



Groceries Code  
Adjudicator

# Groceries Code Adjudicator **Annual Report and Accounts**

2014 – 2015



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2014 – 2015

Presented to Parliament pursuant to Section 14 and Paragraph 15 of  
Schedule 1 to the Groceries Code Adjudicator Act 2013.

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Any enquiries regarding this publication should be sent to us at  
Groceries Code Adjudicator  
2nd Floor  
Victoria House  
Southampton Row  
London WC1B 4DA

If you require this publication in an alternative format, email [enquiries@gca.gsi.gov.uk](mailto:enquiries@gca.gsi.gov.uk) or call on 0203 738 6537

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## Contact the GCA at:

Website: [www.gov.uk/gca](http://www.gov.uk/gca)  
 Email: [enquiries@gca.gsi.gov.uk](mailto:enquiries@gca.gsi.gov.uk)  
 Telephone: **0203 738 6537**

# The Groceries Code Adjudicator – Working for fairness in the groceries supply chain

The Groceries Code Adjudicator (GCA) was formally established on 25 June 2013 by an Act of Parliament. The GCA was set up to ensure supermarkets treat their direct suppliers lawfully and fairly.

The appointment followed a 2008 Competition Commission Market Investigation into the groceries sector. The Competition Commission found that while the sector was broadly competitive, some large retailers were transferring excessive risk and unexpected costs to their direct suppliers. Such practices could discourage suppliers from investing in quality and innovation; small businesses could fail and ultimately, there could be potential disadvantage to consumers.

Following the Commission's recommendation, the Government introduced the Groceries Supply Code of Practice (the Code) in 2010. This was designed to regulate the relationship between the 10 groceries retailers with UK annual turnover of more than £1 billion (the large retailers) and their direct suppliers. The Government gave the large retailers some time to set up a voluntary Ombudsman; the GCA was established on a statutory basis when the self-regulatory approach did not progress.

Christine Tacon – the first Adjudicator – is responsible for monitoring and encouraging compliance with and enforcing the Code. The GCA is funded by a levy on the large retailers. 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.

## GCA powers

At the request of suppliers the GCA must arbitrate in disputes properly escalated and may also do so following a request from a large retailer. Arbitration awards are binding and may include compensation.

The GCA can launch investigations and did so for the first time in 2015. If a breach of the Code is found following an investigation, the GCA can make recommendations; require large retailers to publish details of any breach and other information; and in the most serious cases, where a breach is found to have occurred after 6 April 2015, impose a fine. Fining powers were brought into effect by The Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015 (the Financial Penalty Order). This provides for a maximum level of fine of 1% of the relevant retailer's UK turnover.

Under the Code the large retailers are obliged to deal fairly and lawfully with their direct suppliers across a range of supply chain practices. These include: no delays in making payments; 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 delisting. This list is not exhaustive and full details are available on [www.gca.gov.uk](http://www.gca.gov.uk).

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 outside the GCA's statutory remit.

## The way the GCA works

The GCA encourages suppliers and others to continue to bring Code issues and evidence to its attention in order to inform decisions and actions. The GCA also gathers information from retailers, trade associations and others. The stronger and wider the evidence base, the greater is the justification for action and the confidentiality safeguard for suppliers.

As a small regulator the GCA must effectively prioritise its activities. The statutory guidance on investigation and enforcement functions sets out four prioritisation principles to guide decisions about whether to launch an investigation and the GCA applies these principles when considering other activities, too. The four principles are:

<b>Impact</b>	The greater the impact of the practice raised, the more likely it is that the GCA will take action.
<b>Strategic importance</b>	Whether the proposed action would further the GCA's statutory purposes.
<b>Risks and benefits</b>	The likelihood of achieving an outcome that stops breaches in the Code and prevents further or future breaches and ensures Code compliance.
<b>Resources</b>	A decision to take action will be based on whether the GCA is satisfied the proposed action is proportionate.

The GCA must carry out its statutory functions set out in the Groceries Code Adjudicator Act 2013 (the Act). In setting the direction for the GCA, the Adjudicator has developed an approach that fits the resources available as well as the outcomes the GCA has been set up to deliver. It is a modern regulatory approach, with collaboration and business relations at its core. This is delivered through a three-stage process, beginning with a less formal approach. When Code-related issues are raised the GCA follows the approach set out below:

**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 large retailers' Code Compliance Officers (CCOs) for their own action. In some circumstances if they are judged to have significant impact the GCA will also raise single incidence issues with CCOs so long as confidentiality can be maintained.

**Stage 2 The GCA will request that 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) experiencing the issue. The CCO will be expected to look into whether a breach has occurred in their organisation. Depending on what is found by the CCO, the GCA may issue advice clarifying or interpreting the relevant provisions of the Code for the retailer and others to follow. Where a retailer accepts a Code breach has taken place the GCA may publish a case study 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 then the outcome may be to publish more formal guidance and/or launch an investigation.

Through this process the GCA ensures that issues are raised with, and promptly considered by, the large retailers and that any necessary action is agreed and taken as swiftly as possible. This is an efficient way to deal with current groceries sector practices that may not be consistent with the Code.

The GCA believes that this collaborative approach has a dual benefit. It significantly reduces the cost of regulating the large retailers, limiting costly investigations to circumstances when other means of effecting change have failed or to the most serious reported cases, and it delivers results quickly. With the support of each CCO the collaborative approach has proved to be effective.

The GCA's responsibilities do not extend to acting as a complaints-handling body, nor can it advise on individual disputes where a supplier seeks a view on whether a large retailer has breached the Code. This is because the GCA may later be asked to arbitrate in the same dispute between the supplier and the large retailer or may later launch an investigation into the practice raised by the supplier. Providing a view on individual cases in these circumstances could compromise the GCA's objectivity and may prejudice the ability to act decisively later.

Instead, the GCA encourages suppliers to approach CCOs directly because they can deal with issues quickly and, where needed, discreetly.

The ultimate goal of the GCA is to promote a stronger, more innovative and more efficient groceries market through compliance with the Code and, as a result, to bring better value to consumers. The GCA is working with suppliers and the large retailers to respond rapidly to issues raised and relies on suppliers and others to bring evidence of non-compliance quickly to the GCA to achieve this goal.

**More information is available on the GCA website: [www.gov.uk/gca](http://www.gov.uk/gca).**



# Foreword by Christine Tacon

## Groceries Code Adjudicator



This has been a year of significant milestones for the Groceries Code Adjudicator: the first market sector survey, the first annual conference and the first successes with my Top 5 issues. I have also launched the first GCA investigation and am progressing two arbitrations.

Evidence of progress has come from my meetings and communications with suppliers. I am hugely encouraged by how regularly they tell me that compliance with the Groceries Supply Code of Practice has improved over the last 12 months, I have received many favourable comments from suppliers about this. Now I am looking forward to seeing positive signs of

change reinforced in my second annual survey, the results of which will be announced at the GCA conference in June.

I am also pleased to report the continued commitment from the CCOs of the 10 large retailers to improving compliance. In my early days as Adjudicator I encountered the belief that training buyers was sufficient to ensure Code compliance. However, the GCA survey, my published case studies and the launch of my first formal investigation have emphasised to the CCOs that for some, the need for change goes deeper. Nonetheless, there are retailers about whom I very rarely hear of any issues with compliance.

My supplier meetings have led me to add a new dimension to my work: to promote the need for suppliers to be trained in the Code. Far too many suppliers are still coming to meet me or hear me present to learn for the first time about a law that is there to protect them and has been in existence for over five years.

Retailer buyers are very well-trained in the Code, so for a supplier to challenge a retailer's request or apparent requirement as non-Code compliant, the supplier also needs to know its rights. Suppliers who have been on training courses come away not only more aware of the law, but with the benefit of having heard other suppliers' experiences. They learn that they are not alone in facing issues and get tips on dealing with demands made of them in a firm but subtle way.

To this end, I am encouraging all the relevant trade associations to play a stronger leadership role on the Code by offering training to their members. I believe this is a necessary first step that will benefit their membership and give the trade associations themselves direct insight into the Code-related practices faced by their members. It will support them in collating their members' issues and raising them proactively and effectively with my office.

The supply chain is under intense pressure with the rise of the discounters and competitors' responses to their success. I have been pleased to see the trend in some retailers with complicated negotiation practices moving from "back margin" (i.e. paid and negotiated at the end of a trading period) to a simpler "front margin" model (i.e. agreed at the outset).

