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Case Reference: FD/2022/0001

**First-tier Tribunal  
(General Regulatory Chamber)  
Food**

**Heard at Field House  
On 17 & 18 April 2023  
Decision given on: 26 February 2024**

**Before**

**JUDGE NEVILLE**

**Between**

**ODYSEA LIMITED**

**and**

**LONDON BOROUGH OF WALTHAM FOREST**

Appellant

Respondent

**Representation:**

For the Appellant:

Mr R Kingham, counsel instructed by Covington & Burling LLP

For the Respondent:

Mr S Jessop, counsel instructed by the London Borough of Waltham Forest

**Decision:**

- (i) The appeal is allowed.
- (ii) The Improvement Notice is cancelled.

**REASONS**

1. “The things that make me different are the things that make me me”, said Piglet, who must have seen quite a bit of honey eaten over the years. If he treated Pooh to some “raw honey”, what would be different about it?
2. Plenty, says Odyssea, who have sold thousands of jars of honey proudly labelled as “raw”: unlike ordinary honey, ours has not been heated above its natural temperature and has undergone far less processing, so is of better quality. Describing one of Odyssea’s raw honey products, the judges at the Great Taste Awards complimented the “subtle pine and fir flavours, the perfect level of sweetness, the hint of saltiness, the sheer sexiness of this honey”.

3. Nothing, says Waltham Forest Trading Standards, who wants them to stop: all honey is raw because it has not been cooked, so it misleads consumers to suggest that yours is special. Odysea has had to reprint its labels to say “artisan honey” instead. The Tribunal must decide if that is right.

## Honey law

### Composition

4. Bees visit thousands of flowers to collect nectar. Once back at the hive, the nectar is repeatedly digested and regurgitated, allowing enzymes to transform it into honey that is stored in honeycomb cells. Using their body temperature and airflow from the beating of their wings to create an air-conditioning system, bees remove moisture from the air and keep the hive at a steady temperature of around 35° Celsius. This allows enzymatic activity to create the product we all know.
5. Modern humans have now gained these skills using machines, so can simply make their own sugar syrup in a factory, add flavourings, and try to sell it as honey. Consumers and honey-makers in England are protected from such dupery by a legal definition of honey, at regulation 2 of the Honey (England) Regulations 2015 (“the Honey Regulations”):

“... “honey” means the natural sweet substance produced by *Apis mellifera* bees from the nectar of plants or from secretions of living parts of plants or excretions of plant-sucking insects on the living parts of plants which the bees collect, transform by combining with specific substances of their own, deposit, dehydrate, store and leave in honeycombs to ripen and mature.”

6. Only food meeting that description may be sold as honey.
7. Like many products from nature, honey straight from the hive is not ideally suited to all the various steps needed to put it in a jar on a supermarket shelf. Removed from the bees’ care it crystallises when left in storage, so must be heated into a liquid to be put into jars. While famous for its longevity, honey can still sometimes spoil if naturally occurring yeasts start fermentation. To stop industry’s solutions to those problems altering honey to the extent that it no longer deserves the name, when honey is sold it must also meet several compositional requirements set out at Schedule 1 to the Honey Regulations.
8. Three of those requirements are relevant in this appeal. First, at paragraph 8(d), honey must not have been “heated in such a way that the natural enzymes have been either destroyed or significantly inactivated”. Second, paragraph 12(6)(a) specifies the minimum level of diastase, a particular enzyme found in honey. Third, paragraph 12(6)(b) specifies a maximum level of hydroxymethylfurfural (HMF), a chemical formed over time and much more quickly if the honey is heated. If something that would otherwise qualify as honey fails to meet those requirements then it may only be sold as ‘baker’s honey’.
9. Insofar as it might be suggested that the first of those three requirements simply introduces the other two, I disagree. Each is freestanding. The only sensible interpretation of the words used is that all the natural enzymes have either been destroyed or significantly de-activated. That is not the same as requiring a minimum level of one enzyme in particular. So, if honey has been heated in that way then it will fail the requirement, no matter that the diastase and HMF levels meet the requirements of the regulations.

