



Department for
Business, Energy
& Industrial Strategy

STATUTORY REVIEW OF THE GROCERIES CODE ADJUDICATOR: 2013-2016

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

July 2017



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Ministerial foreword

I am pleased to be publishing this statutory review into the performance and effectiveness of the Groceries Code Adjudicator (“GCA”), the first since this regulator was created in 2013.

The GCA is the UK’s first independent adjudicator to oversee the relationship between the largest 10 supermarkets and their suppliers. Established in 2013, the Adjudicator’s role is to make sure that large supermarkets treat their direct suppliers lawfully and fairly.

The GCA not only monitors compliance with and enforces the Groceries Supply Code of Practice (“the Code”); it also helps to strengthen the supply chain benefiting suppliers, including small businesses, retailers and consumers.

The GCA’s investigatory work, arbitrations and guidance carry a clear message that the GCA expects fairness in the supply chain between large retailers and suppliers as provided for in the Code.

This review has found that the GCA is regarded as an exemplary modern regulator with an international reputation.

There is, however, more to be done. Too many direct suppliers are still facing issues with potential breaches of the Code and I am concerned by evidence that some suppliers are reluctant to raise issues with the Adjudicator for fear of the commercial consequences. I welcome the measures that the current Adjudicator, Christine Tacon, is taking to address this and will continue to support her important work.

I would like to thank, the review team, the Challenge Panel and all those individuals and organisations who responded to this statutory review.



Margot James MP

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



Executive Summary

1. The Groceries Code Adjudicator (“GCA”) was established under the Groceries Code Adjudicator Act 2013 (“the Act”). Section 15 of the Act requires the government to review periodically the performance of the GCA. This is the first statutory review of the GCA and covers the period from the creation of the GCA (in June 2013), to 31 March 2016 (“the Review”).
2. The Review is concerned wholly with the GCA’s performance and effectiveness against the current remit. There have been calls for the GCA’s remit to be extended and a Call for Evidence was launched alongside this Review. The Government’s response to the Call for Evidence will be published in due course.
3. As part of the Review, a public consultation on the performance and effectiveness of the GCA was open for a twelve week period from October 2016 to January 2017 during which time stakeholder events were held across the UK. Forty-three responses were received to the consultation including from trade associations with large membership bodies. This Review has also drawn on evidence from the GCA’s Annual Reports and the independent Annual Survey of suppliers carried out by YouGov on behalf of the GCA.
4. The Review was conducted against measures set out in the Act, which are covered in the Review Terms of Reference (see page 14).
5. The GCA monitors compliance with and enforces the Groceries Supply Code of Practice (“the Code”) which regulates the relationship between the 10 retailers with a UK annual groceries turnover of more than £1 billion (“large retailers”) at the time of designation and their direct suppliers (“suppliers”). The Review found that, since its establishment in 2013, the GCA has been effective in enforcing the Code; and exercising its existing powers.
6. The majority of respondents to the Review felt that the GCA had been effective or very effective in exercising its investigation and enforcement powers. Furthermore, the existence of the GCA was felt to have made resolution of problems easier without needing formal arbitration, as the Adjudicator is able to act as a conduit between suppliers and large retailers.
7. The majority of respondents also described the GCA as being effective in enforcing the Code. There is evidence of a positive shift in the relationship between large retailers and direct suppliers and an end to some of the unfair trading practices that were prevalent before the Adjudicator was appointed.
8. Whilst progress has been made, the Review notes that there is still more to be done. The Review notes the measures the Adjudicator is taking to improve awareness of the Code; increase the number of suppliers who are trained on the

Code and overcome the reluctance of suppliers to report issues to the Adjudicator. **The Government shares the Adjudicator's ambition to make further progress in these areas.**

9. No significant evidence was supplied during the Review to suggest that the GCA should be abolished or have its powers or functions transferred to another public body.
10. Given the responses received together with further, publically available evidence, the conclusions of the Review are:

- **The GCA has been effective in exercising its powers; and in enforcing the Code.**

During the period covered by the Review the GCA carried out one investigation; in addition two arbitrations have been concluded and two more were on-going at the end of the period. There has been some criticism that the GCA has not carried out more investigations. The Review notes that the GCA has chosen to adopt a collaborative approach to deliver increased compliance with the Code rather than rapid escalation to formal measures. This approach involves a high level of engagement with the large retailers and appears to be working. Independent survey results¹ show increased awareness of the Code, fewer suppliers reporting issues and increasing confidence in raising issues with the GCA.

- **No order should be made setting out information that may be considered when the GCA is deciding whether to investigate.**

The Act places no restriction on the sources of information available to the GCA in deciding whether to launch an investigation. But the Act does contain a provision, not brought into force that would impose such a restriction if the Secretary of State decided it was merited. No evidence submitted to the Review suggested a need to restrict the sources of information available to the Adjudicator prior to an investigation. Therefore, this Review finds that no such order should be issued.

- **The Order setting a maximum financial penalty does not require amendment or replacement.**

The Act gives the Adjudicator the power to impose a financial penalty where, following an investigation, the Adjudicator has found a large retailer or retailers to be in breach of the Code. The Order setting the maximum amount of such a penalty came into force on 6 April 2015, following consultation. It is currently set at 1% of a large retailer's annual UK turnover.

The Review received submissions arguing both for and against the current maximum amount of the financial penalty. Some large retailers, in particular,

¹ <https://yougov.co.uk/results/>

are concerned at the potential size of the penalty arguing that reputational damage alone is enough of a deterrent against breaching the Code. The majority, however, believe that the financial penalty is an important signal of how seriously the Code is being enforced. The Review notes that 1% of annual UK turnover is the maximum fine that can be imposed but that the Adjudicator has complete discretion and may choose to issue a lesser fine according to the individual circumstances of a particular case. The Review concludes that the Order setting out the financial penalty should not be amended or replaced.

- **The GCA should not be abolished or have its powers transferred to another public body.**

The Review is required to consider whether the GCA should be abolished or have its powers transferred to another public body. The Review finds that there is evidence of a continued need for the GCA given the extent of non-compliance that suppliers report through the YouGov Survey and by other means.

Evidence to this Review suggests that the GCA is well regarded across the sector and is considered to be effective by both large retailers and suppliers. There is no evidence to support an argument that the GCA's powers should be transferred to another public body.