This should in turn simplify supply agreements making them more transparent. It should also make it much easier for suppliers to know the real cost of doing business with the retailer. It should reduce the risk of Code breaches. Reliance on back margin and agreeing money due after the event makes life uncertain for suppliers as well as requiring huge effort on both sides to negotiate agreements, shifting attention away from sales and the consumer.

## Promoting the work of the GCA

I have continued to spend a large proportion of my time promoting the work of the GCA. This past year my focus has moved from explaining the Code and the work of the GCA to talking about progress on my Top 5 issues, asking for supplier feedback and seeking evidence.

Suppliers provide me with a lot of information, especially when I meet them individually, but they are reluctant to provide supporting evidence. I think this indicates how nervous suppliers are about revealing information that could identify them – a strong theme that emerged from the 2014 YouGov survey. I have redoubled my efforts to reinforce the message to suppliers that I have a duty to maintain confidentiality and protect their identity and I will continue to demonstrate that the way I work is designed to achieve that goal. I will keep working on this to deepen suppliers' confidence.

My message to all suppliers is that I do not necessarily need to be aware of potential breaches of the Code in commercial discussions at the time they occur. I understand that suppliers may be well-equipped to negotiate with retailers and/or feel it is best to do so by themselves at the time. However, I do want to be told about the types of practices that suppliers experience during the negotiation process which they believe may be breaching the Code. These practices are likely to be applied more widely with other suppliers and have a significant impact on those who are less powerful. To change retailer behaviour I need to be sure about when and how breaches of the Code may be happening.

I have continued to provide guidance on the Code, specifically on appeals and de-listing, advice on what evidence the GCA needs and also regular updates through the new quarterly newsletter which I introduced this year.

There is still a lot of interest in my work from overseas, including from the European Commission. I recognise that the UK's initiative in this area of regulation is pioneering and that others are keen to hear how I am progressing. I also meet overseas representatives when they come to the UK; these visitors have included ministers or officials from Norway, Ireland, New Zealand plus the European Commission and members of the International Federation of Agricultural Journalists.

## Acting on supplier issues

My primary role is to act on supplier issues and information. I have continued to use the collaborative approach, I believe to positive effect, meeting quarterly with the CCOs. They now report back at each meeting on the progress they are making in their organisations on my Top 5 issues.

At the beginning of the year covered by this report I announced significant progress on the difficult issue of forensic auditing and during 2014 I facilitated a more collaborative approach on delays in payments arising from disputed deliveries (referred to as "drop and drive"). In recent months I have asked retailers to report back to me on their approach to forecasting and to explain

their charges for consumer complaints. Some retailers provided great detail giving me very comprehensive answers, others were not so forthcoming.

On 5 February 2015 I launched an investigation into Tesco plc. This was followed swiftly by the draft publication of the Statutory Instrument which would give me the power to apply a financial penalty. Press coverage of both events was considerable and this has been extremely useful in raising the profile of my role and the Code with suppliers and others.

The investigation arose from the circumstances underpinning the mis-statement of profits announcement by Tesco plc in September 2014. Following the announcement I sought information from a number of sources including: from Deloitte, who were appointed by Tesco plc to assess the relevant accounting practices and profit level; from Tesco plc for their own assessment of Code compliance related to the reported accounting practices; and from suppliers and trade associations. Together this information gave me reasonable suspicion that the Code had been breached and triggered my investigation, which at the time of reporting is still underway.

At this stage my public call for evidence has closed, and I am considering what further information I require from Tesco plc, suppliers and others to allow me to determine if and what Code breaches have occurred.

Until I properly consider the evidence available from Tesco plc and from suppliers and others, I cannot determine whether and in what way the Code has been breached. As any regulator, I must follow the procedures I have already published, including my guidance on investigation and enforcement functions. If I establish a breach my available sanctions are making recommendations to Tesco plc and/or requiring the company to publish information. My ability to use financial penalty powers became law on 6 April 2015 and so I can only apply a fine to retailers for breaches occurring after that date. It is possible that any recommendations I make may lead to guidance to the sector as a whole, which will inform all the large retailers and others about my interpretation of the relevant paragraphs of the Code.

Having a strategic overview of the groceries sector is crucial for my work. The 2014 survey was very useful in confirming that I was working on the right issues. But I was concerned that while 8 out of 10 suppliers felt they had experienced a breach of the Code in the last 12 months only 38% of them would be prepared to raise the potential breach with me. I took away many actions from this, including the need to identify why there was such reluctance to talk to me. To gain more insight into this, I asked for it to be a key element of a mini-survey conducted in December. I also sought to increase the future response rate from suppliers and was very pleased that all 10 retailers undertook to encourage their suppliers to complete the 2015 survey.

## **Improving the culture of Code compliance with the large retailers**

During the year I started to consider how to ensure that the large retailers have a culture of Code compliance that comes from the top. Having reviewed the retailers' training, I am confident that buyers are aware of the Code and what is permitted in their dealings with suppliers. But if demands are put on buyers which encourage, indeed incentivise, them to find ways around the Code, then they may be put in an impossible position.

To help me achieve this vital culture change I now have a Board level contact in each retailer and have introduced an annual meeting with the Chairs of each of their Audit Committees (or equivalent). With these contacts I can reinforce the need for behaviour change at the most senior

level and ensure that business leaders understand my priorities and hear directly from me about feedback I receive from suppliers. I was pleased to discover that some of the Audit Committee Chairs had studied their own retailer-specific reports of the 2014 survey results.

It is clear that there have been some significant events this year influencing Code compliance: considerable changes to the groceries market; the Tesco plc financial mis-statement and subsequent GCA investigation; the introduction of the Financial Penalty Order; and feedback from the YouGov surveys. I expect these to be discussed at Board level in each retailer and I will continue to emphasise the responsibility at the top of large retailers to encourage compliance.

## Challenges and future look

The GCA office continues to operate under resource pressure and I have explored alternative resourcing this year. My solutions have included bringing in temporary staff and buying in specific expertise such as additional legal support while continuing to seek public sector secondees for key posts. We are managing the investigation with the help of external resource and the budget for the coming year should be sufficient to cover this and any future investigation during this period.

The opinions expressed and the issues raised by suppliers in the 2015 GCA survey will play a crucial role in setting my goals for the coming year. I will continue to pursue further progress on my Top 5 issues. I believe this will achieve a stronger, more collaborative culture that will work to the benefit of retailers, suppliers and ultimately consumers. I am confident that with the support of my hard-working office and with maintained commitment from all sides that this can be achieved.

**1**  
**ADJUDICATOR**



**1**  
**INVESTIGATION**



**1**  
**CASE STUDY**



**1**  
**FINANCIAL PENALTY ORDER**  
(implemented 6 April 2015)



**10**  
**RETAILERS**



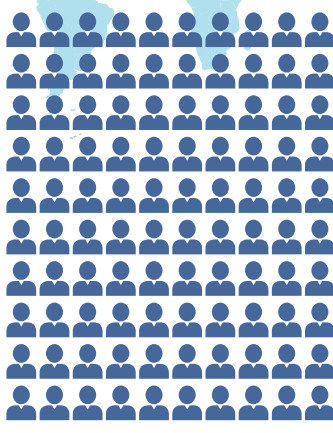
**4**  
**SETS OF GUIDANCE PUBLISHED**



**2**  
**ARBITRATIONS**



**MORE THAN**  
**10,000**  
**SUPPLIERS**



**Engagement**

**55**



**MEETINGS WITH SUPPLIERS/ GOVERNMENT/ MPS/EU**

**53**



**MEETINGS WITH RETAILERS**

**AND A**  
**SECTOR WORTH**  
**£177bn**

**1<sup>st</sup>**



**ANNUAL CONFERENCE**

**3**



**QUARTERLY NEWSLETTERS PUBLISHED**

**Top 5 issues**

<b>NEW</b>	<b>NEW</b>	<b>CLOSED</b>	<b>CLOSED</b>	<b>LIVE</b>	<b>LIVE</b>	<b>LIVE</b>
Consumer complaints	Delays in payment	Forensics: third party audits	Drop and drive – delivery performance	Forecasting/ service levels	Request for lump sums	Packaging and design charges

# Strategic objectives

In its second year of operation the GCA has continued with the objectives set in the first year and added a further objective.

## Objective 1 – Promoting the work of the GCA

This is critical to encourage and give confidence to suppliers to challenge behaviour that is not compliant with the Code, and if appropriate to raise it with the retailer's CCO or the GCA.

