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DEFRA Milk Contracts Consultation

Introduction

The Ulster Farmers Union (UFU) welcomes this opportunity to contribute to the DEFRA consultation on milk contracts. The UFU is the largest farmer/landowner representative organisation in Northern Ireland with 12,000 members. Producing 2.4 billion litres of milk per year we are the 2nd largest milk producer in the United Kingdom, milk represents a significant position within the Northern Ireland farming structure contributing turnover of £925m to the Northern Ireland economy. Crucially, 33% of the Northern Ireland milk pool is processed in the Republic of Ireland.

Background to Northern Ireland Dairy Farming

It is our view that regulation should be aimed at addressing the imbalance identified by the Grocery Code Adjudicator in the dairy supply chain. The milk contract in Northern Ireland differs slightly to that in GB. However, the underlying principle is the same; the contract is critical in determining the business relationship between farmers and milk buyers.

The Northern Ireland dairy farmer is a "price taker" which automatically means that they are at a disadvantage in the business relationship leading to implications for the farmgate milk price. This is the most common complaint that I hear from our Dairy Committee and the wider membership.

Retrospective Pricing of Milk in Northern Ireland

Northern Ireland dairy farmers are paid retrospectively meaning our dairy farmers, unlike those in GB do not know the price they are to receive for the milk they are producing. So for their July milk cheque for example, they will know how much they will receive until the 3rd or 4th week of August.

Northern Ireland Dairy Sector

Three milk processors dominate Northern Ireland dairy industry; Dale Farm, Lakeland and Glanbia Cheese. The remaining Northern Ireland milk pool is accounted for by Strathroy, Glanbia Ingredients Ireland/Fivemiletown and Aurivo. There are a number of smaller, local dairies, but collectively these would not amount to as much as 1% of the NI milk pool. Northern Ireland is dominated by the co-operative structure, although from the above list, Glanbia Cheese and Strathroy are limited companies. Hence the local milk pool is compact and very much focused on the export market.

The graphic below illustrates the estimated shared of total milk collected in Northern Ireland.

Lakeland Dairies	49%
Dale Farm	35%
Glanbia Cheese	6%
Glanbia Milk	5%
Strathroy	2%
Aurivo	2%
Fivemiletown	1%

Northern Ireland Dairy Product Mix

The Northern Ireland dairy product mix and exposure to commodity export markets means that we tend to experience steeper troughs (with peaks to a lesser extent, see below). 97% of milk produced in Northern Ireland (excluding liquid milk) will be sold externally in 2020. GB accounts for 36% of the NI milk pool and the remainder is exported to the rest of the world. 26% of NI cheese and 46% of butter is exported to Europe, 29% of butter goes to the rest of the world. It is the powder market which sees the greatest global exposure, with 34% going to Africa/Middle East and 19% going to the rest of the world.

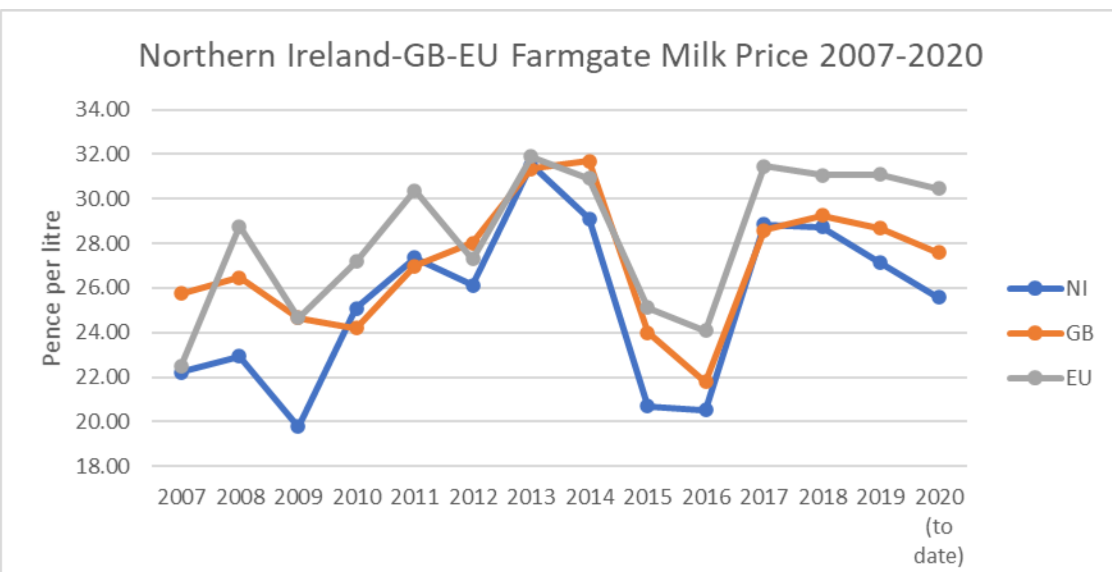
This is unlike the GB product mix, who are much more focused on the domestic market.

Northern Ireland Milk Pricing

The DAERA milk price for June 2020 was 25.43ppl and the average NI milk price in 1995 was 25.45ppl. Yet input and retail prices have risen disproportionately in the last 25 years, yet NI dairy farmers are receiving less for the milk they are producing.

Northern Ireland farmgate milk price tends to be one of the lowest in Europe. For June 2020, only Estonia, Lithuania and Latvia had a milk price lower in terms of pence per litre than Northern Ireland.

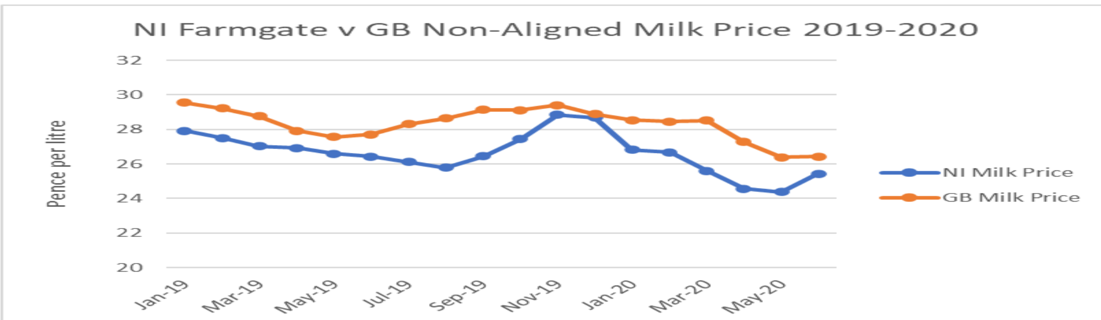
Graph One – Northern Ireland-GB-EU Farmgate Milk Price 2007-2020



- **GB-Northern Ireland Differential**

It should be noted that the UFU has been monitoring the rising price differential between non-aligned prices in GB and Northern Ireland farmgate milk prices. In theory, these non-aligned prices should be closer to those being paid in Northern Ireland. Northern Ireland Dairy farmers do not have access to dedicated aligned retail contracts available in GB, which adds as much as 5ppl to the base price for the milk produced.   The price differential between Northern Ireland and non-aligned GB milk prices has widened in the last 18 months. Below we have mapped the DAERA farmgate milk with the DEFRA price in GB. Please note that the GB is for non-aligned dairy farmers and crucially excludes any farmer are the more lucrative supermarket aligned contracts.

