



# Horticultural Sector Committee

## Corrected oral evidence: The horticultural sector

Thursday 20 July 2023

11.05 am

Watch the meeting

Members present: Lord Redesdale (The Chair); Baroness Buscombe; Lord Carter of Coles; Lord Colgrain; Lord Curry of Kirkharle; Baroness Fookes; Baroness Jones of Whitchurch; Baroness Walmsley; Lord Watson of Wyre Forest; Baroness Willis of Summertown.

Evidence Session No. 23

Heard in Public

Questions 262 - 271

### Witness

[I.](#) Mark White, Groceries Code Adjudicator.

## Examination of witness

Mark White.

Q262 **The Chair:** Good morning, Mr White. It is great that you can join us this morning. We have had a number of submissions from all elements of the sector. It is fair to say that all elements of the sector feel hard done by and that there is a difficulty. I am sure they will come to you for restitution on that. There have been a number of questions about your role as regulator, and we want to look at those as we go forward. What is the role of the GCA and the GSCOP? If you could give some background about yourself, that would be wonderful.

**Mark White:** Shall I start with some background? I am a solicitor by training but I have spent the majority of my career working in UK multinationals with complex supply chains as worldwide general counsel and sitting on their executive committees.

The Groceries Supply Code of Practice, or the code, as most people call it, was designed to stop retailers transferring excessive risks or unexpected cost to their direct grocery suppliers, which might adversely impact on suppliers' quality, their ability to innovate and their willingness to invest. Ultimately, that would feed into consumer choice, so what was available in the shops.

The code details how the designated retailers should manage their relationships with their suppliers, so that they are treating them fairly and lawfully. It outlaws a number of behaviours. I will just give you four examples: delaying payments to suppliers, delisting products without having a genuine commercial reason to do so or giving reasonable notice, changing supply chain procedures without reasonable notice, and requiring a supplier predominantly to fund the costs of a promotion. What Mr Morrey just told you about transparency and communication are examples of where the code is saying to the retailer, "You have to communicate properly with your suppliers".

The GCA is responsible for regulating the relationships between the UK's largest grocery retailers and their direct grocery suppliers. It is done by encouraging, monitoring and enforcing compliance with the code. There are currently 14 retailers designated by the Competition and Markets Authority as falling under the code, with the latest being Amazon, which was designated in March 2022.

My modus operandi is that I take a collaborative approach to regulating the retailers as being, in my view, the most effective way of quickly and effectively resolving supplier issues. I intervene as soon as I hear and become aware of an issue that a supplier brings to me, ideally before the supplier suffers any detriment or incurs any expense. Working with retailers in this collaborative way resolves issues quickly. I can compare that to launching an investigation, which is quite time consuming, and then waiting for a report to be issued. Of course, that risk of my launching an investigation and imposing a fine is a very important

motivator for the retailers. I will consider investigating where I have reasonable grounds to suspect that there has been a breach of the code.

Finally, for the introduction, I have powers to publish guidance to the sector. I also act as an arbitrator when a supplier has a dispute under the code with a retailer and asks me to do so.

Q263 **Lord Colgrain:** What do the GCA annual surveys tell us about relationships between suppliers and retailers regulated by the GCA?

**Mark White:** I have asked in my annual survey largely the same set of questions over a period of time. That allows me to track the challenges facing the sector and the perceptions of retailers' behaviour over time. I use the data from the surveys to engage retailers, so that they introduce improvements and changes to their ways of working and their systems in order to improve their operations.

Suppliers' concerns about fair and lawful treatment by retailers when the GCA was established were very clear in the results of the very first survey, which were published in 2014. Scores for overall compliance with the code for the then 10 designated retailers averaged 73%. In the 2023 survey, the results of which I published last month after a decade of action by the GCA, suppliers reported improved compliance, with an average of 92%. Some 79% of suppliers who contributed to the 2014 survey said that they had encountered a code issue with the then 10 designated retailers. By 2023, that had fallen to 36%.

During the pandemic, retailers and suppliers were seen to be working very well together to keep the shelves filled. However, the ways of working during the pandemic had led to buyers becoming very much more distant from the growers, not visiting them to gain experience of their operations or understanding their challenges. That came through in the survey results. This really weakened relationships between suppliers and retailers, and resulted in many buyers simply not understanding how their suppliers operate.

