



## Groceries Code Adjudicator

# The Groceries Supply Code of Practice – paragraph 12: payments for better positioning

## Overview

Following the investigation by the Groceries Code Adjudicator (GCA) into Tesco plc, which considered the issue for payments for better positioning of goods under paragraph 12 of the Groceries Supply Code of Practice (the Code), the GCA announced that she would consult the groceries sector on the proper scope of indirect requirements for payment to secure better positioning of goods or increased shelf space within a store.

The GCA is aware of a range of practices relating to payments for better positioning and allocation of shelf space, and would like to know more about them and their impact on direct suppliers, in particular.

Responses to this consultation will help the GCA understand how widespread these practices are among the 10 retailers regulated under the Code, what forms they take, their impact on suppliers and their effect on competition and consumer choice. The GCA will then determine what the proper scope of paragraph 12 of the Code should be, specifically in relation to indirect requirements for payment to secure better positioning or increased shelf space. The GCA does not intend to interfere in commercial negotiations which are beyond the reach of the Code.

This consultation is relevant to: direct suppliers to the 10 retailers regulated under the Code and their representative trade bodies, the regulated retailers.

## How to respond

The consultation opens on 27 June 2016 and closes at 4pm on 19 September 2016.

## Give Us Your Views

**Online Survey** <<https://gca-consultation.citizenspace.com/gca/payments-for-better-positioning-of-goods/consultation/intro/view>>

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

Under new Cabinet Office guidance consultations are now digital by default. The web version of this consultation document is fully interactive and downloadable.

You can reply to this consultation in the following ways:

- online via this site;
- download a pdf/word version, complete and submit by email or post;
- send a letter directly to the GCA stating your views.

You may make printed copies of this document without seeking permission.

If required printed copies of the consultation document can be obtained from:

**[enquiries@gca.gsi.gov.uk](mailto:enquiries@gca.gsi.gov.uk)**

Groceries Code Adjudicator

2nd Floor Victoria House

Southampton Row

London

WC1B 4DA

The form can be submitted online or downloaded and sent by email or posted to the address above.

There will be a workshop for direct supplier delegates to the GCA annual conference on the consultation launch date, to answer questions about it and to hear their initial views. There may be further direct supplier events during the consultation period. There will also be events for trade bodies representing direct suppliers.

The GCA will separately under business as usual with the 10 regulated retailers ask each of them to provide information about its practices in relation to payments for more space and better positioning of goods. This will be considered alongside all consultation responses received.

## Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). There is also a statutory Code of Practice issued under section 45 of the FOIA with which public authorities must comply and which deals, amongst other things, with obligations of confidence. The GCA is also subject to the confidentiality requirements of section 18 of the GCA Act 2013 and Part 9 of the Enterprise Act 2002. Supplier confidentiality, in particular, will be safeguarded.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

#### **Help with queries, comments or complaints**

Questions about the policy issues raised in the document can be addressed to [enquiries@gca.gsi.gov.uk](mailto:enquiries@gca.gsi.gov.uk), or Groceries Code Adjudicator, 2nd Floor Victoria House, Southampton Row, London, WC1B 4DA.

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Head of Office  
Groceries Code Adjudicator  
2nd Floor Victoria House  
Southampton Row  
London  
WC1B 4DA

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy are set out in the consultation principles.

**[www.gov.uk/government/publications/consultation-principles-guidance](https://www.gov.uk/government/publications/consultation-principles-guidance)** <<https://www.gov.uk/government/publications/consultation-principles-guidance>>

## Background information

### The Groceries Code Adjudicator and the Groceries Supply Code of Practice

The Groceries Code Adjudicator (GCA) was formally established on 25<sup>th</sup> June 2013 by an Act of Parliament. The GCA was set up to ensure supermarkets treat their suppliers lawfully and fairly. The GCA is responsible for monitoring and encouraging compliance with and enforcing the Groceries Supply Code of Practice (the Code), introduced in 2010.

