DAIRY CONTRACTS

Tim Lock
About me:

• Dairy Arable Farmer from West Sussex.
• Appointee to NFU national Dairy Board
• Chairman M&S National Milk Pool
A long history...

- Milk contracts have been a point of contention for many years
- One of the most important pieces of paper that a dairy farmer owns
- A good contract brings certainty and opportunity to a dairy farming business
- A bad contract can leave a dairy farmer exposed, especially at times of market downturn
- The voluntary code introduced during the 2012 dairy crisis brought new focus on dairy contracts
The voluntary code of practice

- Developed in 2012 between DairyUK, NFU and NFU Scotland
- At least 30 days notice of price changes
- Farmer could give 3 months notice on a change of price or terms
- Encourages producer organisations to be formed and negotiate price
- Encourages non-exclusive contracts where milk buyer doesn’t want more milk
- Includes provisions for fair contract terms e.g. force majeure, insolvency, penalties etc.
- Achieved some considerable change, but much of this has been unpicked over time…
The Global Context

• Many other countries have looked at regulating for dairy contracts to address supply chain issues
• The EU CMO (article 148) – provides powers which can be put in to domestic legislation around milk contracts. 13 member states currently use the powers
• Unfair Trading Practices Directive – recently adopted in EU, will have an impact on dairy contracts, such as price and unilateral changes
• Australian regulation on dairy contracts recently passed, which bans some exclusive contracts, processors cant make unilateral changes to contracts
What is the problem?

The Grocery Code Adjudicator found that there is an ‘unfair balance of power in the dairy supply chain’ in her 2018 report.

Combination of factors in many dairy contracts can cause issues, such as:

- Buyers discretion
- Exclusivity
- Long notice periods
- One sided contract terms
- Ability to impose unilateral changes

Most processors do not abuse these types of clauses – so why are they still in the contract?
Are contracts still a problem?

- UK dairy sector now has much better representation and joint working – co-ops are stronger than ever in the marketplace.
- Lots of retail aligned or farmer groups operating to a premium & increased standards.
- With current milk markets, farmers are in a strong position as milk production is falling and demand increasing.
- We have seen major abuses of power, very recently e.g. Covid, where a huge amount of risk was pushed down to farmers.
- Given the uncertainties about future investment in dairy production in the UK, and export opportunities, we need relationships to be strong.
- Don’t want to see farmers continue to exit the industry.
What is the solution?

- It’s not about price, it’s about relationships!
- The NFU have long been calling for a reform of dairy contracts legislation.
- We don’t see regulation as increasing price to farmers – the main goal is transparency, fairness and relationships.
Defra contracts work - timeline

• Following the 2018 report from the Grocery Code Adjudicator, the Government recognised the need to legislate dairy contracts.
• This also coincided with a new Agricultural Bill which replaced domestic legislation post Brexit.
• New powers were created in the Ag Bill which gave Government the ability to improve fairness in the supply chain.
• The Minister then announced that a consultation on a new mandatory code for dairy contracts would take place (Summer 2020).
• Since then Defra have been working with industry stakeholders to refine the code before it is passed into legislation (2022?)
Key Principles

The UK Farming Unions are **supportive of the introduction of mandatory contract terms** for dairy contracts and feel it should apply between all purchaser and farmer relationships to achieve:

1. Rebalance the risk within the dairy supply chains specifically on price and volumes

2. Eliminate unfair trading practices and one-sided contract terms from the dairy supply chain

3. Place dairy farmers in a stronger position to develop professional sustainable relationships with their buyer to be commercially focused, innovative and competitive
Specific Areas Looked at

1. Price
2. Farmer Representation
3. Exclusivity / volume
4. Duration / rights to terminate
5. Force majeure
6. Contracts freely negotiated
7. Dispute resolution
8. Consequences of breach
9. Anti-circumvention provisions
10. Implementation / transition period
• M&S Milk Pool Example
THE M&S SELECT FARM MILK POOL HAS BEEN LEADING THE INDUSTRY SINCE IT WAS CREATED IN 1999

