



HM Government

# Groceries Code Adjudicator Review: Part 2

Government response to the Call for Evidence on the case for extending the Groceries Code Adjudicator's remit in the UK groceries supply chain

## Joint Ministerial foreword

We are pleased to be publishing the Government's response to the formal Call for Evidence, launched in October 2016, to explore the case for extending the remit of the Groceries Code Adjudicator (GCA).

The role of the GCA is to make sure that the largest domestic retailers treat their direct suppliers lawfully and fairly by monitoring compliance with and enforcing the Groceries Supply Code of Practice (the Code). The GCA is recognised as an exemplary modern regulator with an international reputation. It is helping to strengthen relationships in the supply chain for the benefit of consumers, retailers and other food businesses.

In launching the Call for Evidence, we recognised that there are still some concerns about unfair trading practices in the supply chain; in particular, amongst primary producers who are not covered by the Code. The Government wants to do all it can to help such businesses, whilst taking account of the interests of all parties in the groceries sector.

The consultation revealed a number of specific concerns:-

- Problems with the balance of bargaining power in the groceries supply chain.
- Examples of unfair or unclear contract terms.
- Difficulties caused by late payments.

- A lack of trust and transparency that discourages good relationships across the supply chain.

This response sets out some immediate steps that the Government will take to address these concerns. But this is not the end of the story. As we leave the EU, we will be able to go further and design new domestic policies that improve transparency and fairness for the longer-term. The response highlights some of the key areas that we will consider further.

We would like to thank all those individuals, businesses and organisations who responded to the Call for Evidence. We look forward to working with them closely as we progress the actions set out in this response.

**Andrew Griffiths MP**

***Parliamentary Under Secretary of State  
and Minister for Small Business,  
Consumers and Corporate  
Responsibility***

**George Eustice MP**

***Minister of State for Agriculture,  
Fisheries & Food***

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## Background to this Government Response

1. The GCA is an independent adjudicator which oversees the relationships between the largest UK retailers and their direct suppliers.
2. Established in 2013, the GCA was created to ensure retailers treat their suppliers lawfully and fairly. The appointment followed a 2008 Market Investigation by the Competition Commission into the UK groceries market. The Competition Commission found that, while the sector was broadly competitive, some large retailers were transferring excessive risk and unexpected costs to their direct suppliers. This could discourage suppliers from investing in quality and innovation; small businesses could fail and, ultimately, there could be potential disadvantage to consumers.
3. In response to the Competition Commission's recommendation, the Government introduced the Code in 2010 to regulate the relationship between the 10 retailers with UK annual groceries turnover of more than £1 billion ("the large retailers") and their direct suppliers. The Government gave the retailers some time to set up a voluntary Ombudsman; the GCA was established on a statutory basis when the self-regulatory approach did not progress.
4. The GCA's role includes investigating complaints and arbitrating in disputes of alleged breaches of the Code. By ensuring that the large retailers treat their direct suppliers fairly, the GCA also helps to ensure that consumers get a better deal through fair competition.
5. The GCA's remit was limited to addressing the adverse effects highlighted in the Competition

Commission's investigation into the groceries market and does not apply elsewhere in the groceries supply chain; for example, it does not apply to farmers, growers and other businesses that supply the large retailers through a third party. A number of these indirect suppliers and their representatives have argued that the limitation in the GCA's remit is unfair. These businesses argue that they are at least as vulnerable as direct suppliers to unfair trading practices, if not more so, but have no regulatory protection.

6. In October 2016, the Government published a formal Call for Evidence on the remit of the GCA. We invited views and information on any unfair trading practices affecting the groceries supply chain, the need for further action and the form such action might take. The Call for Evidence closed in January 2017.
7. This Government response deals in turn with the main issues raised during the Call for Evidence process. The response is focused on England and reserved matters only. We have shared the Government response with the relevant devolved administrations and will continue to discuss with them what could be done in other parts of the UK to respond to the concerns of farmers and growers.