The Code was put in place by the Competition Commission following its market investigation of the supply of groceries in 2006-08. It is intended to remedy adverse effects on competition found by the Competition Commission to arise from grocery supply chain practices which transferred excessive risks and unexpected costs to suppliers and which prevented restricted or distorted competition.

The Code applies to the 10 groceries retailers with UK annual groceries turnover of more than £1 billion and their relationships with their direct suppliers. These are: Aldi Stores Limited, Asda Stores Limited, Co-operative Group Limited, Iceland Foods Limited, Lidl UK GmbH, Marks & Spencer plc, Wm Morrison Supermarkets plc, J Sainsbury plc, Tesco plc, and Waitrose Limited.

In brief, the Code obliges these retailers:

- a. To deal fairly and lawfully with their suppliers;
- b. Not to vary supply agreements retrospectively, except in circumstances beyond the retailer's control which are clearly set out in the supply agreement;
- c. To pay suppliers within a reasonable time;
- d. Not to seek contributions to marketing costs unless this is provided for in the relevant Supply Agreement;
- e. Not to seek compensation for shrinkage;
- f. Not to seek payments for wastage except in limited circumstances;
- g. Not to charge listing fees, except in limited circumstances;
- h. To compensate suppliers for forecasting errors;
- i. Except in limited circumstances, not to tell suppliers which third party suppliers to use;
- j. Not to charge position payments unless they relate to a promotion;
- k. Not to require suppliers predominantly to fund promotions;
- l. Not to over-order at promotional prices;
- m. Not to require suppliers to make unjustified payments for consumer complaints; and
- n. To de-list suppliers only for genuine commercial reasons and gives reasonable notice of, and opportunity to, discuss delisting with the large retailer's Code Compliance Officer.

### Competition Commission findings in 2000 and 2008

The issue of payment for better positioning was recognised by the Competition Commission in its 2000 supermarket inquiry. It found that *"the practice of requiring or requesting suppliers to make payments for better positioning of products within their stores... adversely affects the competitiveness of some of their suppliers and distorts competition in the supply of groceries between suppliers"* because *"the multiple engaging in the practice does not necessarily select the best, or most efficiently produced product, or that preferred by consumers, but to some extent is influenced by whoever is best able to make the payment requested."* The report discussed the distinction between a requirement and a request. It stated that *"where the request came from a main party with buyer power, it amounted to the same thing as a requirement."* These conclusions, set out in the analysis underpinning the 2000 report, resulted in the inclusion of the provision on better positioning in the 2002 Supermarket Code of Practice. The 2008 Competition Commission report did not recommend any changes to that provision and it was subsequently included in the Code.

The 2008 Competition Commission report recommended that a principle of fair dealing be included in the Code as *"an important safeguard against the transfer of excessive risk and unexpected cost from grocery retailers to their suppliers."* Paragraph 2 of the Code adds an overarching principle of fairness to all of the other, practice-specific provisions of the Code. The principle stems from recognition of the inequality of bargaining power that sometimes exists between the Retailers and their suppliers. The thinking behind the provision is further explained in the Explanatory Note to the Code, which states that the provision *"will add a useful context within which the GSCOP should be interpreted. The fair dealing provision emphasises the need for certainty of the part of suppliers regarding the risks and costs of trading."*

### Investigation into Tesco plc

On 26<sup>th</sup> January 2016, the GCA published the report of the investigation into Tesco plc ('the investigation') in relation to paragraphs 5 and 12 of the Code. Tesco plc was found to have breached paragraph 5 of the Code but no breach was found in relation to paragraph 12. However, the GCA was concerned to find practices that could amount to an indirect requirement for payments from suppliers to secure better shelf positioning or an increased allocation of shelf space. These practices included large suppliers negotiating better positioning and increased shelf space in response to requests for "investment" from the retailer, as well as paying for category captaincy and to participate in range reviews. As a result of this, the GCA set out in her report her intention to consult with the sector about what practices exist, how widespread they are, and what effect they have on suppliers and consumer choice in store, so that the GCA may determine whether or not they are consistent with paragraph 12 of the Code.

