

PROFESSIONAL UPDATING

DOI: 10.5836/ijam/2014-01-08

The Groceries Supply Code of Practice: fairness for farmers?

PETER SHEARS¹

ABSTRACT

For many years the UK had heard complaints from farmers about the practices of supermarket chains. In 2008 the Competition Commission found that they had a point. In 2010 a Groceries Supply Code of Practice was established. Where there is a Code there is an Adjudicator. In 2013 the Adjudicator was given statutory authority to arbitrate disputes, investigate confidential complaints from direct and indirect suppliers, hold to account retailers who break the rules by 'naming and shaming' or, if necessary, imposing a fine. This article will look at this new rural view and consider the implications for consumers.

KEYWORDS: Competition Commission; Groceries Supply Code of Practice; Adjudicator's powers

Introduction

All across the western hemisphere the sound of farmers pleading that they are hard done by can be heard. But in the UK the Rule Makers have begun to take them seriously, acknowledging that they may have points to make. Key amongst them is the framework within which the arrangements they make with those who buy what they produce is regulated. This article will focus on the latest element of that framework, the Groceries Supply Code of Practice (the Groceries Code or GSCOP) and, as far as possible, include the farmers' voices.

What is the problem?

It is the inequality of bargaining power. Suppliers are many, supermarkets are few, market shares are huge.

In the UK in 2011 4 supermarkets commanded 76% of the supply of food products to consumers. In Austria in 2009 3 supermarkets commanded 82%. In Finland in 2011 5 supermarkets commanded 88%. In Portugal in 2011 3 supermarkets commanded 90% (Consumers International 2012).

The supermarkets, usually trading through stipulated processors and packagers, offer contracts that do not include prices. Produce can be over-ordered with confidence because the retailer will not suffer if it is not sold. This can be pernicious for soft fruit and salad growers, for example. Their entire year's income can be ruined by a cold grey UK springtime or a couple of rainy summer weekends when consumers will not buy summer produce.

The uneasy relationship between growers and these stipulated middlemen was colourfully illustrated by a former strawberry supplier called William Hudson:

"Everybody assumes growers have a direct line to the supermarkets, but that's not true. The real issue is with the marketing agents, middlemen and packers who do all the dirty work for the supermarkets. ... The problem was when we were producing strawberries, there was never any negotiation - we were just told what we'd get for our supplies. ... They are the schoolyard bullies in this system. ... We have to question whether it's right when packers often make more money out of vegetables and packing than primary producers. ... The primary producer lives in a world of cost and profit whereas the agency lives in a world of supply and demand. The supermarket only knows demand" (Case 2013).

There are some growers who supply direct to retailers. The criticised conduct of the sellers lies between them and those with whom they make contracts, be they intermediaries or producers.

This 'buyer power' combined with their 'retailer power' enables supermarkets to control their suppliers. It facilitates practices which might disconcert consumers, if they were aware of them.

They have been found (Competition Commission 2000) to include:

- Listing fees (charging to be on a list of suppliers)
- De-listing or the threat of de-listing (when suppliers refuse to reduce prices or make other payments and concessions backed by the threat of cutting them off)
- Slotting fees (where suppliers have to pay for shelf space)
- Demands for extra or unforeseen discounts or payments from suppliers (perhaps for marketing, store openings or remodelling, new packaging, and retailer-initiated promotions)

¹ Professor of Consumer Law and Policy, Plymouth University, Plymouth, PL4 8AA, UK. peter.shears@plymouth.ac.uk

- Demanding retrospective payments (perhaps consisting of extra discounts, after-sale rebates, percentage deductions of the total sales of a particular supplier's goods for that year, compensation for profit margins being less than expected; all commonly referred to as 'managing the retailer's profitability')
- Return of unsold goods to supplier (often at the suppliers' expense, including fresh produce that cannot be resold)
- Late payments (for products already delivered and sold)
- Retrospective changes to agreed terms (such as changes to quantity and/or specification without compensation)
- Below cost selling (often incorporated within unscheduled promotions to clear over ordered stock or to outsell rivals)
- Influencing product availability to, or raising the costs of, other retailers (usually by demanding lower buying prices than all other retailers or demanding limitations on supplies to other retailers)
- Promotion of retailers' own brands (resulting in the squeezing out of third-party brands. This may involve copy-cat packaging) and
- requiring brand owners to divulge development intentions so that retailers can pass them on to their own brand suppliers.

