

The Inspection of J.E. Tudor & Sons Ltd by the Meat Hygiene Service

- 9.1 While the Outbreak itself was dominated by the focus on the butcher's premises of John Tudor & Son, I wanted to check if there was anything further down the food chain that could have contributed to it. What I found led to an abattoir and the inspections of it by the Meat Hygiene Service ("MHS") becoming a significant strand of the Inquiry's work.
- 9.2 This chapter considers in detail the Abattoir operated by J.E. Tudor & Sons Ltd at Treorchy (the "Abattoir"), and the role of the MHS in enforcing food safety legislation in relation to it. The word "slaughterhouse" may on occasions be used instead of "abattoir", which reflects the wording in legislation and in evidence submitted to the Inquiry.
- 9.3 The significance of the Abattoir is explained in Chapter 5. The results of microbiological testing and typing confirmed the same strain of *E.coli* O157 in cattle faeces, on raw meat recovered from John Tudor & Son's premises, on cooked meats recovered from schools, and in people who were infected. Given that cattle from the Farm (Chapter 5 refers) were slaughtered at the Abattoir in the days and weeks before the Outbreak, and that it supplied John Tudor & Son with raw meat, it can therefore be inferred that the organism passed through the Abattoir to John Tudor & Son and then on to individuals.
- 9.4 The Abattoir owned by J.E. Tudor & Sons Ltd was located in a very old building. First constructed around 1860, it was located near the centre of Treorchy, which is a small town in the Rhondda Valley. The Abattoir was owned and operated initially by William (Billy) Tudor. From approximately 2001 onwards, its operation was taken over by his son, Jonathan. Jonathan Tudor is a cousin of William Tudor who, as explained in Chapter 6, operated John Tudor & Son as a catering butcher in Bridgend.
- 9.5 As explained in my introduction, I did not designate J.E. Tudor & Sons Ltd as a core participant because the focus of my investigation was the inspection of the Abattoir by the Meat Hygiene Service. However, in advance of the oral hearings, Jonathan Tudor, the manager of the Abattoir at the time of the Outbreak, received a copy of all the relevant material provided to the Inquiry by the MHS and was given an opportunity to respond. He chose not to.
- 9.6 Butchers have to design and operate their processes on the assumption that the meat they receive from abattoirs and other sources may contain *E.coli* O157. However, an abattoir's processes also need to minimise the chances of meat infected with *E.coli* O157 being supplied up the food chain. Two steps are particularly important:
- (i) The hide must be removed carefully to prevent the outside of it coming into contact with the animal's raw flesh.
 - (ii) The gastro-intestinal tract, which hosts the *E.coli* O157 organism, must also be removed carefully to prevent its contents contaminating the surface of the carcass.
- 9.7 The Inquiry called for, and received, a considerable quantity of material about the operation of the Abattoir over a long period and the enforcement steps taken by MHS. The MHS was responsible for enforcing the food hygiene regime set out in legislation.

- 9.8 The central purpose of food hygiene legislation is to minimise the risks of unsafe meat progressing up the food chain. At the risk of stating the obvious, legislative requirements are not optional. They need to be complied with by those, such as J.E. Tudor & Sons Ltd. Bodies, such as the MHS, which are responsible for enforcing such requirements, also need to carry out the functions ascribed to them. This Chapter examines the methods of enforcement used by the MHS in the case of the Abattoir.

Prior to the Establishment of the Meat Hygiene Service

- 9.9 In 1991, an EU Directive had the effect of making a common market for meat. The Fresh Meat (Hygiene and Inspection) Regulations 1992 ("the 1992 Regulations"), implemented that Directive into UK law. At that stage, the competent authority for implementation of the legislation was the Ministry of Agriculture, Fisheries and Food ("MAFF"). The responsibility for licensing decisions in Wales rested with the Secretary of State for Wales.
- 9.10 It was recognised in the 1992 Regulations that it might take some time for businesses to make the changes required to satisfy the new legislative requirements. To that end, the Regulations included transitional provisions. The effect was to exempt certain types of business from the full rigour of the new requirements for a period of time. That applied to the requirements relating to the structure of the building. It did not apply to the new requirements governing hygiene practices, which had to be complied with by all businesses from the date the 1992 Regulations came into force.
- 9.11 Pursuant to the 1992 Regulations, decisions made at Ministerial level in respect of licensing were subject to appeal to a specialist Tribunal. At that stage, the daily responsibility for official control remained with local authorities. They operated through a combination of Official Veterinary Surgeons ("OVSs") and Meat Hygiene Inspectors ("MHIs"). The OVS was responsible for all of the official controls in a slaughterhouse and was assisted by the MHIs. MHIs were permitted to assist the OVS with all tasks except ante-mortem inspection. Further, if anything unusual was found by a MHI at the post-mortem stage, a referral had to be made to the OVS.

The Establishment of the Meat Hygiene Service

- 9.12 The MHS is now an Executive Agency of the Food Standards Agency ("FSA"). It had operated as an Executive Agency of the Ministry of Agriculture, Fisheries and Food, the predecessor to what is now the Department for Environment, Food and Rural Affairs. The MHS describes itself as "...first and foremost an enforcement body and its primary function is the full and proper enforcement of hygiene rules...in licensed meat premises."
- 9.13 On 1 April 1995, the MHS took over meat inspection duties at abattoirs from local authorities. From its inception, the MHS was staffed by MHIs who came from local authorities and OVSs, the majority of whom were employed on contract from local veterinary practices.

The Fresh Meat (Hygiene and Inspection) Regulations 1995 (“the 1995 Regulations”)

- 9.14 The 1995 Regulations came into force on 1 April 1995 and gave effect to Council Directive 91/497/EEC. It amended and updated a previous Directive relating to health problems affecting intra-Community trade in fresh meat to extend it to the production and marketing of fresh meat. Concerns had been identified by the European Commission’s auditors. The European Commission took formal infraction proceedings against the UK for failure to implement Community Law correctly. In addition, two specific outbreaks had given greater impetus to the need to change and drive up standards. The outbreak of *E.coli* O157 in Scotland had occurred, as had BSE, or as it is more commonly known, “mad cow disease”.
- 9.15 The basic requirement was for slaughterhouses to be licensed by the relevant Minister. Unlike Butchers’ Licensing, that did not involve periodic re-applications by slaughterhouses. A licence, once issued, was permanent, but could be subject to revocation. If an application for a licence was refused, there was the possibility of an appeal to a specialist Tribunal set up under the 1995 Regulations. The Tribunal’s jurisdiction was not simply one of review. It could substitute its view for the appropriate decision in the event that it disagreed with the Minister’s decision.
- 9.16 For a business such as the Abattoir in question, three requirements needed to be met:
- (i) The construction, layout and equipment used at the premises had to meet the detailed requirements set out in the Regulations.
 - (ii) The method of operation had to meet specified requirements.
 - (iii) The meat processed had to be inspected post-mortem, and if rejected, should not be used.
- 9.17 The method of operation requirements were contained in Schedule 7 of the 1995 Regulations.
- 9.18 In relation to construction, layout and equipment, the details of the requirements that needed to be met were dealt with in Schedule 5 of the 1995 Regulations. Schedule 5 applied to low-throughput, that is, handling relatively small numbers of animals, slaughterhouses such as that in Treorchy. However, the possibility of obtaining exemptions from some of the stricter requirements relating to construction, layout and equipment continued from the 1992 Regulations. That transitional position was initially until 1 January 1996, but was then extended by subsequent Regulations to a later date at the discretion of the Minister. This applied in the cases of slaughterhouses where the operator had begun to bring the premises into compliance with the requirements and had demonstrated to the satisfaction of the Minister that, for reasons not attributable to him, the requirements could not be met by 1 January 1996.

- 9.19 Regulation 11 related to inspection and a system of Health Marking. The purpose of the Health Marking system was set out in Regulation 11(2) which provided that where fresh meat was intended for sale for human consumption, it must have been passed fit for human consumption following ante and post-mortem health inspections, and complied with the requirements of the Regulations, and been Health Marked. Regulation 11(5) provided that the Health Mark should be applied by persons acting under the responsibility of an OVS, and that no other person should apply the Health Mark or possess or use the equipment for applying the Health Mark.
- 9.20 Accordingly, the 1995 Regulations made provisions which required focus on both the premises and the practices operated at slaughterhouses. Because the microbiological cleanliness or safety of the meat produced by a slaughterhouse could not be determined as a result of the visual inspection, food safety could not be guaranteed. The Regulations were designed rather to ensure that the premises and practices minimised the risks of unsafe food being produced.

Duties and Enforcement

- 9.21 Regulation 8 of the 1995 Regulations provided detail of the functions of the OVS and MHI.
- 9.22 The OVS was responsible for:
- (i) The ante-mortem health inspection of animals in accordance with Schedule 8 of the Regulations.
 - (ii) The post-mortem health inspection of slaughtered animals in accordance with Schedule 10.
 - (iii) The Health Marking of fresh meat.
 - (iv) Securing the observance of the requirements relating to the premises and the practices as set out in the Schedules, including Schedules 5 and 7.
- 9.23 The MHIs acted under the supervision and responsibility of the OVS. Regulation 8(4) made it clear that they should only make initial checks on animals and assist with purely practical tasks.
- 9.24 Regulation 20 was specifically entitled “Duties of the occupier”. It set out a variety of precise and express duties, including duties on the occupier/operator to:
- (i) Keep an adequate record of the number of animals received into the premises, and the amounts of fresh meat despatched from the premises during each week.
 - (ii) Take all practicable steps to secure compliance by any person employed by him or by any person invited onto the premises with the provisions of the Regulations.

- (iii) Ensure that an OVS, Inspector or Veterinary Officer is provided with adequate facilities so as to enable him to carry out his duties under the Regulations and that he is given such reasonable assistance and access to records as he may from time to time require for that purpose.
 - (iv) Take all necessary measures to ensure that, at all stages of production, the requirements of the Regulations are complied with and carry out checks (including any microbiological checks the Minister may require) on the general hygiene of conditions of production in his establishment to ensure that equipment and, if necessary, fresh meat, comply with the requirements of the Regulations.
- 9.25 Mr Peter Hewson, Acting Veterinary Director of the FSA, suggested in his statement to the Inquiry that the 1995 Regulations were less than satisfactory. The implication appeared to be that this made the task of the MHS more difficult. The particular issue he identified was what he characterised as a blurring of the lines of responsibility for the production of safe food as between the operator and the OVS.
- 9.26 I do not consider that to be an accurate or relevant characterisation of the 1995 Regulations or their effect. It is not accurate because the duties and functions on those involved are clearly and expressly set out in the 1995 Regulations. As appears from the terms of the 1995 Regulations, the operator has to comply with the requirements in relation to the premises and the practices operated at the slaughterhouse. It is the OVS's job to take whatever steps are appropriate and necessary to ensure that the operator does so. I have seen no evidence to suggest that there was any real confusion in the case of the Abattoir.
- 9.27 In fairness to him, in his oral evidence, Mr Hewson accepted that, if there was any doubt about roles and responsibilities, Regulation 20 put the matter beyond any conceivable doubt; and that that Regulation provided a clear and express duty or responsibility on the operator. It is also to be noted that Mrs Jane Downes, the Veterinary and Technical Director of the MHS, accepted in oral evidence that the 1995 Regulations, and subsequent Regulations that refined and added to them, were a perfectly workable scheme for seeking to minimise the risk of unsafe food entering the food chain.
- 9.28 The ultimate sanction for failure to comply with the requirements in the 1995 Regulations was revocation of the operator's licence. This was dealt with in Regulation 5. It conferred a discretion on the relevant Minister to revoke in two relevant circumstances:
- (i) "the conditions of hygiene at those premises are inadequate and the occupier has failed to take the necessary measures to make good the shortcomings within such period as the Minister may specify" ; or
 - (ii) "any requirements of these Regulations as to hygiene has not been complied with and inadequate or no action has been taken to ensure that a similar breach does not occur in future."

