



Department for
Business, Energy
& Industrial Strategy

Statutory Review of the Groceries Code Adjudicator: 2016-2019

Presented to Parliament pursuant to Section 15(7) of the Groceries Code
Adjudicator Act 2013

July 2020



OGL

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ISBN 978-1-5286-2078-9

CCS0720866768 07/20

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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Ministerial foreword

I am pleased to publish this report on the findings of the second Statutory Review of the Groceries Code Adjudicator ('GCA') which covers the period from 1 April 2016 to 31 March 2019.

The GCA is the UK's independent adjudicator overseeing the relationship between large retailers and their suppliers. Established in 2013, its role is to ensure large retailers treat their direct suppliers lawfully and fairly, investigating suspected breaches of the Groceries Supply Code of Practice ("the Code") and arbitrating in disputes.

Most respondents to the Review agree that the GCA continues to have a positive impact on the groceries market, by creating a more level playing field for those who fall under its remit. The GCA's regulatory approach has led to fairer practices across the board and it has made large retailers more accountable and more open in their dealings with suppliers. In particular, the GCA's investigation during this review period into the compliance of Co-operative Group Ltd with the Code, together with its on-going advisory and arbitration work, carries a clear message to all retailers that the GCA will continue to use its powers to reinforce the principle of fair dealing of direct suppliers demanded by the Code.



This is also evident from the 2019 GCA annual survey which shows the progress that has been made since the first survey in 2014:

- Large retailers' overall compliance with the Code has now risen to between 81% and 97% (compared to 58% and 90% in the first survey in 2014) with 10 out of 12 retailers above 90%.
- 41% of suppliers have experienced an issue, down from 79% in 2014.
- 47% of suppliers were willing to report an issue to the GCA, up from 38% in 2014.
- 50% of suppliers now have a written agreement with large retailers.
- 47% of suppliers have received training on the Code, up from 29% in 2015.

I am pleased to note the progress that the GCA has made addressing the top issues reported by suppliers during this Review period. For example, delays in payments are down to 13% from 30% in 2016 and forecasting errors are down to 15% from 25% in 2016.

The survey results and some responses to the Review indicate that some Code-related issues still occur. Despite the overall increase in supplier willingness to report issues to the GCA compared to 2014, there are still suppliers who are reluctant or unwilling to do so.

The GCA is tackling these issues by launching the Code Confident campaign which encourages suppliers to know the Code, get trained and speak up to the GCA and large retailers. The Government agrees with the overall evidence provided in response to the Review that there is still a need for the GCA to ensure Code compliance and encourage best practice. The Government will therefore maintain the GCA and ensure it is funded and

resourced to carry out its statutory functions under the Groceries Code Adjudicator Act 2013. It will also work with the next GCA to continue to raise awareness of the Code to help suppliers feel empowered to raise issues with the GCA and their retailers directly.

I would like to take this opportunity to thank Christine Tacon, who will be stepping down when her third term ends this year, for transforming the way large retailers treat their suppliers. Her reputation, credibility and experience within the food industry have been central to the success of the GCA. She has created a culture change that is driving fair and transparent supply chains which is not only recognised in the UK but internationally.

I would also like to thank all those individuals and organisations who responded to this Statutory Review. The views and comments expressed clearly show that the GCA is a valued and trusted body which continues to make a real difference to the groceries supply chain.

A handwritten signature in blue ink, appearing to read 'Paul Scully', is positioned to the left of the typed name.

Paul Scully MP

**Parliamentary Under Secretary of State
Minister for Small Business, Consumers and Labour Markets
Minister for London**

Executive Summary

1. The Groceries Code Adjudicator (“GCA”) was established under the Groceries Code Adjudicator Act 2013 (“the Act”)¹. The GCA monitors compliance with and enforces the Groceries Supply Code of Practice (“the Code”)² which regulates the relationship between the 13 retailers³ with a UK annual groceries turnover of more than £1 billion (“large retailers”) at the time of designation and their direct suppliers (“suppliers”).
2. Section 15 of the Act requires the Secretary of State to review periodically the performance of the GCA. The primary purpose of the Review is to consider a three-year period and seek views and evidence to help the Secretary of State assess the performance of the GCA against measures set out in the Act. The Act specifies the issues which the Review must address and who must be consulted as part of the Review. These points are covered in the Terms of Reference (‘ToR’), which can be found at [Annex A](#) and 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 may only be considered by the GCA when deciding whether to investigate.
3. The statutory review is not a review of the Code or the remit of the GCA⁴. The Code is a competition measure owned by the UK’s Competition and Markets Authority (CMA).
4. As required by the Act, the first Review covered the period from the creation of the GCA (in June 2013), to 31 March 2016. The Secretary of State’s response to that review was published in July 2017⁵.
5. The second Review (“the Review”) covers the period from 1 April 2016 to 31 March 2019.
6. The Review was evidence-led and accompanied by a public consultation which ran from 20 June to 12 September 2019. Responses were submitted either through the main consultation documents or an online Citizen Space survey. Eighty-five responses were received to the Review including from large retailers, suppliers, the GCA, the CMA, trade associations and representatives (details of responses are set out in [Annex C](#)). All responses received through the consultation process were assessed against the ToRs (see [Annex A](#)).

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

² <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

³ Aldi, ASDA, B&M, Co-op, Marks and Spencer, Iceland, Lidl, Morrisons, Ocado, Sainsbury’s, Tesco, T J Morris (trading as Home Bargains) and Waitrose. Ocado Group plc and B&M were added to the list in November 2018 and T J Morris in September 2019. Following Ocado Group plc’s joint venture with M&S, a substantial part of Ocado’s groceries business was carried out by Ocado Retail Ltd which was designated in October 2019. Ocado Group plc was de-designated by the CMA in January 2020.

⁴ The Government reviewed the remit of the GCA in 2016 and published its response in 2017 -

<https://www.gov.uk/government/consultations/groceries-code-adjudicator-extending-its-remit>

⁵ <https://www.gov.uk/government/publications/groceries-code-adjudicator-statutory-review-2013-to-2016>

7. In addition to the public consultation, this Review draws on evidence covering the Review period from the GCA's Annual Reports and the independent YouGov Survey ("the YouGov Survey") of suppliers carried out annually on behalf of the GCA. The 2019 YouGov survey received over 1,500 responses with a 55% increase in direct suppliers' participation over the previous year.
8. The Review found that the GCA continued to be highly effective in enforcing the Code and in exercising its powers. Large retailers, most suppliers and other parties in the grocery supply chain reported that the GCA has created a more level playing field and it had not limited the ability of the UK's groceries retailers to compete and provide a good consumer offer.
9. Most respondents to the Review reported evidence of a strong culture of collaboration between large retailers and their suppliers and that the GCA has made large retailers more accountable and more open in their dealings with their suppliers. Most respondents also reported a high awareness of the Code by large retailers and that this had protected suppliers.
10. Respondents' views on the performance of the GCA were all positive, with the current GCA and her team considered to be approachable, professional and influential in driving the ongoing culture change that was driving fair and transparent supply chains. Respondents felt the current GCA had brought a wealth of knowledge, skills and experience to the role, which enabled her to achieve the required change through a modern regulatory approach, pro-actively engaging with retailers and suppliers.
11. It is clear from the evidence received (set out under the section "[Findings of the Statutory Review](#)") and other publicly available evidence that the GCA had made a difference within its current legislative framework in ensuring fairness between large retailers and their suppliers. The Government shares the views received through responses to this Review that there is still a need for the GCA to continue this good work. The Government will therefore maintain the GCA and ensure that the office is funded and resourced to carry out its statutory functions under the Groceries Code Adjudicator Act 2013.
12. Following consideration of the responses received to the Review together with further publicly available evidence (the GCA's Annual Reports and the independent YouGov Surveys of suppliers carried out on behalf of the GCA) the Secretary of State's conclusions on the ToR of the Review are:

