

# Groceries Code Adjudicator

Record of GCA Group meeting with Code Compliance Officers 22 <sup>nd</sup> January 2014 09:30 – 11:30	
Location	Purpose of meeting
GCA, Victoria House, Southampton Row, London	Collective discussion with Code Compliance Officers on suppliers Code issues
Attendees	
<p style="text-align: center;"><b>GCA</b></p> <p>Christine Tacon (CT), Groceries Code Adjudicator</p> <p>Helen Gordon-Lee (HGL), Chief Legal Advisor</p> <p>Angela Latta (AL), Head of Policy and Operations</p> <p>Jenny Hendricks (JH), Office Manager</p>	<p style="text-align: center;"><b>CCOs</b></p> <ul style="list-style-type: none"> <li>• Aldi Stores Limited – Jonathan Ward</li> <li>• Asda Stores Limited – Alex Simpson</li> <li>• Co-operative Group Limited – Phil Willsmer</li> <li>• Iceland Foods Limited – Jennifer Barnett (for Jayne Burrell)</li> <li>• Lidl UK GmbH – Patrik Bures</li> <li>• Marks &amp; Spencer plc – Max Gillibrand</li> <li>• Wm Morrison Supermarkets plc – Steven Butts</li> <li>• J Sainsbury plc – Susannah Hall</li> <li>• Tesco plc – David Ward</li> <li>• Waitrose Limited – David Roberts</li> </ul> <p style="text-align: center;"><b>Observers</b></p> <ul style="list-style-type: none"> <li>• Asda Stores Limited – Mark McCombe</li> <li>• Marks &amp; Spencer plc – Robert Steadman</li> <li>• J Sainsbury plc – Edward Anderson</li> </ul>

## 1 Introductions

CT thanked everyone for taking the time to attend the meeting. Roundtable introductions were made.

HGL set out competition compliance points. The meeting will be conducted in the spirit of GCA openness and consultation with retailers.

## 2 GCA Overview and forward look

CT provided an overview of GCA achievements to date.

- Code Compliance Officers (CCOs) have attended quarterly meetings with the GCA, which have provided an opportunity for CT and other members of the office to get to know them and discuss the working relationships in the future. Regular quarterly meetings with CCOs have now been scheduled for the remainder of the year.
- CT and other members of the team have visited one retailer's business already and have another retailer visit scheduled to take place shortly. Other invitations have been received and it is hoped that other visits can be arranged to help the GCA better understand each individual retailer.
- The statutory guidance was published on 18<sup>th</sup> December 2013; and a submission was made to the BIS Secretary of State containing the GCA recommendation for the maximum financial penalty. It will be for the Secretary of State to lay the Order and we are expecting the Order to come into force in Spring 2014. Other material published on the GCA website was the GCA consultation response summary and press release.
- CT has made face to face contact with approximately 3,000 people through various speaking engagements, at conferences, dinners and one to one meetings over the last 6 months. Quality input has been gained from smaller events, with people generally happy

# Groceries Code Adjudicator

to have an open and frank discussion. Although it can still take some time for suppliers to feel confident enough to name the retailers with whom they have issues.

- We have had good press and radio coverage.
- The first stakeholder meeting took place on 20<sup>th</sup> January 2014 with a number of key Trade Associations presenting the views of their members. We expect to hold this meeting at least annually.
- Recruitment of an additional 2.5 members of staff is underway.
- Update of the GCA website has begun. A new area will be created to feature case studies. CCOs will be alerted when any new information is uploaded to the website.
- We are starting to receive quality input from suppliers and extending our contacts and understanding across the range of sectors covered by the Code, for example the Health & Beauty sector. We see it as important to get the message out to suppliers that we are working with CCOs, how we are doing that and that there are signs that things are changing.
- Four retailers have had specific issues (some more than one) which have been taken up directly with them. We will be introducing more frequent meetings with those retailers about whom we receive continuing complaints.

It is important that the GCA is able to demonstrate progress working with retailers informally rather than through investigations and that a difference is being made in terms of Code compliance. CT is happy to continue her informal approach in discussions with retailers on issues raised and how these issues can be addressed. However, at some point, if steps are not introduced by retailers to resolve issues, action will be taken by the GCA.

CT outlined her escalation process for dealing with an issue raised with the GCA. The first step will be to consider it in light of the Code, and what is acceptable. CT will then discuss with the relevant CCO, and may issue advice on Code interpretation/clarification for the retailer to follow. This will be made available more widely as a case study, via the GCA website. If the practice continues more formal guidance may be issued and/or an investigation launched. This will be followed up with a further check on compliance.

