



IFST JUBILEE CONFERENCE

MODERN FOOD LAW PROSECUTIONS

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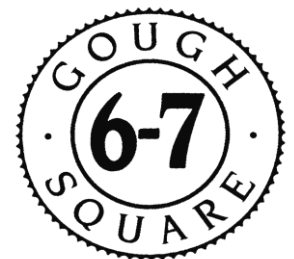
OVERVIEW

- ▶ A criminal prosecution – the ultimate sanction.
- ▶ Alternatives.
- ▶ What happens.



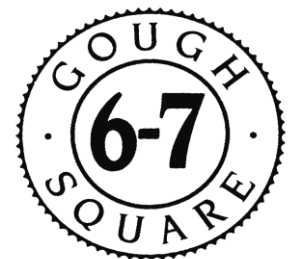
BACKGROUND

- ▶ The temptation to give short weight or to adulterate food have meant that the law has had to put controls in place in an attempt to limit this.
- ▶ An early example – the Assize of Bread and Ale 1266. Numerous other statutes dealing with food law relating primarily to adulteration (e.g. gin). The general thrust of the legislation was that the sanction should be prosecution. In some cases adulteration of food was treated as a capital offence.



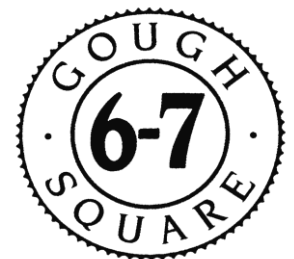
CURRENT ALTERNATIVES

- Alternatives to prosecution include other sanctions. Condemnation of unfit food has been a feature of UK food law for many years. (See for example the destruction of 254 pallets of meat in the Northern Irish case of FSA v. McCabe, 21st August 2006.) More recently (in particular the Food Safety Act 1990) provision has been made for other sanctions such as improvement notices, remedial action notices and emergency prohibition notices.



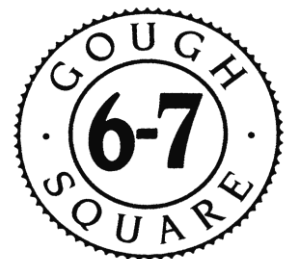
THE ARGUMENTS IN FAVOUR OF PROSECUTION

- Criminal sanctions have predominated if the state wanted people to do or refrain from doing something. Private disputes relating to matters such as sale of goods or land law are dealt with by civil actions for damages, injunctive remedies etc.



PUBLIC BENEFIT

- Where the state is involved a prosecution in the Criminal Courts has predominated as a way of regulating behaviour. To that extent it can be said that it is the public that benefits from a food law prosecution. There are the usual justifications for criminal prosecutions such as punishment and deterrent. In the field of food law the deterrent driver for a prosecution is very strong. If there was no significant criminal sanction for the adulteration or underweight practices they would undoubtedly become prevalent.



HOW MANY OFFENCES

- ▶ It is more than adulteration and underweight offences which can be committed. It would be a monumental task even to attempt to schedule all the criminal offences which can be committed in relation to the production, distribution etc. of food. This is particularly so because of the relatively recent proliferation of European law.
- ▶ In the case of European Regulations relating to food law these are of direct effect leaving only procedure and sanction to be decided by Member States. There will simply be a relatively short piece of domestic legislation providing that a failure to comply with a certain EU Regulation is an offence.



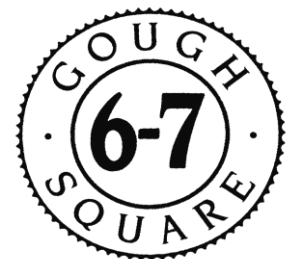
WHAT HAPPENS

- ▶ There is no special procedure for regulatory criminal cases including food.
- ▶ A common feature not generally found in criminal cases is the use of experts.
- ▶ There is an even greater emphasis than in “normal” criminal cases on pre-trial disclosure of documents, experts’ reports and the issues to be decided.



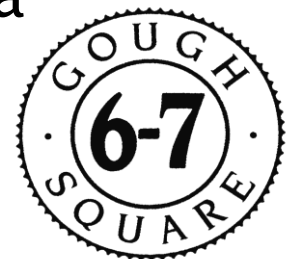
THE SERIOUSNESS OF THE OFFENCE

- ▶ The Courts will view a food law offence with particular reference to its seriousness (other factors include the identity of the defendant, its financial position and resources together with the history of previous convictions, if any).



