



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Groceries Code Adjudicator

30 September 2013

NORTHERN IRELAND ASSEMBLY

Committee for Agriculture and Rural Development

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Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
Mr Joe Byrne (Deputy Chairperson)
Mr Thomas Buchanan
Mr William Irwin
Mr Declan McAleer
Mr Kieran McCarthy
Miss Michelle McIlveen
Mr Ian Milne

Witnesses:

Ms Helen Gordon-Lee	Groceries Code Adjudicator
Ms Angela Latta	Groceries Code Adjudicator
Ms Christine Tacon	Groceries Code Adjudicator

The Chairperson: This morning, we have Christine Tacon, who is the groceries code adjudicator, Helen Gordon-Lee, who is the chief legal adviser, and Angela Latta, who is the head of policy and operations. You are very welcome to Northern Ireland. I know that you met the Ulster Farmers' Union this morning, so this is your second meeting. You will be "meeting-ed out" by the end of the day, I am sure, but it is very good to have you here.

Members will have had the chance to read your briefing paper, so I ask you to take no more than five minutes for your presentation, if that is possible. Please outline only the main issues or provide new information that is not included in your paper. When five minutes have passed, I will ask you to stop, and a question-and-answer session will commence. I ask you to keep your answers succinct and concise. I also ask members to keep their questions succinct, focused and clear. It would be helpful if personal opinions and statements could be excluded from the line of questioning and kept for your press releases. If that is clear, we can begin. We look forward to hearing what you have to say.

Ms Christine Tacon (Groceries Code Adjudicator): If I have only five minutes, I will have to assume that you have all read your papers. If any clarification is needed, I would love to address that. I want to make two points. We are in the middle of a consultation, which is why we are here. We had to issue statutory guidance within six months of starting; I started on 25 June, working three days a week, so that takes us to Christmas Day. The guidance is on the way in which we will conduct an investigation, not on everything we do in our job. The main area in which we expect challenge, particularly from retailers, is the maximum level of fine, which we have put at 1% of UK turnover.

The consultation is just for investigations. I want to make it clear that my starting point is not that I will go straight into an investigation the minute that I am allowed to do so. I am trying to build up

relationships with the code compliance officers. Every retailer has such officers, who are usually based in legal or audit departments, so they are completely outside the buying chain. They understand that the groceries supply code of practice is law, and they do not want their business to break it. They are frightened that the code might be being broken somewhere, and they do not know about it. The officers are very responsive to my indicating to them what I am hearing and the areas about which I have concerns, so they can then look for that and correct it in their organisations. I hear from lots of different areas that there are so many potential breaches of the code that it will be far more efficient for me to try to clean it up by working with individual code compliance officers. I intend to tell them that when I find things going wrong, I will give them time to put them right. I will go into investigative mode only if I not getting anywhere.

The Chairperson: Thank you very much for your brief and concise statement. In Northern Ireland, we are very aware of the need for a strong adjudicator with teeth, who can investigate, enforce and apply financial penalties. The Northern Irish parties in Westminster, not least my party, will have relayed that message to Parliament. You clarified that the consultation is only on investigations and that role or remit. You have gone out to consultation, which could turn up all sorts of beliefs, concerns and queries. Do you know exactly where you need to be from one spectrum to another?

Ms Tacon: Do you mean the areas that I am looking for feedback on in the consultation?

The Chairperson: To do with your powers and how and what you will be able to investigate.

Ms Tacon: The answer to that is that I really do not know. The way in which we wrote the guidance is fairly simple. We used broad principles on what would make us investigate and how we would decide the level of sanction. My ideal is that I get no feedback at all on the consultation, and that we take it as it is and get on with the job. I have to go through this statutory process, and what we put down is fairly straightforward. People have given me feedback, and they either have no comment or have said not to go backwards and to leave it as it is because we have enough teeth.