I have heard about buyers who do not know when the produce that they are buying for their retailer needs to be sown, when it needs to be harvested, or perhaps what impact the weather might have. This can cause real issues for the grower. If, for example, a retailer is late confirming the quantity that it will order from the grower, it can delay a grower planting a crop and can affect the risk/reward ratio. Of course, that is very important for the grower. I have encouraged all the retailers to work with their buyers to extend the time they spend in their categories, so that they can really get to understand the challenges and demands on the growers. As we heard a little earlier from Mr Morrey about being out on the farm, that is the only way to understand what is going on and what those challenges are.

The pressure of inflation, which we have heard about this morning, further weakened relationships. In my 2022 survey, retailers' refusal to consider a cost-price increase, or delays in responding to a request for a

cost-price increase or agreeing to implement an agreed cost-price increase, became the most reported issue in the survey across the preceding five years. I personally heard from growers that were reducing the amount of crop that they were planting in order to reduce costs, or considering whether it was actually financially worth while to heat greenhouses, given the unprecedented level of energy costs that they were experiencing. I am conscious of the increased level of insolvencies across the economy brought about by those input cost pressures.

In response, I published seven golden rules in January 2022 for managing cost-price increases fairly. These were all agreed to by the retailers. The rules have improved how the retailers respond, so how quickly they acknowledge receipt of an inbound cost-price increase request. They have curtailed what they ask of the supplier, so narrowing down what information it is that the retailer needs in order to make a decision on the cost-price increase request that has come in. They recognise the needs of smaller suppliers, for whom cash flow is clearly very important to their ability to stay in business. I have to say that the seven golden rules do not impact on whether a retailer will accept or decline a request or the price that is agreed.

For the third year running, I received more than 2,000 responses to my 2023 survey. It is one of the most important ways in which suppliers tell me their views. I am really grateful for their continued participation and delighted that more than 10% of respondents in 2023 were fruit and vegetable suppliers. I was really encouraged to see that overall compliance scores for the retailers in 2023 have improved, despite all the challenging conditions, which suggests that relationships are improving and going from strength to strength. Of the 13 retailers that participated in the 2022 survey, 11 increased their compliance scores and eight by more than 3%. Marks & Spencer received a compliance score of 99%, the highest ever score, notwithstanding the challenges in the sector.

On surveys generally, I would simply encourage more and more suppliers to tell me their views. Please participate in the survey. Please contact me if you are having issues. My contact details are on the website. I welcome meeting in any forum that suppliers wish—online, face-to-face and so on. However we engage, I absolutely guarantee confidentiality. I have a statutory obligation to do so and it encourages suppliers to tell me what is on their minds.

Q264 **Lord Colgrain:** I do not want to personalise with Mr Morrey, who was very brave coming in here on his own, but there is the question of this word “transparency”, which I asked him to define a little more clearly. Would you say, as a result of your experience, that transparency is evident between suppliers and buyers to the extent that you would want it to be?

**Mark White:** If I look back at the seven golden rules, the number one golden rule is to communicate with your supplier what the timeline will be for agreeing your CPI—cost-price increase—request. My work involves encouraging all retailers to engage with their suppliers.

In this particular sector, some of the retailers contract through consolidators or buying desks, rather than directly to growers. It may well be that those messages do not transcend quickly enough, or at all, through those buying desks down to the growers. Some retailers that have this approach of using consolidators are including in their agreement with the consolidator a requirement to flow down information to the grower and to apply the principles of my code down to the grower. Regardless of whether there is a consolidator or a buying desk in between the retailer and the grower, I encourage the buying teams at the retailers to get out on the farm and go and see what growers experience, so that they can create those constructive relationships.

**Q265 Lord Colgrain:** The last nine to 12 months have been extreme in terms of the pressures that have been brought on to the whole sector externally. In your view, have supermarkets risen to that challenge as well as they could as far as growers are concerned?

**Mark White:** My view is that retailers were on the receiving end of an avalanche of CPI requests, the likes of which they probably had not seen for a very long time, certainly at that level. When I engaged with them over the seven golden rules, it was to assist in how they organised themselves to deal with the inbound cost-price increase requests. I certainly received a lot of complaints about how those requests were being dealt with in the earlier days. I do not hear those same concerns now.

**Q266 Baroness Jones of Whitchurch:** We have heard evidence that the last thing people would do is come to the Groceries Code Adjudicator and raise any sort of concern, saying, effectively, "You won't work in this town again if you do that". They would have a black mark against their name. You talked about confidentiality being guaranteed. Do you accept that there is a bit of a climate of fear and that that is not an open discussion in the way we would want it to be; people are scared to approach you?

**Mark White:** Of course I recognise that the fear of retaliation exists. In all my engagement with people in the sector and the industry, I reinforce my confidentiality obligation. I reinforce the way I use the information they give me, so that when I approach a retailer I do not give them the name, the category or the product details. I am very careful about how I assemble the information to take it to the retailer to ensure that I am protecting the supplier.

