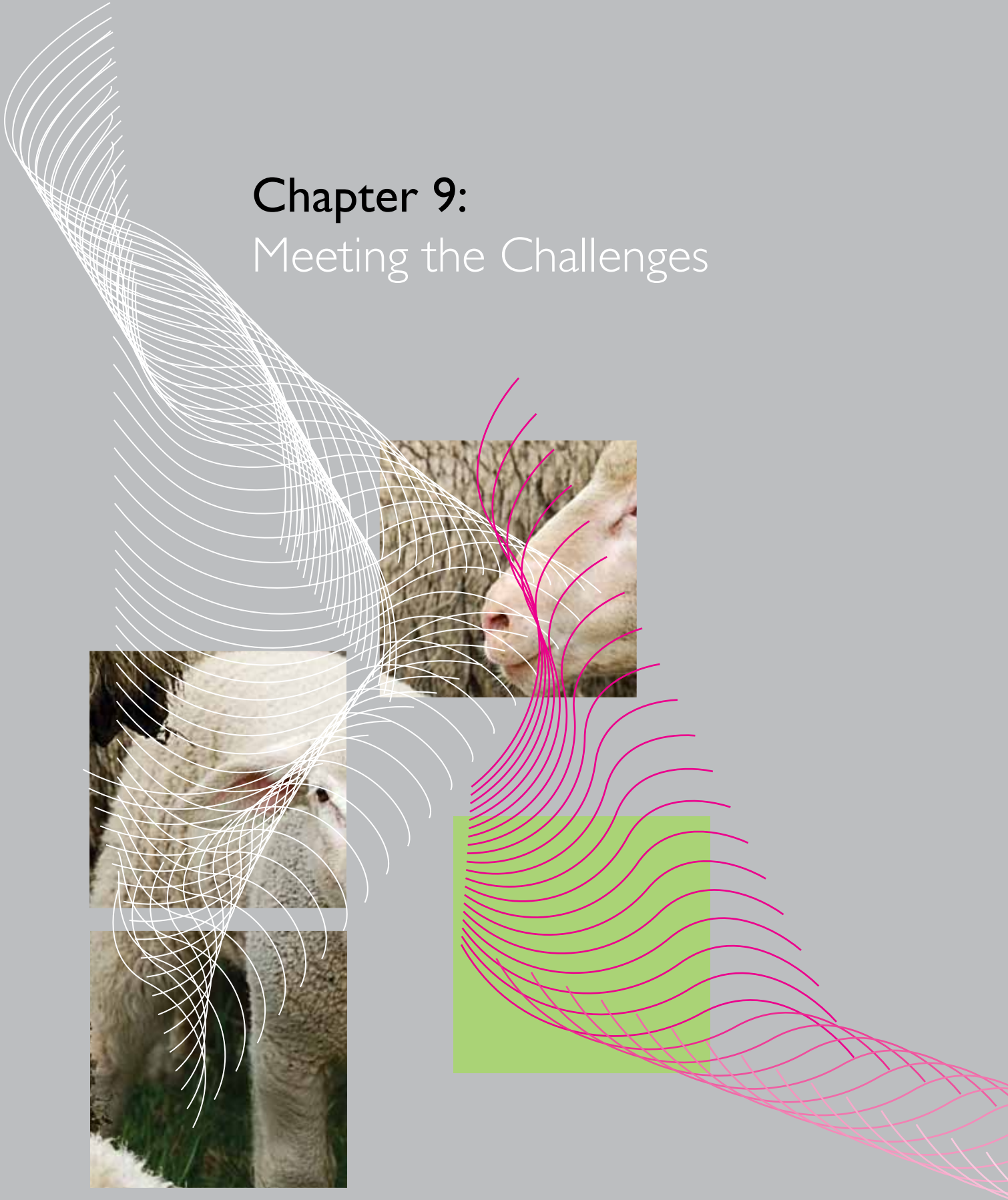
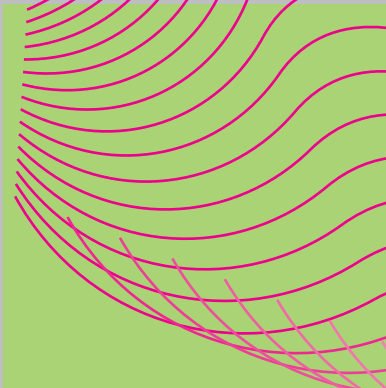
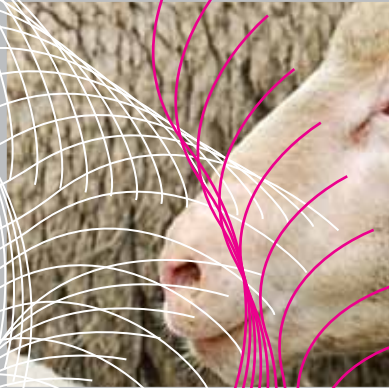


# Chapter 9: Meeting the Challenges

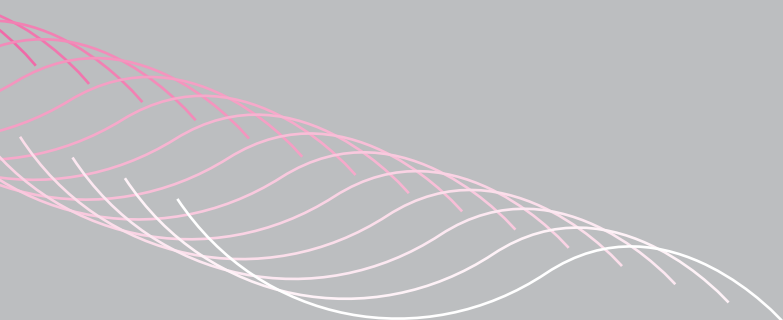


## Chapter 9: Meeting the Challenges

- 9.1 Strengthening the Regulatory Regime
- 9.2 An Approved Code of Practice
- 9.3 Securing Compliance
- 9.4 Working Together
- 9.5 References