CT stated that she appreciated that, although everyone had agreed to meet as a group which allows the same message to be communicated to all retailers simultaneously, the CCOs may not feel able to respond to her points in this session. As such at this meeting CT will highlight the main issues of concern raised by suppliers, of which there are 5, and feedback and suggestions should be provided by the 21<sup>st</sup> February 2014.

## 3 Main areas of concern being raised by suppliers

**The GCA discussed the following areas with all Code Compliance Officers. The issues raised are generic and should not be interpreted as attributable to any particular retailer or all retailers, unless specified.**

### (i) Forensics: Third party audits

#### *Description:*

Retailers are able to audit suppliers going back up to 6 years looking for invoice errors (one retailer has reportedly gone back 8 years). Suppliers are being asked for significant sums of money with the burden of proof falling on suppliers over alleged discrepancies. The document audit trail is often difficult to piece together after lengthy periods, with fast moving and significant change within suppliers and retailers. In some cases deductions are made from invoices/trading accounts without notice to or the agreement of the supplier.

## Groceries Code Adjudicator

Some retailer T&Cs give suppliers only a few weeks in which to mount a challenge, yet deductions are reportedly being made going back 6 years. Suppliers say they have little or no notice of when these types of deductions will be applied, so they are unable to plan effectively. Some sums can be significant for smaller suppliers at certain times of the year. It discourages their businesses from investing and innovating.

### *Potential Code breach:*

- Deducting against current invoices may mean retailers are not paying on time.

### *Possible solution:*

Retailers could settle accounts by the end of the current financial year, however as promotions might have crossed financial years, the current and previous financial year could appear to be more reasonable. Suppliers should be given sufficient prior notice of deductions, which should never be made without notice and agreement.

### *Next steps:*

In order to find a workable solution CT invited comments to be sent to the GCA by 21<sup>st</sup> February 2014. This will allow time for internal communications between the CCOs and their businesses, and a judgement to be made on whether a change of practice could be implemented.

## **(ii) Drop and Drive: delivery performance**

### *Description:*

Where there is a mismatch/disparity between what suppliers say they have delivered and invoiced, and what the retailer says has been received, retailers appear to have been automatically making deductions from invoices for alleged shortages. These deductions are difficult to challenge, particularly when using prescribed hauliers. Suppliers have informed the GCA that this is a major issue. There appear to be different patterns of deductions between how different retailers deal with deliveries from suppliers with, according to suppliers, some retailers recording twice the percentage error rate of others. The GCA is keen to understand where and when this is happening, to which products and to what extent.

### *Potential Code breach:*

- Not paying on time, with suppliers possibly being used to fund in-store wastage.

### *Possible solution:*

When using a retailer prescribed third party haulier the point of delivery could be treated as loading, and not receipt into the depot/store. CCOs were asked at recent quarterly meetings if they would be prepared to provide the GCA with an indication of the percentage of under-deliveries recorded at one of their distribution centres over a period of 3 months as a sample. When this information has been received it will be considered alongside figures of paid versus invoiced deliveries (which the GCA will obtain from suppliers). The GCA will provide feedback to CCOs on whether their figures appear to be particularly high compared to other retailers.

### *Next steps:*

CT invited comments to be sent to the GCA by 21<sup>st</sup> February 2014. CCOs should send their under-delivery, and paid versus invoiced for delivered shortages information to the GCA by the end of March 2014.

## **(iii) Forecasting/service levels**

### *Description:*

## Groceries Code Adjudicator

Charging suppliers for non-delivery against orders with inconsistent reference to forecasts and using joint business plans as a means to justify penalties applied, e.g. for alleged loss of profit. This puts the risk on the suppliers to tackle the variability of demand. Retailers are reported to be asking for payments for lack of achievement of service levels with no regard to accuracy of forecasts (both high and low). This can lead to significant wastage in the chain, particularly with regard to fresh produce. The penalty for non-delivery is significant in comparison to the cost of production. CT made it clear that inaccurate forecasting cannot properly lead to the supplier being penalised, and it is acknowledged that forecasting cannot always be 100% accurate. The standard set out in the Code is that forecasts should be prepared with due care and attention. The issue of wastage is of particular concern at the moment and CT was recently invited to provide oral evidence at the House of Lords EU Food Waste Prevention Committee, where she was asked what influence the GCA can have on forecasting and crop production levels to help reduce wastage.

