

Written evidence submitted by the NFU (FFS0019)

NFU response to House of Commons Environment, Food & Rural Affairs (Efra) Committee inquiry: Fairness in the food supply chain.

The NFU's purpose is to represent the views of its 44,000 professional farmer and grower members, advocating change that enables them to be more productive, profitable and sustainable. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life.

The NFU welcomes the opportunity to respond to the Environment, Food and Rural Affairs (Efra) Committee, this submission builds on evidence submitted in July 2023 in response to the previous EFRA committee's call for evidence in relation to fairness in the supply chain.

Summary of response

The NFU has long called for more fairness in our food and drink supply chains to sustainably support British Agriculture for the long term. As the UK grocery market has become increasingly competitive, there has been a lack of focus on long commitments to strengthen our food security. By strengthening UK farmers and growers' position in the supply chain, we will improve our domestic food security. A trading environment where costs and risk are shared equally through the value chain allows investment and innovation to take place, creating a fair but competitive supply chain.

The government must seek to utilise policy as a mechanism to build resilience into domestic supply chains. We believe the following recommendations to be key to the success of improving overall fairness and fair dealing within the British Agri-food supply chain:

- The GCA to increase visibility amongst farmers and growers, to raise awareness of the role and instil confidence when reporting issues.
 - To amend/introduce secondary legislation which allows for "ornamentals" which are supplying to the UK grocery supermarkets to be included within the GSCOP and therefore regulated and enforced by the GCA.
 - To expand the GSCOP beyond direct suppliers to include foodservice, manufacturers, processors and distributors who are indirectly supplying the GSCOP retailers.
 - To reduce the turnover threshold of the GSCOP to include more retailers and foodservice organisations.
 - For the Groceries Code Adjudicator's 7 golden rules to be legally incorporated into the GSCOP to address unfair trading practice around cost price negotiations covering both Cost price increases (CPI) and Cost Price Decreases (CPD).
 - Regular reviews of the Fair Dealing Obligations (Milk) Regulations to ensure they remain fit for purpose and in line with the objectives set out within the regulatory provisions.
 - Extending the functions of the Agricultural Supply Chain Adjudicators Office (ASCA) to proactively investigate potential breaches of compliance, in line with the functions of the GCA.
 - For the government to use its powers within the Agriculture Act 2020 to regulate contracts, by introducing a "Horticultural Buyers Code of Practice" and to ensure appropriate enforcement of the obligations by an independent body/person.
 - For Defra to set out a clear timescale and honour the previous commitment to prioritise a supply chain fairness review in the broiler sector.
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- For Defra to deliver on its commitment to introduce regulations which will ensure that there are written agreements between egg producers and buyers and work with industry at pace on the regulations to ensure they deliver fairness to all parties.
- To use the powers in the Agriculture Act to enhance fair dealings for livestock farmers by introducing mandatory sheep carcass classification and price reporting in England.
- To conduct a supply chain fairness review into the combinable crops sector to understand the key issues facing the sector.
- For the ASCA office to be equipped with adequate resources to ensure it can meet its objectives and operate efficiently.
- Establish a formal mechanism for information sharing between DEFRA adjudicators and the GCA to foster a unified strategy and coordinated action against unfair practices.

Q1. The effectiveness of the Groceries Code Adjudicator (GCA) to enforce the Groceries Supply Code of Practice.

1. The GCA plays a key role in enforcing retailers' compliance with the GSCOP and holding retailers accountable for unfair trading practices. As shown in the GCA annual survey results, compliance with GSCOP has seen a steady improvement year on year¹. The GCA is an independent regulator, which gives it credibility when acting as a neutral arbiter between retailers and suppliers and allows for impartial decision-making. The office works with the Department for Business and Trade and is supported by a small team of staff, all of whom are seconded from public bodies. Given this, the NFU has concerns that the GCA's effectiveness to enforce GSCOP could be negatively affected by the availability of the office's resources and use of temporary staff.
2. The effectiveness of the GSCOP and the GCA relies heavily on the primary producer reporting unfair behaviours to the adjudicator. There is a long-standing and pervasive culture of fear among suppliers, which we understand is preventing them from reporting issues. The fear is based on the potential for suppliers to be delisted, have volumes reduced or damage caused to their reputations for raising an issue. The NFU encourages the GCA to raise his profile among our membership and the wider industry by attending events to discuss his role and key areas of work, as well as publishing more prominent case studies of successful interventions to help build confidence among suppliers.
3. **Recommendation:** The GCA to increase visibility amongst farmers and growers to raise awareness of the role and instil confidence when reporting issues.

