
Purpose

1. The purpose of this document is to explain
   • the respective roles of the OFT and the Groceries Code Adjudicator (GCA) – see www.gov.uk/gca
   • the Office of Fair Trading’s (OFT) role in the monitoring and enforcement of the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order)

2. For advice on the GCA’s role in overseeing and enforcing the Groceries Supply Code of Practice (GSCOP), and advice on what grocery suppliers should do if they want to pursue a dispute under the GSCOP please visit www.gov.uk/gca

3. Annexe 1 contains Order compliance practice suggestions for Designated Retailers (see below).

4. Annexe 2 lists the ten Designated Retailers to which the Order and the GSCOP apply.

Background

5. Following a reference by the OFT under section 131 of the Enterprise Act 2002, the Competition Commission (CC) published a report on 30 April 2008 on its investigation into the Supply of Groceries in the United Kingdom. The CC concluded that there were features of the market which prevented, restricted or distorted competition, and that an adverse effect on competition therefore existed. It found that one of the features that adversely affected competition in the market was the exercise of buyer power by certain grocery retailers, through the adoption of supply chain
practices that transfer excessive risks and unexpected costs to suppliers. To address the adverse effect of these practices, the CC proposed:

- the establishment of the GSCOP to supersede the code of practice that was put in place by way of undertakings following the CC’s 2000 report on the supply of groceries from multiple stores in the United Kingdom; and

- the establishment of an ombudsman (the GCA) to monitor and enforce compliance with the GSCOP

6. The Order was published on 4 August 2009 and came into effect on 4 February 2010. It established the GSCOP, which is set out in Schedule 1 of the Order. The retailers who are bound by the Order (‘Designated Retailers’) are listed in Schedule 2 to the Order, and Annex 2 to this document. Further retailers with a turnover in the supply of groceries in the UK exceeding £1 billion may be designated in the future by the OFT under Article 4 of the Order.

7. The CC does not have the power to establish an ombudsman by means of an order so, initially, it sought undertakings from retailers to do so. Since a number of retailers declined to give such undertakings, on 4 August 2009, the CC recommended that the Government should establish an ombudsman. The Government accepted the recommendation and the Groceries Code Adjudicator Act 2013 provides for the creation of the GCA.

The OFT’s role

8. Sections 162-167 of the Enterprise Act 2002 set out the powers and duties of the OFT in relation to the monitoring and enforcement of undertakings and orders arising from market investigation reports by the CC. In particular, section 162(2)(a) requires the OFT to keep compliance with enforcement undertakings and orders under review, and section 167(6) enables the OFT to bring enforcement proceedings.

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1 Cmd 4842 – see http://www.competition-commission.org.uk/inquiries/completed/2000/index.htm and scroll down to ‘supermarkets’
9. The main elements of the OFT’s role are:

- to designate retailers who meet the designation criteria in Article 4 of the Order

- to monitor and enforce the obligations on designated retailers that are set out in the Order, ensuring that these retailers:
  
  o incorporate the GSCOP into supply agreements and make those agreements available in writing to their suppliers
  
  o train staff on the GSCOP
  
  o appoint compliance officers
  
  o respond to requests from suppliers to initiate dispute resolution proceedings
  
  o produce compliance reports and submit them to the OFT

10. The OFT’s role is confined to the operation and enforcement of the Order rather than the GSCOP. The OFT does not, therefore, provide guidance on the interpretation of the GSCOP or determine whether matters fall within the GSCOP’s scope. This is for the GCA.

11. The OFT has no role in resolving disputes between suppliers and retailers on the operation of the GSCOP. It is for the GCA, rather than the OFT, to investigate complaints by suppliers about breaches of the GSCOP.

**What should suppliers do if they want to pursue a dispute under the GSCOP?**

12. Because the GSCOP does not form part of the Order itself, the OFT’s statutory monitoring and enforcement powers do not apply to it. Complaints about breaches of the GSCOP should therefore be pursued with the Designated Retailer concerned, to be handled in accordance with the dispute resolution procedure set out in the Order. If necessary, suppliers can complain to the GCA. Advice on how to do this can be found [here](#).
13. The procedure for resolving disputes under the GSCOP is set out in Article 11 of the Order. In the first instance, the supplier should inform the Code Compliance Officer at the relevant retailer that it believes that the retailer has not fulfilled its obligations under the Code, and wishes to initiate the dispute resolution procedure.

14. If the issue is not resolved at the level of Code Compliance Officer then the matter may be referred to arbitration. Article 11 of the Order provides that the arbitrator’s costs in any arbitration will be borne by the retailer concerned, unless the arbitrator decides that the supplier’s claim was vexatious or wholly without merit, in which case costs will be assigned at the arbitrator’s discretion. All other costs of the arbitration will be assigned at the arbitrator’s discretion.

In what circumstances should suppliers bring concerns to the attention of the OFT?