The question of suppliers knowingly accepting orders that they are unable to fulfil was raised. CT clarified that suppliers should contract in good faith and should alert retailers when they are unable to meet a forecast, and if the order is clearly not filled then the procedure as detailed in the retailer's T&Cs should be followed. What is not reasonable is for retailers to significantly increase/decrease their forecast at short notice, making it impossible for the supplier to meet the demand or leaving them with large amounts of wastage. AL pointed out that this is about how the risk is shared and how the cost of under or over supply is apportioned. If necessary, CT has stated that she will request information from suppliers about where the different retailers' forecasts are in comparison to others but she would prefer to have the retailers' own analysis at this stage.

### *Potential Code breach:*

- Passing excessive risk to the supplier and retrospective demands.
- Requirement to compensate suppliers for forecasting errors.

### *Possible solutions:*

Not charging for shortfalls where the forecast was outside a given percentage of the order (may change by category).

Forecasting practice could be reviewed to improve accuracy, and compensation given for over production where any forecast is outside a given percentage of the order.

Agree any major changes to the forecast with the supplier ahead of time.

### *Next steps:*

CT invited comments to be sent to the GCA by the 21<sup>st</sup> February 2014.

## **(iv) Request for lump sum payments**

### *Description:*

At the end of the financial year it has been widely reported that some retailers request lump sum payments from suppliers for a variety of reasons with margin maintenance through Joint Business Plans (JBP) being the most frequently quoted. Retailers are said to be using JBP in different ways and the GCA will be looking more closely at this and whether practices in relation to any particular retailer's JBP is effectively requiring suppliers to sign away rights under the Code. CT clarified that putting something into the JBP does not necessarily prevent its being characterised as a retrospective demand. Suppliers are telling CT that JBPs are often imposed and not agreed. HGL pointed out that a number of the larger suppliers may be happy to work collaboratively with retailers on JBP, but smaller suppliers may not be so confident. The GCA needs to gain an understanding as to how the JBP works for different businesses. This issue has come in

## Groceries Code Adjudicator

top of the issues from those suppliers with JBP, alongside deductions from payments, as a matter for the GCA to address.

*Potential Code breach:*

- Passing excessive risk to the supplier and retrospective demands.

*Possible solutions:*

Consider stopping the practice of calling for lump sum payments.

If seeking funding for future commitments, CCOs should check that retailers are honouring the commitments made or pay the money back to suppliers.

*Next steps:*

CT invited comments to be sent to the GCA by 21<sup>st</sup> February 2014.

### (v) Packaging and design charges

*Description:*

Some reported charges used for photography and pack designs do not appear to be reasonable. Some suppliers do their own packaging and design and know when charges appear unrealistic. A few retailers have been told that prescribed sources are overcharging for packaging. Some suppliers have reported that they have been charged up to three times for changes to design in a single year, as well as for minor packaging design changes. Another practice raised is that the charge for photographs has increased four-fold over the past 2 years. CT will follow up directly with the retailers in question. CCOs should check that they believe their charges are reasonable and compliant with the Code.

*Potential Code breach:*

- Charging a premium for a product or service that is sourced from a third party for a supplier, and profiting from it. (If a retailer is imposing a more expensive service than the supplier could have obtained for itself, this is arguably profiting and is a breach).

*Possible solutions:*

Consider a maximum charge for photographs to reflect actual cost.

Consider that the supplier will only be charged for one redesign per annum with any subsequent changes paid for by the retailer.

*Next steps:*

CT invited comments to be sent to the GCA by 21<sup>st</sup> February 2014.

## 4 CCO Feedback to GCA

The group was invited to provide comments on their impression of the GCA's first 6 months of operation.

General consensus was that a good start had been made and that the GCA was taking good care to gain a thorough understanding of the supply side of the chain. The opportunity to do the same for the retailers should be taken, thus ensuring a balance.

CT confirmed that the GCA has already made a start in this area, and will respond positively to all invitations received from retailers to better understand their business, as was the approach with suppliers.

## 5 Annual Compliance Report format and timings

## Groceries Code Adjudicator

A paper was tabled by AL which set out the aims of the proposed new draft Annual Compliance Report (ACR) together with a new reporting format. The context for the paper is in response to requests from several Code Compliance Officers for further guidance on completion of the ACRs, and the need for consistency across all retailers.

AL explained the GCA aim was to ensure consistency of approach across all retailers in recording and reporting issues and disputes raised under the Code. It was also important that suppliers see consistency between the issues they raise with retailers and the detail of the ACRs. This detail will be presented collectively in the GCA Annual Report. The GCA approach is to follow the process set out by the Office of Fair Trading (OFT) in 2010 and that reporting burdens should not increase.

The revised format seeks to simplify the instructions, removing repetition where it exists and to simplify the reporting, principally in Table 2 of the report.