- **No Guidance should be issued by the Secretary of State.**

As a result of the findings of a statutory review the Secretary of State may give guidance to the Adjudicator about any matter relating to the Adjudicator's functions. This Review will not result in any such guidance being issued. The Review did find barriers to implementing the Code effectively as set out below. However, this Review also finds that the Adjudicator is well aware of the issues and is taking steps to address them. It is considered that if the Secretary of State was to issue guidance on areas already being addressed that this would undermine the operational independence of the GCA who is best placed to determine how to deliver increased compliance with the Code.

The Review gives the Government the opportunity to re-iterate and clarify the purpose and remit of the GCA which was established for the ultimate benefit of consumers. The Government will also continue to work directly with large retailers, along with many other businesses, to encourage best practice through the supply chain, including encouraging businesses to sign up to the Prompt Payment Code.

Challenges for the Future

11. In the last Annual Report the Adjudicator set out the challenges still being faced including confidence in the GCA being undermined by a common misunderstanding of the remit of the role.
12. Evidence submitted to the Review suggests that the three biggest challenges in enforcing the Code are (i) a lack of awareness of the Code and the GCA amongst suppliers; (ii) a misunderstanding of the Code; and (iii) a reluctance on the part of suppliers to report breaches of the Code for fear of the commercial consequences, and in particular of de-listing.
13. The Adjudicator is taking steps to address these issues. The Review will support these steps by continuing to raise awareness of the GCA; taking this opportunity to re-state and clarify the purpose of the GCA and by re-iterating the message that the Government views actions taken by large retailers against any supplier who reports a breach of the Code as totally unacceptable.
14. In addition, Government will work with large retailers and suppliers to overcome the reluctance of suppliers to raise potential breaches of the Code with the GCA. The Government will make it clear to large retailers that adverse commercial consequences in response to a supplier reporting a potential breach of the Code are totally unacceptable.
15. Alongside its statutory reporting requirements, the GCA monitors its performance against four strategic objectives: promoting the work of the GCA; providing advice and guidance; acting on suppliers' issues and information and improving the culture of Code compliance. To protect and build on the achievements of the GCA, work is on-going to establish a robust governance and assurance framework for the long term that will endure beyond the tenure of the current Adjudicator. Within that process, Ministers will agree with the GCA an appropriate strategic goal around addressing the climate of fear.
16. The next Statutory Review of the GCA will take place in 2019. This will be an opportunity to assess progress on addressing the 'climate of fear'. If it is found that this is still holding suppliers back from raising legitimate grievances, the Government and GCA can and will develop a plan of action to tackle this.

Background

How and why the GCA was established

17. In May 2006 the Competition Commission² launched a Market Investigation into the UK Groceries market in response to long standing concerns about practices of the large retailers (supermarkets).
18. The Competition Commission published its findings in 2008³ stating that, while the sector was broadly competitive and worked well for consumers, large retailers were transferring excessive risks and unexpected costs to suppliers by using their buyer power. The Competition Commission 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 Competition Commission issued The Groceries (Supply Chain Practices) Market Investigation Order 2009 ("the Order") containing a new strengthened code of practice for groceries retailers' dealings with their direct suppliers – and stated that a Supermarkets Ombudsman should be set up to enforce the Code and to arbitrate disputes arising from it. (**Fuller details of the Code are given at Annex A**).
19. Large retailers were given some time to set up a voluntary Ombudsman but, as this self-regulatory approach did not progress, the Competition Commission recommended that the then Department of Business, Innovation and Skills (BIS)⁴ should set up an Adjudicator on a statutory basis. Following a consultation, the Act establishing the Adjudicator came into force on 25 June 2013.

Remit of the Groceries Code Adjudicator

20. The GCA is an independent regulator sponsored by the Department for Business, Energy and Industrial Strategy (BEIS). The GCA oversees the Code which regulates the relationship between the 10 groceries retailers with a UK annual groceries turnover of more than £1 billion (the "large retailers") at the time of designation and their suppliers. The GCA is funded by a levy on the large retailers.

Duties

21. 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

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 BIS responsibilities were transferred to BEIS in October 2016 as part of a machinery of government.

notice; compensation payments for forecasting errors, no charges for shrinkage or wastage; restrictions on listing fees, marketing costs and delisting. The GCA website includes a list of issues covered by the Code⁵ (**See also Annex A**).

22. 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;
 - Investigate issues to ascertain whether there has been a breach of the Code;
 - Impose sanctions and other remedies for breaches of the Code; and
 - Publish an annual report on the Adjudicator's activities.

Information sources

23. 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 suppliers. All information received is dealt with on a confidential basis and the GCA has a legal duty to preserve anonymity.

Powers

Investigative powers

24. Under the Act, the GCA may launch an investigation if the Adjudicator has reasonable grounds to suspect that a large retailer has:
- (a) Broken the Code; or
 - (b) Failed to follow a recommendation issued by the Adjudicator following a previous investigation.

Power to use information from third parties

25. The Act currently places no restriction on the sources of information available to the GCA in deciding whether to launch an investigation. This means that the Adjudicator is free to use information provided by not just large retailers or suppliers, but also any third parties. However, the Act does contain a provision, not yet brought into force, that would impose such a restriction if the Secretary of State decided it was merited. No evidence submitted to the Review suggested a need to restrict the sources of information available to the Adjudicator prior to an investigation.

⁵ www.gov.uk/government/publications/complaining-to-the-groceries-code-adjudicator

Enforcement Powers

26. If, as a result of an investigation, the GCA is satisfied that a large retailer has broken the Groceries Code, the Adjudicator may, under the Act, take one of more of the following enforcement measures:
- (a) make recommendations
 - (b) require information to be published
 - (c) impose financial penalties.

Understanding the role of the GCA

27. In the GCA's 2015-16⁶ Annual Report the current Adjudicator cited a common misunderstanding of the scope of her role as being one of her key challenges:

"I use every opportunity to explain what I can do, including giving evidence to Parliamentary Select Committees but dealing with this misunderstanding is very time consuming for my office and can act as a diversion from handling issues that the Code allows me to regulate"

28. During the course of the Review, further evidence of this misunderstanding has been received. Several large retailers complain that suppliers often raise issues that are not covered by the Code. The Review also received submissions from those who have been disappointed that the Adjudicator is not able to deal with the issue being raised as it falls outside her remit. Concerns have also been raised about the risk that the original purpose of the Adjudicator, ultimately to protect consumers, is in danger of being lost. One large retailer commented that:

"Within parts of the supply chain, the original consumer-focused rationale underpinning the establishment of the Code, and the scope of the Adjudicator, is still not well understood outside of the retail sector. Further work is required in communicating this to the rest of the supply chain, and aspects of Government."