Graph Two - Northern Ireland v GB non-aligned prices – Last 18 months



It is often pointed out that Northern Ireland pricing is influenced by our exposure to dairy commodity markets. Which should mean that we experience the higher prices associated with such markets. This is certainly not the case when you consider the figures presented above.

Retail

The discussion on the dairy supply must make reference to the role of the retailer.

In 1981, a Northern Ireland dairy farmer received 13.26ppl for the milk they produced and at retail level, a litre of milk would have cost 33.43ppl. Fast forward to 1995, the farmer was paid 25.45ppl and the retail price had risen to 63.34ppl. Now in June 2020, the farmer is receiving 25.43ppl (0.01p less than 25 years ago) and a litre of milk costs 79.19ppl.

The retail litre of milk up 136.88% whilst the amount the farmer has received has risen by 91% over the last 40 years. Meanwhile in this time, the cost of inputs (animal feed, fuel, energy and others) has risen exponentially and it is not sustainable for a farmer to receive the same price for the milk they are producing than what they received 25 years ago.

The disparity between the two prices is not sustainable, and furthermore the gap is rising. This is highlighted by that in 2016 and 2017, the average milk price did not rise about 21p over these two years. In 2016 it was 20.78ppl and in 2017 it averaged 20.49ppl.

The UFU wishes to stress that this not about “us and them” but the entire industry needs to cooperate and this Consultation represents the first step in rebalancing risk throughout the supply chain.

Brexit

There are major concerns within Northern Ireland dairying regarding the pending end to the transition period when we are due to leave the European Union.

There are 10 specific concerns sitting over the dairy sector which still need to be addressed;

i. **'Back Dooring'** – DAERA and the industry have yet to agree to a definition that could stop ROI companies using NI as a loophole to gain access to the GB market. Risk is mitigated by the agreement to a trade deal. Yet this is still a long way off. No Deal could mean tariffs of £1500/tonne for butter and cheese that is manufactured in ROI going into GB.

ii. **'Integrity of NI Product'** –There is concern about the integrity of NI product in the GB market, with specific concerns regarding potential discrimination against the NI product. The difficulty in this is obviously the unfettered access customs issue.

iii. **Good moving from GB to NI -** Around £35m of business moves via this route under the control of the NI dairy processors. This a bigger issue for the red meat sector, but an issue nonetheless.

iv. **'Mixed origin dairy product' on island of Ireland -** This stems from the cross border flow of milk between NI and RoI, which is essential in maintaining the dairy supply. The UFU is currently being told by the EU that 'mixed origin product' manufactured in ROI will NOT have access to future EU free trade agreements or any of the EU market measures put in place in the future i.e. intervention, PSA etc. This obviously makes the NI dairy products less attractive going into ROI.

v. **Labelling** – Northern Ireland still awaiting decisions on labelling by the UK government.

vi. **Border Operating Model -** Waiting to hear more clarity on how this will work. Crucial in line with cross-border trade.

vii. **UK Free Trade Agreements** – In line with the ongoing trade negotiations, Northern Ireland dairy sector is awaiting clarity on the UK free trade agreements and their continuity and how many existing FTAs will be rolled over.

viii. **'All Island Trade'** – The Good Friday Agreement highlights that UK and EU are committed to maintaining 'All Island Trade'. There is the distinct possibility that this could be disturbed in the trade talks by the EU and this would be of grave concern to NI agriculture and especially dairying.

ix. **Investment in capacity/'stainless steel'** – Dairy processors are deeply concerned that in light of the above issues, there is not adequate time to make the necessary investment in required capacity.

x. **Export Health Certificates** – No one seems to know what the export health certificates will look like. Responsibility and clarity must stem from DEFRA and this is not a priority at present despite the possible impact upon Northern Ireland, perhaps due to the higher levels of self-sufficiency in GB and less reliance on exports.

UFU Position - The UFU are concerned and frustrated at the lowly position dairy farmers have in the supply chain and this clarified in the information set out above. Consequently this consultation is an opportunity in looking at how this can be addressed. The primary producer can no longer remain at the bottom of the supply chain and the price risk should no longer remain firmly at the door of the dairy farmer. The bottom line is that the way we are producing milk in Northern Ireland is not working and needs to be reviewed.

UFU Questionnaire and Policy Protocol

There are a number of Central Policy Committees within the UFU covering all the main commodities in Northern Ireland agriculture. The UFU Dairy Committee were subsequently involved in formulating this response. In order to enhance our consultation response, we designed a questionnaire which looked at key parts of the Consultation and was shared with our wider membership. Answers to this questionnaire have been collated and will form part of our response, and we believe that our submission reflects the wider consensus of dairy farmers in Northern Ireland.

The UFU received 133 responses to the questionnaire.

Before commencing with our response we should emphasise that this Consultation is only the beginning of a much needed discussion and quest for change in the industry. We should get ahead of ourselves and think that this will bring about change overnight. But it will start the ball rolling and discuss the way forward.

What the Ulster Farmers Union need to make clear is that whatever results from this Consultation process will need to be considered on a devolved basis, avoiding a 'one-size-fits-all' application, as the GB milk market is different to that here in Northern Ireland. Results will need to be considered on a devolved level and this is crucial for the Northern Ireland Dairy sector.

Consultation Questions and Ulster Farmers Union Responses

Question One - 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.

For Northern Ireland dairy farmers, such is structure of the local industry in terms of processors, they often have no credible option of milk buyer, and often feel that they are unable to challenge the content of their contracts.

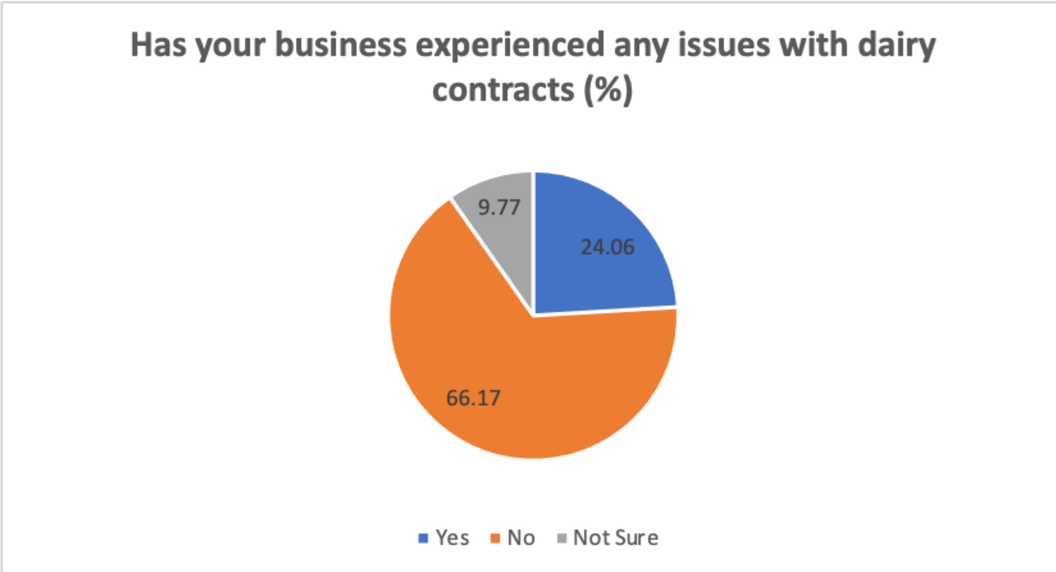
When the Voluntary Code of Practice was introduced in 2012 after agreement between the UFU and Dairy UK (NI), one fundamental issue not resolved. Namely, processors continue to set the terms in a contract, such as price, volumes, quality and penalties without any negotiation with their producers. The average farmer has no say in the content of the contract, with notice periods being introduced for example with no consultation nor mutual agreement. As it stands, Northern Ireland dairy farmers largely remain without any effective means of influencing contract terms or variations.

