

June 2017 Quarterly CCO meetings

Record of the Groceries Code Adjudicator (GCA) Quarterly Meetings with Code Compliance Officers (CCO)	
Location	Purpose of meeting
GCA, Victoria House, Southampton Row, London	Quarterly progress meetings
Attendees	
GCA Christine Tacon (the GCA) Helen Gordon-Lee (HGL) Matthew Sabourin (MS)	<p><u>5 June 2017</u></p> <ul style="list-style-type: none"> • Iceland Foods Limited – Duncan Vaughan • Co-operative Group Limited – Saleem Chowdhery, John Leyden, Peter Fenton and Chris Jones <p><u>7 June 2017</u></p> <ul style="list-style-type: none"> • Asda Stores Limited – Sarah Dickson, Alex Simpson, Ashley Sheppard • Wm Morrison Supermarkets plc – Steven Butts, Denise Harris, and Andrew Clappen • Waitrose Limited – George Leicester-Thackara, Sarah Tomsett, Catherine Hasler • Lidl UK GmbH – Tim Belser, Sophie Wettlaufer <p><u>12 June 2017</u></p> <ul style="list-style-type: none"> • Marks and Spencer plc – Max Gillibrand and Robert Steadman • Tesco plc – David Ward, Emer Kelly and Rebecca Law • J Sainsbury plc – Helen Charnley, Sophie Hackforth-Jones and Dafydd Pugh • Aldi Stores Limited – Chris Young
Key Points Raised	
<p><u>Issues from the previous set of minutes</u></p> <p>There was an update on any issues arising out of the previous set of minutes.</p> <p><u>GCA annual levy</u></p> <p>The GCA had received approval from the Secretary of State for its budget for 2017-18 and to use the same methodology for setting the levy as was used the previous financial year.</p> <p><u>GCA annual conference</u></p> <p>The GCA annual conference would take place on 26 June 2017. The GCA set out the expected agenda. In particular she indicated that the Top 5 issues will be announced as follows:</p> <ul style="list-style-type: none"> ○ Current issues: delay in payments; forecasting; and promotions; 	

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- Monitored issues: payments for better positioning; pay to stay.

Delay in payments would remain a current issue because: it remained the number one concern highlighted by suppliers in the annual survey; it continued to be an issue reported directly to the GCA from suppliers and in particular the GCA had heard allegations that indicated that not all retailers had systems and processes in place to comply with the GCA's interpretation of the Code on delay in payments as set out in the report of the investigation into Tesco plc; and the GCA would continue to escalate her concerns on drop and drive as a practice which can lead to breaches of the Code under paragraph 5.

Forecasting would move back to being a current issue because: it was the second highest issue of concern reported in the annual survey; a major Code training provider had informed the GCA that it was the most significant issue to suppliers attending its training courses; the GCA's recent workshops on the issue had identified a number of specific problems in relation to forecasting; and following monitoring of progress against the forecasting best practice statement by retailers (published in March 2016), the GCA was unconvinced that sufficient improvements had been made in forecasting practice overall.

Linked to forecasting, the GCA would have promotions as a current Top 5 issue, because suppliers had reported that forecasting in relation to promotions was poor and that it led to overbuying at promotional prices or had the impact of suppliers, in effect, predominantly funding the costs of a promotion. Accordingly, paragraphs 13 and 14 of the Code were potentially engaged. The GCA wanted to hear more from suppliers on this issue and understand more about retailer practices.

Payments for better positioning would remain as a monitored issue. The GCA would hear what supplier feedback was on this issue and would see whether retailers had made any changes as a result of the GCA's published consultation response.

The GCA would clarify her understanding of the issue of pay to stay and what behaviours were not considered to be Code compliant. This issue would be moved to the monitored category to monitor supplier feedback.

The GCA would move margin maintenance to be a previous issue as she had set out clearly in the report of the investigation into Tesco plc that unilateral deductions to satisfy an unachieved aspirational margin target were unreasonable and that requests for margin maintenance must be unambiguously supported by the Supply Agreement. Since the GCA issued her report of the investigation into Tesco plc she had been listening to what suppliers had to say and they were not reporting this, in the main, to be a continuing or current issue. The GCA stressed the importance of being careful about the language used to ensure both parties were clear about the intention of what is set out in the Supply Agreement, but did not see any benefit in having this in the current or monitored category.

