



Groceries Code Adjudicator

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Kelly Tolhurst MP
Minister for Small Business, Consumers and Corporate Responsibility

21 August 2019

Dear Kelly,

I am writing in response to the statutory review of the Groceries Code Adjudicator (GCA). I have set out below my response to the three questions highlighted in the review publication.

Questions relevant to the Groceries Code Adjudicator

- 1. For the Statutory Review period, please explain how you have met your statutory duties set out in the Groceries Code Adjudicator Act 2013? Please comment in particular on: a) how much you have exercised your powers; b) how effective you have been in enforcing the Groceries Code.**

Section 14 of the Groceries Code Adjudicator Act 2013 (the Act) provides that I must prepare and publish an annual report describing what I have done during the reporting period. My key performance indicators are set out in the Act as statutory reporting requirements (section 14(2)-(4)). During this review period I have published three annual reports and accounts and I enclose the relevant extracts of these reports at annex A to this letter.

In addition to the statutory reporting requirements, I also monitor GCA performance against four strategic objectives. These are: promoting the work of the GCA; providing advice and guidance; acting on suppliers' issues and information; and improving the culture of Code compliance. I refer you to my annual reports which set out my performance against these objectives.

My overall approach to monitoring and ensuring compliance with and enforcing the Code is now well-established and I am confident that this delivers results. My collaborative approach with the retailers I regulate enables tough, honest conversations and prompt remedial action. All the regulated retailers have supported my collaborative approach and worked hard to achieve progress. In this way, and by focusing on themes rather than individual cases, I have ensured retailers improve for the benefit of the widest possible supplier base.

I have now carried out six annual surveys of suppliers and each year this has shown they report experiencing fewer Code-related issues. Where I have tackled a specific issue and worked with retailers on this, the issue is reported less by suppliers. I have set out a graphic at annex B which shows how suppliers have reported progress on each of these issues. This

progress has continued year on year even as the number of retailers has increased and this year I had a record number of direct suppliers responding to my survey, over 1400.

The feedback I get from suppliers, retailers and trade associations, as well as in the media underlines how much progress has been made. Recently, having taken up a matter with a retailer, I commented to the supplier that alerted me to the issue that often the very fact I have raised it makes a difference. The supplier replied: *"I am convinced that is the case and thanks for all the work you have done so far to bring the retailers into line, generally making it a more level playing field and making it more pleasurable to do business with them."* Another supplier recently wrote to me: *"[I] want to record in writing how delighted we have been with the efforts of you and your colleagues over the time of your tenure. You have all done a fantastic job and the business that our company does with the UK supermarkets... is unrecognisable compared to seven years ago. Many of the niggles and "fast" practices have disappeared."*

I thought it would be helpful for you to see some of the relevant feedback from suppliers, retailers, trade associations and others so I have set this out at annex C.

2. We would also welcome any comments you may have on the Order-making powers contained in the Act and whether you would find it helpful for the Secretary of State to: a) amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015; and b) make an order setting out the information which you may consider when deciding whether to investigate.

I support the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015 and see no reason to amend or replace this. It is an important part of the GCA's regulatory toolkit.

I do not see any need for the Secretary of State to make an Order restricting the information which the GCA may consider when deciding whether to investigate. I find the current provision clear and sensible and I am happy to receive information from any source about potential breaches of the Code, as currently provided for by the Act.

As I reflected in my response to the first statutory review of the GCA, the unenacted provision, which is set out at section 15(13) of the Act was put in place in response to concerns expressed during the passage of the Bill that the GCA might 'fish' for evidence, or launch an investigation purely on the basis of information that was not drawn from direct suppliers or retailers themselves, but was rather reported information from third parties, perhaps with particular interests not directly covered by the Code. These concerns have not become reality. I think it is important that the GCA can take information from a wide range of sources.

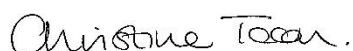
3. How effective you have been since 2016 in: a) improving retailer and supplier awareness of the Code; and b) improving supplier confidence in raising issues with retailers and with you?