The findings from the first question reflect the milk contract scenario specifically in Northern Ireland.

All Dale Farm producers a have contract, yet many stem from deregulation in 1995 when the Milk Marketing Board was split up and United Dairy Farmers was the dairy co-operative which was born out of deregulation and the industry evolved from there. This contract does tick the box in many of the suggested areas within the consultation, but needs attention in regards to price specifically.

Northern Ireland has a long-standing co-operative structure in the dairy industry and we are not looking to have this interrupted. Where a dairy co-op is working to its optimum in terms of pricing and farmer representation, this consultation will be welcomed, however, our experience is telling us that this is often not the case and this why this consultation is relevant to Northern Ireland. Furthermore, there are a significant number of dairy farmers in Northern Ireland who do not have a contract with their processor and it is these producers who would benefit most from any future contract legislation.

UFU Questionnaire Results



Question Two - 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.

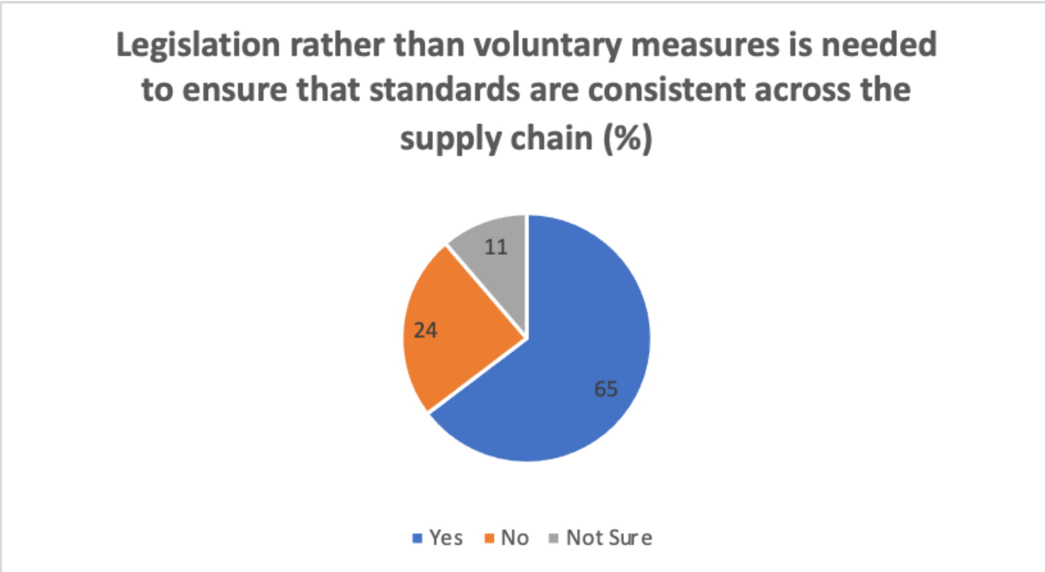
The Ulster Farmers Union strongly agrees.

Now is the time to legislate minimum terms for Dairy Contracts or alternatively a mandatory Code of Practice which has been agreed by all parties, covering all points omitted from the 2012 Code. Only then will dairy farmers move on from their vulnerable position within the supply chain.

From our Questionnaire, it is clear that our members believe that the dairy supply chain needs consensual legislation, agreed between all the dairy supply chain stakeholders, facilitated (and where required arbitrated) by government as being the way forward.

This should be a start in addressing the concerns of all, the imbalance of power (which inevitably results in primary producers accepting terms rather than agreeing), and the urgent need for a dairy sector which works efficiently, proactively and sustainably for the benefit of the supply chain and consumers.

UFU Questionnaire Results



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

The Ulster Farmers Union strongly agrees.

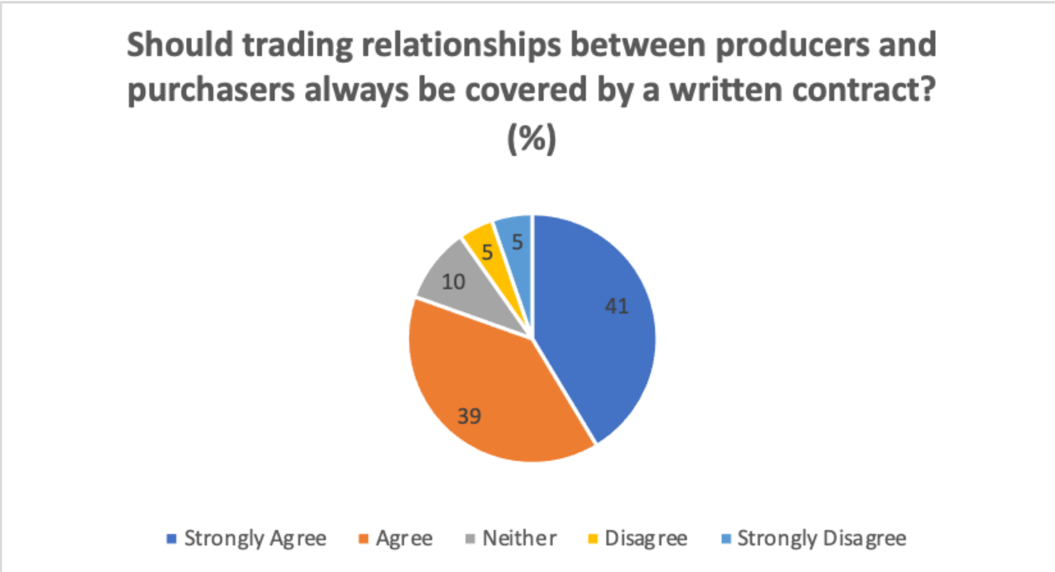
All agreements should be covered by a well-considered contract which has been agreed by both parties. It should not be acceptable for a dairy to be offered contract/terms verbally.

Northern Ireland has an impressive Dairy co-operative structure and, as reflected by the reactions to first question in the questionnaire, many co-op members have had no issue with their contract. However, that is not to mean that it is perfect. Rather, the UFU have received a large volume of calls which have highlighted a number of issues on the ground, which could be addressed by closer scrutiny of the contract.

Dairy co-op governance must be transparent and proactive, to ensure their effectiveness and must be answerable to the members. Some dairy co-op members do not know how their milk is priced, how products are marketed and are often reluctant to raise their concerns through the structural hierarchy which is place within their co-op. Should this be addressed in the context of this consultation, it will be the first step to improving the producers position in the supply chain.

