

## **Review of Public Analyst Arrangements in England and Wales**

### **Comments and Observations by the Association of Public Analysts**

Following the observations made by Professor Philip James in his interim proposal for a Food Standards Agency published in 1997, the White Paper *Food Standards Agency – A Force for Change* published in January 1998 proposed that there should be a review of the Public Analyst Service.

Accordingly the Ministry of Agriculture, Fisheries and Food established a committee to conduct a review in England and Wales, and a similar exercise was undertaken in both Scotland and Northern Ireland.

#### **The Review**

The group reviewing the Public Analyst Service in England and Wales was set up in April, 1998. Their remit was “To review Public Analyst arrangements in England and Wales and to make recommendations on how best to provide the scientific and technical support needed by food authorities in respect of their food law enforcement responsibilities, taking account of the concerns of other interested parties, arrangements in other parts of the UK and EU considerations”.

The Association of Public Analysts presented a substantial submission to the Review Group in which was provided a comprehensive overview of the Public Analyst service including a discussion of its background and an assessment of its strengths and weaknesses. The Association’s submission included a detailed examination of the factors affecting its current position and possible approaches to improvement of the service for the future. The submission included a wealth of supporting information including comparative data from other European countries and data demonstrating the varied use made of the laboratories, however the Association was concerned that its submission may not have been copied in its entirety to all members of the Review Group.

The Review Group published its Report in October, 1998, making 26 recommendations. These were supported by a detailed discussion of the matters that had been considered in reaching the conclusions.

#### **Response by the Association**

The Association of Public Analysts received the Report warmly, and gave immediate attention to identifying those aspects with which Public Analysts themselves could assist. Within a matter

of only a few weeks the Association had established a number of working parties to address various topics, all of which presented papers at the Association's Annual Conference in April 1999. The Association was also pleased to receive acknowledgement of its initial response to the then Minister of State with responsibilities for food safety. In his response the Minister of State, Mr Jeff Rooker MP, stated that it was the Government's intention to take appropriate action on matters arising from the Report, in particular implementing recommendations before the Food Standards Agency was established.

This paper has been written precisely one year after the Report was published. It presents a summary of the Association's views on the Review Group's recommendations and details the development work so far been undertaken to address those matters which the Association is in a position to address.

The Association of Public Analysts  
November 1999

## The Review of Public Analyst Arrangements in England and Wales

### One Year On:

#### Comments by the Association of Public Analysts November 1999

In this document the numbered paragraphs reproduce in italics the 26 recommendations made in the Report on the Review of Public Analyst Arrangements in England and Wales.

- 1 The present legislative requirement for food authorities to appoint one or more public analysts should be retained.*

The Association of Public Analysts particularly welcomed the sound reasoning for formal appointment of Public Analysts in order to ensure the competence of persons charged with the duty of deciding whether or not food is safe and whether or not it complies with all legislative requirements. The Association recognises the associated benefits of accountability and transparency stemming from the legislative requirement and the disadvantages were disparate arrangements to be sanctioned.

- 2 Food authorities should consider whether they are making optimum use of scientific competencies available to them through their appointment of public analysts.*

The recognition of Public Analysts' competence and their capabilities that is implied by these opening recommendations is greatly appreciated by the Association's members. It is of concern, however, that in the intervening year there appears not to have been any move either to involve Public Analysts more fully in the food enforcement process or to stem the continuing erosion of their involvement both when serving some local authorities in respect of food law enforcement and in other areas of some local authorities' work. (See also Recommendation number 7.)

- 3 All stages of the evaluation and analysis of samples and interpretation of the results should continue to be under the control of the local authority's public analyst but some elements of the work could be sub-contracted by him to other laboratories, under the control of another public analyst, or food analyst as defined in the Food Safety Act 1990*

In relation to sub-contracting of work the Association draws to attention that under the "passing on" facility, an administrative facility first introduced in the Food and Drugs Act 1955, this has been used continuously for nearly 44 years and, in general, use of this facility has increased over the years as more specialised techniques have come into use. Examples from the past year include the testing of food for evidence of the presence of genetically modified material, for evidence of food having been subjected to irradiation, to assess the authenticity of coffee, and to confirm the presence and identity of some contaminants.

It must be noted, however, that for as long as the funding of Public Analyst laboratories remains based directly, or indirectly, on the work undertaken on each individual sample received, every sample 'passed on' represents lost income. Such loss of income must be expected to and inevitably does limit the extent to which the facility can be used, whatever may be the wishes of the Public Analysts.

4 *Action should be taken centrally to improve levels of co-operation between the different parties in the food standards enforcement system.*

Public Analysts have always maintained that communication between and within the professions is the key to effective working by all parties involved in food law enforcement. The Public Analyst must be and must be seen to be a part of the enforcement team working in harmony and partnership with all the other professionals in the system, however physically separate or even remote from the authority he may be. For this reason the Association of Public Analysts enthusiastically welcomes the suggestion that there should be central support in overcoming the *struggle for organisational dominance* referred to in the body of the Report. The Association particularly stresses that essential co-operation and team-working is seriously undermined when the Public Analyst is regarded as an external service provider whose services can be summoned or jettisoned at whim and when, by misguided attempts to cut costs, decisions are taken to chop and change between different Public Analysts.

With respect to 'organisational dominance', the Association quotes, as an example, the apparent intent of other professionals in one local authority so to dominate the Public Analyst's professional judgement with regard to required analysis, by actively wanting him to undertake reduced investigation of samples, and so find less wrong, that in 1998 an internal 'review of Public Analyst arrangements' was initiated, notwithstanding that the Review of Public Analyst Arrangements in England and Wales then underway commissioned by central Government would shortly have reported, resulting in plans drastically to cut the service. The Public Analyst concerned considered that as a consequence he would be failing in his duty as an officer of the authority to protect the public and so, regretfully, decided that his professional position had become so compromised that he had no option other than to resign from his post in advance of his due retirement age, with the loss of yet another highly skilled and dedicated scientist from the enforcement system.

Quite coincidentally even before the Report was published the Association of Public Analysts had already decided that the theme of the 1999 Annual Conference, which was held in April, would be "Integrated Public Protection – Working Together to Protect the Consumer". The Association was amazed and quite dismayed to find that the professional bodies representing the other two professions most intimately involved with protecting the consumer were quite uninterested in participating, and had to draw on the interest of committed individuals from those professions to bring the concept together and help make the conference a resounding success.

- 5 *The Food Standards Agency be given responsibility for the coordination of a national sampling programme.*
- 6 *A logically derived system for establishing appropriate sampling rates should be developed centrally in consultation with food authorities. This should be based upon planned premises inspection and sampling, complaint and other ad hoc local investigations and border control point inspections. It will require the following subordinate actions:*
- (i) the completion of the revision of Code of Practice No.8, setting out the criteria for ranking food premises along the food chain in order of inspection priority;*
  - (ii) the classification of the food and food materials producers in their areas by food authorities in accordance with these criteria and the preparation of a rolling inspection programme using this information;*
  - (iii) the preparation of inspection guidelines indicating the likely sampling demands generated by each category of premises and perhaps based on the experience of authorities already running significant inspection programmes;*
  - (iv) the development of a systematic approach to the assessment of the risks presented by different types of foodstuffs and associated materials;*
  - (v) the development of systems for the arrangement and coordination of national programmes for the chemical analysis of foodstuffs and associated materials. We wholeheartedly concur with the suggested guidance on sampling - indeed this is an area we had long considered to be inadequately addressed.*

The Association wholeheartedly concurs with the recommendations made by the Review Group. However as Public Analysts are the specially trained scientists with detailed knowledge of food and the potential for defects or other faults they feel that their profession could make a significant contribution to assist the Food Standards Agency in determining sampling needs.

