

**Written evidence submitted by Dr Carrie Bradshaw, Associate Professor of Law,  
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**Introduction**

1. I am a legal academic specialising in the law and policy on food waste prevention. My published and ongoing research explores the role of law and regulation related to unfairness in the food supply chain in preventing food waste. I thus have a specific interest in how these laws relate to food waste, but as a result have a broader familiarisation with the regulatory frameworks and relevant research.
2. I am grateful to the Committee for confirming that it will refer to evidence already gathered. I will avoid repetition of my [written](#), [oral](#) and [supplementary](#) evidence submitted in 2023, but confirm that many of those concerns and questions raised are still relevant in January 2025. I welcome the Committee's continued work in this area.

**Executive summary**

3. I refer the Committee to previous evidence about the potential for the GCA to make greater use of its fining powers.
4. There are potential merits of expanding the scope of the Groceries Supply Code of Practice (GSCOP)/Groceries Code Adjudicator (GCA). It may address problems and risks identified with the current 'two-regime' approach. These problems and risks include departmental and regulator fragmentation, scope for uneven protection, the risk of no protection for some suppliers, and the risk of perverse incentives for non-compliance.
5. Potential demerits of extending GSCOP include concerns about the 'code adjudicator' model and questions about the compatibility of the goals of competition law with ensuring fairness for suppliers. Another demerit of extending GSCOP is that protections for indirect suppliers are urgently required. The Agriculture Act (AA) 2020 powers exist, consultations have been undertaken, and use of the powers is underway. Further delay is inadvisable.
6. The contemporary priority is arguably to ensure the two regimes, fully implemented, work effectively together. This creates a clear need for oversight, review and research. In the longer term, rather than extending GSCOP, it may be preferable to adopt one overarching regime. This could be overseen by a new regulatory body and regime sensitive to the risks of enhancing competition between powerful buyers in order to drive down food prices.
7. The previous Government, in its regulation of unfairness in the supply chain, missed several opportunities to prevent food waste. The Committee may wish to consider whether and how Defra is aligning its work on agriculture and food waste, particularly in the context of the Circular Economy Taskforce and forthcoming Strategy.

**Effectiveness of the GCA to enforce GSCOP**

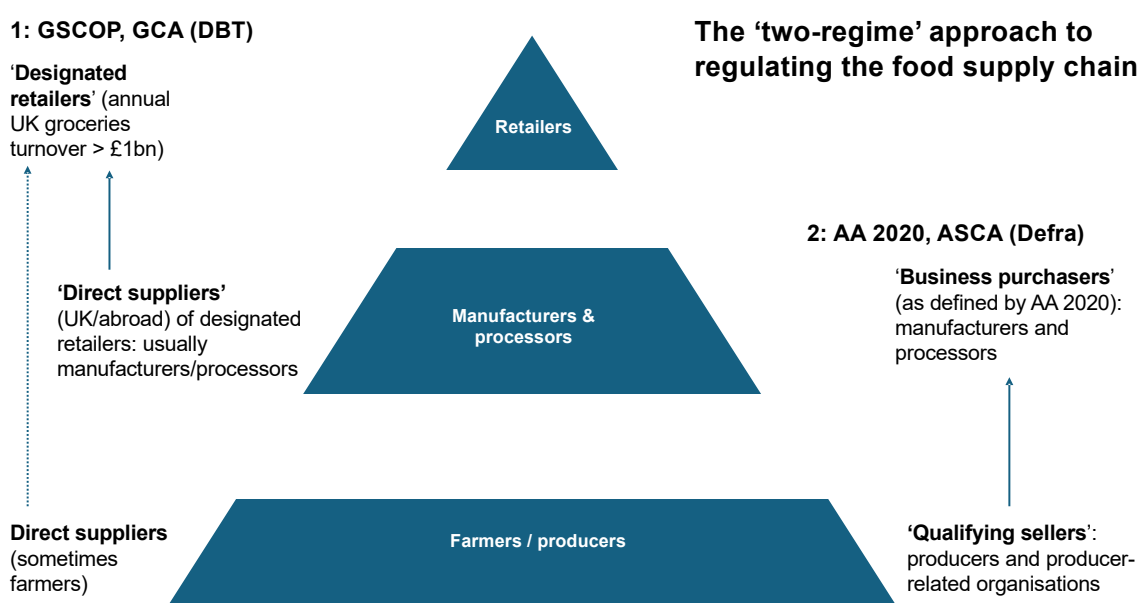
8. I reiterate the concerns I raised in previous evidence about the continued desirability of the GCA's 'compliance' rather than 'deterrence'-based enforcement approach.

There are risks, benefits and costs to both enforcement styles. The GCA may wish to *consider* making greater use of its fining powers, so as to deter non-compliance.

