limited time given to swill farmers for compliance with the ban

80.

It is very evident from the papers that the three-week phasing-in period allowed for compliance was solely based on the advice received from the Chief Veterinary Officer on the time needed to wean pigs on to alternative foods. I note ASU's points (paragraphs 54 and 62) that if there was a real public health risk here then it would have been more logical to make the ban immediate, and in the absence of that immediate public health risk, the phasing-in period should have allowed sufficient time for farmers to make necessary changes to pig accommodation or scale down their activities over several months, to enable them to get the best possible prices for their animals. However the problem, as I understand it, was not that there was a public health risk, but rather a risk to animal health. The chief concern (paragraph 40) was that there was bound to be FMD-infected meat already in the food chain, and therefore the risks of recycling the disease were very real at that time. It seems to me that, whilst in times of normal national conditions, the options suggested above by ASU were those that might have most reasonably been considered by Defra, I can well understand why the situation at the time made neither of those options practicable or desirable. What Defra were doing here was trying to balance a lead-in time (on animal welfare grounds) and which did not add to the huge problems already caused by the FMD outbreak (in the sense of the need to slaughter and dispose of the remains of millions of animals), against a wish to bring the

ban in as quickly as possible to avoid a risk of perpetuating the animal health risk. Again, given the prevailing circumstances, I do not see that the decision that they reached was so unreasonable as to be maladministrative.

81.

That said, I do consider that Defra should have realised that it was unrealistic, and therefore potentially unreasonable, to start the three-week phase-in period on the day that the relevant legislation was signed. I do not, however, find that that specific decision, of itself, led to an injustice to the farmers affected. That is because the effects of that decision were mitigated by the approach subsequently adopted by the Defra officials responsible for enforcing the ban. It is quite clear (see Annex A entries for 22 and 23 May 2001) that when the shortened lead-in time was recognised, Defra officials adopted a sensible and fair approach, and did not take enforcement action where farmers legitimately needed extra time to be able to comply fully with the new legislation.

f) Defra's failure to recognise the true impact of the ban on swill farmers and their consequent refusal to award compensation to former swill feeders

82.

I turn now to what I regard as the crux of ASU's complaint regarding the decision to ban swill feeding, that is, the failure to pay compensation to the swill users for the significant impact that the ban had on their livelihoods. I agree with ASU's comments that at the time of the FMD outbreak, Defra officials did not seem to realise the full implications for swill feeders when considering whether compensation should be paid to them following the ban. Whilst the Defra papers indicate that officials did at least recognise that this was not necessarily a

straightforward matter, and that there was more to it than simply changing the pigs' feed (see Annex A entry: 1/05/01), it does seem to me that when considering these issues immediately following the FMD outbreak, there was a tendency to oversimplify matters. I am satisfied, contrary to ASU's assertions (paragraph 63), that the question of whether compensation had been paid to others in comparable circumstances was fully explored; and I have seen no evidence to suggest that Defra were incorrect in telling Ministers that there were no other cases which set a precedent for this set of circumstances. Otherwise, however, officials simply appeared to regard it as a business decision that swill users had to make for themselves. Defra officials certainly did not appear, in their internal exchanges, or in the early submissions to Ministers, to understand the full impact of the sorts of difficulties that ASU described in paragraphs 58 to 61 above. Yet it should have been obvious to them, from the evidence I have seen, and from some of the comments in the responses to the consultation, that there would clearly be circumstances, as ASU claimed, where factors such as tenancy agreements, planning legislation or availability of investment funds, and even the immediate extra costs involved, meant that many swill processors and feeders would simply have been unable, within the time period given, or indeed in some cases at all, to find alternative uses for the relevant processing machinery, or to alter their feeding regime and animal husbandry arrangements to enable the continued keeping of pigs in accordance with the new regulations. In other words, it would be hard to imagine that the proposed ban heralded anything other than the end of the swill feeding industry in its then current form.

83.

I note that there is also clear evidence from the records of the visits that the Defra officials made a year or so after the FMD outbreak (which my staff have seen) that a significant number of the swill farmers either went out of business immediately or shortly after the ban, or drastically scaled down their businesses. The ban therefore had an immediate, clearly demonstrable and very significant impact on them and on their ability to maintain their livelihoods. I note also that although, following the subsequent EU Directive, a ban on swill feeding was clearly inevitable at some point, the fact that other European countries found it relatively easy to negotiate lengthy transition periods (I understand, for example, that Germany and Italy were given a four-year derogation) strongly suggests that there was wider recognition that this was not a straightforward process if farmers wanted to continue in farming or to diversify.

84.

In the light of the above, I am satisfied that Ministers were not made fully aware of the implications for swill users of the ban on swill feeding, when they were considering the introduction and timing of the ban and the question of compensation for those affected. Accordingly, I find that that discretionary decision was not taken on the basis of all the relevant facts, and that it was therefore maladministrative.

Summary of findings

85.

I have not found that the consultation document or process were so flawed as to constitute maladministration. Whilst I found that incorrect information about the outcome of the consultation had, unintentionally, been given in response to a Parliamentary Question, the submission to Ministers had not misrepresented the position, and I was satisfied that the error identified in the response given to Parliament had not influenced events.

86.

Whilst I found it a matter of concern that, despite the emergency conditions, there were not fuller records of the professional veterinary advice on which Defra had based their recommendation for a ban, I did not find that that meant that there was inadequate rationale behind the ban. I also found that, whilst Defra's guidance on the scope of the ban had undoubtedly changed after the new legislation had come into force, I saw that as evidence of developing thinking in a national emergency situation, rather than a more fundamental lack of clarity about the scope of the ban.

87.

Given the prevailing circumstances and concerns, I did not find the decision to limit the time given to swill feeders for compliance with the ban to three weeks to be so unreasonable as to be maladministrative. I did consider the decision to start that phase-in period on the day the legislation was signed to be unrealistic and therefore potentially unreasonable, but that its effects had been mitigated by the sensible approach subsequently taken to enforcement of the new legislation.

88.

I have, however, found the decision on compensation made by Ministers when considering the introduction of a ban in May 2001 not to have been taken in the full light of all the facts, and therefore to have been maladministrative.

Injustice

89.

I am satisfied that the fact that Ministers, when making their decision on whether to award compensation, were not made fully aware of the devastating impact that the ban was likely to have on the livelihoods of those involved in the swill feeding industry caused injustice to those affected.

However, as I explained in paragraph 6, my powers in respect of discretionary decisions are limited. What I would normally do in such circumstances is to recommend that the decision on compensation should be revisited in the light of all facts. That is because it would not be appropriate for me to seek to substitute my own view of what that decision should have been. Further, it would not be possible for me to establish with any level of certainty what that decision might have been at the time, had the Ministers had all the facts to hand. That could only be a matter for speculation on my part.

In this instance, however, it seems to me that that speculation has been clarified by the subsequent events, as set out in the chronology, and that there would be little point in referring the matter back to Defra for the compensation question to be reconsidered. That is because, in response to ASU's continued representations in support of compensation, Defra Ministers have revisited their decision more than once, and have still declined to change their view on the matter.

Further they have done so not only on the basis of all the facts, but also in the light of clear evidence of the reality of the harsh and devastating impact of the ban on many of the swill processors and feeders, and in the light of forceful representations made by ASU.

I do not, therefore, see that it is possible to conclude that those subsequent decisions have been reached in ignorance of the full facts and therefore maladministratively. For that reason I

cannot find that there is any continuing unremedied injustice arising from the maladministration in the original decision making that I have identified.

I have no grounds, therefore, on which I might legitimately ask Defra to reconsider their decision not to pay any form of compensation to the swill processors and feeders, however harsh that decision might seem.

Part II: Failures in the inspection regime at Burnside Farm, Heddon-on-the-Wall, effectively allowed illegal feeding activities to go unchecked and thereby led to the outbreak of FMD, which in turn led to the hasty imposition of the ban

Background to the relevant events

90.

The Anderson Inquiry concluded that all the available evidence suggested that on or around 7 February 2001 pigs at Burnside Farm, Northumberland had become infected with FMD. In other words this was probably the first or 'index' case of the disease and therefore the likely cause of the subsequent epidemic. In addition, the Inquiry confirmed that the most likely cause of the index case was that illegally imported meat infected with the FMD virus had been fed to pigs on this farm without being properly processed. A later enquiry by the Chief Veterinary Officer in 2002 reached the same conclusion. (It should be noted, however, that it is not possible to establish this for certain.)

91.

Burnside Farm had, since October 1995, been run by two brothers who held the farm on an agricultural tenancy. They ran it solely as a swill feeding pig farm. Burnside Farm did not have its own swill processing plant; instead the brothers collected waste from catering outlets in the Newcastle area which they took for processing at the neighbouring farm, Heddon View, where the premises were licensed for swill processing. One of the three processing tanks at Heddon View had been allocated for the brothers' personal use and they processed their own swill in this tank and provided their own oil to power the boiler. The brothers were licensed by Defra to consign swill from Heddon View, as well as to feed that swill to their pigs. Licences had to be renewed annually. (The brothers' licence simply said that they were authorised to consign swill from the neighbouring farm and to 'cause or permit processed catering waste to be fed to pigs or poultry on the said premises'.) The fact that the brothers were licensed meant they were subject to inspection by the SVS (paragraph 17). Throughout the six years that the brothers were

at Burnside Farm the same vet, James Dring, based in Newcastle and employed by the SVS, carried out these inspections. Mr Dring inspected the farm twice annually (in January and July) until the outbreak of FMD in 2001.

92.

There was no residential accommodation at Burnside Farm and no one lived there. The farm was very basic: it had five sheds in which pigs were housed and an old caravan that was used as an office. The brothers travelled to it from their home on a daily basis and this meant that all visits generally had to be announced in order that Mr Dring had access to the sheds. The feeding system was one in which processed swill was placed in a large holding tank and then pumped through a series of small pipes to the pigs' troughs in the sheds. The brothers were experienced pig farmers (they had farmed pigs all their lives, as had their father) and they had one employee.

Key Events

93.

The key events are as follows. On 30 August 2000 Mr Dring made his normal unaccompanied biannual visit to Burnside Farm and found conditions unacceptable. According to Mr Dring's account to my officers (the note of the interview is set out in full in Annex C), because of depression in the market the brothers were refusing to sell pigs for a low price, so pigs remained on the farm and grew very strong. In one of the huts they had broken through wooden partitions in their pens, smashing the interior to pieces. The result was pigs in very large pens, rather than 24 separate ones. (This meant that boars could meet and were likely to fight. Piglets born into this environment stood little chance of survival.) There were other problems in three other sheds. The farm slurry system was choked and overflowing with slurry backing up into pens, several of which were ankle deep in slurry, making them wetter and dirtier than they should have been. Two sows were dead in their pens.

94.

By Mr Dring's own account (Annex C) other business (relating to the then current swine fever outbreak) prevented him from dealing with the situation there and then. He said that he telephoned one of the brothers at 7.30pm that night (30 August 2000) and told him that he had been shocked and disgusted by what he had seen; he said that he was going to pretend the visit that morning had not happened and he would return to the farm early the following week when he expected to find an improved situation. (There is no record of this telephone call.)

95.

On the Action Sheet dated 30 August 2000, Mr Dring wrote: 'Visit made 30.8.00 – satisfactory. Pl. m/f for next visit due end Jan 01 in synch with re licensing visit of Heddon View'. A date stamp on the document shows that it was received at Defra's Carlisle Office on 1 September 2000. Mr

Dring said that he had made a second follow-up visit a few days after the above visit, when he found things had improved to an acceptable level. There is, however, no written record of this visit, and he did not report to his Divisional Veterinary Manager that there were problems at this farm.

96.