## Labelling

10. Food labelling in general must comply with various laws. The Food Information to Consumers Regulation (EU) No. 1169/2011, known as “FIC”, is retained EU law. Article 7 lists a number of ways in which food information must not be misleading, relevantly including the following:

1. *Food information shall not be misleading, particularly:*

a. *As to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production;*

b. *[...]*

c. *by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients[*

*[...]*

11. For honey in particular, regulation 17 of the Honey Regulations restricts what words may appear in a product name. For example, subject to meeting specific requirements it may be supplemented by its floral and regional origin. It may also, under regulation 17(5), be supplemented by information relating to its ‘specific quality criteria’. Rather unhelpfully, the regulations provide that ‘specific quality criteria’ has the same meaning as in Directive 2001/110/EC, the Honey Directive. Beyond mentioning the term, the Directive attempts no definition. The Food Standards Agency’s guidance on the regulations suggests as follows:

4.3

*[...]*

(iii) *Specific quality criteria: this provision relates to additional descriptions that emphasise the quality of the product. Businesses are also advised to take account of the Agency's Guidance Notes on the use of labelling terms such as “pure”, “fresh” and “natural” ...*

12. I take this as permitting product names such as “Finest Honey”, “Value Honey” or, as is presently being used by Odysea, “Artisan Honey”. Certainly there is no suggestion from Waltham Forest that any of these names are objectionable, and they are obviously familiar from supermarket shelves.

## Enforcement

13. If the above regulations are breached, Schedule 2 to the Honey Regulations modifies s.10(1) of the Food Safety Act 2010 to enable a trading standards officer to issue an Improvement Notice. Failure to comply with an Improvement Notice is a criminal offence.

## Appeal

14. The regulations likewise modify s.37 to give a right of appeal against the Improvement Notice to this Tribunal, and provides that on such an appeal the Tribunal “may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the First-tier Tribunal may in the circumstances think fit.”
15. As explained in R. (Begum) v SIAC [2021] UKSC 7, tribunals “cannot generally decide how a statutory discretion conferred upon the primary decision-maker ought to have been exercised, or exercise the discretion themselves, in the absence of any statutory provision authorising them to do so”. I consider that this statutory regime does confer such authority. Nonetheless, while deciding the relevant matters for myself, appropriate weight must still be afforded to the view taken by the decision-maker: entrusted by Parliament to enforce the scheme and possessing expertise and experience in doing so; see R. (Hope & Glory Public House Ltd) v City of Westminster Magistrates’ Court [2011] EWCA Civ 31 at [45]; Hesham Ali (Iraq) v Secretary of State for the Home Department [2016] UKSC 60 at [44]-[46]. The organisation of specialisms between different trading standards authorities is relevant on this point; Odysea’s sale of raw honey was referred by another authority to Waltham Forest, which has taken the lead on this particular subject.
16. The parties agree that the Tribunal decides the relevant facts according to the standard of the balance of probabilities. There was discussion before me on where the burden of proof lies. Mr Kingham submitted that the burden of proof in establishing any relevant facts is upon the respondent, relying on authorities concerning appeals against prohibition notices under the Health & Safety at Work Act 1974; see, for example, Shiva Ltd v Boyd (An Inspector of Health And Safety) [2021] EWHC 371 at [5]. Mindful of the principles helpfully summarised in Verlander v Devon Waste Management & Anor [2007] EWCA Civ 835 at [18], I can record that I was able to make all necessary findings of fact without needing to resort to the burden of proof, so need not formally decide that issue.

### **Why Odysea’s raw honey led to the Improvement Notice**

17. On 14 October 2021, Adrian Wiltcher, an Environmental Health Officer at Waltham Forest, informed Odysea that he considered labelling honey as ‘raw’ breached Article 7(1)(c) of FIC. Correspondence followed, in which Waltham Forest relied on guidance on raw honey produced by the Association of Chief Trading Standards Officers (ACTSO) in 2017, and Odysea relied on a report from Dr Mark Tallon, a food scientist.
18. Mr Wiltcher served the Improvement Notice on 15 March 2022. It states that he has reasonable grounds for believing that Odysea had failed to comply with the relevant provisions, because:

*You are labelling and advertising food with misleading food information; Containers holding honey are labelled with the word ‘raw’ and advertised as ‘raw’ on your website [...]*

*The matters which constitute your failure to comply are:*

*Making available to the final consumer a range of honey products with ‘food information’ using the term ‘raw’ on product labels and on product descriptions on your website. Thus, suggesting that this food possesses a special characteristic when in fact all similar foods possess such a characteristic.*

*In order to comply with the provision specified above, you must take the following measures.*

*Remove the descriptor / word “raw” when giving food information about honey to the final consumer. This will include the removal of the word ‘raw’ from honey on all associated product labels, digital / online media and any other advertising device.*

19. Odysea has exercised its right of appeal, which is resisted by Waltham Forest. I take this opportunity to apologise for the delay in producing this decision, caused by a number of pressures upon both this Tribunal and me personally, none of which were the fault of the parties.