The Chairperson: I understand. The supermarkets have been very vociferous about the financial penalties. With the agreement of the Secretary of State for Business, there will still be a maximum financial penalty or a method of calculating a financial penalty. How do you see that working? You have met and are building up relationships not only with the Secretary of State for Business but with the supermarkets. Do you have any concerns about how that process will work if you have to enforce penalties?

Ms Tacon: I am determined to get the maximum agreed. I will put it into context: 1% of UK turnover for Tesco would be half a billion pounds. One per cent of UK turnover is massive, and most supermarkets are working on 2% to 3% profit margins. It is a massive deterrent, which is what I want.

An investigation will look at the impact of what they are doing, how much they gained from it and how people — suppliers — have been affected strategically. I need to have a maximum level of fine. I do not have concerns. How close to the maximum I would go will probably depend on the size of the issue that I am investigating. That is a bit of a woolly answer. Once I have the facts, it will be easier to say that someone has benefited by x million pounds. I am not just going to fine them the x million that they have benefited; there must also be a deterrent in the fine. As my legal person, Helen wants to say something.

Ms Helen Gordon-Lee (Groceries Code Adjudicator): I will add to what Christine said. In drafting the consultation paper and the principles by which the calculation will be done, we have benefited from a very close liaison with the Office of Fair Trading (OFT) as well as the Competition Commission. We have learned from both the Competition Commission inquiries and the evidence that it submitted to those inquiries. We have learned from parliamentary debates as the Groceries Code Adjudicator Bill became an Act. We have also learned from the OFT, which recently revised its guidance on damages and competition law cases. We have tried to reach something that is proportionate for the sector that we are trying to regulate. We hope, as Christine said, that that will be fairly uncontroversial. It is deliberately pitched at the level of the principles that we will apply rather than the specifics of the calculation in an attempt not to decide ahead of time and evidence what we will do in any one case.

Mr Byrne: I formally welcome Christine and her colleagues. We are the scrutiny Committee for the agriculture and rural development remit here. Our main focus is on primary producers and the prices that they get. Will you be able to influence the farm gate price that farmers get in Northern Ireland,

given that there is a historical disparity of between £100 and £150 in beef cattle prices here compared with GB? It is the same for sheep meat, fat lambs and spring lambs, where the historical disparity is between £10 and £20 per head. Given that retailers are the price makers and farmers are the price taker, what can you do to address that disparity?

Ms Tacon: The honest answer is that I can do very little. There is nothing in the code about having an influence on price. The code applies to direct suppliers to retailers only. The Competition Commission was very careful not to do anything that would impact on the value that consumers pay for food. Anything that is agreed in an initial negotiation is out of my remit. Much of the material in the code is about things that come along afterwards and later changes. Some alleged practices that the Competition Commission found when it did its investigations have resulted in the return being reduced all the way down the chain. My aim is to try to make the relationship between retailers and direct suppliers as clear-cut, honest and efficient as possible so that loads of trust is built between them, which will end up with a more efficient supply chain. I cannot directly interfere with price at all. It is not that I do not want to; my role is legally defined, and I can do only what has been agreed in the Act.

Mr Byrne: I appreciate your honesty and clarity on your remit. With the code of practice for retailers, however, given that the big retailers are largely the power brokers in that game, what can you do to make sure that suppliers get paid on time and at a fair price?

Ms Tacon: As I said, I can do little about a fair price, but being paid on time is one of the requirements of the code. I can easily investigate that to see the payment terms and find out whether people are being paid on time. I frequently come across, including this morning, evidence of deductions from payments, which means that people are not being paid on time. Those deductions may be completely legitimate, but people cannot get hold of the evidence. They are finding it difficult to challenge and are often simply walking away from deductions and accepting them because it takes more effort to try to find out whether they are correct. In my opinion, a person not being paid on time is a way of withholding payment. Those sorts of things are well within my remit, so I can work on them.