Respondents to this consultation might find it helpful to read the **investigation report**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/494840/GCA\\_Tesco\\_plc\\_final\\_report\\_26012016\\_-\\_version\\_for\\_download](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494840/GCA_Tesco_plc_final_report_26012016_-_version_for_download)  
(link opens in a new window).

### The regulatory framework

Paragraph 12: No payments for better positioning of goods unless in relation to Promotions

Paragraph 12 of the Code states: "A Retailer must not directly or indirectly Require a Supplier to make any Payment in order to secure better positioning or an increase in the allocation of shelf space for any Grocery products of that Supplier within a store unless such Payment is made in relation to a Promotion."

Paragraph 2: Principle of fair dealing

Paragraph 2 of the Code on fair and lawful dealing is also relevant to this consultation. This states: "A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues."

Code clarification case study: charging for optimum shelf positioning

The GCA clarified two aspects of paragraph 12 of the Code in December 2013, and in March 2014 published a case study which determined that if a retailer were to request payment from a supplier for better positioning, and a consequence to the supplier of declining the request were, or were understood by that supplier to be, comparatively worse positioning, that would effectively be a requirement contrary to paragraph 12 of the Code. This is because the inference a supplier would draw from such a request is that, unless they agreed to it, they would suffer some detriment. This was a key publication by the GCA in relation to the actual and potential scope of "indirect requirement".

The second aspect that was clarified related to eye level positioning. This is clearly optimal positioning of products within a store, at a reach-for height which is also likely to be the first shoppers see. Some of the practices covered by this consultation are not so clearly about physical positioning within a store. The GCA will as a result of this consultation seek to give greater clarity to the sector about what it should understand to be the link between any payment made and any benefit achieved by it, specifically relating to better positioning, and how direct this needs to be to fall within paragraph 12 of the Code.

Respondents to this consultation might find it helpful to read the **case study** <<https://www.gov.uk/government/case-studies/code-clarification-charging-for-optimum-shelf-positioning>> (link opens in a new window).

## About You

What is your name?

(Optional)

It would help the GCA to analyse responses to this consultation if you would provide details of your organisation and select an option from those shown below to indicate which category best describes you as a respondent.

Organisation (optional)

*Please select only one item*

- Large direct supplier (over 250 staff)
  Medium direct supplier (50 to 250 staff)
  Small direct supplier (up to 50 staff)
  Indirect supplier
  Trade body
  Charity or social enterprise
  Legal representative
  Central government
  Individual
  Regulated retailer
  Other retailer
  Other

If other, please specify:

What is your email address?

This is optional, but if you enter your email address then you will be able to return to edit your consultation at any time until you submit it. You will also receive an acknowledgement email when you complete the consultation.

Email

## Indirect requirements - Established GCA position

The GCA has decided that, while there was some evidence from the investigation of practices which may not be consistent with the Code, further information is needed on the practices followed by all retailers and their direct suppliers. This information will allow the GCA to clarify how paragraph 12 of the Code should be interpreted.

The Code clarification case study from 2014 set out the GCA's view that she was likely to interpret requests for payments in order to secure better positioning or increased shelf space as indirect requirements, if the consequences to a supplier of declining the request are, or are understood by the supplier to be, comparatively worse positioning. The fact that the request is framed gently is not determinative; the supplier's understanding of likely detriment is more so.

### 1. Consultation questions: Established GCA position.

#### 1.1. From the explanation of an indirect requirement set out above, would you recognise when an indirect requirement is being imposed by a retailer?