Q2. The potential merits and demerits of expanding the scope of the Groceries Supply Code of Practice.

4. Although the GSCOP and the GCA have been a clear driver in addressing unfair trading practices in the grocery supply chain, the NFU believes there are several amendments which could be made to strengthen the GSCOP to bring fairness into the whole supply chain.
5. The GSCOP legislation excludes items such as, plants and flowers. The NFU classifies "ornamentals" as plants and flowers, including bulbs, potted and cut flowers. Ornamentals are not significantly different to other perishable products in businesses need for certainty, therefore having no significant differences to those businesses supplying directly to retail. The NFU is aware of members exposed to practices outlawed under the GSCOP. Consequently, the NFU

¹https://assets.publishing.service.gov.uk/media/66fd5d30080bdf716392ecf2/2024_GCA_conference_YouGov_slides.pdf

would like to see the GSCOP updated to cover ornamentals supplying the UK grocery supermarkets.

6. **Recommendation:** To amend/introduce secondary legislation which allows for 'ornamentals' which are supplying to the UK grocery supermarkets to be included within the GSCOP and therefore regulated and enforced by the GCA.
7. Currently the GSCOP is only applied to UK retailers with an annual turnover of over £1billion. While this captures the dominating players in the grocery market, there is still a considerable number of influential businesses within the food supply chain that fall outside of the scope of the GSCOP and the GCA. In particular the foodservice and manufacturing sector, which supplies half of UK food, is not covered by regulation, specifically the GSCOP and the GCA. This market contains multiple businesses which exceed the purchasing value of £1billion and who source from the same supply chains as those of the retailers regulated under the GSCOP. Although the nature of the supply chains are more complicated and diverse farmers ultimately supply businesses that exceed the threshold and are still at risk of entering into a supply chain that could be susceptible to unfair trading practices. With many foodservice businesses developing direct supply relationships with primary producers, it is vital that fairness principles and transparency are inbuilt into all new and existing supply chains.
8. The NFU believes the government should extend the role of the GSCOP and the GCA to oversee the trading relationship between suppliers and the intermediaries. Due to the fragmented nature of agriculture across all supply chains (grocery, foodservice and manufacturing) the majority of NFU members are not directly supplying UK retailers or foodservice organisations. Therefore, farmers and growers' routes to market also include selling directly to a processor, packer or manufacturer. While there has been a significant culture change of retailer trading practices, we are yet to see this extended further to all stages of the supply chain.
9. **Recommendation:** To expand the GSCOP beyond direct suppliers to include foodservice, manufacturers, processors and distributors who are indirectly supplying the GSCOP retailers.

Q3. Other potential reforms to the Groceries Supply Code of Practice, including the potential benefits and risks of lowering the turnover threshold for which retailers are covered;

10. The NFU has long called for the turnover threshold in the GSCOP to be reduced to allow for more retailers and foodservice organisations to be included. Currently the GSCOP is only applied to UK retailers with an annual turnover of over £1billion. Meaning therefore it only regulates Aldi, Asda, Co-Op, Iceland, Lidl, M&S, Morrisons, Sainsburys, Tesco, Waitrose and recently added Amazon. While this captures the dominating players in the grocery market, there remain many influential organisations that fall outside of the scope of GSCOP and the GCA.
11. In 2022, the Competition and Markets Authority (CMA) added Amazon to the list of designated companies which must comply with the GSCOP², the announcement was widely welcomed by the industry following years of claims that it was not operating on a level playing field with traditional retail rivals when it came to their trading practices. Since then, Amazon has scored poorly in the GCA survey, the 2024 results show the online retailer's overall compliance with the code at just 46.9%³. This example highlights how there are large players in the grocery sector who have been allowed to trade unfairly as they have not been captured within the realm of the GSCOP. There is a clear need to reduce the threshold to continue to capture these businesses,