- **Has the GCA been effective in exercising its powers and in enforcing the Code**

During the period covered by the Review the GCA carried out one investigation (into Co-operative Group Ltd (Co-op)) and closed four arbitrations. The GCA has published two Code clarification case studies⁶ one on variation of supply agreements and the other on requests for lump sum payments. The GCA has also published best practice statements on forecasting, consumer complaints and additional supplementary guidance on De-listing practice.

On the number of investigations, some respondents would have liked the GCA to carry out more investigations. On the other hand most respondents reported that more full investigations had not been necessary during the review period as the GCA had

⁶ <https://www.gov.uk/government/publications/code-provisions-and-related-gca-action/code-provisions-and-related-gca-action>

resolved issues through a collaborative approach with a high degree of scrutiny combined with a proportionate use of formal investigation and enforcement.

On the GCA's advice, guidance and recommendations, all respondents agreed that they have been highly instructive and effective in promoting the concept of fair trading within the direct supply chains.

On the GCA's fining powers, some respondents would have liked the GCA to impose a fine on Co-op following its investigation.

After considering the evidence received to the Review and the GCA's annual survey results of suppliers, the Government concludes that the GCA has been effective in carrying out its statutory functions and agrees with respondents that the current GCA's collaborative approach had worked well during the review period. The GCA's recommendations following its investigation of Co-op were focused on remedying the root causes of the issues found. The retailer had also co-operated fully with the GCA during the investigation to fix issues as quickly as possible, including refunding over £650,000 to suppliers. The Government believes the GCA's recommendations were a proportionate and effective measure to reduce the likelihood of future non-compliance by Co-op and other large retailers and notes that the 2019 YouGov Survey found that Co-op was considered the most improved retailer over the year.

- **Whether to amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015.**

Since April 2015, the GCA has had the power to impose fines of up to 1% of annual turnover on regulated retailers that have breached the Code. This permitted maximum fine is provided by the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015.

All respondents to the Review considered the current permitted maximum fine to be an effective deterrent to retailers breaching the Code. The Review concludes that the Order setting out the financial penalty should not be amended or replaced.

- **Whether to make an order setting out the information that the GCA may consider when deciding whether to investigate.**

There are currently no statutory restrictions on the sources of information available to the GCA in deciding whether to launch an investigation. The Act provides a power for the Secretary of State to make an order prescribing the information the GCA is permitted to consider when deciding whether to carry out an investigation. The Act provides that the Secretary of State should only make such an order if as a result of the findings of a review, making that order would enable the GCA to be more effective.

No responses to the Review suggested restricting the information available to the GCA. Some respondents suggested the grounds for launching an investigation should be widened, including that BEIS should require licensed insolvency practitioners to report in confidence to the GCA where they find evidence of retailers breaching the Code.

The Secretary of State considers that an investigation by the GCA should only be carried out where the GCA has reasonable grounds to suspect a breach of the Code, as is currently provided for in the Act. Insolvency practitioners can also currently share information obtained in the usual course of their administration or investigation of an insolvency with regulators.

The Secretary of State concludes that the order setting out the information that the GCA may consider when deciding whether to investigate should not be made. BEIS will work with the Insolvency Service to help raise awareness of the Code and the GCA with insolvency practitioners and their regulators, so that in future if they become aware of Code-related breaches they know then to report to the GCA, to the extent there are no applicable restrictions which prevent them from doing so.

How the GCA carries out its statutory functions

13. The remit and the statutory functions of the GCA are set out at [Annex B](#). In considering the Review and its findings it is helpful to understand how the GCA has been carrying out its arbitration, investigation and enforcement functions, which are set out below:

Dispute escalation and arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order)

14. The Order⁷ sets out the legislative framework for suppliers to invoke a formal complaint against a designated retailer (i.e. a large retailer). Under the Act, the GCA, or someone appointed by the GCA, may act as arbitrator in relation to such disputes. The Order provides a dispute escalation mechanism for suppliers. Under the Order, the supplier may contact the Code Compliance Officer (the CCO) of a retailer if the supplier considers that the retailer has not complied with its obligations under the Code. Whenever the supplier contacts the CCO about an alleged breach of the Code, the CCO is required to inform the supplier of the supplier's right to initiate a dispute and confirm with the supplier whether it wishes to do so. If the CCO does not request confirmation as to whether a dispute should be initiated, a dispute will be deemed to arise. If a dispute is not resolved to the supplier's satisfaction within 21 days of the dispute arising, then at any time up to 4 months after the dispute arises, the supplier may make a written request for arbitration and the retailer must submit to it. The costs of the arbitrator will be borne by the designated retailer unless the arbitrator decides that the supplier's claim was vexatious or wholly without merit, in which case costs will be assigned at the arbitrator's discretion.
15. For a retailer, the route to arbitration is not directly under the Order but under the supply agreement with the supplier, provided that the supply agreement contains an arbitration clause. The arbitration must be on the same terms as those set out in the Order. If a retailer refers a dispute to arbitration under a supply agreement, the Act empowers the GCA to accept the appointment as arbitrator or appoint another person to act as arbitrator. The GCA's guidance for suppliers on raising issues and dispute escalation⁸ is intended to address questions about identification and reporting of issues and disputes under the Groceries Supply Code of Practice. It also explains how issues and disputes can lead to arbitrations and investigations.

The GCA's investigation and enforcement powers under the Act

16. The Act sets out the GCA's investigation and enforcement powers. Under the Act, the GCA may investigate if the GCA has reasonable grounds to suspect that the retailer has

⁷ <https://www.gov.uk/government/publications/groceries-supply-chain-practices-market-investigation-order>

⁸ <https://www.gov.uk/government/publications/gca-guidance-on-complaints-disputes-and-escalation-process>

broken the Code or failed to follow a recommendation. Reasonable grounds for suspicion may be based on information from direct and indirect suppliers and from third parties, whether or not they wish to remain anonymous to the retailer(s) in question. Investigations must be based on evidence obtained after the GCA came into being i.e. 25 June 2013.

17. The GCA has published the investigation criteria it will follow to ensure it targets resources effectively and proportionately. Unlike issues leading ultimately to arbitration, the GCA is likely to investigate where there is evidence of wide-ranging practice that has significant impact across the sector or a segment of it. The prioritisation principles are set out in the GCA's investigations and enforcement guidance⁹.

⁹ <https://www.gov.uk/government/publications/statutory-guidance>

Findings of the Statutory Review

Term of Reference 1: Consider the GCA's performance from 1 April 2016 to 31 March 2019.

