

## FOOD STANDARDS AGENCY: FOI 1297 response

### ANNEX A

Taking each of your questions in turn, and adding sequential numbering, I am responding to each as follows:

- 1. *What civil service grade was the former Food Standards Agency (FSA) chief executive Tim Smith before he left to join Tesco as group technical director?***

The Chief Executive role that Tim Smith performed is at the Director General (DG) grade (SCS Pay Band 3).

- 2. *When did Tim Smith inform the FSA that he planned to join Tesco?***

Tim Smith informed two FSA Directors (Legal Director and Director Wales) and his Head of Private office on 25 July 2012 that he had received an offer to join Tesco plc. He informed the FSA Chair, Jeff Rooker, on 27 July 2012 of the offer to join Tesco plc as Group Technical Director and informed him that he would accept.

- 3. *Did Tim Smith tell the FSA if/when he was first approached by Tesco?***

The first information that the FSA has regarding Tim Smith joining Tesco plc. is from 25 July 2012 and subsequently 27 July 2012, when he informed the FSA Chair. The FSA has no information about when or whether Tim Smith may have been approached by Tesco plc about the prospect of employment.

- 4. *Did Tim Smith tell the FSA if/when he applied for a job at Tesco?***

The FSA has no information of when Tim Smith may have applied for employment with Tesco plc.

- 5. *Why was Tim Smith asked to step back from his responsibilities on 22 August 2012? What were the perceived conflicts of interest referred to in the FSA press release on the 8 August 2012?***

The FSA Board had asked Tim Smith to step back from his responsibilities as Chief Executive as a precautionary measure, to protect the reputation of the FSA and its staff, and to maintain public trust. This action was intended to address the possibility of someone casting doubt over his impartiality; and perhaps alleging that in the period following the granting of approval of his employment by Tesco plc by the Advisory Committee on Business Appointments (ACOBA), it had been possible for him to gain improper advantage for himself or his future employer.

Please note that there was no FSA press release of 8 August 2012. The FSA's press release was issued on 22 August (the 08 August appearing in the heading on the website news release refers to August as the 8<sup>th</sup> month of the year).

**6. What was Tim Smith's annual remuneration package including benefits and bonuses and performance related pay whilst he was FSA chief executive?**

The annual remuneration package in place for Tim Smith in his final year with the FSA comprised:

- A basic salary of £140,000;
- Eligibility for consideration for a performance bonus of up to £ 15,000 (non-consolidated and non-pensionable);
- 30 days' annual leave entitlement;
- Occupational sick pay of up to 6 months full and 6 months' half-pay; and
- The option of joining the Nuvos pension scheme.

Tim Smith received a non-consolidated, non-pensionable bonus payment of £12,500 in July 2012.

Details of Tim Smith's remuneration package for his employment with the FSA are published in the Annual Report and Accounts. (<http://www.food.gov.uk/about-us/publications/busreps/>).

**7. Did Tim Smith continue receive this remuneration package after he agreed to step back from his responsibilities on 22 August?**

Yes. Tim Smith continued to receive his remuneration package, as he was still employed by the FSA. His employment with the FSA ended on 14 October 2012.

**8. How did the FSA ensure that Tim Smith Tesco appointment avoided 'any reasonable concern' that he 'might improperly exploit privileged access to contracts in government or sensitive information'?**

Firstly, the FSA addressed this potential issue and other sensitivities associated with Tim Smith's proposed future employment by referring his case to ACOBA, as required by the Civil Service Business Appointment Rules. ACOBA, in its notification to the FSA that the Prime Minister had accepted their recommendation that Tim's Smith's application to join Tesco should be approved, acknowledged that Tim Smith's access during the course of his official duties to sensitive information that would affect Tesco business was limited.

In its consideration of Tim Smith's application, ACOBA noted that Tim Smith had dealings with other companies, including all of the UK's major retailers, dairy companies, meat processors, and other food businesses. It took into account that only the major food retailers are competitors of Tesco plc and that Tim Smith did not have access to commercially sensitive information about those competitors.