### **The parties’ cases**

20. At the hearing I heard evidence from Mr Wiltcher and an expert Mr Nigel Payne for Waltham Forest and, for Odysea, from its managing director Mr Panaghiotis Manuelides and expert Dr Mark Tallon. I shall only set out their evidence and submission where necessary to explain my subsequent conclusions.

### Odysea

21. It is convenient to start with Odysea’s case on why their honey is properly described as ‘raw’, and why this makes it special. The first sense in which Odysea claim their honey is raw is that it is ‘unpasteurised’. Mr Manuelides gave evidence as to the way in which the honey is gathered. Its honey is made by a team in Greece headed by a beekeeper, Mr Gousiaris. They move beehives to various areas depending on the type of they want to harvest, for example pine, fir, oak, wild thyme, orange blossom, and so on.
22. The honey is extracted by removing the frames from the hives and taking them to Mr Gousiaris’ workshop, where the honey is extracted by a centrifuge and pumped into barrels. There it rests, while naturally occurring detritus rises to the top and is scraped off by hand. Some of the honey is then put into individually numbered jars as a ‘limited run, single source’ honey. The rest is put aside in 25kg tins. Up to this point, no heat has been artificially applied to the honey at all.
23. The honey that has been put aside *will* be warmed when it is needed, so that it can either be put into more limited-run, single source jars, or blended with other honeys. The honey will never be warmed above 40 degrees. The blended honey is strained through a 300 micron mesh. Mr Manuelides stressed that the blended honeys may come from different batches, hives and locations within Greece, but always from that country and from a single beekeeper.
24. This is all, Mr Manuelides stated, far away from the way in which large-volume honey is made. Their blends may come from many producers in many different countries around the world and some “will be blended, filtered, and re-packed in barrels multiple times before being sold to the final consumer”. They are ‘ultra-filtered’ to prevent crystallisation and maintain clarity, but with the effect of removing other naturally occurring particles such as pollen that makes honey distinctive and desirable.
25. Most importantly of all, says Mr Manuelides, Odysea’s honey is never “pasteurised”. I put that word in quotation marks at the first mention because, as I shall go on to describe, no-

one is quite clear what it means. Mr Manuelides claims that large companies will often subject honey to pasteurisation by “flash heating”, heating it as high as 70 degrees Celsius for less than an hour before flash-cooling it down again. In support he relies on standard training materials produced by the British Beekeeper’s Association which, in a section on preparation, instructs beekeepers to do the following after putting honey into jars:

*Bottle into pre warmed jars*

*Heat to 60-62°C for ¾ to 1 hour in water bath after securing lids to remove final crystals and pasteurise*

26. Then, in a later section on spoilage:

*Yeasts are everywhere where honey is, it is impossible to remove them but pasteurisation kills them.*

*Commercially: raise the temperature to 71°C then cool rapidly*

*Non-commercially: raise the temperature to 60° for one hour*

27. In an attempt to demonstrate the effect of all this, Mr Manuelides had arranged for seven honeys to be bought from a supermarket and sent them all off to a German laboratory to be tested for their diastase and HMF levels.

<b>Honey</b>	<b>HMF (mg/kg)</b>	<b>Diastase (DN)</b>
1	34.7	9.1
2	24.2	7.2
3	37.8	13.6
4	35.5	14.4
5	19.8	8.9
6	45.6	5.1
7 – Odysea Pine & Fir Tree Honey	3.8	12.0

28. I have not considered it necessary in these reasons to name the other brands of honey or their manufacturers, none of whom were on notice of the proceedings.

29. Mr Manuelides puts forward these results as vindicating that his honey is special. The regulations require a maximum amount of 40mg/kg HMF, and a minimum DN of 8. It is submitted that Odysea’s honey having by far the lowest HMF levels, and a respectably high DN, shows that there has been little interference with its natural enzymatic activity; this is attributed to the lack of heating.