In this second year of operation the GCA office has continued to promote its work. This has been achieved by:

- Targeting speaking engagements: presentations at key events and with new audiences;
- Meeting stakeholders on a regular basis;
- Disseminating information: engaging proactively with the media and providing information on the GCA website; and
- Promoting the need for suppliers to be well-trained in the Code.

### Targeting speaking engagements

This year there has been an increased focus on ensuring the GCA reaches direct suppliers from right across the groceries sector, presenting more information on key priorities and progress rather than simple awareness of the Code and the GCA. The GCA has been represented at 55 events involving a comprehensive spread of sectors, size of business and location. To increase direct access to the GCA, suppliers can often book private sessions either before or after such events.

The GCA also attended the first workshop of EU competition and enforcement authorities with responsibility for the groceries sector where participants shared experiences of how regulation is implemented in different EU member states. The European Commission and other member states are very interested in the UK's approach, not only in the legislation, but also the collaborative approach adopted by the GCA and recent progress.

### Meeting stakeholders on a regular basis

Government ministers and parliamentarians continue to follow the work of the GCA closely. The Adjudicator has met ministers and officials of the devolved administrations and UK Government ministers from BIS and DEFRA and given evidence to parliamentary committees.

The Adjudicator has established an annual meeting with trade associations; the second event held in March was well-attended and well received.

Almost 200 people attended the GCA conference in June 2014 with a quarter coming from overseas. The conference included seminars on subjects from the history of the GCA Act to directly addressing supplier issues. The GCA and team also met suppliers and overseas visitors the following day in private meetings.

## Disseminating information

The GCA has continued to build a wide network of media contacts and has adopted a more proactive approach with increased links to regional, specialist and digital titles. The media has played a key role in ensuring that suppliers are aware of the GCA with notable coverage on Panorama; a range of Radio 4 programmes (Today, You and Yours, Farming Today); Radio5 live; Sky News; ITV News, all national newspapers and specialist journals. There was particular interest in the introduction of the Financial Penalty Order and the launch of the GCA's first investigation.

The GCA website is kept up to date and remains the main source of information for suppliers and others interested in the work of the GCA. This year the GCA has also introduced a quarterly newsletter; readers can register on the GCA website to receive an alert when each edition is published.

## Promoting the need for suppliers to be well-trained in the Code

During the year the GCA found increasing evidence of a continuing lack of knowledge of the Code amongst direct suppliers. As a result the GCA is promoting the need for suppliers to become aware of the Code and encouraging all trade associations to provide access to training for their members. This follows the success of one trade association in organising relevant training.

## Objective 2 – Providing advice and guidance on the work of the GCA

The GCA has continued to publish guidance, responding to concerns raised by suppliers and retailers. This has included:

- Guidance on appeals;
- Guidance on de-listing;
- A paper entitled “What is evidence?”; and
- A policy document explaining how the collaborative approach will continue during an investigation.

### Guidance on appeals

This sets out the process for appealing against the GCA's actions, findings or the level of a financial penalty imposed in respect of investigations or awards in arbitration cases.

### Guidance on de-listing

This guidance is intended primarily to respond to questions about de-listing practice and to assist interpretation of “significantly to reduce the volume of purchases made” and “reasonable notice” set out in the Groceries Supply Code of Practice. It may be used by retailers in planning de-listings, whether of single or multiple suppliers.

### Paper entitled “What is Evidence?”

This paper explains that documentary evidence is worth much more, in evidential terms, than reported conversations, recollections of events some time past, opinions or beliefs. The more specific information is about the behaviour which occurred and how it relates to the Code, the more useful it is to the GCA.

It sets out some examples of evidence, records and information that are of most help to the GCA including supply agreements, joint business plans, invoices and forecasts as well as contemporaneous notes of conversations.

### Policy on continuing the collaborative approach during an investigation

The policy establishes four protocols on how the GCA will continue to work with all ten designated retailers during any investigation. It states very clearly that the GCA will stay silent on the progress of any investigation and will not discuss it in meetings set up for business as usual purposes with Code Compliance Officers.

## Objective 3 – Acting on suppliers’ issues and information

The primary purpose of the GCA is to monitor and ensure compliance with the Code. The GCA has continued to work to do this and to measure progress by:

- Raising issues with CCOs;
- Launching an investigation; and
- Commissioning a GCA survey.

### Raising issues with the CCOs

- The GCA has continued to work collaboratively with retailers, meeting each CCO quarterly and holding two meetings of all the CCOs together;
- Each retailer is required to bring an update of progress against the Top 5 issues to their quarterly meeting and the issues have been refined during the year as progress has been made and supplier concerns factored in;
- Minutes of CCO meetings are published on the GCA website; and
- A further case study has been published on the GCA website. The details are set out below.

### Case study

The GCA received correspondence from a trade association in December 2013 setting out concerns from its members about Wm Morrison Supermarkets plc’s multi-channel initiative. Further direct contact was also received from a number of suppliers.

This initiative included a request to suppliers for an optional ‘multi-channel status’ payment of a set amount per product for greater exposure and sales opportunity. In the process of implementing the new multi-channel initiative, a number of suppliers had funds debited from their trading accounts without having agreed to participate or make any financial authorisation.

Having considered the information provided by Wm Morrison Supermarkets plc, the GCA concluded that:

- The multi-channel initiative was part of the normal operations of Wm Morrison Supermarkets plc and was neither a separate business nor a promotion. Therefore Part 9 of the Code (Limited circumstances for Payments as a condition of being a Supplier; listing fees) applied and prohibited any requirement for payments to be made other than in relation to a promotion or for new grocery products, as defined. Wm Morrison Supermarkets plc had breached the Code by



unilaterally making deductions from the trading accounts of 67 suppliers. This was in breach of Part 3 of the Code – Variation of Supply Agreements and terms of supply. Wm Morrison Supermarkets plc has since reimbursed all the suppliers affected.

- The GCA accepted Wm Morrison Supermarkets plc view that the multi-channel initiative was a request to suppliers and not a requirement to pay a listing fee.

### Launching an investigation

On 5 February 2015 the GCA launched an investigation into Tesco plc. This came after the GCA considered information submitted to it and made an assessment of that information in line with the published statutory guidance on how the GCA would carry out its investigation and enforcement functions.

The investigation is focusing on 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 GCA has discussed the practices with Tesco plc and has sought more information from direct suppliers and others to determine what occurred and what action to take.

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 that 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.

### GCA survey

The GCA uses an annual perceptions survey to gauge the views of suppliers, ensure that the widest possible range of supplier issues are registered and measure Code compliance year on year. Each retailer receives a tailored report showing how they are perceived by their suppliers.

The GCA commissioned YouGov to carry out its first survey of the groceries sector in 2014. The results were announced at the GCA conference in June 2014.

Key findings from the survey are set out in a separate section of this report.

## Objective 4 – Improving the culture of Code compliance within the regulated retailers

The GCA has continued to visit the large retailers and has requested opportunities for first-hand experience of their training packages during the visits. Many retailers are continually updating and improving their training, ensuring they include real issues raised by suppliers and the GCA. Best practice in training was shared at one of the two CCO group meetings held during the year.

While buyers may be well trained, the GCA believes it is critical that there is a culture of compliance from the top of each regulated business, including recognition that targeting commercial teams with raising proceeds from suppliers during the year needs to be balanced with what is in keeping with the Code.

To build a top-down culture of compliance with the Code the GCA has requested a Board level contact in each large retailer and has had contact with a senior representative from each business. In addition, following best practice in other industries, the GCA held a meeting in March of Chairs of each retailer's Audit Committee (or equivalent) before they would be reviewing and authorising each retailer's Annual Compliance Report (ACR).

At the meeting, the GCA ensured that Chairs were aware of the Code, expectations for the ACR and how retailers could use them internally together with latest information on the Top 5 issues to embed a really robust approach to Code-related risk. One attendee requested that the meeting be repeated in the autumn to identify thematic issues raised across ACRs and the group agreed to meet annually thereafter.

# GCA annual survey

In 2014 the GCA commissioned its first annual survey of the groceries sector to:

- Understand the extent of concern across the sector about issues raised by individual suppliers;
- Enable the industry to provide feedback to the GCA on its strategic objectives; and
- Measure the progress of Code compliance.

The survey gave the GCA a comprehensive picture of the relationship between retailers and their direct suppliers, the impact of the Code and the sector's expectations for the future. It also enabled suppliers to provide anonymous feedback on the GCA's effectiveness and progress made so far.