I have worked with the retailers, because I would like to think that they recognise that it is very important for them to understand what their suppliers are feeling about their relationship. In 2021, I got the code compliance officers for each of the retailers to agree that they would equally treat any supplier that approached them about a code-related matter with confidentiality, so moving the control dial to the supplier. It is up to the supplier to say to the code compliance officer, "I am happy for you to share my details more widely within your organisation", to encourage more suppliers to talk to code compliance officers.

I set up a "Tell the GCA" reporting platform. It is available 24/7 in multiple languages and enables suppliers to come and tell me information completely anonymously. Of course, I would continue to treat details about their category or particular product with confidentiality. Earlier this year, I agreed with each of the 14 retailers that if a supplier is brave enough, as you say, to come forward and raise an issue, there will be no retaliation and no negative consequences from the retailer on the supplier that has come forward to air their issues.

**Q267 Lord Curry of Kirkharle:** The role of the GCA has been reviewed at least a couple of times, and I was quite involved when it was originally established. As you are very aware, there was always a concern at farmer level that pressures within the supply chain ultimately impact on the primary supplier through the chain itself. Even though the role has not been extended, would it have been helpful to you if the larger manufacturers and processors were brought into scope, so that you could have a more transparent view of the entire chain?

**Mark White:** I recognise that such a change would be welcomed by some primary producers. Primary producers provide me with really useful insight. I do not differentiate between primary producers and direct suppliers to the retailers in my engagement. I am willing to and do speak to everybody in the supply chain, so that I am informed about the issues.

I believe that my existing work may already benefit primary producers. I spoke a few moments ago about the seven golden rules. I hope that the clarity that is now coming from the retailers flows down to primary producers when they are talking about cost-price increases. I also hope that my interventions with retailers benefit primary producers. I spoke earlier about encouraging retailers to make sure that their buyers stay in role for a couple of years in order to gain that deep understanding of the challenges and pressures faced by growers, crop growing cycles and so on. Of course, I would like to see many more buyers out from behind their PCs and on the farms.

I spoke earlier about commercial models, so the use of consolidators and buying desks. It is really important for me to understand what is going on at the grass-roots level, as it were. Those commercial strategies change from time to time, so I have suppliers that fall inside scope of the code and outside of the scope of the code depending upon how the retailers are arranging their strategy. Today's primary producers can be tomorrow's suppliers.

Any changes in scope would need to consider the GCA's powers and resources. Today, I work very closely with a small, limited number of large retailers. I have a relatively small team. If the scope were to change then, consideration would need to be given to how that would be operationally delivered efficiently and effectively, and with what resources.

**Q268 Lord Curry of Kirkharle:** As you will be aware, Defra has agreed through the Agriculture Act to look at supply chains and to try to create

greater transparency. It has already announced some principles for pigs and it is probably moving on to other sectors. Have you been involved in those discussions? Would you welcome such involvement?

**Mark White:** I always welcome engagement with colleagues across government. Yes, I have engaged with Defra and I am happy to engage with Defra as it conducts its further reviews.

Q269 **Lord Watson of Wyre Forest:** Could I push you a little further on the powers you have? I think it was Roosevelt who said that you should walk softly with a big stick. You give me the impression that that is how you operate. Is your stick big enough to deal with these very powerful corporations?

**Mark White:** The approach is very much collaborative, because I truly believe that it is the way in which to deliver much quicker solutions. The ability to investigate and impose a fine is a very big motivator to ensure that that collaborative approach works on a day-to-day basis. I also have powers to issue guidance, case studies and best practice statements. My modus operandi is to agree the text of best practice statements with all 14 retailers before I publish them.

I said earlier that I act as an arbitrator. Although those arbitration decisions are entirely confidential, I take the themes arising from arbitrations to feed back to all 14 retailers about what I see and what might need to improve. The powers I have are appropriate and I would not hesitate to ask if I felt that I needed some more weapons.

**Lord Watson of Wyre Forest:** Could I test you on one thing on that, if you do not mind? It is a gentle one, I promise. A couple of times you have alluded to how good buyers get out of the office and on to farms to see what is going on. Would you have the authority or power to measure that, to ask retailers how many visits these young buyers make and to make that a metric for success for that area?

**Mark White:** The metric that I use is code compliance through the survey. It is not necessarily just that one issue. The issue of buyers getting out and speaking to and engaging with growers is very important for horticulture, but perhaps not so important for other products that retailers sell. I look at the metrics in the survey as being a culmination of all the little levers that might get pulled down below.

