

# Grocery Market Ombudsman Bill

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**B I L L**

TO

Make provision for the appointment, functions and powers of a Grocery Market Ombudsman; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Appointment of an independent Grocery Market Ombudsman by the Office of Fair Trading**

- (1) The Office of Fair Trading (“OFT”) must, within three months of this Act coming into effect—
- (a) establish a body corporate to be known as the “Office of the Grocery Market Ombudsman”, and 5
  - (b) appoint a person as the Grocery Market Ombudsman (“the Ombudsman”).
- (2) The Secretary of State must by regulations make provision regarding the membership of the Office of the Grocery Market Ombudsman. 10
- (3) The purpose of the Ombudsman is to—
- (a) ensure fair dealing between retailers and their suppliers;
  - (b) promote competition for the benefit of consumers;
  - (c) enforce the Groceries Supply Code of Practice (“the Code”), including the investigation and determination of complaints and disputes under the Code; and 15
  - (d) fulfil the purposes set out in the Recommendations from the Competition Commission to the Minister of State for Business, Innovation and Skills on 4 August 2009 (“the Recommendations”).
- (4) The Ombudsman is to be independent of the OFT. 20
- (5) The Ombudsman may appoint staff which the Ombudsman thinks are necessary for the fulfilment of the Ombudsman’s functions.
- (6) The Ombudsman may delegate any of the Ombudsman’s powers and duties under this Act to any member of staff.

- (7) Regulations under this section are subject to annulment in pursuance of a resolution of either House of Parliament.

## 2 Duties to establish and publish procedures and guidelines

Within six months of being appointed to the role, the Ombudsman must –

- (a) establish and publish procedures for monitoring and enforcing the Code; 5
- (b) establish and publish procedures regarding the investigation of complaints of breaches of the Code;
- (c) establish and publish procedures regarding the investigation of disputes under the Code; and 10
- (d) establish and publish guidelines as to how the Ombudsman will promote fair dealing and competition in accordance with the Recommendations.

## 3 Investigations and determinations by the Ombudsman

- (1) The Ombudsman may investigate and determine a complaint regarding conduct allegedly in breach of the Code made by – 15
  - (a) the OFT,
  - (b) a supplier, as defined by the Groceries (Supply Chain Practices) Market Investigation Order 2009, or
  - (c) a retailer, as defined by the Groceries (Supply Chain Practices) Market Investigation Order 2009. 20
- (2) The Ombudsman may investigate and determine a dispute regarding the Code referred by –
  - (a) the OFT,
  - (b) a supplier, as defined by the Groceries (Supply Chain Practices) Market Investigation Order 2009, or 25
  - (c) a retailer, as defined by the Groceries (Supply Chain Practices) Market Investigation Order 2009.
- (3) The Ombudsman must investigate and determine any complaint or dispute which the Ombudsman thinks should be investigated, subject to subsection (8). 30
- (4) The Ombudsman must publish guidelines regarding how the Ombudsman will decide which complaints and disputes will be investigated.
- (5) The Secretary of State may make rules by statutory instrument regarding the procedures which are to be adopted in connection with –
  - (a) the making of complaints and the reference of disputes, and 35
  - (b) the investigation of complaints and disputes under this Act.
- (6) Subject to any provision made by the rules, the procedures for the making of complaints, reference of disputes and the conduct of investigations shall be as the Ombudsman considers appropriate in the circumstances.
- (7) The Ombudsman may investigate a complaint notwithstanding that it relates to conduct which took place before these provisions came into force, as long as the conduct occurred after the Groceries (Supply Chain Practices) Market Investigation Order 2009 was made, on 4 August 2009. 40
- (8) The Ombudsman shall not investigate or determine a complaint or dispute if –