On 22 December 2000 Mr Dring visited Burnside Farm with an LA inspector (paragraph 13) following a complaint alleging poor standards of husbandry at the farm. (This complaint had apparently been made by people living near the farm to the RSPCA, which had passed it to the LA. The LA inspector had initiated the visit and invited Mr Dring to accompany him.) Mr Dring said that he saw one ill pig alone in an un-bedded pen, when it should have been in a hospital pen. It had a swollen, painful elbow and he instructed that it be moved into bedded accommodation. By Mr Dring's account, he had then had a discussion with the LA inspector about mounting a prosecution for causing unnecessary pain and suffering, but decided not to do so because, although a case could be made, he considered the threat, rather than the actuality, of prosecution to be the most effective means of improving husbandry practices on the farm. Instead, he gave one of the brothers an oral final warning and told him that next time evidence would be collected and a prosecution would be recommended. Mr Dring made no written record of the oral warning. In the Farm Inspection Welfare Report which he completed following the visit, Mr Dring described welfare conditions at Burnside Farm as 'less than ideal and always have been. Pigs are kept in bare concrete pens with no additional bedding. Problems are exacerbated at this farm by seeming inability to keep the pens dry. All the same the majority of pigs are well grown and well fleshed'.

97.

On 24 January 2001 Mr Dring made his normal annual re-licensing visit to Burnside Farm and saw two pigs in hospital accommodation. He examined them and felt them to be adequately provided for. As he considered everything else on the farm to be acceptable, the brothers' licence to consign and feed swill was renewed.

98.

On 19 February 2001 signs of a notifiable disease were discovered in pigs at an Essex abattoir and on the following day the disease was confirmed as FMD. On 22 February 2001, as part of the tracing process to find the source of the infected animals, Mr Dring, accompanied by an SVS technical officer, visited Burnside Farm where they found evidence of disease in a number of pigs, which was confirmed the next day as FMD. Arrangements were made for the pigs to be slaughtered. On 24 and 27 February 2001 (with additional footage shot subsequently) a Trading Standards Officer (TSO) made video recordings to show the conditions on the farm.

99.

Some time after the outbreak of FMD, and in readiness to submit to the enquiry that was then under way by Dr Anderson – paragraph 26, Mr Dring wrote a lengthy and detailed memorandum concerning his involvement with Burnside Farm. This suggested, with the benefit of hindsight, that his inspections at Burnside Farm might not have been rigorous enough. In terms of animal welfare, he said that basic welfare standards were acceptable and the pigs were generally thriving and disease free. However, there were problems if a pig became a casualty. Despite encouragement to take a proactive approach in considering the welfare of such animals, the brothers' attitude had throughout been one of indifference. He said that when he visited with the LA inspector in December 2000, a case for prosecution for causing unnecessary pain or distress to a pig with a swollen and painful elbow

could have been made. He accepted that the decision not to make such a case had primarily been his and it was a decision that, in retrospect, he regretted. He also accepted that he had failed to follow normal working practices in the way in which he had dealt with the totally unacceptable conditions that he had found at Burnside Farm when he visited in August 2000, in that he had not documented what he had found, or made an official record of his second visit. As a result the Divisional Veterinary Manager had not been made aware of what had happened at Burnside Farm as he should have been.

100.

Mr Dring also acknowledged in his memorandum that he might have missed certain indicators that should have led him to suspect that unprocessed food was being fed. These indicators were:

- He did not realise the true significance of containers on the hard standing at the front of Burnside Farm.
- He did not notice until 22 February 2001 the presence of a macerator on the feeding system holding tank. Its recent appearance was indicated by a differently shaped tank lid (first noted in March 2001).

Mr Dring's memorandum also notes (with respect to investigations on the farm after the discovery of FMD) that:

- He did not notice the presence of any cutlery laid around the farm until after 22 February 2001, after FMD was suspected on the farm. When its presence was drawn to his attention it took a short while for him to realise its significance.
- He did not realise when the pipe feeding system at the farm had ceased to function and that such a system could be used to feed unprocessed catering waste.

101.

That memorandum, together with the TSO's video (which my officers have seen), which showed very poor conditions at the farm, formed the basis of ASU's complaint that the inspection regime had been inadequate. Neither the memorandum, nor the video, were submitted to the Anderson Inquiry.

102.

In May 2002 a district judge convicted one of the tenants of Burnside Farm of various offences, including feeding unprocessed catering waste to their pigs. The brother was not, however, convicted of bringing unprocessed catering waste on to his farm, because the judge accepted that the brother had been 'authorised' by an LA inspector to leave the waste on the hard standing (despite the fact that the LA inspector had no powers to provide such an authorisation).

ASU's contentions

103.

ASU say that it was very clear that Burnside Farm was far more dirty and dilapidated than other swill farms, and that pigs were kept in conditions well below those normally required of a swill farmer. They contend that Mr Dring should not have allowed such conditions to exist and that, by his own account, as an experienced vet, he should have taken positive action to ensure that the brothers either complied with the law or had their licence rescinded, effectively putting them out of business. They say that he was grossly negligent not to do so.

104.

ASU point out that they are supported in their view of the conditions at Burnside Farm by the views of the other SVS vets who attended the farm in response to the identification of FMD in late February 2001, one of whom had publicly described the conditions there as the worst he had seen. ASU said that the TSO video clearly showed very dilapidated and dirty conditions at the farm, which in their view could not possibly have reached that state in the time since the last of Mr Dring's visits.

105.

ASU contend that, by Mr Dring's own admission in his memorandum, he had failed to appreciate during his visits the significance, before FMD was identified on the farm, of the clear evidence on Burnside Farm of the feeding of unprocessed waste as swill. That included the presence of the waste containers holding unprocessed swill on the hard standing at the front of the farm (which ASU said was a clear breach of Article 21(2) of the Animal By-Products Order 1999 – see paragraph 16), and the alteration to the lid of the feeding system holding tank, which could only have been for the purpose of feeding unprocessed swill. But most significantly, he had failed to realise the significance of the large amounts of cutlery in the pens and around the farm. Nor had he noticed

that the pipe feeding system had broken down.

106.

In his memorandum Mr Dring had said: 'Had this inspection been more rigorous ... had the licence not been renewed, or renewed only subject to radical revision of [the brothers'] patently deficient feeding technique, then this awful 2001 epidemic would never have come about'. ASU said that it followed from that admission by Mr Dring that, had it not been for those failings, then swill feeding would never have had to be banned and the former swill feeders would not have lost their livelihood. They concluded that, in the light of that, Defra should compensate the former swill feeders for the effects of their maladministration.

Further evidence from ASU

107.

When my officers met with ASU representatives, ASU made some further representations on this aspect of their complaint. They said that on 30 August 2000, when Mr Dring had visited Burnside Farm and found conditions unacceptable, he had agreed with the farmer that he would treat the inspection as if it had never happened and come back the following week. Two weeks later Mr Dring had apparently passed the farm as acceptable. No record had been made of a second visit, and two weeks seemed like too short a time to put the farm in order. ASU believed that the animal welfare issues should have been addressed at the first visit. Classical Swine Fever had broken out on 9 August 2000, so there should have been a heightened sense of bio security taken into account by Mr Dring. ASU also questioned whether Mr Dring had checked records of pig movements and waste processing as he should have.

108.

ASU went on to say that when Mr Dring had visited the farm again with the LA inspector on 22 December 2000, and welfare problems had again been found, although Mr Dring and the LA inspector had discussed the possibility of mounting a prosecution, they had decided to issue a final warning instead. ASU said that Mr Dring's account of the final warning given did not accord with usual practice. In their experience, final warnings had always been given in writing and were very strict. There should have been daily 'to do' lists and everything was supposed to be tightly monitored. ASU felt that Mr Dring had not mounted an appropriate investigation in response to the complaint about animal welfare, and that although Mr Dring might strictly speaking have followed his Defra remit (see paragraphs 8 to 10), he had a higher professional duty as a vet to ensure animal welfare. Furthermore, none of the problems at Burnside

Farm had been fed back to Mr Dring's line manager. That was clearly wrong.

109.

On the following visit, ASU contended, it should have been apparent to Mr Dring that the containers holding unprocessed swill on the hard standing constituted a breach of Article 21(2) of the Animal By-Products Order 1999. Those containers would have been clearly visible to Mr Dring, and he must also have accepted that they were on farm premises, as he had instructed the farmers to put lids on them.

110.

ASU went on to say that a second problem that had been identified was the alteration to the lid of the swill tank. The lid had been changed several times and, in his memorandum, Mr Dring had said that the hole in the lid which he had observed was subsequently found to be for a macerator to be fitted. However, ASU's experience from other inspections was that an SVS inspector would ask how and why the plant worked. Plants varied and it was necessary for the vet to understand each one, and any alterations would be noted. The whole process should have been examined, from the transport of the swill to the feeding of the pigs. ASU pointed out that, in any event, untreated swill had a different smell to treated swill, and so should have been easily detectable. Had untreated waste not been allowed to be kept on the farm, the farmer would not have had the temptation to feed it to his pigs. ASU strongly felt that Mr Dring should have questioned the commercial logic of unloading untreated swill at the farm, and then reloading it to take it to the neighbouring farm for treatment.

111.

ASU went on to say that, during the TSO visit to the farm in February 2001 when the video was made, 1,300 pieces of cutlery had been found.

ASU said that these clearly should have been spotted earlier. ASU said that they accepted that Mr Dring would not have been able to see those at the bottom of the swill tank, but in their view he should, nevertheless, have spotted that the tank contained unprocessed swill from the smell and a temperature reading, and they remained convinced that there must have been some debris visible. It was their view that the difference between processed and unprocessed swill would have been readily apparent to anyone, qualified or unqualified, who looked at it. ASU insisted that the conditions at Burnside Farm had clearly been exceptionally bad; and that being the case, it showed significant failure on the part of the SVS inspection regime that no action had been taken on animal welfare grounds. ASU said that they did not accept that standards of animal welfare had been lower amongst swill feeders generally.

112.

ASU insisted that it was self-evident that, had Mr Dring carried out his duties effectively, there would have been no need for a ban on swill feeding. Although they accepted that the EU had now banned swill feeding, ASU strongly believed that the UK would have been given a derogation for several years, like other countries (such as Germany). ASU concluded by pointing out that neither the TSO video, nor Mr Dring's testimony, had gone to the Anderson Inquiry. My investigation was therefore the only type of enquiry to have all the evidence before it on this issue.

113.

In subsequent comments on the facts, ASU said that they did not accept Mr Dring's assertion (Annex C, paragraph 2) that the primary role of the SVS was to check on the welfare of the farm animals. In their view the function of the SVS had principally been to ensure that the terms of any licence to feed swill were being complied with.

They said that they were also concerned that Mr Dring had been the only SVS vet who had visited the farm over a six-year period. For any inspection regime to be effective, the inspector and the inspected had to maintain an arms length relationship, and having the same inspector for that period was not conducive to that. The SVS should, in their view, have rotated the inspectors to avoid the sort of relationship that had clearly developed in this case.

114.

ASU went on to say that one of the brothers from Burnside Farm denied that Mr Dring had ever made the telephone call he claimed to have made to the farm on the evening of 30 August 2000, and there were records that proved that. He also denied that any follow-up visit had been made. Given the lack of records to support Mr Dring's account, ASU believed the brothers' account to be more likely to be accurate. ASU said that they remained firmly of the view that Mr Dring both could, and should, have revoked the brothers' licence to feed swill on the grounds that neither the licence nor the Animal By-Products Order 1999 were being complied with.

Defra's comments in response to the complaint

115.

The Permanent Secretary was asked for his comments on Mr Dring's failure to take action in response to unprocessed catering waste apparently being stored on the hard standing at Burnside Farm. He said that, generally speaking, in the event of discovering unprocessed catering waste at the front of premises which were only approved to feed processed swill, a Defra vet should have informed the occupier immediately of their findings and insisted that the unprocessed catering waste be removed without delay. They would also have had the options of following this with a written warning and/or carrying out a repeat visit to check compliance. Article 27 of the Animal By-Products Order 1999 gave inspectors the power to serve a notice requiring the disposal of the catering waste as specified in the notice if there was non-compliance with the Order, or if it was thought necessary for animal health purposes. Suspension of the approval was a further option, effectively preventing the continuation of the operation. The local authority (as the enforcement body) could also have initiated a prosecution. The seriousness and frequency of the offence and the willingness of the operator to rectify the matter would have been considerations which the vet would have had to take into account in deciding which option(s) to pursue.

