



Groceries Code Adjudicator Conflicts of interest policy and register of interests

Introduction

- 1** This guidance explains how conflicts of interest will be handled by the office of the Groceries Code Adjudicator (GCA) to ensure that no conflict arises, or could reasonably be perceived to arise, between the official position of the Adjudicator and private interests, financial or otherwise arising from outside interests. The guidance also explains how the GCA team and external advisers' conflicts of interest will be handled.
- 2** The Adjudicator and GCA team will behave in accordance with the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership (see Annex for full details). The approach to dealing with the outside interests of the Adjudicator and GCA team is founded on these principles.
- 3** The Adjudicator and GCA team will prevent conflicts of interest by disclosing potentially relevant outside interests for inclusion in the GCA register of interests. Details from the register will inform decisions about how to handle any conflicts or potential conflicts. The principle '*if in doubt, disclose*' will be applied. A Compliance Officer [Head of Office] will be responsible for ensuring the register is current and advising the Adjudicator, the GCA Team and external advisers on this policy.
- 4** Once a disclosure is made the Adjudicator and Compliance Officer will decide how to handle potential conflicts of interest. The Adjudicator has two statutory functions; to arbitrate in disputes between retailers and their direct suppliers or to investigate potential breaches of the Groceries Supply Code of Practice. This guidance reflects these functions and the activities and work carried out in support of the statutory functions. Not all outside interests will preclude participation in a particular activity, arbitration or investigation. The Adjudicator and Compliance Officer will look at all potential conflicts proportionately. Each case will be considered on its merits having regard to the particular circumstances.
- 5** The Adjudicator is the decision maker in the key activities of arbitrations and investigations and therefore the emphasis of this guidance concerns the Adjudicator.

Conflicts of interests

- 6** A conflict may arise whenever an outside interest might influence, or be perceived to be capable of influencing, a person's judgement. Some outside interests will create a clear conflict. Others will not do so but may nonetheless prompt the GCA Compliance Officer to take some action on a prudential basis.

- 7 The most common ways in which impartiality can be put at risk can be categorised under four headings:
- (a) financial interests;
 - (b) organizational relationships;
 - (c) personal relationships; and
 - (d) prejudgement.
- 8 Potential conflicts may be identified at the outset of an activity, arbitration or investigation; others may only become apparent as the work develops, and circumstances change (e.g. because of the involvement of a new party, or a change in the personal circumstances of the Adjudicator). If any doubts arise as to the propriety of an outside interest, or as to the compatibility of a relationship with the Adjudicator or member of the GCA team, the Compliance Officer should be informed of all relevant facts.

Role of the Compliance Officer

- 9 The Compliance Officer will be responsible for judging the consequences for the GCA. The Compliance Officer may decide that in some cases an outside interest is sufficiently minor that it warrants no action at all. It may be decided that an outside interest must be disposed of or severed if the Adjudicator is to conduct in arbitration or investigation.
- 10 The Compliance Officer will take all necessary steps to ensure that no 'apparent' bias - the perception of bias - exists in order to mitigate a basis for a challenge to a decision of the Adjudicator as actual bias. The test for apparent bias the courts apply is 'whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility' of bias. The Compliance Officer will apply this test to ensure that an undue concern for appearances is not allowed to interfere unnecessarily with the functioning of the GCA office.
- 11 In this guidance an outside interest that normally requires some prudential action on it, such as preventing the participation of the Adjudicator or member of the GCA team in an arbitration or investigation or disclosing the interest to a person affected by an arbitration or investigation, is described as a 'disqualifying interest'.
- 12 At the beginning of an activity, arbitration or investigation, the Compliance Officer will disclose any outside interests and where it is satisfied that the outside interest will not affect the impartiality of the Adjudicator. In such cases, the Compliance Officer will consider any representations that are made in the particular circumstances of the case.
- 13 In cases where the outside interest and risk of apparent bias is more significant, the Compliance Officer may nevertheless sometimes consider it appropriate to deal with the matter by disclosure.
- 14 In the case of an arbitration where a potential conflict of interest may occur, the Adjudicator may appoint another person to arbitrate.

Handling Interests of the Adjudicator

- 15** The risk of potential conflicts as a result of the Adjudicator's wider interests will be assessed against the following criteria:
- (a) financial interests;
 - (b) organizational relationships;
 - (c) personal relationships; and
 - (d) prejudgement.