27. Insofar as there are questions about the remit of the GCA and whether this should be extended, these will be investigated through the Call for Evidence launched alongside the Review, the response to which will be published in due course.

⁶ www.gov.uk/government/publications/groceries-code-adjudicator-annual-report-and-accounts-2015-2016

Rationale for the Groceries Code Adjudicator and what remit does, and does not, cover

28. As described at paragraph 17 above, the Code was put in place as the result of specific findings made by the Competition Commission about particular practices found to be prevalent in the groceries sector. The Competition Commission found that the buyer power of retailers with annual groceries turnover of over £1 billion was resulting in excessive risk being transferred to direct suppliers leading to the suppliers facing unexpected costs. These unexpected costs could result in suppliers failing to innovate or going out of business leading to a detriment for consumers who might face higher prices and/or fewer choices.
29. The Code was the remedy that the Competition Commission determined was necessary to address this potential detriment to consumers. Retailers covered had two years to establish a voluntary, self-administered ombudsman scheme. This did not happen and so a statutory regulator (the GCA) was established by the Act in 2013. Although the Code ensures that suppliers to large retailers are treated fairly, its primary purpose is to ensure a competitive groceries market that benefits consumers.
30. The Code does not cover issues such as price setting, the relationship between indirect suppliers and the large retailers, food safety or labelling. These issues are therefore outside the GCA's remit.
31. In response to calls for the GCA's remit to be extended, the Government launched a Call for Evidence alongside the consultation on the Review⁷. The evidence submitted on the Call for Evidence is still being considered and the Government will respond in due course. In the meantime, it is important to stress that this Review is and must be a review of the GCA's performance and effectiveness within the current remit defined by the Code and the Act. Where a respondent to the public consultation on the GCA's performance has raised the issue of the remit, this has been added to submissions to the Call for Evidence and has not been considered as part of this Review.

⁷ www.gov.uk/government/consultations/groceries-code-adjudicator-extending-its-remit

The Statutory Review: process and purpose

32. Section 15 of the Act requires the Government to review periodically the performance of the GCA. This is the first review and covers the period from the creation of the GCA (in June 2013), to 31 March 2016.
33. The Review was evidence led. **(Full details of the evidence base are set out in Annex B).**
34. The Act specifies the issues which the Review must address and who must be consulted as part of the Review. **(A full list of statutory consultees and a breakdown of responses by group is included at Annex C).**
35. The primary purpose of the consultation covering the statutory review was to seek views and evidence which would allow us to make an assessment on the GCA's performance against the measures set out in the Act. These measures are explained in the Terms of Reference which are summarised below:
 - How much the GCA's powers have been exercised;
 - How effective the GCA has been in enforcing the Code;
 - Whether to make an order setting out the information that the GCA may consider when deciding whether to investigate;
 - Whether to amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015;
 - Whether some or all of the GCA's functions should be transferred to another public body;
 - Whether to close down the Groceries Code Adjudicator.
36. Forty-three responses were received to the Review consultation including from trade associations with large membership bodies. In addition to the Public Consultation, this Review draws on: evidence from the GCA's own Annual Reports; the two independent YouGov Surveys carried out on behalf of the GCA; and views given at public stakeholder events held during the consultation period.
37. The Review has benefitted from a high level of engagement from large retailers, suppliers and representative organisations and has drawn on detailed and thoughtful submissions from respondents to the consultation.

38. The evidence gathered for this Review, including consultation responses was assessed against the Terms of Reference. The following sections summarise the findings and evidence that was provided to each of these.

Findings of the Statutory Review

Term of Reference 1: Consider the GCA's performance from 25 June 2013 (when the GCA was established) to 31 March 2016.

39. 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 .

How have the GCA's powers have been exercised

40. Since the creation of the GCA one investigation has been carried out and four arbitrations undertaken, two of which were on-going at the end of the period covered by the Review.

41. The majority of respondents to the Review felt that the GCA had been effective or very effective in exercising its investigation and enforcement powers. This was true both of large retailers and other parties.

GCA approach to investigations

42. The Adjudicator has chosen to take a collaborative approach and describes a three-stage process that is designed to address and resolve issues quickly whilst retaining the option to move to an investigation if necessary. This process consists of:

- Alerting large retailers when Code-related issues are raised with the Adjudicator by suppliers;
- Requesting that the large retailer Code Compliance Officers (CCOs) internally look into the issues; and
- Report back to the Adjudicator, identifying any business changes made to address the issue raised (if necessary).

43. If a large retailer continues with a practice following this collaborative approach, the Adjudicator may take more formal action. The Adjudicator is clear in her response that the above approach:

“ensures that issues are raised promptly with the regulated retailers for them to consider and work on internally, with any necessary action taken by them and reported to me as swiftly as possible. This is an efficient and effective way to deal with any current groceries sector practices that may not be consistent with the Code, and to put them right for the future. This works to the benefit of retailers and suppliers alike, without imposing disproportionate burdens on business or GCA interference in what are often essentially commercial practices.”

44. To strengthen this collaborative approach, the Adjudicator regularly meets with each Code Compliance Officer through which large retailers being required to update on their progress against the Adjudicator's 'Top 5 issues', which are identified and prioritised through the GCA Annual Survey.

Number of investigations

45. The Review noted that there has been criticism from some parties that there had not been more investigations. One large retailer referred to such criticism but argued that a greater focus on investigations would be counterproductive as it would have diverted time and resource away from ensuring compliance generally in order to respond to the formal requirements of an investigation. The large retailer also felt that the lighter-touch approach to ensuring compliance before problems developed helped facilitate a freer and more open exchange between large retailers and the GCA. A focus on investigation could have created a more adversarial relationship.
46. Another large retailer suggested that more investigations would be less worthwhile than the GCA's collaborative approach as this has allowed the GCA to engage meaningfully with the ten large retailers subject to the Code. This response also stated that the GCA's power to uncover breaches of the Code would be very limited if it was limited to investigations, given the time and expense of each investigation.
47. There is no target number of investigations, nor is the number carried out a proxy measure for success of the GCA. However, it is noted that there is a danger of complacency if investigations are perceived as being unlikely. The Adjudicator has been clear that action will be taken if it is needed and it is important that this message is re-stated and heard.