15. Complaints about breaches of the Order will be investigated and pursued as the OFT considers appropriate.

16. Suppliers should inform the OFT if they believe that a retailer is in breach of any of the requirements of the Order (as opposed to breaches of the GSCOP). Such breaches might include, for example: failure to incorporate the GSCOP into supply agreements; failure to ensure that their suppliers have a written copy of the supply agreement; or failure to follow the dispute resolution procedure when a dispute is raised by a supplier.

17. Compliance with the Order is also enforceable by civil proceedings brought by the OFT or CC for an injunction (under sections 167(6) and 167(7) of the Enterprise Act 2002). The OFT may also ask the CC to give a direction under Article 3(2) of the Order to secure compliance. Suppliers should be aware that, in order for the OFT to pursue alleged breaches of the Order brought to their attention by suppliers, it will normally be necessary to disclose their identity to the relevant retailer. This may be necessary in order to ensure that the retailer is made aware of the nature of the alleged breach and that the matter can be dealt with as effectively and efficiently as possible. Alternatively, it may be impossible to pursue the matter without revealing information that will enable the retailer to deduce the identity of the supplier.
What did the OFT do in the lead up to the Order coming into effect?

18. After publication of the Order in August 2009, the OFT met designated retailers to discuss their arrangements for compliance, covering such matters as the appointment of Code Compliance Officers, the training of staff, and the incorporation of the GSCOP into supply agreements. Some of the issues arising from these discussions are described in Annexe 1 of this note.

19. In line with the OFT’s advice, on 4 February 2010, the CC released certain retailers from undertakings given following the CC’s report in 2000 to comply with a Code of Practice on their dealings with suppliers. The GSCOP has superseded these undertakings.

20. Enquiries about the GSCOP should be addressed to:

Christine Tacon  
Groceries Code Adjudicator  
Victoria House  
Southampton Row  
London  
WC1B 4AD

Phone: 020 7271 0282  
E-mail: enquiries@gca.gsi.gov.uk  
www.gov.uk/government/organisations/groceries-code-adjudicator

21. Enquiries only about the Order should be addressed to:

Bob MacDowall  
Market Remedies Team  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London  
EC4Y 8JX

E-mail: bob.macdowall@oft.gsi.gov.uk  
Phone 020 7211 8574

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Annexe 1
Suggestions for practice in complying with the Order

A1.1 The points below are offered as suggestions only. They are not presented as guidance. It is for each Designated Retailer to consider how best to ensure compliance within the context of its own organisation. Each Designated Retailer is best placed to consider the extent to which suggestions made here have value and relevance in that context.

Incorporating the GSCOP into Supply Agreements - retailer and supplier terms and conditions

A1.2 Article 5(1) of the Order requires that a Designated Retailer must not enter into or perform any Supply Agreement unless that Supply Agreement incorporates the Code and does not contain any provisions that are inconsistent with the Code. The Explanatory Note on the Order makes it clear that supply may be either on retailer terms and conditions or those of the supplier (see paragraph 21). Where it is agreed that supply is to take place on the retailer’s terms and conditions, these must incorporate the GSCOP.

A1.3 Where supply is on the supplier’s terms and conditions, a Designated Retailer should draw the attention of the supplier to the requirements of Article 5(1). Where agreement is not reached as to on which set of terms and conditions (retailer’s or supplier’s) supply is to take place, a Designated Retailer should ensure that its own terms and conditions incorporate the GSCOP and should draw the attention of the supplier to the requirements of Article 5(1).

Incorporating the GSCOP into Supply Agreements

A1.4 When communicating with suppliers on Supply Agreements, Designated Retailers communicating by e-mail may wish to consider making use of "delivery receipt" and "read receipt" functions to confirm that addressees have received the documents sent.

A1.5 Establishing a dedicated e-mail address for supplier queries relating to the implications of the GSCOP for Supply Agreements may assist retailers in encouraging and managing communication on this with suppliers.
Training

A1.6 In addition to training staff with responsibilities under the Order and GSCOP, a Designated Retailer may wish to consider creating a dedicated e-mail address to which staff are encouraged to send any queries that arise about compliance with the GSCOP or Order.

A1.7 Where a Designated Retailer operates a performance management system, it may wish to consider whether performance management may have a role in contributing to a culture of compliance with the GSCOP and Order. An example might be where one or more objectives relating to Order/GSCOP compliance is/are measured as part of performance assessment.
Annexe 2

LIST OF GROCERY RETAILERS TO WHICH THE GROCERIES (SUPPLY CHAIN PRACTICES) MARKET INVESTIGATION ORDER 2009 AND THE GROCERIES SUPPLY CODE OF PRACTICE APPLY

Aldi Stores Limited

Asda Stores Limited

Co-operative Group Limited

Iceland Foods Limited

J Sainsbury plc

Lidl UK GmbH

Marks and Spencer plc

Tesco plc

Waitrose Limited

Wm Morrison Supermarkets plc