18. This section of the report assesses:
- how the GCA's powers have been exercised; and
 - how effective the GCA has been in enforcing the Code.

Views of respondents to the Review

19. On Term of Reference 1, the Review asked specific questions of all relevant stakeholders. The following sections summarise the questions and the responses received from respondents to the Review. It also draws on information from the GCA's Annual Reports and the annual YouGov Survey carried out on behalf of the GCA.

How have the GCA's powers been exercised

20. Most of the respondents to the Review reported that the GCA had been effective in exercising its powers. More details of the evidence received are set out below:

Providing arbitration

21. Most respondents were supportive of the GCA's approach to arbitrations that it should be the last resort for suppliers when facing a breach of the Code and that there were other means at the supplier's disposal, which were less expensive and less likely to damage the relationship with the retailer. This included working with retailers through their Code Compliance Officers to resolve issues without the need for formal proceedings. One respondent reported that the ability of the GCA to act as an arbitrator was vital to ensuring fair dealing in the groceries sector and therefore greater publicity should be generated around the role of the GCA in providing arbitration.

Conducting investigations and undertaking enforcement activity

22. During the review period, the GCA carried out an investigation into the compliance of Co-operative Group Limited (Co-op) with the Code, specifically:
- duties in relation to De-listing of products; and
 - variation of supply agreements and terms of supply.
23. The period under investigation was from January 2016 until 8 March 2018. The investigation is now complete and a report was published on 25 March 2019 setting out the GCA's findings and recommendations. The GCA concluded that the nature and seriousness of the breaches by Co-op did not merit a financial penalty. The retailer had to pay the full cost of the investigation and the GCA's costs in overseeing the implementation of the recommendations.

24. All respondents to the Review welcomed the GCA's investigation into Co-op and its findings¹⁰ as it had made clear that large retailers need to establish a clear governance framework and build Code compliance into all their operations.
25. Most respondents reported that, although the GCA had only carried out one formal investigation during the review period, it had been highly effective in changing the relevant retailer's practices and had also encouraged other retailers to review their current practices. They believed that the GCA, by using its powers only for the most serious breaches, had developed trust with the retailers which had encouraged an openness and meant that full investigations had not always proved necessary.
26. Some respondents would have liked the GCA to have used its powers of investigations more frequently, as they believe that investigations had a positive impact on the retailer investigated and encouraged others to improve their processes. Some respondents thought the GCA may have been restricted by financial constraints and resources from investigating possible breaches of the Code. There were several suggestions about how the GCA should ensure Code compliance including carrying out routine inspections of all retailers, undertaking inspections of retailers at no, or short, notice without the need for specific complaints, having different types of sanctions available to the GCA depending on the severity of the breach and requiring all retailers to provide evidence of how they were complying with particular aspects of the Code. Some respondents would have liked the GCA to use its fining powers on Co-op following its investigation in order to send a message to suppliers and act as a deterrent to retailers' non-compliance with the Code.
27. Some respondents noted the 2019 suppliers survey¹¹ indicated that 41% had experienced a Code-related issue in 2019. While this was an improvement on previous years, they felt it showed there were still significant numbers of Code breaches. To tackle these issues and win the confidence of more suppliers, they would like the GCA to demonstrate a willingness to take on supermarkets by greater use of its investigative powers. The GCA's report on code-related issues at [Annex E](#) indicates that during the review period it has continued to make good progress to resolve some of the code-related issues. For example, delay in payments is down to 13% from 30% in 2016 and forecasting errors are down to 15% from 25% in 2016.
28. The Review notes that along with arbitration and investigation, the GCA reports using a modern regulatory approach, with collaboration and business relations at its core and is delivered through a three-stage process when Code-related issues are raised:
 - Stage 1: The GCA will make retailers aware of issues reported by suppliers. The GCA will consider whether the issue raised appears to be more than an isolated occurrence. If so, it will be raised with the regulated retailers' Code Compliance Officers (CCOs) for their own action. In some circumstances if they are judged to have significant impact and confidentiality can be maintained, the GCA will raise single issues with CCOs.
 - Stage 2: The GCA will request that the CCOs investigate the issue and report back to the GCA. The GCA will raise the issue with the relevant CCO or all CCOs either if the issue is widespread or to protect the confidentiality of the supplier(s)

¹⁰ <https://www.gov.uk/government/publications/gca-investigation-report-into-co-operative-group-limited>

¹¹ 2019 annual survey results:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810373/Presentation_2_-_YouGov.pptx

experiencing the issue. CCOs will be expected to look into whether a breach has occurred in their organisation. Depending on what the CCO finds, the GCA may issue advice clarifying or interpreting the relevant provisions of the Code for the retailer and others to follow. Where a retailer or retailers accept a breach of the Code has taken place, the GCA may publish a case study¹² on the GCA website.

- Stage 3: The GCA may take formal action if the practice continues. If the GCA continues to hear of suppliers experiencing the same issue, the outcome may be to publish more formal guidance and/or launch an investigation.

Providing advice, guidance and recommendations

29. Most respondents agreed that the GCA's advice, guidance and recommendations had been instructive and effective in promoting the concept of fair trading within the direct supply chains. They believe this has been evidenced by the GCA's report into the investigation of Co-op, the GCA's code clarification case studies, the overviews provided in the GCA's annual report, the GCA's annual conferences and the willingness to meet suppliers and suppliers' organisations to explain the GCA's work.
30. On the GCA's Code clarification case studies, most respondents said they were an innovative and cost-effective compliance tool which had been useful in highlighting the GCA's interpretation of the Code and identifying areas of risk and focus for retailers. The GCA's approach to shared learning on an ongoing basis across the sector had enabled the large retailers to adopt best practice, which they found useful and benefited them and their suppliers.
31. Some suppliers reported approaching the GCA directly and found the advice and guidance provided to be clear and insightful. They also found the GCA's newsletters with updates on policy and guidance useful in improving their understanding of the Code. Most suppliers reported that the GCA had communicated well through trade bodies, webinars, conferences and e-mail updates. They felt the material published by the GCA had ensured retailers and suppliers were interpreting the Code in a consistent way and that this had helped them during negotiations with retailers. Some respondents wanted a greater focus on overseas suppliers to the regulated retailers and for the GCA to collaborate more closely with counterparts in other countries.
32. Some respondents had found it was not easy to locate key documents on the GCA website such as investigation reports, code clarifications, case studies, annual reports and supplier survey results.

How effective has the GCA been in enforcing the Code?

33. Most of the respondents to the Review described the GCA as being effective in enforcing the Code and the annual YouGov survey was strong evidence that demonstrated the GCA's approach had resulted in a widespread improvement in compliance over the last three years. The survey results showed that each large retailer's performance had improved since the introduction of the Code. During the review period, compliance levels remained strong. In 2016¹³, large retailers' overall

¹² <https://www.gov.uk/government/collections/code-clarification-case-studies>

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/555463/GCA_Annual_Survey_Results_2016.pdf

compliance with the Code was between 80% and 98% with 6 out of the 10 retailers above 90%. In 2019, large retailers' overall compliance with the Code was between 81% and 97% with 10 out of 12 retailers above 90%.