- 9.29 It is to be noted that in relation to the second of these grounds the Minister could properly have taken into account persistent past breaches; particularly if those breaches were of a similar or identical nature.
- 9.30 One of Mr Hewson's principal concerns about the regime was that the Tribunal to which revocations of licences could be appealed by an operator was readily satisfied once the operator had rectified specific identified problems. At paragraph 9 of his statement Mr Hewson stated that the Tribunal tended to favour the operator, where it was shown that the specific problems identified at the refusal visit had been addressed. Mr Hewson further stated in oral evidence that the plants would change their company name, re-apply for a licence, and on the day of re-applying, do just enough to comply.
- 9.31 I am unconvinced by Mr Hewson's argument. It is clear that the second of the legislative grounds for revocation would have enabled those considering it to rely on persistent, similar breaches on compliance. The solution to whatever perceived difficulties there might have been with the Tribunal's decisions was to operate an effective enforcement policy. If that had been done in a way that moved from initial light-touch enforcement to increasingly serious measures, an operator would either have dealt with the source of the repeated non-compliance, or a clear picture would have emerged of a refusal or failure to take the necessary steps. That picture could then have been used as the foundation for an application for revocation that could properly have been defended before a Tribunal. It should have been possible to ensure that devices, such as changes of name, were not used abusively to circumvent the system.
- 9.32 It is also to be noted that in 2001, the enforcement regime was given new and additional tools. The Meat (Enhanced Enforcement Powers) (Wales) Regulations 2001 provided an additional power, short of revocation, to suspend an operator's licence. They also provided a new power for the OVS, short of suspension, to give notice to the operator when it appeared that:
- (i) Any of the requirements of the Regulations as to hygiene were being breached, or:
 - (ii) Adequate health inspection in accordance with the Regulations was being hampered.

The Meat (Hazard Analysis and Critical Control Point (Wales) Regulations 2002 ("the HACCP Regulations"))

- 9.33 The HACCP Regulations gave effect in Wales to European Commission Decision 2001/471/EC, by amending the 1995 Regulations. The purpose and effect was to introduce a requirement for HACCP principles to be applied in slaughterhouses, as an additional means of minimising the risks of unsafe food being produced by slaughterhouses.

- 9.34 Regulation 3(7) imposed a number of additional duties on the operator, which were additional to those in Regulation 20 of the 1995 Regulations. The operator of any licensed slaughterhouse was required to conduct regular checks on the general hygiene of conditions of production in their premises by implementing and maintaining a permanent procedure developed in accordance with a number of principles. These principles were to:
- (i) Identify any hazards that must be prevented, eliminated or reduced to acceptable levels.
 - (ii) Identify the critical control points at the step or steps at which control is essential to prevent or eliminate a hazard or reduce it to acceptable levels.
 - (iii) Establish critical limits at critical control points which separate acceptability from unacceptability for the prevention, elimination or reduction of identified hazards.
 - (iv) Establish and implement effective monitoring procedures at critical control points.
 - (v) Establish corrective actions when monitoring indicates that a critical control point is not under control.
 - (vi) Establish regular procedures to verify whether the measures outlined above are working effectively.
 - (vii) Establish documents and records commensurate to the nature and size of the business to demonstrate the effective application of these measures and to facilitate official controls.
- 9.35 The HACCP Regulations came into force for “small meat establishments” such as the Abattoir on 7 June 2003. They required operators to apply the HACCP principles set out in Regulation 3(7). Thus, from that date in June 2003, Parliament had decided that operators needed to comply with the HACCP Regulations. This process was not introduced overnight. There had been substantial warning that the HACCP Regulations would be introduced as a legislative requirement in relation to small slaughterhouses such as the Abattoir, given that the Commission Decision was dated 8 June 2001, and larger establishments had been subject to the Regulations since June 2002.
- 9.36 Mr Hewson again suggested in his statement and in his oral evidence that the HACCP Regulations were not easy to implement or enforce.
- 9.37 His first point was that a difficulty arose because the HACCP Regulations were being introduced in a legislative environment where operators did not have, what he described as “full and unambiguous responsibility for the production of safe food”. I do not consider that this is any more accurate or relevant than his suggestion that the perceived blurring of roles hampered effective implementation of the legislation. The principles set out in the HACCP Regulations were well-established HACCP principles. There should have been no insurmountable difficulty in taking all necessary steps to enable the industry, with such assistance as was necessary from, for example, the MHS/FSA, to comply with them in an effective manner and on time.

- 9.38 Mr Hewson's second suggestion, made in oral evidence, was that, to have enforced the law as enacted by Parliament would have had the effect of shutting down the meat processing industry. As he put it in answer to questions, "it depends whether you want an industry or not. We could have just implemented it to the letter of the law, as you suggest, and import our meat". I do not support that expression. I do not accept that this would have been the position and it is of concern to me that that should have been the position of someone as senior as Mr Hewson. Mr Hewson himself has explained that the answer was given in the heat of the moment and that it was ill-judged and inappropriate.
- 9.39 My conclusion is that it was for the FSA, as the policy makers, and the MHS as its enforcement arm, to take whatever steps were necessary to educate and train, and then enforce the requirements that Parliament had decided should be in place. That could, and should, have occurred in advance of the date on which the requirement came into force to a level that operators were in a position to comply with the legislation either on, or shortly after, the date set by Parliament.
- 9.40 Having said this, it is evident that some steps were taken to this effect. Mrs Downes stated that the MHS did ensure that their staff were properly trained, explaining that MHS OVSs were given an hour a month with small premises to discuss HACCP with the operator and give advice and some training. Training courses were run in the period up to July 2003. Mrs Downes stated that she personally wrote to all premises in July 2003 informing them that the time had come for HACCP to be implemented. However, it is evident from the difficulties of enforcement and the scale of non-compliance in the months and indeed years after the date the requirements came into force that the preparatory work had been inadequate.
- 9.41 However, in relation to the Abattoir, the documents indicate that some guidance and explanations were, in fact, given to Jonathan Tudor in advance of the 1 June 2003 implementation date applicable to him. Such guidance included the following:
- (i) 10 April 2002: Guidelines on HACCP by the OVS, Mr David Phillips.
 - (ii) March 2003: HACCP implementation discussed.
 - (iii) May 2003: a meeting with Jonathan Tudor to go through the HACCP legislation.
 - (iv) May 2003: Jonathan Tudor states that he does not need help with the implementation of HACCP.
- 9.42 Despite the assistance provided, nothing came of it. As explained later in this Chapter, it did not lead to the development of an effective HACCP plan by the required date or indeed, within a reasonable timescale thereafter.

“Light touch” or Non-enforcement of HACCP

- 9.43 Mr Hewson stated that there was a deliberate FSA policy to allow operators longer than the legislation allowed on its June 2002/2003 dates to comply with the legislative requirements. He confirmed that in practice, some operators were allowed until 2006 when the 2006 EU Regulations came into force to apply HACCP properly. The other MHS witnesses also referred to a policy of “light” or non-enforcement of the HACCP Regulations.
- 9.44 The documents produced by the MHS after the oral hearings confirmed the existence of such a policy. This policy was the FSA’s. It was reflected in instructions to the MHS. In the initial period, the policy was that the MHS were to encourage and advise small establishments on HACCP but not take any formal enforcement action. This period lasted until the end of February 2004. On 27 February 2004, the policy changed. In relation to small establishments, formal enforcement action was to be taken but only in relation to establishments which had made no effort to implement HACCP requirements. For those which were assessed to have made such an effort, encouragement and cajoling should continue with informal enforcement action, verbal or by letter, being the limit of the enforcement action. The policy was reflected in a new Chapter 5 of the MHS Manual, introduced in February 2004. This was then amended in May 2004. At this stage, Chapter 5 continued to suggest a light touch approach where in summary, genuine efforts at compliance were being made. However, it also made clear that for others the enforcement hierarchy should be followed. In fact, it appears from the MHS Annual Report for 2004/2005 that that hierarchy was not followed to a point beyond Improvement Notices in any case in that period.
- 9.45 Mr Hewson sought vigorously to defend this policy.
- 9.46 His first reason was that the HACCP Regulations did not add much, or were not perceived as adding much to the current legislation. He stated that in regulatory terms, the prescriptive nature of the 1995 Regulations provided for production of meat as safe as possible and, for slaughterhouses, HACCP did not really add a great deal, except to transfer the responsibility for the production of safe meat to the operator away from the OVS. Mr Hewson stated that if the introduction of HACCP was not critical to the industry, then it should be given time to do it properly.
- 9.47 This seems to me a surprising and unfortunate position. It appears to suggest a deliberate choice by the MHS not to press ahead as quickly as possible with measures that Parliament had decided were necessary for the purpose of enhancing the prospects of safe food being produced by slaughterhouses. The necessity of the HACCP Regulations was a matter for Parliament, whose decision should have been respected and implemented, and not for the MHS whose sole function was to organise and put in place an effective enforcement regime. Further, and in any event, I do not agree with the suggestion that the requirements of the HACCP Regulations did not add materially to the existing regime. On the contrary, those Regulations should have been, and were intended by Parliament to be, an important, indeed a central, part of a new enhanced regime.