Co-operatives UK oversee the workings of dairy co-ops in GB, yet they have no presence in Northern Ireland. The UFU would like to see this extended to Northern Ireland and this could possibly address some of the concerns here.

UFU Questionnaire Results



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

The Ulster Farmers Union strongly agrees.

Whilst it is crucial that legislation is applied uniformly over the United Kingdom, it should be emphasised once again (please refer to the opening pages of our consultation response) that the Northern Ireland dairy industry differs from that in GB, principally with our different product mix and exposure to export markets as well as the dominance of the co-op structure. Consequently, any resulting legislation from this consultation must be tailored to reflect the Northern Ireland dairy industry and considered at a devolved level. The one size fits all approach cannot be applicable in this case.

Pricing Mechanisms

Question Five - 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.

The Ulster Farmers Union strongly agrees.

However, before we look at this in further detail, we should consider in the context of reviewing the Retrospective Pricing of Milk in Northern Ireland.

Retrospective Pricing

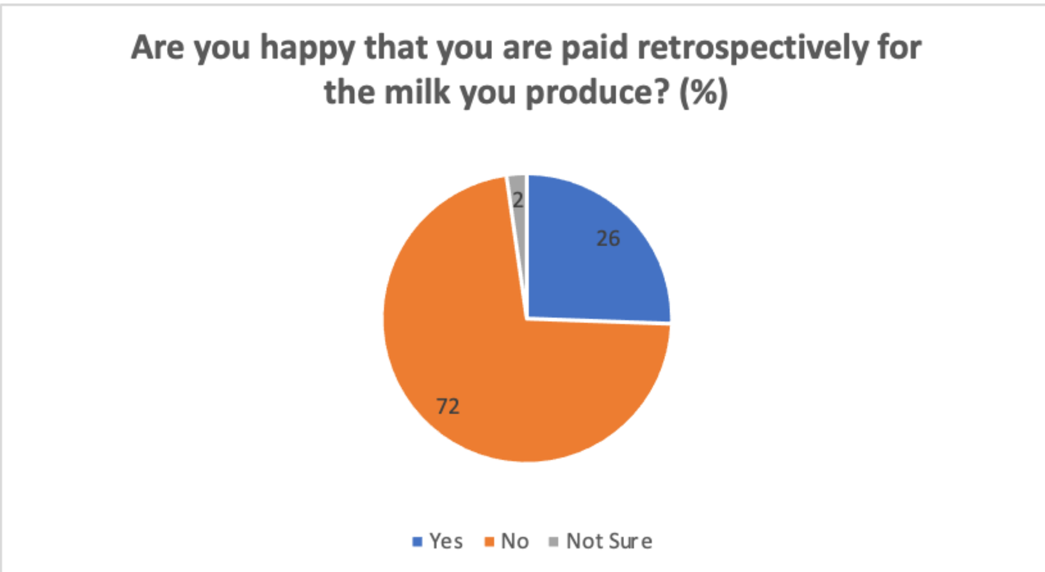
Northern Ireland dairy farmers are paid retrospectively meaning our dairy farmers, unlike those in GB do not know the price they are to receive for the milk they are producing. So for their July milk cheque for example, they will know how much they will receive until the 3rd or 4th week of August.

Farm businesses are unable to manage cash flow when they are being paid retrospectively. When the Russian ban on key dairy products added to a perfect storm of low milk prices in 2015, we encountered local dairy farmers who were at their wits ends because local banks were refusing to extended overdrafts because there was no indication of what they were going to be paid for the milk they had produced. This is played out repeatedly during the milk price cycle.

What the UFU would like to see the following scenario, namely in mid-September, a Northern Ireland dairy farmer will know they will receive for their product in October. Our proposal is that some form of forward pricing, perhaps in the form of a pricing mechanism within a milk contract is necessary to allow farmers to know what they will receive for the milk they are producing. Through time this could evolve in further future pricing over a long period, but we could consider 1 month in advance as a start.

This is an important first step and will go a long way to improving transparency in the pricing of milk in Northern Ireland.

UFU Questionnaire Results



Whilst milk buyers were able to manage the risk, this was not an option for primary producers and the dairy farmer ends up with the burden directly at their door.

Instead, we could consider the development of pricing models that fit well with the demand of different supply chain relationships specific to Northern Ireland, covering price and other factors. There are a variety of mechanisms in existence in the dairy sector. This includes veritable market indicators such as AMPE and MCVE, cost of production models, a fixed price contracts and futures mechanisms.   UFU do not advocate an inflexible pricing formula is imposed on the sector, rather a transparent pricing structure.

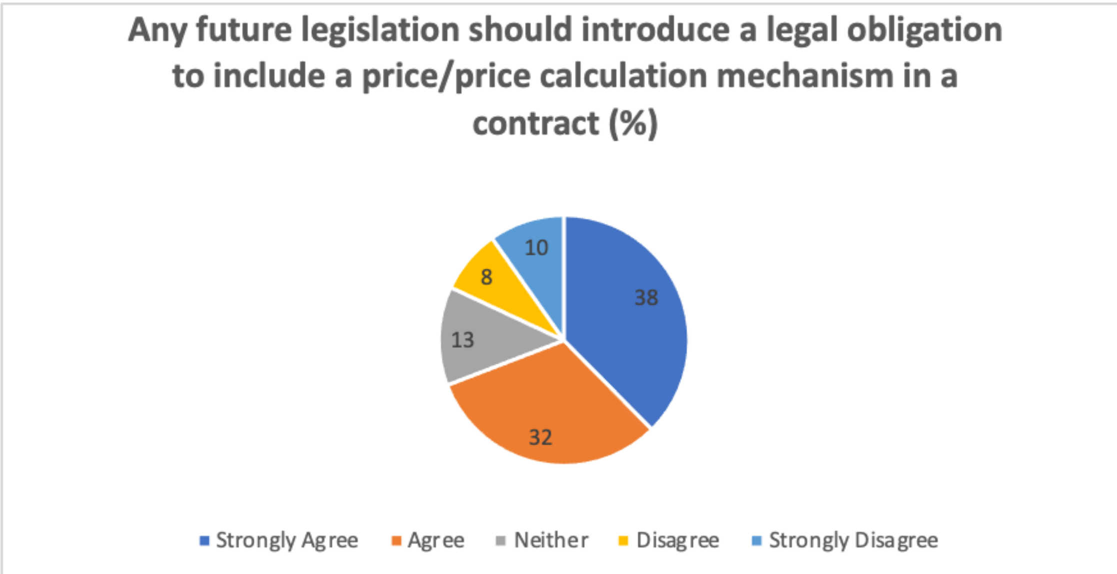
Other payment mechanisms may already exist, for example a milk price based on the performance and returns of the co-op, this is seen in GB with ARLA.   However, for this to work in Northern Ireland (with our dominance of co-ops), it must be agreed and understood by co-op members and it is essential that it is transparent (with due regard to commercial sensitivity)

It is imperative that Northern Ireland dairy farmers know why they get the milk price they receive and that said process has open and reasonable negotiation on agreeing the price-setting mechanism.

