

Joint Briefing on supply chain fairness by the Groceries Code Action Network (GCAN)

Our engagement with the current regulatory framework has revealed significant gaps and inefficiencies that undermine the intent of existing policies designed to protect those at the vulnerable end of the food supply chain who are also responsible for protecting nature, livestock, ecosystems and workers. In this briefing, we present our concerns and recommendations to ensure a comprehensive approach towards food supply chain fairness.

Key changes recommended

1. Joined-up action

Issue: The new DEFRA adjudicator(s) must have the capacity and mandate to share pertinent information with the GCA to prevent a fragmented approach that fails to hold retailers accountable for initiating unfair purchasing practices.

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.

2. Reducing the fear factor:

Issue: Suppliers are hesitant to approach the GCA due to fear of retaliation and possible de-listing by retailers.

Recommendation: Implement a system of randomised visits by the GCA to suppliers in order to proactively assess compliance with GSCOP, thereby making it easier for suppliers to engage with the GCA, thus helping to protect suppliers from direct retaliation.

3. Expand the scope of the GCA to cover regulatory gaps.

Issue: Significant gaps in the food supply chain are not covered by current regulations.

Recommendation: Introduce GSCOP+ to include all upstream and mid-supply-chain businesses with significant annual turnover, ensuring comprehensive coverage and fairness. Establish deputy adjudicators within the GCA, with a GSCOP+ code designed for business-business relationships within the supply chain that ultimately supply the 14 largest retailers. This could be done using powers the government already has under the GCA Act (2013) and is an approach akin to that the EU Unfair Trading Practices Directive has taken in order to develop a code which needs to be followed by a more powerful business relative to a weaker business. The GCA's remit should be expanded and strengthened to include businesses with a turnover of over £500,000, with the GCA's golden rules legally incorporated into the GCA., and it should also adopt a more deterrence-based rather than compliance ('collaborative') orientated approach to enforcement, to reduce incentives for non-compliance. This could involve a greater use of its already existing fining and investigatory powers.

Further context: current government approach

The 2008 Competition Commission's inquiry identified excessive risks and costs transferred to suppliers by grocery retailers. This led to the creation of the Groceries Supply Code of Practice (GSCOP), legally binding on designated retailers, now enforced by the Groceries Code Adjudicator (GCA). The GCA has been successful in reducing the prevalence of unfair and abusive purchasing practices undertaken by the UK's 14 largest food retailers. However, as recent inflation has impacted suppliers' cost prices, the continued trajectory of retailer compliance with the GSCOP has stalled. This legislation covers all four nations.

Furthermore, the GSCOP only applies to designated retailers and their direct suppliers, and crucially does not apply to indirect suppliers, leaving the majority of farmers unprotected. This means that unfair practices which originate with the retailer can be passed down the food supply chain to areas which are not covered by the GCA.

In an attempt to protect these 'indirect suppliers' DEFRA, using the powers of the Agriculture Act 2020, is proposing to set up 4 or more narrow sectoral codes – aiming to protect farmers in specific sectors. The first of these codes – milk has passed through parliament, and it is anticipated it will be followed by Pork, Eggs, fresh produce and chicken. These codes are due to be overseen by part time adjudicator(s) reporting into DEFRA and DEFRA has already advertised the post.

While we welcome moves to address unfair dealings, we are concerned about the departmental fragmentation and sectoral siloed approach that the government is

taking to addressing problems only in 4 sectors and only at the farming stage. These problems include the following:

The symptom, not the cause, of unfairness is currently targeted. Currently there is no mechanism in place by which the GCA gets informed by the DEFRA adjudicator in circumstances where there is reasonable suspicion that it was actions by the retailer, in breach of GSCOP, which caused a breach of the Dairy/Pork/Eggs/Horticulture Fair Dealing code. The DEFRA adjudicators may be able to address the farmers' experience of unfair trading practices, but if the cause of that unfair trading practice originated with the food retailers, the retailers will continue to get away with passing unfair trading practices (which breach GSCOP).

Small mid-supply chain processors are at risk of being pushed into administration. Smaller food processors in most of the large supermarket food categories will remain exposed to risks and costs being dumped on them. They are potentially even more at risk after the fair dealing codes have been passed, because they may continue to be subjected to retailers' unfair trading practices but need to ensure (correctly) that they treat the farmers in compliance with the new fair dealing codes.

The new sectoral codes risk perpetuating regulatory fragmentation and market distortion. The two-regime approach with the GCA and the DEFRA sectoral codes of conduct (Figure 1), are fragmented and thus vulnerable to exploitation, potentially resulting in three 'own goals'. (1) Intermediaries are created with the sole purpose of evading both GSCOP and the new Agriculture Act regime (2) Processors go out of business resulting in farmers having no market and, (3) it becomes more convenient for buyers to source from supply chains where there maybe less protection, such as from overseas, putting UK suppliers at a competitive disadvantage.

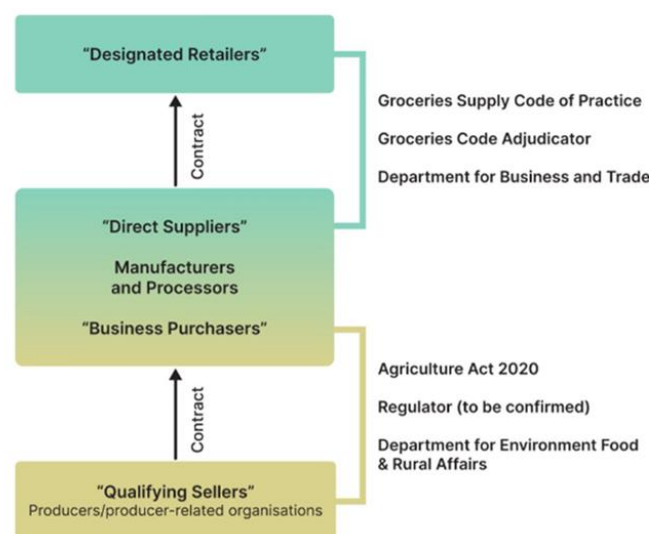


Figure 1: Current Proposed Function of Food Supply Chain Regulation.

Conclusion

A joined up and integrated approach to food supply chain fairness is crucial to address the underlying issues of unfair trading practices effectively. By adopting the recommendations outlined, the government can take a significant step towards ensuring a fair and sustainable supply chain that benefits all stakeholders. We urge the government to consider these proposals in their advocacy and policy formulation, paving the way for a more equitable food supply chain.

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The Groceries Code Action Network (GCAN) is a coalition of food and farming organisations committed to advocating for a fair and equitable food supply chain that upholds the dignity and livelihood of farmers and producers, both domestically and internationally. The briefing is supported by research carried out by Dr Carrie Bradshaw, University of Leeds. This briefing is supported by the following organisations:

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