SERIOUS

- The most serious cases involve contamination which can take many forms such as dangerous foreign objects such as a Stanley knife blade in food or biological contamination. For example, a severe dose of salmonella could potentially be fatal to vulnerable people such as very young children and the elderly. (For example a 2005 case where a sentence of 12 months imprisonment was imposed on a kebab shop owner whose unhygienic practices lead to a salmonella outbreak.)



MIDDLE RANGE

- Middle range offences will encompass most hygiene cases. Having a dirty fridge or deep freeze is unlikely in itself to cause harm to others, but it has the potential to do so because of the possible growth of bacteria and is indicative of poor food hygiene standards and therefore poor food handling. Infestation cases can be at the higher end of the middle range with, for example, the not uncommon problem of food products in, for example, a supermarket warehouse being nibbled by rodents. (For example in a 2007 case a supermarket was committed to the Crown Court for sentence on three hygiene charges including mouse infestation and the presence of mouse droppings.)



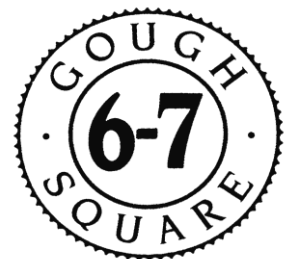
LOWER RANGE

- At the lower end of the range of seriousness will be cases primarily involving advertising or labelling where consumers can be misled as to the nature of the food, its contents, its origins etc. (For example a 2000 case where the wording on cases of soft drink was in Dutch.) Some mislabelling can, however, have serious consequences such as the failure to warn purchasers that the food has contents which could cause serious harm or death to those allergic.



USE-BY

- Use-by dates have a special place in the range of seriousness and sentencing. By far the most cases are those in which food is sold or on display for sale past its use-by date, but the food is in no way prejudicial to health or even of poor quality. One would think that such cases, and one must doubt the efficacy of a prosecution in very many cases, would result in very modest financial penalties. This, however, is not always the case. A single use-by date offence can result in a fine of many thousands of pounds. (For example a fine of £58,000 in 2009 for use-by offences by a supermarket.) There is more behind this than the seriousness (or otherwise) of the offence.



SPECIALIST TRIBUNALS

- Raised on many occasions over many years. The thinking is that the ordinary criminal courts are ill-equipped to deal with food cases where there may be relatively complex scientific issues and where the legislation can also be complex. Employment (formerly Industrial) Tribunals have existed since 1964. The suggestions as far as food cases is concerned is not that there should be specialist food “courts” but that food prosecutions should be dealt with by regulatory tribunals.



THE 2008 ACT

- ▶ The Regulatory Enforcement and Sanctions Act 2008 followed the reforms proposed by the Macrory Review of Regulatory Penalties. The review came to the conclusion that the current sentencing regime was ineffective, over-reliant on prosecutions and lacked flexibility. It was anticipated that the implementation of the recommendations would result in about 9,000 less regulatory cases being taken to Court.
- ▶ Part of the implementation was the Environment Civil Sanctions (England) Order 2010 which came into force on 6th April 2010. So far this has been primarily applied to environmental contraventions so that, for example, the Environment Agency can impose civil sanctions in relation to the offences which are set out in Schedule 5 to the Order. There is then an appeal against civil sanctions to the General Regulatory Chamber of the First-Tier Tribunal. The sanctions include monetary penalties, compliance notices, restoration notices and stop notices.



THE TRIBUNAL

- The First-Tier Tribunal has a relatively wide range of functions including (at present) consumer credit, the operation of regulation on estate agents etc. However, general food offences are not within its remit and there is a hesitation to bring “ordinary” criminal cases in front of a specialist tribunal.



ALTERNATIVES

- ▶ The Regulatory Chamber of the First-Tier Tribunal and the use of civil sanctions would appear to be the only likely realistic alternative to food prosecutions.
- ▶ Undoubtedly the number of food prosecutions has declined significantly over the last few years. In large part this has been due to financial pressures on Trading Standards Departments and Environmental Health Departments. In addition, local authority regulators are increasingly taking the view that prevention and remedial action is a preferred course compared to prosecution. No-one doubts that sanctions (whether criminal or otherwise) have to be reserved for what are undoubtedly bad cases. It is, however, unlikely that we will return to the mindset of thinking that if an offence has been committed the almost automatic response is bringing a prosecution.