The GCA clarified that a previous issue did not necessarily mean that the practice no longer existed, but that the issue had been explored and the GCA was clear that CCOs understood her interpretation of the Code. It was therefore likely that any future suspected breach of the Code in this areas preliminary in the Top 5 would lead to an investigation.

GCA annual survey

The GCA shared the results of the annual survey with retailers. The increased number of responses from direct suppliers was noted and retailers were thanked for their efforts in promoting the survey. There was a continuing fall in the number of suppliers experiencing issues under the Code, although the trajectory had slowed with the drop being from 62% to 56%, not as big as the GCA would have liked to see. In the view of their direct suppliers, all retailers had shown a net improvement in their compliance with the Code. YouGov would

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announce the results of the survey at the annual conference.

Top 5 issue: Payments for better positioning of goods

At the previous quarterly meeting the GCA set out her intention to carry out formal monitoring in February 2018 to see whether retailers had decided to make any changes as a result of the published consultation response, and to evaluate whether supplier feedback meant the matter needed to be considered further. In the meantime, retailers were asked to provide updates on their progress on this issue.

Top 5 issue: Forecasting

Since the last quarterly meeting the GCA had held two workshops with direct suppliers on the issue of forecasting. The GCA reiterated her intention to move this to be a current Top 5 issue and would set out at the annual conference how she intended to progress the issue.

Top 5 issue: Delay in payments (specifically drop and drive)

All retailers had received a letter setting out the GCA's view on their progress in actively managing the risk of breaches of the Code under paragraph 5 (No delay in payments) arising from the practice of drop and drive. Retailers had been put into one of three groups:

- Group 1: Those retailers where the GCA was concerned about the lack of progress and considered not enough action was yet being taken to address their compliance risk;
- Group 2: Those retailers that had made insufficient progress to date but that have stepped up their action in this area following the December CCO meetings;
- Group 3: Those retailers who appeared to be making sufficient progress or did not engage in drop and drive practices at all.

Categorising retailers in this way had been as a result of detailed analysis and consideration. In coming to her view the GCA had taken into account:

- the extent to which a retailer carries out drop and drive;
- supplier feedback given directly to the GCA and her office over the past year specifically on the issue of drop and drive and on delay in payments more generally;
- supplier feedback in the GCA annual surveys from both 2016 and 2017, with more importance placed on what the GCA had heard in the 2017 survey;
- views from third parties representing suppliers, although a lower weight had been put on this information; and
- information retailers had made available to the GCA about practical steps being taken in actively managing the risk of breaches of the Code under paragraph 5.

The GCA remained concerned about some retailers' progress. With those retailers, the GCA made clear that she was reaching the point where the collaborative approach was not delivering the right level of improved practice at an acceptable pace, in particular in those retailers actively managing the risk of breaches of paragraph 5. Retailers were expected to respond in July to the letter they had received.

Top 5 issue: Margin maintenance

As the GCA had highlighted, she intended to move this issue to be a previous Top 5 issue.

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Top 5 issue: Pay to stay

Over the last six months the GCA had sought views from retailers on their practices in connection with a range of scenarios; and also from direct suppliers in one-to-one meetings and workshops arranged specifically to discuss pay to stay. Examples were raised in each context that retailers clearly see as normal commercial negotiations but suppliers view differently.

The GCA made clear her view that it was important for retailers to be careful about the language used when money is being requested, as an existing supplier might view any retailer request for a lump sum payment that is unexpected or not provided for in the Supply Agreement as a request for payment to keep the business.

The GCA also made clear her view that it was important that retailers were aware of the behaviour of third parties acting on their behalf in, for example, selling tickets for events or conducting other marketing initiatives, because the GCA had heard concerns from suppliers that third parties sometimes misrepresented their role on behalf of retailers and might put suppliers under pressure to pay to participate or engage in these initiatives.

However, given what was being said by suppliers and retailers on the issue of pay to stay and the fact that it was not a major issue reported in the survey, the GCA would be moving it to be a monitored Top 5 issue.

Other issues in the retailer's quarterly report to the GCA

The GCA discussed any other issues covered in the retailer's quarterly report to the GCA.

Issues raised by direct suppliers

The GCA highlighted any issues being raised by direct suppliers.

Any other business

Annual Compliance Reports: The GCA had started to receive retailers' annual compliance reports. These would be reviewed and feedback provided to each retailer.