



Learning from the Groceries Code Adjudicator experience

Addressing corporate power issues in the
food system

A report of the Business Forum meeting
on Tuesday 7th October 2014

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About the Business Forum

Ethical questions around climate change, obesity and new technologies are becoming core concerns for food businesses. The Business Forum is a seminar series intended to help senior executives learn about these issues. Membership is by invitation only and numbers are strictly limited.

The Business Forum meets six times a year for an in-depth discussion over an early dinner at a London restaurant.

To read reports of previous meetings, visit foodethicscouncil.org/businessforum.

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Introduction

Market and political power in the food system has become concentrated in the hands of relatively few organisations in recent decades. The resulting economies of scale have, it is argued, enabled customers to access wide product ranges at affordable prices. However, some claim that major food businesses have not always been held accountable for their actions, which has led to allegations of abuse of power and unfair treatment of suppliers in some instances. A long campaign for the introduction of an independent adjudicator in the UK ensued.

The Government appointed its first Groceries Code Adjudicator (GCA) in 2013 to oversee compliance with the Groceries Supply Code of Practice which itself became law in 2010. The Code is designed to regulate the relationship between the ten large grocery retailers and their direct suppliers. The GCA's role is to help develop a more equitable relationship between retailers and suppliers. As well as promoting good practice it has the power to investigate and fine retailers for non-compliance with the Code.

The October 2014 meeting of the Business Forum explored some of the issues relating to corporate power in the food system and the role of the GCA in addressing these.

We are grateful to our keynote speakers Christine Tacon CBE (Groceries Code Adjudicator) and Professor Tim Lang (Professor of Food Policy at City University, London). The meeting was chaired by Dan Crossley, Executive Director of the Food Ethics Council.

The report was prepared by Chloe Grahame and Dan Crossley and outlines points raised during the meeting. The report does not necessarily represent the views of the Food Ethics Council, the Business Forum, or its members.

Key Points

- The Groceries Code Adjudicator (GCA) was appointed in 2013 to ensure compliance with the Groceries Supply Code of Practice. The GCA's principal tools include arbitration, launching investigations and working closely with retailers.
- Power in the food system is currently concentrated at the retail end of the supply chain and a huge market share is held by a small number of retailers. Some argue that this has led to widespread abuses of power with small suppliers often suffering most.
- It was felt that government policy on food and farming is lacking an overall vision and therefore taken a mostly reactive approach to addressing issues in the food system.
- Discount supermarkets were cited as examples of alternative practice regarding numbers of products in stores, mechanisation of production to reduce costs and treatment of suppliers.
- Issues of power in the food system are not exclusive to the UK and it was argued that the GCA has the potential to both improve practice domestically and act as a model for change worldwide.
- A key challenge for the GCA has been obtaining enough evidence to launch investigations. Suppliers have not come forward as they can reportedly be fearful of potential consequences despite the anonymous nature of the process.
- The GCA has a specific, legally defined remit. Some believe that is insufficient as it does not address root causes of power issues in the food system. The question remains as to what other mechanisms might (also) be needed to prevent abuses and, some may argue, to prevent market concentration in the first place.
- Collaboration was discussed as a key tool to bring about a more secure and fair food system. This could take the form of collaboration across the retail sector; throughout supply chains and between civil society and government in defining priorities for a better food economy.

Power in the food system

A changing picture

Since the industrial revolution, power in food system supply chains has been relatively fluid. In the 19th Century, it was principally concentrated amongst farmers; towards the middle of the 20th Century, manufacturers and wholesalers tended to dominate; and by the end of the century the concentration of power shifted into retail where it has broadly remained ever since¹.

These developments have led to increasingly complex and lengthy supply chains with the proportion of value added typically shifting further and further away from farmers and producers. It was argued that, in discussions around power in the food system, the most important ingredient – land – is often forgotten. Land has been the principle source of human power in history. It was suggested that there is likely to be a revolution in the next few years spurred on by economic and ecological changes and centred on the principle of land ownership.

The role of food culture

As the first industrialised nation, Great Britain experienced enormous and rapid urban growth at the same time as power shifted from rural to urban centres. Consequently, many people lost a sense of where food came from, while seasonal eating habits and the value of cooking as a social experience declined. This has meant that British culture today often ignores the links between people, food and land.

A comparison was made between the British and French people's relationship with food. In France, a rich culinary tradition reportedly presides which holds deeply rooted values for land and agriculture. The conclusion was drawn that the British people's distant relationship with food and farming has caused many of the problems in the food system and that solving these problems must therefore take a cultural as well as policy-based approach. These problems include diet-related diseases, apparent growing demand for

ever cheaper food and injustices across the supply chain.

Government (in)action?