## First survey

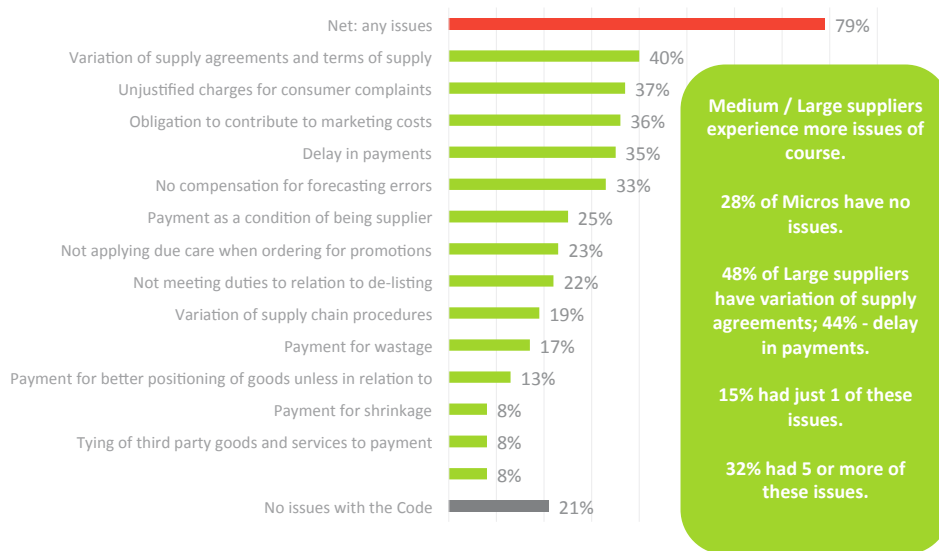
YouGov, who carried out the survey, presented the results to the GCA conference in June 2014.

The survey attracted 574 responses, of which 66% were from direct suppliers. Against an estimated 8000 direct suppliers to the large retailers, the response seemed low. However YouGov confirmed the results were statistically significant.

## Key Findings

8 out of 10 suppliers stated they had experienced issues that could be breaches of the Code in the previous 12 months:

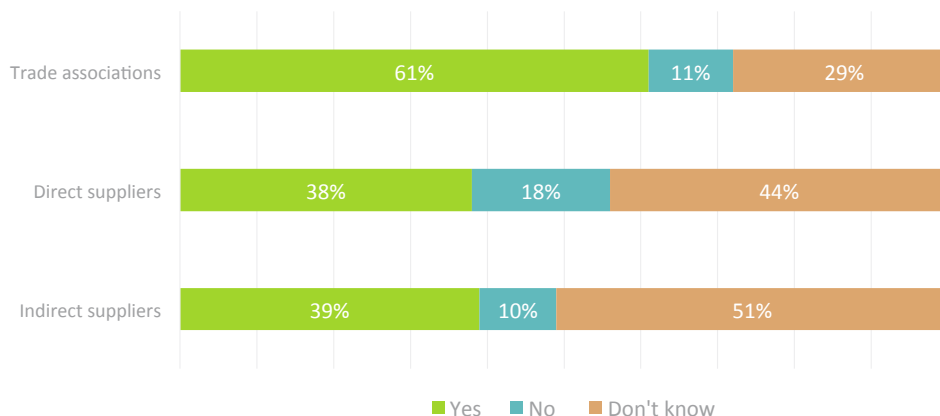
### Issues categorised by the Code: Which issues have they experienced?



q6a. During your contract period, and since June 2013 have you experienced any issues with retailers that are covered by the Code areas below? Please don't include any of these that you had agreed to at the start of the contract period. (multiple) Base: 303 direct suppliers only

Only 38% of direct suppliers said they would consider raising an issue with the GCA:

### Would you consider raising issues with the GCA?



Smaller suppliers more likely to consider raising issues with the GCA than larger ones. 41% of Micro, 35% of Small, 41% of Medium, 31% of Large suppliers.

q4c. Would you consider raising any issues you have about groceries supply with the GCA? Base – only those aware of the GCA: trade associations (28); direct suppliers (242); indirect suppliers (94).



When asked why they would not raise an issue with the GCA 58% stated they feared retribution should the retailer establish who they were and 41% thought the GCA would not act on their evidence:

### Why wouldn't suppliers raise issues with the GCA?



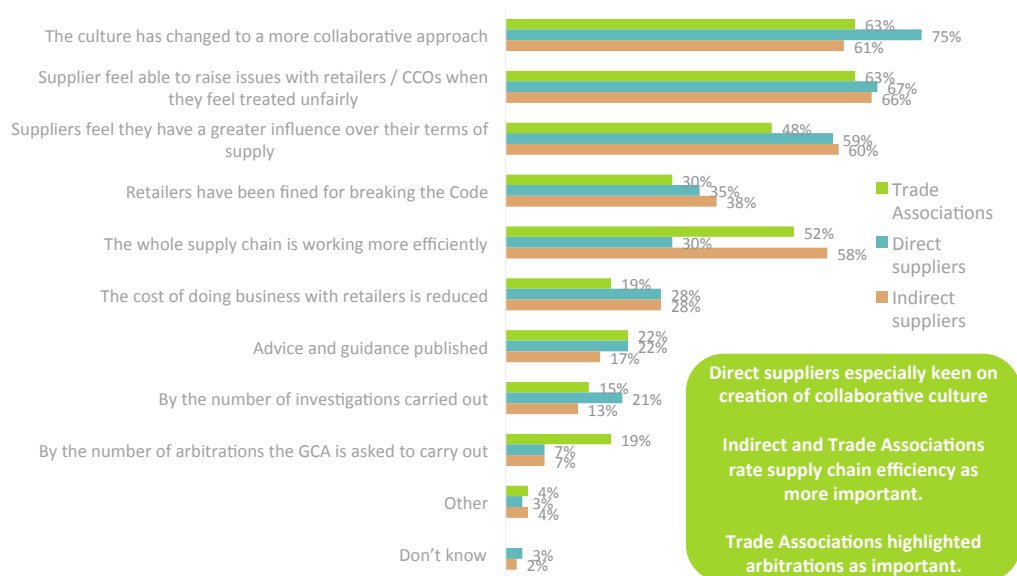
Smaller suppliers not sure their issues are important enough, Larger suppliers more concerned about retribution or think they can handle themselves.  
From another angle: 20% of all Large suppliers aware of GCA fear retribution if they raised an issue.

Q5. If you have issues about grocery supply but don't want to follow these up with the GCA is this because ... (multiple). Base: (51) all aware of the GCA but wouldn't raise issues.



When asked how they would judge whether the GCA was a success, suppliers provided a range of views, with the conclusion that they wanted a more collaborative culture and the ability to raise issues with retailers:

### The GCA's Critical Success Factors



Q5a. How will you judge that the GCA has been a success? Please tick up to 4. Base: trade associations (27); Direct suppliers (230); indirect suppliers (90).

1 YouGov  
What the world thinks

Also measured were suppliers':

- Awareness of the Code and the GCA's roles and responsibilities; and
- Views on how retailer practice had changed since the Code became law and the GCA was formally established.

Full findings were published on the GCA website: [www.gov.uk/gca](http://www.gov.uk/gca)

### Acting on supplier feedback

The GCA held a group meeting with CCOs in July 2014 to review the survey results and to supply each retailer with their own personalised feedback.

Following the survey the GCA committed to act in the following areas:

- Improving the response rate, range and depth of responses in the 2015 survey;
- Achieving deeper engagement with suppliers and their representative bodies;
- Building greater understanding of how the GCA can ensure fairness in the groceries supply chain;
- Tackling the reported fear of retribution and lack of confidence that the GCA will do anything – both cited by direct suppliers as reasons for not bringing issues to the GCA;
- Addressing the practices faced by suppliers which may be in breach of the Code; and

- Drawing up more effective ways of measuring progress and GCA success than simply numbers of investigations, enforcement measures and arbitrations.

Suppliers also provided feedback relevant for other organisations; for example the highest score achieved by a retailer for written supply agreements was 44%. However it is a requirement under the Order for suppliers to have a written supply agreement, so the CMA has taken up the issue and it is being investigated by all CCOs.

In addition, suppliers' awareness of retailer CCOs varied between 11% and 27%.