Resource requirements for an investigation

48. The investigation that was carried out was heavily resource-intensive. It took almost a year from launch to publication of the findings and the GCA estimated it took over 50 per cent of the Adjudicator's time and 25 per cent of the total office resource⁸. The GCA noted that due to the costs of conducting an investigation it is much better for suppliers to report issues as they arise so they can be dealt with more cost-effectively and quickly.

⁸ Groceries Code Adjudicator Annual Report and Accounts 2015-2016 p 4

49. Limited resources were cited by some respondents as a potential restriction on the number and frequency of investigation activities, with one respondent warning of *“a sense that smaller transgressions may go unnoticed”*. However, there was no evidence provided through the Review responses that other potential breaches of the Code were missed or overlooked during the investigation. Following the Tesco investigation, the Adjudicator increased the levy to ensure that there are sufficient resources are available for any future investigation.

No notice investigations

50. One trade association suggested that due to the time and resource needed for an investigation, that the GCA would have more impact if it had powers of inspection on large retailers on specific issues at short, or no, notice. The GCA does not have powers to investigate in this way.
51. The view of the large retailers is that implementing short, or no, notice inspections could potentially undermine the way they engage with the GCA. It is also evident through the responses that the nature of how the GCA works has been well received in the sector, with both large retailers and suppliers describing the relationship as positive and constructive. It is critical that the Adjudicator maintains this even-handedness.

The Investigation

52. Although the collaborative approach of the Adjudicator has been welcomed and is delivering results, the Review would not wish to understate the importance and impact of the one investigation that has been carried out so far. The investigation into Tesco plc resulted in significant improvements in the way suppliers were treated not just by Tesco but by the other major retailers too.
53. Following the investigation, the YouGov survey, commissioned by the GCA to capture views from direct suppliers on how the 10 large retailers are complying with the Code, showed a large improvement in the proportion of respondents⁹ assessing Tesco’s compliance with the Code as being “consistently well” and a similar fall in the proportion saying they “rarely” or “never” complied with the Code.

⁹ Including direct and indirect suppliers and trade associations

YouGov survey: Overall assessment of compliance with the Code: Tesco

	2016	2015	2014
Consistently well	36%	12%	12%
Mostly	58%	58%	47%
Rarely	6%	27%	35%
Never	0%	3%	6%

54. Tesco’s own supplier surveys showed that while just 51 per cent of UK suppliers were happy with their engagement with Tesco in 2014, the figure jumped to 78 per cent in 2016.
55. The wider publicity surrounding the investigation was a further tool in promoting compliant behaviour in other retailers, as details of non-compliant practices were publicised widely in national and trade news. One large retailer stated that it *“had a useful impact by raising the profile of the ‘delay in payments’ issue and providing a great deal of clarity on how the GCA interprets Article 5 of the Code’*.
56. The GCA’s procedures and conduct also generated positive feedback, with one trade association noting that
- “the GCA was able to respect and maintain confidentiality of all evidence and supplier details over the course of the investigation. This single fact should give suppliers further confidence in the ability of the GCA to act without causing severe disruption to a direct suppliers business.”*
57. Further information on the Tesco investigation can be found at Annex E.

Arbitration/dispute resolution

58. The GCA has concluded two arbitrations, both of which were started and completed in the 2015-16 reporting year. Two further arbitrations, which had been referred in the 2013-14 reporting year, remained live at the end of the 2015-16 reporting year, with the parties requesting frequent extensions to the timetable, thereby prolonging the process.
59. Responses to the Review from both the suppliers and the large retailers showed that the existence of the GCA was felt to have made resolution of problems easier and quicker without needing to rely on formal arbitration, as the GCA acts as a conduit between suppliers and large retailers. The GCA has issued both a policy

on how the GCA will handle Code-related arbitrations¹⁰, and guidance on raising issues, initiating disputes and the escalation process to be followed under the Order.

60. The Review found on-going concern that some suppliers are reluctant to bring issues to the Adjudicator and that there is still *“a climate of fear preventing reporting of retailers’ abuses of power”*. One trade association stated that *“the fact that arbitration entails the waiving of anonymity by suppliers prevents these suppliers from using it as a tool”*. However, another trade association noted that there were no arbitrations before the GCA’s appointment, *“suggesting that her role is critical to the effectiveness of this aspect of [the Code]”*.
61. More widely, several respondents mentioned the climate of fear as an issue that could prevent the GCA from being fully effective in tackling issues, as it may deter suppliers from bringing matters to the attention of the GCA. One respondent suggested that any lack of negotiating power within the grocery supply chain is *“compounded by a ‘climate of fear’ amongst suppliers and the exclusion of all but direct suppliers from recourse to redress through the GCA”*. A representative organisation from primary producers highlighted that.
- “The sense of fear within our membership to publicly highlight issues still remains across all sectors. The fear centres on the potential for members to be delisted, damage their relationship or lose volume from their retail customers if they are seen to have reported the issue to the GCA”. Similar themes relating to the climate of fear were mentioned in several further responses. Therefore, it is clear that this remains a real, live issue that needs to continue to be on the radar of the GCA, as reflected in one respondent’s statement that ‘Going forward, the climate of fear amongst suppliers must be tackled if the GCA is to continue to be able to investigate unfair trading practices.’”*
62. Evidence also shows that fear of the consequences is not the only reason for suppliers not to raise issues; lack of awareness and understanding of the Code is often more of an issue. The GCA stresses the importance of suppliers getting trained in the Code, understanding how to negotiate commercially with retailers with the knowledge of the Code behind them, and being willing to raise issues with the buyers directly and with the CCOs.
63. It is outside the Adjudicator’s remit to provide training in the Code and there has been a lag between the establishment of the GCA and the availability of training from private providers. The Government endorses the GCA’s call for more trade associations to both offer training and encourage their members to become trained in the Code. Large retailers might also wish to consider encouraging and supporting their suppliers to become trained, whether that be through third party

¹⁰ www.gov.uk/government/publications/gca-arbitration-policy

training available in the open market or through extending their own training offer to suppliers . (Training is discussed in more detail from paragraph 70 below).

Less formal enforcement activity

64. The GCA's less formal monitoring and information gathering activities, such as regular meetings with larger retailers' Code Compliance Officers, workshops with suppliers and extensive public appearances to publicise her work, were also highlighted. The GCA's gathering of substantial information on current practices and identifying conduct that left large retailers at risk of investigation was also felt to have a positive effect on changing the large retailers' behaviour.