34. Large retailers reported that the effective and proportionate use of formal enforcement, combined with the collaborative approach (referred to in paragraph 28 above) and a high degree of scrutiny, had enabled the GCA to drive increased compliance on a sustained basis. The GCA's collaborative approach had also been effective in raising awareness of the Code with suppliers and it had given them confidence to raise issues with large retailers about disputes.
35. Most of the suppliers, trade associations and representatives who responded to the Review also agreed that the GCA's effectiveness had been achieved mainly through the GCA's collaborative approach. They reported that often the GCA raising an issue on behalf of suppliers had been sufficient for large retailers to take action to resolve it. They also reported that where retailers had been found in breach of the Code, they had worked collaboratively with the GCA to resolve it.
36. All respondents reported that communication had been a key part in the effectiveness of the GCA enforcing the Code, and along with updates, case studies, and sharing of information, the GCA had ensured an informed supply and retail base.
37. Respondents commented on the informal work the GCA had done and considered this had been important in improving and keeping the pressure on large retailers' behaviours. The informal work included the GCA conference, annual survey and meetings with Code Compliance Officers.

What has been the impact of the GCA on the groceries market?

38. Large retailers reported that the GCA has had a positive impact on the groceries market, by creating a more level playing field for those who fall under its remit. They reported that the GCA's regulatory approach had helped them embed a strong culture of collaboration between them and their suppliers. They believed the GCA had been effective in delivering its key objectives due to its clear scope, it allowed the GCA to focus its resources efficiently and enforce the Code without overstretching itself.
39. The GCA had also increased large retailers' awareness of and level of compliance with the Code. They reported the GCA has had a positive impact on their relationships with their suppliers. They had seen a noticeable improvement in the way they work together. Retailers reported that the GCA had made resolving supplier complaints less burdensome, because it had been able to act as a conduit between the supplier and the retailer. The existence of the GCA had encouraged their suppliers to speak up when they believed retailers had not followed the Code, as well as helping them to understand and navigate its provisions and processes to help ensure Code compliance. Retailers believed the GCA had helped to accelerate changes they needed to make and that had been recognised by their suppliers. The use of case studies and guidance by the GCA in addition to its collaborative approach across all designated retailers had allowed them to assess their own practices and processes against the Code and the practices of other designated retailers and assess if and how they can be improved.
40. Retailers agreed that the GCA had been good at sharing best practice to enable the retail sector to take action as appropriate. Some of the retailers made the following

recommendations to enable the GCA to make a bigger contribution to protecting suppliers:

- increase the number of retailers designated as being covered by the Code. This would ensure more supplier and retailer relationships were conducted in a fair way and that a level playing field existed for all large grocery retailers.
 - continue to encourage suppliers to gain a greater understanding of the Code. They believed misunderstanding about the scope of the GCA's role persists and there is a recurring misconception that the GCA's office has some role to play in ensuring a 'fair price' within the supply chain.
41. Suppliers reported that the GCA had driven much fairer practices across the board and it had made the supermarkets more accountable and more open in their dealings. They reported that large retailers were keen to remain compliant to the Code. The GCA's relationship with individual retailers meant that some issues had been resolved simply through consultation between the GCA and the retailer, rather than resorting to a costly and lengthy investigation process. Suppliers noted that retailers who had been the subject of an investigation had proactively improved practices and processes.
42. Representative Groups reported that the GCA's monitoring and enforcement had brought about greater certainty to members, reduced complexity and strengthened the climate for investment in quality, range and choice from which consumers benefit directly.

Designation of retailers

43. All respondents welcomed the annual review by the Competition and Markets Authority (CMA) of those retailers that should be designated under the Order. They believed this was important in a dynamic market. The CMA in their response to the Review reported that their role in relation to the groceries market involved the following:
- on an annual basis, the CMA collected information from a number of retailers of groceries in order to determine whether there were further retailers that met the turnover threshold to be considered for designation under the Order; and
 - monitoring and enforcing compliance with the Order and the Groceries Market Investigation (Controlled Land) Order 2010. Specifically, in relation to the Order, this included assessing whether the designated grocery retailers' supply agreements with their direct suppliers were compliant with the requirements of the Order, and considering the annual reports provided to it by retailers designated under the Order.

Have suppliers experienced any issues with large retailers which are covered by the Code? Did they raise the issue with the GCA?

44. Most suppliers reported that Code-related issues had happened to a lesser extent since the first Review of the GCA as the whole industry had improved since the GCA was established. Of the issues reported by respondents, the five issues experienced most by suppliers during the Review period were:
- not meeting duties in relation to De-listing
 - variation of supply agreements and terms of supply

- delay in payments
 - no compensation for forecasting errors
 - not applying due care when ordering for promotions.
45. Where suppliers have raised issues with the GCA, most of them reported receiving good advice on the use of the Code and support.
46. Some respondents reported that, although the impact of the GCA had driven a positive change in retailer behaviour, there continued to be a reluctance among suppliers to report issues. This reluctance centred on the potential for suppliers to be delisted, the time involved in raising issues, and their relationship with their retail customer as a consequence of reporting a breach.
47. Some respondents suggested that, to tackle reluctance to report issues, the GCA should reassure suppliers that any complaint would be kept confidential and it should also use its power of investigation more frequently and proactively, as this would make retailers more sensitive to the reputational risk of non-compliance. They also recommended the GCA should continue to encourage suppliers to gain a greater understanding of the Code.

In future, would suppliers consider raising any issues they have about groceries supply with the GCA?

48. Most suppliers indicated that in future they would consider raising any issues they had about groceries supply with the GCA. Some reported they felt confident their anonymity would be respected. Some reported they would first try to resolve issues themselves. However, if they felt this was not working, they would raise the issue with the GCA for its support. One supplier reported that they would go through their trade body as often they would not be the only supplier experiencing issues and their trade body would be able to canvass views from other members on a confidential basis and provide the GCA with evidence from several members. However, if they experienced a serious issue, they would also be comfortable raising this directly with the GCA.

Would a representative group consider raising an issue with the GCA?

49. Most of the respondents indicated they would consider raising issues informally with the GCA on behalf of their members in circumstances where they represented suppliers covered by the Code. One respondent reported they had raised issues with the GCA on a number of occasions and valued the ability to do so.
50. Another respondent reported that, where the Code applied to their members, they proactively supported and represented them. When Code-related issues arose, they encouraged their members to speak to the relevant Code Compliance Officers. On certain occasions they had found their members reluctant to raise Code-related issues with the retailers due to fear of commercial consequences. Where this occurred, they approached each issue on a case-by-case basis and would only take forward the members' concerns to the Code Compliance Officers or GCA under the instruction of the member. If the member did not wish the representative to take forward their concerns, they would continue to assist the member through the issues via other means. Where the representative has raised issues on behalf of their members, they had found the GCA and the Code Compliance Officers helpful, which had enabled them to provide feedback to their members with corrective actions or a structured way

forward. However, to protect the anonymity of their members they believed it was best to raise issues directly with the GCA rather than the Code Compliance Officers. They also provided their members with easily understood briefing documents to raise awareness of any recent announcements from the GCA and new interpretations of the Code.

Are representative groups engaging with the GCA?

