



## **THE FOOT AND MOUTH OUTBREAK 2001: LESSONS NOT YET LEARNED- Professor David Campbell, Professor Bob Lee**

### **Introduction**

The foot and mouth outbreak of 2001 generated costs totalling no less than £9 billion, and with at least £3 billion in direct cost to the public sector.<sup>1</sup> Amongst these direct costs were significant sums of compensation to farmers. The largest single payment was some £4.2 million, but 59 farmers in total received more than £1 million and 323 farmers more than £500,000.<sup>2</sup> These figures represent compensation paid for losses incurred, but the private sector, particularly in tourism and supporting industries, but also in the food chain, suffered revenue losses of about £5 billion, much of which went uncompensated. Hundreds of businesses failed, and alongside this misery the outbreak produced unspeakable cruelty to animals.

This paper represents a short narrative history of the outbreak, made necessary if for no other reason than the government still resists calls for a public inquiry, and the three inquiries to date provide only a fragmented picture. It seeks to demonstrate that there are obvious messages arising out of a review of the history of the outbreak, and argues that the Government has to date shown few signs of heeding any of these. In particular this paper suggests that there are structural confusions inherent in the framework of disease control and response, whereby policies adopted to serve one outcome have precisely the opposite consequence. The primary example of this is that, in order to pursue a policy of stamping out the disease, the Animal Health Act 1981 provides for such levels of compensation to farmers that all risks of disease are

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<sup>1</sup> There are different estimates of the precise costs of the foot and mouth outbreak. The figure used by Defra is £9bn, see DEFRA and DCMS The Economic Cost of Foot and Mouth in the UK: A Joint Working Paper (DEFRA, London, March 2002). The National audit office suggest a somewhat lower figure, though one which exceeds £8bn (see HM Comptroller and Auditor General, The 2001 Outbreak of Foot and Mouth (Stationery Office, London, June 2002)(hereafter “NAO Report”). Part of the explanation for this lower figure is that although there were considerable losses to tourism, the NAO report allows that money was expended elsewhere in the economy, reducing the net economic loss. In an astonishing piece of forecasting the Centre for Economics and Business Research predicted in early March 2001 that the overall cost would amount of £9bn – ‘Bill for farms crisis hits £9bn’ Sunday Times 18 March 2001, cited in Barclay, C ‘Foot and Mouth Disease’ Research Paper 01/35 (House of Commons Library, London, March 2001).

externalised leaving little incentive for on-going precaution. Similarly, payments set at generous levels to encourage the declaration of the disease to allow its stamping out reached such a level that it positively encouraged deliberate infection of animals.

A second theme is the failure to appreciate that significant difficulties in controlling a virulent disease arise out of the promotion of intensive forms of agriculture supported by EU agricultural policy. Thus, the disease spread in a manner beyond all expectations because those expectations showed little awareness of the scale of animal shipments. Similarly, when dealing with the outbreak, there were significant shortfalls in the regulatory response to risk essentially because scientific modellings of the problem, often geographically and intellectually remote from the infected areas, made assumptions not borne out in the conditions of modern agriculture. Measures taken as a result led to a loss of trust and the exercise of powers for which there was no legal basis. However, we see from the Government's approach in holding three studies of the problem rather than a single public inquiry that there will be no holistic response and that issues connected with the future of farming<sup>3</sup>, which we would assert are central to understanding and dealing with foot and mouth are ring-fenced from 'Lessons to be Learned'<sup>4</sup>.

### **The outbreak**

First suspicions of the disease arose following a veterinary inspection on pigs at the Cheale Meats Abattoir at Brentwood, Essex on 19 February 2001. Although the disease was confirmed the following day, the five mile exclusion zone at the Essex abattoir was not put into place until 21 February 2001.<sup>5</sup> The tracing of the animals passing through the abattoir suggested a possible source of infection at a farm run by Bobby Waugh in Heddon-on-the-Wall, Northumbria. A five mile exclusion zone was established around this farm on 23 February 2001. However, it is also known that sheep sent to Hexham Market on 13 February were infected. There were 3,800 sheep

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<sup>2</sup> See NAO Report, Part 4 and Table 51.

<sup>3</sup> Policy Commission on the Future of Farming and Food Farming and Food (Cabinet Office, London, January 2002) (hereafter 'Farming and Food').

<sup>4</sup> Anderson, I Foot and Mouth Disease 2001: Lessons to be Learned Inquiry Report (Stationery Office, London, July 2002) (hereafter 'Lessons to be Learned')

<sup>5</sup> Studd, H 'Foot and Mouth at Essex Farm Complex' Times (21 February 2001).

passing through Hexham Market on that day and 120 dealers attending the market.<sup>6</sup> It follows that in contrast to the dilatory conduct of MAFF in declaring an exclusion zone in Essex, hundreds of potentially infected animals were being dispersed widely across the country.

Bobby Waugh has been positioned as the villain, Admittedly, animal husbandry at his farm clearly left a great deal to be desired. He is now banned from owning or dealing in animals for 15 years. However, certain curiosities remain. In an outbreak of foot and mouth in France in March, 31 sheep were tested. 21 of those sheep proved negative, but 10 proved positive, with 7 testing highly positive.<sup>7</sup> These sheep were transported to France from Wales before the end of January which would certainly seem to raise doubts as to the date and location of the outbreak as accepted in the published reports. The MAFF explanation, endorsed by the Anderson Report, is that the French testing probably represented “false positives”.<sup>8</sup> This constitutes an astonishing coincidence.

If we accept that the pig farm in Heddon-on-the-Wall was a source of the outbreak, there is a simple regulatory mechanism that may have prevented the outbreak itself and much of the anguish that followed. The overwhelming explanation for the transmission of foot and mouth to the pigs would have been the use of unprocessed pig swill, probably containing meat illegally transhipped from Asia. There is speculation as to how such meat would have made its way into pig swill, and suggested sources are Chinese restaurants in the Newcastle area, or army camps in the locality. Yet only just over one percent of pig farmers used pig swill, and the saving over other sources of swill are minimal – about £5 in the lifetime of a pig.<sup>9</sup> The simple regulatory solution, taken by DEFRA<sup>10</sup> as an interim measure, was to ban the practice of feeding swill to pigs in the U.K. Astonishingly, however, this ban has yet to be

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<sup>6</sup> See NAO Report at para 1.7 and Cumbria Foot and Mouth Disease Inquiry Panel Cumbria Foot and Mouth Disease Inquiry Report (Cumbria FMD Group and Cumbria County Council, Carlisle, August 2002) p.25, and Elliott V ‘£900 sale of sheep led to rapid outbreak’ Times 27 February 2001.

<sup>7</sup> This is pointed out by the campaigning website, Warmwell, which draws attention to the fact that Dutch versions of the spread of the disease are impossible to reconcile with official views in the UK, as the Dutch trace their own source of infection to the French staging post at Mayenne– see further [www.warmwell.com/30Julydate.html](http://www.warmwell.com/30Julydate.html)

<sup>8</sup> Lessons to be Learned, p.52. The sheep tested were located at Mayenne (supra).