## Introduction

8. The Government is committed to a fair, transparent and thriving modern groceries supply chain. In launching the Call for Evidence on the remit of the GCA in October 2016, we invited information to help us consider if there is any case for extending the remit of the GCA or some alternative Government action.
9. The Call for Evidence ran from October 2016 to January 2017. In particular, we asked respondents to address the following questions:-
  - What changes, if any, are needed to the groceries supply chain to ensure fair practice, whilst ensuring that, over the long-term, consumers face no extra costs?
  - Are there any behaviours or practices in the groceries supply chain that are unhelpful but not covered by the Code, either because they are new behaviours or practices not identified in the Code or because they are affecting businesses who are not direct suppliers to the large retailers?
  - What are the top two or three priorities in the groceries supply chain that you feel will benefit your business most if addressed?
  - Could any changes be achieved through non-legislative means?
10. Many individuals and organisations welcomed the opportunity to provide their views on the groceries supply chain. During the course of the consultation, the Government received 58 written responses. We also held a number of public engagement events around the country. Respondents included private individuals, retailers, suppliers, NGOs, academia, and trade associations. Submissions received as part of the Call for Evidence included case studies, published articles, anecdotal evidence, letters to retailers, examples of contracts, and publicly available reports.
11. The Call for Evidence was issued alongside the formal statutory review into the performance and effectiveness of the GCA which was required under Section 15 of the GCA Act 2013. The main conclusion of the statutory review was that the GCA should continue in its current form and is well-regarded by both large retailers and suppliers. A report setting out the conclusions and recommendations of the review was published in July 2017.

## The Remit of the GCA

12. Most respondents to the Call for Evidence felt that the GCA has had a positive impact on commercial relationships in the groceries market. In general, direct and indirect suppliers supported some kind of government action to extend its remit. A number of submissions highlighted the unfair pressures placed on primary producers; for example, through unfavourable contract terms, delays in payments, and short notice of price reductions and specifications. These practices limit the ability of farmers and growers to budget effectively, manage price volatility, and run a profitable business.
13. There were different views about the form that any such action might take. These ranged from extending the GCA's remit further down the supply chain to regulate contractual relationships between primary producers and processors or manufacturers, to bringing smaller retailers and the food service sector within the remit of the GCA.
14. By contrast, most of the large retailers highlighted problems with extending the GCA's remit and argued against any further intervention. Several retailers commented that the GCA is successfully delivering against its remit and there are dangers in diluting its effectiveness by adding further responsibilities. There were concerns about funding and how any extended role for the GCA could be delivered in practice.
15. On the basis of submissions to the Call for Evidence, we believe that any formal extension of the GCA's remit would not be appropriate at this time. Although there are clearly a number of concerns relating to the experience of some farmers and growers in the supply chain, there is no clear evidence of systematic

widespread market failures. However, there is significant potential to explore more targeted and proportionate approaches to enable primary producers to survive and thrive. These should go beyond existing reliance on voluntary codes of practice and encourage greater transparency and fairness.

16. The rest of this response discusses the specific concerns raised in the Call for Evidence and sets out actions that the Government intends to take. In some cases, these will be subject to further consultation.

# Responses to the Call for Evidence's main findings

## Issue 1: Contracts and specifications

One of the main concerns raised in the consultation was a significant pattern of unfair or unclear terms and conditions in contracts between producers and the processors, slaughterhouses, or manufacturers that they supply. These concerns were particularly prominent in the dairy sector. A number of respondents highlighted the challenge posed by variations to specifications or contract terms, especially if imposed at short notice. Others raised the difficulties that producers face in trying to terminate their contracts within a reasonable period if significant changes to prices or the terms of contracts are proposed. These can have major commercial implications for a small producer.

17. The Government will take the following steps to support fairer and better terms and conditions for primary producers.

### *Mandatory written contracts*

18. The EU CMO Regulation (1308/2013) gives Member States discretion to make obligatory the use of mandatory written contracts between milk producers and processors. As a minimum, such contracts should include:-

- a. the price payable for the delivery of milk – expressed either as a static price or a formula;
- b. the volume of raw milk to be delivered and the timing of deliveries;
- c. the duration of the contract;

- d. details of payment periods and procedures;
- e. arrangements for collecting or delivering raw milk; and,
- f. rules that apply in the event of force majeure.

19. The Government plans to introduce compulsory written contracts in the dairy sector in 2018. This has a potentially valuable role to play in providing extra transparency and certainty for dairy farmers. We anticipate that the rules would be enforced by the Rural Payments Agency. Formal consultation will be undertaken on the necessary secondary legislation. Our aim is to launch the public consultation by March 2018.