*Please select only one item*

Yes  No  Not sure

Further comments here:

#### 1.2. What types of indirect requirement have you encountered?

Please comment here:

## Indirect requirements - possible scope; retailer-initiated

While the recent investigation did not find evidence of breaches of the Code based on the established GCA position at that time, evidence was received of practices that merited further consideration. These practices were different from those which had previously been brought to the GCA's attention and which had informed her Code clarification case study.

For example, sometimes the request for payment is less clear, or the potential detriment to a supplier is less obvious. Discussion of payments might arise as part of normal business between retailers and suppliers, when negotiating about meeting margin targets at the end of trading periods. A retailer might ask for an "investment" or "contribution" in exchange for benefits to be agreed with the supplier. These benefits may be express or implied, or simply understood between the parties. Detriment might arise as a result of one supplier not being able to access an advantage that a rival supplier has, or a failure to maintain existing position or share of space for future years.

The GCA has seen evidence indicating that some of the benefits sought by suppliers when faced with requests for "investment" by retailers included: increase in or maintenance of share of shelf; increased facings of products; specification of actual positioning; brand blocking; request for a reduction in shelf space for a competitor's products, and exclusivity.

It is clear that some suppliers might refuse or be unable to offer investment. Some suppliers might consider that there are clear benefits in being able to make payments in exchange for shelf space and positioning. The GCA is particularly keen to hear the views of direct suppliers on these points, and appreciates that the views of large suppliers may differ markedly from those of their smaller competitors.

### 2. Consultation questions: Following a request by a retailer

**2.1.** In your view, is there ever a genuine request made by a retailer in this context?

*Please select only one item*

Yes  No  Not sure

Further comments here:

**2.2.** Have you ever been asked by a retailer to make a payment for “investment”, “contributions” or other similar request for a non-specific payment?

*Please select only one item*

Yes  No  Not sure

Further comments here:

**2.2.1.** If so, how frequently have requests for payment been made?

*Please select only one item*

Once a year  Twice a year  More than twice a year  Not sure

Further comments here:

**2.2.2.** If a request for payment has been made by more than one retailer, how did the requests compare (e.g. for a specific type of activity or left to the supplier to decide; for a lump sum or sums to be made at certain times; for ongoing payments or a one-off payment; were the details of the request clear)?

Please comment here:

**2.2.3.** How was the request for payment made (e.g. as part of contract negotiations; as a one-off request; as a regular request from the retailer; other circumstances)?

Please comment here:

**2.2.4.** What did you understand to be the basis of the request?

Please comment here:

**2.2.5.** Was it clear if there were activities for which a request for payment was not acceptable?

*Please select only one item*

Yes  No  Not sure

Further comments here:

**2.2.6.** What benefits did you expect from participating in these initiatives?

Please comment here:

**2.2.7. Was it clear how this request would be recorded in the supply agreement?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**2.2.8. How would it be recorded in the supply agreement?**

Please comment here:

**2.2.9. Did you make a payment to a retailer?**

*Please select only one item*

Yes  No  Prefer not to say

**2.2.10. Was the payment a lump sum or ongoing payments?**

*Please select only one item*

Lump sum  Ongoing payments  Prefer not to say

**2.2.11. If you did make a payment, what did you expect to receive for it?**

Please comment here:

**2.2.12. Did you receive the return you expected?**

*Please select only one item*

Yes  No  Prefer not to say

**2.2.13. Did you ensure that the retailer delivered what had been agreed?**

*Please select only one item*

Yes  No  Prefer not to say



**2.2.14. How did you ensure that the retailer delivered what had been agreed?**

Please comment here:

**2.2.15. What happened if the retailer did not deliver what was agreed?**

Please comment here:

**2.2.16 If you did not make a payment, why was that?**

Please comment here:

**Indirect requirements – possible scope; supplier-initiated**

Still further removed from the situation considered by the GCA when formulating the Code clarification case study is that where payments arise after the supplier initiates discussions with a retailer. During the investigation, the evidence received by the GCA suggested that when suppliers referred to initiating payment in exchange for better positioning, this mostly occurred in the context of wider negotiations in which the retailer was requesting “investment” in generic terms.