- (a) before the making of the complaint or the reference of the dispute, proceedings in respect of the matters which would be the subject of the investigation have been started in any court or tribunal, and
- (b) those proceedings have not been discontinued or have been discontinued on the basis of a settlement or compromise binding all persons by or on whose behalf the complaint or reference is made. 5
- (9) A determination by the Ombudsman may include—
- (a) upholding or rejecting a complaint or any part of a complaint;
- (b) deciding the accuracy of the positions of either or both parties to a dispute under the Code; 10
- (c) directing a party complained of to—
- (i) refrain from any conduct, or
- (ii) take any action,
- that the Ombudsman thinks is appropriate in the circumstances to comply with the Code and remedy any breach; 15
- (d) ordering a party complained of to pay a monetary penalty in accordance with section 6, or costs in accordance with section 7.
- 4 Ombudsman to provide written reasons for decisions**
- (1) If the Ombudsman decides not to conduct an investigation pursuant to a complaint made or a dispute raised, the Ombudsman will provide reasons for that decision in writing to— 20
- (a) the complainant; and
- (b) the OFT.
- (2) Where the Ombudsman has conducted an investigation under this Act the Ombudsman shall provide a written statement of the determination of the complaint or dispute in question, including reasons for the determination, to— 25
- (a) all parties to the complaint or dispute; and
- (b) the OFT.
- 5 Power to gather information**
- (1) For the purpose of conducting an investigation into a complaint or dispute, the Ombudsman may— 30
- (a) obtain information from such persons and in such manner, and make such inquiries, as the Ombudsman thinks fit;
- (b) require the production of any documents (including electronic documents) as the Ombudsman thinks fit; 35
- (c) disclose information which is obtained for the purpose of an investigation to any person prescribed in regulations under this section, if the Ombudsman considers that the disclosure would enable the person to discharge any of that person's functions, or assist the Ombudsman in discharging the Ombudsman's functions. 40
- (2) Regulations under this section shall be made by statutory instrument and may not be made unless a draft of the regulations has been laid before and approved by resolution of both Houses of Parliament.

- 6 Power to impose monetary penalties**
- (1) The Ombudsman may impose a monetary penalty on a party against which a complaint, or part of a complaint, is upheld.
  - (2) The Secretary of State may by regulations set out an appropriate range of monetary penalties, and may by regulations set out an appropriate method of determining the level of monetary penalty. 5
  - (3) In determining the range of monetary penalties available, the Secretary of State must consider the objectives of this Act and must consult with the OFT.
  - (4) Regulations under this section are subject to annulment in pursuance of a resolution of either House of Parliament. 10
  - (5) Subject to any regulations under subsection (2), the Ombudsman will have full discretion to impose the level of monetary penalty as the Ombudsman sees fit in the circumstances of each case, taking into account the purposes of this Act.
- 7 Power to award costs**
- (1) The Ombudsman may award costs against a retailer against whom a complaint has been upheld. 15
  - (2) In a case where the Ombudsman has found abuse of the Ombudsman's functions or the Formula according to section 13 of this Act, the Ombudsman may award costs against a party found to have been directly or indirectly responsible for the abuse. 20
- 8 Enforcement of monetary penalties and costs orders**
- (1) The Secretary of State must by regulations provide for the enforcement of any monetary penalties and costs orders imposed by the Ombudsman.
  - (2) Regulations under this section shall be made by statutory instrument and may not be made unless a draft of the regulations has been laid before and approved by resolution of both Houses of Parliament. 25
- 9 Appeal**
- (1) Subject to subsection (3), the determination by the Ombudsman of a complaint or dispute shall be final and binding on all parties to the dispute.
  - (2) In this section, "determination" includes any decision made, direction given or penalty ordered by the Ombudsman. 30
  - (3) An appeal from a determination of the Ombudsman on a point of law only shall lie to the High Court or, in Scotland, the Court of Session or, in Northern Ireland, the High Court.
- 10 Reporting requirement** 35
- (1) The Ombudsman must publish the following reports –
    - (a) reports on the results of all complaints investigated by the Ombudsman, as soon as practicable after a determination is made in respect of a complaint;