- 9.48 Mr Hewson's second reason was that the operators needed to be allowed a period of understanding how to comply because the legislation came in very quickly. However, it is evident from the dates given above that, by the time the HACCP Regulations became applicable to slaughterhouses such as the Abattoir, over two years had elapsed since the relevant Commission Decision to which they gave effect, and over a year had elapsed since they had been brought into effect for larger establishments.
- 9.49 Mrs Downes' recollections as to what occurred, and her position in relation to the legislation, were different from those of Mr Hewson. She accepted that there could be no sensible excuse after June 2003 for low-throughput slaughterhouses not to comply with the additional requirement that Parliament had chosen to be in place to minimise the risk to food safety. However, her recollection, which documentation subsequently indicated to be broadly accurate on this point, was that the guidance at that point from the policy division at the FSA was to start to encourage the first step of the hierarchy of enforcement and to take a light touch with enforcement.
- 9.50 After Mrs Downes had given her oral evidence, the Inquiry received from a source other than the MHS, a copy of an internal MHS audit report relating to the implementation of HACCP principles. It is both unfortunate and very disappointing that this report was not provided to my Inquiry by the MHS in the first place. That is particularly so as Mrs Downes was the sponsoring director of the report. The revelation of the document and the references to a policy of only the lightest touch of any real enforcement, prompted further requests for information from the Inquiry to the MHS. This resulted in Mrs Downes providing a further statement, which was accompanied by 84 exhibits. Mrs Downes apologised for the omission, which I note and accept.
- 9.51 One of these internal audit reports was an audit report conducted at the end of 2003 and the beginning of 2004 by the MHS's Verification and Audit Unit entitled "A comparison of HACCP based controls in plants and the levels of implementation reported by the OVS".
- 9.52 The 2003/2004 MHS internal audit had been undertaken to establish levels of operator compliance with the requirement of HACCP based controls (introduced by the HACCP Regulations) and to compare them with levels of implementation reported by OVSs. It presented a concerning picture in relation to small plants (such as the Abattoir):
- (i) Only 52% of the small plants were even reported by OVSs as having HACCP-based controls fully in place.
 - (ii) Of this 52% figure, the auditors concluded that 64% of OVSs in small plants had declared that HACCP-based controls were fully in place when in fact they were not.
 - (iii) There was no assurance that OVSs had sufficiently advanced knowledge of HACCP to make the required judgements.

- (iv) Instructions to OVSs on the use of formal enforcement to achieve adequate HACCP-based requirements had not been clear. That had caused some OVSs to hold back from initiating formal enforcement action; and had created an impression with some operators that the MHS/FSA would not formally enforce the requirements of the HACCP Regulations.

9.53 A series of recommendations were made. These included the following:

- (i) MHS Area Managers should take action to ensure that OVS assessments of HACCP-based controls are consistent and, in summary, well founded.
- (ii) Where HACCP-based controls are assessed as not in place, as was the position in the Abattoir, MHS Area Managers should determine the reasons. Regional Veterinary Advisors should provide support in initiating an appropriate programme of enforcement.
- (iii) This recommendation was stated to rely on "prior clarification of the enforcement policy for the... HACCP Regulations". Once that policy had been agreed between FSA and MHS a detailed, clear statement of the MHS's position on enforcing operator compliance should be included in the general MHS Enforcement policy. In addition, clear in-depth procedural guidance for the OVS should be given on formal enforcement for the most likely situations where an operator's HACCP-based controls could be judged non-compliant.
- (iv) Additional training should be given if necessary to MHS staff involved in providing support to OVSs in the enforcement of HACCP-based controls. The MHS needed to establish whether OVSs had sufficient capabilities to deal with HACCP and, if not, to deal with that.
- (v) A co-ordinated MHS action plan needed to be formulated to address the findings and recommendations of the report.

9.54 Over the following months, an action plan was developed and steps were taken to follow these recommendations.

9.55 A second internal audit carried out at eight premises, seven of which were large and only one small, by teams of FSA Veterinary Meat Hygiene Advisers auditors in December 2003 and January 2004 also revealed results of concern. The findings, summarised in a table at section 5 of the report, indicated that at no plant was the HACCP plan satisfactory and that at no plant was the operator implementation satisfactory.

9.56 This report contained similar recommendations to the first, including that:

- (i) The MHS consider how the knowledge and understanding of HACCP by OVSs could be improved.
- (ii) The FSA provide to MHS and its staff clarification of its policy on enforcement of HACCP.

- 9.57 Concerns as to the lack of effective implementation of the HACCP Regulations was also raised in the FSA's annual 2003-2004 audit of the MHS. That audit had expressed concern at the "MHS's lack of effective action and, more fundamentally, the underlying failure of many operators to take responsibility for their own operations". The MHS's response to this finding was to point out that the FSA had acknowledged that this was a difficult area; and to state that achieving full operator compliance required "a joint approach to improve education and understanding by the operator".
- 9.58 I do not underestimate the challenge of securing and enforcing compliance with the HACCP Regulations. It is also right to record that the MHS did take a number of steps in an effort to prepare both the industry and the enforcers, notably the OVSs, for the introduction of the HACCP Regulations. However, this aspect of the MHS's work, in conjunction with the FSA, is of considerable concern.
- 9.59 First, I do not consider enough was done to ensure that the HACCP Regulations could be implemented and enforced in a timely manner. As indicated above, some steps were taken. The FSA has acknowledged that the scale of the challenge involved in the implementing and enforcing the HACCP Regulations was underestimated. Most, if not all, of the reasons relied on by the MHS as illustrative of the difficulties of making progress with enforcement after introduction should have been evident before introduction. In particular, more than the usual preparation and training would be needed; and a clear approach to what was required in practice would also need to be developed. It should also be noted that, in relation to small abattoirs, the MHS and FSA had an additional year in which to prepare and to benefit from the first year's implementation in large slaughterhouses.
- 9.60 In all the circumstances, as events clearly demonstrated after introduction, the preparations for introduction were inadequate. They were inadequate in relation to levels of understanding, training and preparation at small slaughterhouses such as the Abattoir. They were also inadequate in relation to the understanding, training and preparation of the OVSs who were to be the front line enforcers of the new regime.
- 9.61 Second, the failure to prepare adequately, placed the FSA and the MHS in a very difficult position. The result was a deliberate decision by the FSA, giving effect by instructions it issued to the MHS, to ignore the dates by which Parliament had decided the new requirements in the HACCP Regulations should be implemented.
- 9.62 Despite the evident difficulty of the position, it then took far too long for the combination of the FSA and the MHS to manage the problem. Again, I note that some steps were taken but they were inadequate to provide a solution within an acceptable timeframe. Compliance was not secured in practice, it appears, for a significant section of the industry, for a period not of weeks or even months, but of years, indicated by the history of HACCP implementation, or more accurately non-implementation, at the Abattoir. The failure is made all the more serious by the fact that the MHS's own internal audits and the FSA's audits of the MHS in 2003/2004, clearly identified the scale of non-compliance and the nature of the difficulties.

2006 Onwards

- 9.63 In January 2006, this sector became subject to new legislative requirements, the Food Hygiene (Wales) Regulations 2006 (“The 2006 Regulations”), after new EU Regulations (Regulation (EC) No 852/2004) were introduced. These required the operator to demonstrate that the establishment was complying with all the requirements of food law.
- 9.64 Pursuant to the 2006 Regulations, all previously licensed premises were subject to a review in order to ascertain whether they were suitable for compliance with the Regulations. Although the MHS concluded that the Abattoir was not in a position to make a successful application under the new Regulations, in the event no application was made. The Abattoir surrendered its licence with effect from 1 February 2006.
- 9.65 Mr Hewson stated that of the premises visited; only approximately 70% were approvable at the first visit. He stated that the premises were afforded three months to carry out improvements with an extension of three months, but that if they did not achieve compliance after six months, they were refused a licence.
- 9.66 Mr Hewson attached considerable weight to the 2006 Regulations. The suggestion was that, before their introduction, the MHS was seriously hampered in effectively conducting its enforcement duties; and that the 2006 Regulations made all the difference. I do not accept the argument that there was a sea change. The fact that the 2006 Regulations were on the horizon could not, and should not, have provided a legitimate basis for non-implementation of the then current regime. I consider that Mr Hewson overstated the true significance and impact of the 2006 Regulations; and that there was a great deal that the MHS could, and should, have done to ensure that the Abattoir complied with the relevant food safety requirements extant prior to the 2006 Regulations.

Enforcement in Practice at J. E. Tudor & Sons Ltd

The 1990s

- 9.67 During the 1990s, the licensing decisions were taken by the relevant Minister, advised by officials. Those who provided the advice or had input into it included Regional Meat Hygiene Advisors (“RMHA”) and Veterinary Officers (“VO”). Mr David Thomas was a RMHA and gave evidence to the Inquiry about the licensing of the Abattoir at that time.
- 9.68 His evidence was that RMHAs were told that provided at the final inspection a slaughterhouse met minimum structural conditions and hygienic slaughter could be observed at that time, then a licence was to be recommended. He stated that if the appraisal of the premises showed that any necessary structural works could be undertaken to allow it to be licensed as fully compliant with the legislative requirements, then the operator could be licensed and given a temporary derogation from those structural requirements. In that way, the slaughterhouse could continue to operate while the work was being undertaken.

- 9.69 His view was that the legislation was interpreted in a way that would allow establishments to be approved. He agreed that it was a worrying state of affairs. He stated that he thought he would have passed on his concerns to his senior colleagues, but that he was not aware of any feedback as inspectors were essentially told to get on and do their job as per the policy at the time.
- 9.70 Mr Thomas's evidence as to the approach in place at that time appears to be borne out by the history of the licensing of the Abattoir.
- 9.71 In March 1992, J.E. Tudor & Sons Ltd was operating the Abattoir as a full-throughput slaughterhouse. In relation to slaughtering, Billy Tudor had a stated annual throughput of 700 cattle, 7000 sheep and 1500 pigs. Billy Tudor applied for the temporary exemption (derogation) from the detailed structural requirements on 23 March 1992. He expressly stated in his application that it was not his plan to update his existing premises. He explained in his application that he was searching for a suitable site on which to build a new slaughterhouse.
- 9.72 Mr Thomas stated in oral evidence that at that time, Billy Tudor was adamant that he wanted to continue with his current throughput. In terms of licensing it as a full-throughput slaughterhouse, however, Mr Thomas explained that "it didn't have any chance at all" of meeting the structural requirements. The situation was such that Billy Tudor could only comply if he moved to totally different premises, as yet un-located, and obtained planning permission for those premises. Mr Thomas stated in evidence however, that, in the application of the policy referred to above, it was judged to be sufficient that Billy Tudor had simply said that he intended to move to such premises.
- 9.73 On 7 August 1992, the VO and an Environmental Health Officer ("EHO") from Rhondda Borough Council made an exploratory visit to the premises and listed a series of hygiene deficiencies which they identified as requiring rectification prior to a permanent licence being recommended. Approximately four months later, on 11 December 1992, the VO and the EHO made a further visit to the premises. As a result of that visit, the VO was unable to recommend a permanent licence because the slaughterhouse was not operating to the hygienic standards required. A list of the deficiencies were again included in a letter to Billy Tudor and the following were identified as the more serious of the deficiencies:
- (i) The roof was leaking and water was dripping close to exposed carcasses.
 - (ii) Several parts of the plant and equipment were not clean.
 - (iii) Unhygienic practices were being performed by the operatives, including infrequent personal washing and sterilisation of implements. Carcasses were being wiped down with dirty cloths. Contamination of carcasses was taking place from various sources.
 - (iv) The amenities were unhygienic.
 - (v) There was inadequate fly/vermin proofing. Flies were present in the slaughterhouse.

(vi) In several places, metal surfaces were corroded with rust and presented a potential food hazard.