Such is the importance of sampling to achieving proper control of food and enforcement of food law that in order to avoid any unnecessary delay the Association established a working party immediately after the Report was published to further consider this matter.

As a result a paper outlining the principles of risk-based sampling was presented at the Association's Annual Conference in April this year, a synopsis of which is appended hereto.

Following that initiative the trading arm of the Association, established to facilitate joint bids to be made by numbers of financially independent Public Analysts' laboratories working together, has made a bid for MAFF research funding in order to develop the initial concepts into a practical system ready for implementation.

Notwithstanding this initiative, in order to ensure that the food control system in this

country does not collapse in the period before the Food Standards Agency is established and able to operate effectively, the Association continues to urge that the previously widely recognised sampling rate of 2.5 samples per annum per 1000 population should remain in place as clear guidance to Local Authorities, albeit that this is but half the rate legislatively required in Germany. Such a target, although it is simplistic, is at least a target that is achievable and can be audited, and serves to maintain delivery of a service until a more scientific approach based on risk to health and risk of fraud or of other defects or deficiencies adversely affecting the consumer becomes operational. With 20% of all samples currently being found to be unsatisfactory, the present sampling level can scarcely be considered to be excessive.

Reinforcement of existing sampling guidance (with sanctions against authorities that fail to perform adequately) is essential. If this is not done, the continuing decline that has been seen in the recent past as some authorities have found that they can 'get away with it' risks further and avoidable serious damage to the Public Analyst Service. The risk is that the Service will not survive to be developed and improved with the Food Standards Agency. Urgent action by central Government is required. The first and most urgent action is to provide clear and explicit interim guidance on sampling levels to food authorities

It is particularly relevant to note that a conclusion along just these lines was reached in the review of the Public Analyst Service in Northern Ireland – which review was carried out with the benefit of much prior awareness as the reviewers were the Chairman and another member of the team that had carried out the Review in England and Wales. A copy of the conclusions and recommendations arising from that Review is appended to this paper.

- 7 *Local authorities should investigate developing food safety and standards teams. Where the necessary skills and experience are outside the scope of enforcement officers, food specialists or public analysts should be involved.*

The Association believes that this recommendation should be very much more positive and should counsel that the local Authorities must develop food safety and standards teams in which Public Analysts are involved at the very outset.

This recommendation reinforces the view Public Analysts have always expressed, but which unfortunately has been adopted by a very few authorities. It is to be hoped that with the support of the JFSSG, on behalf of the relevant Departments, and subsequently with the support of the Food Standards Agency, such involvement will occur in every Local authority responsible for food law enforcement. The Association believes that there are still some food authorities where food control duties are performed by officers without the level of training and experience necessary to make them experts on food. (See also the comments made with respect to Recommendation number 2.)

- 8 *As a matter of priority, information systems to support and utilise the output from all sampling programmes should be developed, operated and co-ordinated centrally to improve consumer protection across the UK. This would take the form of a national database which should be made available, free of charge, to food authorities and their*

*public analysts to facilitate planning and follow-up action.*

A national database would certainly assist not only with sampling programmes but also in interpretational aspects, for example in determining what level of a contaminant may be abnormal in a food where some trace contamination may be unavoidable. In the absence of a properly co-ordinated national database the extraction of this type of data is difficult and laborious to marshal and is therefore rarely done.

In order to be effective, this database must be able to integrate readily with the laboratory information systems in use in Public Analysts' laboratories – systems that are currently disparate in nature due to the varied levels of resources available.

As the producers of the raw data that would form a fundamental part of the database, albeit at a level of detail that is not relevant to 'general consumption', the Association feels that Public Analysts' laboratories must be central to the database.

Immediately after the publication of the Report the Association promptly established a working party further to consider this matter. The aim of this working party has been to develop a specification for the required database and to consider its practical implementation particularly in terms of linking with the sources of information in Public Analysts' laboratories.

As a result, a paper was presented at the Association of Public Analysts' Annual Conference in April this year outlining basic concepts a synopsis of which is appended hereto. To follow this initiative, the trading arm of the Association has made a bid for MAFF research funding in order to develop these initial concepts into a practical system ready for implementation in conjunction with the development of the risk-based sampling scheme with which it is inextricably linked.

Overlying the intention to make use of a central database must be recognition that the scopes of analyses undertaken are intended to complement and be complemented by the interpretational skills of Public Analysts. A database cannot be expected to and should not be expected to replace the interpretational skills of Public Analysts merely by incorporating acceptance criteria for sample or commodity types. The database must be intended to facilitate efficient sampling and analytical result interpretation by reinforcing and enhancing the skills and the knowledge base of Public Analysts and thereby operate at two levels, one as a record of samples and the reported conclusion accessible to all food authorities and used by them (in conjunction with the Agency) to guide sampling needs, the other as a pool of raw data to assist Public Analysts in their interpretation of analytical results, helping to identify trends or baseline levels, etc.

A secondary benefit of such a database would be to reduce any duplication of effort by MAFF's surveillance work that may exist in relation to topics that have already been thoroughly tested at enforcement level. Coupled with effective planning based on liaison with the enforcement authorities, use of the Association's planned database will facilitate better deployment of existing resources thus enabling more comprehensive analytical repertoires whilst containing expenditure.

- 9 *MAFF surveillance work should continue to be offered by open tender and information derived from this work should be included in the proposed national database.*

Information from the database is also likely to assist in focusing MAFF surveillance work on topics either not otherwise covered through routine enforcement activities or where a matter requiring further investigation is highlighted, thus avoiding any unnecessary duplication of effort, that sometimes appears to take place at present.

In relation to bidding for the surveillance work currently commissioned by MAFF, it is noted in the body of the Report that Public Analysts seldom put in bids. The Review Group reported that they tried to identify reasons for this apparent lack of interest. One very significant reason overlooked by the Review Group is that the work tends to be have to be undertaken in large batches involving extensive work undertaken to a tight time scale. To be able to commit any already hard pressed and financially under funded laboratory to undertaking such work, work for which a laboratory has to have a substantial degree of spare capacity, clearly this is something that sadly has been beyond the ability of the majority of Public Analysts' laboratories following two decades of financial neglect by the majority of Local Authorities.

As a compromise approach the Association has established a trading company, The Public Analyst Service Ltd., that can and presently is co-ordinating bids from participant laboratories undertaking to act as sub-contractors for parts of the total surveillance requirements. In the current round, bids have been offered on this basis for the first time for a number of the short term research and development requirements identified by MAFF for the year 2000/1.

Sometimes, so it has seemed to the Association's members, decisions on work required has been made by Officials guided by availability of equipment, techniques or methods in use in Ministry laboratories or in Agency laboratories, especially when the specification requires that any tendering laboratory must have prior experience in using the specific method stated. Public Analysts often have equivalent methods, frequently they are not identical, therefore Public Analysts cannot claim to have past experience and so had found themselves to have been ineligible to tender. Perhaps in the future invitations to tender should concentrate on specific targets rather than on specific procedures as has sometimes been the case, and the application forms simplified to require only pertinent data.

