Groceries Code Adjudicator: Insights from “an effective modern regulator”

BEIS Statutory Review July 2017
Role of the GCA

• Monitor, enforce and ensure compliance with the Groceries Supply Code of Practice (the Code)

• Help strengthen the supply chain and bring further innovation to the groceries sector benefiting suppliers, retailers and customers
The Code
Performance measures

<table>
<thead>
<tr>
<th>Statutory Reporting Requirements</th>
<th>Strategic Objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disputes referred to arbitration under the Groceries Supply Order</td>
<td>Promoting the work of the GCA</td>
</tr>
<tr>
<td>Investigations carried out by the GCA</td>
<td>Providing advice and guidance</td>
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<tr>
<td>Cases in which the GCA has used enforcement measures</td>
<td>Acting on suppliers’ issues and information</td>
</tr>
<tr>
<td>Recommendations that the GCA has made to the Competition and Markets Authority for changes to the Code</td>
<td>Improving the culture of Code compliance</td>
</tr>
</tbody>
</table>
A modern regulatory approach

• Collaboration and business relations at its core
• Three stage ‘collaborative approach’

1. Make retailers aware of issues reported by suppliers
2. Request that retailers investigate the issue and report back to me
3. Take formal action if the practice continues
Meeting with retailers and suppliers (2017/18)

61 RETAILER MEETINGS

4 NEWSLETTERS PUBLISHED

59 SUPPLIER ONE-TO-ONES

30 SUPPLIER AND TRADE ASSOCIATION EVENTS
Tools

- Voluntary commitment
- Best practice
- Case studies
- Interpretative guidance
### Suppliers perception of how retailers comply with the Code overall

#### Retailers ranked by net ‘consistently well’ and ‘mostly’ (2017 v 2016)

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<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Aldi</td>
<td>48%</td>
<td>47%</td>
<td>4%</td>
<td>0%</td>
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<tr>
<td>Sainsbury’s</td>
<td>35%</td>
<td>38%</td>
<td>5%</td>
<td>0%</td>
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<tr>
<td>Waitrose</td>
<td>38%</td>
<td>36%</td>
<td>6%</td>
<td>0%</td>
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<tr>
<td>Tesco</td>
<td>42%</td>
<td>50%</td>
<td>7%</td>
<td>1%</td>
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<tr>
<td>Marks &amp; Spencer</td>
<td>34%</td>
<td>57%</td>
<td>8%</td>
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<td>Lidl</td>
<td>37%</td>
<td>54%</td>
<td>8%</td>
<td>0%</td>
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<tr>
<td>Morrisons</td>
<td>30%</td>
<td>61%</td>
<td>9%</td>
<td>0%</td>
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<tr>
<td>Co-operative</td>
<td>28%</td>
<td>60%</td>
<td>10%</td>
<td>2%</td>
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<tr>
<td>Asda</td>
<td>27%</td>
<td>61%</td>
<td>11%</td>
<td>0%</td>
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<tr>
<td>Iceland</td>
<td>17%</td>
<td>65%</td>
<td>18%</td>
<td>0%</td>
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Annual survey
<table>
<thead>
<tr>
<th>Issue</th>
<th>Retailer 1</th>
<th>Retailer 2</th>
<th>Retailer 3</th>
<th>Retailer 4</th>
<th>Retailer 5</th>
<th>Retailer 6</th>
<th>Retailer 7</th>
<th>Retailer 8</th>
<th>Retailer 9</th>
<th>Retailer 10</th>
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<tbody>
<tr>
<td>Incorrect deductions from invoices</td>
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<td>Data input errors not resolved promptly (e.g. 7 days)</td>
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<tr>
<td>Artwork and design: Unfair, unreasonable or unexpected charges</td>
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<td>De-listing without giving reasonable notice</td>
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<tr>
<td>No compensation/incurred penalty charges for inaccurate forecasting by the retailer</td>
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<td>Drop and drive: delays in, or not receiving, payment when there are disputes over deliveries</td>
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<td>Forensics: third party audits which have been abusive or excessive in nature</td>
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<td>Unjustified payments for consumer complaints</td>
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<td>Unfair/unreasonable/unexpected charges for:</td>
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<td>Packaging</td>
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<td>Requests for lump sum payments relating to:</td>
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<td>Retailer margin shortfall not agreed at the start of the contract period</td>
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<td>Other requests for lump sum payment</td>
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<td>Overbuying at promotional price and subsequently selling at full price</td>
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<td>Listing fees for products already stocked (pay to stay)</td>
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<td>Better positioning or increased shelf space or participation in category captaincy/category management/range reviews</td>
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<td>Other</td>
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N.B. Retailers have been shuffled and are NOT shown in alphabetical order.
Top issues