Financial interests

- 16** Where the Adjudicator (or a person they have a personal relationship with referred to in paragraph 28 below) has a financial relationship with or interest in ('a financial interest' in) a person¹ whose interests may be affected by a possible decision by the Adjudicator, the Compliance Officer will consider whether the relationship or interest is a disqualifying interest.
- 17** Such persons will include companies which are the subject of an arbitration or investigation as well as companies which are likely to take a significant part in proceedings before the GCA, such as main competitors, suppliers or customers.
- 18** Financial interests will generally arise from the ownership of assets (or other investments or sources of income) such as shares (whether bearing a right to vote or not), stock or debentures and options and similar rights. However, they may also arise from liabilities to a person. In such a case, for the Adjudicator to participate in the arbitration or investigation the interest must generally be sold.
- 19** However, where the person in whom the interest is held is likely to be less closely affected by the outcome of an activity, arbitration or investigation, sale may not be required. While such an interest may be a disqualifying interest, it may be that any risk or concern can be dealt with by other action, such as disclosure.
- 20** Where a financial interest belongs to a person with whom a member has a personal relationship identified in paragraph 28 below, the Compliance Officer will have regard to the nature of the personal relationship, in deciding whether the interest is a disqualifying interest, and, if it is, what action must be taken.
- 21** Where assets are held by discretionary managers or in a trust, a prudent approach will be adopted in deciding whether the assets should be treated as disqualifying interests. Relevant matters may include the duties to which a trustee or manager is subject and the degree of knowledge a person has or may acquire of the particular assets held by a trust or manager.
- 22** Where assets are held by the Adjudicator as trustee for or otherwise on behalf of another person, these will normally be treated as if they were assets of the Adjudicator.

¹ *The persons referred to include natural and legal persons, including companies and their affiliates, partnerships and other enterprises*

Interests which are unlikely to cause concern

- 23** The Compliance Officer will not normally consider as giving rise to disqualifying interests:
- (a) assets whose value is too low to be material;
 - (b) goods and/or services bought on the open market on normal commercial terms available to other buyers (e.g. banking or insurance services, telephone services, travel and tangible assets purchased on normal terms on the open market); and
 - (c) assets held in collective investment schemes² where the investor has no control over individual investment decisions and has no ownership of the underlying investments.

Organisational relationships

- 24** Organisational relationships between the Adjudicator and organisations which are or may be affected by the work of the GCA are normally regarded as a disqualifying interest. The most likely such relationships are:
- (a) directorships or equivalent positions with high-level responsibility for governance and performance;
 - (b) elected positions in government at local or national level;
 - (c) senior paid or unpaid roles with charities and not-for-profit organizations; and
 - (d) consultancy or advisory roles, whether remunerated or not.
- 25** The provision of advisory or other services on competition and/or economic regulation issues potentially relevant to the activities of the GCA is normally considered a disqualifying interest.
- 26** Ordinary membership of charities or not-for-profit organizations where no role in governance or management is undertaken is not normally considered a disqualifying interest (although some activities, such as lobbying on matters of national interest or debate relevant to an activity, arbitration or investigation, may raise concerns).
- 27** The significance of organisational relationships diminishes over time. Normally organisational conflicts are regarded as spent after two years. In the absence of complicating factors, members who were formerly partners in firms providing professional services to any party to an activity, arbitration or investigation are not considered to have a disqualifying interest if two years have elapsed since they left the firm, provided that they have no continuing financial interest in or relationship with the firm.

Personal relationships

- 28** Personal relationships may be disqualifying interests where there is a real risk that they will affect an individual's judgement. Close relationships, such as with spouses, civil or cohabiting partners, and minor children, are normally regarded as giving rise to the possibility of a disqualifying interest. However, other relationships may also do so: for example, those with adult children (particularly those living at home or financially dependent); and those with close friends or individuals where there is a close financial link.

² For example, unit trusts, investment trusts, unit linked policies, pension schemes, or stocks and shares ISAs.