116.

The Permanent Secretary went on to say that some unprocessed catering waste had been held temporarily in barrels on a hard standing in front of Burnside Farm, before being moved for processing at Heddon View. Judgment by District Judge James Prowse on 30 May 2002 in the case of Northumberland County Council v Robert Waugh (which my officers have seen) had concluded that, whether or not it was taken direct to Heddon View or unloaded at Burnside Farm, depended on which collector had collected

it. One had fallen out with the processor at Heddon View. He therefore unloaded the material at Burnside Farm and another collector would take it to Heddon View shortly afterwards.

117.

The Permanent Secretary said that Mr Dring had not considered that unloading the material on to a hard standing at the front of the farm was in breach of the Order. The hard standing adjoined the main road and was well away from the pigs, or any activity involving the pigs. He had also understood that it was being taken to Heddon View for processing without undue delay, as required by the Order. The judgment from the trial had shed some doubt on whether the hard standing was in fact outwith the premises, as the judge had accepted the farmer's claim that the local authority had given tacit agreement to his holding the unprocessed material on his hard standing. The judge had, therefore, found that the farmer had a lawful excuse for this practice.

118.

During Mr Dring's visits to Burnside Farm he had twice warned the farmer about barrels of unprocessed catering waste being left on his hard standing. However, the issue had been that the catering waste had been left uncovered, not that it had been there at all.

119.

Asked whether he considered Mr Dring's response to finding unprocessed swill at Burnside Farm, apparently on several occasions, to have been reasonable in the circumstances, the Permanent Secretary said that it was not appropriate for headquarters staff to try to anticipate every eventuality and to provide instructions for each one. Rather, general guidelines were provided within which veterinary field staff had to take account of the circumstances in each individual case and exercise their judgment accordingly, seeking advice from

The LA inspector's comments

others as appropriate. Mr Dring acted in accordance with the instructions and his assessment of the situation at the time.

120.

As part of the investigation, my officers interviewed Mr Dring about the role that he had played in these events and the memorandum that he had written. A summary of the key points covered in that interview is at Annex C.

121.

My staff also interviewed the LA inspector who had accompanied Mr Dring on the visit to Burnside Farm on 22 December 2000 (paragraph 96). He explained that the visit had been in response to a complaint that had come via the RSPCA. The complaint was that there were dead pigs lying around Burnside Farm, and that both the pigs and the farm were in a generally poor condition. The visit was not pre arranged, and the brothers who owned the farm were not expecting it.

122.

The LA inspector explained that, with this type of visit, the LA was the prosecuting authority, and he, as an LA inspector, was responsible for enforcing the law. Any action that he took would probably be for causing unnecessary suffering to an animal under the Protection of Animals Act 1911 (paragraphs 9 and 13). He would, however, be totally reliant on the SVS vet for expert evidence to prove that an animal had suffered unnecessarily. If the vet was not prepared to give a statement saying that, he could not commence a prosecution. In addition, although an LA inspector had certain powers of entry, he was not empowered to enter premises to deal with animal welfare issues. Only a Defra vet had this power. He therefore needed Mr Dring with him so that they could legally enter the premises.

123.

The LA inspector said that on 22 December 2000 he had met Mr Dring at the bottom of the road leading to Burnside Farm, and they had then gone to the farm together. To the best of his recollection they had spent just over an hour at the farm and visited each of the pig sheds. The LA inspector said that he had had no previous experience of pig farms and could not say how Burnside compared with others. This had also been the first time he had been to Burnside Farm. However, his general impression had been that

the farm was in poor condition. He had felt that it should be cleaner, and that the pigs should have had more bedding. Nevertheless, all the pigs had been in good bodily condition. Two were lame, but even those had been in otherwise good condition. Mr Dring had told the farmer to move those two pigs into pens where they could be separate from the herd and recover.

124.

On the basis of these two pigs Mr Dring had not been prepared to give a statement to support a prosecution for causing unnecessary suffering. The LA inspector said he had not been entirely happy about that, and would have preferred for a prosecution to be instigated, but he had had to accept the vet's view. The LA inspector said that it was not that he strongly disagreed with Mr Dring, he had just felt that the animals had suffered and that that merited prosecution, whereas Mr Dring had preferred to obtain compliance through advice. The LA inspector had been concerned that they would be leaving the ill pigs with no guarantee that a vet would be called to them, and that the authorities would have no further control over what happened to them. Mr Dring had, however, indicated to the brothers that the conditions needed to improve. The LA inspector said that, although he would have preferred Mr Dring to have given a statement, he had had to accept that it was unlikely that a prosecution would have achieved very much. The brothers would not have been banned from keeping pigs, just because two pigs out of an otherwise healthy herd had suffered unnecessarily.

125.

The LA inspector confirmed that conditions had to be bad to justify a prosecution for causing unnecessary suffering. Basically you were looking for a problem reflected in the animals so if, as at Burnside Farm, the animals were healthy and thriving, it was extremely difficult to say that

they were suffering unnecessarily. Defra vets had their own animal welfare codes (paragraph 9) which said that animals should have a dry lying area and bedding, but these were not legally enforceable, and breach of them was not an offence in itself.

126.

The LA inspector said that, in his view, pigs would be alright at Burnside until they became ill, when it seemed unlikely that they would be looked after properly or treated by a vet. In his view, Mr Dring's relationship with the brothers had been professional, and certainly not 'pally'.

127.

On 22 December 2000 it had not been possible to inspect any documentation because the brothers claimed that the relevant documentation, in terms of pig movement records and records of the administration of veterinary medicines, was at their home.

128.

The LA inspector said that he had returned to Burnside Farm with Mr Dring on 24 January 2001 when the movement records had been inspected, and found to be in order. The LA inspector said that prior to changes brought about by FMD, and computerisation, it had been extremely difficult to check whether entries were correct or that all entries had been made. The only way to check would have been to visit the claimed destination for any pigs that had been moved, and that could be many miles away. The only identification on a moved pig was a temporary identification mark sprayed on to the pig's hide, so it was hard to trace a particular pig. Those problems meant that, prior to FMD, records had not been as comprehensive or as useful as they were now. At that time it had only really been possible to check the format of records. It had been almost impossible to verify the content.

129.

The LA inspector said that his second visit to Burnside Farm was Mr Dring's normal annual licence renewal visit, both to Burnside and to the neighbouring farm, where the brothers processed their swill feed. He had not been sure that the two pigs that had been ill in December 2000 had still been at the farm at the time of this second visit. Otherwise, conditions on the farm had seemed to him to be more or less the same. During the visit he had worked separately from Mr Dring who, he presumed, had been checking the welfare of the animals and the feeding arrangements, but he had not personally seen how he went about this.

130.

The LA inspector said that on both occasions when he had visited Burnside Farm a large fire had been smouldering. It could be seen from the road, and smoke from it had often blown across the major dual carriageway nearby. He knew there had been complaints from neighbours about the fire. The LA inspector went on to explain that, at that time, farmers had been allowed to dispose of dead pigs by burying or burning. Burnside Farm had hardly had any land for burying, so the brothers could only dispose of pigs by burning, and as far as he knew that had been the main reason for the fire.

131.

The LA inspector could not remember whether any containers were on the hard standing at the front of the farm. He said that he would not have specifically looked for that, because enforcement of the law relating to processing and feeding was not his role. The LA inspector said that, in his view, LA staff tended to be minded towards enforcement and prosecution, and were aware of the legal requirements for ensuring that evidence would be admissible in court, whereas Defra staff appeared generally to favour a much softer approach of encouragement, and maintaining a

good relationship with the farming community. The LA inspector said that he believed Mr Dring to be conscientious; he would not leave problems unaddressed.

132.

The LA inspector concluded that, although the enforcement of the regulations relating to swill processing and feeding had not been his responsibility, it was his opinion that this law had been unenforceable, and easily abused by a pig farmer who was unscrupulous. Mr Dring only visited Burnside Farm twice a year. To be certain that unprocessed swill was not being fed, someone would have needed to be at a farm for 24 hours of each day.

Findings

133.

I consider first ASU's contention that the general conditions at Burnside Farm, and the animal welfare problems identified by Mr Dring during his visits, particularly in August and December 2000, were so severe that he was grossly negligent not to either force the brothers to comply with the law, or have their licence rescinded (paragraphs 99 and 100). ASU say that the evidence of the TSO video (paragraph 98) and the comments of the other SVS vet are sufficient strongly to support such a finding. I do not, however, agree with them on that point. The video was taken several days after the brothers had effectively stopped doing anything on the farm and I note the comments made by Mr Dring in his statement (Annex C, paragraph 14), which seem to me to provide a reasonable explanation for a very quick and significant deterioration in the conditions on the farm. The other SVS vets also only saw the conditions on the farm after the FMD outbreak and for the same reasons, I do not think it is possible to assume that what they saw at that time was necessarily indicative of what Mr Dring had seen over the previous year.

134.

It is not, of course, possible to say now exactly what the conditions at Burnside Farm were like throughout the period when Mr Dring was inspecting it. It is clear that Mr Dring considered them to be at the absolute minimum of what was acceptable in animal welfare terms. But it is also clear to me, given that his inspection visits were usually pre-notified, that if the farm conditions were normally very poor, the brothers could easily have cleaned them up before the visit. I also take the LA inspector's point that in order to get a successful prosecution, the vet would have to identify a problem reflected in the animals and that where, despite the conditions, the animals were healthy and thriving, it was extremely difficult to say that they were suffering

unnecessarily. This view is supported by the fact that when in August and December 2000 the vet identified an animal welfare problem he regarded it as unusual and took action to deal with it. I note also the LA inspector's comment that even a successful prosecution in relation to just one or two animals would not have been sufficient grounds for them to ban the brothers from keeping pigs.

135.

It is also impossible now to determine whether the visit Mr Dring made on 30 August 2000 was his first or second visit at that time. The fact that Mr Dring said that he would pretend that the first visit had not taken place and then submitted the action sheet showing that the 30 August visit was satisfactory strongly suggests to me that that was the date on which he made his second visit. Indeed, that would explain why there were apparently no records of his alleged call to the brothers on that evening (as ASU contend). But is Mr Dring being honest in saying he visited twice, or did he simply find an unacceptable situation on the farm, ring one of the brothers about this, and then put the form in showing that the visit was satisfactory? I cannot be certain whether Mr Dring made two visits, but in view of his openness in so many other matters, and in view of the LA inspector's objective comments on Mr Dring's general professionalism and that he did not believe that the vet would leave such matters unaddressed (paragraphs 126 and 131), I am prepared to accept that he did make two visits. I also believe that Mr Dring was entitled to use his discretion in deciding what action should be taken in dealing with the conditions he found on the farm. However, I do find that he failed significantly not just in failing to report what he had found on the first visit (which is hard to understand if conditions were as bad as he has said when he visited the farm, and in the context of an outbreak of swine fever, which would have

pointed to the need for even greater punctiliousness in reporting unsatisfactory conditions), but in knowingly submitting what was effectively a false report. That could only mislead his managers and anyone else who might subsequently have dealings with the brothers. It is difficult to know why a long-serving and apparently dedicated vet would decide to make a false report. I am prepared to accept his explanation that it was because he was working under severe pressure due to staff depletion caused by the swine fever epidemic, but even so, his behaviour fell far below an acceptable standard, and I find it surprising that Defra appear to have accepted it with equanimity. It also seems to me to have been unprofessional for him to have indicated to one of the brothers that he would 'pretend a visit had not taken place', although again, I accept that in doing this he was trying to use informal means to achieve compliance.

136.

I turn now to the December 2000 visit with the LA inspector, when one or two pigs (the evidence of the LA inspector and Mr Dring differs on this point but I do not see that as of particular significance) were found to be suffering from a sore elbow. Mr Dring could have decided to take more formal action, and I note his regret with hindsight that he did not do so (paragraph 99), but he has explained why he took that decision. I accept that there was a difference of opinion between Mr Dring and the LA inspector on the animal welfare issue, but it seems to me that the LA inspector's evidence suggests that that was more about the difference in approach taken by the two respective roles, as described by the LA inspector (paragraph 131) rather than any disagreement that there was a problem identified that needed to be tackled. I note also that the LA inspector, whilst not agreeing with Mr Dring's approach in some respects, commented that the approach that he had favoured (namely a

recommendation to prosecute) was unlikely to have affected the course of events significantly (paragraph 124).

