



# Groceries Code Adjudicator

## Notice of Investigation

### GCA statutory responsibilities:

1. The role of the Groceries Code Adjudicator (GCA) conferred upon it by the Groceries Code Adjudicator Act 2013 (the Act), is to enforce the Groceries Supply Code of Practice (the Code) and to encourage and monitor compliance with it.
2. The Code applies to Aldi Stores Limited, Asda Stores Limited, Co-operative Group Limited, Iceland Foods Limited, Lidl UK GmbH, Marks & Spencer plc, Wm Morrison Supermarkets plc, J Sainsbury plc, Tesco plc, and Waitrose Limited.

### GCA decision to launch investigation

The GCA has considered information submitted to it and has made an assessment of that information in line with the published *Statutory guidance on how the Groceries Code Adjudicator will carry out investigation and enforcement functions*.

The GCA holds a reasonable suspicion that the Code has been breached by Tesco plc by some of its practices associated with the profit over-statement announced by the company in September 2014.

The GCA has applied its published prioritisation principles to each of the practices under consideration and has evidence that they were not isolated incidents, each involving a number of suppliers and significant sums of money.

The GCA has discussed the practices with Tesco plc and now needs more information from direct suppliers and others to determine what further action to take.

Accordingly, the GCA is launching an investigation into the conduct of Tesco plc under the following provisions of the Code:

**i) Part 4 (paragraph 5) of the Code: No delay in Payments:**

A Retailer must pay a Supplier for Groceries delivered to that Retailer's specification in accordance with the relevant Supply Agreement, and, in any case, within a reasonable time after the date of the Supplier's invoice.

**ii) Part 5 (paragraph 12) of the Code: No Payments for better positioning of goods unless in relation to Promotions**

A Retailer must not directly or indirectly Require a Supplier to make any Payment in order to secure better positioning or an increase in the allocation of shelf space for any Grocery products of that Supplier within a store unless such Payment is made in relation to a Promotion.

The investigation will also consider the extent to which Tesco plc has complied with the following paragraph in relation to paragraphs 5 and 12 of the Code:

**iii) Part 2 (paragraph 2) of the Code: Principle of fair dealing**

A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the Suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.

**Investigation scope**

The investigation will consider the existence and extent of practices which have resulted in delay in payments to suppliers. This will include in particular, but not be limited to, delay in payments associated with:

- Short deliveries, including imposition of penalties
- Consumer complaints where the amounts were not agreed
- Invoicing discrepancies such as duplicate invoicing where two invoices were issued for the same product
- Deductions for unknown or un-agreed items
- Deductions for promotional fixed costs (gate fees) that were incorrect
- Deductions in relation to historic promotions which had not been agreed.

The investigation will also consider the existence and extent of practices where suppliers have been required to make payments for better positioning of goods (shelf-positioning) which are not related to a promotion.

**Retailers to be investigated**

The investigation will focus on Tesco plc and, at this stage, will not extend to other designated retailers. If during the course of the investigation evidence is presented to the GCA which indicates that the same practices have been carried out by other designated retailers, consideration will be given to extending the scope of the investigation to include them, in line with published GCA guidance including its prioritisation principles.

**Investigation review time period**

The investigation will consider the conduct of Tesco plc from 25 June 2013 (when the GCA was created) to 5 February 2015 (the date of this notice).

**Call for evidence**

The GCA accordingly calls for evidence relevant to its determination of whether Tesco plc has breached paragraphs 5 and 12 of the Code in the ways described in this notice.

The deadline for submission of evidence is 5pm on **3 April 2015**. Submissions may be made in paper or electronic form.



Evidence should be submitted to the GCA at:

Groceries Code Adjudicator  
2nd Floor  
Victoria House  
Southampton Row  
London, WC1B 4DA

Email to: [enquiries@gca.gsi.gov.uk](mailto:enquiries@gca.gsi.gov.uk)

All suppliers who have previously contacted the GCA directly with information about the practices under investigation or who are otherwise believed to have been directly affected by them will be contacted by the GCA before 5pm on **18 March 2015** for more information.

**The anonymity of all those providing information will be preserved and no individual or business will be identified without their consent.**

**5 February 2015**