How effective the GCA has been in enforcing the Code

65. The majority of respondents to the Review described the GCA as being effective in enforcing the Code. There is evidence of a positive shift in the relationship between regulated retailers and suppliers and an end to some unfair trading practices that were prevalent before the Adjudicator was appointed (for example excessive charges for consumer complaints).
66. The majority of respondents commented that the GCA has been highly effective in exercising its existing powers through a combination of ensuring better Code related information for suppliers, promoting collaboration with large retailers, and using investigatory and regulatory powers. Respondents, from both large retailers and suppliers commented on the GCA's achievements and its effectiveness in achieving good working relationships throughout the retail sector.

Awareness of the GCA

67. Raising awareness through promoting the work of the GCA is one of the Adjudicator's strategic priorities. Whilst awareness of the GCA is rising in the UK, the Review found some concern that this was not the case for overseas suppliers who are also covered by the Code. A response from an organisation representing overseas suppliers highlighted that figures from the GCA's YouGov survey showed that, whilst 94% of UK suppliers were aware of the Code, this figure dropped to 54% for overseas suppliers. One suggestion to address this matter, and put forward within this response, was that the GCA might provide translations of the Code on its website to improve awareness of the regulatory framework overseas.

Advice and guidance:

68. Since taking office, the GCA has issued additional advice and guidance on the Code and this has been widely welcomed across the sector. The following comment, from a respondent who works closely with businesses across the grocery supply chain, was typical:

"The GCA has, in our opinion, been particularly effective in providing advice, guidance and recommendations to Food Suppliers and the Retailers through the material supplied via its website, in regular news bulletins, significant engagement with Food Suppliers at trade events,

its regular CCO [Code Compliance Officer] meetings and its annual conference with supporting YouGov surveys.”

The Adjudicator has recognised the importance of clear advice and guidance by making this one of her strategic objectives.

Training

69. All large retailers covered by the Code provide relevant staff with training on the Code. It is a mandatory requirement which is taken very seriously by large retailers and the GCA, who monitors retailers to ensure this happens. One large retailer described how:

“Training on the GCA and the Code is held with all new starters who will have supplier contact, with a copy of the Code included in the day-1 induction pack given to all members of the commercial teams as part of the on-boarding process. Annual refresher training is held with the buying team to ensure any Code clarifications, guidance, investigation outcomes and internal learning are briefed and understood.

In addition to the legal requirements we also annually test, using a computer-based online test, the current circa 700 trained colleagues with additional training given to those who do not meet the required standard.”

70. There is no such requirement placed on suppliers and the Adjudicator has raised a concern that insufficient numbers of suppliers are trained in the Code. In the 2015-2016 YouGov Survey of the GCA, the Adjudicator’s perception that few suppliers had been trained in the Code was tested through the following two questions to suppliers: “Does your company offer training on the Code?” and “Have you received any training on the Code?”. The replies revealed that fewer than three out of ten suppliers had received training – a problem that was even greater among small suppliers (24%) and micro suppliers (9%).
71. The issue of supplier training was also raised in responses to the Review’s consultation with some large retailers complaining that a lack of understanding of the Code by suppliers was leading to confusion and a tendency to use it incorrectly - *“There are some areas for improvement, not least in ensuring that suppliers, particularly smaller suppliers, fully understand the Code and where it does and doesn’t apply.”*
72. Whilst this issue is outside its direct control, the Review found that the Adjudicator has been very active in promoting the need for suppliers to be well trained in the Code. The last YouGov survey found that ‘Good’ level of understanding amongst suppliers rose from 24% (2015) to 31% (2016). At the 2016 annual conference, the GCA announced that one of her priorities was to encourage trade associations and others to offer Code training to its suppliers.

GCA Staffing Resources

73. Several responses to the Review commented on the relatively low level of resources available to the GCA and some questioned why the Adjudicator was only employed for three days a week.
74. The GCA's office is small but runs a simple and effective model for enforcement which is based on the Adjudicator's relationship with the Code Compliance Officers who work for the 10 large retailers who come under the Code. The Adjudicator prioritises particular issues which the Code Compliance Officers report to her against. The conclusion of this Review, is that the GCA is proving effective and that the current model for the GCA office is sufficient.
75. Other concerns focused on whether it was appropriate for the GCA to be limited to recruiting staff seconded from other parts of the public sector. However it was also noted that if the barrier was lifted and the GCA was able to recruit from outside the public sector that there would be a risk of a 'revolving door' between the GCA office and suppliers or large retailers which could raise conflict of interest issues. The issue of the recruitment process to the GCA office is being kept under close scrutiny by the Department for Business, Energy and Industrial Strategy, who will continue to work with the GCA on this.

Impact of the GCA on the groceries market

76. Initially, there was opposition to the establishment of the GCA from some large retailers who were concerned that the appointment of an Adjudicator was a disproportionate measure that would result in administrative burdens and potentially inhibit commercial practices. In the event, initial fears do not appear to have been realised.
77. In their responses to the consultation the large retailers indicate that they regard the GCA as having a beneficial impact on the groceries market, by increasing scrutiny over retailers' compliance with the Code, increasing understanding of the Code by all parties and increasing awareness amongst large retailers of supplier concerns. One large retailer said *"by focusing on improving efficiencies and removing uncertainty from the supply chain, the Adjudicator has reinforced the impetus for change in the industry"*.
78. Other respondents agreed that the GCA has had a positive effect on the market, by reducing the transfer of costs and risks from large retailers to suppliers and giving suppliers more certainty, although one charity argued that despite the *"small but positive"* impact of the GCA, the *"distribution of risks and profits along groceries supply chains is still considerably uneven"*. One small supplier felt the GCA had *"introduced some balance to the market"*.

