

December 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), except 11 December Matthew Sabourin (MS)	<p><u>4 December 2017</u></p> <ul style="list-style-type: none"> • J Sainsbury plc – Helen Charnley and Dafydd Pugh • Tesco plc – David Ward and Christina Miles • Iceland Foods Limited – Jennifer Barnett and Sarah Hutchinson <p><u>6 December 2017</u></p> <ul style="list-style-type: none"> • Asda Stores Limited – Sarah Dickson and Tim Belser • Wm Morrison Supermarkets plc – Steven Butts, Denise Harris and Andrew Clappen <p><u>11 December 2017</u></p> <ul style="list-style-type: none"> • Co-operative Group Limited – Saleem Chowdhery, Roger Groarke, Michael Fletcher, Matthew Speight • Marks and Spencer plc – Max Gillibrand and Robert Steadman • Waitrose Limited – Sarah Tomsett and Catherine Hasler <p><u>13 December 2017</u></p> <ul style="list-style-type: none"> • Aldi Stores Limited – Chris Young • Lidl UK GmbH – Sophie Wettlaufer
Key Points Raised	
<p><u>Issues from the previous set of minutes</u></p> <p>There was an update on any issues arising from the previous set of minutes.</p> <p><u>Top 5 issue (current): Delay in payments (specifically drop and drive)</u></p> <p>The GCA had now had detailed responses from those retailers whose progress on tackling delay in payments arising from drop and drive was causing concern. The GCA is now monitoring what suppliers say about the drop and drive issue and will use the results of the next annual survey to track the impact of retailer initiatives.</p> <p>This would give time to see what impact retailer initiatives have had on addressing the issue from direct suppliers' perspectives. Retailers were reminded not to be complacent on the issue as it remained of supplier concern.</p> <p><u>Top 5 issue (current): Delay in payments (more generally)</u></p> <p>The GCA had previously provided retailers with an example reported by suppliers that</p>	

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delays in being paid could arise because of the period of time taken for retailers to issue proof of delivery notes, because some retailers issued a statement of what was to be paid on the due date with money not arriving with a supplier until a number of days later; and because some retailers had scheduled payment runs on specified days only and always deferred to the later date rather than paying early. The combined effect of this could cause suppliers to be paid later than the agreed payment terms. The GCA discussed retailers' comments on this example.

The GCA recalled that the report of the investigation into Tesco plc ('the investigation report') set out a recommendation that the retailer should ensure that its systems and internal processes are designed to facilitate prompt resolution of disputed invoices and should provide a single point of contact for suppliers to resolve queries which have not been resolved promptly. The investigation report set out how the GCA interpreted paragraph 5 of the Code (No delay in Payments) and while the recommendations were made specifically to Tesco plc, they were a clear indication of the standard which the GCA would apply in considering whether any regulated retailer practices were compliant with the Code.

With this in mind, the GCA noted that a number of retailers had put in place supplier helplines or some other means to enable disputes and queries, such as on invoices or cost prices, to be handled in simple 'finance to finance' discussions. The GCA noted that this enabled suppliers to raise issues which were finance related without involving the retailer's buyer, which some suppliers felt might put at risk their commercial relationship with the retailer. Suppliers had reported to the GCA that they sometimes felt reluctant to raise issues, such as invoice disputes, if they had to involve the buyer or if the buyer was present at discussions about the amount due. The GCA was not mandating any particular business practices, nor could she do so, but suggested that retailers without a helpline or contact point might like to consider how they would handle conversations about money due without giving cause to suppliers to worry about their commercial relationships being affected. The GCA intended to publish details of retailer helplines for suppliers on her website.

The GCA reported, at a high level, the outcome of the recent mini survey and supplier workshop. The GCA noted that there had been some recurring themes in the comments supplied, which included:

- Unilateral deductions: including reports that these were taken immediately although payment was not due. Deductions appeared mostly to relate to alleged short deliveries; duplicate invoices; and consumer complaints which were clearly not the fault of the supplier (e.g. the consumer did not like a product which was manufactured to a retailer specification);
- Resolution time: including responses claiming that it took up to six months to resolve an issue;
- Not paying on time: including reports that entire invoices were held up while one element was in dispute; BACS notices issued on due date but payment not received until days later; and retailers insisting that credit notes were raised before an invoice was paid;
- Resolution of issues caused by the retailer's haulier: including reports of no PODs having been issued but the supplier requiring a POD to challenge discrepancies; and of lost stock which was signed for on collection;
- Depot practices: reports of retailers not issuing PODs and not following procedures.

The GCA gave her view that the supplier feedback indicated that her interpretation of the Code as set out in the investigation report was not being used as the benchmark for Code compliance by all retailers. The GCA highlighted that retailers needed to consider how they could each demonstrate that their current practice met all elements of the standard of Code compliance set out in that report.

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It was reiterated to all retailers that the GCA considered that they needed to continue to take action to minimise the risk of breaches of the Code arising and that she had not closed the door to further regulatory action.

Top 5 issue (current): Forecasting

The GCA reported, at a high level, the outcome of the recent mini survey and supplier workshop. The GCA noted that there had been some recurring themes in the comments supplied, which included:

- Communication: including suppliers reporting that they found it hard to get access to supply chain or buying teams to share intelligence and discuss forecasts or orders;
- Responsibility: reports of retailers not taking sufficient responsibility for forecasts after they had been set, including reports of last-minute changes; no engagement when products were not selling to forecast; inadequate systems which did not learn or take into account known or past issues; poor internal retailer information flow e.g. agreed order profile being ignored; an example of an eight-week range change letter sent to suppliers reported as having been sent in error but only after suppliers had started reacting to it by increasing production and other activities;
- Compensation: it was unclear to suppliers how to get compensation for inaccurate forecasting, who to talk to or, indeed, when it might be due.