## Potential merits and demerits of expanding the scope of GSCOP

*Background: Option 1 (extending GSCOP) and Option 2 (the ‘two-regime’ approach)*

9. In 2008, the Competition Commission identified two options to plug the gap in protection for indirect suppliers outside of the scope of GSCOP.<sup>1</sup> ‘Option 1’ was extending GSCOP to cover indirect suppliers. ‘Option 2’ was introducing complementary codes to cover intermediaries and primary producers. The new fair dealing powers under section 29 of the AA 2020 represents Option 2.<sup>2</sup> It creates a ‘two-regime’ approach to regulating the food supply chain, where GSCOP coexists alongside the new AA 2020 regime:



*Merits of extending GSCOP: avoiding problems and risks with the ‘two regime’ approach*

10. I and others have highlighted various problems with this ‘two-regime’ approach, enforced by two different regulators (the GCA and ASCA) and owned by different government departments (the Department for Business and Trade, and Defra):
11. The two-regime approach creates scope for uneven protection. Farmers/producers will be covered by different regimes, and potentially subject to greater / lesser protection, depending on whether they supply designated retailers or manufacturers/processors.

<sup>1</sup> Competition Commission, ‘The Supply of Groceries in the UK Market Investigation’ (Competition Commission 2008).

<sup>2</sup> The AA 2020 regime provides UK-wide powers for the Secretary of State to impose a broad range of obligations on ‘business purchasers’ of agricultural products from ‘qualifying sellers’. This envisages obligations on processors or manufacturers purchasing agricultural products from farmers/primary producers (and related producer organisations).

12. The two-regime approach also risks no protection, whereby some suppliers are protected by *neither* regime. There are some reports (on which the Committee may seek updated evidence) that some retailers instruct suppliers to deal with intermediaries, allowing that retailer to circumvent GSCOP.<sup>3</sup> Two two-regime approach creates the same risk upstream; new buying intermediaries that evade both GSCOP (by not selling directly to designated retailers) and the new AA 2020 regime (which only protects exhaustively defined ‘qualifying sellers’).
13. There is also a risk of squeezing and perverse incentives in the middle of the supply chain. There is some evidence to suggest that unfair practices faced by farmers/producers from manufacturers/processors arise due to pressures passed on *from retailers*.<sup>4</sup> Put differently, part of the problem, at least in some sectors, remains the concentrated economic power of retailers. If processors are direct suppliers of designated retailers, then they should, in theory, be protected under GSCOP. However, these processors or manufacturers will now be subject to new obligations under the AA 2020 regime. The balance of protection between the regimes is therefore important. Otherwise, there is a risk that manufacturers/processors in the middle will be ‘squeezed’ if they are not fully protected by GSCOP. This in turn could generate perverse incentives for non-compliance with the new fair dealing codes, especially for those with lesser bargaining power than the designated retailers they supply.
14. These risks may not materialise, but they are risks created by the two-regime approach that should be monitored. The Committee may wish to take evidence, and/or seek reassurance from Defra.
15. For these and other reasons, some recommend a unified, one-regime system. As above, there is Option 1: extending the remit of GSCOP and expanding the scope of the GCA.

#### *Demerits of extending GSCOP: the ‘code adjudicator’ model and competition law*

16. However, in previous evidence, I raised questions, based on the admittedly limited available research, about the regulatory design of the GCA’s ‘code adjudicator’ model, and its ultimate objective as a creature of competition law.
17. As to its regulatory design, the GCA is both a statutory arbitrator *and* a regulator. As I noted in previous evidence, this ‘code adjudicator’ model is novel and under-researched. An academic study of the same model applied in a different context (the Pubs Code Adjudicator) found (i) it failed to identify problems and resolve them, and (ii) change future behaviour or systems based on problems its users encounter.<sup>5</sup>

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<sup>3</sup> Groceries Supply Code of Practice Petitions Committee Debate 22 January 2024, vol 744, cols 2WH and 27WH; Grace Duncan, ‘Producers Falling out of GSCOP Remit as Retailers Hire More Middlemen’ (*The Grocer*, 23 January 2024) <<https://www.thegrocer.co.uk/sourcing/producers-falling-out-of-gscop-remit-as-retailers-hire-more-middlemen/687422.article>> accessed 24 January 2024; Grace Duncan, ‘GCA Examining Impact of Code-Circumventing “Middlemen”’ (*The Grocer*, 9 February 2024) <<https://www.thegrocer.co.uk/supply-chain/gca-examining-impact-of-code-circumventing-middlemen/688090.article>> accessed 11 February 2024.

<sup>4</sup> See e.g. in the pig sector: ‘respondents indicate that they believe retailers dictate the market, with retail pressure passed down via processors to farmers’: Defra, ‘Contractual Practice in the UK Pig Sector: Summary of Responses and UK Government Response’ (Crown Copyright 2023) 21.