### Key Points

- The existing regulatory structure is not securing compliance with standards and is unlikely to reduce the risk of future outbreaks at Open Farms unless reinforced
- Non-statutory, unenforceable guidance leaves room for doubt about standards of protection; simply reviewing guidance will not be sufficient to meet the challenge of improving public health protection
- An approved code of practice (ACoP) would be a proportionate means of providing clarity and certainty about standards, helping both operators and enforcing authorities **(Key recommendation)**
- A voluntary accreditation scheme for Open Farms is strongly recommended as helpful to both operators and regulators; we do not recommend making special regulations or licensing of Open Farms at this time **(Key recommendation)**
- A definition of an Open Farm is needed and a national register would help target awareness-raising, education and inspection programmes for Open Farms
- The Health Protection Agency (HPA) has no enforcement powers and is not an enforcing authority; the powers of the local authority (LA) inspectors and proper officers to prohibit activities or close premises need clarification
- Confidence and competence of Environmental Health Officers (EHOs) to inspect and enforce standards at Open Farms need to be strengthened through training and support from centres of expertise
- There is a need for agencies to share information and work much more closely together in regulating Open Farms **(Key recommendation)**.



### Introduction

Chapter 8 has analysed weaknesses in assessment of risk, risk management and control measures necessary to reduce risk of *E. coli* O157 infection of visitors to Open Farms. Several problems have been identified that get in the way of achieving compliance with standards, involving farm operators, industry and regulatory bodies. This Chapter discusses solutions.

## 9.1 Strengthening the Regulatory Regime

### 9.1.1 The Regulatory Framework

On the face of it, the framework of health and safety law for the protection of visitors to Open Farms looks robust, with 'general duties' (see Chapter 4) requiring operators to keep risks arising as low as reasonably practicable and further statutory requirements for competent risk assessment and management of health and safety. Moreover, the *E. coli* O157 risk has been recognised in guidance for farm operators describing control measures that the Health and Safety Executive (HSE's) Biological Agents Unit believes are reasonably practicable and proportionate to the risk.

There are considerable strengths in the UK's regulatory approach, not least in the establishment of expert leading national agencies such as the HSE, Food Standards Agency (FSA) and Animal Health (AH) with 'delivery' at local level by LAs, strengthened by the forging of partnerships between national and local regulatory bodies. Until the *E. coli* O157 outbreaks in 2009 (see Chapter 1, section 1.5.6), there might have been some points of justification that 'light touch' regulation of Open Farms was appropriate.

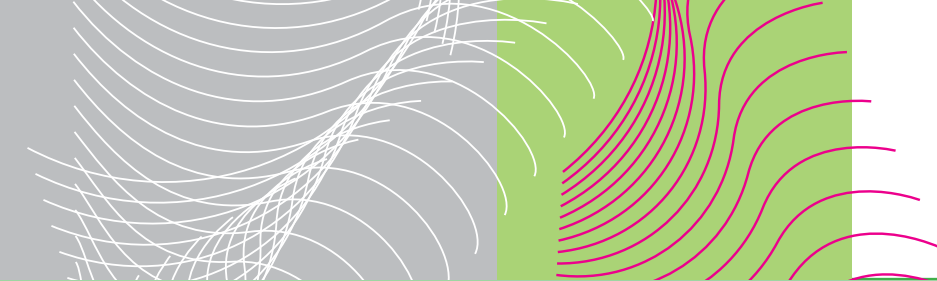
However, many of the businesses in this sector are small, having originated largely from working farms that needed to diversify in order to remain viable. The resources and expertise available to them for risk assessment are few and it is unsurprising that they have difficulty (as we discovered) in understanding the risk and what they needed to do to control it.

The 'goal-setting' approach of the Health and Safety at Work Act (HWSA), which allows employers to choose how to comply with the Act's general duties and other legal obligations, suits large businesses with in-house resources and expertise enabling them to manage a variety of risks competently without need of further regulatory intervention. This is not so true of smaller, less well resourced firms who will often say 'just tell us what we should do'. For small businesses, clarity and certainty about their statutory obligations are essential. The Department of Business Innovation and Skills has issued a Code of Practice on Guidance on Regulation which recognises these needs (it can be found on [www.bis.gov.uk](http://www.bis.gov.uk)).

There are a number of lessons to be learned from the farm-associated outbreaks occurring in 2009. At Open Farms, the success of the regulatory regime protecting public health relies principally on the regime set up for occupational health and safety. Public health depends initially on prevention, which clearly failed in 2009. **We conclude** from our findings that if the risk of future outbreaks is to be reduced, the regulatory regime needs to be strengthened, demanding a more rigorous approach towards securing compliance with standards from both farm operators and regulators. How should this be achieved?

### 9.1.2 Role of the Regulators

There are impediments in securing greater compliance that will need to be overcome. Assessing



whether an organisation is in compliance with health and safety law is not an easy task for inspectors when the law allows each business to take a different approach to controlling risks. We have heard from farm operators and from the Tandridge Environmental Health Department (Tandridge EHD) that they would favour a more prescriptive regulatory approach. We have also heard criticism of the existing guidance material because, for example, it requires 'too much interpretation', that 'it does not say how many signs there should be, or what size the lettering should be'.

These comments may be symptomatic of a difference of regulatory attitude between LAs (who, together with farm operators, are a primary user of the HSE's guidance) and the HSE. The HSE advised us that their strategy for addressing health and safety in agriculture had changed over time. Rather than spending resources on inspection of the many small enterprises, more effort was now being directed toward promoting and raising awareness among farmers through a variety of communication methods (see Chapter 4). The HSE's own inspectors are at ease with the 'goal-setting' approach. They are well trained and recognised as highly competent. Being responsible for inspection of the majority of farms in Great Britain, they acquire a detailed understanding of health and safety in agriculture. On the other hand, with so few Open Farms for each LA to inspect, resulting from the current division of enforcement responsibility, it would not be surprising if lack of experience of good health and safety practices in farming and a relatively low level of expertise in agricultural and microbiological risks on farms left EHOs at a disadvantage.

