



Groceries Code
Adjudicator

Launch date: 31st July 2013
Response by: 22nd October 2013

**Statutory guidance on how the Groceries Code
Adjudicator will carry out investigation and enforcement
functions**

Consultation response form

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Adjudicator.

The Adjudicator will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.	<input type="checkbox"/>
Reason for confidentiality:	

Name: John Noble	
Please tick if you are responding on behalf of your organisation.	<input checked="" type="checkbox"/>
Name of organisation (if applicable): British Brands Group	
Address: 100 Victoria Embankment London EC4Y 0DH	

Please mark the category which best describes you as a respondent.

<input type="checkbox"/> Retailer	<input type="checkbox"/> Direct supplier	<input type="checkbox"/> Indirect supplier
<input checked="" type="checkbox"/> Representative body	<input type="checkbox"/> Other	

Please specify: A representative body, the majority of members comprising direct suppliers of branded grocery products to supermarkets.

Investigations

1) Is the guidance clear on how the **investigation criteria** will be applied?
If not, how can this be improved?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Comments:

The basis for carrying out an investigation reflects the GCA Act.

The prioritisation principles are relevant, sufficiently clear and reasonable. Compared with the principles laid down by other regulatory authorities, these guidelines are clearer and more comprehensive than the norm.

We would not wish to see these principles clarified further in any way that may reduce the flexibility of the Adjudicator or restrict her ability to monitor and enforce the GSCOP.

2 Does the **complaints** procedure explain how the Adjudicator will deal with complaints?

If not, how can this be improved?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Comments:

The flow chart generally explains clearly how the Adjudicator will deal with complaints.

The only clarification we request concerns Step 1. We understand and support the Adjudicator's need to clarify whether an issue has been raised by a supplier with a retailer or its Code Compliance Officer but it should not be a requirement for a supplier to do so prior to any investigation or other initiative being considered. Such a requirement would introduce a significant hurdle for suppliers, one that would inhibit most from coming forward.

In instances of a significant breach involving many suppliers, speed may be crucial in limiting negative effects on suppliers and their investments. While we do not expect timescales to be clarified in the consultation document, over and above the principles laid down in paragraph 39, the procedure needs to have the flexibility to operate quickly. We believe it has this and we have not identified any mechanism where a party may unduly delay the procedure. It is important that this remains the case.

3 Does the **investigations** procedure explain how the Adjudicator will deal with investigations?

If not, how can this be improved?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Comments

The information gathering powers are crucial for the Adjudicator to obtain accurate information on practices in the supply chain.

We consider it fair and reasonable for costs to be allocated as outlined in the consultation document.

Enforcement

- 4 Does the section on **enforcement powers** explain how the Adjudicator will choose whether to use these and which ones?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
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Comments:

It is important that the Adjudicator has the flexibility to call on a range of remedies and sanctions should any breach of the GSCOP be found and the guidance provides this.

Applying sanctions that are proportionate and reasonable relevant to the nature and seriousness of the breach is wholly appropriate.

We endorse a stepped approach, whereby sanctions increase in severity with the persistence of practices that breach the GSCOP.

We support the highest level of transparency concerning breaches of the GSCOP as this will inform suppliers and others and indicate specific problem areas. We therefore strongly support:

- the ability of the Adjudicator to require a retailer who has been found to be in breach to disclose and publish information. Guidelines on such disclosure, in particular the level of detail required, may be helpful for retailers;
- information on breaches discovered via arbitrations to be included in the GCA's annual report (as long as this does not disclose the parties to the arbitration);
- information on breaches found by informal means (eg from evidence from

suppliers but absent an investigation) also to be included in the GCA's annual report (recognising that the identity of the retailer should not be disclosed). To be clear, this would be in addition to the usual disclosure of any breaches found through any formal route such as investigations

Continued monitoring to ensure recommendations are followed – or alternative solutions put in place that prevent breaches of the GSCOP – is an important part of the Adjudicator's role.

- 5 The Adjudicator proposes that the **maximum financial penalty** for breaches of the Code is 1% of UK turnover. Do you agree? If not, what do you think the maximum financial penalty for Code breaches should be?

Comments:

We agree that the maximum penalty is 1% of UK turnover. We think that this gives an appropriate indication of the seriousness of breaching the GSCOP which has been established to address an adverse finding of the Competition Commission. Furthermore it provides an effective deterrent.

Further guidance

This statutory guidance explains: (i) how the Adjudicator will decide whether to carry out investigations; (ii) how the Adjudicator will carry out investigations; (iii) how the enforcement powers will be applied; and (iv) the criteria the Adjudicator intends to adopt in calculating financial penalties.

- 6 The Adjudicator is happy to provide later, **additional guidance** should that be useful. For example, we expect to provide guidance on the appeals process and arbitration. What additional guidance would you like to see?

Comments:

In due course, some guidance on the evidence that would be required to give reasonable grounds for suspecting a breach of the GSCOP would help. However we do not believe this is required to meet the statutory requirement for guidance laid down in the GCA Act.

The publication of ongoing advice and guidance on the interpretation of the GSCOP and on prevailing practices is a crucial part of the GCA's role and there are likely to be many areas where such guidance will be helpful, for example on de-listing and what constitutes a significant reduction in the volume of purchases made from a supplier.

We appreciate that this is more an area for the OFT than for the GCA, but it would be helpful were guidance to be given to retailers on what should be included in their annual published reports. Currently there is a diverse approach which makes it difficult to gauge one retailer's performance against another's. Furthermore, there is a real lack of quantified information on important aspects on which we suggest all retailers should report publicly, for example numbers of alleged breaches, numbers of actual breaches, numbers of disputes and numbers of arbitrations.

Additional Comments

7 Do you have any other comments to make on the guidance?

Comments:

The guidance is clear, helpful and covers the relevant areas. We believe the guidance on investigations meets the requirement laid down in the GCA Act and we trust the Secretary of State will accept 1% of turnover as the maximum available penalty for breaching the GSCOP.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply.	X
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E-mail address for acknowledgement: jn@britishbrandsgroup.org.uk

The consultation period began on 31st July 2013 and will run until 22nd October 2013.

Please ensure that your response reaches us before the closing date by: e-mail to enquiries@gca.gsi.gov.uk marked '**Consultation Response**' or by downloading the response form which should be completed and e-mailed to the address above or sent to:

**Angela Latta
Groceries Code Adjudicator
2nd Floor
Victoria House
Southampton Row
London, WC1B 4DA**

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

If you would like further copies of this consultation document, it can be found at: <https://www.gov.uk/government/publications>.

Further information on the consultation and the GCA can be found at: www.gov.uk/government/organisations/groceries-code-adjudicator

Thank you for taking time to respond to this consultation.