An agreed pricing mechanism that recognises the needs of both the farmer and the processor is needed. Processors need to challenge retailers. A common complaint that comes across my desk is that processors are ‘weak sellers’ and it is the producer who pays regardless of the wider milk price and an agreed pricing mechanism would aim to avoid this happening.

As far as the retail side is concerned, it cannot be passed by without its role in the supply chain being referred to. At the end of the day, their pricing policies impact upon the milk price received by farmers and the UFU would urge Government/Grocery Code Adjudicator to look at this.

UFU Questionnaire Results



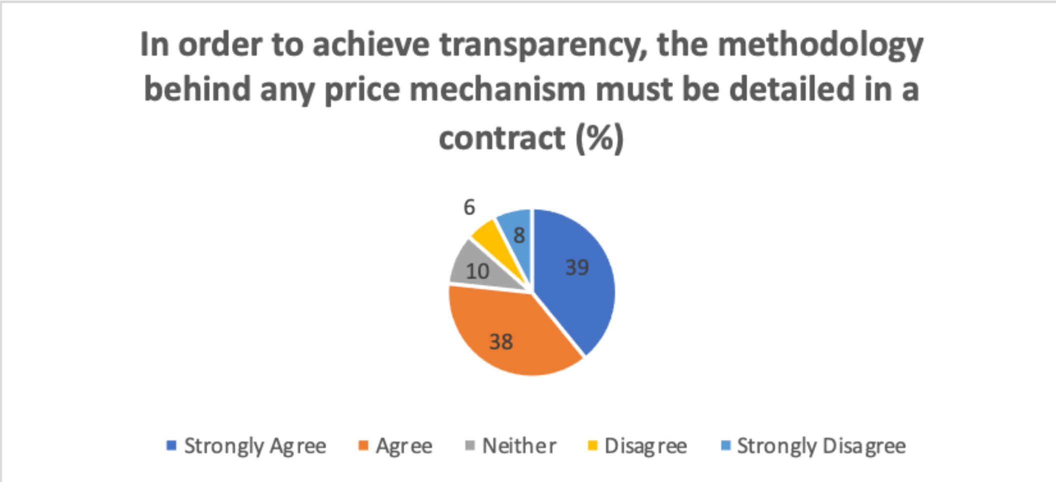
Question Six - To achieve transparency, the methodology behind any price mechanism must be detailed within a contract. To what extent do you agree with this statement? Please give reasons for your answer.

The Ulster Farmers Union strongly agrees.

Transparency is crucial and therefore the parameters of any pricing mechanisms within a milk contract need to be objective, verifiable and mutually agreed. The UFU respectfully recognise that confidentially is a concern for processors but any pricing mechanism must be trusted for it to be ultimately effective for both parties.

Our final point here is possibly the most pressing concern and a point which we feel that needs to be stressed. Reversing retrospective pricing or introducing a pricing mechanism, must not result in lower prices. This is a concern raised under the heading of the impact of conservative price-setting. Any pricing mechanism must strive to pay the maximum amount back to the producer.

UFU Questionnaire Results



Volumes and Timings

Question Seven - 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.

At the very outset, we should make it clear that we do not advocate, support nor are calling for compulsory discretionary fixed volumes.

The UFU is unable to provide a yes or no answer as this is more complex than the question implies.

Milk is traded on an all-island basis and there is a feeling amongst some Northern Ireland dairy farmers that any move to fix volumes of milk could dimmish any competitive advantage. There is a need to consider the complexities of the all-island model, i.e. seasonality. In light of the cross-border presence of several local processors, seasonality affects milk volumes, with Northern Ireland the source for 'winter milk' in certain cases. The Peak-to-Trough ratio in Northern Ireland is flatter than what it is in the Republic of Ireland, where it is 8:1. This is principally due to seasonality and as a consequence, notable Republic of Ireland dairy co-ops reply upon the Northern Ireland milk pool to meet demand for winter milk. The flatter NI ratio is down to our local calving patterns which means we are producing a steady flow of milk throughout the year. The Ulster Farmers Union want this to be maintained in Northern Ireland. The dominance of the co-op model in Northern Ireland, means that currently, local dairy farmers are allowed to send as much or as little milk as they wish. The UFU see this as reasonable, but with the caveat that the co-ops farmer member owners agree to this policy through their governance processes and that all the milk supplied is paid using a transparent pricing mechanism. There are some contracts will have options to agree a proportion of milk e.g. on a fixed term/price and the remainder of milk produced is priced in the conventional manner by the processor.

However, looking to the future, there does need to be a forthright and open conversation in the regarding Milk Volume in Northern Ireland. The UFU believes that that discussions on 'volume management' are needed to ensure the efficiency and flexibility of the Northern Ireland sector to react to risk of oversupply. Oversupply was the common denominator in the price crashes of 2009, 2012 and 2016.

As far as 'volume management' is concerned, shared and equal responsibility is key between all parties and this could allow for a proactive partnership between producer and processor. The GB reaction to the oversupply of milk when lockdown was imposed in spring 2020, is evidence of how this could be achieved. In contracts terms, this must be agreed and clear at all times, with regular reviews to ensure the agreement remains fit for the purpose for all in the partnership.

This will be looked at on a farm-by-farm basis taking into consideration the intricacies of the Northern Ireland dairy producer business. Should a farmer decide that he wishes to expand, reduce or maintain the capacity of their dairy business, this should be accounted for in the contract negotiations and not face any penalty for doing so, as long as they communicate this to their processor and is agreed in advance. Again, two-way communication is essential.

The UFU Questionnaire results on the next page illustrate the complex nature of our response, with 48% agreeing (including those who strongly agree) is balanced by 30% either disagreeing (including those who are strongly opposed).

UFU Questionnaire Results

Question Eight - 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.

The UFU believe that a tolerance of +/- 10% or at an agreed % that suits <u>both</u> buyer and seller. There are cases where exceptional circumstances beyond this could be agreed.

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

The UFU are not supportive nor calling for compulsory discretionary fixed volumes nor 100% fixed price contracts, rather it would be for a % of the milk produced. Fixed terms can be offered or agreed, or as an option or to cover part of a contract agreement. A strong case could be made for annual calculation (April to March) which can allow for a degree of predictability in terms of calving patterns etc, however fixed term volumes would need to be accompanied by fixed term pricing.

There is the danger that fixed term pricing could result in conservative prices setting. Consequently, there is need for agreement in terms of volume, timescales, and pricing. Where there is a risk of conservative price setting. then resetting the agreement after a specified period of time could be an option.

The UFU have long supported the option of a fixed terms option for a % of the milk, as part of an option to tackle price volatility. Fixed term options based on processors forward selling, allowing a fixed price over one or two years within a 'tool-box' of option, is attractive to both producer and processor and should be encouraged, with the appropriate conditions in place.

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

As with our answer to Question 8, there is not one single yes or no answer, as circumstances will vary.

