



Groceries Code
Adjudicator

Guidance on raising issues, and the disputes and escalation process

Guidance on Raising Issues, and the Disputes and Escalation Process

1. This guidance is intended to address questions about identification and reporting of issues and disputes under the Groceries Supply Code of Practice (the Code), including the language used, escalation process, timing, and routes into the investigations and arbitration procedures set out in the Groceries Code Adjudicator Act 2013 (the Act).

The legislative framework

2. The Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order) sets out the legislative framework. The supplier may contact the Code Compliance Officer (the CCO) of a retailer if the supplier considers that the retailer has not complied with the retailer's obligations under the Code. Whenever the supplier contacts the CCO about an alleged breach of the Code, the CCO should inform the supplier of the supplier's right to initiate a dispute, and confirm with the supplier whether or not it wishes to do so. If the CCO does not request confirmation as to whether or not a dispute should be initiated, a dispute will be deemed to arise. If the supplier and the retailer are unable to resolve the dispute within 21 days of its having arisen (i.e. by confirmation by the supplier to the CCO, or by its having been deemed to have arisen), the supplier may request arbitration. The supplier must do this within 4 months of the dispute having arisen. Under the Act, the Adjudicator will act as arbitrator or appoint someone else to do so.

3. For each financial year, retailers must ensure that within 4 months of the financial year end, their CCO delivers to the Competition and Markets Authority, as the legacy body for the Office of Fair Trading, and to the GCA, an annual compliance report (Article 10(1) of the Order). The report must have been approved by the chair of the retailer's audit committee and must include a detailed and accurate account of:

- (a) the retailer's compliance with the Code and the Order, including instances where a breach or alleged breach of the Code or the Order has been identified by a supplier, and the steps taken to rectify it (Article 10(2)(a));
- (b) steps taken during the year to ensure compliance with the Code and the Order, e.g. employee training and guidance issued (Article 10(2)(b)); and
- (c) disputes between the retailer and its suppliers regarding the terms of any supply agreement or the application of the Code, and the outcome of any such dispute (Article 10(2)(c)).

4. Also, a summary of the annual compliance report must be included in each retailer's annual company report, including an overview of each of (a) – (c) above (Article 10(5)).

Key terms

5. "Dispute" has the meaning given by Article 2 of the Order, i.e. "a dispute arising under Articles 11(2) or 11(3)." Article 11(2) provides that a dispute will arise under the Code when a supplier informs the CCO that the supplier believes that the retailer has not fulfilled its obligations under the Code, and that the supplier wishes to initiate the dispute resolution procedure set out in Article 11. Article 11(3) provides that whenever a supplier contacts the CCO regarding an alleged breach of the Code, the CCO will inform the supplier of its right to initiate a dispute under Article 11(2), and confirm whether the supplier wishes to do so. If the CCO does not request this confirmation, a dispute will be deemed to arise. A retailer must negotiate in good faith with a supplier to resolve any dispute (Article 11(1)).

6. “Complaint” does not derive from the Order, the Code, or the Act, but clearly has an ordinary English language meaning. The Act uses “information” to describe what may be considered when deciding whether to investigate a suspected breach of the Code.

7. “Issue” is not a term defined in the legislation, either, and the GCA has adopted it to describe the range of matters that may be raised with the GCA, and possibly discussed with CCOs.

Reporting

8. CCO handling of different types of communication may differ, from light touch to more formal. Some suppliers may be comfortable or be persuaded to contact the CCO informally, but may be reluctant to invoke any formal dispute resolution process. If this results in disagreements being resolved quickly and Code breaches identified within retailers and remedied without the need for the GCA to get involved, it would seem counter-productive to push the parties down any more formal route.

9. Nonetheless, the Order provides for recording and reporting below the level of formal dispute resolution (see paragraph 3 of this guidance, and separate GCA communications about annual compliance reports).

Timing

10. If a supplier believes that a retailer has breached the Code the escalation process, together with timescales, is set out in Article 11(4) of the Order. Ultimately, it leads to arbitration.

11. If a dispute is not resolved to the supplier’s satisfaction within 21 days of the dispute arising, then at any time up to 4 months after the dispute arises, the supplier may make a written request for arbitration and the retailer must submit to it (Article 11(4)). The GCA has developed a template for suppliers to use when [requesting arbitration](#), available on the GCA website.

12. It must, however, be possible to resolve (settle) the dispute at any time, by agreement between the retailer and the supplier. Nor should a retailer so delay its response to disputes that the supplier is effectively “timed-out” from requesting arbitration. To protect its position in those circumstances, a supplier would need to have escalated the dispute in accordance with the Order and to request arbitration in the absence of any fruitful engagement with the retailer’s CCO, within the time permitted.

Investigations

13. The GCA may investigate whether a retailer has broken the Code if the GCA has reasonable grounds to suspect that the retailer has broken the Code or failed to follow a recommendation (section 4(1) of the Act). Reasonable grounds for suspicion may be based on information from direct and indirect suppliers, and from third parties, whether or not they wish to remain anonymous to the retailer(s) in question. Investigations must be based on evidence obtained after the GCA came into being, i.e. June 25th 2013.

14. Unlike issues leading ultimately to arbitration, the GCA is likely to investigate where there is evidence of wide-ranging practice that has significant impact across the sector or a segment of it. The prioritisation principles are set out in the [investigations and enforcement guidance](#), available on the GCA website.

Arbitration

15. For a supplier, the route to arbitration under the Order is by escalating a dispute through the CCO. If a supplier refers a dispute to arbitration under the Order, the Adjudicator is then obliged to arbitrate or to appoint someone else to arbitrate (section 2(1) of the Act).

16. For a retailer, the route to arbitration is not directly under the Order but rather, under the supply agreement with the supplier, provided that the supply agreement contains an arbitration clause. The arbitration must be on the same terms as those set out in the Order (Article 11(9)). If a retailer refers a dispute to arbitration under a supply agreement, the Adjudicator may accept appointment as the arbitrator (section 2(2) of the Act).

17. See also the [GCA arbitration policy](#), available on the GCA website. We strongly recommend that potential claimants seek independent legal advice before requesting arbitration.

18. Commercial litigation remains an option for contracting parties.

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