30. Dr Tallon’s expert evidence is put forward in support of these conclusions. He sets the relevant research on the effect of temperature on the activity of honey enzymes, which he summarises as showing that heating honey to high temperatures reduces diastase levels, altering its composition, but may still leave DN at 8 or higher.

31. Having put forward a case on how the science shows Odysea’s honey to be special, Mr Manuelides next turns to consumer perception. He cites an article from the Evening

Standard from 4 February 2021, ‘Best honey: Manuka, raw, acacia, blossom and all the best health boosting honeys in the UK’:<sup>i</sup>

*Raw honey is untreated, and therefore superior in purity, clarity and with a more full-bodied taste. It contains natural traces of pollen from the bees and is rich with live, nutritional enzymes.*

*When honey is heated through pasteurisation, it loses these health boosting properties as well as the unique flavour palate from the blossom.*

32. Mr Manuelides also provides a page from the website of a competitor, Just Bee, that includes the following and with which he agrees:<sup>ii</sup>

*So what makes Raw Honey different to all other honey?*

*We've used the word 'processed' several times already and that is the key word and key difference of raw honey. Raw honey is honey in its original unprocessed form. You might rightly wonder what these processes are and why they are seen by us and many others as a negative. So let's explore those processes, why large manufacturers use them, and what makes raw honey different.*

*Processed honey often starts life as cheap imported, low grade honey from Asia. So even before any processing starts, the quality of the product is not always what you might want or expect.*

*It's then pasteurised, which involves heating the honey to temperatures over 70 degrees Celsius. The pasteurising process damages the honey and removes many of the natural flavours, textures, health boosting nutrients and antioxidants that are found naturally in honey.*

*The main reason manufacturers use this damaging process is to make the honey look nice and clear on the shelves and to keep it in its runny, easily squeezable state.*

*As well as pasteurisation it's common for processed honey to be extremely fine filtered to remove any small particles of pollen, beeswax, bee glue and other nutrients. These tiny bits and pieces are the main reason that raw honey is more likely encourage the formation of crystals over a fully processed product. The large brands and supermarkets believe you won't want to buy honey with these particles.*

*At Just Bee we believe something different. Our honey has not been pasteurised or fine filtered. Because of this, it is full of amino acids, vitamins, minerals, carbohydrates, and antioxidants. We would never process our honey to the point that all the beneficial nutrients of the honey are likely to be destroyed. Not only that but we believe that the loss of flavour in processed honey is clear to anyone who tries our honey. Raw honey is extracted from the comb before being coarsely filtered and put into jars... and that's it.*

33. He next provides emails from customers concerned about the word ‘raw’ being dropped from packaging after the present Improvement Notice was served. Odysea has had to reassure customers that the honey was still manufactured in the way described above.

34. Finally, Mr Kingham referred me to the State of Utah Administrative Code § 70-520-2 which, unlike the English regulations, does represent a legislative attempt to restrict what may be sold as ‘raw honey’:

*(4) "Raw honey" means honey:*

*(a) as it exists in the beehive or as obtained by extraction, settling, or straining;*

*(b) that is minimally processed; and*

*(c) that is not pasteurized.*

*(5) "Straining" means the process of removing particulate matter from honey by passing it through a metal or fabric screen or cloth with mesh large enough to pass pollen grains, enzymes and minerals.*

35. All this, argues Odysea, is evidence for a public understanding of the word raw that is cogent, coherent, accords with how Odysea makes its honey, is backed up by the science, and makes it special.

#### Waltham Forest

36. Waltham Forest rejects that raw honey has any characteristic setting it apart from other honey. Whatever may have been the choice of the Utah state legislature, Parliament here chose not to include it in the Honey Regulations. The regulations achieve consumer protection by setting out requirements for different types of honey that consumers might expect to see, including baker’s, blossom, chunk, comb, extracted, filtered, nectar, pressed and honeydew honey, but not raw honey. This is not a special quality criterion, like (for example) runny or set. There was no evidence to show that Odysea’s honey possesses any identifiable or measurable special characteristic or quality. Mr Jessop argued that the use of the word raw is misleading: Odysea’s honey is not special, because it has the same characteristics as any other honey. If raw bears its usual meaning of uncooked, perhaps here shorthand for pasteurised, then all honeys qualify – the regulations excluding from the definition any honey that has been heated such that its natural enzymes are destroyed or significantly deactivated. All honey is therefore raw, or it would be baker’s honey. This matches the content of the ACTSO guidance.