- 9.74 The VO stated to Billy Tudor that the majority of the points had been discussed at the earlier meeting on 7 August 1992 and nothing had been done since that visit; indeed, conditions had in fact deteriorated. Mr Thomas stated in oral evidence that the letter would have been copied to Rhondda Borough Council, which was at the time responsible for enforcement. Despite this, as Mr Thomas confirmed, the Abattoir continued to operate as a full-throughput slaughterhouse.
- 9.75 On 23 December 1992, a meeting took place between the Chief EHO at Rhondda Borough Council and the VO at which there appears to have been some disagreement as to whether or not the Abattoir should stay open. The Local Authority produced a copy of a letter dated 16 December 1992 which they had sent to Billy Tudor, in which they stated that they would be refusing his licence under the Slaughterhouses Act 1984 and that the slaughterhouse should close on 31 December 1992. The VO pointed out to officials, however, that a temporary licence could be issued to Billy Tudor under the Fresh Meat (Hygiene and Inspection) Regulations 1992 ("the 1992 Regulations"), provided that he met the minimum hygiene requirements and that he had a forward plan.
- 9.76 On 22 January 1993, a three-month temporary licence was issued on behalf of the Secretary of State for Wales to expire on 18 April 1993. Mr Thomas's view in his evidence was that this was a rather surprising decision given the nature and extent of the apparently unrectified problems with hygienic operation that had been clearly identified.
- 9.77 On 11 March 1993, the VO and the EHO visited the Abattoir again. They reported that no progress had been made by Billy Tudor in rectifying the contraventions that had been found on 11 December 1992.
- 9.78 Another visit took place on 7 April 1993. Cattle and pig slaughter were considered to meet the minimum hygiene standard required for a permanent licence. However, sheep slaughter was considered to be unhygienic. In addition, many of the points raised in correspondence following previous visits had still not been corrected. In relation to the forward plan, Billy Tudor stated that he still intended to move ahead with a new slaughterhouse with a revised layout at his farm. He stated that planning permission had been refused but indicated that he would be appealing against the decision. The Secretary of State nevertheless extended his temporary licence. Billy Tudor was given until 20 May 1993 to carry out the requirements.
- 9.79 On 19 May 1993, inspectors again visited the Abattoir. Sheep dressing was demonstrated. The beginning of the demonstration was noted to be unhygienic as faecal contamination of the carcasses was visible. However, with the advice of the VO, techniques were improved and a hygienically-acceptable dressed carcass was produced.
- 9.80 On 7 July 1993, Billy Tudor signed the necessary form enabling him to have a temporary derogation from some of the structural elements required by the 1992 Regulations and the forward plan agreed was to up-grade to another slaughterhouse. Mr Thomas stated in oral evidence that there would have been a detailed plan to renovate the new premises.

- 9.81 On 20 July 1993, the Abattoir was granted a licence as a full-throughput premises with a temporary derogation. Again, Mr Thomas's view given in evidence was that the decision might be considered surprising given the history of the premises; however, he stated that the officials were under pressure to try and help the industry as much as possible and not to close establishments down. He stated that there was also pressure from local MPs for slaughterhouses to remain open in their area, and from the farming unions. His evidence is supported by a Welsh Office document dated 9 June 1993. The document sought the agreement of the Secretary of State for Wales, which was subsequently given, to recommendations on licensing decisions for slaughterhouses. This included the issue of a further temporary licence for the J.E. Tudor & Sons Ltd abattoir. The briefing papers said that if it were not for Ministers' stated preference to close only those plants where meat was actually being contaminated, these [plants with borderline hygiene standards] would also have been recommended for closure.
- 9.82 On 7 October 1993, the VO carried out a routine visit to the Abattoir. On this occasion Billy Tudor informed him that he no longer intended to purchase alternative premises nor had he any intention of building a new abattoir at his own premises near to where he lived. As such, it was the opinion of the VO that Billy Tudor had broken the conditions of the agreed derogation. It was the VO's opinion that the existing slaughterhouse could never be upgraded to an acceptable full-throughput layout; but that it was licensable as a low-throughput slaughterhouse. However, even for that to occur, structural upgrading would be required which would have to be the subject of a forward work plan within a new agreed derogation. Billy Tudor declined to sign the application to be licensed as a low-throughput slaughterhouse. Despite all of this, he continued to operate as a full-throughput slaughterhouse.
- 9.83 In December 1993, the RMHA emphasised to Billy Tudor that he would have to either re-negotiate his conditional licence with an acceptable alternative to the current forward plan, or apply to become low-throughput premises and agree a new forward plan. Neither appears to have occurred, yet no action was taken and the Abattoir continued to operate.
- 9.84 On 3 February 1994, the VO visited the Abattoir and observed cattle being slaughtered. He concluded that Billy Tudor had failed to maintain the standards of hygiene and working practices that were necessary. Cattle were not being dressed hygienically, and in particular:
- (i) There was faecal contamination of the brisket, hocks and knees.
 - (ii) The washing of cattle carcasses took place before de-hiding resulting in dirty water entering the body cavities.
 - (iii) Slaughtermen used the steriliser and drop hoses for personal hygiene. Neither washing booth was operational as the valves were broken.
 - (iv) Sterilisation of contaminated knives was not taking place.
 - (v) In the amenity block, lockers were not being used as intended and were storing filthy equipment.
 - (vi) The filing cabinet in the office was used to contain protective clothing.

- 9.85 Still no action was taken to revoke the licence.
- 9.86 On 3 March 1994, the newly introduced system for scoring and assessing hygiene at abattoirs was applied to the Abattoir for the first time. This was the Hygiene Assessment System ("HAS"). The assessment gave a score in various categories: ante-mortem, slaughter and dressing, personnel and practices, maintenance and hygiene of the premises and general conditions and management. The total marks were given out of 100. Scores below 66 were deemed to be unacceptably low. The Abattoir scored only 15 out of a possible 100. The clear conclusion was that there were the most serious problems with the hygienic production of fresh meat at the Abattoir.
- 9.87 During this visit Billy Tudor finally applied in writing to become a low-throughput slaughterhouse. However, no agreement about an acceptable forward plan was reached.
- 9.88 On 6 May 1994, there was another inspection. It was noted that little progress had been made with Billy Tudor's forward plan.
- 9.89 The VO completed a second HAS score-sheet on 27 June 1994. This time the Abattoir scored 31 out of a possible 100. Although this was an improvement on the previous score, the score was still half the score that would have been acceptable. At this visit, no agreement could be reached about an acceptable forward plan.
- 9.90 As a result of this visit, in a letter dated 15 July 1994, the VO finally recommended to Mr Thomas, the RMHA, that Billy Tudor's licence to operate as a slaughterhouse be revoked.
- 9.91 On 21 July 1994, the RMHA and the VO jointly visited the Abattoir. The HAS score-sheet was again completed. The score was 35. Billy Tudor demonstrated the slaughter of four lambs. A series of concerns and breaches of the legislative requirements were noted:
- (i) There was infolding of fleece and transference of faecal material and wool on to the carcasses.
 - (ii) The oesophagus, which contains ruminal contents, was not being removed from the red offal.
 - (iii) Green offal was being discarded and not made available for inspection.
 - (iv) Operatives were allowed to come into the slaughter hall from the lairage in the same clothes which were used in the lairage and there was no wash point.
 - (v) There was inadequate disposal of waste and by-products.
 - (vi) Washing of carcasses was taking place before final inspection. This resulted in the splashing of other carcasses and offal.
 - (vii) Carcasses in the chillers showed evidence of contamination and poor dressing.

- 9.92 The RMHA wrote to Billy Tudor to explain the reasons for awarding such a low HAS score. Because Billy Tudor was still not able to agree a forward plan, Mr Thomas informed him that he had no alternative other than to recommend to the Secretary of State for Wales that his licence to operate as a slaughterhouse under the 1992 Regulations be revoked. Mr Thomas stated in oral evidence that he also wrote to the OVS responsible for the plant in relation to his duties and listed what he thought he should be doing. This system was provided for under the 1992 Regulations but was very rarely used.
- 9.93 On 18 August 1994, at the request of the RMHA, the VO made an unannounced visit of the premises. The VO discovered and listed numerous contraventions of the 1992 Regulations, and also contraventions under the Slaughter of Animals (Humane Conditions) Regulations 1990. A HAS assessment was also undertaken. The score was 11 out of 100. Mr Thomas stated in oral evidence that this was the lowest score, and thus the worst hygiene record, ever recorded in Great Britain. After the visit, Mr Thomas wrote to Billy Tudor. He said that the HAS score was unacceptable, indicating that there were serious problems in the hygienic production of fresh meat.
- 9.94 Mr Thomas put up a recommendation to his superiors that the Secretary of State for Wales should revoke the licence. Officials went as far as preparing a submission. Three drafts of the submission are on file, the last of which is dated 22 August 1994. The drafts set out the background and key issues.
- 9.95 In the event, the licence was not revoked. I have been unable to determine the precise reason why that did not occur. The additional documentation provided to the Inquiry after the hearings was in the form of Welsh Office papers as it was responsible for the relevant statutory functions at that time. The papers do not include a copy of a final version of the submission to the Secretary of State for Wales. Neither do the papers include any record of a decision not to put up a submission. It appears that there was a prolonged debate by officials within the Welsh Office and also discussions with MAFF about whether the correct procedures had been followed in order for the licence to be revoked. That debate appears to have carried on throughout the remainder of 1994 and into 1995. It is not clear whether it was resolved before September 1995. The available records are less than complete, which is disappointing. It means that I am unable to resolve the issue.
- 9.96 On 21 September 1995, by which stage the 1995 Regulations had come into force, Billy Tudor agreed to the plant becoming a low-throughput slaughterhouse. A schedule of works to bring the premises into compliance with the 1995 Regulations was verbally agreed between Mr Thomas and Billy Tudor at the time. It related mainly to the by-products yard, the lairage, the slaughter hall, the chiller, although general points about the structure were also raised. In terms of hygiene practices, whilst there was nothing on Mr Thomas's file to show what the position was, he stated that the VO would have drawn up a list which would thereafter have been monitored.

9.97 On 3 March 1996, Mr Thomas, having inspected the Abattoir on 16 February 1996, made a recommendation that Billy Tudor be given a low-throughput licence without any derogations. By this date, it appears therefore that some work had been carried out to bring up the standards at the Abattoir. However, Mr Thomas stated that under the policy in place at the time, all that had to be demonstrated was hygienic slaughter. This policy went as far as allowing people to slow down production lines in order to achieve this. He referred to it as "the Hollywood effect", in that everything was done in slow motion when officials were visiting the premises. He further stated that the visits were announced and that operators would have been aware that the inspectors would attend, having been given two to three weeks notice. Consequently, the operators would put on a show for the inspectors and the policy was that if they slaughtered hygienically on the day of the inspection and the minimum structural requirements were met then the officials were to licence.