51. Most of the respondents on behalf of representative groups have engaged with the GCA and this includes the GCA attending member meetings and discussing Code compliance issues directly with members. The GCA ensured these organisations were kept up to date with its most recent developments enabling the representatives to share this information with their members.
52. One respondent reported that the GCA had attended some of their local, county and board meetings throughout England and Wales to raise awareness of the Code and the GCA. The GCA had also attended industry events organised by the representative and they encouraged the GCA to continue to do so.

Has the introduction of the GCA had an impact on product or process innovation for suppliers?

53. Most respondents indicated that there had been no impact on undertaking product or process innovation. Some respondents indicated that they were substantially or slightly more likely to undertake product or process innovation. None of the respondents reported that they were less likely to undertake product or process innovation.
54. Most respondents indicated that they had spent relatively more on product and process innovation, while some indicated no change.

Benefit of retaining the GCA

55. Those respondents that commented on the benefit of retaining the GCA were strongly in support of keeping a regulator in this sector. It was felt that the existence of the GCA had sent a message to large retailers that their supplier relationships needed to be conducted fairly and in accordance with the Code.
56. Respondents on behalf of large retailers reported a positive, collaborative relationship with the GCA and saw value in having a regulator with an objective to improve relations between them and their suppliers. They believed the office of the GCA had operated in a manner that was balanced and fair and had shown a technical understanding of the sector while taking a firm but pragmatic approach to regulation. They reported seeing a noticeable improvement in the way they worked together with their suppliers. The GCA had made resolving supplier complaints less burdensome because it was able to act as a conduit between supplier and retailer. The GCA's guidance had provided clarity on the nature and extent of retailers' obligations under the Code.
57. Respondents on behalf of suppliers reported that retail practice overall had improved since the first review of the GCA. There was now high awareness by supermarket buyers about the Code and this was protecting suppliers. They reported the retailer compliance officers were much more accessible and visible to suppliers and that retailers were more collaborative and open-minded to find solutions rather than implementing changes they had unilaterally decided needed to be made.

The remit of the GCA

58. Some representatives of primary producers commented on the remit, which was outside the scope of the Review. They had asked the Secretary of State to consider either extending the remit of the GCA or introducing a complementary regulator to cover business-to-business trading relationships not directly involving the large retailers but working closely with the GCA.
59. Some respondents wanted retailers with lower turnover to be covered by the Code. One respondent suggested updating the powers of the GCA either by amending the Code or the Act to ensure it regulates online sales and buying alliances. One response highlighted that to improve the GCA's effectiveness, the Secretary of State should require all retailers covered by the Code to become signatories of the Prompt Payment Code and for the GCA to monitor retailers' compliance with this.

Term of Reference 1: the Secretary of State's conclusion(s)

On how the GCA's powers have been exercised

60. The Secretary of State notes that since the creation of the GCA, in 2013, the GCA has concluded two formal investigations - Tesco¹⁴ (2016) and Co-operative Group Ltd (2019)¹⁵. The GCA has also closed 6 arbitrations as of March 2019 (of which 4 were in the review period). During the review period, it had published two Code clarification case studies¹⁶, one on variation of supply agreements and the other on requests for lump sum payments. The GCA had also published best practice statements on forecasting, consumer complaints and additional supplementary guidance on De-listing practice.

On the GCA's investigative powers

61. Under the Act, investigation is a significant regulatory intervention which carries financial and reputational risks to large retailers. Therefore, it would not be appropriate to introduce other additional powers such as routine or short-notice inspections. If following an investigation, the GCA was satisfied that a large retailer has broken the Code, the GCA had the power to take one or more enforcement measures and may take into account the severity of a code violation. From the responses received to the Review, the Secretary of State recognises that the GCA, through a modern regulatory approach to deliver increased compliance with the Code rather than automatic escalation to formal measures, has resolved many issues and therefore full investigations had not always proved necessary. This approach also involved scrutiny and a high level of engagement with the large retailers. Most of the respondents agreed that this approach had worked well and had led to a strong culture of collaboration between retailers and their direct suppliers. It made an important contribution to putting a stop to issues before they became systemic and has made retailers more accountable and open in their dealings with their suppliers. The Secretary of State concludes that the GCA has been effective in carrying out its statutory investigative functions and agrees with respondents that the current GCA's modern regulatory approach has worked well during the review period.

¹⁴ <https://www.gov.uk/government/publications/gca-investigation-into-tesco-plc>

¹⁵ <https://www.gov.uk/government/publications/gca-investigation-report-into-co-operative-group-limited>

¹⁶ <https://www.gov.uk/government/publications/code-provisions-and-related-gca-action/code-provisions-and-related-gca-action>

On the GCA's fining powers

62. The Secretary of State notes that following the investigation, the 2019 YouGov survey, commissioned by the GCA to capture views from direct suppliers on how the regulated retailers are complying with the Code, showed Co-op was the most improved retailer over the year, followed by Asda, Tesco and Morrisons. The survey results also indicated that the four most improved retailers had all been subject to increased scrutiny or enhanced engagement with the GCA through investigations or case studies.
63. The Secretary of State, after taking into consideration the GCA's findings and recommendations and an improvement in the retailer's behaviour following its investigation, concludes that the GCA's decisions in relation to Co-op were an effective remedy. The Secretary of State has also taken into consideration that Co-op had co-operated fully with the GCA during the investigation, including refunding over £650,000 to suppliers. The retailer had paid the full cost of the investigation and the GCA's costs in overseeing the implementation of the recommendations, £1.3m in total. The retailer was also required to provide a detailed implementation plan. In January 2020¹⁷, the GCA's report on the progress made by Co-op indicated that the retailer had an appropriate approach towards following the recommendations set out in its investigation report.

On suppliers' reluctance to raise Code related issues with the GCA

64. The Secretary of State notes the GCA's annual YouGov survey has shown a decrease in the proportion of direct suppliers that said they **would not** raise issues with the GCA, down from 20% in 2017¹⁸ and 18% in 2018¹⁹ to 10% in 2019. The Secretary of State also notes from the survey that there was an increase in suppliers who were **unsure** whether they would raise issues with the GCA (43% in 2019 compared with 30% in 2018 and 28% in 2017) as the proportion who said that they **would** raise issues also declined (down to 47% from 52% in both 2017 and 2018). Over half of the suppliers who said they would not, or were not sure they would, raise issues with the GCA believed that the retailer would find out and there would be consequences for their business. The YouGov 2019 survey has also shown 84% of suppliers are aware of the GCA with 30% saying they had a good understanding of its role and responsibilities and 43% a fair understanding; and 47% of direct suppliers had training on the Code compared to 44% who had not.
65. In considering the above figures it is important to note that the 2019 survey covers two additional retailers added to the list of designated retailers by the CMA and that the survey received over 1,500 responses with 55% increase in direct supplier participation over the previous year. It is possible some of the suppliers to the additional retailers had not had the protection of the Code previously and were less sure of the implications of raising issues with the GCA or afraid of commercial consequences. This suggests a need to build on the work the GCA has already done on raising awareness of the Code, in particular with those who have recently come into the Code's protection.

