



Groceries Code Adjudicator: Statutory Review

Response form

Personal / Confidential information

I want my response to be treated as confidential

About You

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	Respondent type
<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input checked="" type="checkbox"/>	Trade associations

Part 6: Questions for any other interested parties

1. Have you engaged with the GCA?

Yes No

2. How satisfied were you with how the GCA handled your issue?

Very satisfied

3. If you are a representative group (e.g. a trade association), would you consider raising an issue with the GCA on behalf of your members?

Yes No

Comments: We have done this on a number of occasions and value highly the ability to do so. There are two circumstances for raising issues: (1) where we have been notified of an issue by one or more members and seek clarification on the extent to which it may represent a breach of GSCOP; and (2) raising an issue that we believe to be a GSCOP breach and where we wish to maintain the anonymity of an individual member (we ascertain that the issue affects a number of members before raising it with the GCA). The actions we may seek from the GCA will vary by circumstance. In

addition to raising specific practices, we provide information to the GCA on the issues raised with us on our training courses, on an aggregated basis every six months, input that we hope provides her either with new information or verification of the concerns of suppliers at a particular point in time. We also arrange meetings at least annually between the GCA and our members, providing a further opportunity for members to raise concerns and seek clarifications. These meetings are well attended.

4. What do you believe has been the impact of the GCA on the groceries market?

Comments: We believe the GCA's impact on the groceries market has been significant and positive. The combination of GSCOP, the GCA's monitoring and enforcement and the enforcement regime (including fines), and it is a crucial combination, has brought greater certainty to members, reduced complexity (thereby increasing productivity) and strengthened the climate for investment in quality, range, choice and reputation from which consumers benefit directly. Trading practices by designated retailers that disrupt suppliers' investments unfairly have declined consistently and markedly, with contract terms better respected. At the same time, we detect that the ability for retailers to exercise their buyer power in relation to price negotiations has not weakened, sustaining downward pressure on consumer prices.

5. How effective do you consider the GCA has been in exercising her powers? (In responding to this question, stakeholders may wish to refer to the GCA's own guidance¹ on its approach to carrying out investigations, enforcement and arbitration)

a) In providing arbitration?

Comments: While important to have this provision, we do not consider arbitration as a significant enforcement tool. It is a measure of last resort which we understand is used predominantly in cases where a supplier has little lose, for example delisted or threatened with delisting. The GCA has publicly discouraged arbitrations on the basis that they are time consuming and costly and that her ability to bring a retailer and a supplier to an agreement is limited, bearing in mind she is an arbitrator rather than a mediator. Instead she has urged both retailers and suppliers to reach agreements as early as possible through commercial discussion and, if necessary, mediation, an approach we fully endorse as pragmatic and realistic.

b) In conducting investigations and undertaking enforcement activity?

Comments: We believe the GCA has been effective both in conducting investigations and in undertaking enforcement activity. We fully endorse and support: the GCA's collaborative approach, giving retailers the opportunity to resolve potential breaches in good time outside the spotlight of public enforcement; the message that any interpretation of the Code arising from a case study or enforcement action applies to all designated retailers; the supplier survey (in particular the ability to identify areas of concern by practice, by retailer, by category

¹ <https://www.gov.uk/government/collections/gca-guidance>

and potentially by business type); the focus on clear, well-communicated priority areas; and the transparent approach, publishing thorough annual reports and notes of meetings with Code Compliance Officers. The effectiveness of GSCOP is wholly reliant on the GCA's monitoring and enforcement function, backed up by the ability to levy fines (along with other enforcement options) when things go wrong. It is these elements that give the remedy credibility, encouraging compliance, and provide its deterrent effect, so we urge that these are not changed.

c) In providing advice, guidance and recommendations?

Comments: The GCA publishes clear and relevant advice, guidance and recommendations, evidenced by her report on payments for better shelf positioning, her clarification on variation of supply agreements and requests for lump sum payments, the overviews provided in her annual report, the annual conferences and the willingness to meet suppliers and suppliers' organisations to talk through and explain her work. That the GCA is proactive is evidenced by her initiative to engrain compliance throughout the businesses of designated retailers, a long-standing theme of her work and given particular prominence in the 2019 GCA Conference.

6. Do you think the GCA has been effective in enforcing the Code?

Yes

No

Please give your reasons: This question will allow us to gauge the broad sense of effectiveness in wide terms. Detailed analysis of effectiveness will be judged by responses to all questions.

Comments: Without question the GCA has been effective in enforcing the Code, something that has been achieved primarily through her collaborative approach with the designated retailers. The evidence of effectiveness comes from suppliers in the annual supplier survey, which shows that suppliers consider, year-on-year, that retailers are increasingly compliant, that potential breaches of GSCOP are decreasing and that incidents relating to her top priority issues are consistently declining. This is reinforced by the feedback we receive from suppliers on our GSCOP training courses (we run approximately 20 per year) and our members (which comprise over 40 FMCG suppliers, ranging in size from small to multinational businesses).

Do you have any other comments that might aid the consultation process as a whole?

We have three further comments, ranging from the detailed to the broad:

The GCA website – it is not easy to locate the key documents relating to the GCA's work. These are investigation reports, code clarifications, case studies, annual reports and supplier survey results. These are all in different locations under headings that are not intuitive. It would help were all the key documents relating to the GCA's work and her interpretation of the Code to be in one place.

Designation of retailers – we welcome strongly the annual review by the CMA of those retailers that should be designated under GSCOP. This is important in a dynamic market

such as grocery retailing. We find however that, while the criteria for designation is relatively clear (£1 billion UK grocery sales), the process for determining grocery turnover is not transparent. There is concern that this lack of transparency may give retailers scope to avoid designation. This concern is compounded by a lack of clarity over what are considered to be grocery products (for example, the differentiation between cosmetic and toiletry products is not clear, especially as in regulatory circles 'toiletries' are a subset of 'cosmetics').

Overall effectiveness – The GCA's effectiveness (which is interlinked with all the other elements of the GSCOP Order, including the enforcement regime with its fining powers and level of fines) is clear from a comparison with other approaches to regulating unfair trading practices in other countries. Approaches which depend on supplier complaints or do not have active and credible monitoring and enforcement we do not believe have had the demonstrable positive impact of the UK approach.

We also observe that the significant positive impact of GSCOP and the GCA in smoothing trading relationships between powerful retailers and their suppliers contributes positively to efficiency and productivity, in addition to their core role of benefiting consumers. It is therefore a valuable model for use in other sectors where retailers have buyer power, act as powerful gatekeepers between supplier and consumer and where unfair trading practices occur. The branded business model contributes positively to productivity by (1) spurring innovation to sustain reputation and competitiveness, (2) commercialising innovation by increasing its acceptability and appeal to consumers and (3) adding both tangible and intangible value to products. This contribution is constrained and undermined where trading relationships bring uncertainty, complexity, unnecessary costs and inefficiency. The GSCOP model is therefore one which has wider applicability and relevance.

Please acknowledge this reply

Would you be happy for us to contact you again from time to time either for research or about other consultations?

Yes

No

J A Noble

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