9.98 My conclusions in relation to the period up to March 1996 are as follows:

- (i) There was flagrant disregard for the requirements of the legislation by the Abattoir.
- (ii) Those responsible for enforcing the requirements appear to have operated a policy which cannot sensibly be squared with their obligation to enforce the legislation.
- (iii) It must have become apparent to those operating the Abattoir that the enforcement was utterly ineffective. The result was the absence of any real improvement in the hygiene conditions and of any real attempt to achieve such an improvement.
- (iv) The licence to operate as a full-throughput slaughterhouse should never have been granted.
- (v) The decision to recommend revocation of the licence should have been taken years earlier than it was.
- (vi) If a Ministerial decision not to revoke was in fact taken, it would seem to have been unjustifiable on the basis of the evidence I have seen. However, it may be that officials did not actually put a submission to the Secretary of State for Wales and therefore that no such decision was taken. If that is so, it is also very unfortunate because it would mean that it took over a year for those responsible to make a decision on whether or not correct procedures had been followed. In the meantime, a slaughterhouse that had been recommended for revocation of licence on hygiene grounds continued to operate on a basis that was in clear and persistent breach of the relevant legislation to the knowledge of the enforcement authorities.

2000 Onwards

9.99 The principal significance of the inspection history in the early 1990s is the light it sheds on lessons being learned, or not learned, and the recurrence of problems that appear to have persisted for many years.

Roles and Responsibilities

9.100 The following is a brief description of roles and responsibilities of those involved in the enforcement of the regime as it applied to the Abattoir.

9.101 The OVS would, and was required to, attend the Abattoir during operations. The OVS performed the functions set out in the Regulations, notably the 1995 Regulations. Those functions, included Health Marking and securing the observance of the legislative requirements relating to the premises and the practices in operation. There is little doubt that OVSs were in considerable demand and they had only limited time to devote to each of the slaughterhouses for which they were responsible.

9.102 The OVS inspected every animal ante-mortem, but did not inspect every carcass post-mortem. All carcasses post-mortem would be inspected by the MHI. Mr Jesus Alvaro Pastoriza, an OVS employed by the MHS, stated that it would depend on the severity of the case as to whether the OVS would get involved in the post-mortem inspection.

9.103 There were two types of inspectors, working to the OVS. The MHI carried out inspection of the carcasses while they were being produced at the Abattoir. A Meat Technician was principally responsible for inspection work related to a particular type of material produced during the slaughter: the Specified Risk Material, which is material suspected to have any infectivity for BSE, or “mad cow disease”.

9.104 From 3 August 2004, the decision was taken that it was no longer necessary for the Meat Technician to be in attendance at the Abattoir. This was a controversial decision and opposed by the MHIs who attended the Abattoir as, in their view, it potentially compromised both hygiene and animal welfare. Some two months later, in October 2004, an entry in the J.E. Tudor & Sons Ltd’s Staff Day Book by a different inspector stated that there was no Meat Technician at the plant, that 100% line supervision was unattainable and that in that person’s opinion the health and safety of the MHI was compromised.

- 9.105 Mr Phillip Stallard, Area Manager for South East Wales employed by the MHS, did not agree with the view expressed by the MHI. He stated in his evidence that he had discussed the issue of the continued presence of the Meat Technician with the OVS. They did not agree with the view of Mr Mark Mumford, Senior MHI. Mr Stallard went on to say that the Regional Meat Veterinary Advisor (“RMVA”) was also of the view that the MHI and the OVS at the plant together could more than cope with what was required bearing in mind the line speeds at the plant. Mr Stallard stated that in his view, the duties of the Meat Technician were specific and not onerous. Further, he stated that the Meat Technician was not authorised under the Regulations to act in any hygiene or inspection capacity whatsoever and that he would purely carry out checks in relation to Specified Risk Material and dentition.
- 9.106 Ostensibly, cutting the number of people responsible for monitoring and assisting with compliance with the relevant legislation, particularly at a time when a series of concerns had recently been identified and raised, might not appear to be a sensible management decision. However, I note Mr Stallard’s evidence on this issue that the matter was given full consideration and was discussed with those involved. I conclude that the problems at the abattoir could, and should, have been dealt with without a Meat Technician and that the decision, which was following MHS policy, did not contribute materially to addressing the ongoing problems at the abattoir.
- 9.107 The regional management of the MHS was in a position to oversee, and was responsible for overseeing, the work of the OVS and MHIs in the region. Mr Phillip Stallard was the Area Manager for the South East Wales region of the MHS. He occupied that post from 18 May 2003. Before that date, he had been an Area Resource Manager for that region for eight-and-a-half years.
- 9.108 As Area Manager, Mr Stallard received from each OVS every month a copy of all the monthly reports that originated from each premises for which they were responsible. Mr Pastoriza stated in oral evidence that this would have meant that Mr Stallard was sent the monthly HAS score, the enforcement action form, a HAS schedule to explain any variation of the HAS score between the present and the previous month, and the OVS monthly report. He did not think that Mr Stallard would have been provided with a copy of the daily Animal Welfare Reports or the daily Hygiene Reports. Mr Stallard stated in oral evidence that he would review the enforcement action at all plants within his area. He would go through the various reports with the RMVA every month and discuss with him whether or not the enforcement action taken was reasonable and proportionate.
- 9.109 One of Mr Stallard’s functions as Area Manager was to monitor the performance of those OVSs who were employed by the MHS. This was done in part by him completing the Performance Monitoring Forms. These forms employed a traffic light system for judging Key Performance Indicators, which are particular indicators designed to show how well an OVS was performing. In summary, an amber light highlighted an area of concern and a red light indicated the need to take action to deal with a serious issue.

- 9.110 Mr Stallard stated in oral evidence that he was very much aware that the requirements should have come in by June 2003 but that no progress had been made. Mr Stallard stated that he had written to OVSs on that basis but was advised by the RMVA's that they should not be following the regime of enforcement in respect of HACCP, and should instead be advising rather than enforcing. On the basis that enforcement was a current requirement of the legislation, Mr Stallard agreed that this stance struck him as rather odd as it went against what the MHS were trying to achieve in relation to improving standards at plants.
- 9.111 I conclude that, as the Area Manager, Mr Stallard should, and could, have taken further steps to address what were obvious problems. Moreover, there is no contemporaneous evidence in respect of the advice said to have been given by the RMVA, and I do not consider that, even if such advice was given, that alters the conclusion Mr Stallard could, and should, have taken further steps.

Hygiene Reports and Other Forms

- 9.112 One of the functions of the OVS was to secure observance with the hygiene and other standards set out in the Regulations. To that end the MHS had designed a series of forms to be completed by the OVS and/or the MHI. They included an Ante-Mortem Report which assessed the physical condition and cleanliness of the animals before slaughter and a daily Animal Welfare Report.
- 9.113 The Red Meat Slaughterhouse Operational Hygiene Reports ("the Hygiene Reports") were the most important. Mr Pastoriza agreed in his oral evidence that the Hygiene Reports were a critical, if not the central element, in monitoring and securing compliance with the legislative requirements. They were completed on each day of operation and were signed by the on duty OVS. The Hygiene Reports were broken down into three main sections:
- (i) The first listed a series of around 35-40 categories that were used in generating the HAS score. They covered everything from the maintenance of the structure to pest and vermin control to the various processes and practices operated during slaughter. Each category was scored with a letter from "A" to "D". The letter scoring was described in the MHS Operations Manual ("the MHS Manual"). That indicated that even a "B" score did not necessarily indicate compliance with the legislation. However, "C" or "D" scores indicated that the particular category was in breach of the legislative requirements designed to secure the production of safe food. They also indicated that the breach was such as to create a risk to public health. The MHS Manual stated:

"...awarding a "C" and "D" score indicates that you have identified a risk to public health as a result of a regular or frequent failure to implement the requirements of the Regulations and you must take appropriate enforcement action..."

- (ii) In practice, "D" scores were rarely given (none were given in relation to the Abattoir). Both Mr Pastoriza and Mrs Downes indicated that the approach was only to award a "D" score where there was an imminent risk to public health requiring the plant to be closed. So, for example, even in relation to HACCP, after the HACCP Regulations came into force in June 2003, the complete absence even of a HACCP plan would still lead only to a "C" and not a "D" score.
- (iii) The second section enabled a record to be made of the corrective action agreed with management in relation to any problem categories recorded in the first section. An additional column was set aside for recording the date at which the corrective action was completed to the satisfaction of the OVS.
- (iv) The third section was designed to record the state of the operator's own hygiene checking system through HACCP and microbiological testing. As appears above, for small slaughterhouses such as the Abattoir, the HACCP requirements became law in June 2003.

9.114 The scores recorded in the Hygiene Reports then formed the basis of the monthly or quarterly HAS scoring. Monthly HAS scores were generated for slaughterhouses causing concern, such as the Abattoir. The HAS used the same categories as those contained in the Hygiene Reports. It then converted the letters scored in the Hygiene Reports into numbers. The system was weighted. Some of the categories carried more points than others based on judgement as to the relative importance of the category in hygiene terms. An "A" score led to a higher number than a "B" score, down to a zero number for a "D" score.

9.115 There is one important and fundamental point in relation to how the system was used. In considering the HAS scores, one should note that, as set out above, "D" scores were virtually never used save in the most extreme situations requiring the immediate cessation of production. That is of some significance because in most cases even a persistent and clear breach of the legislation would lead only to a "C" score, carrying with it at least some scoring points under the HAS and thus contributing to a higher overall score.

9.116 If the "D" score had been used more frequently, the HAS scores for a slaughterhouse such as the Abattoir would have been considerably lower and thus more obviously below the level deemed acceptable, which is less than 66 of 100. My conclusion is that the HAS scores need to be viewed with some caution, and are not to be taken as a measure of legislative compliance. This was accepted by Mrs Downes .

9.117 Detailed guidance on the completion of these forms and the manner in which the HAS scores were to be calculated was provided in the MHS Operational Handbook and on the HAS forms themselves.

The Abattoir as a Failing Slaughterhouse in 2000

- 9.118 A note of a meeting on 18 January 2000 relating to the Abattoir identified that Mr Phillips was the OVS responsible for the plant and that Mr Stallard was responsible for providing resource to such licensed premises. The note of the meeting indicated that, as at that date, the Principal Official Veterinarian Surgeon (“Principal OVS”) had serious concerns in relation to the way in which the Abattoir was operating. It records that it was consistently scoring below the acceptable HAS level of 65. The purpose of the meeting was to make sure that focus was placed on the problem and an attempt was made to drive up standards at the plant. The note identified the effective use of formal enforcement as one of the means to be used to correct serious deficiencies and breaches of the Regulations.
- 9.119 Mr Stallard was involved as a resource manager at this stage. He recalled that in early 2000, the MHS and the OVS teams had focused on the Abattoir as one that was difficult or failing. His evidence was that, whilst he was not aware of the scale of the problems at the plant in 1994, he was at least aware of them generally. He stated that he had attended the premises in 1995 when he first became an area resource manager and he was surprised, having had a background in export-approved premises, that the Abattoir was still operating. His recollection was that at this time there were problems with the operator, namely Mr Billy Tudor, who he described as very aggressive and confrontational. Mr Stallard confirmed that the Principal OVS at the time, Mr Phillips, required special support due to intimidation by Billy Tudor; and how at one stage, the MHS had to increase their level of attendance at the plant as Billy Tudor had attempted to assault a MHS member of staff by, reportedly, throwing an object at them across the slaughterhouse.
- 9.120 Mr Stallard provided the Inquiry with a table setting out the HAS scores achieved at the Abattoir. The table identifies that in 2000, the premises were subjected to monthly HAS scoring as opposed to the typical quarterly assessment for low-throughput premises. Mr Stallard was unable to clarify in oral evidence the basis for the monthly assessments.
- 9.121 The HAS scores for the period 2000-2003 indicate a slaughterhouse at or just below the level of acceptable hygiene performance. Some problems were identified in the monthly reports; for example, Mr Phillips reported the chronic problem of having to constantly advise people to do their jobs properly.