The GCA referred CCOs to her published best practice statement on forecasting and indicated that from the survey information received, it appeared that some retailers might not be following it.

The GCA gave her view that there were a number of operational and supply chain practices that retailers needed to consider more closely in order to ensure they were operating in the spirit of the best practice statement. She would be writing to each retailer about this soon. She also expressed her view that there would almost always be some circumstances in which compensation was appropriate, so a blanket exclusion in a supply agreement would be unlikely to be compliant with the Code, both in terms of risk sharing and, depending on the facts, due care in preparation of the forecast. In view of the fact that suppliers might be unlikely to ask for compensation, the GCA considered that retailers might helpfully consider the extent to which they might offer it. Furthermore, the GCA expressed her view that the due care test was unlikely to be capable of being met by a retailer that provided no way for a supplier to contribute to the forecasting process, whether collaboratively in reaching agreed volumes to be ordered or by ensuring suppliers could raise questions and queries if a forecast seemed to them to be inaccurate or to have resulted in an excessive order.

Top 5 issue (current): Promotions

The GCA reported, at a high level, the outcome of the recent mini survey and supplier workshop. The GCA noted that there had been some recurring themes in the comments supplied, which included:

- Suppliers reporting not being able to access adequate sales data to verify the accuracy of deductions proposed for retrospective or trigger funding;
- Buying-in periods for promotions exceeding the promotional period and in some cases, the shelf life of products;
- Retailers not adhering to timelines;
- No consideration of the effect on sales of similar, competitor or related products of having certain other products on promotion;
- Retailers not delivering on commitments in store for promotions (e.g. actually running the promotion in stores; shelf/gondola positioning etc.), and suppliers not having the manpower to verify the promotional activity is taking place as agreed;

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- Extra care needed for 'one off' activity such as seasonal products, trade ready display units, and special bar-coded products, given there was limited or no outlet for the product to be sold elsewhere.

The GCA reminded retailers of paragraph 13 (Promotions) and paragraph 14 (Due care to be taken when ordering for Promotions) of the Code, and that any deductions made for retrospective or trigger funding of promotions needed to be made in line with the GCA's interpretation of paragraph 5 of the Code (No delay in payments).

Top 5 issue (monitored): Payments for better positioning of goods

The GCA reminded retailers that she would monitor retailer progress on this issue in February 2018, a year after publication of her response to the consultation on paragraph 12 of the Code (No Payments for better positioning of goods unless in relation to Promotions). The GCA would write to retailers about this in January 2018.

In the meantime the GCA had received responses from retailers on some questions she had asked in relation to positioning of products on retailer websites, whether for sale online or as a means of advertising goods for sale in store. The GCA was considering whether the issue required any translation of or clarification about how the existing understanding of what paragraph 12 of the Code requires of retailers may apply in the online context. The GCA would highlight this issue in her next newsletter to see if suppliers had any information or views they would like to submit to the GCA about it.

Top 5 issue (monitored): Pay to stay

The GCA noted that the issue of pay to stay appeared to be of less concern to suppliers now. However, during the recent survey on promotions, some suppliers reported they felt pressured to agree to a promotion in order to keep their business with a retailer. The GCA noted that those suppliers saw this effectively as a 'pay to stay' arrangement.

The GCA gave her view that often, requests for lump sums led to problems for retailers. It was noted that retailers and suppliers frequently had very different understandings of those types of exchanges: suppliers often interpreted lump sums paid as 'pay to stay', whether at the time or later. In seeking to manage their compliance risk, retailers should avoid these differences in understanding wherever possible, whether by avoiding lump sums altogether or by clear communication between the retailer and supplier about what any money paid is for. It was recognised that there were suppliers who offered lump sums freely and wanted to retain that flexibility. There were also specific circumstances envisaged in supply agreements where lump sums could properly be required to be paid.

The GCA considered that retailers should look particularly in this context at sums paid at the point of renegotiation of contracts; and the level of compensation demanded for quality, product recall, and non-delivery issues. These had all been raised with the GCA by suppliers. The GCA had also published case studies on lump sum requests in relation to paragraph 3 of the Code (Variation of Supply Agreements and terms of supply).

The GCA had a simple message: buyers, or third parties acting for retailers, needed to consider carefully when making any requests for lump sum payments not only what they were for and the basis for them, but also how they would appear to the supplier, and how they were documented to provide clarity around the arrangement. Otherwise retailers faced an increased risk of suppliers perceiving that there had been a breach of the Code.

Annual compliance reports and meetings with Chairs of retailer audit committees

The GCA had now met with all but one of the Chairs of retailers' audit committees, or their

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equivalent. Feedback had been given on how retailers' annual compliance reports could be improved.

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 specific to a particular retailer.

Any other business

Recruitment: The GCA noted that two new members of staff had been recruited to the GCA office.

Awareness-raising activity: The GCA was continuing to increase the number of events she attended where she could meet direct suppliers to hear about their experiences of supplying the regulated retailers, and to raise awareness of her role among direct suppliers. The GCA had produced a logo promoting a 'Code Confident' message to suppliers encouraging them to know the Code, get trained and speak up on Code-related matters.

Concessions in store and licence agreements: The GCA noted that a number of retailers had concessions in stores, often selling grocery products, or licence arrangements with branded intermediaries for groceries to be sold. In some circumstances those concessionaires or intermediaries might consider themselves to be Suppliers under the Code. The GCA asked retailers to consider this and to ensure the Code was being adhered to whenever a relevant supply of groceries was made.