It is unclear the extent to which suppliers have offered money for better positioning or increased shelf space where money had not already been requested from them in some way by the retailer.

The GCA understands that some suppliers welcome these types of discussions because they have the resources to leverage significant benefit from them. Other suppliers may not, however, be in a financial position to do so. These suppliers may be disadvantaged, regardless of whether discussions were initiated by the retailer or the supplier in any particular case.

There may also be circumstances where it is not in a retailer’s interest to provide increased shelf space or better positioning on the basis that it would not be customer focused or be in the best interests of the overall category of products.

The GCA is particularly keen to hear the views of direct suppliers and retailers on these points.

**3. Consultation questions: Following an offer from a supplier**

**3.1.** How, if at all, is the situation different if the offer to pay is made by the supplier?

Please comment here:

**3.2.** Have you ever made an offer to a retailer to pay for better shelf positioning or increased share of shelf space?*Please select only one item*
 Yes  No  Prefer not to say
**3.2.1.** If so, what was your main motivation (e.g. more space for your products or for what you consider to be better positioning)?*Please select only one item*
 Increased space  Better positioning  Both  Prefer not to say  Other

If other, please specify:

**3.2.2.** Which retailers did you approach to make an offer to pay for better shelf positioning or increased share of shelf space?

Please select all that apply:

*Please select all that apply*
 Aldi Stores Limited  Asda Stores Limited  Co-operative Group Limited  Iceland Foods Limited  Lidl UK GmbH  
 Marks & Spencer plc  Wm Morrison Supermarkets plc  J Sainsbury plc  Tesco plc  Waitrose Limited  
 Prefer not to say
**3.2.3.** Did the retailer or retailers accept your offer?*Please select only one item*
 Yes  No  Prefer not to say
**3.2.4.** Did you receive the return you expected?*Please select only one item*
 Yes  No  Prefer not to say
**3.2.5.** Did you ensure that the retailer delivered what had been agreed?*Please select only one item*
 Yes  No  Prefer not to say

**3.2.6.** How did you ensure that the retailer delivered what had been agreed?

Please comment here:

**3.2.7.** What happened if the retailer did not deliver what was agreed?

Please comment here:

**3.2.8.** Was your offer to pay a one-off or was it part of your supply agreement negotiations?

*Please select only one item*

- One off payment    Part of supply agreement negotiations    Prefer not to say    Other

If other, please specify:

## Direct link between payment made and more space or better positioning

There are a range of other practices where the causal link is less clear between payments made by suppliers and any better positioning or increased share of shelf they may subsequently achieve. These practices may involve the payment of significant sums of money by suppliers to participate in a range of activities which may lead to better positioning and increased share of shelf. Such practices include category management or category captaincy, and range reviews.

### Category management and category captaincy

During the recent investigation, the GCA came across several instances of suppliers paying for category captaincy. A supplier may be appointed by a retailer as a category captain as part of the retailer's management of a category, which may involve other suppliers. This is referred to by some retailers as category management.

Category management is defined in the 2000 Competition Commission report as "*a leading supplier being responsible for analysing data on consumer preferences; identifying the best means of meeting these; determining the most effective ways in which suppliers provide the relevant products, in terms of range and allocation of space; and advising the multiple accordingly.*"

Category captaincy is defined in the 2008 Competition Commission report as "*a particular form of Category Management in which a supplier (usually a large supplier) is designated by the retailer to have full responsibility for the way in which products within a category are presented and sold to customers.*"

The GCA is aware that suppliers carry out their own market research and will often have a superior understanding of their category to the retailer. Suppliers are therefore often able to propose solutions for product range and layout to maximise the sale of their product, the return to the retailer and satisfy customer demand. Often this is done in collaboration with retailers using both supplier and retailer data. Category management is common in the groceries sector and can, in some circumstances, provide benefits to the sector as a whole. It may facilitate interaction between retailers and their suppliers, involving the exchange of valuable consumer data which can lead to improvement in the performance of categories.