The letter that the FSA received from ACOBA on 28 August 2012 is published on the ACOBA website at <http://acoba.independent.gov.uk/media/26400/fsa%20-%20tesco%20-%20smith%20web.pdf> and appended to this letter (Annex B) for ease of reference. The recommendation of approval was subject to the condition that for two years from his last day of service, Tim Smith should not become personally

involved in lobbying the UK Government on behalf of his new employer. This condition is often applied in such circumstances.

Additionally, the FSA took internal measures to avoid the perception of the potential for improper influence or advantage.

Firstly, since May 2012, at the instigation of Tim Smith while he was engaged in a job search and with the approval of the FSA Board, a group comprising three members of the FSA Executive (Legal Director, Director Wales, and the Head of Private Office) had monitored Tim Smith's actions to provide assurance that Tim Smith was continuing to work in the public interest and was not engaged in areas of business where that might be a potential for a perceived conflict of interest regarding a future employer. When Tim Smith notified the FSA of his offer of employment at Tesco, the group confirmed to the FSA Chair that at no point had Tim Smith acted in a way that could be seen to undermine public trust in the FSA or that could be seen to give an unfair advantage to Tesco plc.

Secondly, the FSA Board asked Tim Smith to step back from his responsibilities and appointed an Interim Chief Executive, Charles Milne, at the earliest practical opportunity.

Also, while the FSA believes that no information that could be of value to a future employer was retained within the FSA's IT system, Tim Smith's access to IT was restricted to guard against a risk of false perception that he would have access to such information.

**9. *Did Tim Smith have access to any unannounced or proposed developments in FSA policy or knowledge affecting Tesco or any its competitors before he took up his role at Tesco?***

As stated in 8. Above, Tim Smith did not have access to any information that is commercially sensitive to Tesco plc or its competitors.

ACOBA observed that the FSA works in a transparent manner and that it does not treat any business more or less favourably than any other. Policy decisions are made by a Board of non-executive members at open meetings that are broadcast live and are available on the FSA's website. The Committee noted that, whilst Tim Smith would attend those meetings he was not – as Chief Executive – a member of the Board. Furthermore, Tim Smith was not in a position in his role with the FSA to make policies that could benefit or harm one company or another. The proposed appointment could therefore not be considered as a reward.

**10. *Was Tim Smith asked to wait one month before taking up his new role at Tesco? Why was he not asked to wait longer, given the maximum is two years?***

No. In considering the application made by the FSA to ACOBA, the Advisory Committee noted that Tim Smith would serve one month's notice before joining Tesco plc.

In considering applications, ACOBA can recommend that they be approved unconditionally, or approved subject to conditions applying for a maximum of two years from the individual's last day of paid service. The conditions to apply can include a waiting period, but ACOBA did not recommend that this was appropriate in Tim Smith's case. In its letter to Lord Rooker, the Advisory Committee noted that Tim Smith's last day would be one month from the day he resigned.

**11. Has Tim Smith given an assurance that he will not lobby the Food Standards Agency and the government in general?**

In the application made to ACOBA, Tim Smith stated that there was no lobbying component to the role as Group Technical Director at Tesco plc. As indicated in the response to 8 above, approval under the Business Appointment Rules of his new role is subject to the condition that, for two years from his last day of service, he should not become personally involved in lobbying the UK Government on behalf of Tesco plc.

**12. Has Tim Smith given an assurance that his colleagues at Tesco will not lobby the Food Standards Agency and the government in general?**

No – Tim Smith is not required to provide such an assurance under the Business Appointment Rules. The conditions apply to him as a former senior civil servant. It follows that other employees of Tesco plc can communicate with Government with a view to influencing a Government decision or policy in relation to their own interests, or those of Tesco plc in the same way that other individuals or organisations may decide to do.

**13. What contact has Tim Smith had with the FSA since he left the FSA in October 2012? How many phone conversations has Tim Smith had with the FSA? How many emails exchanges have there been between the FSA and Tim Smith? How many meetings has he attended with the FSA?**

The FSA has records for a number of contacts with Tim Smith since he left the FSA on 14 October up to 12 February (the date this FOI request was received). The format and extent of these is as follows.