Despite a number of food-related crises and trends in recent decades (including amongst others BSE, turbulent commodity prices and obesity), it was suggested that food and farming has been a background issue politically, with no cohesive policy objectives since the 1950s.

It was suggested that the neoliberal discourse, which has increasingly dominated government policy over the past few decades, dictates that all policy should be focused on market behaviour. An example given was the Coalition's open prioritisation of increasing exports and competitiveness in food industries. Some claim this has been at the expense of other important issues such as addressing growing food poverty.

Politicians have tended towards 'damage control' when problems have arisen in the food system in recent decades. This often involves creating new bodies or mechanisms (such as the Food Standards Agency and the Groceries Code Adjudicator) which are given varying degrees of power to investigate, punish and take responsibility over a particular area of concern. The result is that government's responsibility for improving public health, protecting the environment or ensuring fair practice is passed on to quasi-independent institutions. It was suggested that these institutions often lag behind the reality and sometimes take a reactive rather than proactive approach to change.

By limiting the government's role to maximising market potential and creating independent regulatory institutions, policy makers have arguably absolved themselves of the responsibility to directly tackle the core issues in the food system.

¹ Schirach-Szmigiel "Who is in Power Today and Tomorrow in the Food System", USDA Economic Research Service, Washington DC: 2005

Who's running the show?

Retail oligopolies

Power in the food system is currently concentrated at the retail end of the supply chain and a huge market share is held by a very small number of retailers². This has meant that it is possible for these retailers to dictate, cajole and (it was claimed) sometimes bully those further down the supply chain in order to maximise their profits. This has a huge impact on suppliers of all sizes, although smaller suppliers are often most affected.

Common practices which were highlighted included:

- **Forecasting errors/ risk displacement:** Whether it is linked to consumer demand, the weather or other external factors, risk is commonly passed on to suppliers. This occurs through last minute order changes which oblige suppliers to keep large amounts of stock on hand, and can lead to fines for incomplete deliveries or last minute cancellations of orders. There is no system in place to measure the accuracy of forecasts or orders. This system results in huge amounts of waste, particularly in fresh produce. It is common practice that supermarkets do not compensate their suppliers for forecasting errors.
- **Compensation demands:** Whilst it is fair for supermarkets to demand compensation when quality of produce does not meet standards, often fines can be disproportionate (for example a fee of £45 per customer complaint for something as minor as a black onion in a bag). The 'drop and drive' phenomenon (where products leave a supplier with what was believed to be the correct number of cases which by the time they have been distributed to depot often leads to deductions from invoice for missing stock) also often leads to punitive fines.
- **Listing fees:** These are technically prohibited by the Code except in exceptional circumstances but, as one participant claimed, 'everyone does it'.
- **Forensic auditing:** 'No win no fee' auditors are commissioned by supermarkets to try and prove

² Figures from 2013 show that the biggest 4 supermarkets in the UK control 75% of the market <http://www.kantarworldpanel.com/global/News/Grocery-Market-Share-UK---Two-Directions>

that suppliers owe them money. Suppliers will often need to hire additional staff or lawyers to counter these claims which can be very expensive.

- **Unfair demands:** Retailers have been known to demand that suppliers use specified (often expensive) packaging companies which, some claim, they then gain commission from.

Complex supply chains

Over time, the food system has become increasingly complex with lengthening supply chains, excessive numbers of stock-keeping units (SKUs) and extensive transport services. The situation was described by one participant as 'endemically inefficient' as it has been built with the sole objective of increasing profit.

Forecasting was cited as an example of inefficient practice. Currently there are not the right incentives to improve supermarket forecasting for orders, although it was suggested that companies should include accurate forecasting to their Corporate Responsibility strategies. Supermarkets are increasingly working with weather forecasters to ensure they have the right stock for the period or season. They also use their loyalty card systems to build extensive databases and analyse consumer behaviour. A more accurate forecast could reduce costs and waste, so should this information not be used to improve forecasting?

Comparisons overseas

Concentration of retail power is by no means an exclusively British issue. In Australia, for example, over 70% of the market is controlled by just two supermarkets³; and both Finland⁴ and Iceland were mentioned as having high levels of market concentration in retail.

Some argue that the UK's GCA can and should be seen as a model for attempting to address these issues around the world. As reported in the GCA's annual report '[there have been] many enquiries from

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<http://www.coles.com.au/portals/0/content/pdf/shareholders/grocery%20industry%20report.pdf>

⁴ <http://www.investinfinland.fi/articles/news/retail/lidl-increases-market-share-in-finland/51-889>

overseas governments and interested organisations looking to create a similar body to the GCA.⁵

With large companies entering the retail market from overseas such as Aldi, Lidl and Walmart, questions have to be asked about the nature of borders and jurisdiction when it comes to power regulation. The EU Commission has been involved for some time in these wider questions of power in retail and published a voluntary code in July 2014⁶.