<sup>9</sup> Brown D ‘Did pigswill cause foot and mouth?’ Guardian 26 March 2001.

confirmed as a permanent measure,<sup>11</sup> even though the EU may be moving in this direction.<sup>12</sup>

Ironically, early in 2001, in the North East of England, in Crook, a dealer in pig swill, Andrew Clement, was found to be passing unprocessed swill to farms. In a breathtaking example of the potential shortcomings of criminal law based regulation, given the eventual costs of the foot and mouth outbreak, Andrew Clement was fined £400 by the magistrates.<sup>13</sup> As for illegal importation of meat, inspection costs of imported meat by port health authorities, passed on to the importer, are charged at £30 per tonne, so that a 40 foot container with 30 tonnes might cost £2,800 to inspect. In contrast, the maximum fine before the Magistrates' Court is £5,000.<sup>14</sup> There would seem to be incentives rather than disincentives to shippers to evade inspection and engage in illegal importation. Needless to say, although wider powers were given to prohibit the movements of meat imports at the time of the foot and mouth outbreak,<sup>15</sup> there have been few other changes to the regulatory regime.

### **The disease spreads**

Ten years prior to the outbreak, there were more than one thousand abattoirs in the UK in 1991. In the ten years that followed more than two thirds of these abattoirs closed.<sup>16</sup> Some closures resulted from the imposition of new EU standards.<sup>17</sup> However, alongside this were significant changes in food production and

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<sup>10</sup> See an amendment to the animal by products regulations banning the inclusion of meat products in swill

<sup>11</sup> The Government line is that the ban remains an interim measure – see Commons Answer to question by Gordon Prentice MP by DEFRA Minister, Elliott Morley, on 20 June 2002 (H.C. Col 479W).

<sup>12</sup> As there is much sense in this provision as a measure to protect against BSE, and EU agreement at a meeting of agriculture ministers in June 2001 approved this in outline – see DEFRA, Bovine Spongiform Encephalopathy: A Progress Report (DEFRA, London, June 2001).

<sup>13</sup> Elliot V and Webster P 'Smuggled meat blamed for Epidemic' Times 27 March 2001, and see Harris, P and Browne, A 'Smuggled meat threatened UK with catastrophic viruses' Observer 1 April 2001, alleging that numbers of meat inspectors had declined at Dover Port Authority from seven down to one in an eight year period.

<sup>14</sup> The Products of Animal Origin (Import and Export) Regulations (S.I. 1996/3124)

<sup>15</sup> The Products of Animals (Import and Export) (Amendment) (England) Regulations 2001 (S.I. 2001/1640).

<sup>16</sup> See H.C Debate 11 November 2001, col.111 in which David Taylor M.P. states that only just over 300 abattoirs remain, some 60 per cent having closed in the previous 15 years, and see Kennard R and Young R, The Threat to Organic meat from Increased Inspection Charges (Soil Association Report, Bristol, September 1999) "10 years ago there were 1,400 slaughterhouses in the UK. There are now barely 350...".

consumption. More than 80 percent of the meat which we consume is now handled through a major supermarket chain.<sup>18</sup> The desire of many such retailers to produce meat which is presented to the consumer, uniformly dressed and packaged, means the concentration of meat production in certain chosen abattoirs. This in turn demands considerable movement of live animals. At the outbreak of the disease, one transportation company based in Somerset disclosed that it moved over one million head of cattle per annum.<sup>19</sup> It feared that foot and mouth would kill its business. At the same time, many companies connected with agriculture found that they were not ruined by the outbreak of the disease, but actually made significant windfall profits helping with the slaughter and disposal of cattle. Chief among these is the Scottish waste contractor, Snowie, which is reported to have billed £38.4 million for work undertaken at the time of the outbreak in facilitating the disposal of slaughtered stock.<sup>20</sup>

However, one must question the utility of many such cattle movements. For example Britain imports 125,000 tonnes of lamb. However, at the same time it exports 102,000 tonnes.<sup>21</sup> There can be little doubt that this seemingly pointless activity results from a Common Agricultural Policy which promotes intensive farming, requiring ever larger markets, rather than locally based patterns of rearing, supply and consumption. On the face of it the subsidies in the CAP promote cheap food even to the point of surplus. However, to this we must now attach the billions of pounds of cost attaching to the foot and mouth outbreak to which the transportation of live animals contributed. However, worse than that, these policies actually create the very conditions necessary to stimulate endemic outbreaks of disease. Not long after the foot and mouth, MAFF introduced a 21-day restriction on stock movements after initial shipment. Explaining the need to introduce such a measure a “Cabinet Minister” is quoted as saying:

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<sup>17</sup> For an account of the impact of EU Regulation on the closure of abattoirs in the UK see: Shaoul, J.E., "BSE : For Services Rendered? The Drive for Profit in the Meat Industry". *The Ecologist*, Vol 27, No 5, 1997.

<sup>18</sup> See David Taylor M.P. (fn 16 – supra).

<sup>19</sup> O'Donnell J 'Ripple effect of foot and mouth crisis' Sunday Times 4 March 2001.

<sup>20</sup> NAO report Table 55.

<sup>21</sup> Lucas C M.E.P., Stopping the Great Food Swap: Re-localising Europe's Food Supply (Greens/European Free Alliance, Strasbourg, March 2001).

“Nobody took account of the extent to which dodgy farmers moved sheep around to claim quota payments. That is the true story.”<sup>22</sup>

This is a reference to the practice of “bed and breakfasting” farm animals so that the numbers of animals forecast for the farm, early in the season, are actually available to the farmer at the time of inspection, thereby avoiding any shortfall in quota payments.<sup>23</sup> If the farmer has a shortfall in forecasted numbers, the “Cabinet Minister” is alleging that farmers merely borrow animals in order to ensure a higher quota payment.

This is but one consequence of CAP subsidies and consequential distortion of the market. The first of the Inquiry reports following foot and mouth, Farming and Food, points to many other unwelcome outcomes. These include: the separation of producers from their market; the distortion of price signals; and the masking of inefficiencies in production. As far as direct payments for livestock are concerned, the report calls for a decoupling of subsidies from levels of production as an interim measure:

“Farmers do need assistance in adjusting to reduced support and some compensation is justified for falling asset prices. However, anything other than short term assistance frustrates the objectives of reform, keeps farmers from the market and continues to encourage practices which may harm the environment.”<sup>24</sup>

With the onset of the foot and mouth disease, cattle and sheep movements were tightly controlled. However, even in the aftermath of these controls there were over 700 investigations into illegal movements.<sup>25</sup> One story which would have remained untold had it not coincided with the very outbreak of the disease, is worth recounting.<sup>26</sup> It is impossible to calculate the prevalence of the type of illegal

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<sup>22</sup> Prescott M and Leake J ‘Ministers hit out at farmers’ Sunday Times 25 March 2001, and see Lobby Briefing dated 26 March 2001 from 10 Downing Street.

<sup>23</sup> See the comments of the General Assembly of the Church of Scotland: ‘the dealer network encourages the so-called “bed-and-breakfasting” of animals to satisfy quota rules’ Committee on Church and Nation Proposal to Introduce a 20 day Standstill Period following Movements of Sheep and Cattle (Church of Scotland, Edinburgh, March 2001).