137.

In considering the professional judgment to be exercised by an SVS vet, it seems to me that Defra are entitled to allow such a person considerable discretion as to how they deal with issues they come across. There must, however, be some limits to that discretion. If not, a situation will emerge in which people are being treated differently by different vets in respect of the same or similar matters, and inconsistent regulatory standards will be being applied. That is why, I assume, that although Defra have provided only limited guidance to SVS field staff about what action they should take in relation to the failings they identify, there is a clear requirement in the instructions given to staff that all serious failings found should be clearly documented and reported, so that broadly consistent decisions can be taken on a wider level on what enforcement action to recommend (paragraph 10). In the light of that, I find it a matter for concern that the final warning Mr Dring gave the brothers in December 2000 was once again not given in writing and reported for future action or reference. Although I note that Mr Dring implied that it was for the LA to issue the written warning, as the LA inspector had been in the lead on the visit, I do not think that that was sufficient, particularly in the light of the August 2000 visit, when welfare failings had been identified. It seems to me that there remained an obligation on him either to write himself, and report his own findings to the Division, or to check whether the LA inspector would issue the written warning. (This confusion between Mr Dring and the LA inspector as to who was responsible for issuing the written warning in these circumstances seems to me to highlight the confusion which can arise from the fact that the

LA and SVS have overlapping responsibilities, both in the relevant legislation and in practice, in relating to animal welfare issues.) Mr Dring's failure to complete appropriate reports, both in August and December 2000, and to forward them to the Divisional Manager appeared to me to demonstrate a failure on his part to understand the importance of maintaining appropriate records and following proper procedures. In summary, therefore, I have not seen any evidence to suggest that Mr Dring's professional judgment, in terms of the seriousness of the animal welfare issues he identified and in the exercise of his discretion as to how best to handle those (in the sense of prosecution or a warning), was fundamentally flawed. I do find, however, that his failure to follow proper procedures, and to make and submit appropriate records, meant that he did not carry out his duties in this regard to an acceptable standard, and that given the possible consequences of such omissions, those failings were, therefore, sufficiently serious as to constitute maladministration.

138.

That brings me, however, to Mr Dring's other responsibilities when inspecting the farm, namely to satisfy himself that the brothers were keeping to the conditions of their licence to consign and feed swill. I should say at the outset that, whilst I recognise the practical convenience of requiring SVS vets to carry out these duties, they are, of course, outside a vet's normal professional ambit. Accordingly, given the clear and substantial risks involved if they did not carry out these responsibilities to an acceptable standard, I find it a matter of concern that SVS vets appear to have been given no clear guidance or technical support by Defra as to what they should be doing when inspecting for these purposes.

139.

Further, it is clear that Mr Dring (and his managers did not correct him) saw his animal disease prevention and welfare duties as paramount. In my view, however, given the risks involved if licence conditions were not fully adhered to, both sets of responsibilities should have been regarded as significant and important at each inspection. Perhaps as a result of that attitude, Mr Dring appears to have adopted exactly the same approach to compliance in respect of the licence as he did to his other duties, namely to encourage compliance, warn when there were possible infringements and then make follow-up visits to monitor progress, rather than considering suspension or removal of a licence, or recommending prosecution to his Divisional Manager. I acknowledge, of course, that the question of how best to obtain compliance is not at all an easy or straightforward one, and I take the SVS's point that there is plenty of case law to support the argument that you do not take away a person's livelihood (and in the case of farmers possibly their home as well) lightly. In addition, I recognise that what happened on this farm was highly unusual, so whilst the impact of the risk was high, the likelihood was quite properly considered to be low. Nevertheless, I think that the existence of a clear checklist for SVS vets to follow when inspecting for licence purposes (such as to visit at feeding time in order to see the feeding system in action), and what sort of indicators to look out for, might well have made their responsibilities in these matters clearer and even helped to encourage compliance. I therefore invited the current Permanent Secretary's comments on that point. She replied that since the events described in this report the new agency, Animal Health, had been reviewing the instructions and training provided to its field officers. The field instructions (VIPER – Veterinary Instructions, Procedures and Emergency Routines) had been substantially updated, with improved

guidance and visit reports which were designed to provide a checklist style approach in line with my above recommendation. This guidance was reinforced by a system of Lead Veterinary Officers who provided a point of contact, support and expert advice for colleagues within the field, and had been recently incorporated into a Network of Expertise, to allow that advice to be more widely shared and maintained in a consistent manner. In addition, Animal Health had been developing a Veterinary and Technical Development Pathway, which outlined all areas of technical knowledge and skills which staff in such roles needed to acquire in order to perform their duties effectively, along with a variety of methods for delivering that training. Looking to the future, an Operations Manual was currently under development to replace VIPER, which would allow timely updates to be easily made available to staff, and to ensure that all staff had access to accurate, and consistent, instructions. I welcome those developments.

140.

I turn now to the four issues that Mr Dring himself identified in his memorandum as indicators of the feeding of unprocessed waste which he felt, at the time of writing the memorandum and with hindsight, he should have noticed. The first of these were the containers of waste food on the hard standing at the front of Burnside Farm. It is a matter of legal interpretation, and not a question for me, as to whether the containers were actually illegally on Burnside Farm, or whether they were being taken 'without undue delay' to Heddon View for processing. I do not doubt that Mr Dring honestly believed the latter to be the case, and that he thought that they were in transit to the processing premises. It seems to me, however, that irrespective of that question, Mr Dring should have taken more interest in them than he apparently did. I note that he accepts that they

were sometimes uncovered, and so presented an infection risk, and that in response to that, he had asked the brothers to make sure that they were covered. As I see it, however, knowing that they held unprocessed swill, he should have established why, and for how long, they had been there, and taken advice on whether or not that met the legal requirements. I find his failure to do so a matter of concern, and perhaps once again indicative of his general view, and that of Defra, that his priority in inspection terms was animal welfare, and not the oversight of the licence conditions.

141.

The other issues Mr Dring identified related to his failure to notice the presence of a macerator on the feeding tank, the cutlery in the pigs' troughs and around the farm, and that the pipe feeding system was blocked. I have seen no evidence to suggest that the macerator was actually fitted to the tank when Mr Dring visited in January, but note in any event that that in itself was not an indication of feeding unprocessed swill. It could have been there for other legitimate reasons (as the brother argued in court). But it is now impossible to say whether it was there, and Mr Dring did not notice it, or whether he should have been able to identify that the lid to the holding tank had been adapted for some purpose, which ought to have raised his suspicions. As for the cutlery, I note that Mr Dring is insistent that in his statement he was not saying that he **had seen** or must have seen cutlery in the pens or around the farm before the February 2001 visit following the FMD outbreak, but that he had failed to notice it. He was referring solely to his failure immediately to notice it or register its significance during the visit in February 2001. Again, I note that the LA inspector, who went around the farm himself in December 2000 and January 2001 with Mr Dring, did not say that he saw any cutlery. That would

Summary of findings

suggest to me that it was not clearly visible at that time such that Mr Dring should have noticed it. Finally, I note that it is not known exactly when the pipe feeding system became unserviceable, and therefore whether that was something that Mr Dring might perhaps have picked up on. Accordingly, overall, I have not found evidence that would demonstrate that Mr Dring failed to pick up on clearly identifiable indicators that the brothers were not meeting their licence conditions.

142.

In summary, I have not found that Mr Dring clearly failed to take appropriate enforcement action in response to the general conditions and animal welfare problems he identified at Burnside Farm. Nor have I found that he clearly failed to identify indicators that the brothers were not meeting the conditions of their licence to consign and feed swill. I have found two matters of concern, namely:

- that SVS vets were not given clearer guidance about what checks to make and indicators to look for when inspecting for licensing purposes; and
- that, perhaps because of the absence of such guidance, Mr Dring did not question the brothers more robustly about the presence of the containers on the hard standing.

Nevertheless, I did not see those concerns as clearly indicative of maladministration.

143.

I have, however, found that Mr Dring's failure to follow proper procedures, and to make and submit appropriate records in relation to animal welfare matters, was sufficiently serious as to constitute maladministration.

Injustice

144.

But what injustice to ASU members flows from the maladministration I have identified? As I see it, it is impossible to say with absolute certainty what would have happened had Mr Dring made appropriate records on both occasions that he found welfare problems at Burnside Farm, and forwarded those to the Divisional Manager. That said, as I have already indicated above, I am satisfied that Mr Dring's failings in this regard are not in themselves sufficient to cast doubt on the merits of his decision not to recommend that enforcement action be taken on either occasion. In the light of that, it seems to me that, even if Mr Dring had forwarded appropriate records, on the balance of probabilities the Divisional Manager would have been unlikely to have taken issue with Mr Dring's professional judgment on the seriousness of the problems he had encountered at Burnside Farm and the most appropriate way of dealing with them. Indeed I note that, even had Mr Dring reached a different conclusion and recommended prosecution, that recommendation might not have been accepted by the LA. Furthermore, as the LA inspector said, a successful prosecution would not, in any event, have been likely to have led to the withdrawal of the brothers' licence. All in all, therefore, I do not see that there is clear evidence to suggest that Mr Dring's failings in this respect had an impact on the course of events.

145.

As it was, conditions on the farm had apparently improved at the time of the crucial January 2001 visit, and that visit did not reveal any animal health or welfare matters that it could be claimed Mr Dring should have taken immediate action on. In the light of all that, I do not see that any injustice flowed from Mr Dring's failure to keep and forward appropriate records, or that there can be said to be any clearly demonstrable link between those failings and the outbreak of FMD,

as ASU have claimed. Nevertheless, those failings were serious ones, and I asked the Permanent Secretary of Defra what reassurance she could give me that these were isolated incidents, which did not reflect a wider failure within the SVS to follow proper procedures. In reply she assured me that Defra would be looking closely at my observations, in particular about animal health practice in this case, and considering carefully whether the shortcomings identified were peculiar to the circumstances of this case, or whether there were wider lessons for the Department to learn. In the meantime, there had already been significant changes in the structure and operation of the SVS (now Animal Health), since the events in this case. With that reorganisation had come better structural controls on field operations so that, for example, reports of field staff often contained specific information which had to be completed, and entered onto the agency's systems, to complete a visit. That information formed part of internal reporting, and using tools such as the Local Implementation Plans operated in each division provided significantly more information to Divisional Veterinary Managers. That enhanced their ability to monitor divisional performance, and allowed them to challenge any inconsistencies, so that opportunities for detecting any incident similar to what had happened here (Mr Dring's failure to follow proper procedures) were now significantly increased. Animal Health was also now subject to audit by the Department's Internal Audit Division, and externally by the National Audit Office.

146.

The Permanent Secretary went on to say that, in order to ensure that there was a recognised standard, checklists for inspectors had been devised to inform both farmers and Animal Health staff of the Statutory Management Requirements relating to the welfare of farmed

animals, and the controls on medicine residues, and to provide a route for external feedback. Along with the training and guidance mentioned earlier, she believed that these provided a robust framework against which Animal Health staff were monitored. Looking to the future, Animal Health had embarked on a wide-ranging business reform programme which, amongst other objectives, would introduce new systems of work and information technology, which would build on the controls set out above and provide much more visibility of the activities of Animal Health's field staff to line managers. I welcome those developments.

147.

Finally, I have indicated that Mr Dring should, in my view, have taken more interest in the containers holding unprocessed swill on the hard standing. Once again, however, it is impossible to say what would have happened had he done so. Given that Burnside Farm was only inspected twice a year, it seems likely that, even if Mr Dring had told the brothers that the containers could not stand there, and had carried out a follow-up visit to check that the containers were no longer there, if the brothers had remained intent on feeding unprocessed swill, then in all probability, they would have found a way to conceal their activities.

148.