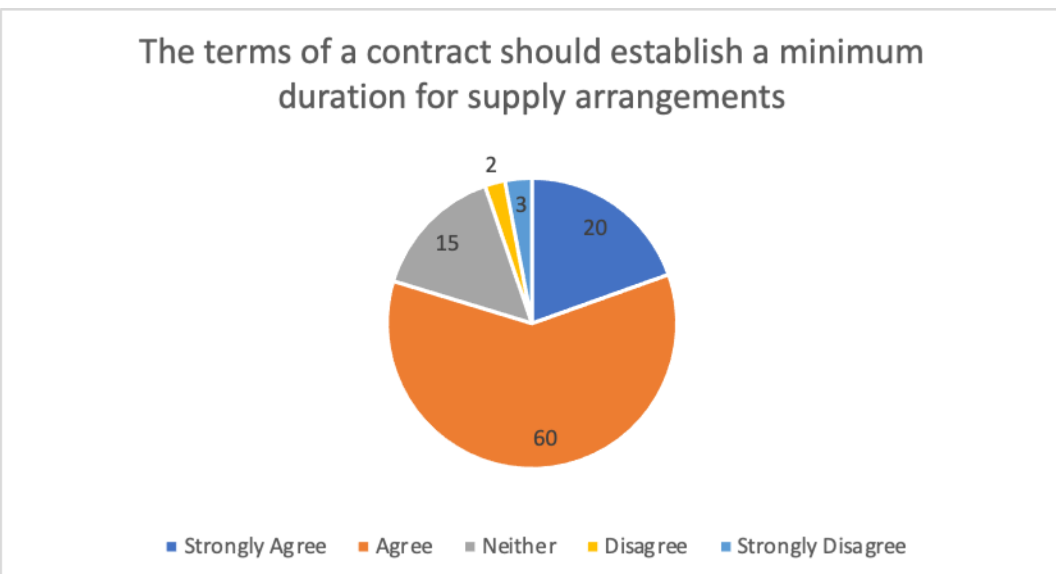
Duration of contracts

Question Eleven - 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.

The UFU agrees.

Currently the duration of a milk contract is determined by the termination clauses which producer or processor may activate. There is a need to clarify an evergreen contract (this is an agreement to supply and purchase milk indefinitely) and allow for this in any resulting legislation.

UFU Questionnaire Results



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

In terms of minimum length of contract, we believe that contracts should be a minimum 6 months in duration.

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

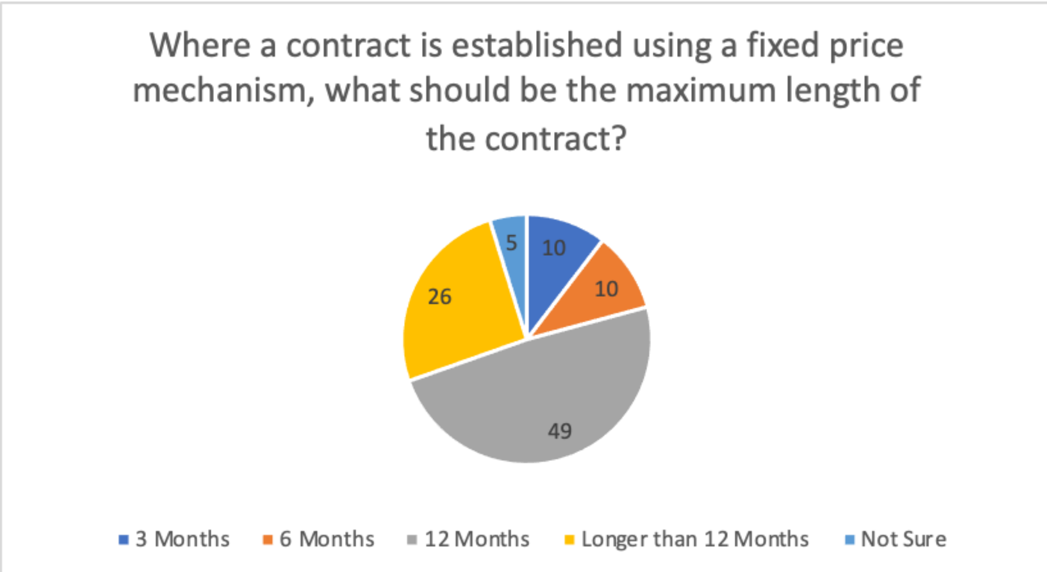
Yes, but we would not be supportive of a review of the contract structure per se. Rather consideration should be given to 'a refresh' within the fulsome of time and no maximum period specified.

The overarching part of a milk supply agreement is the "Evergreen Contract" which we wish to maintain and this need to be considered, in the context of this question, separately to that of a "contract to supply". "A contract to supply" includes agreed terms and conditions which may need to be refreshed with the fulsome of time. It should be agreed within a contract to review such issues.

Question Fourteen - 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.

The majority of Northern Ireland dairy farmers surveyed believe that 12 months should be the maximum length of contract and this is ratified by the position of the UFU Central Dairy Committee. However, accordingly to the UFU Questionnaire results, there was a significant number is favour of a longer contract length, i.e longer than 12 months.

UFU Questionnaire Results



Termination of contracts

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

The UFU strongly agrees to this.

Queries surrounding the standing of the farmer in relation a termination clause in their milk contract is the most common query which the UFU receive and is a hence a major issue on the ground.

The right for a farmer to terminate a contract is crucial to the workings of an individual dairy farm business as this will influence how they plan for the time ahead. The dairy farmers standing in this supply chain observation needs to be highlighted and hence the importance of any contract termination upon their business. Consider the fact that 100% of the milk production goes directly to a dairy processor, and with 80% of a farmers income coming from the milk processor, a dairy farmer faces a unparalleled consequence should the contract be terminated. It is essential that termination clauses are agreed and clearly set out in any contract.

Termination of contracts – on the part of the producer

Question Sixteen - 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.

The UFU is unable to provide a clear answer to this question. However, what we do have consensus on is the right of a farmer to terminate a contract. This is in reaction to business decisions, reaction to market circumstances etc. However, as our results indicate, farmers also want security and long-term arrangements on which to build their business. Accordingly, the UFU would be supportive of minimum notice period would need to meet the needs of the individual farm business and contract legislation could allow for this.

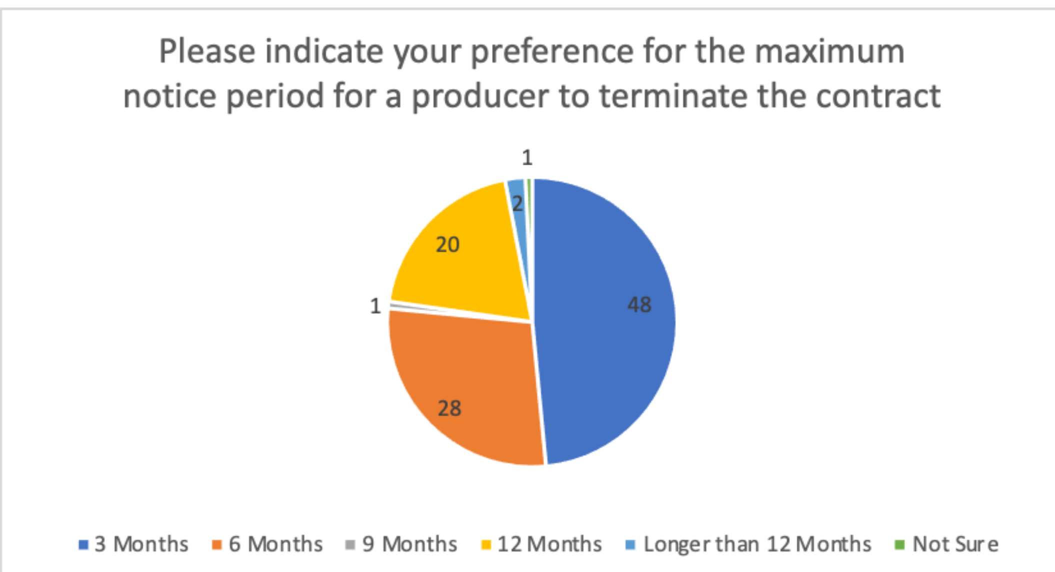
Question Seventeen - Please indicate your preference for the maximum notice period for a producer to terminate the contract.