² <https://www.gov.uk/government/news/amazon-now-bound-by-the-groceries-supply-code-of-practice>

³ https://assets.publishing.service.gov.uk/media/66fd5d30080bdf716392ecf2/2024_GCA_conference_YouGov_slides.pdf

legislation must keep up with the changing grocery landscape in order for business thrive in the competitive environment they operate within.

12. **Recommendation:** Reduce the turnover threshold of the GSCOP to include more retailers and foodservice organisations.
13. Best practice around cost price negotiations is currently excluded from the GSCOP. Following an increase in reports of issues around cost price negotiations from suppliers, the GCA published a set of “golden rules”. These rules act as a guideline framework and remind retailers of best practice when dealing with requests for cost price increases (CPI)⁴.
14. The NFU welcomed the focus the GCA placed on aggressive buyer tactics, however, we have continued to hear member feedback around the challenges associated with CPI negotiations. Although the GCA’s annual 2024 survey shows an improvement with issues around CPI requests having fallen from 28% in 2023 to 16% in 2024, this was largely due to a decrease in the total number of CPI requests submitted in 2024⁵. In contrast, the YouGov deep dive survey into the results found retailers’ willingness to engage in negotiations has “worn thin”, retailers are continuing to ask for extensive evidence for cost justification and increasingly using the threat of delists during negotiations⁶. Evidently, to drive lasting change and address evolving buyer tactics, the seven golden rules should be embedded into GSCOP, not simply set out as guidelines.
 - Clear communication from the outset by retailers about the process and how long it will take.
 - Awareness, and prioritisation, of the possible greater impact on smaller suppliers.
 - Support for buyers from colleagues who have experience of dealing with CPI requests.
 - Only asking for the specific information from suppliers that is needed to make a CPI decision.
 - Clear communication of the outcome, so there can be no grey areas.
 - No automatic delists or fixed delist notice periods following CPI negotiations.
 - Reminding buyers about abiding by competition law, e.g., never asking suppliers about other retailers’ plans or retail prices.
15. **Recommendation:** For the GCA’s seven golden rules to be legally incorporated into the GSCOP to address unfair trading practice around cost price negotiations covering both CPI and CPD.

Q4. Adequacy of reviews into contractual practices in agricultural sectors and effectiveness of introduction of fair dealing powers under the Agriculture Act;

16. The Agriculture Act gives powers to address unfair trading practices, it is critical that these regulatory powers are utilised to control excessive buying power and to strengthen the position of farmers in the supply chain, enhance transparency and trust and ensure a fairer distribution of risks and rewards. The NFU believes these powers should be used more proactively and not wait to apply these reactively when an industry has reached crisis mode.
17. While we welcomed the introduction of the Fair Dealing Obligations (Milk) Regulations and the recent investigations into the egg, horticulture, and pork sector, we would like to see further investigations conducted into the remaining sectors as a matter of urgency to bring fairness into the whole industry and create a level playing field.

⁴ [Edition 28: News from the Adjudicator - GOV.UK](#)

⁵ [Improved treatment of grocery suppliers despite poor Amazon performance - GOV.UK](#)

⁶ https://assets.publishing.service.gov.uk/media/66fd5d30080bdf716392ecf2/2024_GCA_conference_YouGov_slides.pdf