- 3 emails to Tim Smith (from Head of Private Office and from FSA Chair – see annex C(1) and (2) and question 14 below)
- 1 handwritten note (copy not retained) to Tim Smith (from FSA Deputy Chair)
- 7 texts (from Tim Smith)
- Two brief conversations (in margins of EFRA select committee hearing and outside/in queue at a restaurant)
- There have been no meetings.

**14. Can you supply us with any email exchanges between Tim Smith and the Food Standards Agency since he started working for Tesco?**

Two emails to Tim Smith referred to in question 13 above of 15 October and 16 October 2012 are provided in Annex C. The third email referred to in question 13 above was an email from the Head of Private Office forwarding to Tim Smith with

“FYI” the email in annex C from Jeff Rooker to the FSA Board of 15 October and attached to Jeff Rooker’s letter to Tim Smith of 16 October. We have withheld personal information (including the names of junior or former staff, email addresses and a home address) which we consider are exempt under section 40(2) and (3)(a)(i) of the FOI Act as to provide this information would contravene the provisions of the Data Protection Act 1998: the duty to process data fairly and lawfully (the first data principle).

**15. How many FSA employees have gone to work in food industry since 2001? Please give details of the post they left and the food firm they joined?**

The FSA does not maintain a record of the prospective or actual employment sought by staff who leave its employment. Staff are reminded by the FSA in writing of their responsibilities under the Business Appointment Rules when leaving the organisation.

The Rules require that at Chief Executive level (DG/SCS3), an application is required for *any* new appointment or employment the individual wishes to take up during the two year period after their last day of paid service. The Rules apply differently, however, to staff at lower grades, and for the majority of individuals in less senior positions who leave the FSA to take up alternative employment, an application is only required if the individual’s circumstances match one or more of the following:

- they have been involved in developing policy affecting their prospective employer, or have had access to unannounced Government policy or other privileged information affecting their prospective employer, at any time in their last two years in the Civil Service;
- they have been responsible for regulatory, or any other decisions, affecting their prospective employer, at any time in their last two years in the Civil Service;
- they have had any official dealings with their prospective employer at any time in their last two years in the Civil Service;
- they have had official dealings of a continued or repeated nature with their prospective employer at any time during their Civil Service career;
- they have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties;
- the proposed appointment or employment would involve making representations to, or lobbying the Government on behalf of a new employer;
- the proposed appointment or employment is consultancy work, either self-employed or as a member of a firm, and they have had official dealings with outside bodies or organisations in their last two years in the Civil Service that are involved in their proposed area of consultancy work.

Therefore, not all staff intending to take up appointments with food companies are required to make an application. Where an individual has made an application, it indicates an “intention”, and where approval of such cases has been granted it does not provide confirmation that they actually took up employment. It is for this reason

that the number of FSA employees who have gone to work in the food industry is not held.

**16. How many FSA employees at SCS3 grade and above have been referred to the Advisory Committee on Business Appointments since 2001 (broken down by year)? Please give details of the post they left and the food firm they joined?**

Two cases have been referred to ACOBA since 2001. One of those is the application made by Tim Smith in 2012 in relation to his intention to join Tesco plc as Group Technical Director.

The other was referred to, considered and approved by ACOBA in 2007. This related to the intention of Dr Jonathan Bell, former FSA Chief Executive, to work as a consultant in agri-food scientific and regulatory matters in various public and private bodies when he left the FSA.

**17. How many FSA employees at SCS2 grade have been referred to the relevant permanent secretary in line with the Business Appointment Rules for Civil Servants since 2001 (broken down by year)? Please give details of the post they left and the food firm they joined?**

The FSA is a non-Ministerial department, accountable to Parliament through health ministers, and applications made under the Business Appointment Rules by employees at SCS2 grade are considered and decided upon by the FSA Chief Executive.

The FSA does not hold the information in the format requested.

**18. How many FSA employees at SCS1 grade and above have been considered by the relevant department since 2001 (broken down by year)? Please give details of the post they left and the food firm they joined?**

The FSA does not hold the information in the format requested.

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