<sup>5</sup> Jed Meers and Liz Hind, ‘The “Code Adjudicator” Model: The Pubs Code, Statutory Arbitration and the Tied Lease’ (2022) 42 *Legal Studies* 296 <<https://www.cambridge.org/core/journals/legal-studies/article/code-adjudicator-model-the-pubs-code-statutory-arbitration-and-the-tied->

18. As to its ultimate objective, in previous evidence I raised concerns about a regime housed in competition law. The overarching goal of competition law in this context would appear to be to enhance competition *between* retailers for the benefit/protection of consumers, coupled with a basic assumption that retail buying power drives prices down for consumers. However, for weaker suppliers, this hyper-competition between powerful buyers driving down food prices *is* the problem.<sup>6</sup> In other words, the priorities that *may* be baked into the design of GSCOP, enforced by the GCA, are potentially incompatible with fairness for suppliers. I am not a competition lawyer, and so the Committee may wish to take further evidence. But that is the concern identified in the existing literature.
19. This could have implications for food waste. Food waste across the supply chain is caused, at least in part, by competition *between* retailers and the downward pressure this puts on the price of food.<sup>7</sup> However, competition and lower prices for consumers is what competition law—and potentially, by extension, GSCOP—largely aims to achieve.

#### *Option 2 for now, Option 3 in the future?*

20. There is probably consensus as to the need for some protection for indirect suppliers, be it extending GSCOP (Option 1) or the AA 2020 regime (Option 2).
21. While they are not without issues, the AA regime exists, with relevant powers, the use of which has been subject to extensive delay. There is considerable merit making these two regimes coexist effectively. This requires oversight, review and research.
22. In the future, there may be need for an 'Option 3': one overarching regime, overseen by a new regulatory body that is not the GCA. This independent, well-resourced food supply chain regulator could be designed to enforce sector-specific obligations across the full supply chain with a broad range of regulatory objectives beyond ensuring competition and driving down the price of food.

#### **Adequacy of reviews into contractual practices in agricultural sectors, effectiveness of introduction of fair dealing powers under the Agriculture Act, and other potential reforms to the Groceries Supply Code of Practices: food waste**

23. Several unfair trading practices are known to cause food waste. I have raised concerns in previous evidence and elsewhere<sup>8</sup> about 'missed opportunities' to prevent food waste on farms and in the supply chain. This especially relates to consultations on the AA 2020 regime, but also the potential strengthening of GSCOP.

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<sup>6</sup> The outcomes of which are documented in Lisa Jack, 'The Secrets of Supermarketing: A Model Balanced on a Knife-Edge' (Food Research Collaboration 2021); Sustain, 'Unpicking Food Prices - Where Does Your Food Pound Go, and Why Do Farmers Get so Little?' (Sustain 2022).

<sup>7</sup> See Carrie Bradshaw and Jonathan Wentworth, 'POSTbrief 60: Food Waste' (Parliamentary Office of Science and Technology (POST), UK Parliament 2024) <<https://researchbriefings.files.parliament.uk/documents/POST-PB-0060/POST-PB-0060.pdf>>, Box 2: 'The price of food and overproduction', p 15 and section 2.1. especially pp 24-25.

<sup>8</sup> Carrie Bradshaw, 'Missed Opportunities to Prevent Food Waste on UK Farms' in Michael Cardwell, Joseph McMahon and Fiona Smith (eds), *Research Agenda for Agricultural Law* (Edward Elgar forthcoming).

24. Daniel Zeichner MP, Shadow Minister (as he then was) for Environment, Food and Rural Affairs, raised these concerns in the previous Parliament.<sup>9</sup> The Government has recently appointed a Circular Economy Taskforce, whose work will feed into a new Strategy to be published later this year. The previous waste strategy<sup>10</sup> included what are now the AA fair dealing powers as part of its approach to preventing food waste on farms. The Committee may wish to consider what work is being done (if any) by the new Government and its Taskforce to better align law and policy on agriculture and food waste.
25. The previous Government's consultation on using the AA 2020 powers in the fresh produce sector contained little evidence that food waste prevention was being considered. If not addressed under the current Government, this could be a missed opportunity to address unfair practices and food waste associated with cosmetic out-grading. In my supplementary evidence, I outlined various options, including classifying the use of cosmetic specifications to reject food due to changes in demand as an unfair trading practice, reform of marketing standards, and whole crop purchasing (WCP).<sup>11</sup>
26. Another concern is the need to consider how the AA 2020 regime and mandatory food waste reporting could be deployed in mutually supportive ways. Excluding farm-level food waste from any future food waste reporting obligations could exacerbate unfair trading practices in the supply chain, essentially by hiding from measurement and public view a known side-effect of them. This would undermine *both* of Government's policy objectives to promote fairness in the food supply chain and prevent food waste.

January 2025

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<sup>9</sup> See e.g. Draft Fair Dealing Obligations (Milk) Regulations 2024 ([Debated](#) on Tuesday 19 March 2024, Column 6 onwards) and Food Waste and Food Distribution ([Debated](#) 16 April 2024, Column 20WH onwards).

<sup>10</sup> HM Government, *Our Waste, Our Resources: A Strategy for England* (Crown Copyright 2018).

<sup>11</sup> See also Bradshaw and Wentworth (n 7), section 2.2.