- 10 *Screening laboratories should be re-examined more closely by food authorities to ascertain whether they achieve genuine cost effectiveness with reliable sample documentation, accreditation and quality assurance of the methodology and a clear understanding of any analytical or legal uncertainties in the results.*
- 11 *Public analysts should adopt a more positive approach to screening methods and consider whether they can offer a supplementary service in this area.*

The term 'screening laboratory' unfortunately is not clearly defined and has different meanings to different people.

The Association is greatly concerned about the use of laboratories having staff with

limited training and limited qualifications applying methods of analysis of uncertain suitability supported by little, or no, quality control to analyse food samples which properly should be sent to the Public Analyst for analysis. This type of 'screening laboratory' inevitably can and does divert essential resources away from the Official Laboratory, thereby starving it of 'bread and butter' work, while at the same time the results of the such screening analyses cannot be used as part the basis of the official returns made describing the extent of official control activities. Arguments made in support of such laboratories is that they are cheaper than using the Public Analyst. It is clear whenever the details behind such assertions are examined critically that like is not being compared with like. What is even worse, calculations of costs are often fallacious and 'incidentals' such as premises costs, sometimes even staff costs are not taken into account.

It is noted that in order to bring or retain these resources in the Official Laboratory some of the Association's members' laboratories have sought to offer, subject to Accreditation constraints, a basic non-accredited, minimally quality assured very low cost 'screening' service distinct from their official food control work and priced similarly to the claimed costs at which these 'screening laboratories' are operated by some Local Authorities' departments, but with a very low take-up rate.

Another type of 'screening' adopted is the use of simple 'spot test' methods to identify questionable samples in relation to a particular parameter, for example a rough check on the alcoholic strength of spirits in licensed premises. Provided that such procedures always are used with caution and that when assessing the results of such tests never is it concluded that samples apparently 'passing' the test are satisfactory in other respects, and provided that all such testing is recorded formally in order to place in perspective the relative proportions of unsatisfactory samples found in the subsequent proper sampling and analysis – this can be a means of concentrating necessarily limited resources on likely problem areas. Such sensibly and properly structured use of simplified testing is supported in principle by the Association.

A third type of 'screening' is the use of rapid 'first action' methods by Official Laboratories, tests that have to be followed up in the case of apparently unsatisfactory samples by the use of more rigorous methods. Provided the 'first action' methods are appropriate, fully accredited and properly quality assured for the purpose, and are suitably directed and the sample results are correctly assessed by a Public Analyst, this type of screening is entirely compatible with Official Food Control and so it is practised routinely by Public Analysts in order to minimise costs.

The Association is pleased that the Review Group formally recognised the problems inherent in the use of some types of 'screening' facility. Therefore the Association willingly accepts Recommendation 11 in respect of the last two definitions of screening. But the Association emphasises that any screening other than the third example must be recognised to be a supplement to proper analysis and so must be used to improve the focus of sampling, and must not be seen as a substitute for sampling and analysis for enforcement purposes (bearing in mind that "screening" work cannot comply with the requirements of the *EC Additional Measures Directive* due to the inherently lesser quality of the methods and of the quality assurance procedures that define screening work)..

- 12 *Guidelines should be prepared to ensure that specialist, but non-accredited, laboratories can be used when they offer the highest level of available expertise and to ensure that their results are equivalent, with respect to analytical quality, to results from laboratories which are formally accredited; assistance in developing such guidelines should be provided centrally.*

Although what has been recommended does not in itself constitute any novel concept, the Association welcomes the suggestion made in this recommendation that assistance should be offered centrally to help develop guidelines for the use of outside experts. However, it felt that it would be too long to wait for establishment of the Agency to draw up appropriate guidelines, therefore a working party was set up to consider this matter further immediately after publication of the Report. It is anticipated that the working party will shortly be in a position to make appropriate recommendations in this regard, recommendations compatible with legislative as well as accreditation requirements controlling the activities of Public Analysts.

- 13 *The availability of resources in relation to the density and type of food businesses in the food authority's area should be taken fully into account when developing enforcement policy and performance criteria associated with national food law enforcement activities.*

It is suggested that the development of enforcement policy should be a matter for the Food Standards Agency to draw up in conjunction with LACOTS. However, the Association understands and hopes that a central goal is and will remain the need for uniformity of effort and enforcement nationally, effort that must be strictly proportionate to need and legitimate expectation. The Association concludes that it is no longer safe to limit enforcement policies of local authorities to the local “availability of resources”. Authorities that seem to have ‘mislaid’ the resources directed to them must be brought to account.

- 14 *If funding is to continue to be locally controlled, it should be linked with a logical and transparent process for the determination of realistic sampling rates, together with the publication of the level of achievement of the objectives.*

Whilst the Association agrees with recommendation 14 if funding does continue to be locally controlled, experiences of the Association’s Members now leads them seriously to question the ability of locally controlled funding to provide an effective Public Analyst service that is sustainable in the long term. Indeed it is noted from the introductory word ‘if’ that the Review Group itself clearly had misgivings. The Association wonders if that recommendation was made out of a preconceived notion that no change to the route of funding could be contemplated.

Throughout the Report it is repeated time and time again that one of main observations made about the Public Analyst service today – seen to be the root cause of the present limitations in the system – is that it has been starved of the funding necessary to do its job.

This continuing starving of the Service of adequate funding is, in the view of the Association and its Members, unforgivable.

Although there are undoubtedly rare exceptions in the case of some individual authorities, the overwhelming fact is that the local system of funding has failed to maintain the system to the point where it is on the verge of total collapse. It is the Association's most fervent recommendation that the question of funding must be revisited, and that only some form of central administration of funds will work. In that respect the Association draws to attention the schematic organisation reported by Professor James, showing Public Analysts as one of the components of the Food Standards Agency yet situated at local level alongside Trading Standards and Environmental Health Officers. Considerable thought has been given to this matter and the Association can, if wished, elaborate further on possible mechanisms for how this can be achieved.

The body of the Report says that it is no function of local authorities to provide a living for Public Analysts. The Association regrets that such a trite remark should have been reported, if for no other reason than that if they cannot make a living Public Analysts will not exist.

The Association suggests that appropriate recognition does need to be made for the high level of qualification and responsibility required of a Public Analyst, not least to ensure that scientists of the high calibre required can continue to be attracted to ensure proper protection of the Public in the future. Arrangements must be made to ensure that there is adequate funding for the scientific aspects of public protection throughout the country if the control of food is to be seen to be the serious issue that it is and should be.

The observations made in the subsequent review of Public Analyst arrangements in Northern Ireland in which the Review Group's terms of reference were sufficiently wider to allow greater observations with respect to funding are no less applicable in England, Wales and Scotland.

- 15 *It should be a task for the Food Standards Agency to consider the application of benchmarking to the public analyst service, in consultation with relevant bodies, due account being taken of the other recommendations that we make.*

Public Analysts fully support the concept of benchmarking, and the proposition that the Food Standards Agency is the appropriate body to set the standards, as it presumably will with all other aspects of the enforcement system. The Association will willingly proffer its help to the Agency to facilitate this task. In the meantime the Association has set up a working party to consider aspects of benchmarking alongside related matters of Best Value and Service Level Agreements.

The Association particularly welcomes the implication that through benchmarking it will be entirely possible to ensure as well as demonstrate that the service is efficient effective and cost-effective, also competitive in the broadest sense, thereby providing best value to the public. However, it is felt that the Report was not clear enough on the question of competition, appearing to have confused *competition* and *competitiveness* in the body of the Report and not having made any recommendation in this respect to clarify the position

Whilst Public Analysts fully accept and agree with the need for their laboratories to be

competitive, which can be achieved through benchmarking, direct competition for work between individual Public Analysts is wholly in conflict with the essential requirement that there has to be full co-operation between laboratories and their staffs. This is necessary to ensure the scientific and technical development, training and mutual understanding identified in Recommendations 3 and 16 of the Report.

