

The Secret Ingredient

IMPROVING YOUR FRAUD
PREVENTION PLANNING



A TASTE OF WHAT'S INSIDE:

ANOTHER MEAT SCANDAL
ROCKS BRITISH FOOD
INDUSTRY

CORPORATE CRIMINAL
LIABILITY: FAILURE TO
PREVENT FRAUD - UPDATE

INVESTIGATIVE TOOLS
PROVIDED BY THE CIVIL
COURTS: PART 3

NEW STATS ON FOOD FRAUD

Welcome to The Secret Ingredient. Our quarterly newsletter helps food and drink sector professionals with fraud prevention planning, advice on protecting brand integrity and recommendations to improve quality control - all from a legal perspective.

If you want to stay ahead of industry trends and developments impacting the food and beverages sector and learn more about evolving regulations and competition pressures, greater transparency and traceability, securing supply chains and preventing fraud you can find it all in here.

For more insights and advice from our legal specialists you can look back at previous issues [here](#). Or for any questions or feedback on the articles please get in touch for a chat.



Because getting it right matters

ANOTHER MEAT SCANDAL ROCKS BRITISH FOOD INDUSTRY

The Investigation



The investigation interviewed former employees who accused the processor of a number of food safety violations and ongoing food fraud, that had been allowed to continue for decades, including passing off huge quantities of foreign pork (several thousands of tonnes a week) as British, washing hams that appeared to be going off and mixing rotting pork with fresh product. Meat was even routinely thawed out on the factory floor, and sampling paperwork was known to be falsified.

Meat processed by the company ended up in products such as ready meals, quiches, sandwiches and other produce sold in Tesco, Asda, Co-op, Morrisons and Marks & Spencer. Schools, hospitals, care homes and prisons were also indirectly supplied, with one source alleging the most rotten meat would end up there.

The processor was regularly audited, but even on surprise audits, inspectors would require time to put on protective clothing allowing time for employees on the factory floor to hide offending product and processes.

Farmers Weekly reports that almost all of the former employees claimed that country-of-origin fraud was embedded in the company's operating model, making this the UK's biggest food fraud scandal since the horse-meat scandal of 2013. Traceability information was duplicated from relatively small quantities of British meat bought from retailer-approved suppliers.

Supply Chain Credibility



When news of such a large-scale scandal (affecting some the UK's biggest food retailers) breaks, inevitably, trust in the food supply chain is broken. Consumers generally (i.e. not just those who shop at the affected retailers) will be left wondering if the food they purchase is safe, and retailers, processors and manufacturers within the supply chain will all look to tighten their procedures and processes for ensuring traceability and food safety standards with their own suppliers.

We have previously written about the importance of auditing suppliers and carrying out due diligence; not only when on-boarding new suppliers but on an ongoing basis. This should include those organisations further down the supply chain to ensure the integrity of your product. This new scandal highlights the importance of doing so.

The current economic climate is creating the perfect storm for food fraud. For pork, the price differential between British and imported product could be as high as a few pounds a kilo. Economic factors are normally the primary motive for those carrying out fraud. Sometimes this can be pure greed, but more often than not the stress and pressure of financial performance can also lead to cutting corners and taking risks on safety and quality.

An investigation carried out by Farmers Weekly has revealed food fraud and food safety violations on an industrial scale at a UK-based food processor

What can you do to protect your business?



1 Know your suppliers

This cannot be reiterated enough. It is essential that you carry out full due diligence on any new supplier and regular audits of existing suppliers. Suppliers should be happy to show you their facility, allow sampling/testing and share paperwork with you. If you suspect a supplier is not being transparent, this should trigger alarm bells. Food crime can be reported anonymously to the Food Standards Agency.

2 Empower your employees

Educate and empower your employees so they know how to spot food fraud or food safety violations, and they know where to report it. Your employees are your eyes and ears on the ground and therefore, educating them about common types of food fraud and how it can affect your business is vital.