Mr Irwin: The Deputy Chair of the Committee touched on one of the big issues for Northern Ireland, which is the ability of big retailers to suppress price to the extent that processors are losing money to supply retailers. I will not go into names, but I know of one incident in which one supplier stopped bottling milk. That supplier said that they were losing so much money bottling milk that it was now much more beneficial to dry their milk and sell it to China and other countries because local retailers were suppressing prices so much that they were making a loss. You said that price is almost outside your control unless there is a dispute. I am sure that there will be disputes with processors on price whereby producers cannot even cover costs and are losing money. In that situation, do you still have no remit?

Ms Tacon: Not unless the price varies from what had been agreed. There is a supply agreement at the beginning, and I think that you are talking about variations in price as they go on. There has to be absolute clarification at the beginning on how a price will be agreed. If a price is being varied in ways that have not been agreed, or if any retrospective changes are made, that will be a breach of the code because it is a variation of terms without notice. A lot of the pressure will come down to understanding what is in the original supply agreement and considering whether there is one. Under the Office of Fair Trading order, there has to be a supply agreement. It is between only those 10 major retailers, but there has to be a supply agreement between them and the supplier. It needs to be clear how pricing will be determined and whether that is being varied later down the line.

Mr Irwin: Do you have no remit regarding how that price is determined?

Ms Tacon: No, not as to how it is determined. However, I do have a remit if the way in which it is determined is varied once the contract has started. It is difficult, but I think that these things will become clearer as I delve into them more.

Miss M McIlveen: Thank you very much for coming to meet us today. I want to ask about the organisation that supports your office.

Ms Tacon: This is what I have: my colleagues who are with me today. We have funding that can take us up to eight people, but, crucially, if we are going to start an investigation, we will need an awful lot more people, who will be seconded in. I am assuming that some of the best places that we will be able to get people from are the Office of Fair Trading, the Competition Commission, the Department

for Business, Innovation and Skills (BIS) and the Department for Environment, Food and Rural Affairs (DEFRA). So, we second in a team to do an investigation, and one member of our team will be responsible for corralling everyone around it. So, it is just us.

You did not ask this question, but it is important for you to know that my team is paid for by a tax — a levy — on those 10 retailers. The budget has been set at £800,000. It will be less than that in the first year, because we are not big enough to use it all, but if we need bigger teams, I apply to the Secretary of State, and we can levy more. At the moment, we think that this is about the right size to run the core team. If we do an investigation because we find a breach and have to bring in all those extra people, the whole investigation is charged to the retailer.

Miss M McIlveen: That is quite refreshing. With commissions in Northern Ireland, it is all very cumbersome, looking for premises and all sorts of associated things, and costs are quite high. Your paper states that you will not be launching any investigations until the guidelines have been published, but, at this stage, you are receiving complaints and evidence. I have also noted that you do not have any plans to prioritise at this stage or you do not have any priorities in a preconceived manner. There will come a time when you will have to prioritise. How will you do that?

Ms Tacon: Helen, can you talk about the four criteria?

Ms Gordon-Lee: There is impact, strategic benefit, risks and resources. Those are drawn from standard documents that have been issued in similar consultations across government, and they are very broad brush terms. The sorts of things that we will look at for Christine to decide which two to four issues she targets in any given year include whether something is widespread, will put people out of business or is a drop in the ocean in financial terms. We will look at whether it is endemic among retailers so that it will not be a single retailer being investigated. We will certainly look at whether it is more widespread among suppliers, which will also help us to protect complainant anonymity if it is not based on a single complaint. The prospect of improving behaviour in the supply chain as a result of not only ultimately finding a breach and enforcement measures but conducting the investigation goes back to what Christine said about the deterrent effect of any possible investigation. We are hopeful that, even if we get to the investigation stage after softer mechanisms have not borne fruit, the fact of an investigation and the potential reputational risk to retailers will be sufficient for that to cause remedies in behaviour rather than waiting for the whole thing to finish. All those things have been thrown into the mix as well as the considerations that Christine mentioned concerning the size of the office, the manpower that we would need to conduct an investigation, the risk reward and whether it is a good use of taxpayers' and retailers' money.