Levelling the playing field

The Groceries Code Adjudicator

Corporate power in the food system has been a top issue for campaigners over the past 20 years, with campaigns calling for a specific legal instrument to protect suppliers. The first Groceries Code Adjudicator (GCA) was finally appointed in 2013.

The GCA is a legal instrument which has the goal of investigating breaches of the Groceries Supplies Code of Practice (GSCOP) and more widely contributing to the creation of fairer relationship between suppliers and retailers. Some believe it has the potential to spark broader culture change in the retail sector. Large retailers covered by the Code are those with a groceries turnover of over £1bn. The CMA have determined the 10 currently covered but others are likely to come in scope as groceries turnover grows and may end up including Boots and Amazon.

To function as intended, the GCA needs evidence from direct suppliers in order to launch official investigations. One of the key features of the process is a legal obligation to ensure anonymity because suppliers could risk losing major contracts by coming forward with evidence against large retailers. This means that it is not possible to bring forward a case when there is only evidence from one supplier as their identity may be compromised.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322415/10143-GCA-Annual_Report_2014.pdf

⁶ http://europa.eu/rapid/press-release_IP-14-831_en.htm

Progress so far

Since the GCA was appointed, it was suggested that retailers have been reassessing their relationships with suppliers to ensure that they are Code compliant. It was also implied that some retailers spoke with the GCA to verify that certain changes in their contracts would be permitted. Whilst no investigation has yet been launched, the general consensus was that one successful investigation could lead to increased supplier confidence in the GCA, which in turn may lead to more suppliers willing to come forward with evidence.

These examples show the impact that the GCA can have as a deterrent against unfair practices. For more details of the actions taken by the GCA since inauguration, please refer to their annual report published in June 2014.⁷

Another way?

The major British supermarkets have long flourished on their ability to make profit out of what some claim are ever more convoluted and unfair methods. These practices have been increasingly under the spotlight due to the recent rise of discount retailers.

It was suggested that discounters often benefit from shorter and more transparent supply chains, significantly fewer suppliers and automated manufacturing systems (widespread in German and Italian markets). While the discounters may offer one stock-keeping unit (SKU) of tuna for example, other large supermarkets may offer over 50. The discounters, it was argued, are also less worried than their rival supermarkets about selling out of a product and so tend not to subscribe to last minute order changing practices which can be so damaging to suppliers. In many ways this explains how they are able to undercut the other major supermarkets whilst appearing to be GSCOP compliant.

On the other hand, it was pointed out that the discounters should not be held up as examples of best practice on every front. It was claimed that discounters have been known to copy products from

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322415/10143-GCA-Annual_Report_2014.pdf

other well known brands and that they sometimes rely more heavily on cheap imports than on local produce.

A lack of evidence

At the time of writing, not a single case has been brought forward to the GCA due to insufficient evidence, despite overwhelming anecdotal accounts of abuses of the Code. Some proposed that to overcome this challenge, the GCA should have its legislative powers extended so that it can launch investigations without any evidence. This idea was countered by the argument that investigating without evidence would lead to 'firing in the dark' and absolve suppliers of their responsibility to come forward.

Although many producers do not deal directly with the retailers, those that do are hesitant about speaking up. One suggestion was that suppliers may not be familiar with the details of the Groceries Code of Practice especially as breaches are so common place. This lack of familiarity contrasts with the retailers who tend to be much better versed and trained in the legal intricacies of the Code.

Ultimately, it was concluded that the biggest factor inhibiting suppliers from coming forward is fear. In an economic context where many supermarkets are apparently discussing significantly reducing their numbers of suppliers in the coming year, it is perhaps easy to understand why people would be fearful of speaking out. Many could weigh the massive risks of losing essential supermarket contracts against a possibility that action may be taken against the offending supermarket (or supermarkets) – hence why they often choose to continue business as usual.

According to a YouGov poll⁸ taken in May 2014 79% of respondents had experienced breaches of the code during their interactions with supermarkets. However only 38% of direct suppliers said they would consider raising an issue with the GCA. Of these 58% cited fearing retribution as their reason and 41% didn't believe the GCA would be able to help them. Although these figures represent a small sample, the poll indicates that suppliers are fearful of coming forward despite apparent widespread abuses of the Code.

⁸ <https://www.gov.uk/government/news/annual-conference-registration-open>

Unforeseen consequences

In some cases there has been an effort by supermarkets to improve their compliance with the Code alongside reducing the number of SKUs and the number of suppliers (similar to the discounter model described previously), particularly in light of the horsemeat scandal. The reduction in numbers of suppliers selling to the major supermarkets may further increase fear of suppliers to approach the GCA about claims of unfair practice, as they may be even more concerned about the possibility of being delisted.