This has struck us as a weakness in the regulatory approach that needs to be remedied by the leading bodies. There are several ways in which this can be done and the HSE is well placed to take the lead, having already forged a strong relationship with Local Authorities Co-ordinators of Regulatory Services (LACORS).

For example, following the Godstone Farm outbreak the HSE has, commendably, attempted to support LAs by issuing advice through the HSE and LA joint liaison committee (HELA) on how to apply the Enforcement Management Model (EMM) at Open Farms, seeking consistent and effective regulatory actions. But unlike the regulatory approach followed by the FSA under food safety legislation there is no auditing of LAs' performance in health and safety inspection and therefore no means of knowing whether consistency and effective regulation are being achieved.

**We conclude** that the question of how the health and safety regulators assure themselves and the general public that a consistent, effective regulatory approach to Open Farms is being maintained needs to be answered. **We recommend** this be addressed by the HSE and LACORS, taking the industry's views into account.

## 9.2 An Approved Code of Practice (ACoP)

The regulatory options available under the HSWA have been highly successful over the last 35 years in improving standards of health and safety in Great Britain in a variety of industries. A major challenge that now has to be met by both the industry and regulators to improve health and safety at Open Farms is establishment of a set of clear and enforceable standards for this sector. More needs to be done to improve understanding of what it is reasonably practicable for operators to do and what would be acceptable to regulators.

We have discussed at length in Chapter 8, problems drawn to our attention arising from guidance

currently available to Open Farm operators and have concluded that control measures need to be reviewed in close consultation with leading representatives of the industry.

However, we do not regard a review of guidance alone as a sufficient response to the lessons of the 2009 outbreaks. That is the starting point for a more fundamental strengthening of the regulatory regime.

The role of the industry in strengthening the regime is as important as the role of the regulator. After all, operators of Open Farms have a primary duty of care. They also have a strong commercial interest in ensuring public confidence in their sector's management of risks. There is work to be done to restore trust after the 2009 outbreaks.

**We conclude** that a more rigorous approach to securing compliance with good practice needs to be taken by both operators and inspectors, within a strengthened regulatory framework. In coming to this view, we have considered the evidence of all the parties carefully and have taken legal advice from the Solicitor to this Investigation.

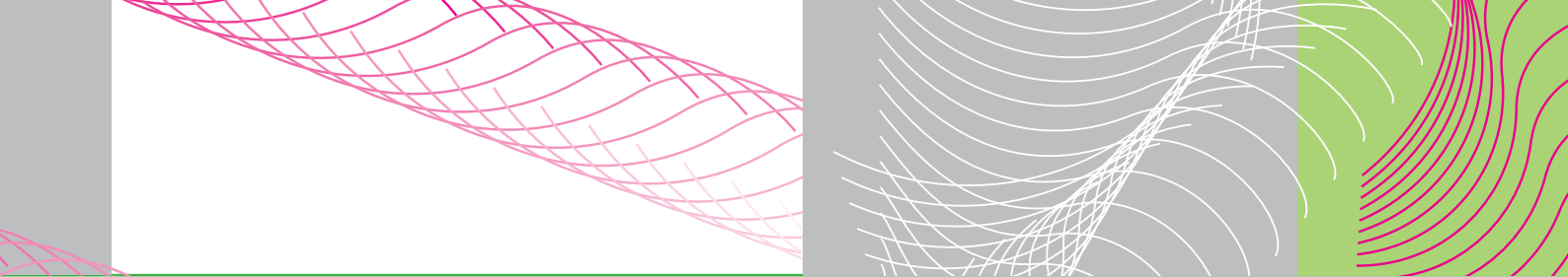
Our legal advice is that non-statutory guidance is not enforceable and farm operators are not obliged to follow it, even assuming that they all understand it. The guidance leaflet AIS23 carries the disclaimer 'This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do'. At present the regulatory approach to Open Farms depends on operators complying with their general HSWA duties and the requirements of regulations such as the Control of Substances Hazardous to Health Regulations 2002 (COSHH), which they need to understand. They are required to appoint a competent person to enable them to meet the requirements of health and safety law, although this need not be anyone with special expertise from outside the farm. It is clear to us from the findings of the joint HSE/LA inspection (i) conducted after the outbreak that Godstone Farm did not possess the necessary in-house expertise and understanding to manage risks to health.

We do not wish to make a case for yet more regulations being imposed on this essentially 'small firms' sector. That approach would not address the problems we have identified in the way of improving compliance. There is a better way of introducing more rigour into the system, in line with modern principles of Better Regulation, that would have the advantage of strengthening the regulatory framework without imposing any burden on business. An approved code of practice (ACoP) will provide a targeted, transparent, proportionate and consistent structure which will provide a basis for the advice which the Industry currently lacks. Such an ACoP will provide flexibility and can be easily reconfigured in the light of further scientific and public health knowledge. The clarity and certainty which will ensue from the ACoP will help farmers and will reassure the Industry and the public that steps have been taken to provide a definitive reduction in risk.

How should the regulatory regime support enterprises like Godstone Farm in meeting their statutory obligations? The recommendations of the Robens Committee (1), which led to the passing of the HSWA, supported the idea of codes of good practice being produced in collaboration between industry and regulators. The Act was to enable progressive replacement of overly prescriptive, outdated health and safety legislation that had accumulated over the previous century with a 'system of regulations and approved codes of practice'.