General comments on the current GCA office holder

79. Responses to the Review that focused on the performance of the current GCA office holder were all positive. Respondents commented on the GCA's knowledge

of the sector as “*a significant advantage*” which gave the Adjudicator credibility with both large retailers and their suppliers. One trade association felt “*the current GCA brings a wealth of knowledge and skills to the role, which enable her to get results without causing negative ripples across the industry*” whilst a large retailer commented that the current office holder “*holds an in-depth knowledge of the sector that is hugely beneficial.*”

80. Several responses mentioned the professionalism and fair-minded treatment of large retailers, suppliers and other stakeholders: “*our input, and requests for confidentiality, is met with professionalism, care and consideration...we continue to have full confidence that anything we raise with the Adjudicator will be dealt with appropriately.*” The large retailers typically stated that they felt the Adjudicator has been “*balanced and fair*”. Evidence, such as that above, received through the Review suggests that the current Adjudicator has created a level of trust with the large retailers, without which, some responses highlighted, it was more likely that issues would have remained hidden.
81. The Adjudicator’s focus on the type of Code breach that most mattered to suppliers was commented on positively in responses to the consultation. The Adjudicator was also commended for: transparent and regular communication, the creation of the YouGov survey that allowed suppliers to provide their perspective in a quantifiable and confidential manner, and the “personal advocacy and openness” shown by the GCA.
82. Evidence suggests that the GCA is seen, in many quarters as an exemplar for modern regulation. This is reflected in both the comments of stakeholders and through the fact that the GCA is frequently asked to advise other organisations both within and beyond the EU. In the words of one respondent, the GCA “*has been recognised as a model enforcer both by the European Parliament and other governments.*”
83. The significant achievement of the GCA since its establishment in June 2013 is generally seen as delivering a change of culture amongst the large retailers. Responses to the Review from across the grocery supply chain highlighted this point, with one respondent, representing international suppliers, stating:
- “The Groceries Code Adjudicator should be particularly proud of the evidence showing that supermarket purchasing practices are starting to improve. The UK is seen internationally as an example of best practice for how to regulate supermarket supply chains, and this is testimony to the effectiveness [of] the GCA and its office”.*

Term of Reference 1: Conclusion(s)

- **Following analysis of the responses received to the consultation, and the evidence detailed in the section above, it is the finding of the Review that the GCA has been effective in exercising its powers; and in enforcing the Code.**

Term of Reference 2: 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.

84. This considered whether:

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

Power to restrict information which can be considered on decision to investigate

85. The terms 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) which would restrict the sort of information the GCA may consider when deciding whether to carry out an investigation. The Act makes clear that such an order should be made only if, on the evidence submitted and considered as part of the review, the Secretary of State considers that making an order would enable the Adjudicator to be more effective.
86. This order-making power was put in place to address concerns raised during the passage of the GCA Bill that the GCA might 'fish' for evidence or launch an investigation purely on the basis of information that was not drawn from suppliers or large retailers themselves, but was information reported from third parties, perhaps with particular interests not directly covered by the Code.
87. The response the consultation received from the GCA stated that concerns "these concerns have not become reality." The GCA "finds the current provision clear and sensible and is happy to receive information from any source about potential breaches of the Code, as currently provided for by the Act."
88. No evidence was provided in other consultation responses to support a case for making such an order. Of those who responded to the consultation on this question, the consensus is that the GCA should retain current discretion to assess whatever information is submitted rather than narrowing the scope of information and evidence which can be considered.
89. Therefore, in view of there being no evidence which suggests that such an order is necessary or would enable the Adjudicator to be more effective, it is concluded that no such order will be made at this time.

Power to fine large retailers found to be in breach of the Code

90. The Act contains a power for the Adjudicator to impose financial penalties on large retailers found in an investigation to have breached the Code. As required

by the Act, the GCA consulted on and then made a recommendation to the Secretary of State as to the permitted maximum amount of such financial penalty and how it was to be calculated. The Secretary of State then made The Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015 which came into force on 6 April 2015. This enables the GCA to impose financial penalties on large retailers found to have breached the Code of up to 1% of their annual UK turnover. The amount of any financial penalty imposed in any particular case will be at the Adjudicator's discretion, upon consideration of all relevant factors including the seriousness of the breach. The power could only be applied to breaches of the Code occurring after 6 April 2015.

91. One of the purposes of the Review was to consider whether it would be desirable to amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015, increasing or reducing the permitted maximum amount. This power received considerable comment in the consultation responses both from suppliers and large retailers. Broadly there was support for the sanction, with general acknowledgement that this gave the GCA a very powerful tool to use against non-compliant retailers. Respondents stated that *"the ability for the GCA to issue a fine to retailers is vital and gives a threat which adds power and gravitas to the role, driving a positive change"* and *"demonstrates that the Code is to be taken seriously"*. Some respondents, both from suppliers and those who work with supply chain businesses, were eager to see the GCA make a strong statement by imposing a financial penalty on a large retailer, noting that this power was as yet unused.
92. Some concern was expressed by the large retailers that the maximum amount currently permitted under the order could be disproportionate if imposed as a financial penalty. One argument presented was that the measure of up to 1% of turnover would include non-grocery products out of scope of the Code and may include part of a group that includes non-grocery businesses. An alternative proposal put forward for the maximum turnover was a percentage (e.g. 1 per cent) of the turnover of the products supplied by the affected supplier(s) or sourced by the relevant category that committed the breach. It should be noted that these proposals were also proposed during and considered within the GCA's own consultation on the permitted maximum how the GCA will carry out investigation and enforcement functions. Given that the power to fine has yet to be used, and that the current, collaborative process is highly regarded and a means that has, to date, avoided any further, full investigations, the 1% fine figure will not be revised at this time. It is also noted that some suppliers and trade associations argued for much higher penalties.
93. Large retailers and other organisations also noted that the reputational damage that comes from the publicity associated with an investigation or report of a breach could cause significant damage to a retailer in terms of trust with customers and noted that this was an effective sanction regardless of any power from the GCA to

impose a financial penalty. Others pointed out, however, that the power to impose a financial penalty was an important signal of how seriously the Code was to be taken, with one trade association commenting that:

“...when the GCA was given fining powers via the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015 a number of supermarkets appointed more senior staff members to the role of Code Compliance Officer. The increased attention of senior figures within retailers to their purchasing practices should be welcomed.”

94. In summary, the responses received were broadly in favour of retaining the current arrangements and there is no evidence to support amending the maximum fine. We will not be amending the Order which sets out the maximum financial penalty at this time.

Term of Reference 2: Conclusion(s)

- **No order will be made setting out information that may be considered when the GCA is deciding whether to investigate;**
- **The Order setting a maximum financial penalty does not require amendment or replacement at this time.**

Term of Reference 3: Consider whether some or all of the GCA's functions should be transferred to another public body.