¹⁷ https://www.gov.uk/government/news/gca-investigation-into-co-operative-group-limited-progress-towards-following-gca-recommendations?utm_source=e6a48266-7969-4302-be69-254302591e89&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/623564/GCA_Annual_Sector_Survey_Results.pdf

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721703/GCA_Annual_Sector_Survey_2018_-_the_results.pdf

66. On Code-related issues that suppliers have experienced during the review period, few respondents to the Review had reported issues to the GCA. In response to the question why they had not raised their issues with the GCA, some reported that they could address the concerns themselves, while others reported a reluctance to report due to fear of some form of penalty from retailers or concerns over confidentiality. Some felt their concerns were not important enough or they were not sure what was covered by the Code.
67. The Review also noted that, where suppliers had reported experiencing Code-related issues, most of them reported receiving good advice on the use of the Code and support from the GCA. Over half of the suppliers that responded to the Review reported that in future they would consider raising any Code related issues with the GCA. Suppliers also reported that they believed retailers' practices have improved and the issues they have highlighted have happened to a lesser extent since the first Review of the GCA.
68. After taking into consideration the GCA Annual Survey results and the responses to the Review, the reluctance of some suppliers to raise issues with the GCA could be explained by improved retailer compliance with the Code (which may mean suppliers are more confident in taking up issues with retailers themselves), better advice from the GCA or more informed suppliers.
69. This is reflected in some of the review responses where some suppliers have reported that having been trained in the Code, they can handle the concerns directly with the retailer without needing to raise them with the GCA. They had found the threat of Code Compliance Officer involvement is enough for buying teams to understand the seriousness of breaches. The GCA had been an effective last layer of defence, needed only after making use of the Code itself and the Code Compliance Officer. Some suppliers reported raising issues via their trade bodies to protect their identities and supplier relationship. They also had one to one meetings with the GCA organised through their trade body where they had been able to raise potential issues and discuss these with the GCA.
70. The reluctance of some suppliers to raise issues with the GCA was also highlighted in the first statutory review of the GCA. Following the Secretary of State's response to the first Review, BEIS agreed a strategic goal with the GCA:
- "The Groceries Code Adjudicator will apply additional focus to encouraging direct suppliers to raise Code-related issues directly with retailers and the GCA through promoting the Code Confident message."*
71. In 2017, the GCA launched a Code Confident campaign which encouraged suppliers to "Know the Code; Get Trained; and Speak Up" to the GCA and to the regulated retailers' Code Compliance Officers. The GCA in its response to the Review reported positive progress on this campaign and it was pleasing to note that more suppliers continue to get trained. The GCA's 2019 annual survey showed that only 10% of suppliers would not raise an issue with the GCA, which had reduced from up to 20% in previous surveys.
72. On protecting the anonymity of suppliers, the GCA reported it had always reinforced to suppliers its statutory duty of confidentiality under section 18 of the Act as well as encouraging suppliers to get trained in the Code.

73. In relation to the GCA's statutory duties to help suppliers experiencing Code related issues, the GCA reported its overall approach to monitoring and ensuring compliance with and enforcing the Code had now been well established and it was confident that it was delivering results. The GCA reported that its collaborative approach with the retailers it regulates enabled tough, honest conversations and prompt remedial action. All the regulated retailers support the GCA's collaborative approach and have worked hard to achieve progress. In this way, and by focusing on themes rather than individual cases, the GCA reports that it had ensured retailers improve for the benefit of the widest possible supplier base. The GCA refers to its annual survey of suppliers each year which had shown they report experiencing fewer Code-related issues. This is the result of the GCA tackling a specific issue and working with retailers on this. [Annex E](#) – shows how suppliers had reported progress on each of the issues tackled by the GCA.
74. Going forward, the GCA has requested retailers and trade associations do more to raise awareness and it will continue to work with them to do so. The GCA has encouraged suppliers to take the initiative to get trained and come forward with information. The GCA has also set out some specific actions that it would continue to take to raise awareness and to improve supplier confidence in raising issues with retailers and the GCA. [Annex F](#) sets out the GCA's progress against these actions.
75. The Secretary of State would also encourage suppliers to undertake training on the Code, to improve understanding of the Code and to ensure they feel empowered to raise issues with the GCA and their retailers directly. It will also help them to understand how to use the Code to support their commercial negotiations with retailers. This in turn will help the GCA to operate in an effective manner and help them appropriately. There is evidence from the Review that, where suppliers are aware of the Code, they have the confidence to defend themselves and use the Code positively in their commercial discussions. As one respondent reported, it would also be helpful for suppliers to take confidence in the fact that, as part of the two investigations carried out by the GCA, the adjudicator was able to respect and maintain confidentiality of all evidence and supplier details.

On the GCA website

76. The Secretary of State concludes that the GCA is taking positive action to ensure the website is user-friendly and accessible for example the GCA has now added a new page on its website, setting out material relating to particular paragraphs of the Code: <https://www.gov.uk/government/publications/code-provisions-and-related-gca-action/code-provisions-and-related-gca-action>
77. The GCA also speaks about specific aspects of the Code in a series of new bite-size videos on the GCA YouTube channel: <https://www.youtube.com/channel/UCRgILbcqRxaY1gsy27ZEcnw>

On overseas suppliers to UK supermarkets

78. Overseas suppliers are protected by the Code where they are directly supplying one of the designated retailers and their goods are being sold in the UK (save for those suppliers that are part of the same corporate group as the designated retailer they supply to). All designated retailers have a duty to inform their direct suppliers about certain key aspects of the Code. The GCA's office reported that one of the most powerful ways of reaching overseas suppliers had been through retailers' promotion of the GCA annual survey. The GCA also had a lot of interest from overseas regulators

and direct suppliers and engaged with them as part of its overall awareness-raising programme.

On the benefit of retaining a GCA

79. Given the evidence supplied through responses to the Review and the GCA's annual surveys, it is clear the GCA is still needed to ensure Code compliance and drive improvements wherever non-compliance is identified. The Secretary of State will therefore ensure the GCA continues to operate in this sector. Where the GCA identifies a need for more funding or staff to ensure compliance with the Code, the Secretary of State will work with the office to resolve any funding or resource issues to enable the GCA to carry out its functions under the current regulatory framework.

On the remit of the GCA

80. The scope of the statutory review is about the GCA's performance and effectiveness within the current remit defined by the Code and the Act. The Review does not concern the GCA's remit itself. In October 2016, the Secretary of State issued a call for evidence on the case for extending the GCA's remit to cover indirect suppliers²⁰. The response to the call for evidence was published in February 2018²¹ and found problems down the supply chain were sector-specific and did not warrant extending the Code and the GCA's remit across the whole sector. Instead targeted measures to address these issues are included in the Agriculture Bill currently before Parliament. The Secretary of State believes that these proportionate and targeted interventions are the best way to address these issues rather than through extending the GCA's remit.
81. On the GCA regulating retailers in relation to the Prompt Payment Code, a voluntary non-legislative measure, currently four large retailers have signed up. The Code includes an obligation on all large retailers to pay suppliers in accordance with the relevant supply agreement, and in any case within a reasonable time after the date of the supplier's invoice. The GCA's progress report on issues indicates delay in payments is down 13% from 35% in 2014. This demonstrates good progress from the GCA and there is no requirement to give the GCA this additional obligation.