The Association therefore strongly recommends that direct competition in relation to Public Analyst work be recognised as the antithesis of effectiveness and that it must be discouraged in the strongest terms unless funding can be so generous that vying for funds is counterproductive to completing work schedules. This comment also extends to tendering for Public Analyst appointments, which also suffer from the limitations of the tendering system in that the resultant service can only be as good as the design of the tender document itself. In the experience of Public Analysts such documents hitherto have been poorly conceived and manipulative in effect if not also so by design.

In considering this matter, the Association's Working Party also considered formally the question of Best Value, with the result that a policy document has been drafted to assist laboratories and the authorities for whom they undertake work the better to comply with the requirements incumbent upon all authorities, namely to provide Best Value to the public they serve. The document is about to be published and the current draft is appended hereto.

- 16 *Individual public analysts should explore the development of links between their laboratories on a regional basis.*
- 17 *The Food Standards Agency should have the role of helping to develop and oversee a rational and equitable framework for a rearrangement of public analyst laboratories.*

The Association concurs with the arguments presented in the Report leading to the proposal that the best way forward for the Public Analyst Service is for closer working between individual laboratories. Indeed the Association would go so far as to suggest that the aim is that there should be groupings of laboratories so that they may act as single multi-site entities, providing all the advantages of local availability with the greater resources and specialisms of the whole.

For this to work effectively, however, the question of funding discussed earlier in this paper has to be addressed. It is easy to see how multiple laboratories could work closely together and pass samples freely between themselves when funded centrally. In that respect the model drawn by Professor James seems particularly apposite and indeed it closely resembles the earlier formulated concept established by the Association. What is impossibly difficult to see is how any such concept ever can work when subjected to the vagaries of local funding arrangements, compounded by local sampling variations.

The Association has considered this approach in considerable detail, even to the extent of having made very significant progress in developing a draft business plan before the Review took place. The proposed support from the Food Standards Agency is welcomed, and the Association looks forward to developing this much further.

- 18 *Contractual arrangements should be drawn up between individual food authorities and public analysts; assistance should be provided centrally in developing model working arrangements.*

The Association fully supports the suggestion regarding contractual arrangements, and notes that a draft document is in existence which it is understood was offered to the Review Group by MAFF for consideration. The Association believes that this is close to being workable arrangement (a copy is appended to this document), unlike the master and slave arrangements now being touted by some Local Authorities.

- 19 *Ministers should issue appropriate guidance to authorities and public analysts on the interpretation of the existing constraints on conflicts of interest and be empowered to regulate if necessary to prevent such conflicts arising.*

Although the Association believes that the professionalism of Public Analysts has long ensured that conflicts of interest have not arisen, given the track record of its members it is puzzled as to why this matter should have been raised yet again. Any guidelines that clarify the position on conflict of interest would be welcomed for the sake of all concerned in enforcement, particularly if a general model will address the relationships that arise when Local Authority Trading Standards officers develop 'business partnerships' with local food manufacturers

Also related to this is the 'Home Authority Principle'. Although in many ways this is an effective means of simplifying the investigative process, it is also a potential source of conflict of interest besides which conflicts of interest involving Public Analysts pale into insignificance, particularly where a single food business is likely to be a major employer within the Authority's area. Perhaps the Principle should be modified to use a different Authority (e.g. a neighbouring Authority), in defined situations such as when any food business employs more than a given proportion of the local work force.

- 20 *The M.Chem.A. should remain as a prescribed qualification for public analysts and food analysts and the present provision whereby Ministers may prescribe or approve qualifications should also remain.*

- 21 *In relation to the M.Chem.A., the RSC should consider:*

*(i) reviewing the scope of the qualification;*

*(ii) possible sources of bursaries;*

*(iii) awarding an interim qualification at an earlier stage and the elevation of the M.Chem.A. to doctorate level.*

The Association is pleased that the Review Group should have recognised the value of the M.Chem.A. qualification, even to the extent of recognising that it commands knowledge, ability and experience at doctorate level. This qualification is the cornerstone of the Public

Analyst profession, it provides the assurance that Public Analysts are competent to discharge their responsibility to protect the Public, it provides the credibility to investigate and to interpret those parts of the process that have to complement the formal accreditation of Official Laboratories to EN45000, accreditation that only addresses the quality of the raw analytical data. In effect the qualification provides complementary accreditation of the interpretation.

Immediately after publication of the Report the Association drew the recommendations to the attention of the Royal Society of Chemistry, and members of the Association met with members of the Society in December last year to discuss the recommendations.

The Royal Society of Chemistry had already been engaged in reviewing the syllabus of the M.Chem.A., having intentionally delayed completion of the review in order to take into account any recommendations arising from the Review of Public Analyst Arrangements. The new syllabus has now been published. Much of the syllabus unrelated to food has been removed or reduced in emphasis in order to improve the focus of appeal of the examination and thus attract more candidates.

The Association understands that the Royal Society of Chemistry may not yet have made a formal public response to the recommendations, but nevertheless it is appropriate to record the Association's own views on these points.

With respect to an interim qualification the Association notes that the postgraduate Master of Science degree in Analytical Chemistry is in effect already just such an interim qualification, as (subject to approval of its content) it does allow an exemption from the part of the examination designed to verify that the candidate has the necessary advanced understanding of analytical science. The Association is not convinced that beyond this creation of a 'part way M.Chem.A.' is appropriate. Such a step would do nothing to ensure that the individual is competent to be a Public Analyst, and few candidates would subject themselves to an examination with no clear benefit to themselves and not affording recognition at the end. Its only apparent value would be to give some form of award to those who commence study for the M.Chem.A. itself but for whatever reason fail to qualify, by definition therefore failing to have proved themselves to have the competence necessary for appointment as a Public Analyst.

The major limitation of the M.Chem.A. is that it is not widely known, and as a consequence it does not have a wide appeal outside the Public Analyst profession. The Association is convinced that converting the award to a doctorate by examination, by which description it would have universal recognition, is likely to attract additional candidates regardless of whether a career as a Public Analyst is contemplated. This will bring far greater support to the examination and potentially make available a much larger number of people with the requisite qualification to become Public Analysts as more undoubtedly are needed.

The Association is doubtful whether the Royal Society of Chemistry is in a position to provide or attract bursaries to fund training. Public Analysts are puzzled as to why funding for other professionals via the Local Authority structure seems to be a clearly recognised need (for example as recommended for Trading Standards Officers in the recent Consumer White Paper), and yet the same has never been true for the Public

Analyst profession, resulting in an unfairly heavy emphasis on private, unfunded study by those dedicated individuals wishing to train to be Public Analysts.

- 22 *The APA and the RSC consider making continuing professional development a requirement for holders of the M.Chem.A. (and any successor qualification)*

The Association very firmly supports and encourages Public Analysts to undertake 'Continuing Professional Development', but does not have the 'teeth' to make this compulsory. Indeed the Association believes the same to be true of the Royal Society of Chemistry. The Association would support Continuing Professional Development being made compulsory, although to do so would probably require an amendment to the Food Safety (Sampling and Qualification) Regulations 1990

For many years this Association has provided training for Public Analysts in the form of seminars and other meetings, and has supported the concept of Continuing Professional Development. Immediately after publication of the Report the Association's Training Committee, supported financially by the APA Educational Trust (a registered charity), set about developing a formalised scheme that was presented to the Association's members at their Annual Conference in April. This is currently in the middle of a pilot trial.

