

Response ID ANON-BDZF-5JGH-M

Submitted to **Contractual relationships in the UK dairy industry**
Submitted on **2020-09-15 11:29:57**

Introduction

What is your name?

Name:

Farmers Union of Wales

What is your email address?

email address:

aled.jones@fuw.org.uk

Would you like your responses to remain confidential? If yes, please give reasons for your answer.

No

Reasons for your answer::

About You

Are you:

A representative organisation

Other (please specify):

If you are a representative organisation, which part of the supply chain do you represent?

Farmers

Other (please specify):

Where is your business registered?

Wales

Other (please specify):

If you are a producer, where is your milk typically processed?

Not Applicable

Other (please specify):

If you are a producer, are you currently signed up to a contract that complies with the voluntary code?

Not Applicable

If you are a producer, please specify the volume of milk you produce (annually).

Not Applicable

If you are a purchaser, where is your milk typically processed?

Not Applicable

Other (please specify):

If you are a purchaser, do all of your milk contracts comply with the voluntary code?

Not Applicable

If you are a purchaser, please specify the volume of milk you buy (annually).

Not Applicable

Are you currently a member of a cooperative business?

No

Contractual Reform - Your Opinion

Have you, your business, or your members, experienced issues with dairy sector contracts, for example where contract terms have not followed the example set by the voluntary code? Please give examples to explain your answer.

Yes, only in the last 5 years

Reasons for your answer: :

A number of Farmers Union of Wales (FUW) members were affected during the lockdown due to Covid-19 during April/May/June 2020. The sudden loss of the food service sector led to processors who supply the sector changing structures and prices without warning. One company in particular backdated payment cuts, delayed payments and asking their farmers to sign a new contract without being allowed to take legal advice or face further price cuts.

Legislation, rather than voluntary measures, is needed to ensure that standards are consistent across the supply chain. To what extent do you agree with this statement? Please give reasons for your answer.

Agree

Reasons for your answer::

The FUW agree that there is a need for legislation, however although it may help to deal with some rogue buyers there needs to be sufficient flexibility within the legislation as a one size fits all approach may not be the answer, particularly when taking into account that some processors were farmer owned co-operatives and others private businesses. Flexibility must allow Co-ops to operate as they currently do with their design and goal to act in the best interest of their members.

Legal requirement to contract in writing

Should trading relationships between producers and purchasers always be covered by a written contract? Please give reasons for your answer.

Strongly agree

Reasons for your answer::

The FUW believes strongly that a written contract should always exist between farmers and their milk buyers.

Variation in the UK

Legislative regulations are often applied uniformly across all UK nations. Is there any reason why a different approach should be taken? Please give reasons for your answer.

No

Reasons for your answer::

The FUW believes that any legislative regulations should be applied fairly and uniformly across the whole of the UK.

Pricing Mechanisms

Any future legislation should introduce a legal obligation to include a price/price calculation mechanism in a contract. To what extent do you agree with this statement? Please give reasons for your answer.

Strongly agree

Reasons for your answer::

The FUW strongly agree that there needs to be a pricing mechanism in the contract as it provides the legal basis for payments.

Pricing Mechanisms

In order to achieve transparency, the methodology behind any price mechanism must be detailed within a contract. To what extent do you agree with this statement? Please give reasons for your answer.

Strongly agree

Reasons for your answer::

The FUW strongly agrees that the contract should explain on what basis prices would be calculated and that any changes to the method of calculating prices should be properly consulted on.

Volumes and Timings

The volume of milk to be supplied should be fixed in the contract. To what extent do you agree with this statement? Please give reasons for your answer.

Agree

Reasons for your answer::

The FUW believe that there needs to be some form of security of supply on both the producers and processors part. There needs to be flexibility for growth and also a force majeure clause for situations such as a TB breakdown etc. If volumes are to be fixed in contracts are, we believe that they should be transparent and agreed by both parties in advance for a specific time period with the option to vary supply with both parties agreement.

If you agree that the volume of supply should be fixed, please include an indication of an appropriate tolerance for variation (+/- X%). i.e. By how much either way should a contracted supply be allowed to vary.

>5% - <10%

If you agree that the volumes of supply should be fixed, on what timescales should volumes be calculated? Please give reasons for your answer.

Other (please explain)

Reasons for your answer::

FUW members believed that the timescales should be flexible and agreed between producers and processors in advance. A 3 or 6 month timescale was favoured.

What options should be available to treat volumes outside these tolerances? Please give reasons for your answer.

The right to set a lower price for excess volumes

Reasons for your answer::

The FUW believes that all milk should be accepted and a lower price paid for excess volumes but only when there is reason to do so. If the excess volume is needed and is used in the same way as the contracted volume then no price reduction should be implemented.

Duration of Contracts

The terms of a contract should establish a minimum duration for supply arrangements. To what extent do you agree with this statement? Please give reasons for your answer.

Strongly agree

Reasons for your answer: :

The FUW believes this provides certainty and security for both farmer and processor which is needed for business planning for the benefit of both parties.

If you agree that a minimum duration for supply should be established, please indicate your preference for the length of this period.

12 months

Reasons for your answer:

FUW members agreed on a minimum of a 12 month contract with rolling agreements.

Should there be a maximum contract period after which the contract must be refreshed and reviewed?

Yes

Where a contract is established using a fixed price mechanism, what should be the maximum length of this contract? Please give reasons for your answer.