Ms Tacon: I have also been trying to encourage people who have complained to me to think about the impact on their businesses. They may be really upset that they are being charged £45 because of a complaint about something that is worth £1, but they need to think about what it is costing them over a year against deductions from invoices or when things go missing — when they send in 100 units and are told that only 98 arrived. They need to work out what is really having an impact on their business because that will help me to prioritise where I should put my time.

Miss M McIlveen: Can you tell us how many complaints you have received to date as a gauge of how many you may anticipate throughout a year?

Ms Tacon: If I am honest about it, most of what I am doing at the moment is about trying to build trust so that people are able to talk to me. The Competition Commission found it enormously difficult to get hard evidence from people. I have been explaining to people how I am going to protect their anonymity and that I will never investigate something that is happening just to one person with one retailer. I will need to know that a problem is fairly widespread, and by doing that, they will be protected. If they tell me, they might be the tenth person who has told me that something is happening, which will give me confidence to go forward. Around small dinner tables, I am hearing masses, but issues that have formally hit our office are down to —

Ms Angela Latta (Groceries Code Adjudicator): We have had two direct contacts.

Ms Tacon: Even this morning, I was being told about a named person who has specific issues. At the moment, it is all going into a pot. I have also been asking some of the trade associations to do surveys of their members to ask, "These are the elements of the code that Christine can work on.

Which do you think is the priority?". That is to try to get feedback from them on what is really hurting most, as opposed to using a scattergun approach to everything.

Ms Gordon-Lee: We are getting some really good information from them.

Ms Tacon: That has led to deduction from payments becoming my number one priority. People want me to peel back the surface and see what is happening. That is a good thing, because I know that a fair bit that goes on takes the form of corridor conversations. If I go looking for evidence, I might find that there is nothing there, whereas I will find deductions from invoices in black and white. That will be easier for me to go for.

Mr McCarthy: I wish you every success in your work. You were appointed only recently, is that right?

Ms Tacon: Yes.

Mr McCarthy: So it is not surprising that you have had only two queries. Human nature being what it is, regardless of you being there, there will be instances when people will try to conceal things from you, and you may not get to the bottom of a complaint. Do you have the teeth to delve into a problem, whatever it is, so that you can get the answer and resolve a situation to the satisfaction of the community in general?

Ms Tacon: Once I start an investigation, I get all sorts of powers that allow me to demand information, reports, copies of e-mails and so on. That is a formal process, and I can almost imagine us walking into offices and coming out with boxes of evidence to go through. That happens once we start a formal investigation. Before that, if I want to find out more about a complaint, I will visit people and spend time talking to them to get the details.

Mr McCarthy: At the end, however, you want to make sure that you have the power to get all the evidence that you need to ensure that the problem, whatever it may be, has been sorted out. There will no covering over the cracks, as it were. Are you confident that you can delve?

Ms Tacon: Yes. If I am in an investigation, and I am sure that I will, my worry is that I will struggle to get to what you may want to call verbal agreements and threats.

Ms Gordon-Lee: You can require oral evidence.

Ms Tacon: I can require oral evidence; that is good. However, there will be a combination of people not wanting to be named and being frightened of saying too much in case I find out too much, and the retailers perhaps saying, "Unless we know who it is, we can't investigate it". However, if I am going for endemic, widespread things, I am not concerned about getting enough evidence if such things are going on.

Do not underestimate my conviction that a code compliance officer knows the law. I have a massive fine to threaten them with if I tell them that things are going on. Everybody is supposed have been trained; it is about reinforcing it. As I have told suppliers, "Tell me that things are going on immediately, because if one buying team somewhere starts doing something, and, within days, the code compliance officer has heard from me, we will be able to put a lid on things quickly". Giving me the information means that I can act. I would far rather stop it than have to go through the huge legal process of an investigation.