- 23 *Three-part sampling should be retained.*
- 24 *The referee analyst provisions should remain unaltered. Where referee analyses under the Food Act 1990 are carried out in the Laboratory of the Government Chemist, a food analyst should be directly involved.*
- 25 *The Food Standards Agency should be empowered to consider nominating a different Referee Analyst if the current arrangements with the Government Chemist (particularly the funding of the service by the Department of Trade and Industry) should change significantly.*

The Association fully supports three-part sampling, and welcomes the general comments made in relation to the Referee Analyst. It is, however, suggested that a Referee Committee should be set up to assist the Government Chemist in situations where he and his laboratory staff may lack some at least of the necessary interpretational skills and experience to be able to act without passing on his responsibility, a matter permitted by Regulation.

The Association also believes that clarification is needed to the effect that the Referee Analyst is just that, with his results used to determine which analytical data (that of the prosecution or defence) is correct in the event of a dispute based on different results having been obtained on two portions of a food sample. At present the role of the Referee Analyst does not always seem to be clearly defined or understood by the various parties involved. This can lead to difficulties in the Courts when evidence is presented.

- 26 *The provisions relating to the handling of agricultural samples in the Agriculture Act 1970 should be aligned with current arrangements for food samples which allow for samples to be passed outside of the current public analyst system if the necessary technology exists elsewhere.*

The Association supports this recommendation regarding the passing on of agricultural samples outside the Public Analyst (Agricultural Analyst) system if particular analysis cannot be done within the official system, subject to applying similar controls as in the case of food samples taken under the Food Safety Act 1990.

**Conclusions and Recommendations from the Report on the Review of Public Analyst Services in Northern Ireland, May 1999.**

- 43 Overall, we were impressed by the arrangements for public protection in the food standards field in Northern Ireland.
- Because of the single tier of local government there is a combined approach to food safety and standards enforcement through a single inspectorate.
  - There is a close and active relationship between the DHSS and the district councils.
  - The management structure encourages co-ordination between districts.
  - The management structure encourages good communication between enforcement officers and the public analyst.
  - The development of sampling policies and service level agreements directly addresses the main problem of funding the public analyst service; an example that could well be followed elsewhere in the UK.
  - However, we recommend that the policies and agreements also accommodate the need to enforce the regulatory controls directed at materials and articles intended for food contact use.

Thus, many of the recommendations made in the "Review of Public Analyst Arrangements in England and Wales" are already being implemented in Northern Ireland.

44. The size of Northern Ireland is only just large enough to justify a separate public analyst service, yet substantial benefits accrue from the presence of a public analyst and laboratory in the Province. It is important that all districts play their part in maintaining the service, particularly through their approach to the sampling guidelines and service level agreements.
45. The difficulty of funding the accreditation process and the provision of general scientific advice to the district councils was raised by a number of respondents. The suggestion that district councils should pay a retainer in addition to sample based costs was put forward during the consultation, or some central funding through the DHSS might also be a possibility. In any event, there is a need to quantify such costs and discussions between the DHSS, the districts and the public analyst should be able to clarify the position. However, it must be remembered that public protection and value for money are the prime considerations in committing public funds.
46. The need for improved information technology systems to support all sampling programmes and to make optimum use of their output, was identified in the England and Wales review and the same need exists in Northern Ireland. The GCC made much the

same point in commenting "speed and reliability are of the utmost importance in the gathering, exchange and dissemination of information relating to food problems or the prevention of risk". The discrete and compact nature of the system in Northern Ireland, with a single public analyst service and an existing mechanism for Province-wide co-ordination, would seem to make it well suited to act as a pilot for a UK-wide scheme. We recommend that the Food Standards Agency should consider, in conjunction with the Northern Ireland authorities, the development and funding of such a pilot.

47. We concluded that none of the options we considered as possible replacements for the present public analyst arrangements offered any advantages.
48. The existing management structure, involving districts, geographical groups, NIFLG and the CEHOG, already seems to be consistent with many of the objectives envisaged for the proposed Food Standards Agency. When the latter is established, it would be very desirable to find ways of articulating the existing, successful Northern Ireland structure with the Agency rather than superimposing a new structure upon it.
49. We concluded that there is no specifically Northern Ireland dimension to either the arrangements for the qualification and appointment of public analysts and food analysts or the role of the Government Chemist as the referee analyst.
50. We support the recommendations made in the "Review of Public Analyst Arrangements in England and Wales" that the Royal Society of Chemistry should consider:
  - reviewing the scope of the M.Chem.A. qualification and the extent to which existing university modules and qualifications could be used as building blocks towards it
  - awarding an interim qualification at an earlier stage
  - elevation of the M.Chem.A. to doctorate level
  - investigating possible sources of bursaries to encourage more candidates for the M.Chem.A.
  - in association with the Association of Public Analysts, making continuing professional development a requirement for holders of the M.Chem.A.

This appendix presents a synopsis of the paper on this subject that was presented to the Association of Public Analysts' Annual Conference in April 1999.

### Risk-Based Sampling - A Scientific Approach to the Sampling of Food

Food must be safe and compositionally correct, must not contain harmful contaminants and must contain only permitted additives, must be correctly described and must bear all necessary markings, truthfully. In order to ensure that these requirements are met and thus afford the public protection from unsafe, unwholesome, substandard, defective or misdescribed food, it must be sampled to facilitate appropriate scientific evaluation.

An incidental benefit of the control afforded by such sampling and testing is to provide a 'level playing field' that will assist diligent food businesses to thrive by fair competition, while the prevention or early detection of major problems with food can help protect the national economy and so may indirectly benefit even those consumers not directly affected by the food itself.

To ensure that protection of the public is effective, the rate of sampling must be soundly based on the risk to the consumer rather than solely on the size of the population, and the scope of routine analysis undertaken must likewise be based on the risk to the consumer rather than on projects and surveys planned in isolation or on any desire to maximise sample numbers for a given cost. One aim of sampling and analysis has to be to identify any potentially serious problems before they present any significant risk to the consumer, and indeed to the economy. Examples from the past include diethylene glycol in wine, tin in canned food, benzene in carbonated drinks and dioxins in contaminated animal feed. The normal surveillance activities of enforcement authorities must include such topics as part of a well planned and comprehensive 'net' that is likely to require national planning and co-operation.

Risks to the consumer which must be considered in setting the rate of sampling include matters both of safety and of 'consumer protection'. Safety considerations may arise from naturally occurring toxins in components of a food, contamination of raw ingredients from a polluted environment, contamination by micro-organisms and their metabolites, use of unsuitable ingredients, poor control over the levels of certain additives, contamination arising from the production process (residues from pesticides, veterinary treatments, fungicides, foreign objects, contact with machinery etc), deterioration during production or subsequent storage (including migration from packaging material) and failure to declare the presence of ingredients to which an individual may be allergic. 'Consumer protection' aspects include food not being of the nature, substance or quality demanded, being inaccurately or misleadingly presented or bearing incomplete, inaccurate or fraudulent declarations or claims, and food not complying with legislative compositional standards.