3 Invest in technology

Technology in the food industry is increasingly focused on detecting and protecting against food fraud. For example, block chain technology is increasingly being used to ensure the transparency and traceability of food supply chains. Other hand-held testing technologies are also being developed which (it is hoped) will empower all those involved in the food chain (i.e. inspectors, truck drivers, retailers and even consumers) to carry out food quality and safety checks.

4 Check your contracts

Your contracts with suppliers should contain provisions protecting your business from unwanted behaviour or “prohibited acts” including food fraud. To go one step further, include a clause whereby the supplier represents and warrants (i.e. promises) that it has not committed such acts and has not been the subject of any relevant investigation or inquiry. Breach of these terms will not only allow you to terminate the contract with your supplier, but it will also be easier to claim for damages.



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Corporate criminal liability: failure to prevent fraud - UPDATE

In our [last issue](#), we discussed the government's proposal to introduce a new corporate offence of "failure to prevent fraud". The government has recently updated the 'Factsheet' detailing the failure to prevent fraud offence

[Factsheet: failure to prevent fraud offence](#) 

The publication states that: *"Under the new offence, an organisation will be liable where a specified fraud offence is committed by an employee or agent, for the organisation's benefit, and the organisation did not have reasonable fraud prevention procedures in place. It does not need to be demonstrated that company bosses ordered or knew about the fraud."*

The hope is that this new offence will help to drive culture change towards fraud prevention and assist in holding organisations to account if they profit from the fraudulent actions of their employees or agents.

It is intended that the offence will apply to all sectors, but will only affect large organisations meeting two of the three following criteria:

1. More than 250 employees
2. More than £36 million turnover
3. More than £18 million in total assets

The offence will apply to both corporate bodies and partnerships (including charities) that meet these criteria. This threshold will be kept under review and may be amended in the future.

It is understood that the government wished to prevent small and medium enterprises from being disproportionately burdened by the requirements of fraud prevention. However, there is a danger that by exempting smaller businesses, the aim to drive culture change will be missed as there will be no incentive for such businesses to invest in fraud prevention. A further significant worry is that by not incentivising smaller businesses to look at fraud prevention, they will remain easier targets to external bad actors, i.e., the criminals who could cause significant damage to them through fraudulent means. Given the pervasive nature of fraud, this is concerning.

SECTOR EXPERTISE JUST ONE CLICK AWAY

Our website helps businesses looking for financial crime or fraud advice get the answers they need quickly, with simple advice for the sectors we specialise in and clear actionable solutions.

The Fraud Hub shares the teams knowledge and experience, through articles, case studies and executive summaries. You can also find details of our latest events, speaking opportunities and media/TV appearances.

www.tenetlaw.co.uk



AWARDS





INVESTIGATIVE TOOLS PROVIDED BY THE CIVIL COURTS: PART 3

The civil courts have at their disposal a number of powers that can assist parties investigating a wrongdoing by providing routes to gather evidence, identify wrongdoers, seize assets or evidence and prevent further wrongdoing.

Many of these tools are available at an interim stage in court proceedings or pre-action stage (i.e. before proceedings commence). In this issue, following on from [Parts 1 and 2](#) of our series on the civil courts' investigative tools, we take a look at search and seizure orders.

Search and Seizure Orders “SSO”

A SSO is a mandatory interim injunction, meaning that it is a tool that can be utilised at an interim stage (i.e. either pre-action or early in proceedings). The outcome of an SSO is that it allows a claimant's representatives to enter the defendant's premises to search for, copy and remove relevant documents or material.

The purpose of an SSO is usually the preservation of evidence. Given the draconian nature of an SSO, the bar for obtaining one is set very high. An application for an SSO is almost always made without notice, given that tipping off the defendant would likely defeat the purpose of the search as it would provide the defendant with the opportunity to destroy any evidence.

When might an SSO be appropriate?

A SSO is normally used in respect of the most serious type of civil cases such as fraud, breach of confidence and intellectual property claims. It is important to make the application as soon as possible – any delay may jeopardise the application, and may also defeat the purpose should the defendant take steps to destroy evidence before the application is made.