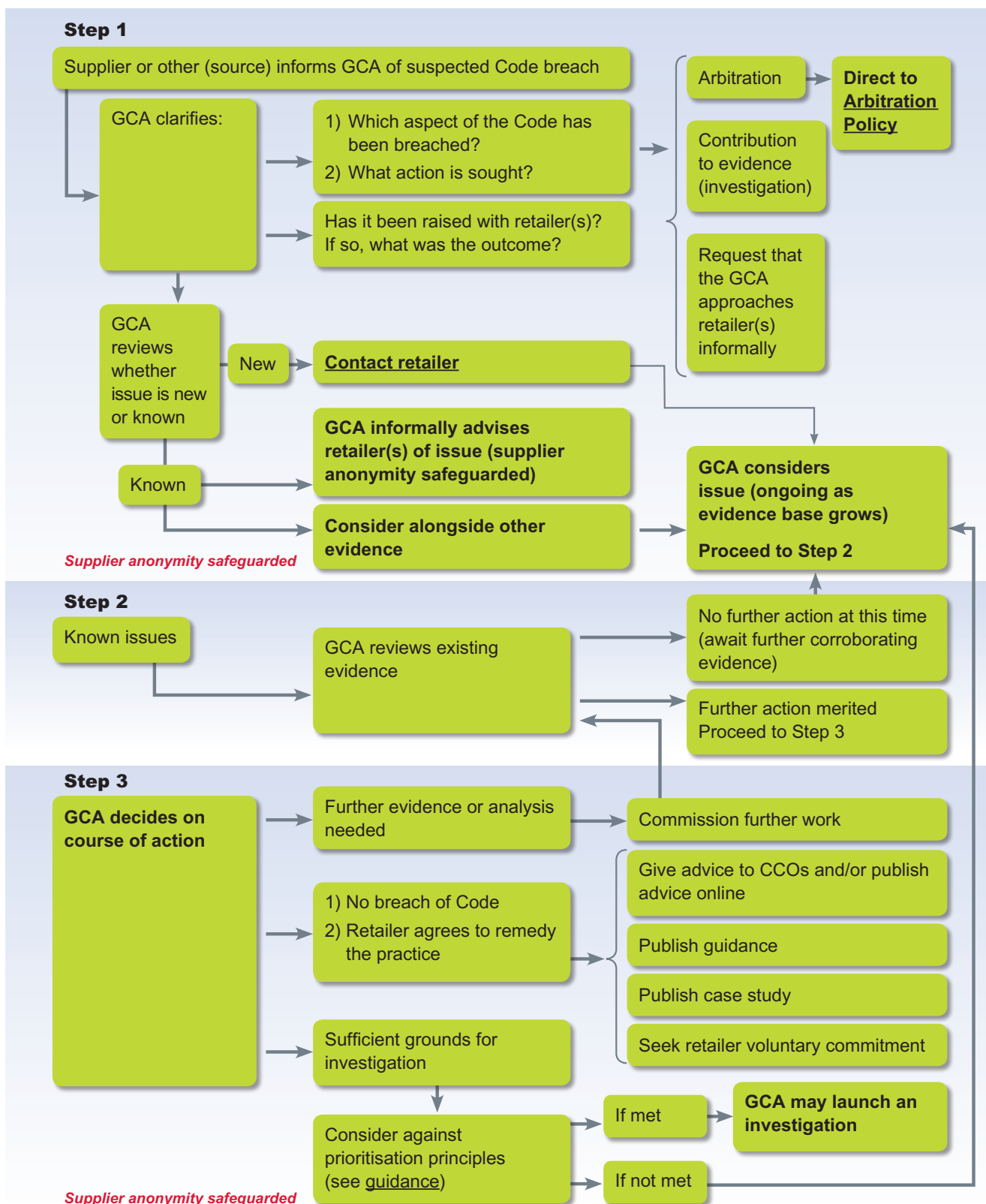
### Follow-up survey

A small follow-up survey was carried out during the year among those who had agreed to be re-contacted by the GCA, to provide a deeper understanding of views raised in the 2014 survey. The key conclusions from this follow-up work were:

- The majority had seen no change in retailer practice in the previous 6 months;
- The GCA's Top 5 issues were reinforced as those most experienced by suppliers; and
- Suppliers want to achieve a collaborative culture through a joint approach in which retailers and suppliers work together.

The survey also showed continued confusion among suppliers about how and where the GCA can act. As a result the GCA published the flowchart opposite to describe how issues raised would be handled.

# Issues procedure



# Statutory reporting requirements

The GCA has reporting requirements set out in the Groceries Code Adjudicator Act 2013. These are set out below together with the GCA report in respect of each item.

## Disputes referred to arbitration under the Groceries Supply Order

The GCA received two requests for arbitration in reporting year 2013/14. The cases have progressed through this accounting year but no final decision has been reached in either dispute.

## Investigations carried out by the GCA

The GCA launched its first investigation on 5 February 2015, into Tesco plc.

## Cases in which the GCA has used enforcement measures

The investigation continues and therefore no enforcement measure has been imposed.

## Recommendations that the GCA has made to the Competitions and Markets Authority (formerly Office of Fair Trading) for changes to the Code

The GCA has made no recommendation to the CMA for any change to be made to the Code.

## Wider government and parliamentary input

The GCA is fully committed to meeting its wider duties as a public body. In this reporting period the GCA has fulfilled these duties in the following ways:

### The Regulators' Code

The GCA is a non-economic regulator which must have regard to the Regulators' Code. The Regulators' Code obliges the GCA to follow stated principles when developing policy or operational procedures and when setting standards or giving guidance which informs GCA regulatory activity.

### Growth duty

The GCA is committed to following the Government's better regulation agenda and in the last reporting period the GCA supported the need to take account of the economic impact of its regulatory activities on growth. This is now a requirement. The Deregulation Act 2015, Section 108 stipulates that:

- (1) A person exercising a regulatory function to which this section applies must in the exercise of the function, have regard to the desirability of promoting economic growth.
- (2) Consider the importance for the promotion of economic growth of exercising the regulatory function in a way which ensures that:



- (a) regulatory action is taken only when it is needed, and
- (b) any action taken is proportionate.

### Building a responsible payment culture

The GCA has continued to support and inform the work of BIS on its prompt payment policy, including participating in a high-level discussion at No 10 Downing Street. The GCA has not had late payment (i.e. payment beyond agreed terms) raised as an issue. However three retailers informed their suppliers that they would be increasing payment terms during the year and informed the GCA beforehand. So long as this is done with proper notice and agreed by both parties, this is not a breach of the Code. Five of the ten large retailers are signatories of the Prompt Payment Code. The Groceries Supply Code of Practice contains specific provision that large retailers should not delay in paying suppliers Part (5): *No delay on payments*. This puts payments at the time contractually agreed at the heart of the Code.

### Review of business appeals procedure

The Small Business, Enterprise and Employment Act 2015 has been introduced which contains the introduction of a new review mechanism for the appeals procedure of each non-economic regulator, which includes the GCA. The new law provides for the appointment of a reviewer by the Secretary of State to:

- (a) review the effectiveness during each reporting period of the procedures (both formal and informal) of the relevant regulator for handling and resolving complaints and appeals made by businesses to the regulator in connection with the exercise by the regulator of the function, and
- (b) prepare a report about the findings of the review.

The GCA will work with BIS on the implementation of this new requirement.

### Data sharing for non-economic regulators

The previous Coalition government was of the view that in order to regulate effectively, it makes sense that regulators should be able to share data about the businesses they regulate, in a proportionate manner. The Better Regulation Delivery Office carried out a pilot study to examine data sharing amongst non-economic regulators and explore the potential benefits of data sharing, from the perspectives of regulators and business.

The findings of the project indicated that significant benefits can result from regulatory data sharing, both in terms of enabling regulators to fulfil their statutory functions more efficiently and effectively, and in reducing burden and delivering earned recognition for compliant businesses.

The GCA responded to the consultation published in April 2014.

### Select Committees

The GCA has given evidence to 3 Select Committees this reporting period.

## Environment, Food and Rural Affairs Committee

On 25 November 2014, the GCA gave evidence to the Environment, Food and Rural Affairs Committee in its inquiry into Dairy Prices, announced on 30 October 2014. The GCA was specifically asked about: “*How effective is the regime established under the Groceries Code Adjudicator Act 2013 in ensuring fair and stable prices for milk producers?*”

A record of the GCA’s evidence is available on Hansard. In summary, the main reply to the Committee is that, as currently set up, neither the Code nor the Act allows the GCA to influence fair and stable milk prices for producers. The GCA’s evidence focused on the following points:

- The Code does not apply to the price of goods sold and therefore the GCA has no powers to intervene in the price of milk paid to producers; and
- The Code only applies to direct suppliers to the 10 designated retailers and so unless a dairy farmer (producer) is a direct supplier, the GCA cannot deal with issues they have.