<sup>24</sup> Farming and Food at p.21.

<sup>25</sup> Leading to 195 cautions and 30 prosecutions most of which seem to have led to conviction (Lessons to be Learned para. 3.58.

<sup>26</sup> Much of what follows is taken from accounts in The Sunday Times beginning with Sheenan M and Kearney V, ‘Gardai quiz dealer on outbreak’ 4 March 2001.

movement of sheep demonstrated by this account, but it seems highly unlikely that the incident was an unusual one.<sup>27</sup> It was brought into high profile because of the coincident timing of the foot and mouth outbreak. The episode concerns an Irish cattle dealer widely referred to as the Kerryman. The Kerryman purchased 271 hoggets for between about £35-42 each at Carlisle Market on 19 February 2001. The sheep headed for Cairnryan for transshipment to Lurgan Abattoir in accordance with the paperwork submitted. However, the cattle truck seems to have stopped at a farm in Lockerbie on the way to the ferry, and Lockerbie became the source of the outbreak in Scotland.<sup>28</sup>

The sheep did not arrive at the Lurgan Abattoir. Once in Northern Ireland, the driver was diverted by a telephone call, to a farm in Meigh, South Armagh. As a “favour”, the farm owner there allowed the animals to rest. In return for this favour the farmer kept 21 sheep, thereby extending the outbreak to Northern Ireland. Overnight the following night, the sheep crossed the border into the Republic, arriving at an abattoir in Athleague at 4.00am. The Kerryman met the cargo, carrying false paperwork which claimed that the sheep were despatched from an innocent farmer in Westport in the Republic of Ireland. By this time, ear tags identifying the sheep as British had been removed. The sheep were slaughtered, packed, labelled and despatched to France as fresh Irish lamb.

As a result of this activity, foot and mouth was introduced into Ireland for the first time in 60 years.<sup>29</sup> The purpose of this subterfuge seems to have been twofold. Irish lamb attracted a premium of about £10 per head over and above the price that could have been obtained for British lamb. In addition, the Kerryman was able to obtain a

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<sup>27</sup> As demonstrated by the fact that the dealer in this instance sought immunity from prosecution in return for the provision of information relating to illegal transshipments; Cowan R, ‘Dealer seeks amnesty for help in tracing infected sheep’ Guardian 13 March 2001. This was apparently unsuccessful as he was sentenced to three months imprisonment in Dublin District Court on 25 January 2002. Similarly, the second case of foot and mouth in France in 2001 resulted from ‘fraudulent’ trading in British sheep: ‘I particularly regret that constraints which will seriously penalise an entire industry are probably the result of fraudulent practices’ French Agriculture Minister Jean Glavany reported –see BBC News Report ‘Fraud spreads French Outbreak’ 24 March 2001.

<sup>28</sup> Elliott V and Webster P ‘Fear of epidemic as Scotland hit’ Times 2 March 2001.

<sup>29</sup> Knowles N.J, Davies P.R. and Samuel A.R. ‘Molecular epidemiology of foot-and-mouth disease virus: The current situation in Europe and the Middle East’ in Research Group of the Standing Technical Committee of the European Commission for the Control of Foot and Mouth, Report of the Session held at Moen Island (FAO, Rome, September 2001).

four percent VAT rebate available to processors of slaughtered lambs emanating from the Irish Republic. For a profit of about £3,000, foot and mouth spread from England to three other countries. These ill-gotten gains would have remained undiscovered except that the tracing of the infected animals from the Armagh farm led to the tracking down of the Kerryman.

### **Handling the outbreak**

One of the many extraordinary aspects of the FMD outbreak was the initial confidence of MAFF that they could control the spread of disease, notwithstanding the widespread nature of the cattle and sheep movements. By the end of the first week in March the Chief Veterinary Officer issued the following statement:

“Most of the animals if they are going to develop the disease...should be showing signs last week and this week and possibly some overflow into next week. So the first evidence is that because we stopped all movements, we stop the spread of disease.”<sup>30</sup>

This can be placed alongside the similarly optimistic view expressed, on the same day by the Director of the Institute of Animal Health, whose laboratory was central to the control of the outbreak:

“My understanding is that the vast majority, if not all the current cases, are on farms with a link to the original outbreak and that is good news...everything that has happened so far might have been predicted. Had the disease taken off and moved out of control we would have expected to see cases with no connection to the original source by now.”<sup>31</sup>

With hindsight, this optimism was hopelessly misconceived. As the disease did not peak until the end of the first week of April, and, then, only after the introduction of the horrendous, contiguous, cull Policy (described below). This statement of the Chief Veterinary Officer would only have been true if issued a whole month later.

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<sup>30</sup> BBC Radio Interview quoted in Henderson M ‘Vets more confident of halting outbreak’ Times 7 March 2001.

<sup>31</sup> Ibid.



Statements such as those above produced the impression that MAFF was in control of the outbreak of FMD and in the process of eliminating it. The Anderson Inquiry states that “the government departments were not greatly involved at this stage, largely because MAFF was not asking for help”.<sup>32</sup> The report into the 1967 outbreak of foot and mouth disease had made the following major recommendation: “arrangements should be made to seek assistance from the armed services at an early stage in a foot and mouth outbreak”.<sup>33</sup> This recommendation seems to have been ignored. It was not until the last week in March, over a month after the initial outbreak that the military were introduced. Moreover, the Anderson Inquiry suggests that the complacency within MAFF about disease control affected the entire Department:

“Individual groups and managers not directly involved with the outbreak remained focused on their own targets. There was no incentive to release staff to help in the fight against FMD.”<sup>34</sup>

The Anderson Inquiry also states that around eighty percent of the vets in the State Veterinary Service (SVS) helped to tackle the swine fever outbreak of 2000, even though that was confined to just 16 cases.<sup>35</sup> In contrast, the foot and mouth disease spread via some of the largest livestock dealers in the country. In Devon, William Cleave, the first person to be affected through dealings at the Hexham Market, was one of the largest operators in Devon, working from thirteen different sites.<sup>36</sup> It seems to be accepted that this was the sole source of introduction of the disease into the region, but Devon eventually suffered 173 confirmed cases of foot and mouth disease. The Devon Inquiry reports that the State Veterinary Service had been “run down over the last two decades and was greatly over-stretched during the outbreak and its aftermath”.<sup>37</sup> When it became clear that the SVS could not cope, additional vets

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<sup>32</sup> Lessons to be Learned section 9.1.

<sup>33</sup> Duke of Northumberland Report of the Committee of Inquiry on Foot and Mouth Disease 1967/68 (Cmnd 3999, HMSO, London, 1969) Chapter VIII and Recommendation 50.

<sup>34</sup> Lessons to be Learned para. 9.2.

<sup>35</sup> Ibid.

