



Department for
Business, Energy
& Industrial Strategy

GROCERIES CODE ADJUDICATOR

Statutory Review

Closing date: 12 September 2019

June 2019



OGL

© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at: GCAreview@beis.gov.uk

Foreword

I am pleased to launch the second Statutory Review of the Groceries Code Adjudicator (“GCA”) to gain evidence on how it has performed its statutory obligations following its first review in 2016.

The GCA is the UK’s first independent adjudicator to oversee the relationship between supermarkets and their suppliers. Established in 2013, its role is to make sure that large supermarkets treat their direct suppliers lawfully and fairly, investigating suspected breaches of the Code and arbitrating in disputes.

The GCA’s role not only monitors, ensures compliance with and enforces the Groceries Supply Code of Practice (“the Code”); it also helps to strengthen the supply chain benefiting suppliers, retailers and consumers. The first review of the GCA found that the GCA is regarded as an exemplary modern regulator with an international reputation.

I look forward to receiving your views and comments on this Statutory Review.



Kelly Tolhurst MP

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



Contents

Foreword	3
General information	5
Why we are consulting	5
Consultation details	5
How to respond	7
Confidentiality and data protection	7
Quality assurance	8
Background	9
Consultation questions	11
Next steps	15
Annex A: Terms of Reference	24

General information

Why we are consulting

Section 15 of the Groceries Code Adjudicator Act 2013 (“the Act”)¹ requires the Government to review periodically the performance of the GCA. The first statutory review covered the period from the creation of the GCA (in June 2013), to 31 March 2016. The Government response to the review was published in July 2017.

<https://www.gov.uk/government/publications/groceries-code-adjudicator-statutory-review-2013-to-2016>

The second statutory review (the “Review”) covers the period from 1 April 2016 to 31 March 2019.

Consultation details

The Act specifies the issues which the Review must address and who must be consulted as part of the Review. The primary purpose of this consultation is to seek views and evidence which will allow the Government to make an assessment of the GCA’s performance against the measures set out in the Act. These measures are explained in the Terms of Reference (which can be found at Annex A) the contents of which are summarised below:

- how the GCA’s powers have been exercised;
- how effective the GCA has been in enforcing the Code;
- whether to amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015; and
- whether to make an Order setting out the information that the GCA may consider when deciding whether to investigate.

Issued: 20 June 2019

Respond by: 12 September 2019

¹ <https://www.legislation.gov.uk/ukpga/2013/19/contents>

Enquiries to:

GCA Review Team
Consumer and Competition
Department for Business, Energy and Industrial Strategy
1st Floor, Orchard 3
1 Victoria Street
London
SW1H 0ET

Email: GCAREview@beis.gov.uk

Consultation reference: <https://www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review-2016-to-2019>

Audiences:

The Act requires the Government to consult the following:

- the GCA;
- the Competition and Markets Authority;
- the retailers subject to the Code;
- one or more persons representing the interest of suppliers;
- one or more persons representing the interests of consumers; and
- any other appropriate person (we have not identified any specific person or persons here and welcome contributions from any interested person).

Stakeholders are invited to respond to the relevant sections of the questions: see the [Consultation questions section](#). We have identified questions which we consider are particularly relevant to the stakeholders which the Act requires us to consult. When responding, we recommend that stakeholders take account of the Terms of Reference (see [Annex A](#)). We will assess all contributions against the Terms of Reference. Any recommendations which may follow this Review will be based on the evidence received. We therefore encourage stakeholders to provide supporting qualitative and quantitative evidence where possible.

Territorial extent:

The Groceries Code Adjudicator Act 2013 extends to England and Wales, Scotland and Northern Ireland.