I have no targets for the amount of money that I am supposed to raise from fines or the number of investigations that I am to do. My target is to stop people breaking the code.

Mr McCarthy: Yes, but your raison d'être is to ensure that there is a level playing field and fair competition throughout the supermarkets, right down to the farming community.

Ms Tacon: My legal remit is about fair dealing between the two. Having come from the farming industry, I know that it is not all about level playing fields; it is about the fact that the code is not being broken. Because I cannot get involved in prices, which is what is generally needed for a level playing field, I can make sure only that the code is not being broken. I do not want to raise too high expectations of what I can achieve. It is just the code.

Ms Gordon-Lee: Because Christine's office has come about as a result of the Competition Commission's inquiry findings, her remit is limited by what it found to be detrimental to competition in the supply chain. The commission accepted, and there is quite a lot of information about this in its reports, that far more wide-ranging concerns were at stake. There were rural livelihoods; integrity of supply; and special interests, such as organic supply. Of course, price was an issue, as were provenance, food miles and trade more generally, including trade outside the UK and EU. Christine's remit is circumscribed by the anti-competitive effects of behaviour in the supply chain between the 10 retailers covered by the code and their direct suppliers, and, ultimately, the effect on consumer choice.

Anything that we want to do more creatively about helping farming communities will have to be tethered, somehow, to the language of the order and the code.

Ms Tacon: I have plenty to do already; there is enough to go on.

Mr McCarthy: Yes, you will be busy.

Mr McAleer: I welcome you here. Why was your remit limited to retailers? Why are processors not included? Farmers deal with many processors as middlemen. Secondly, does your remit extend only to UK-based companies? For example, do you have a remit to investigate a superstore in the North that has its headquarters in the South of Ireland or elsewhere?

Ms Tacon: In my opinion, it was limited to the direct suppliers and the retailers because that is where the commission did its investigation; it did not investigate all the way down to the farm gate. If the processor is a direct supplier to the retailer, they are covered; however, the relationship between the farmer and the processor is not. I think that the commission did its investigation there. I was on a fruit and vegetable task force, one of the recommendations of which was that the code should go further down the chain, but that is not where it came out.

I also believe that, if it can be started there, other things may come in that will go further down. On the cards is an EU voluntary code of practice that goes the whole way down the chain. However, if I can sort this bit out first, other things can take over further down. I do not know whether that is a good enough answer, but that is what it is, and I have to stick to it. That is what is in the Act.

In answer to your second question, crucially, my role applies to any supplier anywhere in the world that is supplying those 10 retailers in the UK. It goes as far as the Dominican Republic, a banana supplier, and an Italian wine supplier. It has to, because if it does not, there is a risk that retailers will feel that they can push overseas suppliers and get things out of them that they are not allowed to get in the UK. That has been taken into consideration. One of my challenges is as follows: although there is a reasonably wide awareness in the UK of our role and what we can do, I need to make sure that that message gets out further, to global suppliers, so that they know that they can talk to me as well. We are working with the likes of Traidcraft and other organisations. The other day, I was speaking to someone who has a global horticultural website to say that I have an important message that I need to get out to suppliers from all over the globe.

Mr McAleer: I asked about the designated suppliers because there is at least one large retailer, which is mostly based in the South of Ireland but which has a presence here. It is not on the list. I imagine that its turnover would be over £1 billion per year, though it may not be. That is why I ask the question. Because that firm is based in the South of Ireland but with outlets here, is it outside the scope of your remit?

Ms Tacon: No. Aldi and Lidl are covered.

Mr McAleer: I assumed that Aldi UK might be.

Ms Tacon: If the firm's turnover in the UK is more than £1 billion, it should be on the list. If there is a firm that you would like us to look at, we will do so. We have already referred a supplier of groceries to the OFT to see whether it should be covered. Groceries include health and beauty products, so shampoos and things like that are in the remit. If you think that there is a firm that has a turnover of more than £1 billion in the UK, we could have a look at it. Please mention it to me afterwards, and we will ask the OFT to see what its turnover looks like. The list includes only those 10 firms because they have turnover of more than £1 billion in the UK in what is defined as groceries.