37. To illustrate the above point, Mr Jessop argued that the definition of raw honey was unworkable. If raw honey could be discerned by higher enzymatic activity, where is the cut-off? 10 DN? 12? This cut against the word raw, which would be seen by most consumers as an absolute definition – even a rare steak could not be sold as a raw steak, even if it might be insufficiently cooked for some people’s tastes. Some honeys might be rawer than others; Odysea never heats its honey above 40 degrees. Could a manufacturer who only goes to 38 degrees claim that their honey is rawer still? Indeed, some of Odysea’s honey might not meet the word ‘raw’ as defined in some parts of the evidence. The blended varieties are still artificially heated and mixed with a variety of other honeys. This could well offend against (for example) paragraphs (a) and (b) of the Utah definition or some of the descriptions given by the Evening Standard article and the Just Bee website.



## Assessment of the evidence

38. I start my consideration with the ACTSO guidance, it being the basis upon which Waltham Forest initially acted. I found it to be a very unhelpful document. It includes the following:

6. *It may have been interpreted by some businesses that the term RAW is a specific quality criteria when applied to their product if that product has not been subject to any heating.*
7. *The definition of raw = uncooked, not prepared for use as a food by the action of fire or heat, or in its natural unwrought state (Shorter OED) 1973. To cook food for food safety purposes would require a minimum temperature of 63°C to be achieved. It is believed that once this temperature has been achieved the enzymes would start to be inactivated or changed and therefore the product could only be sold as bakers honey.*
8. *The pasteurisation of honeys for food safety purposes would appear to be allowed providing the quality criteria of the honey laid down in Schedule 1 of the Honey Regulations are still met. The temperature would appear to go well above the 45°C for a short period. but due to the nature of certain honeys this may not affect the compositional requirements.*

*These products should be referred to as Pasteurised Honey (Annex Vi of EU Regulations 1169/2011) in order to distinguish it from un- pasteurised honey, to prevent the consumer being misled (Annex VI and Article 7 of EU Regulation 1169/2011)*

39. First, despite recording that the definition of raw includes both ‘uncooked’ and ‘unwrought’, only the former then features in the analysis. In the full OED, I note that these definitions come under the heading ‘*I. Uncooked; unprocessed, unrefined*’, which also includes the following:

*I.2. In a natural state; not yet processed or worked.*

...

*I.2.d. Of various natural substances, products, foodstuffs, etc. (occasionally also of their qualities): untreated; unrefined or only partly refined; spec. (a) (of a gem) uncut, unpolished; (b) (of water) undistilled; not filtered; (c) (of alcoholic spirit) undiluted; (d) (of grain) unmalted, undried; (e) (of sewage) untreated.*

*I.2.e. Designating any unprocessed commodity, item of produce, or the condition of such an item. Cf. raw material n.*

40. The guidance provides no explanation as to why ‘raw’ should then be associated purely with uncooked. The dictionary definition aside, this is also surprising because in dairy products the word ‘raw’ is understood to mean ‘unpasteurised’ – while these are subject to specific regulation, the possibility that consumers might be more likely to equate raw honey with (for example) raw milk, rather than raw chicken, has been the elephant in the room throughout this dispute.