Numerous helpful codes of practice have since been produced in this way and approved by the HSE, giving them a special status in law. The value of codes of practice to operators in providing clarity and certainty about standards and how to comply with their legal obligations has already been discussed in Chapter 4.

We have noted that a code of practice approved under the Prevention of Accidents to Children in



Agriculture Regulations 1998 made only passing reference to *E. coli* O157. A code of practice has been approved under COSHH for the control of legionella but there is none for the control of *E. coli* O157.

We believe that there would be considerable advantages (and no additional cost to operators) from moving from reliance on non-statutory guidance to an ACoP dealing comprehensively with the *E. coli* O157 risk of infection at Open Farms, providing clear benefits to all concerned. The Open Farm industry's participation in developing an ACoP would engender a sense of ownership of standards.

**We conclude** that if a code of practice were subsequently approved under HSWA powers it would provide clarity and certainty to both operators and inspectors about standards expected at Open Farms and become a basis for assurance of visitors to farms about their compliance with health and safety law. Leadership by the national regulator will be required to achieve this.

**We recommend** that the HSE should take the lead in developing a code of practice for subsequent approval, involving the HPA and other relevant authorities, in close consultation with leading representatives of the industry.

### 9.3 Securing Compliance

Standards are essential to success but other steps will have to be taken to improve compliance by operators and effectiveness of regulatory inspections of Open Farms. These are discussed below.

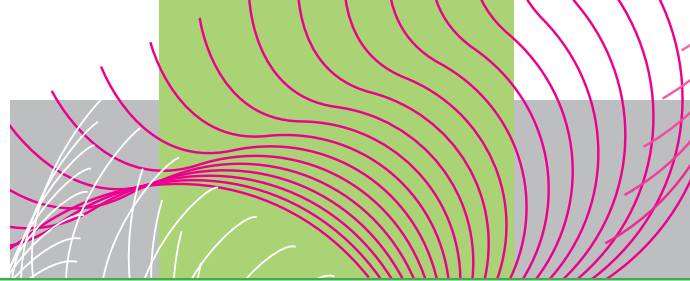
#### 9.3.1 Accreditation

There are a number of voluntary schemes enabling a degree of self-regulation in various sectors. In the agricultural sector, Farming and Countryside Education (FACE) administers the Countryside Education Visits Accreditation Scheme (CEVAS) but this is limited to about 700 farms involved in the Government's programme to ensure learning outside the classroom (Chapter 3).

Accreditation may be of individuals or organisations and may be voluntary or statutory. The Open Farm operators we met expressed enthusiasm for a voluntary accreditation scheme for their sector that would enable independent inspection and auditing of standards and provide assurance about compliance to both operators and the visiting public. Conscious of the damage that another major outbreak of *E. coli* O157 would do to their industry, they were willing to pay the cost of annual inspections.

They drew our attention to a voluntary scheme developed some years ago for assuring safety at fairgrounds, which involves independent inspections of rides by accredited surveyors. They believed that a similar approach would be helpful to restoring and maintaining public confidence in health and safety at Open Farms. While we are not in favour of self-regulation alone as any guarantee that a risk such as arises from *E. coli* O157 is being kept under proper control, an ACoP, as we have recommended above, could provide essential standards as part of the underpinning of such a scheme (safety and other health-related issues as well as the *E. coli* O157 risk would also need to be addressed).

**We conclude** that it would be well worth fostering the development of a scheme that would allow the management of risks to health and safety at Open Farms to be independently audited and assured, on an annual basis. **We recommend** that the industry pursue this, their own idea, and that



the authorities help and encourage leading representatives of the Open Farm sector in fostering the development of a robust accreditation scheme for inspection of standards at Open Farms.

### 9.3.2 Definition of Open Farms

There is another challenge to be met, which is to find a solution to the problem of identifying Open Farms. That they are sometimes variously called 'petting farms', 'farm attractions', 'leisure farms', 'farm parks' or 'city farms' illustrates the difficulty of defining these businesses. Together with the lack of a national register of Open Farms (discussed below), it presented impediments to effective regulatory action when the HPA asked the HSE and LAs to visit all Open Farms in the wake of the Godstone outbreak. We believe that it is a weakness in the regulatory framework and that it is important that a solution be found. (The HSE itself seemed uncertain about whether some Open Farms might fall within its responsibility.)

In the Outline to our report we have defined Open Farms as 'those premises that maintain farm animals, actively attract visitors for leisure purposes, have visitor facilities and encourage, permit and allow animal contact, and such premises need not be open on a daily basis nor solely operating as commercial leisure activities'. Conscious of the terms of reference, this was for the purpose of scoping our investigation and drawing a practical boundary around a study that we could complete within a reasonable period.

We have therefore concentrated our attention on Open Farms such as the one at Godstone but wish to draw the attention of the regulatory authorities to other situations and premises where the general public may be brought into direct contact with agricultural animals.

A challenge lies in the changing nature of the Open Farm sector. It is young and still evolving as farmers diversify and enter the business of public entertainment. The metamorphosis may begin by opening a working farm occasionally to the public as an attraction in itself and then, as any profits allow, fresh attractions such as rare breeds and exotic animals, restaurants, adventure playgrounds, rides or demonstrations may be added, gradually changing the character of the business. At a point where the farm becomes mainly an entertainment business it will cease to fall under the regulatory attention of the HSE's inspectors and will become the responsibility of the relevant LA.