What is clear from both discussions with the UFU Dairy Committee and from our questionnaire, the maximum should be 3 months.

What is clear is that farmers and processors need time to react to significant changes to their business.

The appropriate length of notice period is dependent on many factors, so may be different for certain arrangements. If a farmer has more certainty over how their milk price changes, a longer period could be more appropriate.

UFU Questionnaire Results



Termination of contracts – on the part of the purchaser

Question Eighteen - 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.

It is important to consider the relative risk of a notice period for farmers and milk buyers, respectively. For a farmer, 100 per cent of their milk may be sold through one contract. Whereas that one farmer may only equal to a fraction of a per cent of a milk buyers' total volume.

Given the potential impact on a farmer's business, the stress and challenge of finding an alternative milk purchaser, the risk of no outlet for perishable product, we believe that a minimum term should be 1 year.

Question Nineteen - Please indicate your preference for the maximum notice period for a purchaser to terminate the contract

12 months

Variation of agreements

Question Twenty - 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.

UFU agrees. However, wholesale changes to existing contracts in Northern Ireland is rare, contracts which do exist, are operated by co-ops and any significant changes are not apparent in recent memory.

This is increasing risk to farmers as processors and retailers vary contract terms, as they can, without due consideration on the impact of supplying farmers.

This may be changes to things like penalties, bonuses, or antibiotic testing, but they could also be more significant changes, such as changing the whole payment schedule or very significant changes to production systems and standards. Most dairy contracts contain provisions for the milk buyer to make changes on a unilateral basis which means they do not need to consult or gain agreement from the farmer. This is not acceptable.

Force majeure clauses should be available and agreed to address unavoidable circumstances which can impact farmers and processors and therefore there can still be provisions to cope with extreme situations.

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

3 months

There needs to be appropriate notice periods for changes to contracts and agreed in the context of the variation.

For example, if a payment schedule is being changed to reward more butterfat and protein, it needs to take in to account the changes required on farm to meet new provisions. Similarly changes to seasonal payment schedules will take time for the framer to adapt, which would require longer.

The Ulster Farmers Union believes that there should be a minimum of 3 months, but that there must be agreement if farmers believe that changes will take time to react to.

Question Twenty Two - 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.

Neither agree nor disagree.

The minimum termination notice must be agreed and available to a farmer if he decides to make a business decision to move to another processor for any reason. Where farmers wish to serve notice because of variation in his contract he may want to leave earlier than the normal resignation notice.

Charges and premiums

Question Twenty Three - 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.

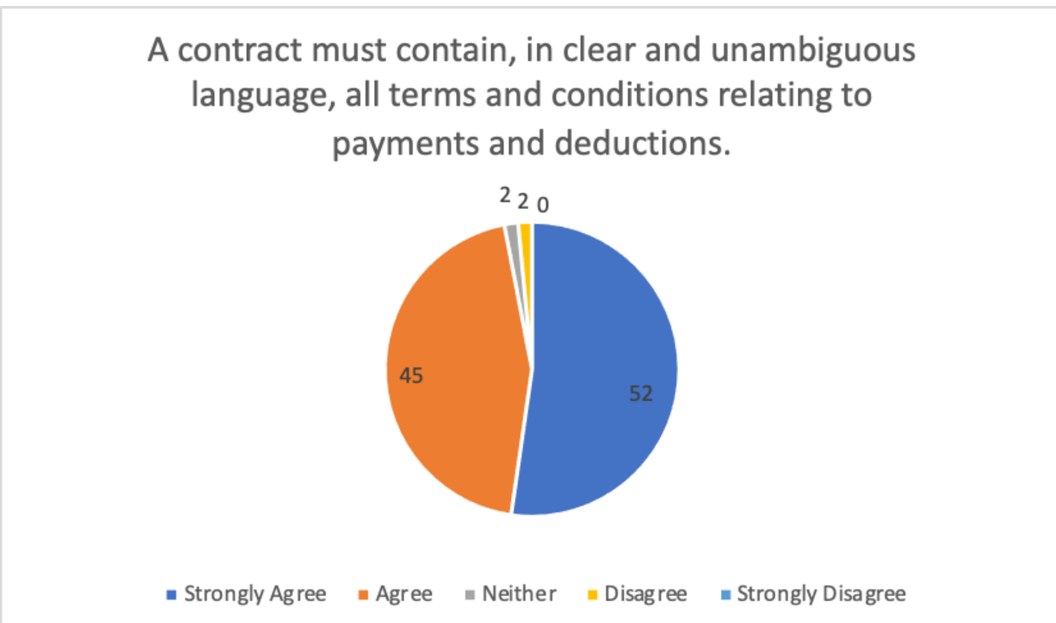
The UFU strongly agrees.

Any terms and conditions relating to payments and deductions must be agreed by all parties and by no way imposed with consultation and negotiation. This should be contained in a contract that the producer understands and is unambiguous.

We often take calls from members who are disputing findings from milk testing. Currently where there are issues regarding testing, butter far/protein and antibiotics. Farmers see that there is no way to challenge any queries. Consequently, the contract could make this clearer and more transparent, with a clearly defined dispute resolution. Currently the system is not subject to scrutiny and not seen as being fair.

By having these agreed and well defined, it can prevent dispute and improve understanding of both party's obligations.

UFU Questionnaire Results



Exclusivity

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

Neither agree not disagree.

Exclusivity means that every single litre of milk a farmer produces, must be sold to a single milk processor. This is more of an issue in GB where there is a greater number of processors, covering a more domestic market. The co-op model also changes the dynamics in terms of farmer-processor relations and further enforces the view that non-exclusivity is not relevant to Northern Ireland.

However, non exclusivity could be considered in relation to ‘volume management’. But that discussion would be for another day as explained above.

Further provision

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

Dispute resolution and force majeure are important clauses which should be agreed and clearly set out in the contract.

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

Farmers should not be restricted from exploring alternative market opportunities. The opportunity to sell very small volumes of milk via a vending machine on the farm premises is an increasingly frequent query and would be an example. Furthermore, there should be no unreasonable restrictions on farmers speaking freely, other than where doing so could result in breaking confidentiality agreements.

Confidentiality

Question Twenty Seven - Should regulations be introduced to cover confidentiality clauses? Please give reasons for your answer

Yes. In conjunction with out answer to Question Twenty Six, confidentiality clauses are clearly very important to both parties and hence should be agreed between farmers and processors.