This generalised overview is sometimes all that can be reported because individual suppliers are not prepared to be quoted. They are frightened. However, the UK newspaper 'The Observer' worked on this story for a month in June 2011 and persuaded a few producers to speak out (Renton 2011). Unlike in the newspaper, the supermarkets concerned are not named here.

Henry Dobell is a fruit farmer in Suffolk: "One year (the supermarket) refused all my raspberries after we'd picked and packaged them," he said. "So the producer organisation (the intermediary the supermarkets insist on dealing with) sold them to (another supermarket) and we had to buy new packaging. But they all went on as a two-for-one offer: we had no say. At one point we were being paid less per punnet than it cost to put a lid on it."

Michael Thompson is a chicken farmer in Devon: "Our problems started four years ago when the big egg packers merged, controlling about 60% of the market. There wasn't any competition any more and the prices started to go down, while everything else, like the feed price, was going up. I'd be getting 91p a dozen for large free range eggs, and it had been over £1. Meanwhile, my eggs were being sold for £3, while I was losing 15p on each dozen. ... I did speak about it publicly. And the next time my eggs went for packing the number of seconds (eggs rejected as inferior) went up 5%. I can't prove this was done as a punishment, but I believe there was nothing wrong with the eggs."

Stewart Houston is a pig farmer in North Yorkshire: "Usually in pork, the processor deals with the supermarket and he should represent us. But you'll never get a processor disagreeing with a retailer. The supermarkets play them off against each other on price – and the retailers bear down on any attempt to get the price

up ... that's forcing producers out of business.... we've all been losing between £10 and £30 per finished pig."

Ray Brown is a dairy farmer in Cheshire: "Only a quarter of the people round here who were in dairy 15 years ago are still doing it. It's a wonder we've stayed in business. In 1997, we got 25p a litre at the farm gate. We're getting 26p now. But the price in the shops then was 42p a litre and now it's anything from 70p to £1. And we've seen all the costs go up.... You sign up to take whatever price the middlemen set and that can be retrospective. They might say, oh we're going to give you a penny less for June's milk, and there's nothing you can do about it. There's no negotiation." One farmer recently tried to instigate a Parliamentary debate².

A regional newspaper was told by an anonymous farmer from Waveney in Suffolk how his strawberry farm was driven to the brink of bankruptcy in the early 2000s after a supermarket at the top of the supply chain relentlessly drove prices down, leaving him with ever-dwindling profits. "The supermarkets set a price not in relation to the costs that suppliers have of producing food, but for what they think their customers will find an acceptable price for that product. ... The only way the middle man can continue his business is by having continuity of supply to the supermarket which is their master. ... So as a cheaper price is set by the supermarket, the cost of the price drop is passed to the middle man, who seeks to pass it on to the supplier. That means margins dwindle down the chain as each person along it tries to save money - and at the bottom are the food producers" (Eastern Daily Press 2012).

What has been done?

In 1999 the Office of Fair Trading (OFT) asked the Competition Commission (CC) to conduct an inquiry into complaints that supermarkets were abusing their market position in their dealings with suppliers. In 2000 they published their report (Competition Commission 2000), concluding that supermarkets were acting against the public interest, reducing the choice and quality of goods, and that a Supermarkets Code of Practice (Supermarkets Code) should be introduced. This Code was developed by the OFT and published for consultation in October 2001. It was formally introduced in March 2002.

A year later, the OFT launched a review, checking for leaks and effectiveness. This was completed in February 2004, concluding that it was not working effectively (Office of Fair Trading 2004). However, there were no recommendations for immediate action beyond further investigation and an audit of the supermarkets' records. In March 2005 the results of the independent audit were published, showing that supermarket practices had not changed significantly since the introduction of the Code, and that the position of suppliers had become weaker. The Code was not being used to resolve disputes.