Points to consider in determining rates of sampling and analysis include the severity of the effect of a fault with food or its labelling (whether in terms of health, enjoyment or pecuniary loss, each having its own weighting in respect of interdependencies with other factors), the likelihood

of a consumer spotting a fault and rejecting the food as a consequence (but having regard for minority groups), the likelihood of occurrence of the fault, the consumption pattern applicable to the food (whether a staple food or one likely to be consumed only rarely or in small quantities), the size of population likely to be affected (more so for consumer protection aspects), the degree of control and monitoring exercised by the manufacturer for all potential faults, and the stage in the production and distribution chain at which the problem can occur.

A simplified model for risk assessment involves pitting the severity of effect against the likelihood of occurrence as in the table below:-

	Slightly harmful	Moderately harmful	Extremely harmful
Highly unlikely	Trivial risk	Low risk	Moderate risk
Unlikely	Low risk	Moderate risk	Substantial risk
Likely	Moderate risk	Substantial risk	Intolerable risk

If the above model were to be applied to faults with food the resultant risk scale from trivial to intolerable could be used to assign sampling rates from few/infrequent to many/frequent. In practice the numerous factors affecting risk in relation to food make the model multi-dimensional such that a mathematical combination of the data derived from the individual risk criteria weighted according to their effect on overall risk is necessary to enable a quantitative assessment of risk to be made. From this a sampling frequency can be assigned, being that adjudged sufficient to have a good chance of detecting faults with food as they arise and before significant effect on the consumer. For simplicity of operation the mathematical formula combining all the risk factors may find easiest application in the form of a multistage nomogram.

The process of risk assessment described above must be performed for every conceivable parameter (although at the initial assessment stage parameters of similar character might be considered together), with the probable result that foods may need to be sampled for different aspects of analysis with different frequencies.

This concept now needs to be developed to provide the formulae for the cumulative risk assessment process (whether or not in the form of nomograms) and the statistical evaluation of the sampling rates necessary to mitigate against the identified risk.

This appendix presents a synopsis of the paper on the subject of a national sample database that was presented to the Association of Public Analysts' Annual Conference in April 1999.

### Product Database and Sample and Results Database

#### **Product Database**

- 2.1 The creation of a database of all food products sold in the United Kingdom is a necessary pre-requisite to the establishment of a system of risk-based sampling and the development of a samples and results database.
- 2.2 The following product information is considered necessary for an effective risk-based sampling system:
- a) brand name
  - b) fancy name
  - c) statutory name and/or description
  - d) ingredient list (this is probably desirable rather than essential)
  - e) name and address of manufacturer, producer or importer
  - f) minimum durability date
  - g) net weight or volume
  - h) nutritional labelling information
  - i) QUID declarations
  - j) alcoholic strength (where appropriate)
  - k) lot number or other batch identifier code
  - l) bar code (i.e. the numbers that accompany the code)
  - m) any other information that must be provided for statutory purposes
- 2.3 Ideally, the above information could be transferred to the sample and results database by making use of a bar code reader which could draw information from the products database.
- 2.4 The advantage of this would be that information was stored in a consistent and correct form and would be directly comparable whichever laboratory did the analysis.
- 2.5 For non-prepacked products it would be necessary to enter the above information manually in most cases.

#### **2 Samples and Results Database**

- 2.1 Since the member laboratories of the Association hold much of the data which would comprise a samples and results database they should take an active part in determining its form.
- 2.2 A central database under the control of the Food Standards Agency should be established with all (and only) Official Laboratories adding data to it and anyone with a need having read-only access to relevant parts of it.

- 2.3 With today's effective means of electronic data transfer the only credible means of data storage will be an on-line computerised system. In order that data could be directly entered into it the samples and results database would need to have a format that was adopted by all Official Laboratories.
- 2.4 The following information is considered to be the minimum required for an effective samples and results database:
- a) laboratory identifier – a unique code for each laboratory
  - b) laboratory sample number – a unique number for each sample
  - c) sampling authority identifier – a unique code for each food authority
  - d) sampling authority sample identifier – a unique number allocated at the time the sample is collected
  - e) date and time sample obtained by sampling officer
  - f) place sample obtained – name and address of retailer
  - g) name of sampling officer
  - h) date and time sample received at laboratory
  - i) means of transport to laboratory
  - j) temperature on receipt – this is required for microbiology samples only
  - k) name of person receiving sample in laboratory – this would be the Public Analyst in the case of formal and complaint samples but normally an administrative assistant for informal samples
  - l) sample status – formal, informal, complaint, survey
  - m) sample type/MAFF code – the current MAFF code should be refined to permit a more detailed discrimination of sample type
  - n) seal number
  - o) product database information –
  - p) failure reason – the reason the sample failed to comply with statutory requirements (e.g. chemical composition, chemical contamination, labelling, microbiology or a combination of two or more).
  - q) name of person approving/failing sample – the name of the Public Analyst or Food Examiner signing the final report
  - r) date of approval/failure
  - s) results of analysis or examination
  - t) opinions and observations – the text which forms and integral part of a Public Analyst or Food Examiner certificate

### **Future Considerations**

- 2.5 Planning for a product and a samples and results database must start now.
- 2.6 Many Public Analyst and other food law enforcement laboratories already have a laboratory information management system (LIMS) and much of the data required for a samples and results database is already being entered into them. If any laboratory is contemplating buying a new LIMS system then they should ensure that it can simply and easily provide the information indicated above in a format that can be imported into the commonest database systems.

This appendix describes a model for effective working arrangements whether contractual or in the form of 'Service Level Agreements' to place on a consistent footing the service delivery by individual Public Analysts and the expectations and obligations of Food Authorities, this being an updated version of a document that it is understood was at some stage seen by the Public Analyst Service Review Group.

### Model Working Arrangements for the Provision of Public Analyst Services

**Whereas** Council Directives 89/397/EEC and 93/99/EEC prescribe the requirements for the Official Control of Foodstuffs;

**Whereas** to ensure that the Food Safety Act, 1990, is properly enforced Food Authorities must have access to appropriately qualified and experienced staff and appropriate facilities in Official Laboratories;

**Whereas** the investment in an Official Laboratory involves considerable capital costs for the purchase and renewal of equipment;

**Whereas** the running of an Official Laboratory involves significant disbursements and staff costs arising from the requirements of accreditation and participation in external performance assessment schemes, continuing staff training and method development and validation and equipment maintenance;

**Whereas** the scope of work otherwise to be undertaken in an Official Laboratory is restricted by Statute;

**Whereas** the work undertaken in an Official Laboratory must be cost effective and proportionate to need;

**Whereas** during the term of any rolling contract senior and other staff may retire or leave their employment;

**Whereas** it is important to be able to attract, secure and retain the services of experienced, able and competent staff;

**Whereas** employed staff acquire rights arising out of their employment and in particular rights in relation to security of employment and compensation in the event of loss of employment;

**Whereas** Public Analysts are to be recognised as the primary source of scientific advice to Food Authorities;

**Whereas** in addition to the skills, expertise, knowledge and understanding of Public Analysts and their staff there are other skills, knowledge, expertise and understanding necessary for the proper and effective enforcement of the provisions of the Food Safety Act, 1990;

**Whereas** Public Analysts and the other officials and staff of Food Authorities must work together harmoniously with the one objective of protecting consumers by ensuring that the provisions of the Food Safety Act 1990 are effectively enforced;

**Whereas** the planning and programming of Food Inspection Programmes requires that Public Analysts and the other officials and staff of Food Authorities must work together;

**Whereas** the requirement that foods should be sampled and analysed is to provide information to be used to protect consumers;

**Whereas** Food Authorities should be required to undertake a risk assessment of the food produced and sold in its area and to assign a level of risk to all food types and to all food premises;

**Whereas** the risk from contamination of food may be different from the risk of compositional or labelling irregularities requiring a different sampling regime to be adopted;

**Whereas** a committee composed of officials from the Food Standards Agency, Public Analysts and Officials of Food Authorities should be established to provide guidance on the risks and on the implementation of sampling programmes;

**Whereas** high risk foods should be sampled at least annually (the frequency determined according to the nature of production and control and may be greater in individual cases), medium risk foods at least every two years and low risk foods at least every three years;

**Whereas** at least 2.5 samples should be taken per 1000 head of population per annum until such time as formal national guidance defines sampling rates based on risk to the consumer both in terms of safety and of consumer protection;

it is concluded that Working Arrangements between the Food Standards Agency, Public Analysts and Food Authorities are necessary.