- Promotions
- Delay in payments
- Forecasting
- Pay to stay
- Payments for better positioning
- Margins maintenance
- Drop and drive
- Consumer complaints
- Forensic auditing
- Artwork and design services
Paragraph 5 of the Code

**Delay in payments**

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>35%</td>
<td>March 2014: Ongoing discussions with CCOs at quarterly meetings.</td>
</tr>
<tr>
<td>2015</td>
<td>34%</td>
<td>March/April 2015: Annual report highlights delay in payments as a Top 5 issue. Ongoing discussions with retailers.</td>
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<tr>
<td>2016</td>
<td>30%</td>
<td>January 2016: GCA sets out position on delay in payments in report of the investigation into Tesco.</td>
</tr>
<tr>
<td>2017</td>
<td>23%</td>
<td>June 2017: Still a major concern for suppliers. GCA escalates drop and drive issue with retailers.</td>
</tr>
</tbody>
</table>

*% of direct suppliers reporting in annual survey that they had experienced a delay in payment.
**Paragraph 10 of the Code**

**Forecasting**

- **33%**
  - 2014
  - November 2016: GCA requests more information on retailer approaches to forecasting.
  - November 2016: GCA provides draft forecasting best practice statement; discussions at December meetings.
  - March 2016: GCA publishes forecasting best practice statement; issue moved to monitored category.

- **24%**
  - 2015
  - March 2017: GCA reviews retailer progress against best practice statement; advises retailers that insufficient progress made.

- **25%**
  - 2016

- **20%**
  - 2017
  - June 2017: Suppliers continue to report concerns on retailer forecasting; survey shows this to be a Top 5 issue.

*% of direct suppliers reporting in annual survey that they had experienced an issue with no compensation for forecasting errors.

**Paragraph 14 of the Code**

**Promotions**

- **23%**
  - 2014
  - March 2016: GCA raises issues in discussions with CCOs on forecasting.

- **17%**
  - 2015
  - March 2017: GCA raises issues with GCA during meetings in London and Manchester.

- **15%**
  - 2016

- **13%**
  - 2017

*% of direct suppliers reporting in annual survey that they had experienced an issue with not applying due care when ordering for Promotions.
Investigations and arbitrations

News story
Tesco breached Code

The Adjudicator publishes her report into the compliance of Tesco plc with the Groceries Supply Code of Practice.

Published 26 January 2016
From: Groceries Code Adjudicator

8 March 2018 — News story
GCA launches investigation into Co-operative Group Limited

The GCA announces an investigation into Co-operative Group Limited
Driving Change, Making an Impact
Current situation

• Culture change
  • Retailers asking me how to improve

• Suppliers opening up to me
  • Spread of training
  • Aware of the Code
  • Telling me about issues

• Progressing top issues
Seeing progress year-on-year

• Improved compliance against a challenging industry background
Driving Change, Making an Impact

**Forensic auditing**

- **2014**: 45%
- **2015**: 30%
- **2016**: 13%
- **2017**: 12%

- **March 2014**: Discussion with CCOs.
- **June 2014**: GCA publishes voluntary commitment by 8 retailers to limit forensic auditing to 2 years plus the current year.
- **November 2014**: GCA requests all retailers inform suppliers of policies and full implementation of commitment by March 2015.

% of direct suppliers reporting in annual survey having experienced third-party audits which have been abusive or excessive.

**Consumer complaints**

- **2014**: 37%
- **2015**: 30%
- **2016**: 22%
- **2017**: 12%

- **November 2014**: GCA publish best practice statement.
- **June 2015**: GCA requests information on issue from CCOs discussed in quarterly meetings.
- **September 2016**: GCA monitors progress by retailers.

% of direct suppliers reporting in annual survey that they have experienced unjustified payments for consumer complaints.

**Margin maintenance**

- **2014**: 36%
- **2015**: 34%
- **2016**: 13%
- **2017**: 10%

- **March 2014**: Issue first raised, discussions with CCOs at quarterly meetings.
- **May 2015**: GCA raises concerns about margin maintenance with CCOs.
- **January 2016**: GCA makes position on margin maintenance clear in report of the investigation into Tesco.
- **December 2016**: GCA discusses with CCOs scenarios in which requests for margin shortfall might arise.

% of direct suppliers reporting in annual survey that they have experienced requests for lump sum payments relating to retailer margin shortfall.