How to respond

Respond online at: beisgovuk.citizenspace.com/ccp/statutory-review-of-gca

or

Email to: GCAREview@beis.gov.uk

Write to:

GCA Review Team
Consumer and Competition
Department for Business, Energy and Industrial Strategy
1st Floor, Orchard 3
1 Victoria Street
London
SW1H 0ET

A response form is available on the GOV.UK consultation page:

<https://www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review-2016-to-2019>

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The published information will include names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Background

The Groceries Code Adjudicator

In May 2006 the Competition Commission² (CC) launched a Market Investigation into the UK Groceries market in response to long-standing concerns about practices of the large retailers (supermarkets). The CC published its findings in 2008³ stating that, while the sector was broadly competitive, some large retailers were transferring excessive risk and unexpected costs to their direct suppliers by using their buyer power. The CC considered that this might have an adverse effect on suppliers' ability to invest and innovate which could ultimately reduce choice and/or increase prices for consumers. As a result of these findings, the CC issued the Groceries (Supply Chain Practices) Market Investigation Order 2009⁴ ("the Order") containing a new strengthened code of practice for groceries retailers' dealings with their direct suppliers i.e. The Groceries Supply Code of Practice⁵ ("the Code").

Large retailers were given some time to set up a voluntary Ombudsman but, as this self-regulatory approach did not progress, the Groceries Code Adjudicator (GCA) was established under the Groceries Code Adjudicator Act 2013 ("the Act")⁶. The purpose of the GCA is to monitor and enforce the Code.

The Code applies to the twelve largest UK grocery retailers⁷ ("the retailers") with UK annual groceries turnover of more than £1 billion. The retailers must incorporate the Code into their supply agreements with their direct suppliers. It imposes an over-arching principle of fair dealing and includes specific provisions governing the variation of supply agreements and terms of supply; the timing of payments; payments for marketing costs and the funding of promotions; and payments as a condition of being a supplier.

The Code does not directly regulate the actual prices paid by retailers to their direct suppliers. In addition, the Code does not cover disputes between the retailers and consumers, which are regulated by consumer protection legislation.

In June 2013 Christine Tacon CBE became the first Adjudicator and was initially appointed for a four year term. She was re-appointed for a second term on 25 June 2017, for a period of three years (ending on 24 June 2020). The Adjudicator is wholly funded by a levy on the retailers which for 2019/20 is £2 million. The Adjudicator works three days per week and has a small team made up of public sector secondees.

² In April 2014, most of the functions of the Competition Commission were transferred to the Competition and Markets Authority.

³ www.gov.uk/cma-cases/groceries-market-investigation-cc

⁴ <https://www.gov.uk/government/publications/groceries-supply-chain-practices-market-investigation-order>

⁵ <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

⁶ <https://www.legislation.gov.uk/ukpga/2013/19/contents>

⁷ These are - Aldi, ASDA, B&M, Co-op, Marks and Spencer, Iceland, Lidl, Morrisons, Ocado, Sainsburys, Tesco, Waitrose. Ocado and B&M were added to the list in November 2018

The Adjudicator has a duty to arbitrate where a supplier refers a dispute with a retailer to her. The Adjudicator may arbitrate herself or appoint a third party to do so. The Adjudicator is under a statutory duty to protect the anonymity of those bringing her information about the retailers. The Adjudicator has the power to investigate where she has reasonable grounds to suspect a breach of the Code. The Adjudicator has wide discretion to assess when the 'reasonable grounds' test has been satisfied – the Adjudicator's published guidance states that this may be based on information from, but not restricted to: direct and indirect suppliers; whistle-blowers; and information which is otherwise in the public domain. Where the adjudicator is satisfied that there has been a breach of the Code, the Adjudicator may take one or more of the following enforcement measures:

- make recommendations as to future compliance to the retailer concerned;
- 'name and shame' the retailer by requiring it to publish information relating to the investigation; or
- impose a financial penalty on the retailer of up to 1 percent of UK turnover.

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.

Role of Government

The Groceries Code Adjudicator is operationally independent of Government.