CCOs were invited to provide comments on areas where they would welcome clarity, either at the meeting or separately. The following points were made:

- Issues raised with retailers should be considered as allegations until more is known about them.
- Retailers should record all instances where the Code is mentioned by suppliers but that judgement may need to be applied by retail staff, so common practice is followed and retailers' internal investigations are clear.
- Clarity on what triggers the recording of an issue/allegation at Level 1 would be helpful. Difficulties arise where suppliers raise a possible Code breach when the issue is outwith the Code. Level 1 issues should serve as an early warning to retailers and provide insights into the understanding of suppliers and buyers of the Code. This will help with awareness raising.
- Revised format looks sensible.

CCOs agreed to reflect on the paper, which will be circulated electronically, and provide feedback and an indication of any areas where they would welcome further guidance to the GCA by 21<sup>st</sup> February 2014. The aim will be to have the revised version in place by early March 2014.

### 6 Guidance

HGL provided an update on the plans for the publication of guidance for early 2014.

- **Arbitration**  
The arbitration guidance is due to be issued next, with the policy level draft currently under review, and once agreed will be published by the end of March 2014. This will not deviate enormously from the framework set out in Arbitration Act 1996, however as this Act does not extend to Scotland some work needs to be done to ensure the GCA can fulfil its remit there too. Arbitrations will potentially be run in-house, but consideration is to be given on how to run those on a larger scale, if needed.
- **Appeals**  
The framework is already in the GCA Act, and this will be a Quarter 2 activity.
- **Informal guidance on points of interpretation**  
This will provide interpretation of some of the grey areas under the Code, providing clarity on what compliance should look like.

HGL reviewed the proposals for further guidance as outlined in the Annex to the Agenda, and confirmed that there are no plans to take the question of the definition of Groceries any

## Groceries Code Adjudicator

further, but the GCA will be willing to answer, as far as possible, any definition questions CCOs may have.

It was requested that the question of what constitutes a significant reduction in the volume of purchases made from suppliers be considered by the GCA, which was noted.

Any further thoughts on guidance/clarification are welcomed.

### 7 Evaluation of the GCA

A copy of the draft questionnaire on the groceries sector research study was circulated to all attendees prior to the meeting. CT explained that the questionnaire is for completion by both direct and indirect suppliers. The invitation to tender has been issued for a company to undertake this study. Any views on the questionnaire are welcomed, and CCO feedback should be provided quickly as the survey will be finalised by the end of January 2014.

This is a baseline survey, with rudimentary questions capturing information from suppliers. The questions need to provide a full picture of the groceries supply chain as covered by the Code. Results will help to decide future working practices, and a sample survey may well be conducted at a later date. Study results will be presented in the GCA Annual Report. Field work is due to begin in mid February 2014, for delivery ideally by the end of March 2014. However, the timing will be adjusted on the advice of the successful contractor to ensure that we have robust and reliable responses. The various trade bodies will promote the survey with their members, and retailer feedback will also be considered.

Concern was raised that readers of the questionnaire may get an unbalanced view of the retailers. AL assured the group that thought will be given as to how to take the supplier through the question set effectively and fairly.

It was pointed out to the GCA that a number of suppliers can receive a large number of questionnaires on general engagement at any given time, and will therefore be unsure as to which survey to prioritise for completion. CT asked CCOs to check on the timing of the surveys their businesses may issue, and report back to the GCA so that consideration as to the timing of the release of this survey can be fully informed.

Retailers noted that the focus of the survey is on the supply base and it may not be appropriate for retailers to be part of the survey and that data could be gathered in other ways. CT agreed to remove retailers from the survey.

**Post meeting note: The survey has been rescheduled with field work expected to begin in April.**

### 8 Any other business

- Over the past 6 months CT has received a number of invitations to speak at events across the globe, as well as here in the UK. It has not been possible to attend all of these events, particularly those abroad. The GCA will host an event in June of this year, in order to reach the large audience of people who have shown an interest in the work of the Adjudicator. Potential dates are 23<sup>rd</sup>, 25<sup>th</sup> or 30<sup>th</sup> June 2014 and the CCOs were asked to note and confirmation would follow shortly on the firm date once a venue has been secured.

**Post meeting note: The conference has been confirmed for 23<sup>rd</sup> June.**

## **Groceries Code Adjudicator**

- The recommendation on financial penalties was submitted to the Secretary of State in December 2013, and additional information has now been requested. The recommendation is due to be laid before Parliament (both Houses) in April 2014.
- It was agreed that these group meetings should be held annually.

CT thanked everyone for attending and for their work with the GCA over the last 6 months.

**GCA**  
**29<sup>th</sup> January 2014**