The OFT has the power to order market reviews. In November 2004 Friends of the Earth, the Association of

² Phil Latham, a farmer, launched an e-petition about the plight of milk farmers in the summer of 2013. It attracted only 1,320 signatures. 100,000 are needed before a topic is considered for Parliamentary debate. See <http://epetitions.direct.gov.uk/petitions/35798>, [Accessed 5th September 2013]

Convenience Stores and the National Federation of Women's Institutes submitted a request for such a review of the grocery market, particularly including the position of suppliers. Nonetheless, and showing an awareness of the time these activities take, they stressed that revision of the Code need not to be delayed until the outcome of such a market review.

In August 2005 the OFT published its conclusions on the review of the Supermarkets Code (and some other competition concerns). It concluded that the Code should remain unchanged, but be used more effectively. They also declined to recommend a new market investigation into the grocery sector.

On the 3rd of October 2005 the Association of Convenience Stores (ACS) instructed Edwin Coe, a firm of London Solicitors, to launch an appeal to the Competition Appeal Tribunal over the OFT's refusal to call for a new market investigation.

On the 28th of October 2005 the OFT withdrew its previous decision, and agreed to reconsider referring the grocery market to the Competition Commission (CC) for a full review.

In February 2006 an All-Party Parliamentary Small Shops Group released a Report called 'High Street Britain: 2015'. It carried the warning that many small shops would go out of business if action was not taken to curb supermarket growth. The report called for a Retail Regulator and revisions to the Supermarkets Code. In March 2006 the OFT issued a preliminary ruling, recommending that a Competition Commission (CC) review of the supermarket sector be conducted.

On May 9th 2006 the OFT announced that it would, after all, refer the supply of groceries by retailers in the UK to the CC for a market investigation.

The CC stated in June that it would look at supplier issues, particularly whether the behaviour of grocery retailers towards their suppliers threatens the economic viability of suppliers or wholesalers, affects competition in grocery retailing, and affects competition among suppliers, for example by limiting the range of products. In July to September 2006 the CC conducted hearings with main and third parties. In January 2007 they published their 'emerging thinking' document, outlining the areas they intended to proceed with in the inquiry. In June they published a 'working paper on the Supermarkets Code of Practice' in which they acknowledged that many of the practices identified in the 2000 CC inquiry were still evident and that they are likely to have an adverse impact on competition.

In April 2008 the CC published its Final Report, concluding that supermarkets are guilty of transferring unnecessary risks and excessive costs onto their suppliers.

Amongst the proposed remedies the CC recommended a new Grocery Supply Code of Practice (GSCOP) to replace the existing Supermarkets Code of Practice and the establishment of a new Ombudsman to police it. Accordingly, in February 2009 the CC published its notice of intention to make an 'Order for the Grocery Supply Code of Practice'. In January 2010 the government announced that it would accept the CC's recommendation to establish a new supermarket ombudsman and in February 2010 the new Grocery Supply Code of Practice (GSCOP) came into force. The ombudsman morphed into the Code Adjudicator. Christine Tacon was appointed as the first Adjudicator

in January 2013 and she took office on the 25th of June. No investigations will be conducted until she has published her Guidelines. That is expected at or by the end of 2013.

Looking at the highlights of this saga.

What did the first Supermarkets Code of Practice provide?

Seeking to put an end to the unjustifiable practices which had been identified by the Competition Commission (CC), the Supermarkets Code provided that:

- standard terms of business should be available in writing
- reasonable notice of variation of a supermarket's terms of business should be given
- there be no undue delay in payments
- there be no retrospective reduction in price without reasonable notice
- a supermarket should not directly or indirectly require a supplier to reduce the agreed price of or increase the agreed discount without reasonable notice

and so on. The Supermarkets Code set out to put an end to each and every one of the identified malpractices found by the CC in 2000. As the then Secretary of State for Trade and Industry, Patricia Hewitt, said: "The Code of Practice, with its independent dispute resolution procedures, will help to redress the balance between supermarkets and their suppliers. It will give suppliers greater certainty and security, by putting their contractual relations with supermarkets on a clearer and more predictable basis. ... The success of the Code depends on supermarkets and suppliers being reasonable in their dealings with one another, and observing the spirit of the Code" (Department of Trade and Industry, 2001).