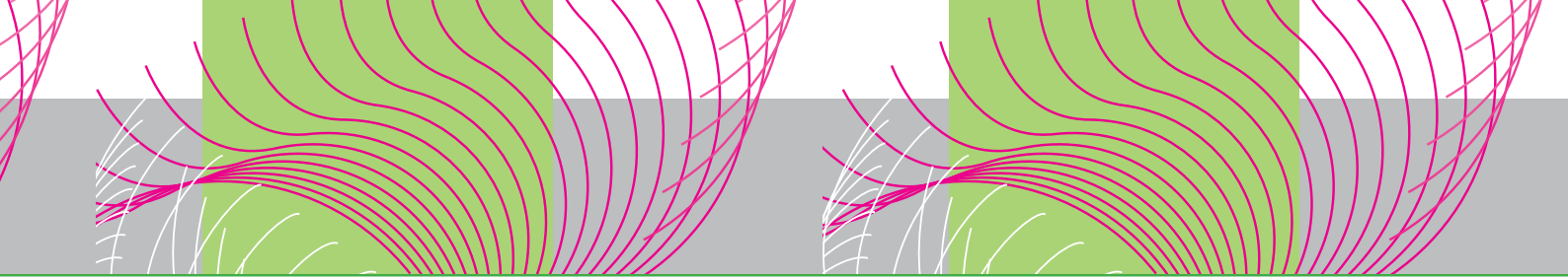
Furthermore, the grounds for deciding when a working farm has become primarily an entertainment facility are unclear.

The following definition, believed to be the most recent, was used by the regulators in the relevant instruction LAC 41/5:

'Open farms are commercial operations whose primary purpose is entertainment and which can be distinguished from conventional working farms (commercial agricultural undertakings) by a number of factors. The following features in isolation or combination are relevant:

- The farm attraction is open to the public by direct access
- The farm attraction is visited on a daily/throughout the year basis
- Provision of fixed facilities for visitors including handwashing
- Provision of animal petting areas; and
- Provision of rides and play amusements/facilities'.

We regard this definition as unsatisfactory. While some of the features are clearly relevant to the Open Farm sector we do not agree with them all for the control of risk. For example, we think the suggestion



that the premises need to be visited on a 'daily/throughout the year basis' is unhelpful and could lead to 'risky' premises being excluded from an inspection programme.

We have described in Chapter 3 circumstances where the general public may be brought into direct contact with animals. Some premises do not invite the public to have animal contact, but animal contact may be incidental (for example, farms that rent out their land for camping or similar activities, have public rights of way running through their property or are non-agricultural premises such as stables or riding establishments).

Additionally, some working farms occasionally participate in public events, such as Open Farm Sunday, organised by Linking Environment and Farming (LEAF). These could be excluded if they did not encourage, permit and allow farm animal contact but some working farms open to the public for a few days each year to allow them to see a particular farming activity, such as during the lambing season. Moreover, we are aware of mobile animal petting companies that move from venue to venue, advertising locations on the internet, and public houses that keep farm animals for petting by customers. Furthermore, some agricultural shows are very large events attracting many thousands of visitors. We would wish to encourage organisers of such events to undertake robust risk assessments guided by the principles we have proposed in Chapter 8.

We have not been able to examine any of these kinds of premises or activities in detail but, notwithstanding, we believe that in some of the circumstances mentioned above, the risks of *E. coli* O157 infection for visitors are likely to be considerably higher than from incidental exposure. Businesses responsible for these kinds of activities need to assess and manage risks to visitors arising from animal contact properly and be included within regulatory oversight.

**We conclude** that to promote effective inspection and awareness-raising programmes, the authorities need to develop a practical definition of Open Farms that takes risks as well as activities into account. The definition we have used for the scope of our investigation may be a useful starting point. **We recommend** that this issue be pursued in consultation with leading agricultural industry representatives.

### 9.3.3 Registration

It became very clear to us as we gathered evidence that there is no accurate figure available of the number of Open Farms. Most LAs will have only one or two farm attractions on their patch and it would be surprising if their EHOs did not know where these are. However, we understand there is still no national total available.

It is hard to understand how a national strategy to improve health and safety at these premises could be developed (and then be properly monitored and evaluated) without better information about the sector. This will be needed for planning campaigns to educate and raise awareness, reaching out to operators, or delivering collaborative inspection programmes of farms by the HSE and LAs. **We conclude** that this unsatisfactory regulatory situation needs to be remedied. A licensing regime (discussed below) would generate a list but a simpler and much less onerous solution would be registration of Open Farms.

We note that the National Farm Attractions Network (NFAN) keeps a voluntary register of its members but not all Open Farms are members; we are also concerned that a farm that intends to diversify its business and open to the public has no need to demonstrate that it meets any conditions for controlling risks to health and safety before it introduces animal contact to the general public. (As a good example of best practice overseas, we have learned that in Denmark the Ministry of Food, Agriculture and Fisheries (Animal Health Division) is responsible for certification of zoological gardens and of farms open to visitors and that there is requirement that all animals must be registered in the

equivalent of a County Parish Holding [CPH]. Visitors are able to check the health status of any farm before visiting and this information is openly available on the internet.)

We were told by Animal Health (AH), the executive agency of the Department for Environment, Food and Rural Affairs (Defra) which is responsible for animal health and welfare on farms, that they knew which ones were Open Farms. However, the evidence presented to us on the role and functions of AH with regard to Open Farms was less clear. They have a key role to safeguard public health from animal-borne disease and one of the four reasons for Government intervention described in the Defra Animal Health and Welfare Strategy is the protection of public health. We are aware that AH and LA Trading Standards Officers (TSOs) visit Open Farms for animal health and welfare and feedstuffs regulatory purposes but we heard little to suggest that their knowledge of farm locations and special expertise are brought to bear in support of the wider regulatory framework for protecting public health at Open Farms.

We are also aware that Defra is continuing to support the development by AH of a CPH database that is intended to maintain a picture of livestock location throughout Great Britain. Such a database might have the capability of providing information about numbers and locations of Open Farms to the regulatory authorities responsible for health and safety inspections (HSE and LAs).

**We conclude** that the absence of a national database of Open Farms, combined with lack of a clear definition, is an impediment to effective regulation of this evolving sector. **We recommend** that in addition to working out a definition, the several bodies with regulatory or representative interests in Open Farms should collaborate to establish a register, sharing any data that are available to them separately.