## **Introduction**

The Working Arrangements should be formalised as an Agreement between the legal person representing the Official Laboratory in and through which the Public Analyst delivers the service required to be delivered to the Food Authority, on behalf of the Food Standards Agency, and the Food Standards Agency. Only in exceptional cases should the form of the Agreement be subject to any local variations.

## **Appointment of Public Analysts**

If effective Working Arrangements are to be developed, Local Authorities acting as Food Authorities should be encouraged to appoint as their Public Analysts only Public Analysts working in the same Official Laboratory.

## **Nominated Contacts**

Nominated Contacts between the Food Standards Agency, the Food Authority and the Official Laboratory should include each Public Analyst appointed by the Food Authority, whether or not such Nominated Contacts are or include the legal person who represents the laboratory in respect of any Agreement with the Food Standards Agency.

## **Terms of an Agreement**

The formal contract of the Agreement should be a rolling, annually renewable, five year contract.

This is to recognise that investment in an Official Laboratory involves significant disbursements and staff costs arising from the requirements of accreditation and the participation in external performance assessment schemes, continuing staff training and method development and validation and equipment maintenance, also the considerable capital costs involved in the purchase and renewal of equipment and the rights acquired by staff:

A long term view, irrespective of the age of any legal person at the commencement of any term, must be taken if any Official Laboratory is to be assured of enabling the appointed Public Analysts to provide a consistent and cost effective service when necessarily constrained by statutory limitations, including statutory limitations designed to prevent conflict of interest.

## **Termination of Agreement**

In drawing up any contracts aimed at implementing these Working Arrangements, irrespective of and without prejudice to any and all considerations of redress which may apply under any Employment Contract Law and in relation to any acquired rights, whether or not those rights involve any transference of any undertakings, except if the laboratory loses its official status, the Termination of any Agreement should be by not less than 1 year written notice by either party.

## **Service Level Requirement - Sampling Rate**

The Service to be delivered by the Official Laboratory should be identified and agreed at least 3 months prior to the start of the Financial Year, which is to be 1st April.

The Sampling Rate must reflect and have been assessed in terms of all the relevant risks to the population served by the Food Authority and including any population likely to be affected by any and all matters relating to food, its production, manufacture, storage, distribution, supply and use, severally or jointly, within the area of the Food Authority, including the animal population, farmed and domestic, and must be a Sampling Rate which, together with agreed scopes of analytical service, has been accepted by the Food Standards Agency to be appropriate to the risk.

Subject to the scope of analytical service required, and with the consent of the Food Standards Agency, the Service Level may be expressed in terms of a sampling rate "x" per 1000 head of population reflecting human risk plus "y" per 1000 head of population to reflect agrarian risk, and until such time as an appropriate Sampling Rate based on risk has been determined, the Rate to be applied shall be a minimum of 2.5 samples per 1000 head of population per annum.

## **The Official Laboratory Budget**

Based on the agreed Service Level Requirement, sufficient resource will be provided from centrally administered funds to be paid regularly, frequently and in uniform proportions of the money budgeted annually so as to enable the Official Laboratory to meet the Service Level Requirement.

This will involve defining a yearly working budget and will take into account costs calculations based on the appropriate model agreed between the Local Government Management Board and the Federated Union of Managerial and Professional Officers.

At the present value of money the necessary resource should be not less than 50 pence per head of population of the appointing Food Authority, at the last census, per annum.

## **Reporting Times**

Although time cannot be made of the essence for enforcement analysis, guidance on good practice for reporting times must be specified in the Agreement.

These times must allow sufficient flexibility so as not to compromise the analyses, yet must ensure that the enforcement officers have sufficient time to discharge their investigations and administrative duties.

Possible target times and final reporting times for samples, where these terms have the meanings as under are set out below:

*Target time: the time, from the date of receipt, by which at least 80 per cent of samples of that category should be reported*

*Final reporting time: the time, from the date of receipt, by which at least 95 per cent of samples of that category should be reported. A~ samples not to be reported by that date should be notified to the Food Authority with the reasons for the delay and the expected date of reporting.*

	Target time	Final reporting time
Food Safety Act, 1990 samples	6 weeks	8 weeks
Food complaints	3 weeks	4 weeks
Agriculture Act, 1970 samples	6 weeks	8 weeks

## **Sample Throughput**

The flow of samples provided by the Food Authority will be such that the work of Public Analysts working in the Official Laboratory is maintained at an approximately constant rate week-by-week throughout the year.

## **Essential Support Services**

The Agreement with the Food Standards Agency should recognise the following services which the Public Analyst provides in support of his/her analyses.

- Method development
- Method modification
- Internal analytical quality assurance (AQA)
- Participation in collaborative trials
- Method validation - in house and within the APA VEMS system
- Maintenance of EN45000 accreditation (UKAS)
- Participation in appropriate external performance assessment schemes
- Representation on outside panels concerned with analytical methodology BSI, MAFF, WHO, LACOTS)
- Representation on outside panels concerned with safety (BSI, LACOTS)
- Maintenance of links with other Public Analysts for information exchange
- Membership of professional bodies
- Continuing professional development in relation to food law, analytical methods and technology
- Training of Official Laboratory staff
- Maintaining information systems within the Official Laboratory
- Providing statistical support relating to analytical results

## **Other Support Services**

The Public Analyst provides other services in support of the essential functions of the Official Laboratory and the Agreement should state clearly whether and at what point these services may trigger any charge or any additional charge to the Food Authority.

These services may include -

- Telephone advice on scientific matters not related to samples submitted, or to be submitted to the laboratory.
- Appearance in Court (subject to costs orders and preparation for court appearances).
- Provision of reports and /or statistical summaries for Committee or in response to specific local authority requests.
- Attendance at meetings with the Food Authority.
- Attendance at meetings on behalf of the Food Authority.
- Inspection of premises.
- Provision of urgent or out of hours services.

## **Availability of Scientific Advice**

Elected members of Food Authorities must have access to scientific advice which has been prepared by the Public Analyst and he/she should be able to present this advice directly to the elected members and be available for the interpretation of that advice

## **Performance Review**

A meeting should be held every six months between the Nominated Contact and representatives of the Food Authority to review the operation of the Working Arrangements.

The review will cover -

- The performance of the Public Analyst in relation to agreed parameters.
- The performance of the Food Authority in relation to agreed parameters.