## Rural Affairs, Climate Change and Environment Committee

On 5 February 2015, the GCA gave evidence to the Rural Affairs, Climate Change and Environment Committee of the Scottish Parliament at an evidence session on emerging developments in the dairy industry.

The GCA largely made the same points as those made to the Environment, Food and Rural Affairs Committee.

A record of the GCA’s evidence is available on the Official Report on the Scottish Parliament website ([www.scottish.parliament.co.uk](http://www.scottish.parliament.co.uk)).

## House of Lords European Union Sub- Committee on Agriculture, Fisheries, Environment and Energy

On 11 March 2015, the GCA was invited to discuss progress on its work to inform the sub-committee’s scrutiny of the Government’s position on EU legislative proposals. The role of the GCA arises periodically as the European Commission and other member states are interested in the UK’s approach, not only in the legislation, but also the collaborative approach adopted by the GCA.

A record of the GCA’s evidence is available on Hansard.

# Issues raised on Code compliance

The GCA has continued to hear from direct and indirect suppliers, trade associations, other bodies and the media about a range of issues covered by the Code and relating to large retailer practice. These issues form part of the growing GCA evidence base which will inform future actions. All the issues that have been raised with the GCA since June 2013 are set out below.

Part of the Code	Issues raised
<p><b>Variation</b></p> <p>(3) Of supply agreements and terms of supply</p> <p>(4) To supply chain procedures</p>	<p><b>Terms of supply varied during the contract term:</b></p> <ul style="list-style-type: none"> <li>■ Written supply agreements not in place</li> <li>■ Request for lump sum payments, often at key accounting periods</li> <li>■ Retailer margin maintenance: inclusion in agreements (contracts and Joint Business Plans) of elements over which suppliers have no influence</li> <li>■ Attempts to alter prices paid to suppliers once agreement/contract is in place</li> <li>■ Use of service levels: not agreed with supplier or unclear methodology applied; and where penalties are applied for allegedly failing to meet targets</li> <li>■ Inclusion of terms of supply notified only after Supply Agreement has been negotiated and terms agreed (particular to new suppliers); administration charges for trading accounts; product testing; packaging/artwork charges</li> <li>■ Introduction of audits paid for by suppliers, e.g. ethical, traceability</li> <li>■ Changes to payment terms and method of payment</li> </ul>

Part of the Code	Issues raised
<p><b>Prices and payments</b></p> <p>(5) No delay in payments <i>(includes deductions without notice)</i></p> <p>(6) No obligation to contribute to marketing costs <i>(including artwork and design of packaging; market research; retailer hospitality)</i></p> <p>(7) No payments for shrinkage</p> <p>(8) No payments for wastage (unless set out in the Supply Agreement)</p> <p>(9) No payments as a condition of being a supplier <i>(including listing fees)</i></p> <p>(10) Compensation for forecasting errors</p> <p>(11) No tying of third party goods and services for payment <i>(including payment of packaging and haulage costs)</i></p>	<p><b>Payment terms not adhered to</b></p> <p><b>Automatic deductions from invoices or trading accounts:</b></p> <ul style="list-style-type: none"> <li>■ Without notice and sometimes before supplier requests payment for goods</li> <li>■ Without sufficient or any explanation (particularly where large sums of money are involved or where deductions are acute for smaller supplier cash flows)</li> <li>■ Withholding payment for entire invoice where only one element of invoice is in dispute</li> <li>■ Drop and drive: deductions for alleged delivery discrepancies where there is little or no ability to check or challenge retailer's paperwork</li> </ul> <p><b>Erroneous deductions and delays in repaying:</b></p> <ul style="list-style-type: none"> <li>■ Lack of supplier access to decision-maker in respect of deductions, to understand the deduction and recover monies taken in error</li> <li>■ Third party and internal audit practices</li> <li>■ Repeated chasing required for agreed refunds to be processed and refunds not processed until after closure of key accounting periods.</li> <li>■ Delay in reverting pricing systems to standard price after promotions</li> <li>■ Delays in changing prices, resulting in delays in resolving queries</li> <li>■ Individual invoices in multiple batches regularly going missing</li> </ul> <p><b>Perceived high charges for mandated packaging and artworks, where supplier believes it can secure cheaper service of comparable quality elsewhere:</b></p> <ul style="list-style-type: none"> <li>■ Flat rate charge for images</li> <li>■ Charges for artwork much higher than open market</li> <li>■ Numerous design changes through the year; lack of reasonable notice of change resulting in cost of excess packaging stock being borne by supplier</li> <li>■ Charge for packaging changes invoiced without prior agreement that this would be required</li> <li>■ Pressure to use 'recommended suppliers' for packaging</li> </ul>

Part of the Code	Issues raised
<p><b>Prices and payments –</b> <i>Continued</i></p>	<ul style="list-style-type: none"> <li>■ Preferred supplier packaging suppliers more expensive than comparable competitors</li> <li>■ Cost of use of plastic crates (e.g. for fresh produce) and reasonableness of hire conditions</li> </ul> <p><b>Request for listing fees:</b></p> <ul style="list-style-type: none"> <li>■ Requests by retailer for supplier to stop supplying specific competitors</li> <li>■ Fees requested not reflecting the risk of listing a new product</li> <li>■ Multi-channel charges – listing fees for additional channels to market for products already stocked</li> <li>■ Fees to access retailer order/forecasting systems</li> </ul> <p><b>Poor forecasting accuracy:</b></p> <ul style="list-style-type: none"> <li>■ Disclaimers by retailers that all forecasts are prepared in good faith</li> <li>■ Lack of clarity about what is a forecast and what constitutes an order</li> <li>■ Excessive charges applied for short delivery, particularly when the forecast volume has been met, but the order considerably exceeded the volume forecast</li> <li>■ Failure by large retailers to take account of compensation for the impact of poor forecasting on suppliers, including changes to agreed distribution levels, over-ordering prior to a promotion or at the start of a listing</li> <li>■ No evidence of compensation for suppliers</li> </ul> <p><b>Lack of choice on haulage provider:</b></p> <ul style="list-style-type: none"> <li>■ Where supplier has access to a cheaper alternative</li> <li>■ Poor service levels by haulier mandated or provided by retailers resulting in supplier penalty</li> </ul>

Part of the Code	Issues raised
<p><b>Promotions</b></p> <p>12) No payments for better positioning of goods unless in relation to promotions</p> <p>(13) No requirement to predominantly fund a promotion</p> <p>(14) Not applying due care when ordering for promotions</p>	<p><b>Attempted charges for better shelf position not related to a promotion</b></p> <p><b>Over-ordering at promotional price</b></p>
<p><b>Other duties</b></p> <p>(15) No unjustified charges for consumer complaints</p> <p>(16) Not meeting duties in relation to De-listing (<i>including giving reasonable notice and giving commercial reasons behind the decision</i>)</p> <p>(17) Not escalating concerns over breaches of the Code to the Senior Buyer</p>	<p><b>Lack of transparency on customer complaint charges</b></p> <ul style="list-style-type: none"> <li>■ Different flat fees charged which do not appear to relate to retailer's cost of handling complaints</li> </ul> <p><b>Unclear large retailer De-listing practice</b></p> <ul style="list-style-type: none"> <li>■ Different perspectives (retailers compared to suppliers) on reasonable notice periods:</li> <li>■ Short notice periods may not take account of supplier circumstances</li> <li>■ De-listing following supplier investment to meet retailer demands</li> <li>■ De-listing following competitor lump sum payment to obtain business</li> <li>■ Suppliers being asked to identify competitor SKUs for De-listing</li> </ul>

In order to ensure we meet the duty to preserve the confidentiality of those who provide information to the GCA, the GCA will not publish numbers of issues raised.

# Top 5 issues

As reported in the *Issues raised on Code compliance* section of this report, the GCA has had a range of issues referred to it over the past year. Following the prioritisation principles and in keeping with the collaborative approach the GCA identifies five key areas where suppliers believe that large retailer practices breach the Code to focus on. These issues are raised with CCOs and discussed on an ongoing basis with them at their individual quarterly meetings and six-monthly group meetings.

