

Gough Square Chambers: Food Law Column

Ian Thomas and **Stuart Jessop** are specialist food law barristers at Gough Square Chambers and editors of the Food Law Column. Together with contributions from other members of chambers, they provide expert commentary and analysis on topical developments and key issues in the field of food regulation and policy.

In the July column, **Sabrina Goodchild** considers the recent decision in *AIMS v FSA* [2026] EWHC 1327 on the lawfulness of FSA levies on slaughterhouses.



Scrutiny of FSA levies

By **Sabrina Goodchild**, Gough Square Chambers

Introduction

The FSA levies Food Business Operators, primarily in the meat sector, for various regulatory services, including for the exercise of official controls and other activities at slaughterhouses.

The levies for 2025/26, which are time-based, were challenged by the Association of Independent Meat Suppliers ('AIMS') by way of judicial review on the grounds that:

1. The FSA is only entitled to recover costs incurred in the actual performance of official controls and activities "inextricably linked" to the performance of official controls.
2. Official controls can only be performed by fully qualified official veterinarians ('OVs'), so the FSA cannot recover the cost of work carried out by vets who have not yet completed their probationary period ('**NOVs**') or who are not members of the Royal College of Veterinary Surgeons and only have a temporary registration ('**TRNOVs**').
3. The FSA had included within the enforcement rate, activities that it had no lawful basis to charge for.
4. The FSA had failed to act transparently because it was impossible to discern how the levy had been calculated.

The Decision

In *R (on the application of AIMS) v FSA* [2026] EWHC 1327 (Admin), Mrs Justice Dias quashed the FSA's levy calculations.

She held that the FSA was not entitled to charge for the entire range of costs "connected with" official controls. The Meat (Official Controls Charges) (England) Regulations 2009 ('**MOCCR**'), which contains the authorisation to charge, does not permit this. It refers only to costs incurred by an inspector "in exercising controls". This may or may not include some costs which can be described as "connected with official controls" but there is no necessary implication that it includes all such costs. As a result, the FSA's recovery of overheads is limited to costs which are incurred by an inspector in exercising official controls or are inextricably linked to the exercise of official controls and which genuinely relate to one or more of the specified heads in Article 81(a) – (g) of EU Reg. 2017/625.

Dias J continued that whilst it was difficult to draw an abstract bright line over what costs were "inextricably linked", she suggested that a useful threshold rule of thumb was to ask whether an official control could be

performed without the activity in question. If it could not, then it was likely to be “inextricably linked” to the official controls. Examples of costs that would be “inextricably linked” on that test were transport, subsistence and equipment maintenance. Examples of costs that would not be “inextricably linked” on that test were internal audit and quality control of inspections, performance management and governance, and dealing with Parliamentary questions and complaints handling. Nor were these latter charges incurred “by an inspector”, as is required.

In respect of who may carry out official controls, having noted that both ante-mortem and post-mortem inspections require the involvement of an OV, Dias J held that NOVVs could not be OVs as they have not satisfied the mandatory probationary requirements, and nor could TRNOVs as they do not satisfy the FSA’s own eligibility requirement contained in its Manual for Official Controls of being members of the RCVS. As a result, NOVVs and TRNOVs cannot carry out official controls independently and the FSA was not entitled to include costs of employing NOVVs and TRNOVs in the levy.

In respect of enforcement charges, Dias J held that the FSA were empowered to impose charges in respect of enforcement activities, however, the charges had to differentiate between enforcement official controls and other chargeable enforcement activities, and could not include indirect costs for the enforcement official controls. The FSA had included in its enforcement charges at least some matters which it was not lawfully entitled to take into account.

As for transparency, the Court held that it was far from clear what improper costs were included in the levy. The FSA are required to break down the costs claimed in such a way as to enable the reader to form a view as to whether the charges have been lawfully imposed. Dias J held that this would necessitate separating FSA staff from contractor staff, OVs from NOVVs/TRNOVs, and identifying heads of costs with

sufficient particularity to be able to tell whether they are “inextricably linked” with official controls or are enforcement official controls or other chargeable enforcement activities.

Comment

Much can be learned from this decision, beyond the substance of the judgment. The key takeaways are:

1. Consider carefully whether the FSA is empowered to exercise the function that it is purporting to exercise. In this case, it is noteworthy that in respect of its ability to impose levies for enforcement activities, the FSA adopted three entirely different positions on the source of its powers, with its final position being one that it had previously disavowed in its Detailed Grounds of Resistance.
2. Close attention should be paid to whether the FSA’s approach is consistent with its own policies. In this case, the Judge noted that the FSA’s published criteria in the Manual for Official Controls was “*far from consistent with the interpretation that the FSA advanced before me*” [72].
3. Those who are charged levies by the FSA may, in future, wish to look more closely at how these have been calculated. Are the charges sufficiently broken down? Is the FSA empowered to impose the specific charge?

A key outstanding issue though is whether NOVVs and TRNOVs can carry out official controls under supervision, and what the extent of that supervision must be (e.g. whether it has to be in person, rather than remote, supervision). This issue was expressly not dealt with by the Judge, who stated that “*the textual arguments are finely balanced*”, but is ripe for determination on another occasion. It has potentially profound consequences given the use made of NOVVs and TRNOVs in slaughterhouses and the subsequent reliance by the FSA on evidence obtained by them. Many FSA prosecutions are being stayed whilst the

considers its position in respect of an appeal of this decision, no doubt because it has concerns over the use, if any, it may make of evidence obtained by NOV's and TRNOV's in prosecutions presently before the Courts. We wait to see what the FSA will do next!

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Author(s)



Sabrina Goodchild | Call: 2017

Sabrina is a specialist regulatory barrister with particular expertise in regulated financial services, consumer law, health & safety, and product safety, spanning both civil and criminal jurisdictions. She is frequently instructed in cases with substantial strategic or national importance, and has an increasing appellate practice...

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