In light of the above, whilst I have found that there were maladministrative failings in the inspection process of which I am critical, again I do not see that it is possible to draw any direct connection between Mr Dring's shortcomings in this respect and the brothers' feeding of unprocessed swill to their pigs. I do not, therefore, uphold ASU's complaint that failures in the inspection regime effectively allowed illegal feeding activities to go unchecked, thereby leading to the outbreak of FMD and the hasty imposition of the ban on swill feeding.

Conclusion

149.

I have found that the decision on compensation for swill users made by Ministers when considering the introduction of a ban in May 2001 was not taken in the full light of the facts, and was therefore maladministrative; and I have found that the failure of the SVS vet to follow proper procedures, and to make and submit appropriate records in relation to animal welfare matters, was also sufficiently serious as to constitute maladministration. I have not, however, found that that maladministration could be said to have resulted in an unremedied injustice to ASU's members. That is because it is clear to me that Ministers have since revisited their decision on compensation for former swill users in the full light of the facts; and because I do not see that it is possible to conclude that it was the failures in the inspection regime which led to the outbreak of FMD, and hence to the hasty imposition of the ban on swill feeding. Accordingly, I consider that the improvements in the inspection regime described by the Permanent Secretary (paragraph 139), and her assurance that there is now significantly improved monitoring of the performance of inspection staff (paragraph 145), to be an appropriate outcome to the complaint.

I have not, therefore, upheld ASU's complaint.

Ann Abraham

Parliamentary and Health Service Ombudsman

December 2007

Annex A

Chronology of key events in relation to the introduction of the ban

2001

- 19/2/01 An outbreak of FMD was identified at an abattoir in Essex.
- 22/2/01 A pig farm at Heddon-on-the-Wall, Northumberland was visited as part of the FMD tracing exercise.
- 23/2/01 FMD was confirmed on Burnside Farm, where the pigs were swill fed.
The farm was identified subsequently as the likely source of the FMD outbreak.
In early discussions about a swill ban, there was consideration within Defra about whether use of the urgency procedure was obviated if a consultation period was allowed. Also, about what consultation actually meant under EU law – did it mean with the public, or with other member states? In the end a notification to the EU was made in the knowledge that the EU was unlikely to object because it was itself considering a similar ban on swill feeding. It was accepted, however, that this might provide the basis for a challenge to the ban later in the European Courts.
- 17/3/01 The Head of the Animal Health & Environment Directorate wrote to another official within Defra: ‘More immediately, Baroness Hayman [then Parliamentary Under Secretary of State] wants to speed up consideration of a (temporary at least) ban on feeding swill on the grounds that other MS [Member States] seem to be taking more action than we are to reduce risks of FMD. How is our review progressing (has it even started). Or have we a hook on which to hang a temporary ban while fuller consideration takes place subject to vet advice and views’.

22/3/01 The Head of TSE Directorate circulated a first draft of a submission asking colleagues whether:

- a) they should propose a ban on swill feeding;
- b) there should be a three-month transitional period for animal welfare and practical reasons; and
- c) any ban should extend to the feeding of catering waste not containing animal products

23/3/01 The Veterinary Head of the Exotic Diseases Team replied to the draft submission saying: 'I fully support the proposal to ban the feeding of swill. The ban should extend to the feeding of catering waste which does not contain animal products and catering waste on a swill plant from which animal products have been removed. A total ban will be easier to enforce'.

The Head of the Animal Health & Environment Directorate wrote to the Permanent Secretary saying that her Directorate 'had received calls that afternoon from the No 10 Press Office about the Prime Minister announcing over the weekend a ban on pigswill, and on the basis of remits from No 10 and the Minister two days ago she has appointed a member of staff to work up a consultation document covering (a) what we know about FMD outbreak, and (b) the lessons from that which suggest early action temporary or otherwise, including – ban on swill feeding'. (This appears to be a reference to the draft submission document that had in fact already been circulated the previous day.)

26/3/01 The Head of TSE put a submission to the Minister which set out the arguments for and against swill feeding, in particular the risks of spreading FMD, and recommended a ban. He also recommended that Defra should consult on:

- a) a permanent ban on the feeding of catering waste as swill to pigs and poultry;
- b) a permanent ban on the feeding of poultry and fish waste as swill;
- c) a possible ban on the feeding to livestock of waste food which did not contain products of animal origin; and
- d) a three-four-week phase-out period on animal welfare grounds.

In response, the then Minister of State asked 'whether it is really necessary to consult on the ban as the arguments are so strong that we should announce a date by which swill will no longer be permitted'.

27/3/01 An official noted that the Parliamentary Under Secretary of State had asked 'whether we could/should immediately enforce a temporary ban on swill while we consult. She has suggested that we are bound to have FMD infected meat in our food chain from "pre-control February" and therefore the risks of re-cycling the disease are all the more real at the moment'.

A meeting was held the same day when the Minister agreed that there should be a two-week consultation period and a three-week phase-in period. In the note of the meeting it said: 'The Minister was broadly content with the submission and consultation letter on a ban on the manufacturing of pigswill. This allowed two weeks consultation period followed by three weeks grace for farmers. Whilst it might have been desirable for

an immediate ban the Minister agreed that the proposals needed to be consulted on. The two weeks consultation would also allow officials to work up precise details of what would be banned and the means of enforcement’.

A consultation letter (see Annex B) was issued the same day, seeking views on whether or not to ban the feeding to livestock of catering waste and other types of material. This asked for comments by 10 April noting that, for animal health reasons, it would be important to introduce any new arrangements as soon as possible. The consultation document was sent to 652 organisations and individuals, including all swill processors and feeders.

In a statement to the House of Commons, the Secretary of State proposed a ban on swill feeding.

27/3/01 -
10/4/01

Consultation period.

1/4/01

The Head of the Animal Welfare Veterinary Team advised that for animal welfare reasons he supported the need for a three-to-four-week period in which to change the pigs’ diet. He pointed out that most swill feeding premises should be able to adopt alternative systems of feeding using wet meal, but recognised that this would not be the case for all systems. He suggested that an advice leaflet should be prepared by ADAS to help swill feeders with the transition.

5/4/01

The former Chief Veterinary Officer (CVO) emailed the current CVO saying that the current CVO had asked him to let him have any thoughts regarding FMD. The former CVO suggested that waste food feeding should be suspended without further delay for two reasons: first, that there was likely to be

some FMD virus in the waste food because some animals incubating FMD were likely to have been slaughtered in the previous few weeks. He added that the virus load in waste food might be sufficiently high to overcome reasonable hygiene precautions in some licensed premises, which would put swill-fed pigs at risk. Secondly, there was unlikely to be sufficient spare veterinary capacity to carry out the routine health inspections of the 100,000 or so swill fed pigs. In that case, waste food premises should stop operating at least until there was the necessary veterinary capacity. He said that seven to ten days should be enough to wean pigs off waste food and on to other feeds.

- 6/4/01 The current CVO wrote to the Permanent Secretary giving his view that waste food feeding should be prohibited as soon as possible. He largely repeated the reasons given by the former CVO, and noted that the FMD control programme meant that it was unlikely that there would be any spare veterinary capacity to inspect waste food premises.
- 11/4/01 The Permanent Secretary noted that he had discussed the CVO's memo of 6 April with him and that the issue of whether a three-to-four-week phase-in period was really needed was something to be decided in liaison with the CVO.
- 17/4/01 A draft submission to the Minister on the proposed ban on swill feeding is circulated within Defra for comment.
- 26/4/01 The Secretary of State said, in a Commons statement, that about 150 responses to the consultation had been received, nearly all of which favoured a ban.

1/5/01

A full submission on the ban was submitted to the Minister with all the necessary documentation. This included the following:

- Submission on the Future of Swill Feeding.
- Statutory Instrument.
- Regulatory Impact Assessment.
- Summary of responses to the consultation.

The summary said that over 200 replies had been received and the responses from these were:

- 87 respondents favoured the ban on the swill feeding of catering waste containing meat and 83 opposed it.
- 46 favoured a ban on the swill feeding of fish and poultry paste and 121 opposed it.
- 26 favoured a ban on the swill feeding of all catering waste and 139 opposed it.

On the question of compensation, the submission said that a number of respondents had called for compensation but Defra 'have not compensated farmers in the past for changes in feed material available for their livestock and do not consider it appropriate to start now. The only difference in this case is that farmers may need to scrap equipment, convert buildings and adapt to new feeding equipment if they choose to continue to keep pigs; others will stop operating. Nevertheless it is not usual to compensate farmers for making such changes required by legislation. Others will also face additional costs; food factories estimate a 40% increase in costs to send pie waste to landfill, whilst restaurants will have to pay higher disposal charges'.

The submission went on to say that 'lawyers have also given consideration to whether any requirement to pay compensation arises from the European Convention on Human Rights and in particular the protection of property provisions of

Article 1 of Protocol 1 of the Convention. Whilst the risk of challenge cannot be ruled out – it may be recalled that cattle de-boners effectively put out of business in 1996 by BSE controls sought compensation (unsuccessfully) before Strasbourg Human Rights Court – lawyers concluded that, on balance, such a challenge would be more likely to fail than to succeed in the present circumstances. Any business having swill production as their sole or main enterprise, might, however, have a slightly stronger case than those simply facing increased business costs if they were left with worthless, or near worthless equipment and were able to quantify their losses. If compensation were decided on state aids clearance would be needed’.

The submission of 1 May contained one short paragraph on the impact of the ban saying that there were only 74 people in Great Britain approved to process swill and 93 approved to feed it to pigs or poultry. The paragraph goes on to say that ‘the impact of the ban is therefore likely to be relatively small both in terms of cost to the industry and of the environmental impact of disposing of additional material to landfill’. The submission also recommended a three-week phase-in period on the basis that, although the CVO had recommended that it should be brought in as soon as possible, veterinary advice was that a two-week period would be needed for the animals to be weaned off waste food on to an alternative diet. There were also practical considerations of converting swill feeding systems to alternative feeding systems, which would again take a little time. Given those considerations a three-week phase-in period was recommended.

The Regulatory Impact Assessment dealt in more detail with the potential costs under the heading ‘Compliance Costs for Business’. Here it was acknowledged that the cost of proprietary feed was approximately double that of swill feeding, but then went on to say that the cost to the pig industry was likely to be relatively small.

2/5/01 The Parliamentary Under Secretary of State (Lords) met with representatives of ASU to hear their concerns that the National Pig

Association (NPA) had not properly represented their views during the consultation process. They made four specific points, namely:

- a) that better controls on swill feeding, rather than a ban, should be introduced;
- b) regional collection centres for processing should be considered;
- c) compensation should be paid for the businesses that would be lost as a result of the ban; and
- d) a three-month phase-in period would be needed.

The Minister told ASU that a swill ban would be imposed from 24 May and that there would be no extension of that period or compensation paid.

However, the points that they had made were put to the Minister of State for consideration alongside the submission of 1 May.

3/5/01 The Minister of State, in a Commons statement, said that an Order banning the feeding of catering waste (which contained or had been in contact with meat) as swill to livestock would be introduced. The ban would apply from 24 May, allowing a three-week phase-in period for alternative feeds to be introduced.

An amendment to the Animal By-Products Order 1999 was made that day.

3–24/5/01 Phase-in period.

- 9/5/01 An ADAS leaflet providing advice for producers who were feeding swill was sent to all swill feeders and other interested parties.
- 10/5/01 A memo from the Head Veterinary Officer for the Eastern Region reported that correspondence to him did not arrive until the 8 and 10 May, which meant the phase-in was effectively already down to two weeks.
- 14/5/01 The National Farmers Union and the NPA told the Minister that swill feeders needed more time to comply with the Order. The Minister said that Defra would be prepared to look at the technical issues involved in implementation, but would not reopen the decision.
- 16/5/01 The Head of TSE Directorate met representatives of the National Farmers' Union, the NPA and the swill feeders to discuss the issue further. They expressed their concern at the very short phase-in period. Following the meeting, the Head of TSE acknowledged in his report of the meeting that, although some would be able to make the change in time (albeit at some extra cost), some would face genuine difficulties. He said that Defra would discuss these issues with the local authority co-ordinating body, Local Authorities Coordinators of Regulatory Services (LACORS).
- 17/5/01 Defra wrote to LACORS asking for agreement to local authority staff accompanying Defra staff on visits to former swill feeders (to check compliance with the ban), and to their not taking prosecution action if the first visit after the ban showed non-compliance, ensuring instead that all reasonable measures were being taken to implement the ban.