The GCA keeps the Top 5 issues under regular review, responding to changing supplier concerns and retailer activity on them. Those that have featured as a Top 5 issue during the year are set out below.

**It should be noted that while the GCA discussed the following areas with all CCOs, the issues raised should not be interpreted as attributable to any particular large retailer or all large retailers, unless specified.**

## ■ Forecasting/service levels

### Description:

Suppliers report that the accuracy of large retailers' forecasts is poor and that significant variations occur between forecasts made and orders placed, sometimes at very short notice. In some cases suppliers have been charged for non-delivery against orders, with inconsistent reference to forecasts. For those with Joint Business Plans (JBPs), this may be used as a means to justify penalties applied. Such activity pushes the risk of managing variability of demand onto the supplier but with little, if any, control over it.

Some large retailers are reported to be applying penalties for failure to meet service levels set out in supply agreements, without regard to the accuracy of forecasts (both high and low). This may happen without clear agreement on the expected level of service and how it is to be measured and the practice can lead to significant wastage in the supply chain, particularly of fresh produce. The penalty for non-delivery per case tends to be fixed and can be more than the cost of production.

The GCA was informed by large retailers that some suppliers knowingly accept orders that they are unable to fulfil. The GCA is of the view that both parties should contract in good faith and that suppliers should alert large retailers as soon as they know that they will be unable to meet a forecast, and if the subsequent order is not filled then the procedure set out in the relevant supply agreement should be followed.

### Potential Code breach:

- The GCA considers that the effect of this practice falls under part 4 (paragraph 10) of the Code: *Compensation for forecasting errors*, read with part 2 (paragraph 2) of the Code: *Principle of fair dealing*.

### GCA progress:

The GCA has explored this issue further with large retailers and has requested an explanation of retailers' policies together with details of how they deal with discrepancies. The large retailers were asked to complete a report providing forecasting data for a range of products and categories against orders placed to give the GCA a better understanding of the current accuracy of, subsequent changes to and improvements in forecasting accuracy.

The GCA is in the process of reviewing retailers' responses, before deciding what action to take.

## ■ Request for lump sum payments

### Description:

The GCA has been told of requests and demands for lump sum payments, particularly at the end of a financial year. This can be for a variety of reasons, but margin maintenance for the retailer as set out at the start of the year through JBPs is the most frequently quoted.

Suppliers argue that as they have no control over retail price, they should not be asked to make up any shortfall but feel they have to pay to ensure they are not penalised the following year. Large retailers use JBPs in different ways, some see them as a genuine joint planning document that is amended throughout the year. The GCA will be looking more closely at this and more particularly any JBP practices that effectively require suppliers to waive their rights under the Code.

The GCA has stated that including something in a JBP mid-contract does not necessarily prevent it from becoming a retrospective demand. This would depend on established practice between contracting parties, the degree of genuine joint planning undertaken, the ways in which risk was shared, how the JBP was used and what it comprised in each case. Some suppliers are reporting that JBPs are imposed and not agreed.

### Potential Code breach:

- The GCA considers that the effect of this practice falls under part 3 (paragraph 3): *Variation of Supply Agreements and terms of supply*, read with part 2 (paragraph 2) of the Code: *Principle of fair dealing*.

### GCA progress:

Over the course of the last year CCOs have provided feedback about how their businesses apply lump sum payment requests. Of particular interest were those lump sums that large retailers stated were due under JBPs, margin maintenance agreements and through the supply agreement (such as volume discounts and over riders) agreed at the outset of a commercial deal.

Suppliers seem to take a differing view from that of the large retailers on the extent and timing of their agreement to pay any lump sums. The GCA considers it important to ensure that both retailers and suppliers understand exactly what their supply agreement is and what the details mean.

The GCA worked with the CMA, which under the Order retains responsibility for the provision by retailers to their suppliers of written supply agreements. The CMA subsequently asked the large



retailers to provide information about supply agreements to it and is currently reviewing them. The GCA will await the outcome of the CMA review before deciding whether to take action and what this might be.

## ■ Packaging and design charges

### Description:

The GCA has heard allegations that some charges have been applied for photography and packaging design that do not appear to be reasonable. Suppliers who buy their own packaging and design consider the charges made by some large retailers for a product of comparable quality to be expensive. In a number of cases large retailers have been told by suppliers that prescribed sources are overcharging for packaging. Some suppliers have reported that they have been charged for up to three changes to packaging design in a single year, all at the instigation of the retailer. Another issue raised is rising charges for photography – reportedly as much as four-fold over the past two years.

### Potential Code breach:

- The GCA considers that the effect of this practice falls under part 4 (paragraph 6) of the Code: *Obligation to contribute to marketing costs*; and part 4 (paragraph 11) of the Code: *Tying of third party goods and services for payment*.

### GCA progress:

In the past year CCOs have reported on retailers' practices, stating that they are compliant with the Code. Suppliers have informed the GCA that it is becoming easier to access different packaging providers. Large retailers have been more willing to add others to their approved supplier list than 12-24 months ago. In addition, the frequency of packaging redesigns has decreased and in some cases retailers have funded redesigns themselves.

Suppliers remain concerned that the charges made by artwork and design companies approved or designated by some retailers are considerably higher than those available on the open market. The GCA will need more information overall and more detailed information and evidence of suppliers' experiences in relation to artwork and design charges before it can conduct any meaningful review or decide how to proceed with this issue.

## ■ NEW: Consumer complaints

### Description:

Suppliers have reported that the large retailers deal with consumer complaints in different ways. Practices include applying variable rates depending on the seriousness of the complaint and fixed rates while some make no charges. Suppliers are concerned that the large retailers may be overcharging for dealing with consumer complaints and deriving profit from them.

### Potential Code breach:

- Consumer complaints fall under part 6 (paragraph 15) of the Code: *No unjustified payment for consumer complaints*.

### GCA progress:

To gain a better understanding of how the large retailers deal with consumer complaints, the GCA has written to all retailers asking them for details of their approach, charging regime and compliance with the Code. Where paragraph 15(3) of the Code is applied (an average figure for payments for resolving customer complaints) the GCA has sought confirmation from the large retailers that the amount does not exceed the expected costs to retailers of resolving those complaints.

The GCA is in the process of reviewing these responses and, where necessary, will seek further clarification from large retailers.

## ■ NEW: Delays in payment

### Description:

Suppliers have raised a number of issues relating to delays in payment. These include: drop and drive disputes, deductions for alleged short deliveries, duplicate invoicing, deductions for unknown or unagreed items, deductions for current and historic promotion fees and delays in paying entire invoices where only part of an invoice is disputed.

### Potential Code breach:

- If disputes arise and are later resolved in favour of the supplier, where unilateral deductions are made at the outset by large retailers against suppliers' current invoices, the GCA considers this falls under part 4 (paragraph 5) of the Code: *Delay in payments*.
- Where disputes are not resolved and deductions are made against invoices, the GCA considers this may also fall under part 4 (paragraph 5) of the Code: *Delay in payments*.

### GCA progress:

A supplier not receiving a payment when it is due, a reduced payment or a unilateral deduction can result from a wide range of different issues. The GCA will work with the large retailers and suppliers to gain a more detailed understanding of how different circumstances arise in which payments might be delayed and then will assess what further action may be merited.

## ■ CLOSED: Forensics: third party audits

### Description:

Under the Limitation Act 1980, contracting parties are able to make claims against one another going back up to six years. The GCA heard this was being used proactively by some large retailers to make claims against suppliers for historic invoicing errors or omissions. Suppliers were being asked for significant sums of money with the burden of proof falling on them to show that alleged discrepancies were not valid claims.

The documentary audit trail is often complex and difficult to piece together after a long period of time, during which there would usually have been significant change to both suppliers' and large retailers' systems and staff. In some cases it was reported that deductions were made from invoices/trading accounts without notice to, or the agreement of the supplier. With little or no notice of when these types of deductions would be applied, suppliers reported that they were unable to plan their cash flow effectively. Some sums could be particularly significant for

suppliers at certain times of the year and required considerable resource to challenge. In many cases a negotiated agreement was reached to shortcut the potentially lengthy process of establishing the actual payment due or where there was sufficient doubt about the validity of the claim.

#### Potential Code breach:

- Although it cannot and would not interfere with parties' statutory rights to bring contractual claims, the GCA considers that where unilateral deductions are made by large retailers against suppliers' current invoices, the effect of this practice falls under part 4 (paragraph 5) of the Code: *Delay in payments*.