### *Carcase classification*

20. The Government is proposing to mandate the use of a carcass classification system in England. This would require slaughterhouses to follow the use of a standard grid for the classification of sheep carcasses, helping to ensure that producers receive consistent information on the confirmation and classification of their animals, and are paid per carcass in a more transparent manner. We anticipate that licensing and monitoring in abattoirs would be carried out by the Rural Payments Agency.

21. Formal public consultation will be needed on the necessary secondary legislation and an Impact Assessment. The Government plans to launch this process by May 2018.

22. Carcass classification has been mandatory in commercial-scale abattoirs in the beef and pig sectors for many years.

## Issue 2: Collaboration

Compared with other, more powerful players in the groceries supply chain, primary producers are much smaller and disaggregated. The lack of bargaining power of many farmers and growers was an important theme raised by those responding to the Call for Evidence.

### *Funding and support*

23. In 2018-19, the Government will begin to make available up to £10 million of funding, through the Rural Development Programme for England, to support projects which enable farmers and growers to improve their efficiency and competitiveness, access new markets and strengthen their position in the supply chain through co-operation.

24. We will work with the farming, horticulture, and ornamentals industries to develop a framework for the use of these funds. For example, this could help in: bringing together those farmers and growers with an interest in co-operation structures; enabling producers to explore the practicalities of formal co-operation; supporting groups to formally establish, develop or expand; and encouraging added-value projects that improve the profitability of farmer and grower members through formal collaborative structures.

25. In principle, these funds would be available on a competitive basis to groups of individual farm businesses in England, existing cooperatives or Producer Organisations (POs), consultancies and NGOs.

### *Facilitating joint activities*

26. The CAP CMO Regulation provides a number of important exemptions to

competition law which enable farmers to collaborate at scale in ways that make markets work better in the interests of producers and consumers: for example, through joint production planning, processing, and sales. It also provides the legal framework for POs, setting out the rights of producers to be formally recognised as a PO. One of the major advantages of recognition as a PO is that it can “bulk-negotiate” contracts, on behalf of its members, for the delivery of their produce to processors.

27. As we develop our future domestic agriculture policy and prepare to depart from the EU, we will aim to ensure that farmers continue to enjoy analogous rights to those available under EU law to form POs and carry out certain joint activities. We will explore this in more detail with the food and farming industry.

### Issue 3: Late payments

As part of the Call for Evidence, around 50% of trade bodies, suppliers, charities and NGOs highlighted ongoing problems of poor payment practices in the groceries supply chain. Difficulties with late payments mean that many small and medium sized businesses experience severe administrative and financial burdens, hampering their ability to thrive and grow.

28. The Government is clear that late payments have no place in an economy that works for all. Appointed in October 2017, the Small Business Commissioner (SBC) is part of a package of measures to tackle late payment and unfavourable payment practices across the private sector. The SBC is an independent public body covering the whole of the UK – England, Wales, Scotland and Northern Ireland.

29. The SBC will:-

- Provide general advice and information to small businesses to help them resolve disputes.
- Signpost small businesses to existing support and dispute resolution services through the SBC's website.
- Consider complaints about payment issues between small business suppliers (businesses with fewer than 50 staff) and their larger customers, making (non-binding) recommendations on how the parties should resolve their disputes.

30. This is one of a number of measures the Government is taking to tackle a late payment culture. Regulations came into force in April 2017 requiring large businesses publicly to report the average time they take to pay their suppliers. This

allows suppliers, including small businesses, to make informed decisions about who they do business with. Firms can check when large businesses pay their suppliers on GOV.UK.

31. The Prompt Payment Code is a voluntary code of practice for businesses, administered by the Chartered Institute of Credit Management (CICM) on behalf of the Department for Business, Energy and Industrial Strategy (BEIS). The code sets standards for payment practices between organisations and their suppliers, promoting 30 day payment terms as the aim for the norm for acceptable behaviour in the UK, with 60 days as the maximum. There are over 2,000 signatories to the Code.

32. Under the Late Payment of Commercial Debts (Interest) Act 1998, suppliers can claim statutory interest, and debt recovery costs, on invoices not paid within the agreed period or (if no period is agreed) within 60 days for business to business transactions. The Late Payment of Commercial Debts Regulations allows representative bodies to bring proceedings in the High Court on behalf of their members about unfair payment terms.