<sup>36</sup> Gillan A, ‘Panic felt across the west country’ Guardian 27 February 2001

<sup>37</sup> Mercer I, Crisis and Opportunity: Final report of the Devon Foot and Mouth Inquiry (Devon Books, Tiverton, 2002)

including vets from abroad or trainees were recruited to assist. However, the goodwill of the vets was not enhanced by the public payment structures. The fee offered to vets was £160 per day.<sup>38</sup> At the same time, valuers were being paid on a much more generous pay scale. In order to ensure that farmers did not resist the slaughter of animals, valuers were given an incentive to value generously by linking their payment to the value of the cattle destroyed. It became necessary to put a ceiling on the operation of this formula, and this was set at £1,500 per day.<sup>39</sup>

### **Questions of compensation**

Indeed, a short comment on methods of compensation may help to more fully understand the nature of the slaughter and disposal of animals. From the outset, MAFF were keen that there would be little argument in relation to the slaughter of infected stock. Payments were intended to be generous. However, as is shown above that the top price for two-year old sheep at the Carlisle Market at the outset of the outbreak was £42 per head. In contrast, the average value across the first four weeks of the outbreak was £100 per head in compensation. This figure eventually peaks at £300 in July 2001. Similarly, the average compensation payment for cattle tripled during the course of the outbreak.<sup>40</sup>

The Animal Health Act 1981 demands the payment of compensation, and this is to be based on the value of the animal immediately prior to infection.<sup>41</sup> Although there is no definition of “value” within the Act, it is accepted that MAFF were operating on a market value basis. However the problem with this is that there was no functioning market during the outbreak. Moreover, as millions of animals were destroyed, one might expect the valuation of stock to rise in order to reflect the subsequent shortage of stock. However, there were other factors at work. Obviously MAFF appointed valuers, but under the legislation, it was also open to the farmer to appoint a valuer also. It became clear from very early in the outbreak that over ninety percent of

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<sup>38</sup> NAO Report para 3.39.

<sup>39</sup> Ibid at 4.13

<sup>40</sup> Ibid at 4.6.

<sup>41</sup> Section 1 of the Act allows the Minister to make such orders ‘as he thinks fit’ for ‘the purpose in any manner preventing the spread of disease’. Most famously this power has been used to pass the primary regulations, The Foot and Mouth Disease Regulations 1983 (S.I. 1983/1950. Section 34(7) of the Act contains an order-making power in respect of compensation to be paid, giving rise to a series of Foot and Mouth Disease (Ascertainment of Value) Orders.

farmers were likely to do so, and in practice it became easier to allow the farmer to choose the valuer. As one might expect, in rural communities, word soon got round as to which valuers were the most generous. Moreover, the valuers themselves had personal incentives to inflate value. In the end the Government paid £10 million in valuation fees, and in almost one in five valuation days the £1,500 cap was reached.<sup>42</sup>

Given the significant uplifts in value, resistance to slaughter was limited to farmers with rare breeds, some organic producers, or, in some cases, to owners of pet animals. This is not to say that farmers were happy to see their animals slaughtered, as there is considerable evidence that many farmers were devastated by the experience and even quit the land. However many accepted the inevitability of slaughter and accepted the payment.

Equally, it must be stressed that many farmers affected by the outbreak went uncompensated. Diseased cattle, and those taken out in the contiguous cull (see below) received compensation. There was also compensation assistance for “welfare killings”. These arose out of the need to kill animals in circumstances that were often distressing such as lambs born in the field that could not be moved, but were literally drowning in the fields in an unusually wet Spring. Many farmers could not get their animals to market and were not allowed to move them during the outbreak. These animals had to be fed and watered at significant cost with no outlet for sale, and long after their market value had peaked. These farmers joined many other people in the rural business community in suffering losses which effectively went uncompensated.

To promise compensation in this way, as the legislation does, is to remove all incentives to precaution. This is not to accuse farmers of reckless or even careless conduct in spreading the disease. Elsewhere, we explore the economic basis of this policy, and argue that the real iniquity is in a system that promotes the conditions whereby the outbreak and spread of the disease are promoted precisely because of this failure to internalise the risk.<sup>43</sup> Not surprisingly in the circumstances, fewer than one in ten farmers carried insurance, but bizarrely, where they did, neither the Government nor the insurers withheld payments. It followed that a minority of

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<sup>42</sup> NAO Report at 4.13

farmers received two sets of payments at levels far exceeding market value prior to the outbreak, while neighbouring farmers received nothing. In the circumstances, reports of deliberate infection, and offers to supply the virus seem credible.<sup>44</sup> Yet bizzarely in introducing the aborted Animal Health (Amendment) Bill, the Minister, rather than questioning the entire approach to compensation provided for specific criminal law powers to deal with deliberate infection.<sup>45</sup>

### **Mass slaughter**

On 11 March, Nick Brown, Minister for Agriculture appeared on 'Breakfast with Frost'.<sup>46</sup> He stated that the disease was under control and when pressed repeated that he was "absolutely certain" in this view. As the Anderson Inquiry points out, there was no evidential basis for this view. 34 cases of foot and mouth had been notified in the two days prior to that Sunday; 164 cases had been confirmed in total, and in Cumbria alone there were over 40,000 carcasses awaiting disposal. In the words of one farmer giving evidence to Anderson:

"We felt absolutely insulted and patronised by these lies that we were told."<sup>47</sup>

It is likely also that these continuing assurances from MAFF delayed the effective control of the disease. It was almost a further two weeks before the Cabinet Office Briefing Room (COBR) was open to co-ordinate work across all departments in handling the disaster. Indeed, the speculation must be that the complacent statements of MAFF constituted an attempt to retain departmental control.

Coinciding with the introduction of COBR was the Contiguous Cull Policy. This was a policy to destroy on a precautionary basis "animals within the 3 kilometre zones".<sup>48</sup>

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<sup>44</sup> Certainly DEFRA found it necessary to send out warnings about deliberate infection – see DEFRA Position on Deliberate Foot and Mouth Disease Infection (DEFRA, London 13 July 2001) BBC news also reported that EU anti fraud inspectors had voiced suspicions of deliberate infection (17 August 2001).

<sup>45</sup> Elliott Morley in evidence to the Select Committee on Environment Food and Rural Affairs (6 November 2001 at para 131) admitted that Maff strongly suspected but could not prove any cases of deliberate infection, but was introducing stronger powers to deal with the problem nonetheless.

<sup>46</sup> A transcript of this interview is available on the CD rom annexes to the Anderson Report at Annex E – Media Transcripts.

The very announcement of this statement caused consternation, since, in effect, the policy only applied to sheep and pigs, but this was not immediately made clear. Alongside the Contiguous Cull Policy was a target to slaughter infected stock within 24 hours and dispose of the carcass within 48 hours. Overseeing the operation of this policy was the FMD Science Group. This group included Sir John Krebs, Chairman of the Food Standards Agency, together with David King, the Chief Scientific Adviser and Jim Scudamore, the Chief Veterinary Officer. It included also a group of epidemiologists which largely specialised in human epidemiology and aimed to produce a method to bring the disease under effective control. They did so, but at enormous cost.