I have always reinforced to suppliers my statutory duty of confidentiality under section 18 of the Act as well as encouraging suppliers to get trained in the Code. In 2017 I launched a Code Confident campaign which encouraged suppliers to Know the Code; Get Trained; and Speak Up to me and to the regulated retailers' Code Compliance Officers. I am pleased that more and more suppliers continue to get trained and my last annual survey showed that only 10% of suppliers would not raise an issue with me, which has reduced from up to 20% in previous surveys. My team and I spend a significant amount of time raising awareness of the Code and GCA at supplier events. I am convinced that retailers and trade associations could do more to raise awareness and I will continue to work with them to do so. Suppliers also need to take the initiative to get trained and come forward with information. I am aware of 14 organisations that provide training on the Code. Around half of all direct suppliers responding to my annual

survey say they have had formal training on the Code and 77% say they have a good or fair understanding of the Code.

In response to feedback from stakeholders in the last statutory review, in addition to my Code Confident campaign, I set out some specific actions I would take to continue to raise awareness and to improve supplier confidence in raising issues with retailers or me. I have set out my progress against these actions in annex D. I would reiterate my view that the incidence of suppliers not feeling confident to raise issues with me is limited and is more affected by suppliers not being trained in the Code or not fully understanding it than anything else. Those suppliers that are familiar with the Code and my work are generally happy to have conversations with retailers or my office, and sometimes both, about their experiences. I am therefore generally satisfied that the level of awareness of the GCA is good and that I am being alerted by suppliers and others to relevant concerns. I would not have been able to make the progress I have if suppliers did not come forward and speak to me.

Yours sincerely,

A handwritten signature in black ink that reads "Christine Tacon". The signature is written in a cursive, slightly slanted style.

Christine Tacon
Groceries Code Adjudicator

Annex A: Statutory reporting requirements

Groceries Code Adjudicator Annual Report and Accounts (2016/2017)

Disputes referred to arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009
No disputes were referred to arbitration in the reporting period 2016/17. Two arbitrations which were underway from the previous reporting year were resolved.
Investigations carried out by the GCA
There were no new investigations in the reporting period 2016/17. The GCA was monitoring the implementation by Tesco plc of the recommendations made to it in the report of the investigation dated 26 January 2016. This monitoring was concluded in this reporting period and has been transferred to business as usual engagement.
Cases in which the GCA has used enforcement measures
No new enforcement measures were used.
Recommendations that the GCA has made to the Competition and Markets Authority (formerly Office of Fair Trading) for changes to the Code
The GCA has made no recommendations to the Competition and Markets Authority for any change to the Code.

Groceries Code Adjudicator Annual Report and Accounts (2017/2018)

Disputes referred to arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009
The GCA accepted appointment as arbitrator in two disputes in the reporting period.
Investigations carried out by the GCA
The GCA launched an investigation into the Co-operative Group Limited on 8 March 2018. This is the GCA's second investigation.
Cases in which the GCA has used enforcement measures
No new enforcement measures were used.
Recommendations that the GCA has made to the Competition and Markets Authority (formerly Office of Fair Trading) for changes to the Code
The GCA has made no recommendations to the Competition and Markets Authority for any change to the Code

Groceries Code Adjudicator Annual Report and Accounts (2018/2019)

Disputes referred to arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009
The GCA accepted appointment as arbitrator in no disputes in the reporting period. No disputes were open at year end.
Investigations carried out by the GCA
The GCA concluded the investigation into Co-operative Group Limited on 25 March 2019. This was the GCA's second investigation.
Cases in which the GCA has used enforcement measures
The GCA made recommendations to Co-operative Group Limited.
Recommendations that the GCA has made to the Competition and Markets Authority (formerly Office of Fair Trading) for changes to the Code
The GCA has made no recommendations to the Competition and Markets Authority for any change to the Code.