### 9.3.4 Licensing

An advantage of licensing is that conditions may be attached which are specific to a particular set of activities. We noted that after the Lyme Bay canoeing tragedy, in which four teenagers drowned, followed by prosecutions of an activity centre and its director for manslaughter, the Government introduced legislation to establish an Adventure Activities Licensing Authority (AALA), requiring businesses to obtain licences subject to regular inspection. The AALA has recently been merged with the HSE.

We noted that a licensing approach has already been adopted for zoos for animal welfare purposes and it is worth recording that some Open Farms are licensed under the Zoo Licensing Act 1981 (as amended). This is also the case in other countries such as in the USA, where States license 'petting zoos'. The 1981 Act requires inspection and licensing of zoos that are open to the public for more than seven days a year. Policy responsibility rests with Defra and AH maintains a register of zoo inspectors.

Responsibility for the day-to-day operation of the licensing system and the administration of the Act rests with LAs, who are required to carry out annual inspections. Tandridge District Council (DC) told us that they contracted with a specialist inspector to help them regulate the licensed zoos on their patch. Godstone Farm is not a licensed zoo.

The Act's definition of a 'zoo' has a wide scope, with licensed zoos ranging from traditional urban zoos and safari parks to small specialist collections such as farm parks with exotic species, butterfly houses and aquaria. Dispensations from licensing are allowed to small zoos. As a matter of interest we noted that Tandridge DC might have considered whether Godstone Farm fell into this category but there was no evidence that they had. On the other hand Horton Park, Godstone Farm's sister farm, which is



regulated by another LA, had been considered for zoo licensing dispensation.

We have considered whether a statutory licensing scheme should be introduced for the purposes of public (as distinct from animal) health and welfare. It is a resource-intensive approach to regulation and regulatory costs would need to be recovered. The option of licensing will need to be kept open, and may ultimately be the right way ahead for the sector if health and safety standards at Open Farms do not improve. But we are not recommending licensing of Open Farms at this time. We consider that a less burdensome measure – registration – will meet the regulatory need for information about these businesses, and that an ACoP will bring clarity, certainty and enforceability of standards from which improvements should follow.

### 9.3.5 Powers of Inspectors

While there was a perception among some of the affected families that the HPA could have acted to close Godstone Farm, this was mistaken. In fact the HPA has no enforcement powers of its own in this respect and is not a statutory enforcing authority, unlike the HSE and LAs. During the Godstone outbreak, there was uncertainty about whether the powers of EHOs provided by the HSWA were sufficient to close the premises entirely, or only to prohibit specific activities. Dealing with a public health risk under health and safety at work legislation may not seem entirely appropriate but was the only option pragmatically available; there was no closure power available in 2009 under public health legislation. It is notable that closure powers would have been available under food safety law if the problem had been one of food poisoning.

We asked for clarification and were told by the HSE and LACORS that decisions about using prohibition powers under HSWA 1974 to close premises need to be taken on a case by case basis. There needs to be evidence that shows there exists a risk of serious personal injury and that the only way to control that risk is to prohibit use of the premises, hence its closure. (This advice is set out more fully in an addendum (ii) to the notes of the investigation committee meeting held on 5 November 2009.)

Since the source of an *E. coli* O157 infection may not become clear for some time – indeed an Outbreak Control Team (OCT) may not have been convened until there are two cases with an epidemiological link to an Open Farm – the EHD will be considering whether infection could have arisen from water, food, the environment or contact with dirty animals or their faeces.

**We recommend** that in efforts to limit the potential for an Open Farm outbreak, as at Godstone Farm, the EHD should suspend visitors' contact with ruminant animals until the source of infection is pinpointed by further epidemiological investigation. It was notable that after this action was taken voluntarily by Godstone Farm operators on 4 September 2009 there were no further cases of infection even though the premises themselves remained open.

Most businesses will wish to do the right thing in the event of an outbreak and securing voluntary closure may often be the better and swifter course of action than use of regulatory powers. However, there needs to be a default position when financial pressures on a business to remain open become extreme, particularly during peak seasons when loss of revenue could mean business failure. Inspectors need to be ready and confident of being able to use their powers should they encounter reluctance or opposition to closure, in circumstances where that is essential for the protection of human health.

Since April 2010 a new health protection power has become available under the Health Protection (Part 2A Orders) Regulations 2010. This enables a LA to apply to a Magistrates' Court for an order



pursuant to S.451 of the Public Health (Control of Diseases) Act 1984 to close premises which are or may be infected or contaminated and present or could present significant harm to human health.

**We conclude** that the authorities need to clarify how prohibition and closure powers under health and safety and public health laws should be used by EHOs and **we recommend** that clear advice be given to inspectors about them.

### 9.4 Working Together

#### 9.4.1 Division of Enforcement Responsibility

We noted that the vast majority of agricultural holdings are the HSE's to regulate, but that Open Farms, whose main purpose is entertainment, are judged to be for LAs to inspect. We also noted that fairgrounds have remained the responsibility of the HSE in spite of their being for public entertainment. We considered whether, as most LAs have only a handful of Open Farms to inspect and their EHOs may require additional competence to do this effectively, it would be sensible for these to be transferred to the HSE lock, stock and barrel. The Regulations permit transfer of individual premises by agreement, but we were advised that a change in the law seems necessary for wholesale transfer. However, operators told us that they preferred to have contact with their local EHOs and clearly there is more benefit to be had from the closer attention they are likely to receive from a well trained and experienced local officer familiar with their business than from the rare visits we were told that working farms can expect from the HSE.

