



Groceries Code  
Adjudicator

## **GCA Guidance on appeals**

## Guidance on Appeals

1. This guidance is intended to address questions about appealing against decisions of the Groceries Code Adjudicator (GCA) about the Groceries Supply Code of Practice (the Code), as provided for in the Groceries Code Adjudicator Act 2013 (the Act).

### The legislative framework

2. The Act sets out the legislative framework.

### Investigations

3. The GCA may investigate whether a retailer has broken the Code if the GCA has reasonable grounds to suspect that the retailer has broken the Code or failed to follow a recommendation (section 4(1) of the Act). 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. June 25<sup>th</sup> 2013.

4. 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 [investigations and enforcement guidance](#), available on the GCA website.

5. The decision of the GCA to start an investigation can only be challenged by judicial review.

6. The decision by the GCA following an investigation that a breach has occurred can only be challenged by judicial review.

7. The decision by the GCA following an investigation in which a breach has been found to make recommendations or require the publication of information can only be challenged by judicial review.

8. The decision by the GCA following an investigation in which a breach has been found to impose a financial penalty, or the decision about the amount of that penalty, can be challenged by the large retailer on whom it is imposed by full merits appeal (section 9(3) of the Act).

9. The decision by the GCA following an investigation in which a breach has been found to charge one or more large retailers found to have breached the Code some or all of the costs of that investigation, or the decision about the amount of costs to be charged, can be challenged by the person required to pay by full merits appeal (section 10(1) and (4) of the Act).

10. Any decision by the GCA to require a person to pay some or all of the costs of an investigation carried out as a result of a complaint by that person which is found to have been vexatious or wholly without merit, or the decision about the amount of costs to be charged, can be challenged by the person required to pay by full merits appeal (section 10(2) and (4) of the Act).

## **Arbitration**

11. For a supplier, the route to arbitration under the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order) is by escalating a dispute through the CCO. If a supplier refers a dispute to arbitration under the Order, the Adjudicator is then obliged to arbitrate or to appoint someone else to arbitrate (section 2(1) of the Act).

12. For a retailer, the route to arbitration is not directly under the Order but rather, 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 (Article 11(9)). If a retailer refers a dispute to arbitration under a supply agreement, the Adjudicator may accept appointment as the arbitrator (section 2(2) of the Act).

13. See also the [GCA arbitration policy](#), available on the GCA website. We strongly recommend that potential claimants seek independent legal advice before requesting arbitration.

14. Appeals against arbitral awards should be made under the Arbitration Act 1996, in England and Wales. There are limited grounds on which to appeal, set out in sections 67-69 of the Arbitration Act 1996.

## **Commercial litigation**

15. Commercial litigation remains an option for contracting parties, with its own appeal routes.

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