Annex B: Progress on Top Issues



Figure 1: % of suppliers reporting they have experienced the issue in the previous year.

Annex C: Stakeholder comments

Supplier comments

"[I] want to record in writing how delighted we have been with the efforts of you and your colleagues over the time of your tenure. You have all done a fantastic job and the business that our company does with the UK supermarkets – all under private label – is unrecognisable compared to seven years ago. Many of the niggles and "fast" practices have disappeared."

(Private label supplier to all the regulated retailers)

"I am a huge fan of what you have all done. You have changed things probably more than you know."

(Small supplier to the regulated retailers)

"We are a company who supply most of the major players in retail...It might be hard to measure how effective your organisation has been but from our perspective since the code of conduct has been in place it has made a huge difference. For smaller suppliers like ourselves with the bulk of the firms we deal with there is now a direct line to senior management to raise issues. The people at the end of the phone for the most part are keen to resolve any issues."

(Small supplier to the regulated retailers)

"I would like to say thank you for your help regarding an old claim the auditors at a retailer were trying to pursue. I met Christine at an event last year where she was presenting. I grabbed 5 minutes with Christine and explained the retailer's auditor's line of communication claiming for £[X],000 for mis-invoicing back in 201[X]. After a few weeks of emails, I mentioned the Code Compliance Officer's name, as suggested by Christine, and I've heard nothing since. Many thanks for your help."

(Fresh produce supplier)

"A lot has changed for the better over the last 10 years around the Retailer/Supplier approach to doing business. It is without doubt largely driven by the application of GSCOP."

(Pet food supplier)

"May I... congratulate you and your team on yet another very well organised and presented Annual Conference yesterday. As in previous years, it was very informative and demonstrated your substantial achievements and influence, when applying the code, since taking office."

(Intermediary linking suppliers to regulated retailers)

Retailer comments

"Our positive record of GSCOP compliance is something everyone here is immensely proud of and I would be interested to hear from you directly regarding what future improvements we could make in this regard."

(CEO of regulated retailer)

“Whilst I am encouraged that there has been significant improvement year on year, I am not happy with our rate of progress. There is clearly more we can (and will) do. We are still working through the detail but please rest assured, that we remain absolutely committed to improving supplier relationships and strengthening our GSCOP compliance programme.”

(Regulated retailer CEO upon receiving annual survey results)

“I am determined to do everything I can to ensure that we improve our ranking in next year’s survey.”

(CEO of regulated retailer)

“I thoroughly enjoyed the conference and thought having the retailer tables in the room afterwards worked brilliantly. I had some suppliers coming to chat saying, “this would never be big enough to escalate to you, but as you are here, I thought I would mention...”. As always, with a little detective work, the “supplier niggles” can generally help me identify other focus areas.”

(CCO of regulated retailer)

“I have hugely enjoyed my time as CCO and feel we have made good progress on a number of fronts, and I am proud to have played a part in strengthening the relationships we have with our suppliers and ensuring our regulatory compliance. I have also enjoyed working with you and your team, and feel we have a good collaborative relationship.”

(Outgoing CCO)

Trade association / other comments

“I would like to thank you for giving your time to talk at our [event] yesterday. Your presentation was excellent and judging from the comments afterwards the delegates felt you had covered so much in the time allowed and it was a very worthwhile visit.”

(Trade association)

“Thank you for an excellent conference yesterday. It was great to see the key performance charts showing continued improvement...The move towards self-regulation is positive, though as you would anticipate we would consider an effective GCA to be an essential part of that working in practice.”

(Trade association)

“We see definite benefit in engaging with you more – if awareness of the code and training around the code helps our members sell their wares into supermarkets in a fair and reasonable way, then all the better.”

(Trade association)

“It is clear that the GCA has made a real impact in the last few years.”

(Agriculture and agri-food consultancy firm)

“I want to thank you for the positive impact you have made to the grocery industry in the U.K. In speaking with many of our members’ counterparts in the U.K. they share a similar experience to what [X] described below. I believe that the solutions that have been implemented and governed in the UK serves as a very positive model for countries such as Canada with a similar consolidation and retail behavioural profile to adopt.”