- (b) an annual report on the discharge of the Ombudsman’s functions for each financial year, as soon as is practicable after the end of each financial year; and
- (c) any other report that the Secretary of State requires by regulations under this section. 5
- (2) For the purposes of the law of defamation, the publication of any report or other matter by the Ombudsman under this Act shall be absolutely privileged.
- (3) Regulations under this section are subject to annulment in pursuance of a resolution of either House of Parliament.
- 11 Funding of the Ombudsman 10**
- (1) The OFT must directly fund all costs associated with the Ombudsman.
- (2) The OFT shall raise money from retailers to cover the costs to the OFT associated with the Ombudsman in accordance with section 12.
- 12 The reimbursement formula**
- (1) Within six months of the coming into force of this Act, the OFT shall publish a reimbursement formula (“the Formula”) by which the OFT will raise the money from retailers to cover the costs associated with the Ombudsman. 15
- (2) The aim of the Formula will be the calculation of each retailer’s contribution to the costs of the Ombudsman by reference to the proportion of complaints made and upheld against each retailer. For clarity, the principle of the Formula will be that – 20
- (a) a retailer with more complaints made against it in any financial year will contribute more to the costs associated with the Ombudsman in that financial year than will a retailer with fewer complaints made against it; and 25
- (b) a retailer with more complaints upheld against it in any financial year will contribute more to the costs associated with the Ombudsman in that financial year than will a retailer with fewer complaints upheld against it.
- (3) The costs to be reimbursed by retailers may be calculated over more than one year if the Ombudsman and the OFT agree to do so. 30
- (4) In developing the Formula, the OFT will –
- (a) follow the formula recommended in the Competition Commission’s Report, unless there is good reason to vary it;
- (b) consult the Ombudsman. 35
- (5) For each period of reimbursement, the Ombudsman must make a recommendation as to how much retailers should contribute according to the formula for any particular period, and the OFT must follow that recommendation unless there is good reason to vary it.
- (6) If the OFT considers there is good reason to depart from the Ombudsman’s recommendation regarding retailer contribution it shall provide the Ombudsman with reasons in writing. 40
- (7) The OFT may, from time to time, change the Formula if both the OFT and the Ombudsman agree –

- (a) that it is necessary to better reflect the aim of the Competition Commission’s recommendation; or
- (b) that the Formula has been or may be subject to abuse by any party, including third parties.
- (8) Non-compliance by a retailer with the requirement to reimburse the OFT according to the OFT’s calculations shall incur a monetary penalty, which will be prescribed in regulations. 5
- (9) Regulations made under this section are subject to annulment in pursuance of a resolution of either House of Parliament.
- 13 Abuse of the reimbursement formula or the Ombudsman’s investigatory function 10**
- (1) The Ombudsman will have the power to investigate any claims of abuse of the Formula or of the Ombudsman’s investigatory function by any party.
- (2) In this section, “abuse of the Formula or the Ombudsman’s investigatory function” includes but is not limited to complaints made against a retailer with the purpose of increasing that retailer’s share of the costs under the Formula. 15
- (3) If the Ombudsman finds that the Formula or the Ombudsman’s investigatory function has been subject to abuse by any party, any change to the Formula may be retrospective for the purpose of remedying the effect of that abuse.
- (4) If the OFT finds that the Formula has been subject to abuse by any retailer, directly or indirectly, that retailer may be subject to a monetary penalty, which will be prescribed in regulations. 20
- (5) Regulations made under this section are subject to annulment in pursuance of a resolution of either House of Parliament.
- 14 Financial provisions 25**
- (1) *There is to be paid out of money provided by Parliament –*
- (a) *any expenditure under this Act of a government department;*
- (b) *any increase attributable to this Act in the sums payable out of money so provided under any other enactment.*
- (2) *There is to be paid into the Consolidated Fund any sums received by a government department by virtue of this Act.* 30
- 15 Interpretation**
- In this Act –
- “Competition Commission’s Report” (“the Report”) means the report by the Competition Commission on the Supply of Groceries in the UK, dated 30 April 2008; 35
- “Groceries Supply Code of Practice” (“the Code”) means the Groceries Supply Code of Practice contained in the Groceries (Supply Chain Practices) Market Investigation Order made by the Competition Commission on 4 August 2009; 40
- “OFT” means the Office of Fair Trading;

“Recommendations” means the recommendations from the Competition Commission to the Minister of State for Business, Innovation and Skills on 4 August 2009;

“retailers” means the companies listed in Schedule 2 to the Groceries (Supply Chain Practices) Market Investigation Order made by the Competition Commission on 4 August 2009;

“suppliers” means suppliers as defined in Schedule 1 of the Groceries (Supply Chain Practices) Market Investigation Order 2009.

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**16 Short title and extent**

(1) This Act may be cited as the Grocery Market Ombudsman Act 2010.

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(2) This Act extends to England and Wales, Scotland and Northern Ireland.



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## B I L L

To make provision for the appointment, functions and powers of a Grocery Market Ombudsman; and for connected purposes.

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supported by  
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