**Artwork and design services**

- **2014**: 24%
- **2015**: 30%
- **2016**: 9%
- **2017**: 11%

- **January 2014**: GCA raises issue of packaging & design charges with CCOs; one of first Top 5 issues.
- **December 2014**: GCA notes that supplier feedback on packaging is improving.
- **September 2015**: GCA hosts supplier workshop on issue; packaging charges no less of an issue than artwork/design charges.
- **Summer 2016**: GCA assesses all retailer artwork/design rate cards and approaches; feeds back to retailers.
- **June 2016**: Due to progress by retailers GCA amends Top 5 issue. Now: artwork/design charges.
- **September 2016**: Moves artwork/design changes to previous; urges retailers to base approach on principles of reasonable, predictable and transparent.
## Changes in retailer practice between 2016 and 2017

<table>
<thead>
<tr>
<th>Retailer</th>
<th>Improved</th>
<th>Stayed the same</th>
<th>Worsened</th>
<th>Net improvement score (2017)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tesco (n=444)</td>
<td>53%</td>
<td>40%</td>
<td>7%</td>
<td>46</td>
</tr>
<tr>
<td>Morrisons (n=454)</td>
<td>44%</td>
<td>47%</td>
<td>9%</td>
<td>35</td>
</tr>
<tr>
<td>Aldi (n=355)</td>
<td>18%</td>
<td>73%</td>
<td>9%</td>
<td>9</td>
</tr>
<tr>
<td>Sainsbury's (n=404)</td>
<td>21%</td>
<td>67%</td>
<td>12%</td>
<td>9</td>
</tr>
<tr>
<td>Lidl (n=268)</td>
<td>14%</td>
<td>81%</td>
<td>6%</td>
<td>8</td>
</tr>
<tr>
<td>Iceland (n=172)</td>
<td>22%</td>
<td>64%</td>
<td>15%</td>
<td>7</td>
</tr>
<tr>
<td>Marks and Spencer (n=163)</td>
<td>18%</td>
<td>71%</td>
<td>11%</td>
<td>7</td>
</tr>
<tr>
<td>Asda (n=506)</td>
<td>24%</td>
<td>57%</td>
<td>19%</td>
<td>5</td>
</tr>
<tr>
<td>Waitrose (n=331)</td>
<td>13%</td>
<td>78%</td>
<td>9%</td>
<td>4</td>
</tr>
<tr>
<td>Co-operative (n=310)</td>
<td>19%</td>
<td>65%</td>
<td>15%</td>
<td>4</td>
</tr>
</tbody>
</table>

**Legend:** Green = Improved, Blue = Stayed the same, Red = Worsened.
Annual conference – 25 June 2018

Hear the results of my annual survey 2018
Time to be Code Confident
Call for Evidence

Annual review

New designated retailers?
News from the Adjudicator
Edition 1.5

Welcome to the Groceries Code Adjudicator

I have been working with the Co-operative Group on these issues for some months through my collaborative approach but decided an investigation was necessary so I can fully understand the conduct to which the Code may have been broken and the root causes of the issues. It is now important that suppliers provide relevant information to help my investigation. I need to know what you think about whether the Co-operative Group has a Code compliant culture and what your views are on their conduct. All information I receive will be treated with complete confidentiality. My call for evidence ends on 5 May, please send any information to: groceries@gov.uk.

Annual grocery survey results 2018

Each year I commission YouGov to carry out a grocery sector survey and the results help shape my work programme for the year ahead and lend me to emerging issues and developments. The more responses I receive, the deeper I can delve into the issues affecting the sector. Last year I had a record response and the results were very interesting and valuable. My 2018 survey is open until 22 April and you can respond at www.gov.uk/groceries. It should only take 10 minutes to complete and it is your chance to tell me what you think the Co-operative Group is doing well and what it could do better. The survey is anonymous and responses are not identified to me without some context. The results are reported in my annual report and this year’s report will be available for learning about the latest developments with the Code and my plans for the year ahead. It is always well subscribed.

Call for evidence on extending the remit of the GCA

Recently, the Government published its response to the call for evidence on extending my remit. As a result the Competition and Markets Authority (CMA) will consider whether code retailers should be added to the list already regulated. I welcome this because I believe there ought to be a level playing field for grocery retailers.

I am looking forward to hearing the CMA’s plans for designating any new retailers and encourage suppliers to take part in the process and let the CMA have your views about which retailers should be covered. The outcome will benefit you. And for those grocery retailers who may find themselves regulated in the near future I would urge you to think now about what action you may need to take to ensure you are Code compliant.

Christine Tacon
Groceries Code Adjudicator

www.gov.uk/gca
@UKGCA
Thank you