95. Some or all of the GCA's functions could be transferred to another public body if the findings of the Review show that it could:
- Increase efficiency, effectiveness and economy in the exercise of public functions; and
 - Ensure appropriate accountability to Ministers in the exercise of public functions.
96. Responses to the Review were, in general, silent on the question as to whether some or all of the GCA's functions should be transferred to another public body.
97. The single respondent that did address this question suggested that it could be worth consideration if it gave greater assurance about resources and enforcement capabilities for the role. However the same respondent balanced this suggestion with the view that if any transfer of the role led to a much more general scope of the remit to be covered, then it would be a backwards move.
98. In contrast to this the responses to the consultation generally were positive as to the current arrangements and performance of the GCA. The Review found no evidence that transferring the GCA functions would increase either the effectiveness of public functions or accountability to Ministers. Further any such transfer would be likely to be detrimental given the inevitable loss of continuity that such a transfer would entail. The Review concluded that transferring GCA functions in this way is not something that needs further exploration at this stage.

Term of Reference 3: Conclusion

- **None of the functions of the GCA should be transferred to another public body**

Term of Reference 4: Consider whether to close down the GCA.

99. Given the evidence supplied through response to the Review, and also information available through the GCA's Annual Report and website, it is clear that (a) the GCA has been effective in enforcing the Code; and (b) that there are still issues to address and improvements to be made which indicate there is still a need for the GCA's existence.
100. The majority of respondents to the Review commented on the benefit of retaining the GCA, and were strongly in support of keeping a regulator in this space. These responses were clear, from across the supply chain that the existence of the GCA has sent a message to large retailers that their supplier relationships need to be conducted fairly and in line with the Code.
101. Some respondents called for the GCA to be further strengthened (through scope and resources) in order that its remit could then be extended further along the grocery supply chain. This question of potential GCA remit extension is being investigated through the Call for Evidence, launched alongside this Review.
102. The overall message from those responses that touched on this area was that, nonetheless, there was a continuing need for a regulator and removing it would be a retrograde step.

Term of Reference 4: Conclusion(s)

- **It is still necessary for there to be a GCA to enforce the Code**

Therefore:

- **The GCA should continue in its current form and not be abolished**

Guidance from the Secretary of State

103. As a result of the findings of a statutory review the Secretary of State may give guidance to the Adjudicator about any matter relating to the Adjudicator's functions. This Review will not result in any such guidance being issued. This Review did find barriers to ensuring Code compliance as set out above. However, this Review also finds that the Adjudicator is aware of the issues and is taking steps to address them. BEIS ministers have concluded that if the Secretary of State was to issue guidance on areas already being addressed that this would undermine the operational independence of the GCA. Based on the evidence provided, it is the GCA who is best placed to determine how to deliver increased compliance with the Code.
104. The Government will also continue to work directly with large retailers, along with many other businesses to encourage best practice through the supply chain. This includes BEIS encouraging businesses to sign up to the Prompt Payment Code.

Conclusion

105. This is the first statutory review of the GCA and has considered the performance and effectiveness of the Adjudicator during the first three years in office.
106. The Review has found that the Adjudicator is making effective use of statutory powers and is effectively enforcing the Code through collaborative working with the large retailers. The GCA takes a proportionate approach to enforcement which is delivering results for direct suppliers and ultimately benefitting consumers.
107. The success of the Adjudicator has been recognised internationally as well as here in the UK. With this success have come high, and sometimes unrealistic, expectations about the extent to which the GCA can address unfair trading practices right across the supply chain. The GCA has noted that a misunderstanding of her role and remit is a key challenge which diverts time away from her key functions and primary focus which is to enforce the existing Code for the ultimate benefit of consumers. The Government is working with the GCA to help address such misunderstanding and this Review provides a welcome opportunity to re-state the purpose of the GCA and clarify the Adjudicator's remit.
108. There is more work to do on raising awareness of the Code and the remit of GCA, in training suppliers and addressing the reluctance of suppliers to come forward for fear of commercial consequences (specifically, delisting should the large retailers become aware that issues have been raised). The direction of travel in all these areas is positive with survey results showing increased awareness, more training being offered to suppliers and increased confidence that confidentiality will be protected leading to an increased willingness to bring issues to the Adjudicator.
109. In addition, Government will work with large retailers and suppliers to overcome the reluctance of suppliers to raise potential breaches of the Code with the GCA. The Government will make it clear to large retailers that adverse commercial consequences in response to a supplier reporting a potential breach of the Code are totally unacceptable.
110. Alongside its statutory reporting requirements, the GCA monitors its performance against four strategic objectives: promoting the work of the GCA; providing advice and guidance; acting on suppliers' issues and information and improving the culture of Code compliance. To protect and build on the achievements of the GCA, work is on-going to establish a robust governance and assurance framework for the long term that will endure beyond the tenure of the current Adjudicator. Within that process, Ministers will agree with the GCA an appropriate strategic goal around addressing the climate of fear.

111. The next Statutory Review of the GCA will be in 2019 and the issue of supplier confidence will be re-visited at this time. This will be an opportunity to assess progress on addressing the 'climate of fear'. If it is found that this is still holding suppliers back from raising legitimate grievances, the Government and GCA can and will develop a plan of action to tackle this

Annex A: The Groceries Code and the Groceries Code Adjudicator

The role of the GCA, conferred upon it by the Act, is to enforce the Code and to encourage and monitor compliance with it

The Code was put in place by the Competition Commission (“CC”) following its market investigation into the supply of groceries in 2006-08. It is intended to remedy adverse effects on competition found by the CC to arise from grocery supply chain practices which transferred excessive risks and unexpected costs to suppliers and which prevented, restricted or distorted competition in connection with the acquisition of groceries by the larger grocery retailers.

The Code applies to the large retailers which had an annual turnover of more than £1 billion at the time of designation with respect to the retail supply of groceries in the United Kingdom and are listed in Schedule 2 to the Groceries (Supply Chain Practices) Market Investigation Order 2009. The Code applies to the UK’s largest groceries retailers based in the UK and their dealings with their direct suppliers.