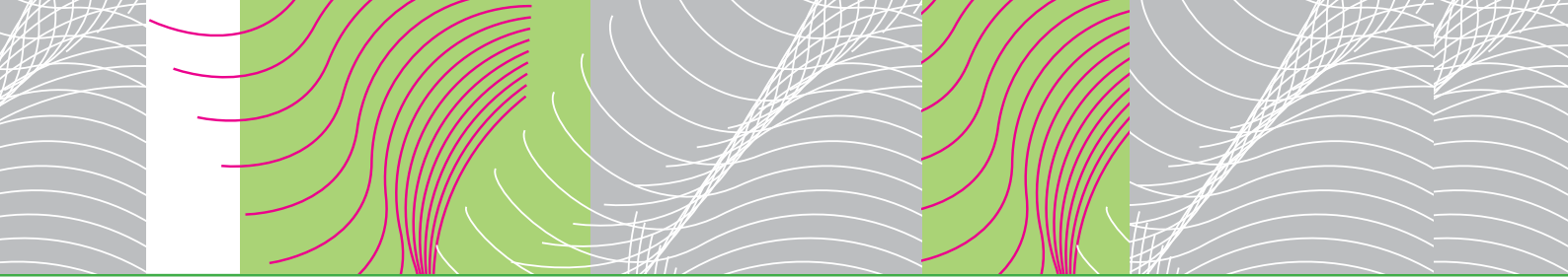
**We conclude** that provided EHOs acquire the competences required to inspect Open Farms effectively, with ready access to the HSE's expertise when needed (discussed below), there is no advantage to be had from the HSE becoming responsible for Open Farms.

#### 9.4.2 Training and Competence of EHOs

Regulatory inspectors need to be both confident and competent. If LAs are to continue to have responsibility for health and safety at Open Farms **we conclude** that it will be important for EHOs to be confident about doing it well and have opportunities to acquire the necessary expertise.

Evidence in Chapter 8 of inspections at Godstone Farm and examination of the reports of OCTs' investigations into Open Farm outbreaks show that training for LA inspectors does not yet ensure the expertise necessary for assessment of Open Farms. In our view the failures to identify the shortcomings in the operator's COSHH assessment and to assess adequately the risks to the public were honest errors, accounted for by the lack of expert knowledge available at Tandridge EHD, amongst other factors identified earlier in this report. We note that in other areas LAs regularly make use of external experts to fulfil regulatory inspections. These include, for example, Zoo Inspectors (who are required to have a minimum of five years' experience) and Riding Establishment Inspectors (required to be either veterinary surgeons or qualified practitioners, with a minimum of five years' postgraduate experience).

We noted that the HSE is, commendably, sharing with LAs, with the support of the professional institutions, the Chartered Institute of Environmental Health (CIEH) and the Institution of Occupational Safety and Health (IOSH), a Regulators' Development Needs Analysis (RDNA) tool. We are aware of good training that organisations such as the CIEH already offer to EHOs in a variety of regulatory topics. We understand that the CIEH would be willing to consider developing training for regulatory



inspections of Open Farms and **we recommend** that the authorities pursue this with the CIEH or other training organisations that have the capacity to offer such training.

#### 9.4.3 Availability of Expert Advice

In addition to the importance of individual expertise we were struck by the need for access to specialist advice for smaller LAs, such as Tandridge DC, who told us that they employed an external specialist Zoo Inspector to assist them with the inspection of the zoos, but no expert for their single Open Farm.

The Investigation found that LAs generally hold the expertise of the HSE's operational inspectors and specialists in high regard and their expert knowledge of agricultural health and safety and biological agents is not in doubt. The HSE has a number of sector groups, including one for agriculture and food based at the regional office in Nottingham (see **Appendix 3**). **We conclude** that this valuable regulatory asset should be regarded by all LAs responsible for Open Farms as a centre of expertise to be approached for advice on agricultural health and safety and for access to specialist advice on microbiological hazards likely to be present. **We recommend** that the HSE and LACORS publicise its availability.

We are aware that for some time LAs, supported by LACORS, have chosen one of their number to act as 'Home authority' for businesses such as national supermarket chains that have multiple premises in most LAs' territories and that there is a 'Home authority' database for LAs to deal with these. While this initiative is not in itself relevant to the several hundred separate small firms in the Open Farm sector it demonstrates LAs' ability to organise themselves when a regulatory problem in dealing with businesses arises. **We conclude** that in addition to the option of using the HSE's agriculture and food sectoral expertise it should be feasible for EHOs who are confident and have experience of dealing with Open Farms to be considered as 'lead experts' available to other less experienced or smaller LAs.

**We recommend** that LACORS establishes lead expertise in the area of Open Farm inspections.

#### 9.4.4 Partnership between the HSE and LAs

We noted that PA Consulting Group was appointed to undertake an evaluation of the HSE and LA Partnership during 2008. It was commissioned by the HSE's Local Authority Unit and conducted jointly with representatives from LACORS, with the aim of enabling them to take a view of the way the partnership was working and how it could contribute to a new strategy for health and safety at work. The report (2) commented on work in progress including, among other things, an intention to conduct more joint inspections.

We agree that there is considerable regulatory value to be had from joint inspections by EHOs and HSE inspectors. Benchmarking and peer review can also be useful ways for a regulatory authority to check whether it is keeping up to the mark. We noted that a joint inspection after the Godstone outbreak was followed by service of Improvement Notices requiring remedial action that would have been better taken earlier. While availability of resources will always be a constraint on the amount of joint visiting that can be done, the Investigation concludes that if LAs are to remain responsible for inspecting Open Farms the HSE needs to consider whether it could offer more support of this kind.

**We conclude** that the Partnership agreement between the HSE and LAs provides a strong foundation for future collaborative regulatory actions to deal with the risk from *E. coli* O157, such as providing access to HSE expert advice (recommended above), awareness-raising programmes and joint

inspections. **We recommend** that the HSE and LACORS continue their collaboration with these objectives in mind.