18. **Dairy** - The NFU was pleased to see the Fair Dealing Obligations (Milk) Regulations come into force in 2024, we welcomed the government engagement across industry on the development of the code of conduct. However, the NFU believes there is scope for evolution to ensure the regulation achieves its objects to bring fairness into the supply chain and remain fit for purpose.
19. Under the new legislation, and in accordance with Regulation 22(3) & 27, the Secretary of State must “from time to time” at intervals “not exceeding 5 years” publish a report reviewing the regulatory provisions set out in the regulations. This review will be important in ensuring the intent and ambitions of the regulations are achieved, the provisions are still fit for purpose and the legislation is helping to prevent unfair and potentially abusive practices from taking place. It is vital that any review of the regulations and/or potential amendments do not undermine the objectives of the regulations or enable practices which reduce transparency, unfairly place too high a risk on the producer, or erode relationships between producers and their buyers.
20. Any review must also, if required, be willing to amend and strengthen the regulations should it find that industry actors are managing to circumvent the provisions, or the regulations themselves have not gone far enough in stopping disruptive practices from taking place.
21. **Recommendation:** Regular reviews of the Fair Dealing Obligations (Milk) Regulations to ensure they remain fit for purpose and in line with the objectives set out within the regulatory provisions.
22. The NFU welcomed the inclusion of an enforcement procedure within the regulations which enables the Secretary of State, through the ASCA office, to impose a civil penalty on a purchaser, or require a purchaser to pay compensation to a producer should they be found to be non-compliant. The ASCA has the power to investigate relevant complaints referred to it by a producer, following an attempt at dispute resolution through the milk purchase contract's own resolution procedure.
23. However, unlike the GCA, the functions of the ASCA do not extend to the ability to investigate suspected breaches based on issues raised and information received, or if there are reasonable grounds to suspect a breach. Individual producers may not be in a position to raise a complaint, even if they believe their purchaser is not acting in good faith with the regulations, as this could put them at risk of losing their milk contract. Even with the regulations in place, the balance of power between a processor, who may have many suppliers, and a producer, who typically has only one buyer, is not equal. The regulations also do not allow others to highlight suspected breaches on behalf of a producer, or a group of producers, unless they are formally recognised as a producer organisation.
24. Going forward, we ask for the functions of the ASCA to be extended, in line with the functions of the GCA, to enable investigations to take place where there are reasonable grounds to suspect a breach, without an individual producer becoming a named complainant and potentially putting their milk contract, business or membership of a cooperative at risk.
25. **Recommendation:** Extending the functions of the ASCA Office to proactively investigate potential breaches of compliance, in line with the functions of the GCA.
26. **Horticulture and Potatoes** - In February 2024, the [NFU submitted its response](#) to Defra's fairness in the fresh produce supply chain consultation following extensive member feedback.
27. The response called for the introduction of a horticulture buyers' code of practice⁷, which will address behavioural practices to the benefit of the whole supply chain. With some horticultural

⁷ <https://www.nfuonline.com/updates-and-information/horticulture-supply-chain-review/>

growers supplying retailers directly, and therefore protected under the GSCOP, the NFU does not wish to duplicate or dilute regulation already in place, and so a Horticultural Buyers Code of Practice would apply to the entire supply chain, working to support and bolster the principles already defined in the GSCOP. As outlined previously in this document, independent enforcement is essential to ensure compliance, and a regulator must have teeth to effectively carry out its duties. Many of the obligations we are asking for can be regulated by the powers in the Agriculture Act, and so we ask Defra to make regulations to address the areas outlined below in relation to contracts, or how contracts are made.