The Anderson Report is extremely defensive in relation to the FMD Science Group, describing them as experts and stating that:

“Many of the public accusations levelled at the work are based on limited knowledge of the statistical and mathematical techniques they employed...the highly specialist nature of their work made it difficult for other FMD experts to engage with the detail, especially when they themselves were under huge pressure of work in managing the outbreak.”<sup>49</sup>

There is however another view of the work of the FMD Science Group as expressed to the Devon Independent Inquiry by a veterinary surgeon:

“Their idea was to control the disease by culling in contiguous farms. That is absolutely fine if you are sitting in front of a computer screen in London. However, it is different on the ground. A person in London will just see the

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<sup>47</sup> Anderson Report at p.81; a MORI poll for the *Times* conducted between 22 -27 March 2001 showed that 66 per cent of urban residents, rising to 77 per cent of rural residents were dissatisfied with the Government’s handling of the foot and mouth outbreak – *Times* 29 March 2001.

<sup>48</sup> Statement by Nick Brown – see Anderson at p.89. This statement was made by the Minister on 15 March but not implemented (except for some areas of Scotland) until 28 March. In fact, the FMD Science Group eventually recommended a more restrictive approach based on a smaller radius because the 3k cull was felt to be ‘neither practical nor likely to be legal’ (Anderson, p.93). In fact the 3k radius is not accidental but emanates from the protection zone demanded by Art.9 of EU Directive 85/511. A protection zone is not by any means a ‘cull’ zone. However, notwithstanding the modification to a smaller area, in parts of the country such as Cumbria, the 3k cull seems to have been retained with the contiguous cull used to ‘expand’ the slaughter (Cumbria Foot and Mouth Disease Enquiry Report p.41).

numbers and will say that they have to be taken out. That is why it was carnage by computer.”<sup>50</sup>

What in effect the FMD Science Group did was to model the likely spread of infection from farm to farm in order to bring the disease on to a downward trajectory such that the rate of spread would always become smaller. Beyond doubt, this was achieved, but the approach was later admitted to have been “over draconian”.<sup>51</sup> The approach took no account whatsoever of the possible variable conditions of spread according to factors such as geography. It made no allowance for natural barriers which might restrict spread. It made no distinction between inspected species, though it is clear that pigs present by far the greatest risk through exhalation. The model may well have overestimated wind spread. This is a common source of transmission of this highly infectious disease, but there is some evidence to suggest that in relation to this particular strain of virus, direct contact was a much more important mode of transmission. Finally, no distinction was made between different farming practices in different regions, and the contiguous cull Policy allowed for no assertion that a farmer had exercised rigorous bio-security measures. Any farm within a three kilometre radius had its animals culled.

In describing “carnage by computer”, well in advance of the Anderson Inquiry, the witness of the Devon Independent Inquiry shows great foresight. The Anderson Inquiry went on to show that the geographical information system deployed was generally used for the purpose of calculating CAP subsidies. In the words of the Inquiry:

“Information is frequently out of date, on occasion by several years. It was sometimes difficult to pinpoint the location of livestock accommodation within an individual holding, or identify the operator of that land.”<sup>52</sup>

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<sup>49</sup> Anderson at p 91.

<sup>50</sup> Wendy Vere, Veterinary Surgeon giving evidence to the Devon Inquiry – supra n.37.

<sup>51</sup> Statement by Dr Neil Ferguson for the Chief Scientist’s Advisory Group as reported by Highfield R ‘Tactics used on half the farms “were inefficient” ’ Daily Telegraph 22 May 2001.

<sup>52</sup> Anderson at p.72.

There are many stories of slaughtermen arriving at the wrong location, but of course farmers could not know, however good their own bio-security, that they were not within a contiguous cull area.

According to the Meat and Livestock Commission, ten million animals were killed.<sup>53</sup> One in three diagnoses appear to have been incorrect. This is not surprising, given the generation of veterinary scientists with no effective experience of FMD. However, this figure relates to *confirmed* diagnoses (which were nonetheless wrong) but where there was thought to be no time for confirmation a policy of “suspected slaughters” was pursued. Four in every five of these suspected slaughters did not involve an actual outbreak of foot and mouth. It is worth recalling when reading these figures, that each of these suspected slaughters then involved contiguous farming units often within the three kilometre radius. On average, there would be four such units.

This produces a ripple effect, and it means that long after the actual onset of disease has peaked, numbers of animals killed continued to grow. In total, 2,026 farming premises said to be infected produce pre-emptive culling on a further 8,131 premises. In the first week of the Contiguous Cull Policy there were 48,000 animals slaughtered each day. In two days in Devon 32,000 animals were slaughtered. In the week beginning 25 March, there were 293 infected premises “confirmed” as suffering from FMD. By the week beginning 6 May 2001 there were 49 such premises, but by mid-May, the daily slaughter had risen to 80,000 animals.<sup>54</sup>

## **Vaccination**

One recurrent controversy in the light of this mass culling of animals is whether or not vaccination might have been a more efficient way of controlling the disease. It is important to understand from the outset that prophylactic use of vaccines prior to any outbreak was not an option.<sup>55</sup> This is because of EU policy that abandoned routine vaccination in favour of a policy of stamping out FMD outbreaks when they occur in

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<sup>53</sup> In fact 10,791,000 of which the vast majority (9.5m) were sheep – see unpublished work By Jane Connor of the Meat and Livestock Commission as reported by Robertson C, ‘Slaughter toll three times the official figures’ *Sunday Post* 20 January 2002.

<sup>54</sup> Figures extracted from the various reports but particularly from the NAO Report.

<sup>55</sup> See Directive 85/511/EEC as amended. Vaccination could be used as an emergency measure once an outbreak had occurred but only if all vaccinated animals were then slaughtered.

Member States. Phasing out of routine vaccination was adopted as a policy in 1990 on the basis that stamping out would prove cost beneficial.

EU policy cannot be divorced from wider international trade policy in this area. This, in particular, is influenced by the OIE whose International Animal Health Code has been adopted by the WTO as the basis on which international trade might be restricted in the interests of disease control.<sup>56</sup> Under the Code, countries without FMD, and not practising the policy of vaccination will achieve disease free status where there has been no outbreak within a 12-month period. Where foot and mouth disease then occurs, if the outbreak can be restricted by stamping out, then disease free status will be regained within a 3-month period of the last slaughter of diseased stock where this is followed by serological surveillance.

However, because FMD free status for Member States in Europe who do not use vaccination depends on there having been no vaccination within the last 12 months, it was clear that the UK was worried about the time that it might take to regain status as an FMD country not using vaccination.<sup>57</sup> It is important to understand that FMD poses no questions of food safety, and indeed many countries of the world, outside Europe, pursue a policy of routine vaccination, in the manner of many other European states, including France and Germany, prior to the adoption of modern EU policy. There is no doubt, however, that the Code offers more favourable treatment to the one-third of countries without FMD and choosing not to vaccinate, thereby giving market advantage to European and North American farmers. In part, therefore, insofar as FMD could have been prevented by vaccination or its outbreak curtailed by its usage, the immense costs of culling were incurred in order to comply with an

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<sup>56</sup> The OIE is responsible for laying down international standards on animal health and international trade in animals and products of animal origin and for adopting resolutions on the control of animal diseases. The standards are recognised by the World Trade Organisation (WTO) as standard international health regulations (in particular within the framework of the Agreement on the application of Sanitary and Phytosanitary Measures - SPS Agreement): see European Parliament Directorate General for Research [Position of International Organisations on Vaccination against Foot and Mouth Disease](#) (EU Parliament 22 May 2002).