A centrally important element concerned the manner in which disputes would be handled. They were to be first considered by the parties to the agreement. If that failed then the supplier could take the case to an independent mediator. If that failed the case could be forwarded to the OFT's Director General by individual suppliers, or by their trade body if suppliers felt uncomfortable about approaching the OFT directly. The important point here is that the supplier and retailer had to try to resolve the matter first. Heads had to be put above parapets.

Who was covered?

The supermarkets supplying at least eight per cent of grocery purchases were required to give undertakings under the Fair Trading Act 1973, section 88, to comply with the Supermarkets Code. These were Asda, Safeway, Sainsbury, and Tesco. It was hoped that the other main players would also be involved in the process and comply with the code voluntarily. It applied to farmers who supply supermarkets directly or who use an agent. It did not apply to farmers who sell their produce to an intermediary (such as a dairy) which then sells to the supermarket, although it did apply to the intermediaries. It was, thus, based upon contractual

relationships between the supermarkets and their direct suppliers.

Did it work? The OFT review in 2004

The Office of Fair Trading reviewed the operation of the Supermarkets Code and reported (the supermarkets code of practice) that they had found it impossible to draw any firm conclusions about how individual supermarkets were complying with the Code. Nonetheless they reported a widespread belief among the supermarkets' suppliers that the Code was not working effectively, and that it had not brought about any change in the behaviour of the supermarkets. The key reason they gave for this was fear of the consequences of complaining. Any code relies for its effectiveness on hard evidence, not merely anecdotal dissatisfaction amongst disappointed parties. The contribution of the supermarkets to the OFT review was that they were committed to the Code and that relations with their suppliers were generally good. They did add that their practices had not changed significantly since the introduction of the Code.

Seeking the missing evidence and noting both the extent of the general concern about the Code's effectiveness and the level of generalised complaints about the extent of compliance led the OFT to conclude that further investigation was required. Suppliers could or would not contribute with sufficient clarity, so an independent audit of the supermarkets' dealings with a sample of their grocery suppliers was commissioned from PKF (a global network of accountancy firms). It focussed upon those clauses in the Code where claims of breaches were most frequent and upon the supermarkets' handling of complaints from, and disputes with, their suppliers. The audit was based on a sample of 500 grocery supplier relationships with supermarkets, representing around 5% of all such relationships.

The audited clauses and findings were, first: 'terms of business to be available in writing'. Here suppliers were usually subject to the supermarkets' standard terms combined with additional particular terms which were recorded in various places such as trading agreements with suppliers, correspondence and promotional agreements. They noted that none of the sample of suppliers asked supermarkets for details of these particular terms, presumably because they were always aware of them or did not need or bother to ask for them. The second was, 'no undue delays in payment to suppliers'. Here, supermarkets usually paid when they say they would, although there was often added a 'processing time', and some suppliers were not aware of that. Third, that there should be 'no retrospective reductions in price without reasonable notice'. These 'discount clauses' were found in just under half of longer term agreements with suppliers and in connection with special promotions. Indeed, they were neither requested nor required for anything else. Such changes may be inevitable in such a competitive environment, but they carry a danger that an unfair proportion of risk is being carried by suppliers. The fifth concerned 'contributions to marketing costs'. Here such contributions appeared to relate to artwork and packaging, and that own-label rather than branded goods suppliers tend to bear the cost. The sixth

concerned 'lump sum payments as a condition of stocking or listing a supplier's products'. Here, within the sample, 46 payments were demanded but 44 of those were by a supermarket that has been taken over by another, which makes no such demands. It was noted, however, that the fact that there is no record of suppliers complaining to supermarkets about such payments suggests that suppliers are unwilling to complain and, if necessary, use the mediation procedures provided under the Code.