The Secretary of State for Business, Energy and Industrial Strategy (BEIS) is responsible for appointing the Adjudicator. The current Adjudicator was appointed following an open competition in accordance with Cabinet Office guidelines on public appointments. The Secretary of State is also required to approve the Adjudicator's annual levy. The Adjudicator must submit a levy proposal and supporting business case in advance to the Secretary of State. The Secretary of State will consider the proposal and write to the Adjudicator confirming whether he has approved the levy, and whether he has done so in full or in part. Once in receipt of this approval, the Adjudicator may invoice the retailers for their share of the levy. Non-payment of the levy is recoverable by the Adjudicator as a civil debt.

The Groceries Code Adjudicator Act 2013 also provides powers for the Government to transfer the GCA's functions to a public body or abolish the GCA. The Government can use the findings of the GCA Review to consider whether and to what extent it is necessary to exercise these powers.

Consultation questions

Part 1: Questions for the Groceries Code Adjudicator

1. For the Statutory Review period, please explain how you have met your statutory duties set out in the Groceries Code Adjudicator Act 2013?

Please comment in particular on:

- a) how much you have exercised your powers;
- b) how effective you have been in enforcing the Groceries Code.

2. We would also welcome any comments you may have on the Order-making powers contained in the Act and whether you would find it helpful for the Secretary of State to:

- a) amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015;
- b) make an order setting out the information which you may consider when deciding whether to investigate.

3. How effective you have been since 2016 in:

- a) improving retailer and supplier awareness of the Code; and
- b) improving supplier confidence in raising issues with retailers and with you?

Part 2: Questions for the Competition and Markets Authority

1. For the Statutory Review period, please comment on the GCA's effectiveness in fulfilling the role intended for it by the Competition Commission in 2009?

Please comment in particular on:

a) whether the GCA has sufficient and proper powers to enforce the Code effectively.

2. We would also welcome any comments you may have on how effective the GCA has been in exercising her powers.

Part 3: Questions for retailers

(i.e. retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order and in the Notices of Designation issued by the CMA. While responding, B&M and Ocado should only consider their experience with the GCA from November 2018)

1. Have you had any dealings with the GCA?
 - a. Yes
 - b. No

2. If yes, how often?
 - a. Regularly
 - b. Occasionally
 - c. Rarely
 - d. Never

3. How satisfied are you with your dealings with the GCA?
 - a. Very satisfied
 - b. Satisfied
 - c. Neutral
 - d. Unsatisfied
 - e. Very unsatisfied

Comment:

4. What impact, if any, has the GCA had on your relationships with your suppliers?

Comment:

5. Has resolving a complaint with suppliers become more or less burdensome than before the GCA?

Comment:

6. What do you believe has been the impact of the GCA on the groceries market?

Comment:

7. How effective do you consider the GCA has been in exercising her powers: (In responding to this question, stakeholders may wish to refer to the GCA's own guidance⁸ on its approach to carrying out investigations, enforcement and arbitration).

a) in providing arbitration?

b) in conducting investigations and undertaking enforcement activity?

c) in providing advice, guidance and recommendations?

Comment:

8. Do you think the GCA has been effective in enforcing the Code?

Yes

No

Please give your reasons: This question will allow us to gauge the broad sense of effectiveness in wide terms. Detailed analysis of effectiveness will be judged by responses to all questions.

Comments:

9. Is there any way to make the GCA more effective in delivering its key objectives?

Comment:

⁸ <https://www.gov.uk/government/collections/gca-guidance>

Part 4: Questions for suppliers

1. To which of these retailers do you currently supply groceries?

Please tick all that apply:

- Aldi Stores Limited
- Asda Stores Limited
- B&M European Value SA
- Co-operative Group Limited
- Iceland Food Limited
- J Sainsbury plc
- Lidl UK GmbH
- Marks and Spencer plc
- Ocado Group plc
- Tesco plc
- Waitrose Limited
- WM Morrison Supermarkets plc

2. During your contract period, and since April 2016, have you experienced any issues with the retailers which are covered by the Code areas below? (If you supply groceries to B&M and Ocado, you should only consider your experience with these retailers since 1 November 2018).

