

## Being a Neutral Expert Witness

Tesco were in the news earlier this year, when they were fined the largest amount ever for a food business, £7.5 million, for selling out of date food. Cadburys were the dubious holder of this distinction for selling chocolate, which was contaminated with Salmonella, in the 1980's. The recent case caused quite a stir in the media, particularly the food press:

[Tesco out-of-date food fine 'a warning' to other chains - BBC News](#)

[What does Tesco's record fine for selling out-of-date food mean for the industry? | Comment & Opinion | The Grocer](#)

[Tesco fined £7.5 million for out-of-date food sales | Food Safety News](#)

There are a number of implications for retailers: making sure that all food on display is within the use by date, it is the law, and a simple to follow method to try to ensure food sold is safe. The second is being honest when you get it wrong, it may help working with your local authority.

Another implication is that of the honesty and integrity of the expert employed, and the need for that expert to not be persuaded or coerced into a different view to the one that the evidence suggests, for the sake of winning the case. This relates to the case below in the news, and one of which I have worked, outlined below.

Judge Qureshi reserved some harsh comments for the expert employed by Tesco in the case, "He even compared the cotton-like mould on grapes to the mould in blue cheese. He is completely at odds with the feeling of disgust that any ordinary member of the public would have on seeing the mould on grapes." Kate Vickery of Osborne Clarke commented " Tesco presented compelling evidence from a leading microbiologist that the out-of-date food found in the stores in Birmingham was still safe to eat. The Divisional Court disagreed and confirmed that simply selling food past its use-by date was enough to commit the offence."

The second case was one where Dr Bux, formerly a medical practitioner (now removed from the Medical Register), worked for clients who claimed to have had food poisoning whilst on holiday. Each claim for which he wrote a report was quite small, and so the fraud went undetected for some time; writing some 700 reports between 2016 and 2017, to a value to Dr Bux of over £100,000. The cases involved a conflict of interest because his wife worked at the solicitors which pursued the claims. The judge said that the reports were written "on a boilerplate basis. They were superficial, unanalytical, devoid of any differential diagnoses, and were invariably supportive of the claim."

<https://www.bondsolon.com/dishonest-expert-loses-ban-appeal/>

I was asked to provide an opinion on behalf of a company in which an employee allegedly suffered chemical burns to the mouth and throat from a caustic cleaning product which carried over into the final product. The staff member had taken part in an informal taint taste panel on the soft drink production line. Since two other members of staff did not suffer any burns, it was assumed by the company that it was an erroneous response. Investigation of the incident did show anomalies in the staff member's account. However, some food safety management procedures related to the incident were either not completely clear, or not being followed correctly or reported properly by staff members. My report showed that there were sufficient grounds for doubt that instructing solicitors advised the company to settle out of court.