The following criteria must be satisfied:

1. There is "an extremely strong prima facie case" – there must be more than a suspicion of a claim. A SSO cannot be used as a fishing expedition to determine whether or not there is a valid claim.
2. The defendant's actions have resulted in very serious damage to the claimant's interests – can be actual or potential, but evidence of damage must be submitted with the application.
3. There is clear evidence that the "incriminating documents or things" are in the defendant's possession and there is a real possibility of destruction or disposal of material before an application can be made on notice.

You will note from these criteria, the emphasis is on the seriousness of the various factors at play. Transversely, the claimant must demonstrate that the execution of the SSO will not excessively impact upon the defendant and the defendant's business affairs.

What happens on the day?

There is a requirement for a supervising solicitor i.e. an independent officer of the court to oversee the execution of an SSO. Their role is to ensure that the SSO is properly carried out, to serve a copy of the SSO on the defendant, to notify the defendant of their right to legal advice, to list all material removed and to provide a report to the claimant's solicitors (which must be served on the defendant and filed at court).

The SSO must be served between 9:30am and 5:30pm. Sometimes, a court will impose a time limit within which the SSO must be executed.

Only the supervising solicitor and persons named in the SSO (i.e. the claimant's legal team) may attend the defendant's premises when the SSO is served and executed. The claimant should not normally attend. There is no right to force entry; the defendant must consent to the supervising solicitor and others entering the premises (refusal could result in committal for contempt of court). In fact, the search can only take place in the presence of the defendant (or a person who appears to be a responsible employee of the defendant).



Conclusion

Although the requirements for obtaining an SSO are tough, and the circumstances in which an SSO may be appropriate particularly narrow, it is a very effective tool when dealing with claims that involve a degree of deceit / dishonesty and where the proposed defendant may have a track record for destroying evidence.

Here at Tenet, we have relevant experience and expertise required to unravel complex fraud claims, where an SSO might be key to unlocking the claim. If you have any questions please get in touch for a chat.



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NEW STATS ON FOOD FRAUD



The Food Authenticity Network (in collaboration with FoodChain ID) has recently released data from 2022 to answer the question: "Which foods are most adulterated?"

Food adulteration is defined as: "...the act of intentionally debasing the quality of food offered for sale either by the admixture or substitution of inferior substances or by the removal of some valuable ingredient."