Circa 11,000 cows

9,300Ls average milk yield per cow

307 cows average herd size

Herd sizes range from approximately 90 Cows to >800 Cows

Grazing for at least 110 days of lactation

Enhanced Code of Practice standards – audited annually
- M&S Health and Welfare conducted by a specialist veterinary surgeon
- M&S Farms Standards conducted by experienced auditor
  - RSPCA welfare standards (USP)
  - Welfare outcome measure data submitted quarterly
  - No Soya fed in the milking cow diet

39 dairy herds across England, Wales, Scotland and Northern Ireland
The Milk Pool have formed their own limited company and within that have their own structure

**M&S Dairy Farmers Ltd**

M&S Milk Pool have formed their own limited company –

Farmers pay a monthly membership fee, which covers:
- Chairman’s and Regional Reps expenses
- Key projects, e.g. RSPCA Standards Cost Review
- Administration

All farmers meet annually for an AGM in October (independent of M&S and Processors)

**M&S Milk Pool Chairman – Tim Lock**

Primary contact to represent views of the milk pool.

Works closely with M&S Agriculture Manager and Müller Milk Pool Manager on day to day running of the pool.

**M&S Milk Pool Regional Representatives**

M&S Milk Pool Regional Representatives:
- 4 British
- 1 Scottish
- 1 Northern Irish

Meet 3 times per year to discuss:
- Key issues and scheme engagement from the milk pool
- What is important to M&S
- Future activity/strategy
The Farmgate Price is calculated through the Milk Pledge Model

| Year on Year Difference: 21.66% increase from the February 2021 = 32.505ppl |

February 2022 Milk Price Paid to Farmers = 38.794ppl + 0.75ppl M&S Scheme Payment = 39.544ppl

How does the Milk Pledge Model work?

- Stable milk price, fixed for 6 months at a time (this has been more volatile with recent cost inflation)
- Price changes every April and October, however, if the key cost prices are changing rapidly, resulting in the calculated monthly price falling outside the 1.10ppl band from the current price, this triggers an immediate price adjustment
- Adjusted based on 5 key cost of production publicly available indices - Feed, Sugar beet Index, Energy, Fertiliser, Labour
- Data monitored on a monthly basis, using verified independent data checked by an independent consultant
- Farmers receive an additional fixed premium of 0.75ppl on top of the milk pledge model price for compliance to the M&S Milk Scheme
- Each producer has an M&S Contractual Volume (milk paid at M&S price) and this is based on M&S Milk Sales, fairly split amongst producers for length of time in the pool, audit performance and scheme engagement. This is reconciled every 6 months
Key Farm Costs Index Tracker

Labour Index

+7.77% YOY
WORKING TOGETHER THE SELECT FARM MILK POOL HAS DELIVERED A NUMBER OF INDUSTRY LEADING PROJECTS

- 2015:
  - 1st pool to demonstrate selective dry cow therapy
  - All M&S Farms gain RSPCA Accreditation

- 2016:
  - 1st pool to prohibit fluoroquinolones & 3rd/4th generation Cephalosporins (Critical Antibiotics)

- 2017:
  - 1st pool with Independently assessed RoMS Mobility Scoring
  - 1st pool to prohibit fluoroquinolones & 3rd/4th generation Cephalosporins (Critical Antibiotics)
  - 1st pool with Independently assessed RoMS Mobility Scoring

- 2018:
  - Mobility Scoring Workshops
  - Johne’s Policy – 1st pool with no Johnes Positive Cows in milk supply
  - Cost of Production Benchmarking Workshops

- 2019:
  - 1st pool with no Johnes Positive Cows in milk supply

- 2020:
  - H&S Training
  - Environmental Survey and Indicator Farms Launch

- 2021:
  - April 2020
  - Carbon footprint assessment June 2021
  - 1st pool to have a 100 day grazing pledge
  - June 2021 Environmental Survey and Indicator Farms Launch