## Issue 4: Transparency

During the Call for Evidence, several respondents raised the need for greater trust and transparency across the groceries supply chain: *“Our plea would be for more transparency throughout the supply chain, from growing through to retail, so that discussions and negotiations are based on facts”*.

Fair access and use of data by farmers and growers would support better business planning, risk management and improved profitability.

33. Well-functioning markets require an adequate flow of information between consumers, buyers and sellers at all stages of the supply chain. However, the Call for Evidence has identified a number of concerns about the level of transparency along the food supply chain. While information on farm gate prices is freely available, there is much less information on prices applied at the downstream stages of the groceries supply chain – in particular in the manufacturing, processing and food service sectors. This contributes to the weak position of farmers and other small suppliers in the chain and hampers their ability to take well-informed production and marketing decisions.
34. The Government already collects and disseminates a range of market information. Working with the Agricultural and Horticultural Development Board (AHDB) and other industry bodies, we will consider if the dissemination of data could be improved in the short term to improve risk management and business planning. We will explore with industry how the collection and dissemination of market data can be improved in the longer-term to drive greater transparency, efficiency and quality while

safeguarding the privacy of sensitive information.

## Issue 5: Codes of practice

Since 2012, voluntary codes of practice in the beef and dairy sectors have been introduced by industry to encourage minimum standards of contractual good practice. Although these have had some beneficial effects, respondents to the Call for Evidence considered that too many processors and abattoirs have failed to sign up to the codes at all, or they are picking and choosing which elements to comply with. There are concerns that “code-compliant” processors and abattoirs may be at a competitive disadvantage against those who have not signed up.

35. Terms, conditions and other contractual practices within the groceries sector should be clear and transparent and fairly negotiated between farmers, growers and processors in the supply chain.
36. In future, we want to explore the potential for different forms of contractual arrangements, especially long-term and forward contracts, which can help farmers to manage their cash flow and risk, giving them more security for business planning and to support investments. Such arrangements can also provide benefits for their contract partners and consumers by improving communication and the transmission of market signals along the groceries supply chain.
37. In addition, the Government will explore the potential benefits of statutory codes of conduct. These could give formal guidance on contractual good practice between processors and producers.

## Issue 6: Designated retailers

The UK groceries market is a highly successful and dynamic sector, featuring the growth of online retailing and the expansion of groceries portfolios by “non-grocery” retailers.

As part of the Call for Evidence, a number of respondents raised concerns that existing retailers or new market entrants may either currently or in the near future have an annual turnover of more than £1 billion with respect to the retail supply of groceries in the UK and should therefore be formally designated as “large retailers” under the Code.

2009 Order, can be designated by the CMA in a written notice under the 2009 Order.

38. The 10 largest grocery retailers in the UK are required to comply with the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order) and the Groceries Supply Code of Practice. The 2009 Order and the Code are competition measures implemented following the Competition Commission’s investigation into the groceries market which concluded in 2008, and are monitored and kept under review by the Competition and Markets Authority (CMA), which replaced the Office of Fair Trading and the Competition Commission in 2014.

39. The grocery retailers that are currently designated under the 2009 Order are: Aldi Stores Limited, Asda Stores Limited, Co-operative Group Limited, Iceland Foods Limited, J Sainsbury plc, Lidl UK GmbH, Marks & Spencer plc, Tesco plc, Waitrose Limited, and Wm Morrison Supermarkets plc.

40. Additional grocery retailers with a turnover exceeding £1 billion with respect to the retail supply of groceries in the United Kingdom, as defined in the

41. The CMA has agreed to formalise its current activities, by reviewing publicly available information on an annual basis. Where there are reasonable grounds for suspecting that any additional retailer may have reached the turnover threshold specified in the Order, the CMA will request further evidence from it. This will allow the CMA to assess whether that retailer should be added to the list of designated retailers.

## Annex: Summary of responses

<b>Type of organisation</b>	<b>Responses</b>
Trade body	27
Retailer	8
Ethical organisation/NGO	6
Government/regulatory	1
Charity	3
Private person	3
Small business (10 to 49 staff)	5
Large business (over 250 staff)	2
Universities	3
<b>Total</b>	<b>58</b>