#### 9.4.5 Agencies Working Together

The complexity of the existing regulatory regime that surrounds Open Farms appears to have made it particularly vulnerable to failures of communication between regulatory agencies. While there appears, generally, to be good inter-agency co-operation during outbreak control incidents, actions for the prevention of outbreaks show a different picture.

We are aware that on an operational level, regular inspections of Godstone Farm were carried out by the Tandridge EHD, by Trading Standards and by AH. We are not aware, however, that there was any process of communicating reports between these departments/agencies that would have assisted in assuring a 'complete picture' of the operation of Godstone Farm. **We conclude** that a strategy of 'joined-up regulation' between the relevant agencies would provide more effective oversight of the operators' control of safety and provide opportunities for reducing the inspection burden on operators.

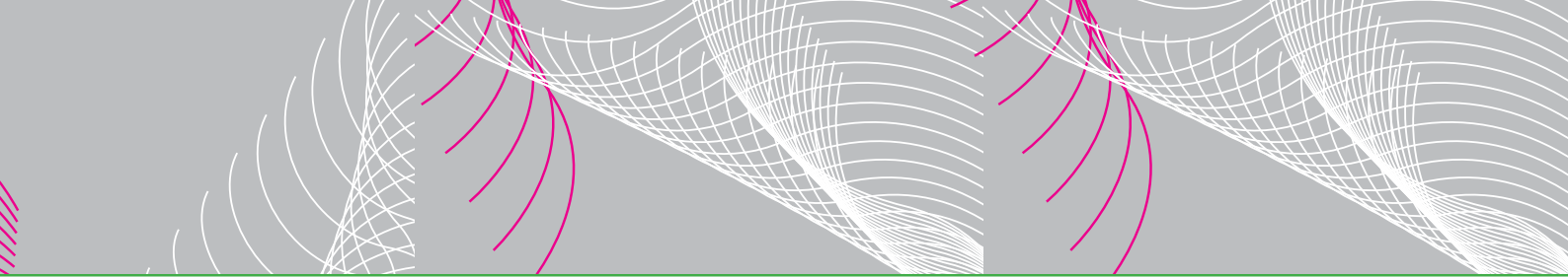
We understand that the HPA established an enhanced surveillance programme for *E. coli* O157 in 2009 and holds a comprehensive collation of material from previous outbreak reports. Furthermore, substantial work is being carried out by the Human Animal Infections and Risk Surveillance Group (HAIRS). Established in 2004, members of this group are from across the Devolved Countries and include the HPA, Defra, Veterinary Laboratories Agency (VLA) and Department of Health (DH), who meet monthly to consider the risk of zoonotic infections. However we are unaware of any system in place whereby the regulators (either the HSE or LAs) could readily access this information, which would clearly be essential to the development of an appropriate regulatory strategy.

Furthermore, although internal HPA documents identify core funded HPA service activities as including: 'The timely investigation of incidents, outbreaks and trends and clusters of disease'; and 'The provision of evidence-based specialist health protection advice for action across the full range of health protection hazards', we are unaware of any service document in place that would support the timely communication of infection occurrences to the regulatory bodies. We are informed that the HPA has taken steps to embed this requirement in its standard operating procedures.

Perhaps the most surprising example of lack of communication, however, is the dearth of inter-authority co-ordination which would enable information gained by LA inspectors during their inspections of premises to be shared more widely. There appears to be no process whereby information is collated and used to inform a co-ordinated regulatory strategy. The information gathered by inspectors appears to be greatly underutilised at present and could be used to add value to the inspection process if appropriate systems were in place.

This failure to communicate information or co-ordinate a unified regulatory strategy highlights difficulties that have arisen as the result of not having a single regulatory body. Dividing responsibility for Open Farms between the HSE and the LAs has resulted in the process and strategy for regulating Open Farms becoming disjointed. The HSE leads nationally in developing policy and strategies but inspects farms for which it is responsible quite infrequently, whereas the effectiveness of the more frequent inspections undertaken by EHOs is weakened by lack of specialist knowledge or experience of risks at these premises. The problem is exacerbated by failure to co-ordinate inter-agency activities aimed at prevention of outbreaks to the same level as inter-agency activity that follows an outbreak.

**We conclude** that a failure to co-ordinate information-sharing between regulatory bodies is



weakening the regulatory system in place, and that strengthening commitment to developing and sharing knowledge of best practices with other agencies would enhance the regulatory system.

We have commented earlier on the desirability of more joint inspections of farms by staff of the HSE and LAs. We have also been impressed by the public service function performed by Defra's VLA in giving support and advice to OCTs dealing with outbreaks of *E. coli* O157 from agricultural contacts. However, we were disappointed to find little evidence of information-sharing or joint working prior to an outbreak occurring. LAs are involved in animal health and welfare inspections on behalf of AH, and visits to farms for that purpose are carried out by TSOs. Again, we found little evidence of information-sharing between TSOs and their EHO colleagues.

Farms are subject to inspection by numerous agencies for various purposes and more 'joined-up' regulation would have benefits for operators as well as regulatory inspectors, and would go some way to relieving the burden that regulation is often perceived to place on small firms. This should reassure the visiting public that Government has 'got its act together'.

**We recommend** that the agencies should explore ways of working together in regulating Open Farms, clarifying mutual understanding of roles, responsibilities and relationships and, where necessary, cementing these with agreements such as the Partnership agreement referred to above or through memoranda of understanding.

## 9.5 References

1. Safety and Health at Work, Report of the Robens Committee, Cmnd 5034, 1972
2. HSE Research Report RR 680

**Independent Investigation documents available at [www.griffininvestigation.org.uk](http://www.griffininvestigation.org.uk)**

- i Feedback from visits undertaken by HM Principal Inspector, HSE to Godstone Farm, Godstone and Horton Park Children's Farm, Epsom on 21 September 2009
- ii Addendum to the notes of the Investigation Committee meeting held on 5 November 2009