Turning then to these supermarket – supplier disputes, the audit found only eight in five hundred cases where the Code provisions had been used to resolve disputes. Nonetheless, there was no hard evidence that disputes had been mishandled by supermarkets.

Overall, the audit found that, despite a few breaches, the supermarkets have generally complied with the Code. As if in surprise, it was also noted that the audit findings do not rule out the possibility that non-compliance may be more common than was shown.

The OFT reaction was to remind everyone that their doors remained open to discuss alleged specific breaches of the Code with suppliers and their trade associations on a confidential basis, and encourage trade associations to build up and submit dossiers of alleged breaches of the Code on behalf of their members. It seems clear that it was strongly suspected that the Code was being breached (or ignored) but that nothing much could be done without hard evidence. Further, that there was nothing that could be done by simply amending the Code or indeed introducing any other measure which would remove the fear of complaining. Further, they were sceptical whether the simple step of introducing of a different form of dispute resolution could address the root cause of the fear, the inequality of bargaining power between the supermarkets and many of their suppliers, and the overriding need felt by many suppliers not to jeopardise trading or, more simply, just to stay in business. They stressed that no code can be effective in dealing with allegations of breaches unless evidence of those breaches comes forward.

The overall view was that it is legitimate for supermarkets to compete vigorously for supplies on terms that provide good value in respect of price, quality and other characteristics. Competition between supermarkets benefits consumers and encourages efficiency and innovation through the supply chain. It is to be expected that both supermarkets and suppliers want the flexibility to be able to make changes to agreements in order to run promotions or respond in other ways to the forces of competition. However, the OFT viewed it neither legitimate nor fair for a retailer to negotiate terms and then unexpectedly and unilaterally seek to change or cancel them.

The OFT's cry for evidence was heard and answered by the press in the farming and retail sectors (again, not naming the retailers here.)

A supplier (to a major retailer) wrote to the Grocer in February 2003 (The Grocer, 2003b) alleging that (they) made "demands for six figure payments" which, according to the supplier, would breach the Code of Practice. But the letter went on to say that the supplier felt they could not go to the OFT about this as doing so "would damage their business even more". ... another

supplier commented that “I would get blacklisted instantly” (The Grocer, 2003a).

Others have pointed to the vagueness of the Code, in particular to the references to ‘reasonable’ practices. As one supplier pointed out, “If you are a small supplier negotiating with a retailer who has more than 15% of the market, you can bet it’s not you who defines what is ‘reasonable’... if you don’t like it you can lump it” (The Grocer, 2002).

It is not surprising then that only one official complaint, from Express Dairies, had been received by the OFT. This asserted that a retailer had unreasonably failed to give adequate notice of its decision to cease taking supplies of fresh milk. Even this single complaint was not dealt with because it concerned a supply contract that had been made before 1 November 2001 and was therefore outside the scope of the Code.

The Competition Commission’s Final Report in April 2008

Amongst its proposed remedies the CC recommended a new Grocery Supply Code of Practice (GSCOP) to replace the existing Supermarkets Code of Practice and the establishment of a new Ombudsman to police it. Accordingly, in February 2009 the CC published its notice of intention to make an ‘Order for the Grocery Supply Code of Practice’, and on 4th February 2010 the new Grocery Supply Code of Practice (GSCOP) came into force.

In January 2010 the government announced that it would accept the CC’s recommendation to establish a new supermarket ombudsman. Predictable arguments followed. Supermarkets said that the fact that there have been no referrals to arbitration under GSCOP since it came into force in February 2010 shows how fair their treatment of suppliers is. Those in favour replied that it proves how cowed suppliers are by the power of the retailers.

Supermarkets said the administration of the system will push up costs and bring unnecessary burdens. The reply was that the costs are minimal in comparison with their profits and further, that if their suppliers are being treated fairly, arbitration will be very rare and therefore result in little additional work or cost.