Please tick all that apply:

- Variation of supply agreements and terms of supply
- Unjustified charges for consumer complaints
- Obligation to contribute to marketing costs
- Delay in payments
- No compensation for forecasting errors
- Payment as a condition of being supplier
- Not applying due care when ordering for promotions
- Not meeting duties in relation to de-listing
- Variation of supply chain procedures
- Payment for wastage
- Payment for better positioning of goods
- Payment for shrinkage
- Tying of third party goods and services to payment
- No issues with the Code
- Not aware of the Code
- Don't know (Please explain below)

Comments:

3. If you ticked any of the boxes above:

a) How often did you experience each of these issues?

- a) Regularly
- b) Occasionally
- c) Rarely

4. Did you raise the issue with the GCA?

- a) Yes
- b) No

5. If you raised an issue with the GCA how satisfied were you with your dealings with the GCA?

- a) Very satisfied
- b) Satisfied
- c) Neutral
- d) Unsatisfied
- e) Very unsatisfied

Comments:

6. If you did not raise an issue with the GCA, why not?

- a) Fear of some form of penalty from retailer
- b) Didn't think the GCA would be able to do anything
- c) You can address the concerns yourself
- d) Didn't feel that the concerns were important enough
- e) You already alerted a trade association
- f) Concerns over confidentiality

g) Not sure what is covered by the Code.

h) Other reason

Comments:

7. Would you say the issues you have highlighted have happened to a greater, the same or lesser extent since the first review of the GCA?

a) Greater

b) Same

c) Lesser

Comments:

8. How do you feel retailer practice overall has changed since the first review of the GCA?

a) Improved

b) Stayed the same

c) Worsened

d) Not sure

Comments:

9. In future, would you consider raising any issues you have about groceries supply with the GCA?

a) Yes

b) No

c) Don't know

Comments:

10. If you cannot raise an issue with the GCA, why not?

Please tick all that apply:

a) Fear of some form of penalty from retailer

b) Don't think the GCA will be able to do anything

c) You can address the concerns yourself

d) Don't think the concerns are important enough

e) You already alerted a trade association

- f) Concerns over confidentiality
- g) Not sure what is covered by the Code
- h) Other reason

What would encourage you to raise an issue with the GCA?

Comments:

11. Has the introduction of the GCA had an impact on product or process innovation?

- a) Substantially more likely to undertake product or process innovation
- b) Slightly more likely to undertake product or process innovation
- c) No impact on undertaking product or process innovation
- d) Less likely to undertake product or process innovation
- e) Substantially less likely to undertake product or process innovation

If the introduction of the GCA has had an impact on product or process, could you please give examples of product or process innovation that you have carried out?

Comments:

12. Do you now spend relatively more, or relatively less, on product or process innovation than you did 3 years ago.

- a) Relatively more
- b) Relatively less
- c) No change

Comments:

13. What do you believe has been the impact of the GCA on the groceries market?

Comment:

14. How effective do you consider the GCA has been in exercising her powers: (In responding to this question, stakeholders may wish to refer to the GCA's own guidance⁹ on its approach to carrying out investigations, enforcement and arbitration).

a) in providing arbitration?

b) in conducting investigations and undertaking enforcement activity?

c) in providing advice, guidance and recommendations?

Comment:

15. Do you think the GCA has been effective in enforcing the Code?

Yes

No

Please give your reasons: This question will allow us to gauge the broad sense of effectiveness in wide terms. Detailed analysis of effectiveness will be judged by responses to all questions.

Comments:

⁹ <https://www.gov.uk/government/collections/gca-guidance>

Part 5: Questions for consumers

1. What do you believe has been the impact of the GCA on consumers in relation to:

a) the quality of groceries supplied by the retailers.

b) the choice of groceries supplied by the retailers.

c) any other impact or effects?

