



Groceries Code Adjudicator

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Margot James MP
Minister for Small Business, Consumers and Corporate Responsibility

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13 December 2016

Dear Margot,

I am writing in response to the statutory review of the Groceries Code Adjudicator. I have set out below my response to the two 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)). I have now published three annual reports and I enclose the relevant extracts of these reports in the annex 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. My annual reports also address GCA performance against these objectives.

I hope you will find it helpful for me briefly to reiterate how I have chosen to work: I have set this out in the following paragraphs.

I encourage suppliers to bring Code-related issues and evidence to my attention in order to inform the decisions and actions I take. I also gather information from retailers, trade associations and others. The stronger the evidence base I have, the greater the justification for action. I am also encouraging direct suppliers to get trained so they understand the Code

and how I am interpreting its provisions, and to assist them in their commercial negotiations with retailers.

As a small regulator I have to prioritise my activities. I have published statutory guidance on my investigation and enforcement functions which sets out the four prioritisation principles which guide all my activities, including decisions about whether to launch an investigation.

In order to enable me to fulfil my statutory purposes set out in the Act, I have developed an approach that fits the resources available and the functions the GCA was set up to perform. I consider this to be a modern regulatory approach, with collaboration and business relations at its core. It is delivered through a three-stage process. When Code-related issues are raised with me by suppliers I will make retailers aware of them, request that Code Compliance Officers (CCOs) investigate the issue internally and report back to me, perhaps making changes to their business where merited. I may take formal action if the practice continues after the collaborative route has been exhausted.

Through this process I ensure that issues are raised promptly with the regulated retailers for them to consider and work on internally, with any necessary action taken by them and reported to me as swiftly as possible. This is an efficient and effective way to deal with any current groceries sector practices that may not be consistent with the Code, and to put them right for the future. This works to the benefit of retailers and suppliers alike, without imposing disproportionate burdens on business or GCA interference in what are often essentially commercial practices.

My ultimate goal is to promote a stronger, more innovative and more efficient groceries market through compliance with the Code and, as a result, to bring better value to consumers.

I am convinced that the collaborative approach is bringing results. Costs of regulation are kept as low as practicable while still delivering results, often far quicker than more formal regulatory action. In my last annual report I noted that all the regulated retailers have made changes to improve their compliance with the Code and I highlighted some of these improvements.

My annual groceries sector survey also demonstrates the progress made, with there being a reduction in the number of direct suppliers reporting that they have encountered a Code-related issue.

On my website I have also published a range of specific information about my regulatory engagement. This includes: statutory guidance on investigation and enforcement functions; four additional pieces of guidance; four Code clarification case studies; two best practice statements; one voluntary commitment reached with retailers; the report of the investigation into Tesco plc; and updates on progress on my Top 5 issues.

2. [BEIS] 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) Make an Order setting out the information which you may only consider when deciding whether to investigate; b) Amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015.

The GCA does 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. The GCA finds the current provision clear and sensible and is happy to receive information from any source about potential breaches of the Code, as currently provided for by the Act.

As you will remember, 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. Indeed, I have worked hard since taking office to overcome supplier reluctance to report to me issues that may indicate Code breaches; and in consecutive surveys, I have sought to understand the reasons for their reluctance so I may address them and work with the most extensive and reliable base of supplier evidence available.

I am pleased that the level of penalty I suggested was agreed and set out in the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015. I support the continuation of this penalty provision so that should I investigate and find a retailer in breach of the Code I have the ability to impose a fine.

Closing remarks

I hope this information is helpful. I know that there will be keen interest in my response so I have decided that I will publish this letter on my website.

As I have indicated consistently throughout the preparations for this consultation and call for evidence, I consider that it is not appropriate for me to give my views on the call for evidence on the case for extending the GCA’s remit.

I would be happy to meet you to discuss anything in this letter.

Yours sincerely,



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Annex to the GCA response letter

Groceries Code Adjudicator Annual Report and Accounts (23 June 2013 to 31 March 2014)

Disputes referred to arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009
The GCA has received two requests for arbitration. The GCA arbitration policy was published on 31 March 2014. The GCA made it clear to potential claimants that no arbitration could commence until the GCA policy had been published.
Investigations carried out by the GCA
No investigation had been launched by the GCA.
Cases in which the GCA has used enforcement measures
As no investigation has been launched, no enforcement measure has been recommended.
Recommendations that the GCA has made to the Office of Fair Trading for changes to the Code
The GCA has made no recommendation to the Office of Fair Trading for any change to the Code.

Groceries Code Adjudicator Annual Report and Accounts (2014 – 2015)

Disputes referred to arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009
The GCA received two requests for arbitration in reporting year 2013/14. The cases have progressed through this accounting year but no final decision has been reached in either dispute.
Investigations carried out by the GCA
The GCA launched its first investigation on 5 February 2015, into Tesco plc.
Cases in which the GCA has used enforcement measures
The investigation continues and therefore no enforcement measure has been imposed.
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 recommendation to the CMA for any change to be made to the Code.

Groceries Code Adjudicator Annual Report and Accounts (2015 – 2016)

Disputes referred to arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009
The GCA received two requests for arbitration in reporting period 2015/16 adding to the two initiated in previous years. Two arbitrations have concluded and two remain underway.
Investigations carried out by the GCA
The GCA concluded its first investigation, into Tesco plc, on 26 January 2016.
Cases in which the GCA has used enforcement measures
The GCA chose to use the make recommendations enforcement measure and issued five recommendations to Tesco plc.
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 CMA for any change to be made to the Code.