The GCA recognises that category management and category captaincy can lead to efficiencies in the market because suppliers may be well-placed to advise retailers on their own category. Efficiencies can benefit the retailers, suppliers and customers.

During the investigation, the GCA received information from a number of suppliers who had acted as category captains. Some suppliers were of the view that category captains were required to remain neutral in their analysis of the market. Some nonetheless viewed category captaincy as a competitive advantage because of the increased knowledge of the category and the influence over the retailer's decision-making that it was perceived the position brought.

From the investigation evidence, it was apparent that suppliers paid significant sums for category captaincy, often millions of pounds. Suppliers stated that they paid for category captaincy because of the commercial and strategic benefits of the position, to ensure that decisions about the category were customer focused or because of a fear that their products would be detrimentally affected if a competitor were advising the retailer. Generally the suppliers appointed as category captains were the larger and better resourced suppliers. They tended to be suppliers of branded products although the GCA has seen evidence of an own-brand supplier paying for category captaincy.

The evidence seen during the investigation indicated that the nature and description of a category captaincy arrangement varies between different categories and suppliers, and almost certainly between retailers, too. Some category captaincy agreements may include advising on recommendations for range and share of shelf space, others may make explicitly clear that there is no link between the role as category captain and maintenance of any share of shelf or range. The 2008 Competition Commission report also noted the variation in the functions performed by the different category captains.

The 2000 Competition Commission report identified concerns about the fact that some category management decisions on the allocation of shelf space were made by the supplier designated as category manager rather than by the retailer. The 2008 Competition Commission report identified possible anti-competitive effects of category management, but concluded that these were not sufficiently borne out to require a provision specifically to address category management in the Code.

The GCA's view is that practices in relation to category management and category captaincy have evolved since these Competition Commission reports. In particular, it is not apparent that the Competition Commission considered category management or category captaincy where large lump sums of money had been paid by the supplier.

The indication that large sums of money are being paid by some suppliers to act in the capacity of category captains suggests that they must believe they are obtaining significant financial benefits for their business from the arrangement. It also suggests that smaller suppliers are potentially priced out of being category captains and from obtaining the benefits that accompany such an arrangement.

The GCA is concerned that the purpose of the Code is being circumvented by the making of payments to secure better positioning or increased shelf space via these types of business arrangement.

The GCA is particularly keen to hear the views of direct suppliers and retailers on these points.

### **4. Consultation questions: Category management and category captaincy**

**4.1. How would you describe category management and category captaincy?**

Please comment here:

**4.2. When different retailers use the terms category management and category captaincy, do they all mean the same thing?***Please select only one item* Yes  No  Not sure

Further comments here:

**4.3. How widespread are category management and category captaincy across the retailers?**

Please comment here:

**4.4. Which retailers use category management or category captaincy?**

Please select all that apply:

*Please select all that apply*

Aldi Stores Limited  Asda Stores Limited  Co-operative Group Limited  Iceland Foods Limited  Lidl UK GmbH  
 Marks & Spencer plc  Wm Morrison Supermarkets plc  J Sainsbury plc  Tesco plc  Waitrose Limited  
 Prefer not to say

**4.5. Which product categories adopt this approach?**

Please comment here:

**4.6. What are the benefits to suppliers of participating in category management and category captaincy?**

Please comment here:

**4.7. What difference, if any, does the payment of lump sums to participate make?**

Please comment here:

**4.8. Do you think that category management and category captaincy are focused on providing some suppliers with more space or better positioning?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**4.9. What are the other benefits to suppliers from category management and category captaincy?**

Please comment here:

**4.10. Do other suppliers suffer as a result?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**4.10.1. If so, how do other suppliers suffer as a result?**

Please comment here:

**4.11. Does consumer choice suffer as a result?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**4.11.1. If so, how does consumer choice suffer as a result?**

Please comment here:

## Range Reviews

Another practice which was referred to frequently during the investigation was range reviews. These are undertaken by retailers periodically in order to assess whether changes should be made to the products listed in a category or the space given to, and position of, particular products or ranges. Range reviews sometimes take place in respect of a whole category and sometimes are smaller and more focused.