<sup>57</sup> In fact, ironically, although as a result of the decision not to vaccinate, Britain was free to resume beef exports in February 2002, in fact no exports took place until September 2002 because as part of the serological surveillance requirements, the EU insisted on abattoirs handling only beef for export, and it was not until permission was given to slaughter domestic and exported meat together that beef exports became a realistic proposition – see Meat and Livestock Commission Press Release ‘Export Cheer for British Beef’ dated 17 July 2002.



entirely artificial rule of international trade less connected with food safety than with policies of competitive advantage.<sup>58</sup>

Given the legal restriction on preventative vaccination, the issue also arises as to whether or not the use of vaccination could have curbed the outbreak more effectively. Obviously, if this was to happen, it would have been necessary to act swiftly, using vaccination to limit the disease. This was the policy pursued by the Netherlands, which suffered an outbreak coinciding with that in the UK.<sup>59</sup> The Netherlands adopted a policy of ring vaccination; vaccinating all animals in the radius of an outbreak. It nonetheless slaughtered the animals that were vaccinated, in order to restore its status as an FMD country without vaccination. The number of animals slaughtered was therefore significant (over one quarter million) but in the event, this seems to compare well with the UK. It certainly allowed the more humane slaughter and orderly disposal of the animals. The Netherlands was disease free by 25 June 2001, and in the event only a three-month, rather than a one-year restriction, was applied by the OIE, meaning that the Netherlands was in a position to recommence animal export prior to the last case of foot and mouth in the UK on 30 September 2001.

However, it seems that early vaccination in the face of the FMD outbreak was not an option. The Chief Veterinary Officer has admitted that:

“No estimate (had) been made of the human resource requirements for a vaccination programme...The assumption (was) made that a stamping out

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<sup>58</sup> See the EU press release dated 26 March 2001: “Should the further development of the situation make it necessary for the EU to decide to introduce large-scale vaccination, the immediate consequence would be that third countries would prohibit the import of all live animals and non-treated products from the EU. This would lead to very severe losses in terms of trade and employment.” (DG Health and Consumer Protection.

<sup>59</sup> One oddity of the foot and mouth outbreak in the Netherlands is that according to the Dutch Ministry of Agriculture Nature management and Fisheries is that the source of the outbreak was the importation of calves from Ireland which the Dutch Ministry accepts were disease free on leaving Ireland, but which became infected in France. The infection occurred according to the Dutch Ministry when the Irish calves were laid up at a holding point in Baroche Gondoin, Department of Mayenne. See Information document on ‘Foot and Mouth Disease in the Netherlands’ available at [www.minlnv.nl](http://www.minlnv.nl). There had been a scare an earlier scare also in northern France, nearer to Rouen, but MAFF insist that the tests in question were false positives (Anderson Report p.52). Positive tests would mean that FMD was rife in the UK by the time of the ‘outbreak’ since although they were only slaughtered in France on

policy would be operated first and that, if sufficient trade resources were immediately available as outlined, vaccination could be avoided.”<sup>60</sup>

In fact, as part of its contingency planning requirement under EU law, issues such as the emergency use of vaccination should have been considered, and plans should have been in place to access emergency vaccine. Interestingly, the United States Department of Agriculture Policy for the Control of Foot and Mouth Disease contains the following statement:

“Emergency vaccination can play an important supporting role in the control of FMD outbreaks in FMD-free countries such as the United States. Vaccination can help contain the disease quickly if it is used strategically to create barriers between infected zones and disease free zones.”<sup>61</sup>

However, even if MAFF was in no position to take the sort of action described above, as an early means of suppressing the outbreak, as the Anderson Report shows, it became necessary to consider vaccination on a number of occasions during the outbreak. This failure of advance planning meant that considerable time and effort was devoted to consideration of vaccination on many occasions during the course of the outbreak. On each occasion, it was ruled out. This was in the face of an almost doctrinaire approach adopted by the NFU. Ben Gill stated that this position was adopted largely to protect international trade status:

“Vaccination would directly affect the marketing and trading of animals, meat, meat products and milk both within the UK and the EU and internationally. Yet it remains quite unclear as to how or why such restrictions would be and how long they would be in place.”<sup>62</sup>

Complicit also in this approach were the major food manufacturers though, not apparently, the retailers. This was on the basis of supposed consumer opposition to

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7 March, they left the UK (Abergavenny) at the end of January 2001 – some three weeks prior to the first UK case.

<sup>60</sup> Anderson Report at p124.

<sup>61</sup> Animal Health Inspection Service, Foot and Mouth Vaccination (U.S. Department of Agriculture, January 2002).

the sale of products from vaccinated stock. This is notwithstanding the fact that they were widely consumed over many years in Europe prior to 1989; that cattle are regularly exposed to vast numbers of injections for other purposes; and that, the consumer voice seems to have been best represented by the farming union and the food manufacturers.

In one sense, this matters little in relation to the likely containment of the outbreak, since, once the early opportunity was missed, the options became stark. Either one could have vaccinated the farm animal population on a long-term basis (an option not available under EU law), or, vaccination could have been used in order to promote the more humane and orderly killing and disposal of stock. One might have expected the NFU to have supported this, but it did not. Its resistance runs the risk that, in view of the gross suffering of the animals involved, consumer attitudes to meat consumption have been more adversely affected by the cruel killing and pyre burning of animals than by any policy of vaccination. Interestingly, the NFU has recognised that its position is unsustainable. In the aftermath of the Anderson Inquiry it issued the following statement:

“The NFU recognises the recent developments in vaccination research. All reports have recommended that emergency vaccination should be considered as an addition to the slaughter of infected animals and dangerous contacts. The NFU welcomes the call from the Royal Society for swift action to put the final scientific and practical steps in place to allow emergency vaccination to become a real option.”<sup>63</sup>

The vaccination debate is bedevilled by confusion and misunderstanding. For example, in terms of consumer resistance, the UK imports almost 70,000 tonnes of beef each year from countries that vaccinate against foot and mouth.<sup>64</sup> This meat is not marked in any separate way or subject to any special treatment. In the Dutch

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<sup>62</sup> Notice to Members ‘NFU Position on Vaccination Against Foot and Mouth’ (NFU, 22 April 2001).

<sup>63</sup> Ben Gill ‘Statement on the Lessons to be Learned Inquiry’ (NFU, 22 July 2002).