Supermarkets said if GSCOP is doing its job already and there is going to be no work for the adjudicator, why have it in the first place? The reply was that it is needed to help suppliers raise grievances without fear of reprisals by the retailers, that it was recommended by an extensive CC investigation and that it has deterrent value.

Who is covered by the new Code (GSCOP)?

The Groceries Code applies to the 10 UK retailers with a turnover in the groceries market in excess of £1bn³. They are Tesco, Asda, Sainsbury’s, Morrisons, Waitrose, Marks & Spencer, Aldi, Lidl, Iceland and the Co-op. It applies to farmers who supply supermarkets directly or

who use an agent. It does not apply to farmers who sell their produce to an intermediary (such as a dairy) which then sells to these 10 supermarkets, although it does apply to those intermediaries. It applies to these retailers and their direct suppliers.

What does the new Code (GSCOP) provide?

Beyond any voluntary code of practice, or ‘assurance’ to the OFT, GSCOP requires large retailers to:

deal fairly and lawfully with their suppliers, not vary supply agreements retrospectively (except in circumstances beyond the retailer’s control which are clearly set out in the supply agreement), pay suppliers within a reasonable time, to pay compensation for forecasting errors in certain circumstances and to take due care when ordering for promotions. The retailers included here (the Designated Retailers) are prohibited from entering into or performing any supply agreements unless that supply agreement incorporates GSCOP, and does not contain any provisions that are inconsistent with GSCOP. The effect of this is that the Code becomes part of the terms and conditions and if broken, may amount to a breach of contract.

Further, it limits the power of the Designated Retailers:

to make suppliers change their supply chain procedures, to make suppliers pay marketing costs and compensation for wastage, to make suppliers obtain goods or services from third parties who pay the retailer for that arrangement, to make suppliers pay them for stocking their products, to make suppliers pay for promotions and to make suppliers pay for resolving customer complaints. Finally it limits their power to ‘de-list’ suppliers, that is, to stop dealing with a supplier or make significant reductions to the volume of purchases from a supplier (Department for Business, Information and Skills 2013).

Much of this is familiar. It does, however, have a specific statutory footing this time and that may make a difference. However, what may be more productive is the acceptance of the Competition Commission’s recommendation, the legislative steps taken and the appointment of a kind of ombudsman, the Code Adjudicator, to police the process. The necessary Bill received Royal Assent on the 25th April 2013, thus becoming the Groceries Code Adjudicator Act 2013. It came into force on the 25th of June 2013.

The Groceries Code Adjudicator can: arbitrate disputes between retailers and suppliers, investigate complaints from suppliers, name and shame retailers who break the rules and impose fines in the worst cases. This last option was resisted and received a mixed welcome. British Retail Consortium director-general Stephen Robertson said: “The power to impose fines is unnecessary and heavy-handed, and should be kept in reserve. ... The code already has a provision for naming and shaming retailers, and in the 2.5 years it has been operating not one supplier has needed to go to arbitration to resolve a problem with a supermarket.” Whereas the Forum of Private Business head of policy Alex Jackman said: “Supermarkets understand one

³In early September 2013, £1bn was approximately equivalent to \$US1.57bn and €1.19bn.

thing and one thing only, and that's money. So it's just common sense for the adjudicator to be able to wield this kind of weapon as a measure of last resort in the worst cases of malpractice" (McEwan 2012).

But perhaps the most important development within this framework is that the Grocery Adjudicator will be able to use evidence from third parties (such as indirect suppliers like farmers and from whistleblowers and various trade associations) to initiate investigations into alleged unfair practices by supermarkets. It may now be possible for those who claim that they have been so adversely affected by retailers' practices that the Code has seemingly been breached to have the Adjudicator step in without having to raise their heads above the parapet. Of course, it may be difficult to hide if the supplier makes a unique contribution. Nonetheless, the Adjudicator cannot make unauthorised disclosures of information relating to arbitrations or complaints brought by suppliers where that disclosure might identify the complainant supplier. Whilst third party information can be received in confidence, it is important to be clear that the GSCOP only applies to the dealings between the Designated Retailers and their direct suppliers and so a dispute between a farmer and an intermediary would not be covered, but a farmer supplying directly or using an agent would qualify.