Comments:

Part 6: Questions for any other interested parties

1. Have you engaged with the GCA?

a) Yes

b) No

2. How satisfied were you with how the GCA handled your issue?

a) Very satisfied

b) Satisfied

c) Neutral

d) Unsatisfied

e) Very unsatisfied

f) not applicable

3. If you are a representative group (e.g. a trade association), would you consider raising an issue with the GCA on behalf of your members?

a) Yes

b) No

Comments:

4. What do you believe has been the impact of the GCA on the groceries market?

Comments:

5. How effective do you consider the GCA has been in exercising her powers:

a) in providing arbitration?

b) in conducting investigations and undertaking enforcement activity?

c) in providing advice, guidance and recommendations?

In responding to this question, stakeholders may wish to refer to the GCA's own guidance¹⁰ on its approach to carrying out investigations, enforcement and arbitration.

Comments:

6. Do you think the GCA has been effective in enforcing the Code?

Yes

No

Please give your reasons: This question will allow us to gauge the broad sense of effectiveness in wide terms. Detailed analysis of effectiveness will be judged by responses to all questions.

Comments:

¹⁰ <https://www.gov.uk/government/collections/gca-guidance>

Next steps

Comments made in response to this review will be considered by the GCA Review Team and will inform the final report which will then be considered by BEIS ministers. We may contact you if, for example, we have a query in respect of your response. A final report covering the review of the GCA will be published on the GOV.UK website.

Annex A: Terms of Reference

Introduction

This document sets out the terms of reference for the Government's second statutory review of the Groceries Code Adjudicator ("the GCA Review")¹¹. Its purpose is to explain the issues that will be examined by the GCA Review.

The GCA Review covers the statutory requirements which the Government is obliged to fulfil under the Groceries Code Adjudicator Act 2013 ("the Act")¹².

The Statutory Review

The Act requires the Government to look at the performance of the Groceries Code Adjudicator ("the GCA") and at specific Order-making powers contained within the Act. These obligations will be met in the first two terms of reference.

Term of Reference 1

To consider the GCA's performance from 1 April 2016 to 31 March 2019.

This will in particular:

- consider how the GCA's powers have been exercised; and
- assess how effective the GCA has been in enforcing the Groceries Code ("the Code").

Term of Reference 2

To consider whether it would be desirable for the Secretary of State to exercise his Order-making powers contained in Section 9(6) and Section 15(11) of the Act.

¹¹ Section 15 of the Groceries Code Adjudicator Act 2013 (<https://www.legislation.gov.uk/ukpga/2013/19/contents>) requires the Secretary of State to review the Groceries Code Adjudicator's performance every 3 years. The first review period covered the period from 25 June 2013 (when the GCA was established) to 31 March 2016. The second review will cover the period from 1 April 2016 to 31 March 2019

¹² See Section 15 of the Act - <https://www.legislation.gov.uk/ukpga/2013/19/contents>

This will consider whether:

- to amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015;
- to make an Order setting out the information that the GCA may consider when deciding whether to investigate.

Consultation process

There will be a consultation paper for the GCA review, and the following will be consulted:

- (a) the GCA;
- (b) the Competition and Markets Authority (CMA);
- (c) the retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order and in the Notices of Designation issued by the CMA¹³;
- (d) one or more persons representing the interests of suppliers;
- (e) one or more persons representing the interests of consumers; and
- (f) any other person (we have not identified any specific person or persons here and welcome contributions from any interested person).

This consultation is available from:

<https://www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review-2016-to-2019>

If you need a version of this document in a more accessible format, please email GCAreview@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.

¹³ At the date of this document these retailers are Aldi, ASDA, B&M, Co-op, Iceland, Lidl, Marks and Spencer, Morrisons, Ocado, Sainsburys, Tesco, Waitrose. Ocado and B&M were added to the list by way of Notices of Designation issued by the CMA in November 2018