<sup>64</sup> This figure is an estimate. When the Soil Association wrote to DEFRA in August 2001, the ministry admitted that it did not know how much vaccinated meat was imported. This was because: “Imports must be accompanied by veterinary certification to guarantee that the meat accords with EU requirements but the certificate does not have to state whether the meat came from animals in a region where vaccination takes place” – [www.soilassociation.org](http://www.soilassociation.org)

outbreak, once cows were vaccinated but prior to their slaughter, their milk nonetheless went into the food chain. The same would have happened in the UK had cattle in Carlisle been vaccinated (as was the decision at one point in time). To take another example, Professor David King, Chief Scientific Adviser, in speaking out against vaccination, issued the following statement:

“Nation-wide mass vaccination would make it impossible to tell the extent to which the virus is present in the country’s livestock. There are currently no internationally recognised tests that are able to distinguish between vaccinated and infected animals.”<sup>65</sup>

The first part of this statement seems hard to reconcile with the Anderson Report which offers the following analysis:

“All viruses, including the FMD virus are made up of protein stock. These proteins can be structural or non-structural. Infected animals produce antibodies against both. However, vaccinated animals produce antibodies against structural proteins only. A positive NSP test detects antibodies against non-structural proteins and therefore identifies an infected animal.”<sup>66</sup>

It is the second part of King’s statement that is true and provides the real insight into why vaccination was rejected. The NSP tests were not internationally recognised at the time of the 2001 outbreak by the OIE. Therefore, although it might have been possible to distinguish between vaccinated and infected animals, this would have done little to assist in the restoration of disease free status. In short, because of considerations largely emanating from WTO and OIE rules, the use of vaccine was not considered on a contingency basis to attempt to suppress any early outbreak of FMD. It was continually rejected during the outbreak, particularly by the NFU, for spurious reasons, notwithstanding the widescale cruelty and chaos brought about by policies of mass destruction of animals.

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<sup>65</sup> King D ‘Use of vaccination in the current FMD outbreak’ (Defra Statement 21 September 2001).

### **The cruelty of the cull**

The initial policy for dealing with the foot and mouth outbreak was the “stamping out” of the disease. This implies that swift localised action can isolate the disease before it is allowed to spread. It rests upon the slaughter of infected stock together with all other animals suspected of being at serious risk of contagion. However, this policy gave way to the contiguous cull. Such policy is different in nature. It was based upon the rapid slaughter (within 24 hours of suspected FMD) and disposal (within 48 hours of suspected FMD) of not merely cattle supposedly at risk through contact or otherwise, but because they happen to be within a certain proximity of a suspected case. As we have seen the radius of 3 kilometres of a suspected source of FMD was commonly employed although not vital to the mathematical model. There are many questions of the legality of government action which attach to the FMD outbreak. These include many civil liberties issues, many animal welfare issues, breaches of environmental laws and bio-security measures, and considerable examples of ultra vires action. For the most part, we address these issues elsewhere, but it is important to say that there must be considerable doubt attaching to the powers purportedly used to support the contiguous cull.<sup>67</sup> The relevant provision in the Animal Health Act 1981<sup>68</sup> reads:

“The Minister may if he thinks fit in any case cause to be slaughtered:

- a. any animals with foot and mouth or suspected of being so affected;
- b. any animals which are in the same field, shared or other place or same herd of flock or otherwise in contact with animals affected with foot and mouth or which appear to the Minister to have been exposed to infection of foot and mouth disease.”

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<sup>66</sup> Anderson Report at p.123

<sup>67</sup> This is admitted by the Chief Veterinary Officer in evidence to the Anderson Inquiry: The CVO said that a general cull of animals within 3k of infected premises could not legally have been carried out – Annex B of the evidence to the Anderson Report, interview with the Chief Veterinary Officer, 19 April 2002, at para 28 and also para 31. See also Tromans S, ‘Silence of the Lambs: The Foot and Mouth Crisis, its Litigation and its Environmental Implications UKELA Conference Proceedings’ June 2002.

<sup>68</sup> Section 31 and Schedule 3 para 3.

On any ordinary principles of interpretation, this would not seem to give the power to slaughter healthy animals merely on the basis that they are located on a site proximate to one suspected of having foot and mouth, or to ring fence a contaminated site, or because of the fear of some future exposure, rather than actual or past exposure to infection.<sup>69</sup>

In essence, this has been admitted on a number of occasions. For example, the Animal Health Bill was said to have introduced “new disease control powers” for England and Wales by amending the Animal Health Act 1981. In the Consultation Paper it was said that:

“The new powers to slaughter animals in order to prevent disease spread will ensure we have the means to control and eradicate an outbreak in a more effective and efficient manner than has been possible in the past.”<sup>70</sup>

In describing why the powers would be introduced, the new powers were described as “precautionary”. However, on 26 March 2002, the Government was defeated in the Lords on the Animal Health Bill by 130 votes to 124. The motion to strike down the Bill was proposed by Lord Moran notwithstanding a three-line whip by the government. In the words of Lord Moran: “The present Bill is based entirely on legalising and extending the mass slaughter of animals.”<sup>71</sup> Elsewhere, Lord Moran has described this Bill as “of a positively Stalinist nature” which was an attempt to legalise the culling of “many thousands of healthy animals...killed last year”.<sup>72</sup>

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<sup>69</sup> Having said this the history of foot and mouth litigation is rather unusual. MAFF were enjoined at an early stage in England from killing a pet pig, Grunty: Maff v Upton (21 June 2001, unreported) and seemed reluctant thereafter to to chance their arm in the English Courts – though see MAFF v Winstlade (22 May 2001, unreported) which followed Westerhall (below). In Scotland, Westerhall Farms v Scottish Ministers Court of Session, Outer House, 25 April 2001 seems to have addressed whether the policy was precluded under EU law, which hardly addresses fully the status of the statutory powers invoked (see the criticisms in English R, ‘Foot and Mouth in the Courts’ (2001) 151 New Law Journal 1515. Finally in Wales, in R v Secretary of State for the Environment Food and Rural Affairs and the National Assembly for Wales ex p Hughes [2001] EWHC Admin 738, the Court seems to have been unduly influenced by the view that if the cull was found to be ultra vires then the compensation payments made might also be tainted. The history of this litigation is reviewed in Tromans (op. cit. n.57)

<sup>70</sup> DEFRA, UK Consultation on the Animal Health Bill, 20 March 2002.

<sup>71</sup> House of Lords Debates, Animal Health bill 2001, 26 March 2002, col 167

<sup>72</sup> Lord Moran ‘The Noble Lords were not Content’ Country Illustrated May 2002 p.10.

The Government spokesman in the Lords at the time of the Animal Health Bill, Lord Whitty, told the Anderson Inquiry himself that the legality of the contiguous cull had been “an issue”.<sup>73</sup> The Anderson Report concludes that:

“We consider the powers to be insufficiently clear. This lack of clarity contributed to a sense of mistrust of the Government, which was made worse by poor communication of the rationale of the cull.”<sup>74</sup>

It is interesting to note that in those areas of the country such as parts of Devon and the Forest of Dean where protestors against the contiguous cull were well organised, there were a number of appeals faxed immediately to MAFF upon the service of a notice seeking to slaughter animals. Although these cases record continuing harassment by MAFF, in the overwhelming majority, the resistance seems to have worked, and MAFF neither killed the animals nor litigated in the face of such resistance.<sup>75</sup>

Where animals were slaughtered, there are accounts of significant cruelty. For example, in South Molton in Devon, an attempt to slaughter Limousin bullocks led to their escape for over 18 hours. One farmer witnessing the event stated that:

“There were three or four marksmen taking shots and there were certainly more shots than the number of animals killed but I have no idea how many were wounded.”<sup>76</sup>

Another farmer states that:

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<sup>73</sup> Annex B of the evidence to the Anderson Report, notes of interview with Lord Whitty, 8 May 2002, para 40, adding ‘in practice the policy had been subject to a degree of local discretion.’