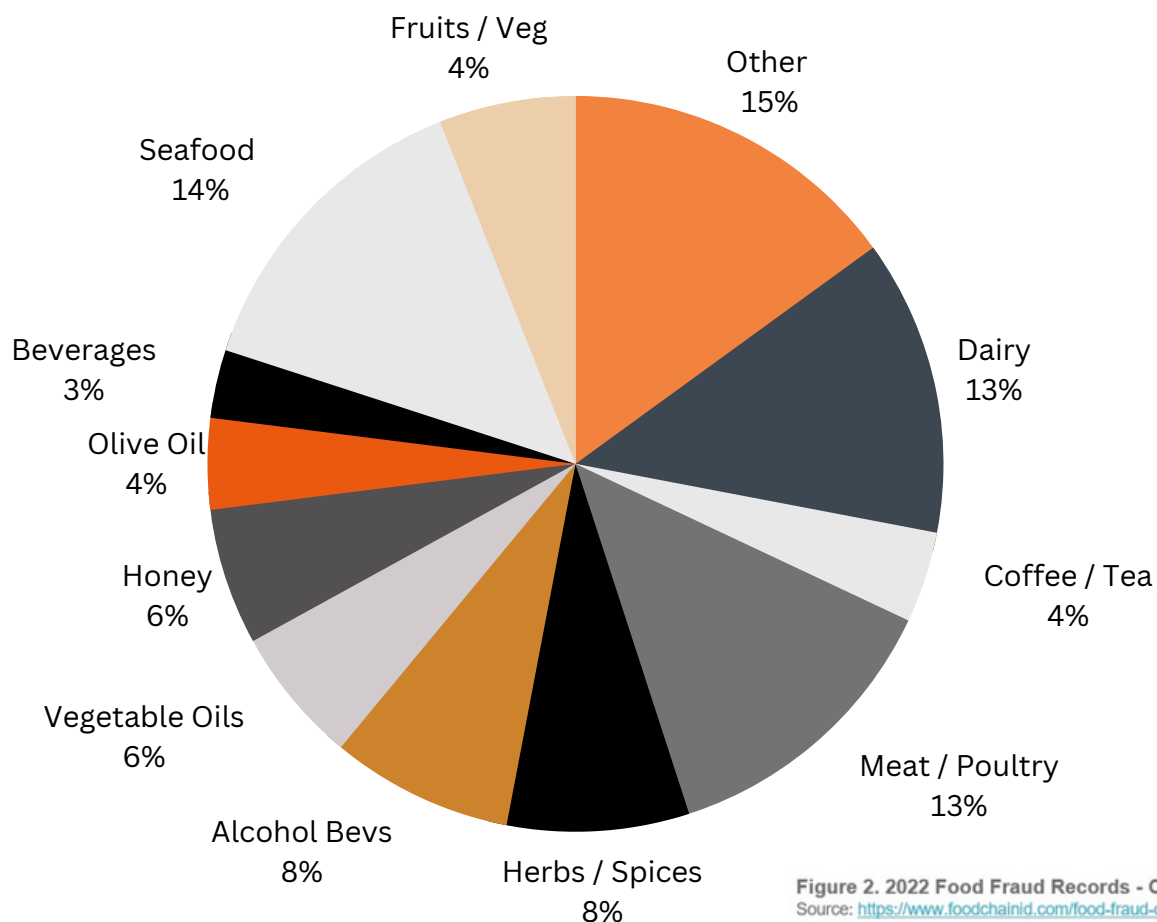


Figure 2. 2022 Food Fraud Records - Commodity Groups
Source: <https://www.foodchainid.com/food-fraud-database/>

The 2022 results show an increase in the adulteration of honey and herbs and spices in comparison to the previous ten years but a reduction in the adulteration of meat and seafood. Adulteration of olive oil remains at 4% of the reported events, however the adulteration of other vegetable oils has seen a 2% increase from the previous ten years. (see following chart)

The adulteration of alcoholic beverages has seen a slight increase of 1%.