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560838/beis-16-29-groceries-code-adjudicator-review-call-for-evidence.pdf

²¹ <https://www.gov.uk/government/consultations/groceries-code-adjudicator-extending-its-remit>

Term of Reference 2: To consider whether it would be desirable for the Secretary of State to exercise the Order-making powers contained in Section 9(6) and Section 15(11) of the Act.

82. This considered whether:

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

Views of respondents to the Review

The power to fine retailers found to be in breach of the Code

83. All respondents to the review considered the current level of fine to be an effective deterrent to retailers breaching the Code.

The power to restrict information which can be considered on decision to investigate

84. The second Term of Reference of the Review included considering whether to exercise the power in section 15(11) of the Act to make an order in the terms specified in section 15(13) of the Act, which would restrict the sort of information the GCA may consider when deciding whether to carry out an investigation.

85. The Act provides that the Secretary of State should only make such an order if, as a result of the findings of the Review, the Secretary of State thinks that making the order would enable the GCA to be more effective. This order had been put in place in response to concerns raised during the passage of the Bill that the GCA might 'fish' for evidence or launch an investigation purely on the basis of information that was not drawn from direct suppliers or retailers themselves, but was rather reported information from third parties, perhaps with particular interests not directly covered by the Code.

86. One respondent to the Review suggested the GCA should investigate without evidential support if there were other grounds to suspect that a breach of the Code had occurred. Another suggested widening the GCA's scope to include the use of food waste as a factor in the GCA's assessment of Code violations and their severity and whether to award a penalty. Another respondent suggested that BEIS should require licensed insolvency practitioners to report in confidence to the GCA where they found evidence of retailer's breaching the Code.

87. The response from the GCA to the current Review stated that the concerns raised during the passage of the GCA Bill have not become reality. The GCA finds the current investigation provisions clear and sensible and is happy to receive information from any source about potential breaches of the Code, which it is able to do under the Act.

Term of Reference 2 - the Secretary of State's conclusion(s)

The power to fine retailers found to be in breach of the Code

88. Since April 2015, the GCA has had the power to fine regulated retailers for breaches of the Code up to 1% of their annual UK turnover, dependant on the seriousness of the breach. This maximum financial penalty was provided for by the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015²². The GCA has published guidance²³ on how the investigation and enforcement functions will be carried out and the principles that will be used to calculate the level of any fine.
89. As all responses received were broadly in favour of retaining the current arrangements, the Secretary of State will not be amending the Order which sets out the maximum financial penalty.

The power to restrict information which can be considered on decision to investigate

90. The Act places no restriction on the sources of information available to the GCA in deciding whether to launch an investigation. The Secretary of State does not intend to make an order restricting the sort of information the GCA may consider when deciding whether to carry out an investigation.
91. An investigation by the GCA is a serious intervention that carries significant risk to the retailers and should only be carried out where the GCA has reasonable grounds to suspect a breach of the Code, as is currently provided for in the Act. The Secretary of State does not consider investigation with no evidential support as an effective measure. The GCA is also able to undertake pre-investigative work to assess whether there are reasonable grounds to launch an investigation. The Secretary of State notes that the GCA's statutory guidance on how it will carry out investigation and enforcement functions²⁴ already lists appropriate considerations that the GCA will use with its main aim being to ensure that any action taken by the GCA will help to promote compliance with the Code.
92. On requiring licensed insolvency practitioners to report in confidence to the GCA where they find evidence of retailers breaching the Code, insolvency practitioners can currently share information obtained in the usual course of their administration or investigation of an insolvency with regulators. BEIS will work with the Insolvency Service to help raise awareness of the Code and the GCA with insolvency practitioners and their regulators, so that in future if they become aware of Code-related breaches they know to report to the GCA, to the extent there are no applicable restrictions that prevent them from doing so.

²²<http://www.legislation.gov.uk/ukxi/2015/722/contents/made>

²³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/511676/GCA_Statutory_Guidance_updated_March_2016.pdf

²⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/511676/GCA_Statutory_Guidance_updated_March_2016.pdf

Annex A: Terms of Reference

Introduction

This document sets out the terms of reference for the Secretary of State's second statutory review of the Groceries Code Adjudicator (the GCA Review). Its purpose is to explain the issues that will be examined by the GCA Review. The GCA Review covers the statutory requirements which the Secretary of State is obliged to fulfil under the Groceries Code Adjudicator Act 2013 ("the Act")

The Statutory Review

The Act requires the Secretary of State 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 Supply Code of Practice ("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.

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;

- (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 CMA;
- (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).

Annex B: The Code and the Groceries Code Adjudicator

The Code

In May 2006 the Competition Commission²⁵(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 2008²⁶ 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 2009²⁷ ("the Order") containing a new strengthened code of practice for groceries retailers' dealings with their direct suppliers i.e. The Groceries Supply Code of Practice²⁸ ("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")²⁹.

The Groceries Code Adjudicator

The GCA is an independent regulator sponsored by the Department for Business, Energy and Industrial Strategy (BEIS). It was established under the Act. The purpose of the GCA is to monitor and enforce the Code³⁰.

In June 2013 Christine Tacon CBE became the first GCA and was initially appointed for a four-year term. Christine served a second term in office from 25 June 2017 to 24 June 2020 and was recently re-appointed for a third term on 25 June 2020, for up to six months. The GCA is wholly funded by a levy on the retailers which for 2019/20 is £2 million. The current GCA works three days per week and has a small team made up of public sector secondees.

The Remit

The Code applies to the thirteen largest UK grocery retailers³¹ ("the retailers") with UK annual groceries turnover of more than £1 billion and which are designated in writing by the CMA as a

²⁵ In April 2014, most of the functions of the Competition Commission were transferred to the Competition and Markets Authority.

²⁶ www.gov.uk/cma-cases/groceries-market-investigation-cc

²⁷ <https://www.gov.uk/government/publications/groceries-supply-chain-practices-market-investigation-order>

²⁸ <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

²⁹ <https://www.legislation.gov.uk/ukpga/2013/19/contents>

³⁰ <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

³¹ These are - Aldi, ASDA, B&M, Co-op, Marks and Spencer, Iceland, Lidl, Morrisons, Ocado, Sainsbury's, Tesco, T J Morris (trading as Home Bargains) and Waitrose. Ocado Group plc and B&M were added to the list in November 2018 and T J Morris in September 2019. Following Ocado Group plc's joint venture with M&S, a

designated retailer. Designated 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.

Duties

The GCA is responsible for monitoring and encouraging compliance with and enforcing the Code. Under the Code the large retailers are obliged to deal with suppliers to ensure fairness across a range of supply chain practices. These include making payments on time; no variations to supply agreements without notice; compensation payments for forecasting errors; no charges for shrinkage or wastage; restrictions on listing fees, marketing costs and De-listing. The GCA website includes a list of issues covered by the Code³².

Statutory functions

The statutory functions of the GCA, set out in legislation, are to:

- provide advice and guidance to both suppliers and large retailers on matters relating to the Code;
- arbitrate in disputes between suppliers and large retailers [or appoint someone else to arbitrate];
- investigate issues to ascertain whether there has been a breach of the Code;
- impose sanctions and other remedies for breaches of the Code; and
- prepare and publish an annual report on the GCA's activities.