Up to 3 years

Reasons for your answer:

The FUW believes that if the fixed price mechanism is fair and transparent and follows markets and has also been agreed by all parties then possibly a maximum length may not be needed. 3 years has been chosen as there may be a need to review the mechanism occasionally for anomalies.

Termination of Contracts

Termination clauses should be mandatory in all contracts. To what extent do you agree with this statement? Please give reasons for your answer.

Strongly agree

Reasons for your answer::

What constitutes 'Major Alterations to the supply terms' will need to be stipulated within the legislation for the avoidance of any doubt or loopholes within the contracts.

Termination of Contracts - on the part of the producer

If you agree that termination clauses should be mandatory, please indicate your preference for the minimum notice period for a producer to terminate the contract.

12 months

Other (please explain):

12 months was the preferred duration, however some members believe there should be some flexibility for a farmer to leave a contract earlier if the terms are changed significantly.

Please indicate your preference for the maximum notice period for a producer to terminate the contract.

12 months

Other (please explain):

12 months was the preferred maximum notice period, however some members believe there should be some flexibility for a farmer to leave a contract earlier if the terms are changed significantly.

Termination of Contracts - on the part of the purchaser

If you agree that termination clauses should be mandatory, please indicate your preference for the minimum notice period for a purchaser to terminate the contract.

12 months

Other (please explain):

Please indicate your preference for the maximum notice period for a purchaser to terminate the contract.

12 months

Other (please explain):

Variations in Agreement

All parties should be able to request changes to the terms of a contract, with that change only coming into force if agreed unanimously. To what extent do you agree with this statement? Please give reasons for your answer.

Strongly agree

Reasons for your answer: :

The FUW believe that good dialogue between the producer and processor is important in developing a good relationship. Businesses, whether farmer or processor need to make decisions regularly that may require change to improve and it is important that where any change affects the other party then a discussion takes place. A unanimous agreement would be a fair way of allowing the changes in terms of the contract.

Before any agreed changes are implemented, what should be the length of a mandatory minimum notice period?

3 months

Other (please explain):

Any mandatory minimum notice period to vary a contract should be set longer than any minimum termination notice period. To what extent do you agree with this statement? Please give reasons for your answer.

Strongly agree

Reasons for your answer:

If a contract is varied in such a way that is to the detriment of a farmers business without both parties agreeing then the ability to leave the contract before the change is implemented is important. The ability to terminate the contract would also give farmers a stronger voice within the negotiation process.

Charges and Premiums

A contract must contain, in clear and unambiguous language, all terms and conditions relating to payments and deductions. To what extent do you agree with this statement? Please give reasons for your answer.

Strongly agree

Reasons for your answer: :

The FUW believes that transparency is essential in any contract.

Exclusivity

Exclusivity clauses should be prohibited. To what extent do you agree with this statement? Please give reasons for your answer.

Neither agree nor disagree

Reasons for your answer::

The FUW believes that where exclusivity is included within a contract then there needs to be the flexibility for expansion to increase volumes. Members believed that there should be an exemption for small scale diversification where the farmer is using the milk for his own processing for sale. Some members believed that prohibiting exclusivity would provide producers with more options but acknowledged that in order for it to be fair to processors, some form of forecasting/ fixed volume would need to be included in the contracts for each processor.

Further Provision

Are there any additional clauses which should be mandatory in contractual terms? Please provide details.

Please provide details: :

The FUW believe that a clause force majeure clauses for TB breakdowns and adverse weather should to be included in contractual terms as these are outside of a farmers control.

Are there any additional clauses which should be prohibited in contractual terms? Please provide details.

Please provide details: :

Confidentiality

Should regulations be introduced to cover confidentiality clauses? Please give reasons for your answer.

Yes

Reasons for your answer::

The FUW believe that a producer should never be prevented from taking legal advice on contractual terms and these types of clauses should be prohibited.

If you agree that regulations should cover confidentiality clauses, which confidentiality clauses should be prohibited, and which (if any) are acceptable? Please give details.

Please give details::

Dispute Resolution

Please provide your views on the most effective means of dispute resolution and whether this should be binding or advisory.

Please detail your views::

The FUW believe that the Groceries Code Adjudicator should be the arbitrator for dispute resolution with the decision being binding.

Producer Organisations

The promotion of Producer Organisations should be considered alongside legislation. To what extent do you agree with this statement? Please give reasons for your answer.

Neither agree nor disagree

Reasons for your answer::

Due to the large number of members already part of cooperatives which operate for the benefit of their members it wasn't felt necessary to promote Producer Organisations.

Impact on Business

Are you aware of any impacts to businesses which could arise from the introduction of a dairy contract regulation? Please give reasons for your answer, including any additional annual costs or savings for your business and any specific impacts in one or other parts of the UK.

Statutory Code of Practice:

The introduction of regulation has the potential to introduce additional cost and complexity in areas that do not need it and are working well in the current regime such as cooperatives. However there are some members who do not supply cooperatives that require their introduction to protect against unfair practices. The

FUW ask that any regulation introduced do not affect the ability of member owned cooperatives to continue to operate as they currently do.

Transition Period

How much time would you estimate you need to be ready to implement new legislation and enter into new contracts? Please give reasons for your answer.

Don't know

Reasons for your answer::

Due to the number of different processors that members supply there was a range of answers from our members ranging from 12 months to as long as possible.