The GCA is aware that retailers might provide suppliers with the opportunity to pay to participate in these range reviews. The investigation indicated that this may involve large sums of money being paid.

Reasons given by suppliers for agreeing to pay to participate in range reviews include having the opportunity to contribute its ideas and help steer the category for the future, and ensuring that their products did not suffer as a result of any review. This implies that suppliers participating in range reviews believed that they had some degree of influence over the products listed and space given to products. It may be that some suppliers are explicitly seeking better positioning commitments from retailers in exchange for investment in range reviews; and therefore that there are occasions where payment to participate in range reviews is directly linked to better positioning or increased shelf space for a supplier's products.

The GCA has similar concerns about this practice as she does about category management and category captaincy. If significant sums of money are being paid by suppliers to retailers in order to participate in range reviews, whether offered or in response to a request for "investment", it suggests that those suppliers believe that they are obtaining significant financial benefit from the arrangement, or that they fear detriment if they do not participate. The evidence suggests that perceived or actual benefits may include better positioning or maintained or increased shelf space. Smaller suppliers may be unable to access these benefits at all, because of the large sums of money involved as payment.

The GCA is particularly keen to hear the views of direct suppliers and retailers on these points.

### 5. Consultation questions: Range reviews

#### 5.1. How would you describe a range review?

Please comment here:

#### 5.2. Is the meaning of a range review the same across all retailers?

Please select only one item

Yes  No  Not sure

Further comment here:



**5.3. Do all retailers conduct range reviews in the same way?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**5.4. How does range review practice differ across the retailers?**

Please comment here:

**5.5. Which retailers make a charge for range reviews?**

Please select all that apply:

*Please select all that apply*

- Aldi Stores Limited  Asda Stores Limited  Co-operative Group Limited  Iceland Foods Limited  Lidl UK GmbH  
 Marks & Spencer plc  Wm Morrison Supermarkets plc  J Sainsbury plc  Tesco plc  Waitrose Limited  
 Prefer not to say

**5.6. Do you think it is fair for retailers to charge suppliers to participate in range reviews?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**5.7. What are the benefits to suppliers of paying to participate in a range review**

Please comment here:

**5.8.** Do you think that range reviews are focused on providing some suppliers with more space or better positioning?

*Please select only one item*

Yes  No  Not sure

Further comments here:

**5.9.** What other benefits are there to suppliers from participating in a range review?

Please comment here:

**5.10.** Do other suppliers suffer as a result?

*Please select only one item*

Yes  No  Not sure

Further comments here:

**5.10.1.** If so, how do other suppliers suffer as a result?

Please comment here:

**5.11. Does consumer choice suffer as a result?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**5.11.1. If so, how does consumer choice suffer as a result?**

Please comment here:

**5.12. Is the range review usually recorded in the supply agreement?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**5.12.1. If so, does the supply agreement cover frequency, basis on which selection is made and basis of any charges?**

*Please select only one item*

Yes  No  Not sure

Further comments here:

**Other practices involving payments to secure more space or better positioning**

The GCA is further concerned that the purpose of the Code is being circumvented by the making of payments to secure better positioning or increased shelf space via other types of business arrangement, of which she may not yet be aware.