2002 and 2003

- 9.122 In 2002, the forms would appear to indicate some improvement. Mr Phillips, the OVS, was responsible for filling out the inspection forms, in particular the Hygiene Reports. Whilst there was the odd “C” score, the majority were “A” or “B” scores.
- 9.123 Mr Pastoriza is a Veterinary Surgeon who qualified in Spain. He was the OVS who most frequently visited the Abattoir from the beginning of 2003 until August 2004. It is to be noted, however, that, as the records indicate, there were a number of different OVSs who did so during the period. Ms Ainhoa Astorquiza succeeded him at that time. However, Mr Pastoriza returned to become its OVS again from August 2005. He continued in that role until the plant ceased operation at the end of January 2006.

- 9.124 When he first went to the Abattoir, Mr Pastoriza had had sight of the folders from the previous OVS with the paperwork which was physically on site. He had been unaware however, of the history going back to the early 1990s and would have focussed on the past 12 months.
- 9.125 Mr Pastoriza stated that when he first arrived at the Abattoir, he was overwhelmed by its condition. The premises were very old and in a very poor condition. He considered the enforcement issues to be a priority.
- 9.126 The first Hygiene Report Mr Pastoriza prepared, dated 15 December 2002, reflected the Abattoir's poor condition. It was in marked contrast to the previous series of Hygiene Reports produced by Mr Phillips. In contrast to the "A" and "B" scores that Mr Phillips had been scoring for most of 2002, Mr Pastoriza began scoring whole sequences of "C" scores. "C" scores indicated both a breach of the legislative requirements and a risk to public health. They included "C" scores for dressing, skinning and depilation practices, cross-contamination controls, handling control staining/sterilisation of by-products, rooms and facilities available, maintenance of the slaughterhouse structure and operational cleaning.
- 9.127 My conclusion is that the scores of Mr Phillips and Mr Pastoriza cannot be reconciled. Given the descriptions of the state of the Abattoir over the period before and after 2002, and the clear and long running problems of the same nature. The clear inference is that the scores of Mr Pastoriza are to be preferred. I note that in his 2004 audit, Mr Thomas concluded that Mr Phillips may have been inflating the scores recorded in the Hygiene Reports. I do not feel able to provide any firm view on that, and do not consider I need to do so given the clear picture that emerges from the Hygiene Reports from 2003 onwards.
- 9.128 In January and February 2003, Mr Pastoriza and other visiting OVSs continued to record a large number of breaches or borderline breaches of the Regulations and gave "C" scores to items including, but not limited to, the handling control and sterilising of by-products, contamination incidents and control and correction, gut room practices, maintenance of slaughter house structure, fly and vermin control, slaughter practices, skinning and depilation practices, dressing practices, cross-contamination, and staff hygiene practice.
- 9.129 The picture that emerged in the first weeks of Mr Pastoriza's involvement was a clear one. The Abattoir had fundamental problems. The problems extended from the structure to the controls and practices operated (or not operated) at the Abattoir. In view of the serious hygiene problems evident from the scores recorded in the Hygiene Reports, decisions needed to be taken as to the appropriate action to be taken to move the Abattoir from a position of serial non-compliance with the legislation to a position of compliance. Given the number and nature of the breaches identified, this was a matter that needed to be addressed both urgently and seriously.
- 9.130 Instead, successive Hygiene Reports record that the action taken was simply to make management "aware" of the problems by reporting them to management. That continued to be the course taken even in the face of weeks and then months of the same problems recurring time and time again, and little or nothing being done by management to deal with them.

- 9.131 Mr Pastoriza's arrival, and his correct identification of the fundamental problems at the Abattoir, provided a good opportunity for him and the MHS management to confront and deal with those problems. That opportunity was not taken. The result was that the problems persisted.
- 9.132 The fact that, substantially, the same problems persisted is evident from the Hygiene Reports prepared by Mr Pastoriza and other OVSs in 2003. On occasion, some categories would move from "C" to "B" only to move back to "C" in later reports. However, no real impact was made on the fundamental and persistent nature of the problems. Throughout 2003, there continued to be a large number of "C" scores, mostly in the same categories.
- 9.133 Mr Pastoriza did seek to take enforcement action in relation to some problems. For example, isolated Improvement Notices were served in relation to the chiller door and to the condition of the ceiling in the mess room. However:
- (i) Enforcement action was sporadic and evidently inadequate to deal with the problems and to compel the Abattoir to take the necessary steps to comply with the legislation.
 - (ii) Far too often and for far too long, as the Hygiene Reports indicate, the preferred solution was simply to report to management. As the months passed without any significant improvement, it must have been or become apparent both to the OVS and to those within the MHS who oversaw the reports coming out of the Abattoir, that management were either unwilling or unable to deal with the problems and to comply with the legislation. Yet the level of enforcement action was not escalated and the Abattoir continued to operate at hygiene levels below those required by the legislation.
- 9.134 The HACCP Regulations came into force in relation to the Abattoir in June 2003. My conclusion is that the enforcement of these requirements by Mr Pastoriza, other OVSs and the MHS generally was wholly inadequate for the following reasons:
- (i) Despite the guidance that was given, there is nothing in the Hygiene Reports to indicate that steps were taken in advance of June 2003 to ensure that a developed plan was in place for the June 2003 date. That is because of the policy decisions dealt with above in relation to the enforcement of the HACCP Regulations.
 - (ii) However, in the Hygiene Report dated 11 June 2003, the "HACCP monitoring" category on the Hygiene Report was scored for the first time. Mr Pastoriza gave it a "B"/"C" score. That indicates borderline compliance. Yet, at this date, as Mr Pastoriza accepted, the Abattoir did not even have a HACCP plan. He gave the score because Jonathan Tudor had listened to some advice about HACCP that Mr Pastoriza had given and had indicated that he would try to implement a plan, which was at that time unformulated.
 - (iii) The next series of forms in June and July 2003 either do not score "HACCP monitoring" at all or indicate "Not Observed" in relation to it or, in one case described by Mr Pastoriza as "a mystery", indicate "Not Applicable".

- (iv) The Hygiene Report dated 30 July 2003, which was after the June 2003 deadline and which was completed by Mr Pastoriza, indicated that there was “no procedure based on HACCP principles”; and that “management [had been] informed of their responsibility of implementing that procedure”.
- (v) The August and September 2003 reports were similar, recording the continued absence of any HACCP procedure and that further discussions with management about that were carried out. Eventually on 14 September 2003, the Hygiene Report records that a warning letter was issued in relation to the fact that there was “no HACCP in place at the premises”.
- (vi) That letter evidently had no effect. The 26 October 2003 report again indicates “no effective HACCP plan in place”, and awards a “C” score accordingly. The Report also records, again, that management had been made aware of the HACCP and the other issues.
- (vii) That remained the position until December 2003 when a Hygiene Report of 21 December 2003 records “HACCP implemented but not working well”. Mr Pastoriza explained this in his evidence, describing multiple deficiencies in the operation of HACCP and his “constant feeling that they were all just a ticking exercise”.

2004

The Hygiene Reports and HACCP

- 9.135 The Hygiene Reports for 2004 indicate that the position at the Abattoir remained unimproved to any significant degree throughout 2004. Small pockets or periods of apparent improvement quickly relapsed into persistent non-compliance.
- 9.136 It is not necessary to set out in detail the content of all the Hygiene Reports. They continued to record a series of categories as non-compliant with the legislation, the same fundamental problems with structure and practices leading to a failure by a considerable margin to meet the hygiene requirements. The same categories were persistently non-compliant. Some attempts were made to enforce the legislation. Those attempts were demonstrably unsuccessful because they did not achieve or lead to any real improvement.
- 9.137 HACCP monitoring was consistently scored as non-compliant “C”. Despite some apparent progress on HACCP, whatever had been put into place continued not to work. The Hygiene Report for 11 July 2004 for example recorded “HACCP still not done...monitoring control procedures not working effectively”. The Report for 21 November 2004 stated: “HACCP system not applied in these premises as it fails from prerequisites...as clean and hygienically safe environment”.
- 9.138 The approach to enforcement of the HACCP Regulations has been dealt with above. There appears to have been some disagreement as to that approach, as appeared from emails sent in 2004 and the evidence of Mr Stallard.

- (i) On 5 April 2004, Mr Stallard sent an email to Mr Pastoriza focusing on the implementation of HACCP at the plant. HACCP-based principles had been a statutory requirement at low-throughput premises since June 2003. The e-mail was sent approximately ten months after the legislative requirement had come into force and stated that it was essential that Mr Pastoriza and his team (or other OVSs) follow the correct procedures in respect of the enforcement of HACCP, to include verbal and written Improvement Notices. The email further stated that any action should be accurately recorded in the appropriate MHS form (MHS56).
- (ii) When asked what led to the need for him to send that email, Mr Stallard stated that he was very much aware that the HACCP requirements should have applied since June 2003 but there had been no progress on them. However, he went on to say that, although he had written to the OVSs on the basis set out in the email, the RMVA's advice was that they should be advising rather than enforcing in respect of HACCP. Mr Stallard stated that he had received this advice via the FSA shortly after he sent the email to Mr Pastoriza. He acknowledged in his evidence that this went against what the MHS were trying to achieve in relation to improving standards at plants.

The Need for Enforcement Action in early 2004

9.139 On 8 March 2004, by which time he had been the Area Manager for ten months, Mr Stallard sent an email to Mr Pastoriza. It read as follows:

"I refer to our meeting of 18 February 2004 during which we discussed the need to escalate enforcement action at 7042 [the reference number given to the Abattoir]. Since our meeting it has come to my attention that this plant has now fallen into the category of one of the seven worst performing plants in the Wales region and as such an immediate escalation in enforcement action at the premises is required. To facilitate monitoring of progress I would request that a HAS and a MHS56 (Enforcement Form) are completed on a monthly basis for this plant until such time that the required standards compliance are consistently achieved".

9.140 In oral evidence, Mr Pastoriza originally agreed that he had not acted upon Mr Stallard's request. He explained that he was responsible for nine different plants, two of which were performing very poorly, and that he had no time available to complete reports which would basically illustrate that nothing had changed. He said that he certainly made Mr Stallard aware that the request could not be met and also of his concerns in relation to his lack of time to complete the reports which were taking him away from carrying out his enforcement duties at the plants for which he was responsible. As it turned out, contemporaneous records indicated that reports had been completed monthly from March 2004 to October 2004 before reverting back to quarterly reporting at the end of 2004 and into 2005. Mr Pastoriza explained that they [the OVSs] were struggling to keep up in 2004 and that in 2005, it was not possible to manage monthly reporting.