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

Confidentiality clauses should include clear and reasonable terms restricting any sharing of business or private information without prior consent. Processors and retailers must not divulge any data or information that is sensitive to the farmer without prior permission.

From our discussions with dairy farmers over the last couple of years, it is clear that many are apprehensive to make their feelings clear to their processor, this is mainly due to a resignation that it is pointless to speak up as their views and concerns will not be acted upon.

Before signing a contract, a farmer should be reassured and have reasonable confidence in the governance of company/co-op they are going to be supplying their milk to, as well as being reassured that the company will market the product to the maximum of their capabilities and safe in the knowledge that the company is financially robust.

Dispute Resolution

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

An effective dispute resolution mechanism is a crucial part of contract reform. If contract terms are breached, there needs to be a well-considered, transparent system to hold those responsible to account, and appropriate penalties for breach to ensure compliance.

Let us consider this under the context of Question Twenty Three and a dispute which may occur in relation to antibiotics testing and that a milk tanker has gone down and the farmer is adamant that they are not at fault.

Currently the only avenue available to the producer is to appeal to their Field Officer who can then escalate accordingly. But the UFU have seen that this is not always effective and often pointless.

Instead the contact could contain a formalised dispute resolution process, which could take the following format;

1. Business-to-Business
2. Independent Mediation
3. Adjudication-scale intervention.

This has the merit of the supply chain having the ability of resolving issues rather than government agencies or a court of law, but this option must remain. Possible role for the Grocery Code Adjudicator.

A very important, even crucial, point many farmers feel we need to address is the power of retail and end users, while also recognising that some farmers have aligned contracts with retailers hence the Grocery Code Adjudicator would be well placed to sensibly extend its remit.

Producer Organisations

Question Thirty - 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.

The UFU agrees, however, the NI dairy structure needs to be considered.

The Co-op structure, if functioning as it should, would take the place of a Producer Organisation in regards to setting the milk price, although farmers who supply milk to limited companies would benefit from following this consultation.

In the context of this consultation, a Dairy Producer Organisation (DPO) is a structure which could allow dairy farmers to collaborate and act as one in dealing with a milk buyer. Competition law exemptions are accounted for within the DPO structure and this would allow farmers can come together to negotiate on issues such as milk price and volume.

After the EU mandatory contract legislation in Spain, DPOs were seen to work very effectively with buy in from producers and processor alike.

DPOs, working alongside Co-ops, could become increasingly relevant if there are substantial changes to dairy contracts established by this consultation. Producer can benefit greatly by professional representation on their behalf. Without wishing to sound patronising, Northern Ireland farmers are mostly private single-person businesses with their sole focus on their farming business unit. Consequently, they would benefit from collaboration and professional support provided by a DPO.

Impact upon business

Question Thirty One - Are you aware of any impacts to businesses which could arise from the introduction of 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.

It is well known that Farming Unions traditionally do not seek new regulation (sometimes referred to as ‘red tape’) , but dairy contracts and specifically milk pricing dairy contracts are long overdue for reform and the relationship between farmer and milk buyer needs to improve.

The Ulster Farmers Union want to see a more sustainable future for the entire UK dairy sector, however, our focus is for legislation specific back to the NI dairy sector.

Milk should no longer be treated as a loss leader as this has gone on for too long with the farmer bearing all the price risk within in the supply chain.

There are a number of Northern Ireland specific business impact concerns which need to be addressed before any legislation is implemented;

- Results and recommendations must be considered on a devolved basis with industry discussions on how it could be applied and adapted for Northern Ireland.

- Milk is traded on an all-island basis and this must be considered.

- Northern Ireland has seen our largest dairy co-op having a milk contract since its formation. The model has worked to date, but can be improved. This should be recognized in this consultation response and in further discussions.

- Clarity is needed in relation to Republic of Ireland-based processors who are buying milk in Northern Ireland and then processing the product in the South, what impact does this have in relation to any pending regulation? This is a crucial consideration and we would need clarity going forward. 33% of the Northern Ireland milk pool is processed in the Republic of Ireland.

- The ‘Winter Milk” issue must be considered, plus in the context of any bonus payments.

- Consideration must be given to with specific reference to milk testing in Northern Ireland, specifically, setting out the testing procedure and what is expected, both of the producer and the processor and crucially, clauses included on dispute resolution.

- The role of the Retailer needs to be reviewed in the context of the impact in the supply chain.

- Expectations need to be managed. This will not result in overnight changes in terms of changes but is the first step in a long road.

- Ultimately, implications for the Northern Ireland Dairy Industry which result from the Brexit Transition will need to be considered. Potentially there could be major ramifications and these must be allowed and accounted for. Again, this would put further weight behind the need for any findings to be applied on a devolved basis as these concerns are specific to Northern Ireland.

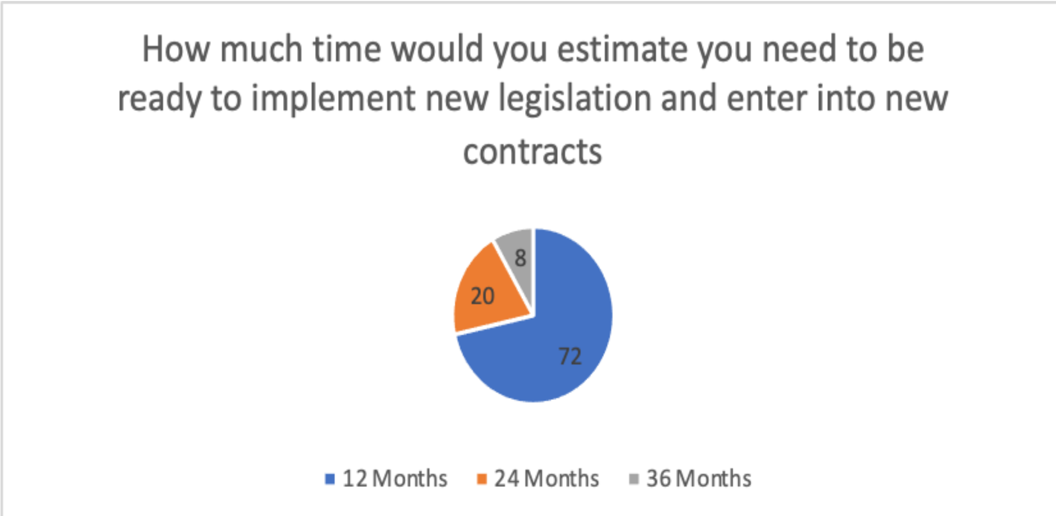
Transition period

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

Such fundamental change to the dairy sector will take time to implement, specifically, when we are entering a crucial phase as we leave the EU, along with uncertainties surrounding Covid-19, as well as the ever-present uncertainties of the global market.

Consequently, the UFU would be in favour of a transition period of 12 months. This will enable stakeholders to fully discuss and develop regulations which will develop in the future.

UFU Questionnaire Results



If you have any queries regarding any parts of this response please get in touch with myself on 07734 599480 or via email christopher@ufuhq.com.

Yours sincerely.

Chris Osborne
UFU Senior Policy Officer