Mr Buchanan: I welcome you to the meeting. I have no doubt that the code will do good in some areas; however, one of its big failings is that you have no remit over the farm gate prices. That is a big issue for the farming community in Northern Ireland. That is perhaps one of the weaknesses in the code. Our producers take much lower prices than those accepted by producers in the UK, and that is a big issue for the farming community here, yet you have no remit over it.

Leaving that aside, you talked about a difficulty where suppliers are not get paid within a reasonable time, and you have some remit over that. In such a situation, where you find out that the supplier is not being paid within a reasonable time, can you see to it that the supplier receives interest or some sort of compensation — if that is the correct word — for the undue length of time that he has had to wait on his money for the products that they supplied?

Ms Tacon: I have two ways of doing my job. One is to conduct investigations. In an investigation, it is highly likely that all the complainants will want to remain anonymous. Where that is the case, no compensation or anything is allowed. The other way is to conduct an arbitration. If someone comes to me with evidence that he has been to the retailer and said that he should have been paid within 60 days but that he is never paid before 70 days, he can speak to the code compliance officer. If he cannot agree it with that officer, he can come to me. In an arbitration, that example is probably a bit too cut and dried; more woolly situations actually come to me.

If they come to me, all the costs of the arbitration have to be picked up by the retailer; the retailer has to pay my costs, those of the complainant, and their own costs. They have to pay all of them, and I can award compensation.

I will go back to what I think you meant, which was whether I can mandate that they pay interest on late payments. If I carried out an investigation into paying people on time, I can mandate that they pay interest as a result of the investigation. If I find that it is breached and people are being paid late, one of my allowances is that I can make recommendations. Under a recommendation, I could say, "If you pay people late again, you will pay them at this rate of interest." I could make a recommendation as a result of an investigation, but it would be a broad industry recommendation. It is highly unlikely that people would be named. Do you know what I mean?

Mr Buchanan: Yes.

Ms Tacon: It would be a longer process, but I think that I can get there. Do you agree?

Mr Buchanan: Absolutely. That would be helpful because there could be retailers who continually flout the code in that way by continually delaying payments to suppliers. Something needs to be in place to stop that happening.

Ms Tacon: I have not heard anybody talk about being consistently paid late, but if you have evidence I would love to hear it. It is much more the case that when they are paid, it is never everything that they expected. Things will have been taken off, and trying to negotiate and argue on the things that have been taken off can take months. Or you might leave it, but that is worse than saying, "I know you're supposed to get paid in 60 days, but we'll always pay you on 66."

The Chairperson: I want to follow on Tom's point. With regard to prompt payments and deducted payments, it is very similar to the construction industry. The one thing worse than a deducted payment or late payment is no payment in the future. There will be the threat, even if it is never spoken, that if you do not play ball and if you tell tales, you will not get any more work from the particular individual or business. Perhaps that is an area in which you are going to have to break down to get collaborative evidence and an evidence base to take forward your investigation. Do you see that? Is that a real concern? Is it tangible?

Ms Tacon: It is definitely a big concern, which is why I have to go out to build trust, speak to people and tell them that they need to give me sufficient evidence so that I know that I am attacking something that is really happening. However, I need to get it from lots of people to make sure that I can protect their anonymity. That is why I do not think that anybody expects me to have a big inbox full of complaints, but I expect that many people will tell me things face to face and start to build up my casebook.

The trade federations, such as the Ulster Farmers' Union, will be very useful in getting evidence and letting me know what is happening so that, again, people's anonymity is protected. That is the big,

exciting thing about my job: I can do those investigations, based on anonymous feedback. The investigations may be on a sector, but, to be honest, from most of the things that I am hearing, it seems that it is everywhere; it is not just one sector. It is not just beef or whatever; it is wider.