The MHS Audit in April 2004

9.141 Ms Maria Sebastia and Mr Steve Lodge of the MHS Validation and Audit Unit drafted an Internal Audit dated 20 April 2004. Mr Stallard explained in oral evidence that the purpose of the audit was to check that the OVS and staff at the plant were working in compliance with the MHS Operations Manual. In fact, the purpose of such a report was described in the report itself as follows:

“... [in relation to the areas of enforcement work examined by the auditors] to drive improvement in consistency and quality of enforcement by the MHS. Auditors seek to gather evidence to demonstrate that MHS enforcement activity at the licensed premises is effective and as a minimum conforms to the requirements of the MHS Operations Manual, legislation and operating instructions.”

9.142 The Executive Summary noted a series of non-compliances including inconsistency in completion of HAS, enforcement of hygiene conditions (detailed in part 14 of the report), completion of monitoring records and application of enforcement action (part 12 of the report). The conclusion was that Mr Pastoriza was “proactive in his approach and doing a good job at what is a difficult plant because of its age”. The Executive Summary noted that many of the deficiencies at the Abattoir were long-standing and were inherited by Mr Pastoriza with no enforcement in place; and stated that the OVS needed to ensure that all enforcement issues were dealt with in a timely and appropriate manner, ensuring that the hierarchy of enforcement is followed. In total, seven minor non-compliances and five areas for improvement were identified.

The Thomas Audit in May 2004

9.143 Mr Thomas had few if any dealings with the Abattoir in the period after his recommendation in 1996 that a low-throughput licence be granted. However, on 27 May 2004, a month after the internal MHS audit referred to earlier, he also conducted an audit of the performance of the MHS in performing their enforcement functions at the Abattoir. The aim was to see whether the MHS was doing so properly in accordance with the MHS Manual.

9.144 In the Executive Summary of his report, Mr Thomas stated that the fabric of the building was deteriorating rapidly and that, realistically, the premises were coming to the end of their working life. He further stated that the HAS scores assessed before the arrival of the current OVS, Mr Pastoriza, who had been in post since September 2003, were inflated and did not accurately reflect the operation or condition of the premises. Mr Thomas accepted in his oral evidence that this was an inference as opposed to there being any direct evidence; he said that he had formed that view by comparing the plant scores awarded prior to the current OVS taking over (which were in the upper 60s to 70s) with those awarded thereafter (in the low 60s to high 50s). Mr Thomas was of the opinion that the current OVS was, in general, taking the appropriate measures to rectify the situation and was putting into place enforcement action. Mr Thomas stated however that the OVS had a difficult task ahead of him, for although Jonathan Tudor was co-operative, he objected to spending money on a building which had only a very short life left.

- 9.145 The audit report noted the following deficiencies at the Abattoir:
- (i) It recorded that the OVS had correctly identified hygiene deficiencies.
 - (ii) It concluded in relation to the structure and maintenance that the time was approaching when the decision must be made to move to a new establishment because in parts the structure of the building was deteriorating rapidly.
 - (iii) It noted that the staff had basic hygiene induction training only, that there was no training programme and there were no training records. The report concluded that the MHS staff had failed to take action in relation to these failings.
 - (iv) In relation to operator checks on cleaning, the report noted that, on some occasions if slaughter went on late in the day, cleaning only took place on the next day of slaughter. That might not be until the following week and this happened on more than one occasion. Another problem identified was that effective cleaning was becoming extremely difficult because of the pitted surfaces in the plant.
- 9.146 In relation to enforcement procedures taken by the MHS, the report stated that the first steps in the enforcement hierarchy were being started. In oral evidence (but not in the report), Mr Thomas stated that it was concerning that only the first steps of enforcement were apparently being implemented. He stated that it had been his intention to encourage OVSs to start taking more rigorous enforcement action. He stated that, in order that a strong case for revocation could be presented, evidence of both structural problems and hygiene problems would be required and the appropriate hierarchy of enforcement would need to be demonstrated.
- 9.147 He returned to this theme at the end of his report. Singling out the fact that cleaning was on occasion left until the next slaughter day he concluded that the OVS should have served enforcement notices on the operator to deal with the issue. More generally, he commented that:
- “...unless there is a dramatic change in the condition of the structure and maintenance of the building, including cleaning, then there is going to be a recommendation for the revocation of the operational licence. In this situation the application of the appropriate enforcement action is essential.”
- 9.148 HACCP does not feature in the report. Mr Thomas stated in oral evidence that he was told not to audit the performance of the MHS in enforcing HACCP.
- 9.149 The report was then commented upon by the OVS responsible for corrective action to be taken to remedy the specific deficiencies identified. He confirmed in November 2004 that the corrective action described in the Corrective Action Report had been taken. Specifically,
- (i) In relation to training of staff, the corrective action involved Jonathan Tudor being “reminded” of the need to implement further training.
 - (ii) In relation to enforcement action, the corrective action was described as follows:

“Enforcement escalated at the premises, there has been multiple notices served to the plant operator and though the general condition of the building has not improved dramatically, action has been taken to ensure that the hygiene of production improves and there is an ongoing process and the disposition of the plant operator look good to get the situation improved.” (sic)

9.150 On 5 January 2005, Mr Stallard signed off the Corrective Action Report confirming that the corrective action had been completed to his satisfaction.

Conclusions on Audit Reports and Corrective Action Report

9.151 Judged in the context of the Hygiene Reports, my conclusions in relation to the Audit Reports and the Corrective Action Report are as follows:

- (i) The reports prepared by the Internal Audit Team and by Mr Thomas and particularly the Corrective Action Report were inadequate in the light of the clear picture that emerged from the Hygiene Reports. Even a cursory examination of the Hygiene Reports in the period leading up to the audit report must have shown a long history of persistent non-compliance with a number of fundamental hygiene requirements laid down in the legislation. Such an examination would also have revealed, even since the new OVS took over at the end of 2002, that the enforcement action taken had been patently inadequate to cause any real improvement in the situation. The so-called “first steps” of enforcement action at that date in reality comprised little more than alerting the management of the Abattoir to problems which were then ignored and not dealt with.
- (ii) Rigorous and properly escalated enforcement action was plainly needed. It should have been identified as set out in clear terms in the audit report and then taken until it had the effect of moving the Abattoir to compliance with the legislation.
- (iii) It is difficult to detect more than a marginal improvement from the scores recorded in the Hygiene Report in the period leading to the OVS signing off the Corrective Action Report in November 2004. The “multiple notices” do not appear to have had a significant impact, and on no view secured a state of legislative compliance by that time.
- (iv) Even if there was some temporary improvement, it appears to have dissipated by the time Mr Stallard signed the Corrective Action Report off indicating his satisfaction with the corrective action taken. For example, the latest Hygiene Report before he signed off indicated that there was legislative non-compliance and thus a “C” score in seven categories on one inspection (4 January 2005) and six, with one borderline at “B/C”, on the next (5 January 2005).

9.152 I note the stark contrast between the tone and conclusions of the reports prepared by the Internal Audit team and that of the report prepared by Mr Thomas. This is surprising on the basis that the same underlying documentation would have been used as a baseline for drafting the reports, and the purpose of the reports was also the same.

- 9.153 It is also to be noted that in early to mid 2004, Mr Stallard identified a number of concerns about the performance of the OVSs at the Abattoir.
- 9.154 In an email dated 20 April 2004, Mr Stallard noted his concerns about one of the OVSs responsible for the Abattoir, namely Ms Astorquiza. He said in oral evidence that his concern arose as a result of some feedback he had received from the RMVA and an unannounced visit that he undertook at the premises on 16 March 2004. During his visit, he had noted that in the hanging hall there were kit bags with outdoor clothing and shoes, cups of tea and empty milk bottles on the table and some old rusty saw blades had not been disposed of properly but just left on the floor. In addition to the poor state of the premises, Mr Stallard stated that he was also not impressed with the standard of supervision that was being operated at the plant by the OVS. What he saw was not reflected in the report for that time.
- 9.155 On 7 July 2004, Mr Stallard sent Mr Pastoriza an email attaching an Employed OVS Performance Monitoring Form dated 6 July 2004 noting the Key Performance Indicators against which “amber lights” had been awarded. These included one instance when no completion date had been agreed for the Abattoir to comply with requirements, and two completion dates had expired with no evidence of the Abattoir’s compliance provided.
- 9.156 Mr Pastoriza received a further warning, this time in the form of a “red light” on 16 August 2004. Mr Stallard confirmed in oral evidence that the red light meant that Mr Pastoriza needed to “pick his game up” and that the warning related to his supervision of the Abattoir. Enforcement action at the plant had been seriously/unacceptably delayed in the opinion of the RMVA. Mr Stallard stated that there was nothing more serious than a red light in this scheme and that, as a result of a red light being given, both himself and the RMVA would usually visit the OVS concerned to at least provide some indication in terms of direction about the improvement needed. It is not clear whether this in fact occurred or what the result was.
- 9.157 These documents and others referred to above are of particular significance as they indicate that Mr Stallard, as the MHS Area Manager, either was, or should have been, well aware that:
- (i) the Abattoir was a serious problem which was non-compliant with the legislation in a number of respects.
 - (ii) those responsible for its day-to-day monitoring were encountering serious difficulties effecting improvements, and did not appear to be using the enforcement tools at their disposal to good, or indeed any real, effect.
- 9.158 The result should have been the active involvement of MHS senior management, in particular Mr Stallard, in monitoring the performance of the Abattoir and of those responsible for enforcing the Regulations (the employed OVSs). That involvement should have continued until standards were driven up or a position was reached where it became clear, if it was not already, that the Abattoir should not be operating because it could not do so in compliance with the legislation.

2005

The Thomas Appraisal Report in April 2005

- 9.159 Some months before the Outbreak, on 5 April 2005, Mr Thomas produced an Appraisal Report following a visit to the Abattoir. The purpose of the visit was to assess the prospects of the premises being able to comply with the 2006 EU Regulations that were due to be introduced in 2006.
- 9.160 Mr Thomas stated that some of the problems contained within the Appraisal Report looked “remarkably similar” to the problems identified in 1994.
- 9.161 The core of the report was contained in the schedule of deficiencies produced by Mr Thomas:
- (i) Mr Thomas accepted that the schedule provided a damning summary of the structure and layout of the premises; and that the deterioration of the structure carried with it a serious risk of contamination of food.
 - (ii) He concluded that the hygiene operations were seriously flawed, with “clean” operations taking place next to “dirty” operations. The hygiene facilities were also not adequate.
 - (iii) Under “HACCP-based controls” he concluded that the pre-requisites were not being fully implemented. Cleaning procedures were not being implemented. The maintenance log did not reflect the true condition of the premises. Mr Thomas stated in oral evidence that the maintenance log should, for example, identify matters such as cracks in the floor and flaking paint and that a corrective action programme should be drawn up by the operator on a risk basis to address them. A generic FSA HACCP plan had been used as a template and had been directly transposed to the Abattoir. That rendered it ineffective even as a plan because it had not been customised to take account of the process steps in the establishment. The plan had not been validated. There was no evidence of a hazard analysis having been undertaken. Very little monitoring had been done. Mr Thomas accepted that the situation at the Abattoir was almost the definition of a fundamental failure to have a decent HACCP system in place.
 - (iv) In relation to history of past compliance, Mr Thomas stated that there was evidence to show that most deficiencies had been identified in the past but that the hierarchy of enforcement action had not been enforced to its logical conclusion. The reason given was that the operator was looking for a site to build a new facility but that he had so far been unsuccessful. Mr Thomas confirmed in oral evidence that this was what he had first been told some 11 years earlier in 1994.
- 9.162 The report concluded that the establishment did not comply with the current legislation and that the amount of work required in order to do so was probably not a financially-viable prospect at the current location.