NEW STATS ON FOOD FRAUD

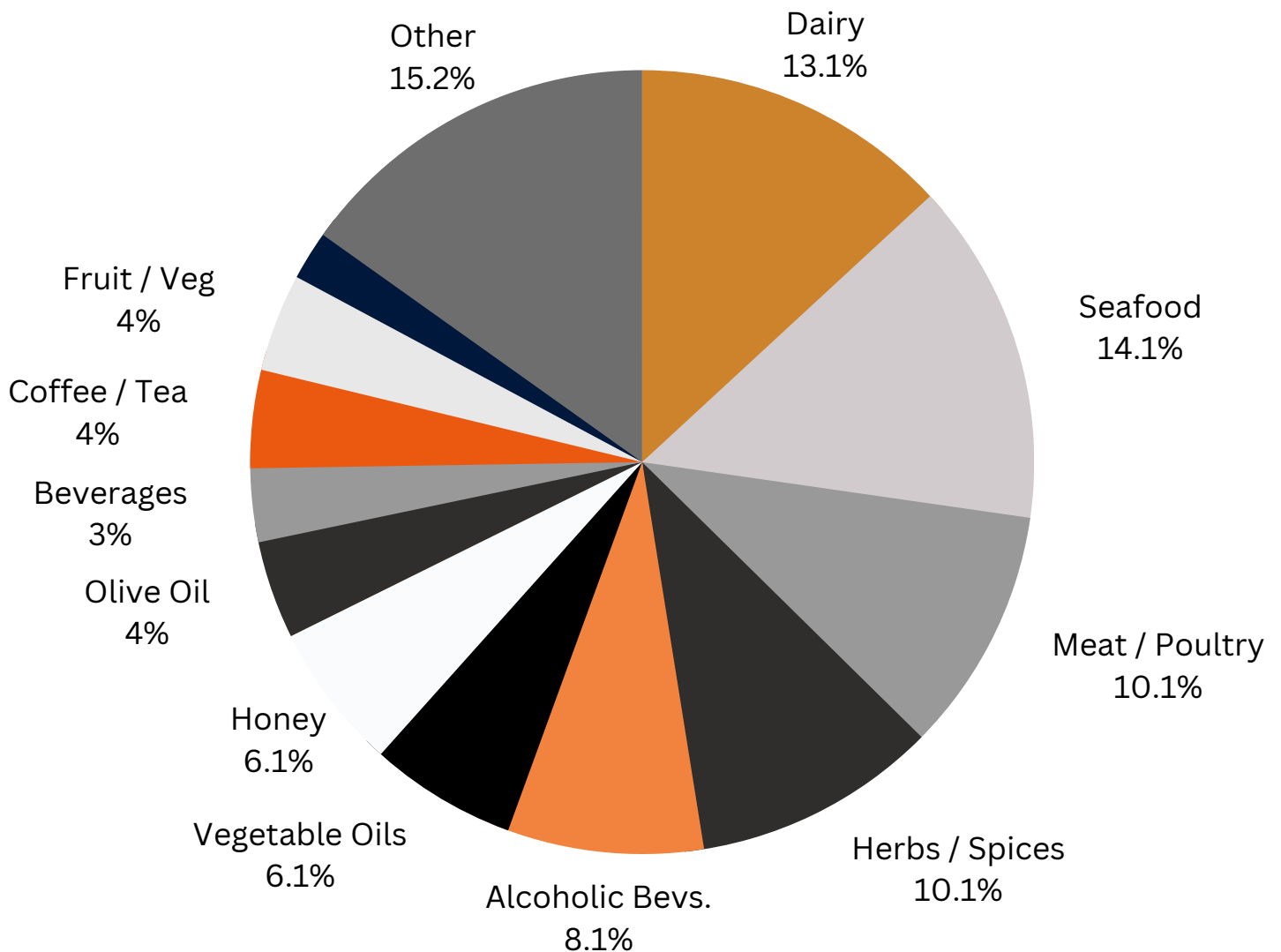


Figure 1. 2013-2022 Food Fraud Records - Commodity Groups
Source: <https://www.foodchainid.com/food-fraud-database/>

Adulteration is just one of the many ways that food fraud can be perpetrated, and as we have seen from the recent pork meat scandal it can be carried out on a large scale resulting in a huge fraud on both retailers and consumers. Not only can this have financial consequences (i.e. retailers and consumers paying the same price but for an inferior product); it can have very significant health consequences. The health and public safety consequences of the pork meat scandal have not yet been fully explored, but it is concerning.

Tenet is proud to support the work of the Food Authenticity Network as an official partner. You can find out more [here](#)



Fighting Fraud for the Food Sector

What makes Tenet different is that we are a specialist compliance, investigations and litigation law firm.

We focus on responding to fraud and financial crime compliance for our clients across the UK and overseas.

Our experience and sole focus is our expertise of dealing with a range of financial crime and fraud issues and applying that detailed and experienced knowledge to certain sectors, including food.

Our approach has been recognised in our speaking at Food Fraud conferences and commentating in publications such as New Food and Food Science & Technology.

If you have any questions or would like more information about the articles in this newsletter or about the work we do, please get in touch, we would be happy to help.



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Resources

<https://www.fwi.co.uk/news/exclusive-mass-food-fraud-and-safety-scandal-engulfs-sector90>

<https://www.food.gov.uk/contact/consumers/report-problem/report-a-product-labelling-issue/report-a-food-crime>

<https://www.foodchainid.com/food-fraud-database/>

<https://www.foodauthenticity.global/foods-most-reported-as-fraudulent>

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