(Canadian trade association)

“The associations for food and grocery suppliers in Denmark, Sweden, Finland and Norway have been following the success of the Groceries Code Adjudicator with great interest...The example of the GSCOP and GCA gives the most valuable input available for the national developments regarding fair trading and UTPs in all our four countries. . . We appreciated very much that you shared your insights and experiences, which are of great value for us in our work to develop sound and sustainable institutions to ensure fair trading in the Nordic markets.”

(Norwegian trade association)

Annex D

A dedicated budget to cover events and marketing focused on promoting the Code Confident message

The GCA has a dedicated budget of approximately £31,000 to spend on marketing and promotional activity and a further budget for events and conferences. Both budgets are used to promote the work of the GCA and awareness of the Code, engage with suppliers, attend trade shows and supplier events and host meetings with stakeholders.

A Code Confident campaign was launched in 2017 to encourage suppliers to Know the Code; Get Trained; and Speak Up to retailer Code Compliance Officers or the GCA. This message has reached thousands of suppliers and is supported by retailers and trade associations. A Code Confident pack is available, containing key documents. In the year 2018/19 over 1,700 of these were distributed.

A commitment to attend a minimum of one supplier event each month

The Adjudicator and her team attend a variety of events at which grocery suppliers are present. This commitment to attend 12 events in one year is always exceeded substantially. In 2018/19 44 events were attended across 19 locations in the UK. This enables the GCA's Code Confident message to be delivered directly to suppliers and provides an opportunity for suppliers to share with the GCA their experiences of working with the retailers.

Asking retailers to support the Code Confident message with their suppliers

Retailers promote the work of the GCA with their suppliers through a variety of methods. Code Compliance Officers (CCOs) are crucial to this and the GCA asks them to work to raise awareness of the GCA and Code. Retailers do this in a variety of ways, including putting information and updates on their portals for suppliers, circulating newsletters from CCOs or communication from Buying Directors, and making presentations to supplier conferences. At the most recent GCA annual conference, all CCOs attended a networking event at which they heard issues directly from suppliers.

Encouraging retailers to be more open and transparent about their Code compliance activity and the issues that suppliers have reported and how they have been handled so that suppliers have confidence in the process, in line with the annual compliance reporting requirement in the Groceries (Supply Chain Practices) Market Investigation Order 2009

The GCA has encouraged retailers to put more information in the public domain about their compliance activities. Each year the amount of information published increases as well as there being improved reporting about the issues that suppliers raise. Retailers have been taking steps to identify the root causes of issues raised by suppliers and making changes to their systems and processes where appropriate.

Using the annual survey to ask suppliers questions about their level of awareness of the GCA, their understanding of the Code, whether they would consider raising issues with the GCA and if they would not the reasons why not

A record number of direct suppliers completed the GCA's annual survey in 2019. The annual survey remains one of the most important activities that the GCA does each year. By asking suppliers about their experiences and opinions, a picture can be drawn of the progress being made. Retailers welcome the information about what issues suppliers say they experience with each of them and act on the results. In the GCA's first survey in 2014 only 52% of direct

suppliers said they were very or quite familiar with the role and responsibilities of the GCA, a figure that has subsequently improved to 75% that said their understanding was good or fair. Similarly, the percentage of direct suppliers that said they were very or quite familiar with the Code has risen from a starting point of 65% to reach 79% that said their understanding was good or fair. In the last annual survey only 10% of suppliers said they would not consider raising an issue with the GCA.

Increased work with trade associations to promote the work of the GCA and the need for their members to be Code Confident

The GCA engages with 70 trade associations and over 55 receive the GCA newsletter and attend events. In 2018/19, 12 trade associations invited the GCA to events and 17 trade association magazines carried articles about the GCA; some, such as *The Grocer*, on numerous occasions.