The Chairperson: I want to touch on Declan's question. You have 10 companies with above £1 billion turnover. You then have the undercurrent, or second stream, of supermarkets that might be under £1 billion, but which will be, nonetheless, very powerful in some regions of the UK. Do you see your role being extended in the future to cover those companies even if they do not make more than £1 billion? Do you see your remit dropping towards them?

Ms Tacon: First, it is not my decision whether it drops down towards them, but I have to do an annual report to go before Parliament. In that, I have to make recommendations to the OFT on any changes that I think are required. If I was hearing about a regional retailer that was having a big impact in a particular region, and I was getting a lot of complaints, I think that that would be enough for me to say that I thought that there were some exceptions and that there were other areas to which, perhaps, consideration should be given to bringing them into the remit of the code.

The Chairperson: OK.

Mr Byrne: Some of the big supermarkets have signalled their intention or desire to have some supply agreements with farmer producer groups. Will you have a role in contracts that the big supermarkets might have with supplier groups?

Ms Tacon: I will tell you what I think and then hand over to Helen. This is one of the areas that I need to get more clarity on. I am fully aware that some of the retailers are specifying what dairy arrangements and feeding and environmental regimes they want farmers to carry out. They are getting very close to telling farmers what they want them to do, but they are paying a middle person for the produce. I think that my legal person would tell me that the direct supplier is the middle person, and if they are contracting with the producer organisations and are asking them to do ever more onerous things while not paying for them, that is not fair dealing. They are direct suppliers in the sense that they have contracts with them.

I have raised this issue as one that I would like to get more understanding of, and Helen has told me that, in legal terms, the direct supplier is the person who pays.

Ms Gordon-Lee: The producer organisation question is complicated. There is a tension between what is required in the way that producers organise themselves into producer organisation co-operatives to obtain European funding — that is kind of why they do it — and what the code requires Christine to look at with the direct supplier relationships.

From a legal point of view, to continue to qualify for European funding, it would need to be the producer organisation — the overarching group that does the contracting, deciding and collecting everything together on behalf of its members and, basically, puts itself in the shoes of all of them put together. That would work as long as it is a functioning model. However, we all know that that is not always a functioning model; it is sometimes a formulaic approach that looks better on paper than it does in practice. That is when there are questions about when you have to look behind the mechanics at the practices. It is likely to be a case-by-case approach, particularly when looking at packaging, distribution, marketing, agency and such. The same issues about who the direct supplier is that are problematic when the European auditors come to look at the producer organisation schemes are also likely to be knotty questions for us.

Ms Tacon: It is not my approach to do everything according to what the Act says. Informally, I can say to a retailer that a producer organisation has issues because they have asked them to do something that is costing them a lot more and that they are not paying them anything for it. Therefore even if it is not directly in my remit, I have every intention of raising it with the code compliance officers if I think that unfair dealing is going on. Even if I could not launch an investigation because my legal people had stopped me, I can still tell them that I think that it is an issue. I think that I made some progress doing that with the code compliance officers, as they are aware of the law and know that they will have to defend this before barristers, etc. When things are in black and white it will be a bit harder for them to justify them. I think that I will get some traction from that approach.

Mr Irwin: It has been touched on, but I want to ask about suppliers who may want to bring a case to you. In some cases, they may be able to remain anonymous, but there may be specific cases that are relevant to them that may not allow them to do that. Do you have any remit to deal with retailers if, for example, they dump a supplier because he came to you? I will make it simple: if a supplier comes to you and, a few months later, he is dumped, do you have any remit to deal with that?

Ms Tacon: This is a bit of a tenuous one, but one of the requirements of the code is that they have to be listed for genuine commercial reasons, and I may ask them to give me chapter and verse on those genuine commercial reasons so that I can follow that up. I intend, particularly where there is an arbitration and someone is named, to keep a list of people and ask the code compliance officers every time I see them whether that person is still a supplier. I will check on their behalf. However, that is only in an arbitration when they are named. In the investigations, it is highly likely that everybody will ask to remain anonymous, and I will have to spread my investigation as wide as I need to in order to make sure that I can guarantee that. However, if they are not delisted for genuine commercial reasons, that is a breach of the code, and I can carry out an investigation into that.