Perhaps predictably, this access for third parties has drawn comment. The British Retail Consortium food director, Andrew Opie, said that this would "open retailers up to malicious campaigns and fishing expeditions from those without full knowledge of the agreements involved, at a great cost to all parts of the grocery supply chain". Whereas NFU President Peter Kendall said the Government's "strong stance against an intense lobbying campaign by retailers" was a "just reward for the farmers and growers who had bravely stepped forward amid a climate of fear to reveal the unfair practices that were confirmed during the two major investigations carried out by the Competition Commission" (Farmers Guardian, 2012).

Beyond investigations, the Adjudicator will be advising suppliers and Designated Retailers on the scope of the GSCOP and publishing guidance about the criteria, practices and procedures which will be adopted by the Adjudicator in deciding whether to conduct investigations, in carrying them out and in relation to enforcement action. There will be no investigations launched until after a consultation exercise and the publication of finalised guidance. This is expected at or by the end of 2013. The Adjudicator will produce an Annual Report. Incidentally, there will also be a levy on the Designated Retailers to fund the Adjudicator's expenses. That has not proved to be a popular move.

More farmers as direct suppliers

Over the past few years there has been an increasing emphasis placed by the major supermarkets on sourcing their produce locally. In response to a journal article criticising the environmental damage of transporting food long-distances, and suggesting that people should try to buy food from within a 20km (12-mile) radius, (Pretty *et al.*, 2005), the supermarket spokesmen were heard. A Tesco spokesman said the company was

"committed to trying to source locally whenever possible, the seasons allow and there is customer demand". Asda said it has a dedicated local sourcing unit that is separate to its main sourcing department. "Across the UK we have 200 local suppliers, many of which are very small indeed, employing less than 20 people. ... We try and make it as easy as possible for small firms to supply to us." Waitrose has a Small Producers' Charter. They say "we have always looked to source products from areas within which we trade, but we want to work with more small, local and regional suppliers" (Waitrose 2013).

A spokeswoman for Sainsbury's said it was "aware that many of our customers want to buy local products which reflect regional tastes and traditions and have a preference for food grown or reared locally. ... We are committed to giving our customers the diverse range of local foods they want and have a dedicated team who search for promising local producers as part of our local sourcing programme." A spokeswoman for Morrisons said it was a "keen supporter of small, local and regional producers and have a number of local producers supplying our stores" (BBC News (2005).

The Campaign to Protect Rural England ran a campaign in the spring of 2013 to encourage supermarkets to support local producers. They said: "Nearly all of them stated a commitment to support British farming, and some use cost of production business models to agree prices with the farmers they trade with" (CPRE 2013).

So perhaps more farmers will become direct suppliers and obtain the protection, such as it may be, of the GSCOP.

And, in the end...

Consumers shop at supermarkets. The Cassandra warnings of the loss of small producers and outlets, the 'use it or lose it' voices, are heard but not always noted. We have a complex relationship with supermarkets. They provide constant consumer choice often at remarkably low prices. They supply an outlet for the best of British produce. But they are accused of driving small, independent shops out of business, and small farmers with them (although some have thrived as suppliers). Consumers may pay regard to the interests of these small-scale farmers and their local produce. They may have sympathy with the diminishing farming community. They may decide to shop more locally, to visit farmers' markets and small stalls. But the supermarket 'store wars' are a strong draw. With a reasonable income the convenience of a large store with easy and free parking is attractive. With a large family and a small income it's a luxury to be able to plan forward at all.

About the author

Peter Shears holds two degrees from the University of London, one from the Law School at the University of Georgia and a Postgraduate Certificate from the Drama Department of the University of Bristol. He is the Professor of Consumer Law and Policy at the Plymouth Law School within the University of Plymouth. He is a

freelance BBC broadcaster (local, regional and national) on consumer law and consumer affairs generally. He has written many articles and a dozen text books on various aspects of law. He is an external examiner for a number of UK Universities and a 'Visiting Scholar' at others, across Europe and the USA. He is an elected Council Member of the Which? consumers' organisation and has worked recently with the European Commission, the Office of Fair Trading and a variety of other national and international organisations. He seems to spend his spare time waiting for trains and planes, cooking, gardening and on quality assurance missions at the local pub.