41. Having tied ‘raw’ exclusively to ‘uncooked’, the guidance goes on to describe food as having been cooked when it reaches at 63°C. Having said that such heating would deactivate or change the enzymes, ruling it out as honey, it concludes that all honey is therefore raw. Only after that conclusion has been reached does the next paragraph acknowledge that pasteurisation may still be possible. The guidance simply does not grapple with how cooking honey is impossible without significant enzyme damage, but pasteurisation to (what must presumably be) just as high a temperature *is* possible. It likewise ties pasteurisation solely to food safety, but ignores that in honey this is not necessarily the principal purpose of pasteurisation.
42. The guidance then instructs that pasteurised honey should be labelled as such to avoid consumers being misled. There is some force in Mr Kingham’s two criticisms of this feature. First, no definition is provided anywhere for what pasteurising honey actually means. There is no such definition in the Honey Regulations or in FIC. What level and duration of heat requires the label? Second, the requirement to disclose if honey is pasteurised can only mean that it has some sort of special quality compared to unpasteurised honey, whereas Waltham Forest’s case is that heating (or not heating) honey *cannot* give it any special quality. I agree, and would add my previous observation about raw milk as a third criticism. By definition, raw milk is unpasteurised. According to the guidance, pasteurised honey should still be treated as raw by definition. It is difficult to see how any consumer would not be confused by this position; I certainly am. The ACTSO guidance is not intended to have any legal or authoritative status, being more akin to technical instructions for decision-makers, but it has nonetheless been relied upon by Waltham Forest as forming the basis of its case. That is a shaky basis indeed, as I find the guidance provides little assistance in resolving the issues.
43. I turn next to the expert evidence. Neither party disputes the other’s expert’s credentials, and I am entirely satisfied that each is qualified to give expert evidence on the nature and chemistry of honey. Mr Payne is a public analyst with qualifications in chemistry. He has many years’ experience in food-related analytical roles, employed by or providing services to government regulatory authorities. In relation to Mr Manuelides’ case that his selection of honeys must have been pasteurised or flash-heated, Mr Payne’s written evidence includes the following:
5. *I would suggest that if any of the honeys given have been flash pasteurised, I would expect a lower diastase activity – there is no indication that that is the case. Additionally, if the enzyme activity is reduced by heating – and I would suggest that the pasteurisation process described would do this – then there is a category of Bakers honey by which that honey is required to be called. If such conditions have not been reached, then the category of “honey” is there to be used.*
44. Asked for the source of this understanding by Mr Kingham, Mr Payne described having been involved in analysing honey since the 1980 and undertaking academic study on the subject in 1994. He also had institutional exposure to current thinking and dialogue within DEFRA and the FSA. He acknowledged that he had no recent direct experience of any studies, that his knowledge did not derive from any up-to-date scientific literature, and that he had not read the studies cited by Dr Tallon.
45. Asked by Mr Kingham if he maintained that opinion faced with the countervailing evidence, Mr Payne confirmed that he did. Mr Kingham sought to identify whether there was a

process of pasteurisation that might be practicable without bringing diastase below DN 8. In the resulting exchange Mr Payne maintained his reluctance to accept that this was at all likely, including that it 'would be difficult' to flash-heat honey above 60 degrees for even a few seconds without doing so. He was referred to a study cited by Dr Tallon as follows:

*In a study, Tosi et al. (2004) assessed the impact of high temperature short time (HTST) exposure on the activity of diastase in honey from Argentina. The aim was to find out what amount of HTST would not result in a DN level below 8. In one sample it was found that 140°C for 30s in the transient heating stage and 10s in isothermal was [the] maximum of HTST treatment to not inactivate DN below 8. In the other sample this was 100°C at 60/30 seconds, demonstrating the variability between honey samples. What was clear is that as temperature and exposure to it resulted in declining diastase activity and at 100°C for 1200s there was no activity detectable suggesting complete inactivation.*

46. His only explanation for this was that diastase levels in Argentinian honey may be more resilient than honey from British flowers. While the experts agree that both the starting levels of diastase and its reduction in response to heating will differ between honeys, such a stark difference is plainly impossible to reconcile with the broader evidence. Moreover, Mr Payne's opinion had clearly been expressed in relation to *all* honey, and at no point has there been any suggestion that his evidence was concerned only with British honey. Nor would this make any sense: not only does this appeal concern Greek honey, but the entire regulatory context concerns a product known to come from a wide variety of countries and floral sources. This was not the only occasion on which Mr Payne's responses were deflective, and failed to engage with the actual proposition being put to him. He had further failed to notice, until it was pointed out in cross-examination, that one of the honeys tested by Mr Manuelides had a diastase level so low that its sale was illegal. This was one aspect of what emerged as a wider lack of engagement with Dr Tallon's evidence.
47. Mr Payne continued to reject that heating above 45 degrees in large scale commercial honey production might be any more common than the odd, isolated rare occurrence. As well as his belief that this is almost always impossible without breaching the compositional requirements, he also relied on the fact that neither he nor colleagues in regulatory authorities had ever been made aware of the practice. When asked, he was unable to identify how he or his colleagues have kept up to date on industry practices and was further unable to satisfactorily reconcile his opinion with the statements in the British Beekeeper's Association training material and the conclusions of the peer-reviewed studies carefully collated in Dr Tallon's report. Considering Mr Payne's evidence overall, and for the above reasons, I am unable to place any significant weight on his opinion. In contrast, I found Dr Tallon's evidence to be carefully constrained to matters upon which he was able to point to justification for his opinion, and to be clearly referenced.
48. While I acknowledge the points made about the sample size of Mr Manuelides' shopping basket not providing a proper basis to draw a firm conclusion, it nonetheless provides modest support for the conclusion that honey which has not been heated will have less HMF and more diastase. This is consistent with the scientific evidence.
49. I find that the scientific and other evidence discloses a realistic likelihood that large honey producers may be routinely subjecting honey to sophisticated heating and crash-cooling methods in such a way that its HMF and diastase levels remain just within the regulatory requirements. It is plainly in their interests to do so: I can properly take notice that