Prejudgement

- 29** The Adjudicator will approach decision-taking with an open mind. The ability to consider a particular case might be compromised or might appear to be compromised, for example, if the Adjudicator had written an article or made a speech expressing strong views about a particular issue or case, or, in an extreme case, had expressed strong opinions about a particular type of evidence or methodology.
- 30** The Compliance Officer will consider any evidence of prejudgement that would give rise to a reasonable concern on the part of an informed observer as to the Adjudicator's impartiality and independence on a case by case basis. However, prejudgement will not lightly be inferred. The important question is not whether a member may have an initial view on a particular issue, but whether he or she will bring an open mind to bear in inquiry work for the GCA.

Handling GCA Team interests

- 31** The GCA Compliance Officer will consider the risk of conflicts arising from the outside interests of the GCA team advising an arbitration or investigation in the same way as the Adjudicator (see paragraphs 15 to 30 above). However, the GCA team are in a different position to the Adjudicator. They are not the decision-makers in arbitrations or investigations. When the outside interests of the GCA team are being considered, their role, and in particular the degree of influence they could exert on an arbitration or investigation, will be relevant factors in determining what action, if any, should be taken. Their roles are varied; while some may enable them to influence the thinking and decisions of the Adjudicator, whilst others—for example, those working within administrative support teams, acting in a purely supervisory capacity or just providing services—do not give them such influence.
- 32** The GCA Team will also have regard to the risk of conflicts of interest arising when conducting procurement exercises on behalf of the GCA, and when considering external employment, appointments or consultancy work. The need to consider the risk of conflicts arising is one of the reasons why the GCA requires staff to obtain prior consent from the Compliance Officer to external employment, appointments or consultancy work.

Interests of advisers and consultants

- 33** During the course of an activity, arbitration or investigation, the GCA may instruct consultants and other external advisers to assist with aspects of its work. The roles played by consultants and advisers may vary considerably, and the appropriate approach to their outside interests will be determined according to their role in the inquiry. However, where consultants act as the equivalent to GCA team, their outside interests will be assessed as if they were members of the GCA team.
- 34** Where the GCA is considering whether to instruct a consulting firm to advise it on a particular issue, the GCA will take account of the interests of both the staff of the consulting firm and of the firm itself. In considering the interests of the firm, the GCA will take account of all relevant matters, which may include:

- 35** the present and future clients of the firm (in so far as they can be ascertained), the nature of the work for those clients, and the extent to which the firm is independent of parties which may be affected by the work of the GCA;
- (a) (b) the degree to which the staff of the firm engaged on behalf of the GCA are protected from improper influence (for example, by being ring-fenced from other staff of the firm);
 - (b) any professional conduct rules which apply to the firm and its staff; the record of the consulting firm in providing impartial advice to the GCA; and
 - (c) the nature of the project to be undertaken; its importance in the deliberations of the GCA.

Notification of conflicts of interest and handling

- 36** If the Adjudicator, member of the GCA team or external adviser considers they may have an interest which could put them into conflict, it must be disclosed to the GCA Compliance Officer as soon as possible for consideration as to what, if any, action should be taken.

Public records

The Register of Interests

- 37** The Register of Interests is a public document recording the organizational interests of all members. It is updated from time to time and annually.

Audit

- 38** The GCA carries out an annual audit of the conduct of the GCA's conflicts of interest policies and a report is published in its Annual Report.

The Compliance Officer

- 39** A Compliance Officer [Head of Office] within the GCA is responsible for ensuring that this policy on conflicts of interest is applied and enforced on a day-to-day basis. If a member of the GCA team is in any doubt about the significance of an outside interest at any time, he or she may consult the Compliance Officer, who will advise on appropriate action.

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THE NOLAN PRINCIPLES

The Nolan Principles of Conduct Underpinning Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or other friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Register of Interests

Christine Tacon

Type of Interest	Organisation	Start date	Expiry date	Additional information
Non-Executive Director	Met Office	2013	2016	Audit Committee
Director	Anglia Farmers	2013		Co-opted director
Member	Natural Environment Research Council	2013	2016	
Committee member	DEFRA	2010	2015	Strategic Regulatory Scrutiny Panel
Non-Executive Director	Ursula Agriculture Ltd	2013		Business start up
Governor	Harper Adams University	2012		
Public Member	Network Rail	2012	2015	
Director	Melbobby Ltd	Pre 1990		Family property business
Chair	UK Farming plc	2012		Dormant company
Non-Executive Director	Farmway Ltd	2012	2014	Business sold