

Supreme Court dismisses case against the Food Standards Agency

The Supreme Court has dismissed a 7-year legal case against the FSA by Cleveland Meat Company Limited (CMC) and the Association of Independent Meat Suppliers (AIMS).

The dispute

The case involved a dispute dating back to September 2014, where a bull was slaughtered at CMC's abattoir. The animal passed the initial ante-mortem checks by an FSA Official Veterinarian (OV), however, at the post-mortem inspection, a Meat Hygiene Inspector (MHI) identified 3 abscesses in the carcass indicating a form of blood-poisoning (pyaemia) and the carcass was therefore declared as unfit for human consumption by the OV.

The company disputed this decision and appointed their own vet, who came to a different conclusion. CMC and AIMS therefore asserted that there should be a right of appeal against OV's decisions, to ensure effective judicial protection for businesses. They suggested that the OV serve a Food Detention Notice under section 9 of the Food Safety Act 1990 but this was refused.

The case

CMC made an application for judicial review before the High Court in order to challenge the FSA's assertion that it was not required to use the Food Safety Act 1990 procedure or in the alternative to provide an appeal right.

The application was dismissed by both the High Court and Court of Appeal before being appealed to the Supreme Court. The Supreme Court referred questions to the Court of Justice of The European Union (CJEU) on appeal rights and the compatibility of section 9 of the Food Safety Act 1990.

The Supreme Court Judgment

The Supreme Court ruled, in light of the CJEU Judgment, that the section 9 Food Safety Act 1990 procedure is precluded from being used as a right of appeal against the OV decision on health marking; and that whilst there must be a right of appeal, a judicial review was an effective safeguard for legal redress in such circumstances. It found that the claim was without merit and therefore dismissed the appeal.

Passing judgment on the case, **Lady Hale** and **Lord Sales** remarked that:

“There is no legal foundation for Cleveland Meat Company Limited's claim that the FSA acted unlawfully in declining to proceed under the section 9 procedure in relation to [this carcass]; nor is there any basis for the alternative complaint that the United Kingdom has failed to provide an appropriate means to challenge decisions taken by an Official Veterinarian.”

Simon Tunnicliffe, Acting Director of Operations at the Food Standards Agency said:

"We welcome the decision of the Supreme Court to dismiss this long running case, which confirms OVs are to make the final decision on whether or not meat is fit for human consumption.

"Our frontline OVs play a vital role in making important decisions every day which help protect consumers and ensure food is safe and what it says it is.

"We have support in place for our OVs to discuss complex cases before they make their final decision if needed."