- A fair dealing clause, similar to that defined in GSCOP.
 - Prohibit unreasonable delay tactics/behaviours of buyers.
 - Obligations on buyers that contractual agreements provide a mechanism to allow growers to renegotiate the price, mid-contract.
 - Obligations on buyers to align the tender process and supply agreements with the long-term planning needs of growers.
 - Prohibit additional and unexpected customer requests within the duration of the supply agreement, without a mechanism to re-negotiate the price.
 - For supply agreements to provide an element of risk and reward sharing within the agreement.
 - Obligations that all deductions are clearly itemised, and any defects communicated to the grower within a reasonable timeframe of delivery, with none subjected to ambiguity.
28. **Recommendation:** For the government to use its powers within the Agriculture Act 2020 to regulate contracts, by introducing a “Horticultural Buyers Code of Practice” and to ensure appropriate enforcement of the obligations by an independent body/person.
29. **Poultry meat** - NFU members frequently highlight concerns about fairness in the broiler (chicken meat) supply chain and it has been the NFU's long standing view that a supply chain investigation is needed to review where unfair practices occur, and where improvements in supply chain agreements and practices can be made. In recent years, broiler producers have repeatedly reported rising input costs and significant challenges in recovering these from the market. This has had a negative impact on producer confidence which in turn threatens the future of food security for British chicken meat.
30. To put this into context, in a 2024 NFU member intentions survey⁸, 31% of broiler producers reported a lower level of production compared to two years ago, with 42% of those respondents identifying insufficient returns as a key reason for the change. Additionally, the survey found that 31% of broiler producers had no plans to invest in their business during the next two years. The same survey identified energy prices and feed prices as a major concern among producers. In order to invest for the future, producers must have the confidence that they are able to operate in a fair and transparent supply chain. We therefore urge the government to work with the poultry meat sector to get ahead of any further significant impacts to producer confidence and ensure risk and reward is shared fairly throughout the supply chain.
31. **Recommendation:** For Defra to set out a clear timescale and honour the previous commitment to prioritise a supply chain fairness review in the broiler sector.
32. **Eggs** - In response to Defra's egg supply chain consultation, the NFU highlighted that a strong legislative baseline is needed to regulate transparency, certainty, and fairness in contracts. An overwhelming majority of NFU members who submitted feedback wanted contracts between buyers and sellers of eggs to be written, ensuring that both parties can agree the terms of any contract and refer to it for the purposes of resolving any potential dispute⁹. However, we

⁸ [Poultry producers need support for future, NFU survey reveals – NFUonline](#)

appreciate that a one-size-fits-all approach will not work due to the variety of businesses operating in the sector; therefore, flexibility in terms of options is important.

33. The government committed to take further action to ensure fairness across the egg supply chain, delivering regulations to improve fairness in the egg sector. The NFU would like to see this commitment delivered in a timely manner engaging with stakeholders from across the egg supply chain before any legislative changes are proposed to ensure the best possible outcome for all concerned.
34. **Recommendation:** For Defra to set out a clear timescale and deliver on its commitment to introduce regulations which will ensure that there are robust agreements between egg producers and buyers and work with the poultry sector at pace on the regulations to ensure they deliver fairness to all parties.
35. **Livestock** - In 2015, the beef industry agreed between the members of the British Meat Processors Association (BMPA) and the NFU to a processor code of practice. This voluntary code of practice has two key features: it commits individual processor signatories to be open and clear about their own company's terms and conditions of trading and signatories undertake to give 12 weeks' notice of changes to those terms and conditions.
36. The NFU would like this code to be made mandatory, with processors required to place their terms and conditions with an independent oversight body which possesses effective enforcement measures to ensure the code is upheld to prevent unfair trading practices. The scope of the code should also be extended to include retailers, food service companies and renderers. The meat industry can further build confidence and transparency amongst their farmer suppliers by providing:
 - Greater transparency round post slaughter deductions calculations and sharing the burden of these charges more fairly between the processing business and the primary producer.
 - Alternatives to the flat rate 'condemnation insurance' which is typically charged at c.£3 to £4 per beef animal or cull cow by the processor as insurance should the animal be condemned postmortem. There is no evidence that this is a genuine insurance product with evidenced T&C's.
 - Greater inspection and oversight of the beef carcass classification and beef labelling scheme and the new sheep classification scheme to ensure it is correctly applied. Mislabelling, loss of product traceability and carcasses not dressed to specification are common noncompliance issues identified during the limited number of RPA inspections to processors and cutting premises.
37. **Recommendation:** Use the Agriculture Act powers to enhance fair dealings for livestock farmers by actioning its commitment to introduce mandatory sheep carcass classification and price reporting in England.
38. **Combinable crops** – The crops sector has a clear lack of legislative interventions to ensure supply chains are operating fairly, as a result NFU members consistently report of unfair trading practices which have taken place for many years. The NFU is certain that a government-led supply chain fairness review into the combinable crops sector will bring to light a number of issues which previously may never have been considered and/or addressed.
39. For example, trade between grain merchants and arable farmers is based almost solely on the AIC No.1 Contract. However, in some cases, grain merchants also use their own individual farm purchase terms to override certain clauses within this contract and impose additional