malleability, homogeneity and longevity are necessary and desirable qualities in food sold to supermarkets, especially for their ‘own brand’ products. It would not be surprising if, over time, producers have improved their technology, sources of honey and blend recipes.

50. The evidence of Mr Payne, and the ACTSO guidance, gave me a strong impression of an institutional reluctance to engage with developments in manufacturing technology and practices, and to address whether they may put honey in breach of the separate requirement that enzymes should not be “significantly deactivated”. At the very least, the ACTSO guidance and its defence reveals a lack of understanding about pasteurisation / flash-heating conducted by industry and its effects on products.
51. Finally, for completeness, I accept the general credibility and reliability of Mr Manuelides’ evidence, there being no suggestion I should do otherwise.

### **Conclusion**

52. I take into account the above evidence and my assessment, without repeating it all. The difficulty in this case arises from the parties asking the Tribunal to rule between two rival definitions of ‘raw’.
53. The definition put forward by Waltham Forest, being ‘uncooked’, can be rejected. The average consumer would struggle to explain what ‘cooked honey’ might even look like, and the ACTSO guidance and Waltham Forest have failed to explain how the supposedly unacceptable process of cooking can be distinguished from the supposedly acceptable process of pasteurisation. That distinction makes no linguistic or scientific sense, at least on the evidence provided in this appeal.
54. Rejecting Waltham Forest’s definition does not mean accepting Odysea’s definition. The evidence shows that consumer perception is aligned with common sense: raw in this context takes the everyday meaning of ‘unwrought’, ‘unprocessed’, ‘in its natural state’. But a precise definition that sorts honey into ‘raw’ and ‘not raw’ is less obvious. If, before your eyes, a beekeeper removes a frame from a hive and scrapes some honey onto your slice of toast, you would certainly agree that you were eating raw honey. The same applies if the beekeeper puts a kitchen sieve in the way so you don’t eat bits of wax or dead bee, or even if it goes into a jar that you pick up a few days later. Beyond these obvious examples, it becomes less clear: instead of a sieve, a fine mesh is used; instead of a jar, the honey is kept in a large tin and warmed to fill a jar later on; now, there are 500 beekeepers and the kitchen sieve is replaced by a specialist mesh with a pump that can handle 50 litres a minute. Is the honey still raw?
55. To avoid continuing to labour the point, I look at Odysea’s own honey. Its ‘limited run, single source’ honey described at paragraph 20 above would satisfy just about everyone as being raw honey, although even then the odd person might take exception to the centrifuge and the pump. The honey at paragraph 21 would probably still satisfy most people, being a blend of honey from different locations across Greece and having been re-warmed to a modest degree, but certainly not all. I have no idea if would satisfy the authorities in Utah, but it *might* not. Similar points were made by Mr Jessop, as set out at paragraph 37 above.
56. Ultimately, however, the Tribunal’s task is not to be drawn into legislating a precise definition of ‘raw’, as both parties were apt to invite it to do, but to decide if *this* honey breaches the law in the way stated in the Improvement Notice. I reject that Odysea’s use of

the word 'raw' suggests special characteristics that in fact all similar foods possess, or that it is any other way misleading. Doing the best I can, the word accurately conveys the lack of processing, including but not limited to heating, undergone by Odysea's honey when compared with many others. I decline to reach any conclusion on where the lower limit of processing lies before honey may no longer be described as raw, and it may be that clearer guidance or regulation would assist consumers and producers.

Signed

Date:

*Judge Neville*

26 February 2024

- <sup>i</sup> <https://www.standard.co.uk/shopping/esbest/food-drink/best-honey-uk-manuka-raw-acacia-health-benefits-a4068371.html>
- <sup>ii</sup> <https://justbeehoney.co.uk/blogs/just-bee-honey-blog/what-is-raw-honey>