**Lord Watson of Wyre Forest:** Would the cultural change you are trying to create with your rapid intervention transfer itself into a KPI that that buyer might be measured on by a retailer or one of your members?

**Mark White:** The retailers themselves may well take that intervention and introduce KPIs within their buying teams. In my engagement with retailers, I am interested in compliance more generally. I engage with them on ethos and culture, and how it is about not just code compliance, but general compliance. I encourage them, for example, to think about how you would link remuneration to compliance overall. How would you link remuneration to whether a buyer is conducting the business in the

way that the retailer wants? It is perhaps more general than specific.

**Q270 Baroness Buscombe:** The Government's statutory review of the GCA has just been laid. We know, for example, that some of the suppliers have been found to be unhappy that they are treated the same—one size fits all—no matter what their size, in working with you. Could you give us your reflections on the outcomes of that review, please? The results literally came out last night; I appreciate that.

**Mark White:** I was very pleased that the statutory review, which, as you said, was laid yesterday, concluded that the GCA is a highly effective regulator. The review found that I take a balanced and collaborative approach, and that this approach is valued throughout the sector. I believe that the findings of the review, which were informed by a very wide consultation that the department undertook, reflect the work I have done. Since I took up the role, the survey findings continue to show that the approach to monitoring and ensuring compliance and enforcing the code is successful.

I have enhanced communications and engagement with relevant stakeholders. When Covid-19 restrictions were lifted, I restarted retailer in-person visits, so perhaps going to distribution centres—there is nothing like “seeing is believing” to really understand what is going on—and in-person engagement with suppliers in a way that they wish.

There has been an improvement in supplier confidence in raising issues, both with the retailers and with me. As I mentioned before, this fear of retaliation is there. The steps I have taken to encourage greater discourse, reflected in the review, are very important, bolstered by the code compliance officers' commitment to confidentiality, “Tell the GCA” and retailers confirming no negative consequences if suppliers come and talk to them about code issues.

I also note the concerns that a limited number of stakeholders raised in the statutory review. The Government suggested that those stakeholders come and talk to me about those issues. I would be more than happy to hear from them to discuss how I might further improve my efforts to ensure fair and lawful treatment of suppliers. The particular issue about size is one that I hear from retailers rather than suppliers. A number of retailers have arrangements with suppliers that are exponentially bigger than the retailers. Those suppliers are not regulated by the code, but the retailers are.

**Baroness Buscombe:** Thank you. That is helpful.

**Q271 The Chair:** The final question is the magic wand question: if there is one thing that you could do, what would it be? Added to that, though, when the retail code was set up it was the wild west compared to the position now. Do you believe that there are significant abuses of the system? Then could you give us the recommendation you would suggest?

**Mark White:** The sector is dynamic. You have seen over the last 12 to 18 months the impact of inflation and what that has done throughout the



supply chain. The GCA has the agility to quickly understand what is going on and get an audience with the retailer to better understand. I talk to trade associations, the NFU, BIFGA and so on, to understand how widespread the issue or the problem is. That collaborative approach really works in changing behaviours in relatively quick time, depending of course on the issue.

I believe that it is working, but because the sector is dynamic and retailers employ many thousands of people, you might get a maverick buyer who has not remembered the training in the same way others have. It is about identifying those people and working with the retailers to make sure that anybody who has stepped out and is looking abusive is brought back in, and that their relationship with suppliers, which is all important, is not affected by whatever might have gone on or been perceived.

**The Chair:** What is your one recommendation to government that we could put into the report?

**Mark White:** The lesson from the work of the GCA is that suppliers see clear benefits from reductions in excessive risk and having to take on board unexpected costs. One way that the GCA has delivered this is through improving communication between retailers and suppliers. Producers would likely benefit from improved communication with their customers to give them a better basis on which to make their investment decisions.

When I engage with the horticulture sector, the focus tends to be on code issues, so I do not have detailed recommendations or proposals. Anything that I would say would centre on improving that two-way communication and more timely agreement of contracts. I often hear from growers that they do not or cannot plant as extensively because their contracts have not been agreed with the retailers.

The burden of dealing with multiple retailer standards should be reduced. I often hear that each of the retailers has similar but different audit requirements, for example. It costs growers to adapt their processes to deal with the very slight changes between each of the retailers' requirements. If there were a way of consolidating those or putting them on to a firm base that did not have too many variations, that would reduce cost and risk for growers.

**The Chair:** Thank you very much indeed for your contribution this morning.