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Origins, role, responsibilities and activities of the UK's Grocery Code Adjudicator

1 Background

This paper provides an overview of the origins, role, responsibilities and activities of the UK's Grocery Code Adjudicator. The paper also highlights some of the issues being considered in moving forward both role of the Adjudicator, as well as providing a snapshot of EU activity on the issue of Unfair Trading Practices which might potentially complement or supersede the role of the Adjudicator.

2 Origins of the GCA

Within the UK, apparent problems with the functioning of the food supply chain led the then Competition Commission to undertake a review of the groceries market between 2006 and 2008. The review established that there were problems with the existing system which were having an adverse effect on competition due to a number of market features including supply chain practices that were detrimental to suppliers.

These findings led to the introduction of the Groceries Supply Code of Practice (GSCOP) in February 2010.

The GSCOP is underpinned by an overarching ‘fair dealing’ provision, and includes (among others) a prohibition from making retrospective adjustments to terms and conditions of supply; a prohibition from holding suppliers liable for losses due to shrinkage; a requirement to enter into binding arbitration to resolve any dispute with a supplier; and a requirement not to unreasonably de-list a supplier. The code applies to any retailer with groceries turnover in excess of £1 billion per year (currently there are ten), and governs their relationships with their direct suppliers. The ten retailers to whom the code currently applies are as follows:

- Aldi Stores Limited;
- Asda Stores Limited;
- Co-operative Group;
- Iceland Foods Limited;
- Lidl UK GmbH;
- Marks and Spencer plc;
- Wm Morrison Supermarkets plc;
- J Sainsbury plc
- Tesco plc; and
- Waitrose Limited

It should also be noted that the GSCOP only applies to direct suppliers to the 10 designated retailers, and this situation would currently rule out its application to the majority of primary producers/farmers within Northern Ireland and the rest of the UK.

Following the general election in May 2010, the coalition government confirmed its intention to create a groceries ombudsman and published a draft Bill setting out the powers of the Adjudicator in May 2011. The Bill was considered by both the EFRA and BIS Select Committees in summer 2011, and both recommended changes to the draft legislation. In the Queen’s Speech on 9th May 2012¹, the government announced its intention to introduce a formal Bill, which was subsequently published on 11th May 2012.

3 Operation of the GCA

The Groceries Code Adjudicator Act came into force on the 25th June 2013 and a key element of the Act was the creation of the role of the Grocery Code Adjudicator (GCA). The Adjudicator’s role can be summarised as overseeing the relationship between supermarkets and their suppliers, with the express purpose of ensuring that large supermarkets adhere to the Groceries Supply Code of Practice.

¹ [The Queen’s Speech 2012](#)

The key statutory functions/responsibilities of the GCA are identified as follows:

- Provide advice to both suppliers and large retailers on matters relating to the Code;
- Arbitrate in disputes between suppliers and large retailers;
- Investigate issues to ascertain whether there has been a breach of the Code - including confidential complaints from any source about how supermarkets treat their suppliers (can come from suppliers or 3rd parties);
- Enforce the Code;
- Impose sanctions and other remedies for breaches of the Code – including fines in the most serious cases; and
- Publish an annual report on the Adjudicator’s activities.

The GCA published its first annual report and accounts in June 2014², and table 1 below provides an overview of the GCA statutory reporting requirements, as set out in the Groceries Code Adjudicator Act 2013 for the 2013-14 and 2014-15 time period.

Table 1: Grocery Code Adjudicator statutory reporting requirements performance 2013-14 and 2014-15

	2013-14 ³	2014-15 ⁴
Disputes referred to arbitration under the Groceries Supply Order	2	No new cases 2013-14 cases progressing but no final decision reached in either dispute
Investigations carried out by the GCA	0	1 – launched on 5/2/15 into Tesco plc
Cases in which the GCA has used enforcement measures	0	Investigation into Tesco ongoing so no enforcement measures imposed
Recommendations that the GCA has made to the Competitions and Markets Authority(CMA) (formerly Office of Fair Trading) for changes to the Code	No recommendation made to the CMA for any change to be made to the code	No recommendation made to the CMA for any change to be made to the code

The data in table 1 highlights that whilst the GCA has been in existence since 2013, to date there is only one ongoing investigation and two ongoing arbitration exercises. There has also been no use of any enforcement measures over this time and no recommendations for any changes to be made to the Groceries Supply Code of Practice.