requirements upon growers. This creates an incredibly complex contractual landscape in which it is very difficult, without legal representation, for growers to navigate. A merchant's terms can also often be written in a format not typical of a supply contract and one which is hard to understand what a requirement is, what is advice, and what the costs of doing business really are. A fairer supply chain would operate where the contract terms are clear, consistent, and transparent and data is transferred immediately and directly between intake and grower. The creation of a single industry-owned digital passport could help deliver greater transparency in the marketplace, instead of multiple digital passport systems owned and controlled by individual merchants

40. There are a number of additional key issues facing the sector which are highlighted below. However, the problems set out below are not intended to be an exhaustive list and the NFU have identified many more problems which highlight further the need for a government-led review.
41. Lack of certainty and transparency around contracts: farmers are subject to the end receiver/buyers terms which are often unclear, they include unilateral variation in the buyers favour and key contract terms are often vague or missing from contract all together.
42. Delays in notification of claims or rejections: delayed time periods prevent the farmer from being consulted as to how any alleged issue should be resolved.
43. Sampling process and independent testing: Where there is a dispute over a claim, drying charge or rejection, the 'independent testing' process can be vague and not clearly outlined within the contract.
44. **Recommendation:** To conduct a supply chain fairness review into the combinable crops sector to understand the key issues facing the sector.

Q5. the benefits and risks of a sector specific approach to the introduction of fair dealing powers; and

45. Although there are commonalities between UTP's faced by each sector, there is a need for further regulation focused to specific sectors to address their unique challenges. A sector-specific approach will ensure that any regulation or fair dealing provisions meet the unique requirements of various sectors. However, a sector-specific approach may mean enforcement actions are introduced at a slower pace, this is why the NFU would like to see the sector let approach coupled with the previously suggested amendments to the GSCOP to ensure fairness is brought to the whole supply chain.
46. It is vital any regulation developed under the fair dealing's regulations is overseen by a regulator to ensure long lasting change is achieved. Therefore, we welcome Defra's recent announcement that the ASCA office will also be responsible for enforcing any future regulations developed under the fair dealing powers¹⁰. However, as each sector has unique supply chains and routes to market, it is crucial that the ASCA office is equipped with the correct resources and level of expertise to knowledge to enforce regulations effectively over several sectors.
47. **Recommendation:** For the ASCA office to be equipped with adequate resources to ensure it can meet its objectives and operate efficiently.

Q6. Scope for collaboration between the Agricultural Supply Chain Adjudicator and Groceries Code Adjudicator.

¹⁰ [Advancing work on supply chain fairness – Farming](#)

48. A joined up and integrated approach to food supply chain fairness is crucial to address the underlying issues of unfair trading practices effectively. ASCA and the GCA must have capacity and mechanisms in place to share pertinent information to prevent a fragmented approach that fails to hold retailers, manufactures and processers to account for initiating unfair purchasing practices. Although they are regulating different stages of the supply chain, information sharing will build a wider picture of how risks, rewards and obligations are being shared throughout the supply chain without adding disproportionate layers of bureaucracy. For example, with retailers and other food organisations under increasing pressure to make commitments around net zero and sustainability targets, we might start to see additional requirements passed to the primary producer to meet these targets. The NFU is clear, the supply chain must be able work collaboratively, and the burden must not be solely passed to the primary producer.
49. **Recommendation:** Establish a formal mechanism for information sharing between DEFRA adjudicators and the GCA to foster a unified strategy and coordinated action against unfair practices.

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