An insufficient starting point?

It was implied that the Groceries Code might be an insufficient starting point considering the cultural nature of these issues. Examples included the fact that farmers' livelihoods are often significantly damaged by payment dates being extended through contract changes which are currently permissible. Another issue question raised was how the Code could address power issues relating to suppliers further down the supply chain.

Equally the code does not encompass the catering industry which accounts for over 40% of the total consumer expenditure on food and drink in Britain⁹. It was also suggested that the catering sector in general receives less media and government attention despite being far less regulated and generally less transparent.

These reservations all point to the much wider issue of policy limitations within a highly complex and global food system as well as questions about where boundaries for these regulations should and can be drawn. There was even a suggestion that government should evolve the role of the GCA into an all encompassing 'Food Power Adjudicator'.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361759/foodpocketbook-2014report-08oct14.pdf

Raising the bar through collaboration

One of the key opportunities for change discussed was collaboration. This could take a number of forms simultaneously:

- 1) Collaboration across civil society – Initiatives which would bring researchers, NGOs and communities together to establish their key interests in the food system. Ultimately this type of forum could be used to create a collaborative vision of what a good food economy would be and what kind of code should underpin it. This information could then feed into government policy.
- 2) Collaborative supply chains – A YouGov poll indicated that suppliers see collaborative supply chains as a solution to many of the issues discussed. It was suggested that the GCA could measure the collaborative nature of supply chains in addition to other measures such as the number of fines given. The 'Toyota way' was suggested as a potential model.
- 3) Sector-wide collaboration – Whilst it is always a possibility following an investigation, the GCA isn't necessarily a tool for publically naming and shaming companies which breach the Code. It was pointed out that collaboration and voluntary agreements across the retail sector could have the potential to create the most extensive systemic change.

Conclusion

The general conclusion drawn from the meeting was that whilst the GCA has the tools to tackle some of the inequalities *within* the food system, it is inadequately equipped (and was not designed) to address the external factors which have led to these inequalities.

In order to address many of the fundamental causes and effects of corporate power in the food system, it was argued that government needs to create a cohesive food and farming policy. The government would need to encourage an open forum for public debate to establish what the nation sees as a good food economy.

Reflections

- 'The real issue is leadership' - It was argued that whilst few would disagree that there needs to be a change from the current system, individuals or companies have rarely taken on a role of leadership to make that change happen. The suggestion was that this was because of a fear of failure.
- 'We need to talk about supply chain ecosystems' - Thinking about these issues in the context of traditional linear supply chains misses an important evolution. Business schools now refer to ecosystem models of supply chains which are much less traceable and highly complex.
- 'We need an efficient food system' – Efficiency is a term often used to describe food supply chains. But what does it mean: achieving minimum cost margins today or long term food security? And for whom?
- 'Food security must be a priority' – As environmental and economic factors shake up the global food system, risks to food security in the UK and globally will increase. No one will be safe from this and supermarkets are beginning to work on building stronger relationships with overseas suppliers who could choose to opt for much simpler orders from China or India for example.

Speaker biographies



Christine Tacon is a dynamic businesswoman and communicator whose career has been driven by a determination to use clear strategic thinking to achieve business success. She relishes taking on major challenges where she can combine her commercial experience with a strong sense of vision and knowledge of regulatory environments and the public sector. She is undaunted by responsibilities others have described as “impossible”. Her current role as the Groceries Code Adjudicator (GCA) ticks all those boxes.

She is working to achieve behaviour change and a more equitable relationship between retailers and suppliers through persuasion and the promotion of good practices. However she also has the power to investigate and fine retailers for non-compliance with the Code. Christine is also a Non-Executive Director of the Met Office and Anglia Farmers (a £250m farm-purchasing co-operative), a Public Member of Network Rail, a member of both the Natural Environment Research Council and DEFRA’s Regulatory Challenge Panel.



Tim Lang has been Professor of Food Policy at City University's Centre for Food Policy since 2002. He was a hill farmer in Lancashire, North of England, in the 1970s and for the last 37 years has engaged in public and academic research and debate about food policy.

He’s been an advisor to many bodies, from the World Health Organisation and European Commissioner for the Environment to the Mayor of London and NGOs. He was Commissioner on the UK Government’s Sustainable Development Commission (2006-11). He’s co-author of *Ecological Public Health* (with G Rayner, Routledge, 2012), *Food Policy* (with D Barling & M Caraher, Oxford University Press, 2009), *the Atlas of Food* (with E Millstone, Earthscan, 2008) and *Food Wars* (with M Heasman, Earthscan, 2004).