An annual survey conducted by YouGov over the 2 years that the GCA has been in existence has been adopted with the express aim of gathering the view of the groceries supply chain and some of the key findings from the last 2 years are set out in table 2 below:

² [Annual Report and Accounts, 23 June 2013 – 31 March 2014, Groceries Code Adjudicator](#)

³ *ibid*

⁴ [Annual Report and Accounts, 2014 – 2015, Groceries Code Adjudicator](#)

Table 2: GCA - Annual Survey Results 2015

	2014 survey ⁵	2015 survey ⁶
Responses	574	1,145
Proportion of Suppliers that had experienced issues that could be breaches of the Groceries Supply Code of Practice	8 out of 10	7 out of 10
% of Suppliers who would consider raising issues with the GCA	38%	47%
% of Suppliers who wouldn't contact GCA who said they feared retribution	69%	68%
% of Suppliers who wouldn't contact the GCA who said they didn't think the GCA would be able to do anything	48%	36%

Whilst the 2015 annual survey results do appear to present an improving picture when compared to the 2014 figures, but there are still 7 out of 10 suppliers experiencing issues that could be breaches of the GSCOP and less than half of suppliers would consider contacting the GCA. It should also be noted that whilst there appears to be an increasing belief that the GCA will be able to do something the fear of retribution has more or less remained the same.

4 Future direction/role for GCA/GSCOP?

The Conservative General Election Manifesto published in April 2015 gave a commitment to ‘...*champion our new Groceries Code Adjudicator, so farmers receive a fair deal from the supermarkets*’⁷, but there was no indication as to how this would be achieved given the limitations around the application of the GSCOP to indirect suppliers.

The 2015 Queen’s speech delivered to Parliament on the 27th May 2015⁸, following the election of the Conservative Government in May, **contained no references to the amendment or extension of the GSCOP to include primary producers/farmers.**

Speaking at the Grocery Code Adjudicator’s annual conference in June 2015, Mr Bob MacDowall⁹ from the Competition and Markets Authority revealed that **the extension of the Adjudicator’s powers would require either a ‘*fresh CMA investigation*’ similar to the original Competition Commission inquiry that established the**

⁵ [Working for fairness in the groceries supply chain, Groceries Code Adjudicator, September 2014](#)

⁶ [GCA - Annual Survey Results 2015, YouGov](#)

⁷ [THE CONSERVATIVE PARTY MANIFESTO 2015](#)

⁸ [Queen's Speech 2015](#)

⁹ [Extension of GCA powers could take years, The Grocer, 25 Jun 2015 |](#)

GSCOP, or the introduction of ‘primary legislation’ from the government. There are currently no indications of action on either these fronts.

In a wider EU context it should be noted that the European Commission issued a Communication on Tackling unfair trading practices in the business-to-business food supply chain in July 2014¹⁰, which encouraged sign up to the EU’s voluntary Supply Chain Initiative and also asked Member States to examine whether their current national regulatory framework is appropriate to address unfair trading practices.

As things currently stand, **the European Parliament’s AGRI Committee formally adopted an opinion on The Commission’s Unfair Trading Practices in the food supply chain Communication, on the 12th November 2015¹¹ and this opinion included a call for EU legislation to protect all food suppliers.** The Parliament’s IMCO Committee is the lead committee responding to the Commission’s Communication and whilst considering the opinion of the AGRI Committee, they are expected to vote on their draft report on the 7th December 2015, which upon approval by the Committee, would then go to a full plenary debate and vote of the European Parliament early in 2016.

5 Key issues/questions

- The GSCOP and role of the GCA currently only cover those businesses which are directly supplying the 10 identified retailers and as such would not currently apply to the majority of Northern Ireland farmers. Whilst there are calls for the extension of powers to indirect suppliers, there must be questions as to whether such a mechanism would be utilised by farmers given the apparent reluctance of many existing direct suppliers to raise issues that they have with the GCA.
- Whilst the Conservative’s 2015 general election manifesto did emphasise championing the GCA to receive a fair deal for farmers the lack of new or amended legislation commitments within the Queen’s speech would appear to make this commitment hard to achieve. Within this context are there moves in the background to either introduce legislation within this parliament or commission the Competition and Markets Authority to undertake a further inquiry?
- Given potential developments on Unfair Trading Practices at an EU level, what is the GCA’s position on any potential EU legislation that could emerge? Would this complement, complicate or undermine the existing UK provisions?

¹⁰ [Tackling unfair trading practices in the business-to-business food supply chain, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of the Regions, 15th July 2014](#)

¹¹ [MEPs vote in favour of legislation to tackle unfair trading practices, AgriLand, 13 November 2015](#)