9.163 Given the contents of the report, I find it extremely surprising that the Abattoir was allowed to remain in operation for a further six months. More pertinently, despite the report, it was still in operation at the time of the Outbreak in September 2005 and continued to operate until January 2006.

The Hygiene Reports

9.164 The picture as it appears from the Hygiene Reports in 2005 is the same as that which emerges from the Appraisal Report, and indeed as appears from the Hygiene Reports for earlier years. The persistent and serious problems continued. Such enforcement action as was taken did not have any real impact on the state of legislative non-compliance.

9.165 In relation to HACCP, there was no significant improvement in 2005. HACCP monitoring continued to score "C" or (after the change in scoring systems) to be marked non-compliant. Mr Pastoriza stated that the change in scoring systems in May 2005 was because there was a different emphasis by this time moving closer to verifying and audit rather than more active supervision of the operator. That was because, as he put it, "by this time all plants will have HACCP systems in place". In fact, as he acknowledged, at this time the Abattoir was still a long way from compliance: "they have a [HACCP] plan but it was not credible".

9.166 I have examined with particular care the Hygiene Report for Monday, 5 September 2005 and Tuesday, 6 September 2005. According to records, 5 September 2005 was the last occasion before the Outbreak on which cattle from the Farm were slaughtered at the Abattoir. Microbiological testing and typing confirmed the outbreak strain of *E.coli* O157 on the Farm was the same as that in people who were infected. The report is fairly illustrative of the sort of problems that persisted. On those dates, the same problems that had been in place since 2003, and indeed in some categories for years earlier stretching back to 1994, were identified and recorded. The Report recorded the following specific aspects as being non-compliant with the legislation:

- (i) Slaughter practices; the problem being described in the second section of the report as poor knife hygiene.
- (ii) Cross-contamination controls including operation cleaning.
- (iii) Staff hygiene practices.
- (iv) Other practices.
- (v) Rooms, equipment and facilities – the second section indicating that rooms and facilities "fall short from legislative requirements".
- (vi) Operator maintenance programme – the second section indicating "no appropriate maintenance carried out".
- (vii) Layout – the second section indicating "layout compromising hygiene of practices".
- (viii) Separation of clean and dirty areas.

9.167 HACCP was also marked as non-compliant. The Hygiene Report indicates that even then, over two years since the HACCP Regulations came into force in relation to the Abattoir, and despite the repeated identification of the problem and repeated discussions, HACCP had still not been implemented at the Abattoir. The Report indicates that even then (and even after the Appraisal Report some months earlier), the HACCP plan remained incomplete and unfinished.

Conclusions

9.168 My principal conclusions are as follows:

- (i) Over a prolonged period, the MHS repeatedly failed to perform effectively its overall enforcement function in relation to the Abattoir. The longstanding, repetitive, failures were made much worse by the fact that there was an abundant knowledge amongst the staff that it was a failing abattoir. Despite this knowledge, the Abattoir was allowed to continue to function in breach of the legislative requirements
- (ii) It is not in dispute that the Abattoir was in serial breach of the legislative requirements. The nature of those breaches remained substantially the same throughout the period. The breaches did not simply relate to peripheral or technical matters. They went to the heart of the ability of the Abattoir to produce safe food; to the structure and its maintenance, to its layout, to the slaughtering and hygiene practices, and from June 2003 to the very existence of an effective and operating HACCP plan.
- (iii) The breaches were not the result of some recent downturn. The documentation that exists in relation to the early to mid 1990s indicates that substantially the same problems had existed un-rectified and unaddressed since that time.
- (iv) It appears from the contemporaneous documentation that those responsible for enforcement of the legislative requirements were well aware of these serial and persistent breaches. The MHS had designed a series of forms for recording relevant details. Those forms were well-designed and tailored to the legislative requirements. They achieved their purpose, focussing the minds of those responsible on whether the Abattoir complied with those requirements. The Hygiene Reports from 2003 onwards provide a clear picture of the true state of the Abattoir and its operations and practices. The monthly HAS reports also indicated a failing slaughterhouse, at least sufficiently to the point where they should have caused those in management who saw them to examine more closely the true extent of non-compliance at the Abattoir.
- (v) The OVSs knew the true position because they completed the relevant forms, including the Hygiene Reports. However, it is also clear that area management became aware of the state of non-compliance at the Abattoir. Mr Stallard's correspondence in 2004, dealt with above, establishes that at the latest by that time he was well aware of the problems.
- (vi) Despite all this, the position did not improve. The same breaches recurred; the same problems remained embedded. The MHS utterly failed to take the necessary, or any effective steps to secure legislative compliance.

- (vii) The responsibility for that failure lies in the first instance with the OVSs but equally, however, with area management. Area management could, and should, have realised that, for whatever reason, the enforcement steps being taken by the OVS were not effective to achieve a state of, or even approaching a state of, legislative compliance. Area management needed to become actively involved in ensuring that the requisite enforcement, and if necessary advisory, action was taken. It is, and should be, a basic function of managerial oversight to identify situations such as this, as they in fact did, and then to ensure that they are properly addressed. Area management should have ensured that the staff were equipped with the support and training necessary.
- (viii) There appears to have been a variety of reasons for the failures.
- (ix) In relation to HACCP, the evidence of Mr Hewson and others indicates that a deliberate decision was taken by the FSA not to enforce the legislative requirements. That decision was, and is, unacceptable. The function of the MHS and the FSA was to apply the legislative requirements that Parliament saw fit to impose in order to minimise the risk of unsafe food being produced. It was not for the MHS or the FSA to choose not to enforce that legislation. Moreover, the concerns expressed about the timing of the legislation appear to me to be without real foundation in a case such as this. There appears to have been plenty of warning that compliance with HACCP principles was to be introduced as a requirement, more than sufficient for any preparatory training or advisory work to be undertaken to enable the industry to be ready on the date the requirement came into force. In any event, by the time of most interest, that is, September 2005 when the Outbreak occurred, the HACCP requirement had been in force so far as the Abattoir was concerned for over two years. Yet there was still not even a credible or effective HACCP plan in place, as indicated both by the Hygiene Reports and from the damning Appraisal Report prepared by Mr Thomas in April 2005.
- (x) In relation to the other failures, the reason consistently advanced by the MHS and OVS witnesses was that they were seeking to work with Jonathan Tudor, they sought deliberately to adopt a co-operative approach to enforcement, and that some warning letters and Improvement Notices were served. On this aspect, my conclusions are:
- (a) There is, of course, benefit in seeking, in the first instance, to achieve the resolution of problems and compliance with legislative requirements by discussion and agreement with the management of a slaughterhouse. However, as the MHS Manual itself recognised, sometimes that approach would not be sufficient. It was for precisely that reason that the MHS Manual (Chapter 18) set out and gave detailed guidance about the hierarchy of enforcement taking progressively more serious enforcement steps in order to ensure compliance with legislative requirements.

- (b) As the legislation and the MHS Manual indicates, all the necessary enforcement tools were available, from advice and recommendation to the service of formal notices to suspension of the licence and, ultimately, to revocation of the licence. Chapter 18 of the MHS Manual noted specifically, but tellingly, given the length of time over which the persistent breaches recurred, that prior to a recommendation by the MHS to revoke a licence “a good trail of enforcement action in relation to the premises exists over a period of time, normally six months... a shorter period may be appropriate depending on the condition and/or history of the premises”. As Area Management was aware of what was happening at this Abattoir, the necessary technical and enforcement support should have been provided to secure compliance.
- (c) The Hygiene Reports clearly indicate that the limited enforcement action that was taken was demonstrably ineffective to achieve compliance with the legislative requirements. Months and then years passed without significant improvement, still less achieving the required compliance.
- (d) What was needed, but never put into place, was a rigorous enforcement programme designed to compel compliance, if necessary put in place and overseen by more senior MHS management. If J.E. Tudor & Sons Ltd was unable, or for economic reasons unwilling, to achieve compliance, steps should have been taken, after working up the hierarchy of enforcement in order to demonstrate such inability or unwillingness, to suspend or revoke the licence.
- (e) No doubt time and resource would have been necessary in order to pursue this. However, the outcome was that, in effect, the body responsible for enforcement of legislation designed to secure food safety permitted a slaughterhouse to produce food that risked being unsafe because of a failure to comply with the legislation.
- (xi) The result of that failure was that an abattoir that should either have become compliant or have been shut down continued to operate whilst failing in serious respects to comply with food safety legislation. By reason of the MHS not effectively controlling compliance with food safety legislation within the Abattoir, there would have been a substantial increase in the risk of *E.coli* O157 on meat coming out of the Abattoir. As a result, the risks of unsafe food being produced and supplied into the food chain were considerably higher than they should have been.

Development since the Outbreak

9.169 Under the EU Food Hygiene Regulations, which came into force on 1 January 2006, the MHS carries out some professional inspection duties, but there is a greater emphasis on auditing the efficiency and effectiveness of operator controls for hygiene, animal welfare and animal health as opposed to directly supervising business activities. Some premises such as catering butchers, which were previously under Local Authority control, now require veterinary controls and fall under the responsibility of the MHS.

- 9.170 The MHS Operations Manual has been replaced with the MHS Manual for Official Controls. It includes a new audit and risk assessment scheme which includes the element “confidence in [food safety] management”.
- 9.171 MHS systems and controls in abattoirs have been subject to a variety of reviews in the period since the Outbreak, including internal and external audits, and independent reports. The European Commission’s Food and Veterinary Office also reported on the application of HACCP-based procedures.
- 9.172 The MHS points to changes in its management structure, saying that it has seen the opportunity to centralise and strengthen decision-making, particularly on enforcement. It is said that the new management structure, to be fully operational in April 2009, will support the escalation of enforcement action.
- 9.173 Consistently non-compliant operators will be brought to the attention of MHS Headquarters and a case conference system will consider such cases for immediate suspension or withdrawal of approval. Alternatively, an operator may be allowed to agree to an action plan to correct deficiencies. If the action plan is not adhered to, procedures to withdraw approval will be initiated automatically.
- 9.174 I am disappointed to note that the changes to the management structure will only become fully operational more than three years after the Outbreak. I am simply not in a position to judge whether the changes made will lead in practice to more effective enforcement of the legislative requirements.