<sup>74</sup> Anderson Report at p.163.

<sup>75</sup> Trainee solicitor Alayne Addy is reputed to have saved animals on 106 farms (including most prominently Phoenix the calf. In each case according to press reports MAFF backed off rather than challenge her interpretation of the law: Born M, ‘100 herds saved as trainee solicitor finds loophole’ Daily Telegraph 12 May 2001. An opinion by Stephen Tromans circulated widely among farmers with rare breeds or others with pet animals, and was used to fend off MAFF slaughtermen; for testimonies see [www.sovereignty.org.uk](http://www.sovereignty.org.uk)

<sup>76</sup> Farmer Gordon Willmetts as reported in the Times 15 May 2001

“The cattle were going berserk, at least one was limping. It was obvious to everyone what was going to happen. Once you shoot one the rest smell blood and go wild.”<sup>77</sup>

One witness describes a bullock taking a bullet to the spine rendering its back legs useless. It nonetheless attempted to crawl away on its front legs only until a slaughterman caught up with it and shot it.<sup>78</sup>

Another farmer, Simon Middle, from Gloucestershire describes the cull of his 87 cattle:

“I ran out in an absolute frenzy and he was standing outside the shed, leaning on the feeder front and shooting a them. The cattle were going ballistic, crashing about trying to escape. It was horrendous.”<sup>79</sup>

A farmer from North Yorkshire, Chris Graham, in a statement to the RSPCA made the following statement:

“Some of them (lambs) were still jumping and thrashing around 20 minutes after they had been shot. They weren’t making sure that they were killed first time. There were piles of bodies and all of a sudden lambs were jumping out. One of the slaughter team was prodding the prone animals in the eye with a knife and then cutting their throats if they showed signs of life.”<sup>80</sup>

The regulations governing animal slaughter are clear. The Welfare of Animals (Slaughter or Killing) Regulations 1995<sup>81</sup> apply to the “restraint, stunning, slaughter and killing” of animals and Regulation 70 states that this includes the killing of any

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<sup>77</sup> Ibid – from farmer Les Winslade.

<sup>78</sup> Midgley C, ‘The cruellest months of all’ Times 24 May 2001

<sup>79</sup> Ibid.

<sup>80</sup> Morrison N, ‘RSPCA lawyers investigate claims of cruelty during foot and mouth culls’ Northern Echo 3 September 2001. In the event, the RSPCA do not seem to have pursued any prosecutions. The only prosecution seems to have been of a slaughterman caught on film taking pot shots at sheep. He was tried but acquitted under Health and Safety legislation at Cardiff Crown Court in October 2002. It was feared that ‘the rifle had enough power to injure humans in the area’; Hall S, ‘Slaughterman fired on sheep willy-nilly’ Guardian 2 October 2002.

<sup>81</sup> S.I. 1993 No. 731



animal for the purpose of disease control. No person engaging in such activity should:

- a. “cause any avoidable excitement, pain or suffering to any animals; or
- b. permit any animal to sustain any avoidable excitement, pain or suffering.”

The methods laid down for slaughter or killing for the purpose of disease control are set out in Schedule 9. They state that where captive bolt is used to stun an animal, it then must be pithed or blood vessels in its neck severed without delay, and nothing more must be done to the animal until it is ascertained that it is dead.

It follows that the activities described above in terms of random potshots at animals or in terms of lambs stunned but not promptly killed are illegal. However, there has not been a single prosecution brought by the RSPCA on welfare grounds. One reason for this may be the wording of the offence laid out in Regulation 4 which uses a common criminal law formulation - namely to cause or permit the suffering in question. It is clear from environmental regulation that this formulation is strict and that it makes liable to those in operational control of the activity in question.<sup>82</sup> In short, it is the authorities that are culpable under this legislation.

## **Conclusion**

The purpose of the above account is to demonstrate that significant shortfalls in the regulatory structure, on a large number of fronts, both contributed to the outbreak of foot and mouth disease and also to its rapid spread. Thereafter, with the disease out of control, further regulatory failures, not least the inadequacy of all contingency planning, ensured that the outbreak spread in an alarming and uncontrolled fashion. The outbreak was eventually curtailed, but only at enormous cost, of which the £10 million in economic losses is but a part when social costs are considered. The contiguous cull eventually put an end to the disease, but at huge environmental and

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<sup>82</sup> In environmental regulation it is clear that the language is strict, and refers to operational cause, even where the operator is not responsible for the immediate cause of the harm: National Rivers Authority v Empress Cars (Abertillery) [1998] 1 All ER 481 (HL), and see Lawrence D and Lee R, ‘Permitting Uncertainty: Owners, Occupiers, and Responsibility for Remediation’ Modern Law Review (forthcoming). In the Cardiff Crown Court case on 2 October 2002 (supra n 80) the slaughterman’s employer, Monmouthshire Council, was convicted and fined.

social cost, and following the slaughter of 10 million animals, most of whom were not infected by the disease, but were killed in horribly cruel fashion.

In the face of this, it is hardly surprising that the Government refused to hold a public inquiry. The inquiries that did take place are in themselves worthwhile. However, their separate approaches and policy recommendations continues a trend away from joined-up government exemplified by the handling of the outbreak. For example the report on the future of farming, which we consider critical for the avoidance of foot and mouth in the future, has been published separately from, and is only tangentially linked to other proposals in the Anderson Inquiry. Similarly, many other learning points, such as those pertaining to the procurement of legal services in emergency, are best covered in the National Audit Office Report.

One must question the government's response to this inquiry process. The Animal Health Bill was introduced into Parliament before any of the inquiries reported. The Bill sought to legitimise conduct that had underpinned the contiguous cull. It passed some responsibility for bio-security on to the farming community, but was condemned by the Bishop of Hereford as "harsh, unjust and untimely". It certainly did not address, in any reasoned fashion, central questions of who might appropriately bear the risk of foot and mouth disease, nor did it seek, even at that late stage, to accept the many shortcomings of the Government in the handling of the foot and mouth outbreak. Yet, in introducing the Bill, there were said to be 'guiding principles' which would apply to the use of the powers introduced. Amongst the claims made are the following:

"We will act **openly and transparently** making widely available the guiding principles that govern our approach...We will use powers in a way that is **proportionate** to risk costs and benefits including at the local, regional and national level. We have an underlying commitment to minimise the overall number of animals that need to be slaughtered by using the powers in a **timely and targeted** way and by taking appropriate preventative action where this is justified. The Government will be fully **accountable** for its use of the slaughter powers...We will seek to **consult** wherever time permits, including

with the relevant local interests, before taking a decision to exercise the slaughter powers.” (Emphasis in the original)<sup>83</sup>.

As they say in all of the standard examination questions: “compare and contrast”. Readers may wish to do so in the knowledge that the Animal Health Bill was introduced late in 2001 without consultation and passed through the House of Commons without amendment. It is hard to escape the conclusion, in the light of the foot and mouth outbreak, that the words and phrases emphasised by the Government in its own guiding principles are nothing more than regulatory buzz words, devoid of all true meaning and substance.

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<sup>83</sup> Consultation on Animal Health Bill (supra n.70) under ‘Key Criteria’.