**6. Consultation question: Other practices involving indirect requirements for payment resulting in more space or better positioning**

**6.1. What other practices are there which might lead to a supplier receiving better positioning or share of shelf for their goods?**

Please comment here:

**6.1.1. What particular considerations apply to each of these practices and developments?**

Please comment here:

**6.2. Is there anything further you would like to tell the GCA in relation to practices by retailers in relation to paragraph 12 of the Code?**

Please comment here:

## Concluding questions

The GCA has published four prioritisation principles that inform her escalation of and action in relation to issues of Code compliance. These are:

Impact: the greater the impact of the practice raised, the more likely it is that the GCA will take action;

Strategic importance: whether the proposed action would further the GCA's statutory purposes;

Risks and benefits: the likelihood of achieving an outcome that stops breaches of the Code and prevents further or future breaches and ensures Code compliance; and

Resources: A decision to take action will be based on whether the GCA is satisfied that the proposed action is proportionate.

In seeking respondents' views to this consultation, the GCA is particularly keen to understand the impact of the practices described, and where this falls.

The GCA explained in the report of the investigation her interpretation of the overarching principle of fair dealing set out at paragraph 2 of the Code. This applies to each of the practice-specific provisions of the Code, including paragraph 12, to assist interpretation of what is and is not Code-compliant behaviour. Paragraph 2 makes reference, in particular, to "suppliers' need for certainty as regards the risks and costs of trading".

The concluding questions in this consultation seek respondents' views on these points.

### Impact of specific practices

The GCA is interested in the impact of specific practices on suppliers.

**7. Consultation questions: Impact of better positioning practices; role of paragraph 2 in interpreting paragraph 12**

**7.1.** How do the conversations and practices you have described affect your ability to know in advance how much it will cost you to supply a particular retailer, overall?

Please comment here:

**7.2.** How important is certainty to you, as a supplier? e.g. for the total volume and cost of supply through the contractual period

*Please select only one item*

Very important    Important    Not important    Not at all important

**7.3.** How important is flexibility to you, as a supplier? e.g. for in-term changes to address fluctuations in supply and demand

*Please select only one item*

Very important    Important    Not important    Not at all important

**7.4.** How do you balance certainty with flexibility to agree the terms on which you supply groceries?

Please comment here:

**7.5.** Would you like to see GCA action in this area?

*Please select only one item*

Yes    No    Not sure

Further comments here:

**7.5.1.** How far do you think the GCA should get involved?

Please comment here:

## Effect on the wider supply chain

**8. Consultation questions: Effect on the wider supply chain**

**8.1.** How, if at all, do the practices set out in this consultation affect large and small suppliers differently?

Please comment here:

**8.2.** Are smaller suppliers less able to compete because they cannot match payments made or offered by larger competitors?

*Please select only one item*

Yes  No  Not sure  Prefer not to say

**8.3.** What effect, if any, would GCA action in this area have on you?

Please comment here:

**8.4.** Should retailers be able to accept payments for more space or better positioning from those suppliers able and willing to make them?

*Please select only one item*

Yes  No  Not sure  Prefer not to say

**8.5.** Would you like to be able to offer payments to retailers for more space or better positioning?

*Please select only one item*

Yes  No  Not sure  Prefer not to say

**8.5.1.** What if you are in a position to do so and others are not?

Please comment here:

**8.5.2.** What if you are not in a position to do so and others are?

Please comment here:

**8.6.** What effect, if any, do indirect requirements for payment to secure better positioning or increased shelf space within a store have on consumer choice?

Please comment here:

**8.6.1.** How, if at all, does this matter?

Please comment here:

**What happens next?**

It is anticipated that after considering the responses received, the GCA will issue interpretative guidance on paragraph 12 of the Code, the scope of indirect requirement and making clear in respect of particular practices such as range reviews and category captaincy arrangements, in what circumstances they are compliant with the Code and in what circumstances they are unlikely to be so, or clearly not.

The timing of this publication will depend on the volume, complexity and content of responses received. The GCA will aim to issue any guidance within 3 months of the close of consultation.