- 22/5/01 Defra held a meeting with LACORS at which it was agreed that local authorities would take a hard line with those operators who had taken no steps to comply with the ban, but a more lenient approach to those who were endeavouring to comply, but had not met the deadline.
- 23/5/01 Defra sent an action note to all their SVS Veterinary Managers saying that they did not expect non-compliance on the first visit to a farm (within two weeks of the ban) to trigger a prosecution providing a farmer was moving towards compliance.
- 1/7/01 ASU wrote to Defra making a claim for compensation for 73 swill feeders, who it was claimed had lost their businesses as a result of the ban on swill feeding.
- 3/7/01 Defra responded referring to the earlier meeting with the Parliamentary Under Secretary (Lords) on 2 May, and repeating that Defra did not intend to pay compensation for changes in feed material.
- 4/10/01 At a meeting with Defra officers ASU asked Defra to decommission the equipment which had previously been used to process catering waste into swill. ASU argued that this equipment was standing idle on farms; much of it had been bought at high cost and many were still making repayments on it which they could ill afford. ASU said that some swill feeders were using this equipment to produce swill from catering waste containing meat because the collection and disposal of this waste was lucrative. Although this activity was illegal, the temptation was great because the benefits outweighed the risks of detection, particularly as illegal processing was hard to detect; and veterinary resources would be better used elsewhere. ASU said that the cookers could not be used for other types of material and

so it could be made illegal to have a swill cooker on the premises. Finally, the Pig Industry Restructuring Scheme (the Outgoers scheme) did not provide for swill processors, as this was aimed at pig farmers to reduce pig capacity. The main business of the swill processors was the collection and processing of waste, rather than its subsequent feeding to pigs.

23/10/01

A Defra official sought the views of colleagues on whether decommissioning was a way of addressing ASU's concerns regarding compensation. She commented that, although it was not Defra policy to pay compensation, or to pay people to comply with the law, she recognised that there was some attraction in removing this equipment from farms and discouraging illegal swill feeding. A range of responses were received which could be summarised as follows:

- The Government could not pay people to prevent them breaking the law.
- Removing all cookers increased the likelihood of illegal raw swill feeding.
- Payment of this kind could set a precedent for many others.
- Former swill feeders could use their plant for other purposes.
- There was no instance in the animal health field where people had been compensated for loss of business arising from Government policy.
- In the light of a judicial review decision, state aid clearance would be required for such payments.
- The ban on swill feeding could be justified under Human Rights as proportionate in balancing the rights of the individual and the general interest.

- 19/11/01 Defra wrote to ASU noting their arguments, but saying that it was not Defra's policy to compensate people for loss of business and consequential costs resulting from Government policy, or to pay businesses to comply with the law. Defra did not therefore consider it appropriate to pay compensation in the form of decommissioning.
- 20/11/01 The Parliamentary Under Secretary of State (Commons) met an MP representing former swill farmers. The briefing note for this meeting mentions that Defra were investigating whether compensation was payable to swill farmers. At that meeting the Minister agreed to explore the possibility of providing finance for ADAS consultants to go out to former swill feeders' farms and look at their businesses with a view to providing guidance on new business plans and opportunities, which might mean considering options other than pig production. (ADAS subsequently agreed to do that, but it was a long process because it was necessary first to apply to the EU for state aid authority.)

2002

- 23/5/02 Defra wrote to former swill farmers asking for expressions of interest in free business advice.
- 10/10/02 The UK's application to the EU for state aid authority in respect of the proposed business advice was approved to the sum of £104,000. The business advice was subsequently given to those who have asked for it.
- 30/10/02 A Defra Minister (in answer to a written question) said that the Government did not intend to compensate pig farmers for changes to the feed material available to their livestock following the swill ban.
- 1/11/02 An EU ban on swill feeding was introduced. However, Austria and Germany applied for, and were granted, a four-year derogation.
- 7/11/02 A Defra Minister (in answer to a written question) said that a total of 351 replies had been received to the consultation on the swill ban. Of those only a minority had objected.

2003

- 24/6/03 The Secretary of State and the Parliamentary Under Secretary of State (Commons) met with ASU and various MPs and agreed to look again at the question of compensation.
- 22/7/03 A Defra officer sent a submission to the Parliamentary Under Secretary of State (Commons) saying that the Secretary of State had asked officials

to revisit the policy against the provision of compensation and/or decommissioning. The submission made the following points both for and against the payment of compensation:

- The majority of swill-fed pigs had been kept in low cost, poorly insulated accommodation because swill-fed pigs were hardier animals. To adapt to a new feeding regime swill farmers had needed to improve or replace these buildings, and to do this they would have to de-stock and could not do that until the following year. In the absence of properly insulated accommodation for pigs the only alternative was to provide a plentiful supply of alternative feed to nourish the animals to the same level as when they had been fed on swill.
- Although many swill farmers were also waste collectors it was hard for them to continue in this because they had lost the cost-free means of disposal.
- Whilst it was technically possible, it was not really practical to use swill-cooking equipment for the composting of catering waste.
- Most swill farmers had had to buy high cost feed although some had found sources that did not contain meat. However, swill farmers were a very small proportion of UK pig producers and there were many established businesses that fed alternative feeds and had managed to remain in business.
- Swill farmers could still collect and dispose of waste and could keep pigs.
- Some farmers were agricultural tenants and could not easily diversify as a result of the terms of their tenancy, or they could not get planning permission.

- A recent European Court case (Booker Aquaculture) had refused compensation for a fish farmer whose stock had been slaughtered. The Court decided there was no overriding right to compensation.
- An EU-wide ban on the feeding of catering waste had been introduced on 1 November 2002, although Austria and Germany had a four-year transition period. This law made no provision for the payment of compensation.
- Any compensation payments would constitute state aid and need EU approval. Initial indications were that this was unlikely to be approved.

5/9/03 The Secretary of State wrote to one of the MPs from the meeting and said that it was not the Government's policy to pay compensation or make decommissioning payments in respect of changes in the law and the costs of compliance with it. Former swill feeders could continue to rear pigs (although not by feeding catering waste) and to collect and dispose of catering waste (other than by feeding it to animals). Free business advice had been offered and financial assistance to diversify might be available from the Rural Enterprise Scheme.

26/9/03 The MP replied asking for further information.

6/10/03 The MP wrote asking the Secretary of State to reconsider the question of compensation.

2004

- 4/2/04 The Minister replied to both of the MP's letters, providing the information requested, and saying that he recognised that the businesses concerned had been seriously affected by the ban, but that Defra had set out the reasons for the ban on a number of occasions. He said that Defra had also explained their policy on the issue of compensation and had made efforts to assist the businesses concerned in other ways. The Minister then gave some further details about the Rural Enterprise Scheme and how that might be able to provide support for a wide range of farm diversification activities, both within agriculture and outside it. He said that, whilst he appreciated that diversification might not be appropriate for some of the businesses in question, the Scheme remained open, and former swill feeders might wish to contact their local Rural Development Service office to get advice on what opportunities the Scheme might be able to offer them.
- 30/3/04 In response to a Parliamentary Question the Parliamentary Under Secretary said that 357 replies to the consultation had been received, of which 37% were against a ban, 32% in favour and 31% had no preference.
- 19/5/04 In response to another Question the Parliamentary Under Secretary said that his previous figures had been wrong and he had had the replies recounted. The total number of responses, including those that were undated, and those received at a later time was 330. Of these, 208 (63%) supported the swill ban, 90 (27%) were against the ban and 32 (10%) expressed no preference. He said that, as a consequence, he believed that the House could be reassured that not only was there a numerical majority in favour of a ban, but also that it was

widely supported when account was taken of the support expressed from associations that represented large memberships (including the National Farmers' Union, Tenant Farmers Association, the British Pig Association, and the Royal Association of British Dairy Farmers).

Annex B

Copy of consultation document

27 March 2001

Dear Sir/Madam

FEEDING TO LIVESTOCK OF BY-PRODUCTS FROM THE FOOD INDUSTRY: BAN ON SWILL-FEEDING

1. The purpose of this letter is to seek your comments on the proposed Animal By-Products (Amendment) Order 2001 and, in particular, on the Government's proposals to ban the feeding of swill and related products.

Present position

2. The Animal By-Products Order 1999 permits the feeding to nonruminants of swill, i.e. processed catering waste or non mammalian animal by-products, after suitable treatment - heating to 100°C for at least one hour. These conditions will eliminate Foot and Mouth Disease (FMD), Swine Fever and other pathogens, although not the theoretical risk of TSEs. Premises producing swill and/or feeding it must be licensed by MAFF. They are subject to regular inspection by the State Veterinary Service.

3. We estimate that, in the year 2000, around 82,000 pigs in GB, about 1.4% of the total, were fed swill. About 74 premises are approved for processing swill, and 93 are licensed for feeding it to pigs or poultry.

The reasons for banning swill feeding

4. The arguments in favour of banning the feeding of swill to any farmed animals, include the following:

(a) because of the FMD outbreak, the risks from swill feeding are very much greater than they were previously. Before the present outbreak, the risk of swill feeding accidentally promulgating PMD came from imported infected meat products. For some time to come, however, there will be a much greater risk of infectivity from domestic meat used in swill.

(b) The consequences of one mistake in swill feeding can be enormous. The potential risk of swill feeding introducing disease to the great majority of livestock farmers who do not feed swill, and to the wider community, is much greater than the benefits to the relatively small number of those who do so.

(c) Because swill fed to pigs may contain porcine material swill feeding represents one of the few remaining examples permitted of intra species recycling. In theory it would be possible to ban intra species recycling and allow some swill feeding to continue, e.g. by allowing processed beef and sheepmeat material to be included in swill fed to pigs. But this would be impossible to enforce. The United Kingdom already bans the feeding of mammalian meat and bonemeal to all farmed animals. A ban on swill feeding would extend to liquid feed the general principle which applies already to dry feeding.

(d) Although EU rules do not currently ban swill feeding, such a ban is being considered in Brussels in the context of negotiations on the draft Animal By-Products Regulation.

The reasons for not banning swill feeding

5. Arguments for not banning swill feeding to non-ruminant farmed animals include the following:

(a) if the statutory conditions for feeding swill are complied with, it will not present a risk of transmitting FMD, SVD and other pathogens;

(b) swill is a useful inexpensive material used, for example, for feeding cull sows prior to slaughter. Marketing cull sows is a low margin activity. More generally, farmers feeding swill would lose the benefit of their investment in the necessary equipment;

(c) banning swill feeding will not necessarily prevent the illegal feeding of swill and catering waste to pigs, particularly by owners of small numbers of pigs. Indeed the risk may increase if legal (and controlled) swill feeding is not permitted;

(d) banning swill feeding will increase the quantity and cost of catering waste to be disposed of in other ways. Landfill is the most likely alternative option. However, the landfill option is becoming more difficult and the national waste disposal strategy envisages a reduction in its use.

Scope of any proposals

6. If swill feeding were banned; a decision would be needed on whether or not to include within the 'ban the feeding of catering waste not containing (or in contact' with) animal products other than milk, eggs, rennet, gelatin or melted fat as an ingredient. Such waste does not, at the present, require licensing under the Animal By-Products Order 1999. Continuing to allow catering waste not containing, or in contact, with, animal products to be fed to farmed animals would make it more difficult for SVS and local authority inspectors to detect meat-containing-catering waste or swill on farm. There would also be more chance of farmers accidentally feeding meat-containing catering waste to their pigs (not realising that it contained meat). If a ban were introduced one option' would therefore be to prohibit the direct feeding to farmed animals of all catering waste, regardless of whether or not it contains, or has been in contact with, products of animal origin, but to permit its use in compound feeds manufactured off-farm. This is explored in more detail in paragraph 10.