The large retailers are:

Aldi Stores Limited

Asda Stores

Co-operative Group Limited

Iceland Foods Limited

Lidl UK GmbH

Marks & Spencer plc

Wm Morrison Supermarkets plc

J Sainsbury plc

Tesco plc

Waitrose Limited

In brief, the Code obliges the large retailers:

- a) to deal fairly and lawfully with their suppliers;
- b) not to vary supply agreements retrospectively, except in circumstances beyond the large retailer's control which are clearly set out in the supply agreement;
- c) to pay suppliers on time;
- d) not to require contributions to marketing costs unless this is provided for in the relevant Supply Agreement;
- e) not to seek compensation for shrinkage;
- f) not to require payments for wastage except in limited circumstances;
- g) not to charge listing fees, except in limited circumstances;
- h) to compensate suppliers for forecasting errors;
- i) except in limited circumstances, not to tell suppliers which third party suppliers to use if the large retailer receives any payment from the third party for this arrangement;
- j) not to require payments for more space or better positioning unless they relate to a promotion;
- k) not to require suppliers predominantly to fund promotions;
- l) not to over-order at promotional prices;
- m) not to require suppliers to make unjustified payments for consumer complaints; and
- n) to de-list suppliers only for genuine commercial reasons and give reasonable notice of, and opportunity to discuss delisting with the large retailer's Code Compliance Officer.

The Code does not govern the prices paid by the large retailers to their suppliers – which fall under general UK competition law and are the responsibility of the Competition and Markets Authority ('CMA'). Nor does it cover disputes between the large retailers and consumers – which are regulated by consumer protection legislation.

The Adjudicator has a duty to arbitrate where a supplier refers a dispute with a large retailer to her. The Adjudicator may arbitrate or appoint a third party to do so.

The Adjudicator has the power to investigate where there are reasonable grounds to suspect a breach of the Code. 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 that which is otherwise in the public domain.

Statutory Review of the Groceries Code Adjudicator: 2013-2016

If 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
- Require information to be published
- Impose a financial penalty

Role of government

The Groceries Code Adjudicator is operationally independent of government.

The Secretary of State for Business, Energy and Industrial Strategy 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 by which it is wholly funded. 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 the levy has been approved, and whether it has been approved in full or in part. Once in receipt of this approval, the Adjudicator may invoice the large retailers for their share of the levy. Non-payment of the levy is recoverable by the Adjudicator as a civil debt.

Annex B: Evidence base for the Review

Sources of information that have informed the Review include:

- The GCA's own reporting against both its statutory objectives and its strategic objectives as set out in a published annual report since its establishment;
- The results of annual independent surveys carried out by YouGov on behalf of the GCA;
- Written responses to a 12 week Government consultation on the performance of the GCA;
- On-line responses to a Citizenspace survey;
- Evidence from suppliers given at stakeholder events run by BEIS and Defra during the consultation period.

The GCA's Annual Report

The GCA's annual report not only reports against the statutory requirements but also reports on its performance against four additional strategic objectives:

- Promoting the work of the GCA
- Providing advice and guidance
- Acting on suppliers' issues and information
- Improving the culture of Code compliance

The YouGov Annual Survey

Since being established the GCA has commissioned YouGov to carry out three annual surveys into the groceries sector. This Review considered the findings of the first two surveys (the third is in progress). The aim of the survey is to provide the Adjudicator with a comprehensive understanding of current concerns in the sector, measure the progress of Code Compliance and explore any new issues of concern to the Adjudicator other interested party.

The Government's Consultation and Citizenspace Survey

In order to ensure as many people as possible were able to respond an online Citizenspace survey ran alongside the main consultation, enabling responses to be provided anonymously online and in the same question format as the main consultation documents.

We received 43 responses to the public consultation including responses from trade associations with large membership numbers.

Public Stakeholder Events

To reach further into the sectors covered by the remit of the GCA, BEIS and Defra officials presented several stakeholder sessions providing background to the Review, answering questions and informing those who attended of how to best present their evidence. These stakeholder sessions took place in:

- London
- Birmingham
- Edinburgh
- Stoneleigh
- Belfast

A further session planned for Cardiff was cancelled due to low numbers of attendees. BEIS officials did speak with those who expressed an interest in the Cardiff event, covering the main points planned for the session.

Further, individual meetings were also arranged on an ad-hoc basis for those who requested them.

The stakeholder sessions mentioned above attracted over 40 attendees, the majority of whom were from representative organisations with total membership in excess of 15,000.

The Challenge Panel

An independent Challenge Panel was set up, at the start of the statutory review, to ensure that the Review had a strong evidence base and that the evidence was interpreted objectively.

Annex C: Breakdown of responses to the Review

Statutory Respondents listed in the Groceries Code Adjudicator Act 2013

- The Adjudicator;
- The Competition Commission (Now the Competition and Markets Authority);
- The Office of Fair Trading (Now absorbed into the Competition and Markets Authority);
- Retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order;
- One or more persons appearing to the Secretary of State to represent the interests of suppliers;
- One or more persons appearing to the Secretary of State to represent the interests of consumers; and
- Any other person the Secretary of State thinks appropriate.

Responses broken down by sector

- Retailer (or retailer representative) – 10
- Supplier (or supplier representative) – 17
- Individual – 2
- Ethical Organisation - 5
- Government or Regulatory – 1
- Other - 8

List of Trade Bodies

- Association of Convenience Stores
- British Independent Fruit Growers Association (BIFGA)
- British Retail Consortium (BRC)
- British Brands Group
- British Growers Association
- Country Land and Business Association
- Fairtrade Foundation
- Food and Drink Federation
- Food Ethics Council
- NFU Scotland
- NFU
- Provision Trade Federation
- Tenant Farmers Association
- Traidcraft
- Ulster Arable Society

Annex D: The GCA investigation into Tesco plc

The first (and to date, only) GCA investigation was launched on 5 February 2015 and completed with the publication of the findings on 26 January 2016. The investigation focused on Tesco's compliance with paragraph 5 (no delay in payments) and paragraph 12 (no payment for better positioning or goods unless in relation to promotions) of the Code. Tesco was found to have breached paragraph 5. Whilst there was not enough evidence to find Tesco to have breached paragraph 12, a range of practices relating to payments for better positioning and allocation of shelf space were discovered on which the GCA decided to follow up with a sector-wide consultation in June 2016.

The GCA made five recommendations, requiring Tesco to: 1) pay money owed to suppliers in accordance with the agreed terms of payment; 2) not make unilateral deductions; 3) resolve promptly data input errors identified by suppliers; 4) provide transparency and clarity in dealings with suppliers; 5) train finance teams and buyers in the findings from the investigation. Tesco was required to submit an implementation plan within four weeks of publication of these recommendations and to provide regular reports on progress to the GCA. Tesco accepted and implemented all the recommendations in full. The GCA's full report is available at www.gov.uk/government/publications/gca-investigation-into-tesco-plc.