Mr Milne: Thanks for coming along today. Do you feel that your current enforcement measures are sufficient?

Ms Tacon: Do you mean our ability to make recommendations and impose sanctions and fines?

Mr Milne: Yes; to create a level playing field for producers.

Ms Tacon: You have made it more difficult with that last bit. *[Laughter.]* I think that the enforcement measures are sufficient to make sure that the code is followed. They will make it a level playing field in the sense that some larger companies may feel more able to fight back against unreasonable retailer requirements, whereas smaller companies cannot. I cannot make it a more level playing field for prices, but I could make it a more level playing field by making it more difficult for people to be pushed around.

Somebody mentioned packaging. When I was in the business of supplying a retailer, one of the things that annoyed me was being told who to buy the packaging from. It cost significantly more than I could buy it for, and I felt certain that a cut was going from the packaging supplier to the retailer. That is a direct breach of the code. I hear large suppliers saying that it does not happen and smaller suppliers say that it does still happen. I should be able to create a more level playing field where that is going on.

Mr Milne: Do you imagine that, as time goes by, your powers will have to be extended or reviewed to take into consideration companies with a turnover of under £1 billion? Do you envisage the powers that you have at present not being sufficient to deal with problems that arise?

Ms Tacon: I would love to get to a situation in which, among the 10 retailers that we have, there are no breaches of the code and everything is transparent. I may then make a recommendation that there are other things outside my remit that I am hearing repeatedly. I have no idea whether that would have to go to Parliament or whether the OFT could make those changes.

Ms Gordon-Lee: OFT would be able to broaden the scope of the code or designate additional retailers —

Ms Tacon: Retailers who are under £1 billion.

Ms Gordon-Lee: However, OFT is circumscribed by the Competition Commission's findings and the terms of the Enterprise Act 2002. If it went beyond those, which it may well do in respect of proportionality if it included companies under £1 billion, it might require parliamentary scrutiny. However, things might have moved on in Europe by that time. The voluntary scheme is what everybody is talking about, but there is also a Green Paper in the offing. We are not quite sure which directorate-general will take that forward or what peg its coverage will be hung on. This will not stay fixed for the next five years even.

Ms Tacon: We are engaging with Europe. We are going to see the director-general of internal markets, who is pushing the voluntary code of practice. Ideally, we would work on this in parallel; if we are both looking at the same best principles, we can work together on this.

One thing that I have not said, and it is not in our briefing paper either, is that since I have been in the role, there has been global interest in what we are doing. The potential abuse of power by retailers towards their supply chain is an issue in many countries. There was particular interest from Australia, big interest from Scandinavia, and CNN has been covering it. It is an issue everywhere. We are one of the first countries to do something about it, so all eyes are on us to see whether what we do makes a difference. It is no accident that the EU is doing something because it too sees it as an issue

Everybody wants to make this a fairer environment, but nobody wants to stop the consumer getting cheap food. It is about how you make it fairer without affecting prices. There will always be those who say that our remit should include price as well; however, I think that that would be quite dangerous.

Ms Gordon-Lee: It puts pressure on you to demonstrate success in the terms under which you have been appointed. That is another reason to focus quite tightly on exactly what Christine is tasked to do. Unless and until we can demonstrate success in that, we are unlikely to be given the scope to do any more.

The Chairperson: OK. Thanks very much to Christine and her team for their time. It was a very informative session. I know that you have a busy schedule from here on in, and we wish you every success.

Ms Tacon: Thanks. If, in your outs and abouts, you meet any direct suppliers, please reinforce the point that they need to tell me what is going on and I will protect their anonymity.