7. The 1999 Animal By-Products Order prohibits the feeding of pig slaughterhouse waste to non ruminants, but continues to allow poultry and fish by-products to be, fed to pigs. Although the risk may be small, it would be difficult to ensure that poultry or fish waste is not contaminated on farm with mammalian waste. On balance, therefore, if there were a ban on swill feeding it would seem sensible to include poultry slaughterhouse waste within its scope.

Timing issues

8. A rapid withdrawal of swill as feed for pigs would create animal welfare problems for animals that had grown used to such a diet, as well as problems for those who would need to find an alternative disposal route. Veterinary advice is that, if swill feeding were banned existing swill feeders should be allowed a transitional period of at least 3-4 weeks to enable their animals to adapt to the new type of feed.

Summary

9. I would therefore be grateful for your views on the following questions:

(a) should swill feeding of catering waste containing animal products be banned?

(b) if yes, should

(i) fish and poultry animal by-products fed on-farm be included in the ban; and

(ii) non-meat containing catering waste be included in the ban? In this case, should there be a total ban on the feeding of any catering waste (including vegetable waste) or should the ban be restricted to catering waste? Another option might be to require licensing of the supplier of the waste, the farmer who uses it, or both, or prohibit feeding on farm but permit their use in compound feeds. (c) Should a 3-4 week transitional period apply?

(d) any other comments, including on whether or not it would be practicable to place obligations on the producers of catering waste eg. restaurants to ensure that its not fed to animals and on the enclosed draft Order?

10. I should be grateful to receive any comments on this letter by 10 April 2001. I apologise for the short notice but, for animal health reasons, it would be important to introduce any new arrangements as soon as possible.

Please could replies and questions on this consultation be directed to Catherine Lamb (020 7904 6408) at the above address.

11. In order to help informal public debate on the issues raised by this consultation document, the Ministry intends to make publicly available, at the end of the consultation period, copies of the responses received. The main Departmental Library at 3 Whitehall Place, London, SW1 (020 7270 8419) will supply copies on request to personal callers or telephone enquirers. It will be assumed therefore that your response can be made publicly available in this way, unless you indicate that you wish all or part of your response to be excluded from this arrangement. If you have no objection to your response being made available for public examination in the way described would you please supply an additional copy of your response to this consultation document.

12. For those wishing to obtain copies of comments, an administrative charge to cover copying and postage will be made. To enable requests to be dealt with efficiently and to avoid undue delay for those calling at the Library in person, it would be appreciated if personal callers could give the Library at least 24 hours notice of their requirements.

Yours sincerely

Sue Bolton

BSE Division

Annex C

Interview with James Dring, the Veterinary Officer from the State Veterinary Service with responsibility for inspecting Burnside Farm

Mr Dring was asked what he saw as his role and responsibility when inspecting a swill feeder and what he looked for

1. He said that because the brothers at Burnside Farm were licensed only to feed swill, he inspected the farm twice a year, whereas a licensed swill processor was visited four times a year (once by a vet and three times by a technical officer – therefore more veterinary visits were made to a feeder than a processor). He said that the number of visits was not a legal requirement, but was normal Defra practice. A licensed feeder was visited fewer times because the risk of infection was much less than where processing was taking place. This was because the main risk of infection came from unprocessed swill, and a farmer who was only licensed to feed should never have unprocessed swill on his premises.
2. Mr Dring said that when inspecting the brothers' farm his main concern was the health and welfare of the pigs. In fact there was little else for him to look at. They had a very simple feeding system in which processed swill was tipped into a holding tank and then pumped through what were, in fact, quite small pipes to the pigs' troughs. (Mr Dring showed my officers photographs of the system.) Mr Dring said that he knew that they obtained their swill from a farm just up the road (on the other side of the road), which he also inspected. In the case of a food processor, Mr Dring said that he would also be checking that the cooking factory worked properly. It had never occurred to him that the brothers might be feeding unprocessed swill because, as he saw it, it would have been impossible to do so through the piping system in place, and very labour intensive to do it manually. Mr Dring said that, for that reason, although he did look in the tank, unless there were means properly to identify the contents of the tank, it would not have been easy for the naked eye to distinguish between unprocessed and processed swill (if they had mixed some processed with the unprocessed swill, the bigger bits would have dropped to the bottom of the tank and then it would have looked the same from the top). He said that it was the case that he could have asked for the feeding system to be run to ensure that it was working

properly, but there were difficulties with doing that because it would have disrupted the feeding routine of the pigs. Mr Dring pointed out that the brothers' situation was very atypical; in the period 1985-2001, there had only ever been one other swill feeder (that is user but not processor) in the Newcastle/Carlisle Division.

3. Mr Dring said that he had also inspected the brothers' records. As swill feeders they were required to keep records of the swill movement and use. If these records were honest, they should show that a farmer was acquiring sufficient processed swill to feed their pigs. Mr Dring said that the brothers were poor record keepers and often gave him the run around by not having records available and claiming that they were at their home. When they were eventually produced they often had the appearance of having been written at one sitting, rather than entries being made over time. Mr Dring said that this did not mean the records were false; they could simply have written them up from some other source, such as a diary.
4. Mr Dring was asked if he could have taken formal action against the brothers for this failing – such as withdrawing the licence. He said that it had to be remembered what type of people the brothers were. They were rough and ready and had been pig farmers all their lives having followed their father into the business. Mr Dring said he felt he had to show them some toleration in respect of their record keeping; if he put too much pressure on them the likelihood was that they would start to concoct false records; that would be hard to detect and would benefit nobody. In any event, in order to take formal action he would need to be able to prove in court that the records were inaccurate. He could not actually say with any certainty whether the information itself (which was in the form of dates and quantities) was incorrect, and it would have been virtually impossible to prove that it was. In a situation like this, he was reliant to a significant degree on the honesty of the farmers.

Mr Dring was asked what guidance he had from Defra about what to look for and about when he should advise, caution or prosecute breaches by swill farmers. Also, what level of discretion was he allowed by Defra?

5. Mr Dring said that if he saw evidence that unprocessed swill was being fed then he was clear that this would have warranted prosecution by the local authority. But this was hard to detect and it was simplistic to think that a vet could just have taken a swill feeder's licence away to stop them operating there and then. If that was done, then how were the pigs on the farm to be fed? He said that the normal procedure was to encourage and chivvy farmers into complying with the terms of the licence, and eventually to warn them that if they did not comply, their licence would not be renewed at the next annual renewal. He said that in his personal experience he could only think of one farm where that had happened, and that had been because, despite continuous instructions, a farmer had failed to carry out essential building work. If the transgression was blatant, however, it would have to be reported to the local authority; there would normally then be a further visit; and, if necessary, a report would then be made to the Divisional Veterinary Manager (DVM) recommending prosecution; the DVM would then make the decision to pursue with the local authority.
6. Mr Dring said that he was not aware of any specific guidance from Defra about when it was appropriate to take formal action against a swill farmer in terms of the licence conditions. However, formal enforcement action was up to the local authority to instigate; the SVS have a different role in approving and issuing licences. Mr Dring felt he was allowed considerable discretion to make this decision himself in respect of the licence issued. There was, however, guidance on welfare matters. (The local SVS Director of Operations confirmed this, saying that, as a rule of thumb, a vet would recommend formal action if they came across a similar welfare problem on three occasions on the same farm.)

Mr Dring was asked about his professional relationship with his vet manager at Carlisle and how the manager ensured the maintenance of minimum standards from that distance

7. Mr Dring said that this was a good relationship and despite the distance between his office at Newcastle and the manager's at Carlisle, he never felt that there was any problem in making contact either by telephone or computer. He also regularly travelled to the Carlisle office for various reasons. In terms of minimum standards it was said that it was not common for a vet manager to accompany a vet on visits to farms, but it was not unknown. Vets had an annual appraisal, and completed written reports of their visits that went to the manager's office. If a visit proved satisfactory then this report would comprise just a few lines of writing and it was unlikely the manager would see this. If something adverse was found then normal practice was for the vet to submit a more detailed report, which the manager would probably see. A manager would certainly see reports concerning significant matters, such as the proposed revocation of a licence or a prosecution, or something unusual. Apart from the quality of the reports the veterinary officer produced, the manager would also get feedback on the vet's performance from customers, in other words farmers themselves, and farmers' groups and representatives.
8. The lead veterinary officer keeps an overview of what was happening over the whole area covered, and the vet would also go to him for advice on more difficult matters. At that specific time, however, working practices were very disrupted because there had been an outbreak of swine fever (in the first week of August 2000). As a result, about half of the staff were not doing their normal duties; regular contact had, however, continued.

Mr Dring was asked about his physical approach to an inspection of the brothers' farm. What did he do and what did he look for?

9. Mr Dring said that his visits were pre-arranged so the brothers knew he was coming. Usually he went alone, although in December 2000 and January 2001 he had had an LA inspector with him. That was because the LA inspector had called him and asked him to go to the farm with him in December 2000 following a complaint the LA had received. The LA inspector had then asked to accompany him for the January 2001 visit so that he could follow up. Mr Dring said that he would normally spend about an hour on the farm and would walk through all the pig sheds inspecting the animals and the conditions they were kept in. If anything caused him concern, he would raise it with the brothers.

Mr Dring had suggested in his statement that he had paid too scant regard to the brothers' waste feeding practice. He was asked what exactly he felt he had done wrong

10. Mr Dring said that it should be remembered that the chief culprits in this case were the brothers, who had deliberately fed unprocessed swill to their pigs, despite knowing what this could cause. He did not think that he had stressed this enough in his statement, which was written before the brothers' court case. Although he had said in his statement, with the benefit of hindsight, that he had paid too scant regard to their feeding practices, on reflection he felt that he should be judged by what could reasonably have been expected of a reasonable vet given the circumstances and what he had known at the time.
11. If it had occurred to Mr Dring that the brothers had been able to feed piped, unprocessed swill, then he acknowledged that he would have been more rigorous in his inspections and, in the event of a transgression being detected, a subsequent monitoring regime (which meant increased frequency of visits) would have been implemented to ensure that subsequent feeding practices were carried out within the law. But it had never crossed his mind that their feeding system could be abused in this way. He now felt that, at the time, he had done all that could

reasonably have been expected, particularly given that he only visited twice a year. He therefore regretted saying in his statement that, if he had been more rigorous, FMD would not have happened, because he now realised that it was unlikely that anything he might have done would have prevented it.

Mr Dring was asked what was expected of him in terms of making notes regarding inspection visits and infringements that he found

12. Mr Dring said that if a visit was satisfactory, he simply wrote a few lines on the bottom of the job sheet that had come to him from the divisional office advising that a visit was due. If problems were found he would write a more detailed report. He carried a notebook with him, but only made notes if something unsatisfactory or unusual was found.

Mr Dring was asked to describe the conditions on Burnside Farm

13. Mr Dring said that he had had experience of swill farms in Northumberland and in other parts of the country over a number of years. He said that he accepted that welfare conditions at this farm were less than ideal. The pigs were kept in bare concrete pens with no additional bedding, and the pens were difficult to keep dry. However, he absolutely refuted ASU's claim that the brothers' farm was worse than all other swill farms, which in his experience were usually very basic places. Indeed, the neighbouring farm where the brothers processed their swill had similar conditions.
14. Mr Dring agreed that the video taken by a Trading Standards Officer on or about 24 February 2001 showed exceptionally dirty conditions, but a number of factors explained this. First, one of the brothers was terminally ill and on top of that, both of them were ill with flu in January and February 2001, so they had allowed the farm to go seriously downhill in the days just before FMD was detected. Secondly, all slurry cleaning had ended three days before the video was taken, so it showed three days of

accumulated slurry in the pens, which were usually much cleaner. Thirdly, much of the video was shot in shed 4, which had not lately been used to keep pigs. Fourthly, the pigs had disease in them, therefore they appeared on the video to be in a much worse state than was usually the case. In fact, the pigs at the brothers' farm were usually well grown, well fleshed, strong and healthy. The farm itself had always only just met the very basic, minimum standard; the main problem had been the state of the concrete; it was that that had caused the problem in the pig's leg that Mr Dring had identified on 22 December 2000.