Information sources

Suppliers, trade associations and other representative bodies are encouraged to provide the GCA with information and evidence about how the large retailers are treating their direct suppliers. All information received is dealt with on a confidential basis and the GCA has a legal duty to preserve anonymity of complainants unless the person sharing the information gives consent for disclosure, disclosure is required for the purpose of an EU/retained EU obligation, disclosure is required under the rules of a court or a court order, for the purposes of legal proceedings of any description.

substantial part of Ocado's groceries business was carried out by Ocado Retail Ltd which was designated in October 2019. Ocado Group plc was de-designated by the CMA in January 2020.

³² www.gov.uk/government/publications/complaining-to-the-groceries-code-adjudicator

Powers

Investigative powers

Under the Act, the GCA may launch an investigation if the GCA has reasonable grounds to suspect that a large retailer has:

- (a) broken the Code; or
- (b) failed to follow a recommendation issued by the GCA following a previous investigation.

Enforcement powers

If a breach of the Code is found following investigation, the GCA can take one or more of the following enforcement measures:

- (a) make recommendations;
- (b) require large retailers to publish details of any breach; and
- (c) impose a fine.

Role of Government

The GCA is operationally independent of Government.

The Secretary of State for Business, Energy and Industrial Strategy (BEIS) is responsible for appointing the GCA. The current GCA 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 GCA's annual levy. The GCA 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 GCA 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 GCA may invoice the retailers for their share of the levy. Non-payment of the levy is recoverable by the GCA as a civil debt.

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

Annex C: Breakdown of responses to the Review

Statutory Respondents listed in the Groceries Code Adjudicator Act 2013.

- the Adjudicator;
- the Competition and Markets Authority;
- retailers subject to the Code;
- one or more persons representing the interests of suppliers;
- one or more persons representing the interests of consumers; and
- any other person the Secretary of State thinks appropriate.

Responses broken down by sector

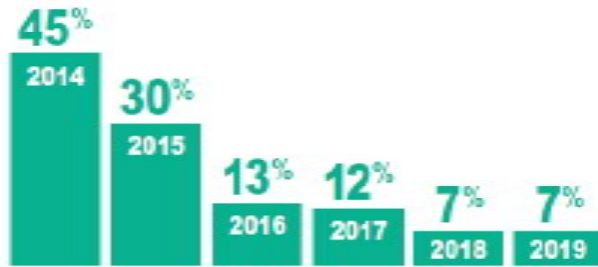
- designated retailer – 12
- supplier – 54
- representative organisations – 16
- consumer - 1

Annex D: The GCA investigation into Co-operative Group Ltd

The full report on the GCA's investigation into Co-operative Group Ltd can be found at:-
<https://www.gov.uk/government/publications/gca-investigation-report-into-co-operative-group-limited>

Annex E: Progress on Top Issues

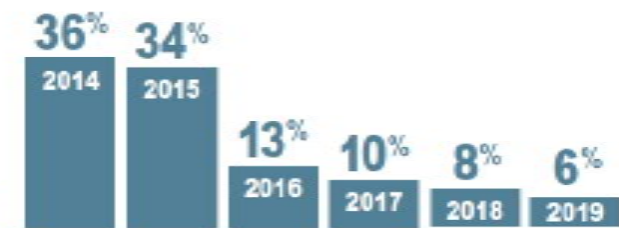
Forensic auditing



Consumer complaints



Margin maintenance



Delay in payments



Forecasting



Pay to stay



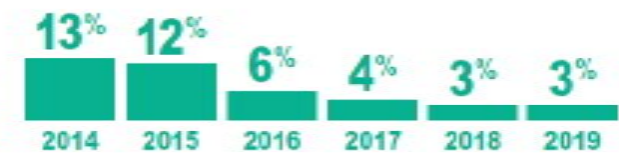
Artwork and design services



Promotions



Payments for better positioning



Annex F: The GCA's progress against specific actions to raise awareness and improve supplier confidence

A dedicated budget to cover events and marketing focused on promoting the Code Confident message

The GCA has a dedicated budget of approximately £31,000 to spend on marketing and promotional activity and a further budget for events and conferences. Both budgets are used to promote the work of the GCA and awareness of the Code, engage with suppliers, attend trade shows and supplier events and host meetings with stakeholders.

A Code Confident campaign was launched in 2017 to encourage suppliers to Know the Code; Get Trained; and Speak Up to retailer Code Compliance Officers or the GCA. This message has reached thousands of suppliers and is supported by retailers and trade associations. A Code Confident pack is available, containing key documents. In the year 2018/19 over 1,700 of these were distributed.

A commitment to attend a minimum of one supplier event each month

The GCA and her team attend a variety of events at which grocery suppliers are present. This commitment to attend 12 events in one year is always exceeded substantially. In 2018/19 44 events were attended across 19 locations in the UK. This enables the GCA's Code Confident message to be delivered directly to suppliers and provides an opportunity for suppliers to share with the GCA their experiences of working with the retailers.

Asking retailers to support the Code Confident message with their suppliers

Retailers promote the work of the GCA with their suppliers through a variety of methods. Code Compliance Officers (CCOs) are crucial to this and the GCA asks them to work to raise awareness of the GCA and Code. Retailers do this in a variety of ways, including putting information and updates on their portals for suppliers, circulating newsletters from CCOs or communication from Buying Directors, and making presentations to supplier conferences. At the most recent GCA annual conference, all CCOs attended a networking event at which they heard issues directly from suppliers.

Encouraging retailers to be more open and transparent about their Code compliance activity and the issues that suppliers have reported and how they have been handled so that suppliers have confidence in the process, in line with the annual compliance reporting requirement in the Groceries (Supply Chain Practices) Market Investigation Order 2009

The GCA has encouraged retailers to put more information in the public domain about their compliance activities. Each year the amount of information published increases as well as there being improved reporting about the issues that suppliers raise. Retailers have been taking steps to identify the root causes of issues raised by suppliers and making changes to their systems and processes where appropriate.

Using the annual survey to ask suppliers questions about their level of awareness of the GCA, their understanding of the Code, whether they would consider raising issues with the GCA and if they would not the reasons why not

A record number of direct suppliers completed the GCA's annual survey in 2019. The annual survey remains one of the most important activities that the GCA does each year. By asking suppliers about their experiences and opinions, a picture can be drawn of the progress being made. Retailers welcome the information about what issues suppliers say they experience with each of them and act on the results. In the GCA's first survey in 2014 only 52% of direct suppliers said they were very or quite familiar with the role and responsibilities of the GCA, a figure that has subsequently improved to 75% that said their understanding was good or fair. Similarly, the percentage of direct suppliers that said they were very or quite familiar with the Code has risen from a starting point of 65% to reach 79% that said their understanding was good or fair. In the last annual survey only 10% of suppliers said they would not consider raising an issue with the GCA.

Increased work with trade associations to promote the work of the GCA and the need for their members to be Code Confident

The GCA engages with 70 trade associations and over 55 receive the GCA newsletter and attend events. In 2018/19, 12 trade associations invited the GCA to events and 17 trade association magazines carried articles about the GCA; some, such as The Grocer, on numerous occasions.

This publication is available from: www.gov.uk/government/publications/groceries-code-adjudicator-statutory-review-2016-to-2019

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ISBN 978-1-5286-2078-9

CCS0720866768