REFERENCES

- BBC News (2005) Supermarkets defend food sourcing. 3 March 2005. <http://news.bbc.co.uk/go/pr/fr/-/1/hi/business/4316207.stm> [Accessed 26th July 2013]
- Campaign to Protect Rural England (2013). Supermarkets challenged to do more to support British farmers. 23 May 2013. <http://www.cpre.org.uk/magazine/opinion/item/3324-supermarkets-challenged-to-do-more-to-support-british-farmers> [Accessed 26th July 2013]
- Case, P (2013). *Farmers Weekly*, June 28th, 2013.
- Competition Commission (2000) *Supermarkets: a report on the supply of groceries from multiple stores in the United Kingdom*, Competition Commission, Cm 4842. October 2000. http://webarchive.nationalarchives.gov.uk/+http://www.competition-commission.org.uk/rep_pub/reports/2000/446super.htm#summary [Accessed 9 September 2013]
- Consumers International (2012). The relationship between supermarkets and suppliers: What are the implications for consumers? <http://www.consumersinternational.org/media/1035307/summary,%20the%20relationship%20between%20supermarkets%20and%20suppliers.pdf> [Accessed 26th July 2013]
- Department for Business, Innovation and Skills (2013). Groceries Code Adjudicator Bill receives Royal Assent. <http://news.bis.gov.uk/Press-Releases/Groceries-Code-Adjudicator-Bill-receives-Royal-Assent-68b9a.aspx> [Accessed 26th July 2013]
- Department of Trade and Industry (2001). Press release, 31 October 2001, <http://production.investis.com/safewayplc/stockannouncements/?id=1004541307nRNSe4204M> [Accessed 26th July 2013]
- Eastern Daily Press, April 25th, 2012.
- Farmers Guardian (2012). Adjudicator Bill allows trade body complaints. 11 May 2012, <http://www.farmersguardian.com/home/business/adjudicator-bill-allows-trade-body-complaints/46904.article> [Accessed 26th July 2013]
- McEwan, G (2012). Power for adjudicator to fine supermarkets in breach of code hailed by representatives. *Horticulture Week*, December 18th 2012, p. 26.
- Office of Fair Trading (2004). *The Supermarkets Code of Practice: report on the review of the operation of the code of practice in the undertakings given by Tesco, Asda, Sainsbury and Safeway to the Secretary of State for Trade and Industry on the 18th December 2001*. OFT 697, 3.7, February 2004. <http://www.of.gov.uk/OFTwork/publications/publication-categories/reports/consumer-protection/oft697#.Ui3i1j-BXMo> [Accessed 9 September 2013].
- Pretty, J. N., Ball, A. S., Lang, T. & Morison, J. I. L. (2005). Farm Costs and Food Miles: An Assessment of the Full Cost of the UK Weekly Food Basket. *Food Policy*, 30(1), 1–20. DOI: 10.1016/j.foodpol.2005.02.001
- Renton, A. (2011) British farmers forced to pay the cost of supermarket price wars. *The Observer*, Saturday 2nd July 2011. <http://www.guardian.co.uk/environment/2011/jul/02/british-farmers-supermarket-price-wars#start-of-comments> [Accessed 26th July 2013]
- The Grocer (2002). "No cracking under Code". 7th September 2002
- The Grocer (2003a). "Code is an 'irrelevance'". 15th February 2003
- The Grocer (2003b). "(retailer) extracting the last penny". Reader's letters, 5th February 2003.
- Waitrose (2013) The Waitrose Small Producers' Charter. http://www.waitrose.com/content/waitrose/en/home/inspiration/about_waitrose/the_waitrose_way/small_producers_charter.html?wtrint=1-Content--2-Inspiration--3-Supplier--4-link--6-Charter [Accessed 26th July 2013]