## **Completed Samples**

The means for dealing with completed samples should follow a single specified, uniform pattern.  
Passing on of Samples

The 'passing on' of samples, as provided by the Statute, must involve formal notification to the Sampling Officer and formal arrangements should be made with the recipient Public Analyst or other Food Analyst. The 'passing on' of samples arises whenever the Public Analyst considers that he/she cannot perform an effective analysis under his/her direction.

Public Analysts should be encouraged to make better use of the Statutory 'passing on' arrangements but, if 'passing on' involves passing samples to laboratories which do not include a Public Analyst, it is important that Public Analysts should have every opportunity to establish the need to be able to extend the analytical facilities, skills or experience which should be available in the Official Laboratories so that they are able to perform an effective analysis.

The Sampling Officer should ensure that the Public Analyst is made aware whenever it is intended to take samples which will be subject to Statutory 'passing on' and the Public Analyst should ensure that the Sampling Officer is made aware of any extension of the analytical facilities, skills or experience available in the Official Laboratories so that the need to pass on such samples will no longer arise.

## **Other use of Official Laboratory facilities and staff time**

It is important to ensure that all the scientific facilities, including staff skills, available are used as effectively as possible.

To make efficient use of instrumental facilities and staff skills Public Analysts should be allowed to undertake other work on behalf of the Local Authorities which, in their capacities as Food Authorities, appoint them.

There should not be any impediment, other than the need to avoid conflict of interest, including conflict of time interest, to Public Analysts undertaking work for other parties, whether other Local Authorities and other public bodies, including Government Departments, food and other businesses and the general public, in addition to their work as Public Analysts, provided that such work does not interfere with Official Laboratory work and provided that appropriate costs

are recovered for such work and services provided, which always are to be consonant with Statute Law and the Agreement with the Food Standards Agency.

It is anticipated that the Agreement with the Food Standards Agency will recognise the instrumental and other bench facilities required to be provided by the laboratory to ensure that proper and effective use is made of the staff time and the analytical and the interpretative skills needed are available to supply the needs of the Food Authority.

In the event that a Food Authority fails to maintain a uniform sampling programme and so does not make effective use of the facilities provided and available, the Public Analyst will ensure that all staff time and facility time required by the Agreement to be available, but which in consequence is not used for its intended purposes, is devoted to appropriate Essential Support Services, accounting such time to the Food Standards Agency. Where any sampling programme achieved results in such unequal distribution of workloads that over-time has to be worked by staff; any additional costs incurred should be charged to the Food Authority.

This appendix presents the Association's latest draft of a position statement on Best Value.

**Best Value and the Public Analyst Service – Draft Position Statement**

**Executive Summary**

The Association of Public Analysts (The Association) is supportive of the process of Best Value. It is, however, concerned that in relation to the provision of statutory and non statutory scientific services, some authorities may use it simply as a cost cutting exercise, rather than undertaking the radical reviews and undergoing the fundamental policy shifts that are called for. It is the Association's view that the scientific competencies present in Public Analyst Laboratories are currently under-utilised both in the provision of food law enforcement by local authorities and as an aid to allow them to ensure that Best Value is being achieved in other areas, a view that was echoed in the Turner Report on the Review of Public Analyst Services in England and Wales.

The use of Service Level Agreements developed in partnership between Public Analyst Laboratories and their client departments could assist in ensuring that Best Value is achieved.

The Business Excellence Model can provide a framework to enable Public Analyst Laboratories to further improve their performance and develop partnerships with clients.

**The Public Analyst Service as part of an Integrated Food Law Enforcement System**

As part of a fundamental policy review local authorities need to examine the way in which they carry out food law enforcement in the light of making the best use of resources available to them. Viewing Public Analysts, their laboratory facilities and scientific expertise as an external testing house whose services are to be bought piecemeal is unlikely to allow them to provide best value.

Examining the cost of the provision of a Public Analyst Service in isolation is not the purpose of a best value review. "Joined up" thinking is required to assess the whole of the enforcement system in terms of effectiveness, quality, efficiency and economy. Any review should consider, amongst other things, if the authority is making optimum use of the scientific competencies available to them through their public analysts, if any screening laboratory is truly cost effective and are the different players in the system working together as a team? In two tier authorities this will include both tiers of local government. In some authorities specialist teams of different professionals working together in areas such as food safety and consumer protection already exist allowing effective inter-disciplinary cross-fertilisation and maximising the use of resources.

## **The Public Analyst Service as part of a Best Value review mechanism**

There are many areas where involvement of the Public Analyst Service would improve the value of service provision, either in simple financial terms or in the more complex arena of Best Value. Hilary Armstrong has defined Best Value as "the duty that local authorities will owe to local people to provide quality services at an acceptable cost". To give two simple examples: if the nutritional quality of school meals is not monitored and number of coats of paint applied to council house window frames not measured, how can the quality of these services be assessed? A Public Analyst Laboratory can be an accessible, quality provider of such services. In the UK the expenditure on scientific food law enforcement work performed in Public Analyst Laboratories is so small that halving or doubling the service provision will have negligible impact on the cost to the Council Taxpayer but the potential impact on food safety and quality of such changes would be considerable.

### **Benchmarking**

For benchmarking to yield long term improvements an understanding of processes and practices coupled with effective organisational learning is required. Cost driven benchmarking will not be productive in the long term. The Public Analyst Service in the UK is small in terms of people and numbers of laboratories. It is effectively networked and has suffered from severe underfunding. Because of this it is unlikely that any benchmarking exercise carried out within the UK would lead to the fundamental review necessary for successful benchmarking. The Association would welcome the opportunity to engage in competent international benchmarking with food law enforcement laboratories in other countries. Within the UK, benchmarking between food law enforcement providers (i.e. Trading Standards, Environmental Health, and Public Analyst Laboratories combined) is likely to be more productive than benchmarking individual components of the service. The Association supports the view given in the Turner Report that it should be a task for the Food Standards Agency to consider the application of benchmarking.

### **The Business Excellence Model (BEM)**

This model has been put forward as an approach to taking Best Value forward, referring as it does to the fundamental principles of good management. The Society of Chief Trading Standards Officers has produced a guide which may be used by Trading Standards Departments when they undertake Best Value reviews. The guide emphasises partnership, communication, quality and Service Level Agreements when working with service providers. The Association is concerned that in some instances, when self-assessment exercises are undertaken as part of a BEM review, undue weight may be given to the cost of external service providers rather than quality and working in partnership. By focusing on an easily quantifiable area: the cost of what is seen simply as "analysis", the more fundamental questions of why activities are carried out and how the service's goals relate to the identified needs of the community fail to be addressed.

The Business Excellence Model is applicable to Public Analyst Laboratories. With fine tuning to adapt it to the service provided as partners within the enforcement system it could provide a tool to examine the effectiveness of laboratory organisation and management. Many of the criteria of BEM have already been embraced by the Association and its individual members. It is active in external organisations, supports training and continuing professional development and,

where able, individual members play a part in developing local authority strategies. The processes within laboratories - analysis and examination - are increasingly accredited and performance is measured by participation in external proficiency schemes. A number of Public Analysts and their staff have business qualifications such as MBAs.

### **Service Level Agreements**

Where Service Level Agreements (SLA) embrace a partnership approach they can be a useful tool in both helping to provide best value and allowing service provision to be monitored. This permits objective reviews to be carried out. Contractual arrangements which place no obligations on the client that are misleadingly described as SLA are counter-productive because, whilst there may be apparent financial benefits in the short term, in the longer term the provision of public protection and effective food law enforcement is likely to suffer. Service Level Agreements can provide the necessary framework for integration and co-operation.