15. Mr Dring said that the fire that was usually burning at the brothers' farm was a muckheap, and every farm had a muckheap in some form or other, although it was true that the brothers' heap had got bigger and bigger, and its size and prominence were therefore unusual. The brothers used to burn dead pigs in a tank immediately behind this muckheap. There were occasional complaints from neighbours about the smell and flies, probably caused by the rubbish and the fire, which the LA had dealt with.
16. Mr Dring said that in dealing with the brothers he had had a constant struggle to get them to keep acceptable welfare standards for their pigs and he had had to chivvy them to do this. Their attitude towards what they were doing would vary from time to time, so that sometimes he would find problems in respect of animal welfare and other times everything would be all right.

Mr Dring was asked if he was happy the brothers were properly licensed, because they seem to have been more than consignors and feeders of swill. They collected waste food, they cooked it themselves in a boiler set aside for them at the neighbouring plant and they provided their own oil to fire the boiler

17. Mr Dring said that he did not see a problem in this respect. It was the premises, and not the individuals, who were licensed. The farm where they processed was properly licensed and the farmer at that location was responsible for ensuring that the brothers processed properly. (The DVM and the Director of Operations both agreed with that view.)

Inspection visit of 30 August 2000

Mr Dring was asked about the circumstances surrounding this visit

18. Mr Dring said that this was his normal six-monthly visit to Burnside Farm. It was pre-announced and he went alone. He had found in one shed (shed 4) that the dividing partitions between pens had broken down, so that pigs could roam freely in the shed. The pens in sheds 1-3 were ankle deep in slurry because the drains were choked and two sows were dead in their pens. This was not a normal or acceptable situation. He did not know what had caused the two sows to die, but sudden death in otherwise healthy pigs was not in itself unusual. He did not deal with this immediately, because he had another very important appointment at the Intervention Board (in relation to work they were doing for the Classical Swine Fever outbreak) that he had to attend. This was at the height of the swine fever epidemic and local staffing levels were heavily depleted as a result of staff being temporarily moved to other parts of the country in response to that epidemic. Instead, that evening he rang one of the brothers at home and told him that he was going to pretend that that day's visit had not happened, and that he would visit again the following week, when he would expect to find that things had been put right.

Mr Dring was asked why, as a vet facing a situation in which animals were suffering, he had felt able to leave it at least four or five days before revisiting

19. He said that the brothers could not have made the improvements he was asking for in less time than that.

Mr Dring was then shown a copy of the Action Sheet in respect of this visit. On this he had shown that the visit of 30 August 2000 was satisfactory and had signed it. A date stamp on this sheet showed that it had been received at Defra (then MAFF) Carlisle on 1 September 2000. Mr Dring was asked why he had completed this form showing that the visit was satisfactory, and why he had apparently returned it before his second visit had taken place.

20. Mr Dring said that he could not really explain this. It might well be that he was mistaken and that 30 August 2000 had actually been the second visit, in which case he could not say exactly when the first visit had taken place. He fully accepted that he should not have returned the form showing that things were satisfactory, when they clearly were not. However, the comments may have referred to the swill feeding requirements, rather than the other conditions found on the farm. He should have written a welfare report and sent that in with the other report. He also accepted that there was bound to be suspicion that he had never made the second visit, but he insisted that he had made that visit, and that his account in his statement was true. Burnside Farm was very close to his route from home to work and he thought it likely that he had simply deviated from this journey to make the second visit, and for that reason had not recorded it.
21. Mr Dring said that he also accepted that, in circumstances such as these, it would have been proper practice to inform the veterinary manager that an unacceptable situation had been found on a swill farm, but he had not done this.

Visit of 22 December 2000

22. Mr Dring said that this visit had taken place as a result of a complaint made to the RSPCA, which they had passed to the LA. The complaint was of animals being kept in poor conditions and that dead pigs had been seen. Mr Dring said that he made an unannounced visit with an LA inspector and found two lame pigs that should have been in hospital pens. The brothers were instructed to move those pigs to hospital pens.

23. Mr Dring was asked whether, in view of what he had found on 30 August 2000, he felt that the welfare of the pigs at Burnside Farm warranted him making another unnotified visit to the farm before 22 December.
24. Mr Dring said that what he had found in August 2000 had been atypical of conditions on the farm and had surprised him. But it had then gone back to the usual standard. He therefore felt that he had dealt with it adequately.

Mr Dring was asked about the oral final warning he had given the brothers on 22 December 2000, and whether it was normal to give such warnings orally

25. Mr Dring agreed that it was normal to back up a final warning in writing, even if it was given orally at the time. Usually the written version would be in the form of a letter sent later, which would then be followed up. (The final warning was not in relation to the brothers' swill feeding licence.) He had not done that on this occasion, but actually the LA had led the visit, so the onus would be on them to initiate action in terms of written warnings. Mr Dring did not know if they had done this. If prosecution were being considered the standard practice would be for the LA inspector to video the animals concerned and for the Defra vet to provide a statement. Mr Dring said that on this occasion he had not felt that prosecution was warranted, and he had thought that the best way of dealing with the matter was a final warning. The LA inspector could have disagreed and could have insisted on a prosecution, if he had felt so minded. Mr Dring said that one factor that had influenced his decision making was that it was three days before Christmas and he knew that he would not be back at work until early January. He would not, therefore, be in a position to revisit the farm for some time. But in any event, it was for the LA to enforce the legislation and take enforcement action.

Visit of 24 January 2001

26. Mr Dring said that this was the annual re-licensing visit and was pre-announced. He remembered that on this visit both brothers were very ill with flu, and it was snowy and very cold. However, Burnside Farm was 'squeaky clean', and he had seen nothing that caused him concern.

Factors which Mr Dring says in his statement should have indicated to him that unprocessed swill was being fed

Mr Dring did not realise the true significance of the waste containers on the hard standing at the front of Burnside Farm

27. Mr Dring said that these were on the hard standing just outside the farm, and so as far as he was concerned, they were not on the farm. He had presumed that they contained unprocessed swill that had been dropped off and was waiting to go to the neighbouring farm for processing. It was pointed out to Mr Dring that the legislation said that unprocessed swill should be taken 'without undue delay' to a processor. So, whilst this remained a matter for legal interpretation, it did seem likely that, even if the unprocessed swill was only there for a short time, the law was being contravened. Mr Dring said that he had not believed that the unprocessed swill was being stored or stockpiled there, it was simply in transit. In the time he was inspecting Burnside and the neighbouring farm he must have passed the hard standing in excess of twenty times, but he had only seen the containers occasionally, so it was untrue that they were there all the time. It had not occurred to him that the brothers could have been putting this unprocessed swill into the holding tank for their feeding system. He had simply presumed that it was in transit to the processing farm, and still believed that that had indeed usually been the case. He had, however, on a couple of occasions when they had been there, instructed the brothers to ensure that the containers were kept covered. This was because uncovered they presented a significant disease risk (from dogs, foxes and other animals taking and eating the swill).

He did not realise the significance of a hole cut out of the lid of the holding tank which he subsequently realised was to allow a macerator to be fitted

28. Mr Dring said that this reference in his statement was meant to be to the macerator itself, rather than the hole in the tank lid. When he visited the farm immediately after the outbreak of FMD he had noticed a macerator fitted to the holding tank for the Burnside Farm feeding system. The macerator itself was old looking, but was secured by shiny unruined bolts, so it appeared not to have been there long. If the brothers were feeding only processed swill, they should not have needed this device because the swill would already have passed through a macerator at the processing farm. If, however, they were feeding uncooked swill, they needed a macerator to liquefy it, so that it could be pumped through the feeding pipes.
29. There could, however, be a legitimate reason for a macerator being fitted and that was if waste food that had not been in contact with meat was being added to the processed swill. This would have been legal because this type of waste did not present a risk of infection, and was not required to be processed. The brothers later claimed in court that that was the case, and that in fact they were adding waste pitta bread to the processed feed. Although it was hard to state if the macerator was present for the January 2001 visit, Mr Dring acknowledged that, if the macerator had been fitted at that time, he must have walked very close to it and not noticed it. However, it was impossible to be sure that it had actually been fitted at that time. It may well have been fitted after this visit, i.e. in the period 25 January to 22 February 2001. He simply could not say with any level of certainty. It seemed likely, however, that if he had seen it earlier and asked the brothers about it, they would probably have told him that it was in order to add pitta bread to the feed, as they had told the court. It would not necessarily have changed anything therefore. As for the lid in question, that had only been found in March 2001 when it was all over.

Mr Dring did not realise the significance of cutlery laid around the farm

30. Mr Dring said that he had not been saying here that he had seen cutlery at Burnside Farm in either December 2000 or January 2001, but that he had not realised its significance. What his 2001 statement says is that when he saw cutlery in Burnside pig pens in February 2001, he had not immediately realised its significance. He put this down to the fact that, at that stage, he was just coming to terms with the enormity of the FMD outbreak and its consequences. The shock of that probably clouded his perceptions as he walked around the farm. (The DVM said that he had also been there that day and had had the same experience. He too had not immediately picked up on the relevance of the cutlery around the farm.)
31. Mr Dring said that in March 2001 he had personally counted 1,300 pieces of cutlery that had been at the bottom of the feeding system holding tank. Obviously he could not have seen those on a normal visit, when the tank had contained swill.

Pipeline feeding system not operative

32. Mr Dring said that it was alleged, after the event, that the pipe feeding system ceased to work around Christmas 2000 but, though it was certainly not working in February 2001, he could not be certain of how long it had been out of use. One of the brothers had said in court that the pipe was frozen; if correct, that might have meant that it was not working at the time of Mr Dring's January 2001 visit, but that he had not noticed that. However, Mr Dring said that he had never heard of such a system freezing and it was more likely that it was clogged with unprocessed swill. If the system was not working, the only alternative was to hand-feed the pigs using buckets. That was both very time consuming and hard physical labour, so it was very unlikely that a farmer would leave a system inoperable for very long, or indeed feed that way by choice.

33. Mr Dring said that he did not normally on a visit ask to see the pigs fed, as this would disrupt the pigs' normal feeding pattern and cause them distress. So he would not have detected that the pipeline had ceased to function.

Mr Dring had stated that he had repeatedly encouraged the farmers to keep the front of their premises clean and twice warned them not to keep unprocessed waste standing by the front of their premises. Did he now consider that he had warned them enough, or should he at some point have taken a harder line with them?

34. Mr Dring said that it was not the case in law that there came a point where a lot of small infringements added up to a big infringement. He had dealt with what he saw as relatively minor issues when he came across them. He had not seen anything on his visits that he believed was prosecutable.

Mr Dring was asked what had prompted him to write the long statement on these events, in which he set out what appeared to be an admission of various personal failings

35. Mr Dring said that he knew there was going to be a court case and thought that there would also be a public enquiry. He realised that he could be at the centre of this and wanted to ensure that he had a record of his recollections and views to refer back to. He had written it over the summer of 2001, and had felt it proper to be as open and honest as possible.
36. After the Anderson Inquiry began, Mr Dring had submitted the finished statement to Defra's Inquiry Liaison Unit with the intention that it be forwarded to Dr Anderson. However, legal officers advised that, in light of the impending prosecution of one of the brothers (a decision having been taken that the other brother was too sick to take action against), the statement should not be submitted to Dr Anderson; rather it was copied, as evidence, under rules of disclosure, to the brothers' lawyers. But Mr Dring had contributed fully to a report commissioned by the CVO on the origins of the 2001 FMD

outbreak – thus the factual element of the statement was not ignored or (as has been suggested) ‘suppressed’. It was given to Dr Anderson.

Mr Dring’s managers were asked what action they had taken in the light of Mr Dring’s statement

37. The Director of Operations said that Defra had taken the view that Mr Dring had written his statement at a highly charged time, and that despite what he had said, Defra felt that there was not much of significance that they would have expected him to have done differently. Nor did they think it likely that, if he had done things differently, it would have necessarily turned out differently.
38. Mr Dring said that he also wanted to make it clear that no one in Defra had ever tried to influence him in respect of what he should say about his dealings with the brothers.

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