#### Outcome:

Eight out of the ten large retailers chose to sign up to the GCA's voluntary commitment to limit the auditing of suppliers' trading accounts in search of missed claims to no more than the current and previous two financial years, on a reciprocal basis with those suppliers. This commitment was announced in June 2014 and those large retailers who signed up have since set out how they would implement it, which they have done over the past year.

The GCA now considers this issue to be closed and has removed it from the Top 5 issues list.

## ■ **CLOSED: Drop and drive – delivery performance**

#### Description:

Suppliers reported that they experienced problems where there was a disparity between what suppliers said they had delivered and invoiced, and what the large retailer said had been received. In some cases large retailers appeared to make automatic deductions from invoices for alleged shortages. These deductions were difficult to challenge, dependent on the haulage method but particularly when using prescribed hauliers and no Proof of Delivery (PODs) had been issued.

Suppliers had informed the GCA that this was a major issue for them. There appeared to be different patterns of deductions among the large retailers in respect of the same suppliers. For example, some large retailers recorded twice the percentage error rate of others when the supplier believed it used exactly the same procedures in packing the two orders for collection by the haulier. The GCA wanted to understand where and how this was happening, at what point in the supply chain and in relation to which products.

#### Potential Code breach:

- The GCA considers that the effect of this practice falls under part 4 (paragraph 5) of the Code: *Delay in payments*.

#### Outcome:

The GCA worked with a group of suppliers and the large retailers to gain a more detailed understanding of the issue and how each large retailer's delivery practice worked. Deductions arising from delivery disputes and any resulting delays in payments for goods were of particular interest. With the GCA's support the representative of a large number of suppliers met with the large retailers at the November 2014 group CCO meeting. This led to further discussions between suppliers and the retailers on a one-to-one basis.

The GCA has had positive feedback from retailers and suppliers about the progress being made. The GCA now considers this issue to be closed as an issue in its own right, but will continue to monitor progress through the new Top 5 issue of 'delays in payment'.

### Case studies

The GCA has continued to apply a case-study based approach to providing an early view on some topical areas of Code compliance, where small-scale breaches were admitted and quickly rectified by the retailer in question. This can only work in cases where the retailer agrees that a breach occurred for whatever reason and quick clarification of the point for the sector as a whole is the most appropriate course of action, in the GCA's view. The GCA has in this way provided clarification of some elements of the Code and prevented the same types of breaches happening again.

During this reporting year the GCA has published one case study and is satisfied that the large retailer involved has taken appropriate action to deal with the breach.

# Glossary

ACR	Annual Compliance Report
BIS	Department for Business, Innovation and Skills
CC	Competition Commission
CMA	Competition and Markets Authority
CCO	Code Compliance Officer
EU	European Union
GCA	Groceries Code Adjudicator
JBP	Joint Business Plan
POD	Proof of Delivery
OFT	Office of Fair Trading
SKU	Stock Keeping Unit
SME	Small to Medium Enterprise
The Act	Groceries Code Adjudicator Act 2013
The Code	Groceries Supply Code of Practice
The Order	The Groceries (Supply Chain Practices) Market Investigation Order 2009
The Financial Penalty Order	The Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015



# Annual Accounts

## Strategic report

### The Groceries Code Adjudicator responsibilities

The Groceries Code Adjudicator (GCA) was formally established on 25 June 2013 by the Groceries Code Adjudicator Act 2013 (the Act). It was set up to ensure supermarkets treat their suppliers lawfully and fairly. It is a corporation sole based in the UK with a sole employee; the Adjudicator. I was appointed by the Secretary of State for Business Innovation and Skills.

I am responsible for monitoring and encouraging compliance with and enforcing the Groceries Supply Code of Practice (the Code), introduced in 2010. It applies to the ten groceries retailers with UK annual turnover of more than £1 billion (the large retailers) and their relationships with their direct suppliers. These are: 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.

My statutory functions set out in the Act are to:

- Provide advice 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;
- Enforce the Code;
- Impose sanctions and other remedies for breaches of the Code; and
- Publish an annual report on the Adjudicator's activities.

### Strategy

The GCA's key performance indicators are set out in the Groceries Code Adjudicator Act 2013 as statutory reporting requirements. The GCA reports annually on:

- Disputes referred to arbitration under the Groceries Supply Order
- Investigations carried out by the GCA
- Cases in which the GCA has used enforcement measures
- Recommendations that the GCA has made to the Competition and Markets Authority (formerly Office of Fair Trading) for changes to the Code

## Format of the accounts

These accounts have been prepared in accordance with the direction from the Secretary of State for Business Innovation and Skills.

## Resources

I am designated as a corporation sole and am therefore the only employee of the GCA. All staff supporting the GCA are seconded from public sector organisations. My guiding principle in resourcing the GCA has been to recruit the resources needed in a phased way based on the anticipated workload. In the model of the GCA designed by the Department for Business Innovation and Skills (BIS) it was predicted that I would need a staff of eight, including my post.

I am employed for three days each week. I currently have a team of 5: Chief Legal Adviser, who also works three days each week, a full-time Head of Policy and Operations, a full-time Office Manager and a full-time Investigations Manager.

Further recruitment of a legal adviser had progressed through the year but no appointment has been made. I have decided instead to bring in legal advice when required, on a contract basis, and review the need for a legal adviser as the work of the GCA develops. Recruitment of a temporary personal assistant (PA) is underway and I expect that to be in place in the next reporting period. I am in the process of requesting extensions to the two-year secondments for the two senior positions, which would expire in June 2015. Communications advice is provided as required by a media consultant appointed following a competitive tender.

## Operations

This reporting year I have focused on further establishing the GCA as fully operational. I will continue to prioritise the GCA resources in the critical areas where governance and controls are needed to ensure the effective running of the office.

Establishing an Executive Board and developing a work plan and risk register have been my priorities to guide the work of the GCA and support decision making. Our work plan has five objectives. Elements informing future development of objectives and priorities will centre around the survey of attitudes of suppliers and others on Code compliance by retailers and awareness and confidence in the GCA. The results of the current, and any future, investigations will also inform our objectives and priorities.

Following procurement challenges faced in reporting year 2013/14, the GCA has now established its own in-house expertise and manages its own procurement, drawing on the support of Crown Commercial Services. This has meant re-prioritising resource to procurement activities, including the steep learning curve in understanding and following the new government procedures.

Managing procurement at the GCA allows greater control over the process and delivers a more efficient outcome.



## Risks and uncertainties

The GCA has identified and dealt with 3 key risks this financial year:

Risk	Detail
<b>Stakeholder awareness is low</b>	Stakeholder organisations and trade bodies do not understand the role of the GCA, leading to misrepresentation across the sector and in the media.
<b>Supplier misunderstanding of GCA role</b>	Suppliers do not raise issues with the GCA or a significant proportion of issues that are raised are out of scope.
<b>Confidence in the Adjudicator</b>	For retailers – willingness to work with the Adjudicator’s collaborative approach of informally seeking resolution of Code issues; and  For suppliers – concerns that the GCA will be unable to preserve their anonymity, which may impact on their relationships with the large retailers.

## Funding the GCA

The GCA is funded by a levy on the 10 large retailers. This takes two forms: (i) a general levy on the large retailers; and (ii) recovery of costs of arbitrations undertaken, and of those investigations where one or more retailers are found to have breached the Code.

The Act [Section 19(2)] states that the consent of the Secretary of State is required before a levy on the retailers can be imposed.

My levy methodology for this financial year and approved by the Secretary of State is based on the impact assessment (IA) supporting the legislation. The levy for 2014/15 is £800,000 divided equally between the large retailers. In assessing deferred income from financial year 2013/14, I made a consideration and deferred income of £140,000 was returned to the retailers, in equal amounts.

In financial year 2015/16, the Secretary of State approved the GCA levy at a level of £1.1m. The levy calculation for 2015/16 and onwards will be based on actual costs (salaries, accommodation and other known costs) together with a best estimate of the forecast costs of investigations and other anticipated expenditure. Deferred income will be returned to the retailers and therefore the levy request for 2015/16 will be £98,000 for each retailer.

I secured agreement from the Secretary of State to a loan facility of £250,000 should the GCA find itself temporarily short of reserves during a financial year, generally as a result of funding an investigation. As this was not required in this reporting period, the loan facility will be available to the GCA in financial year 2015/16.

## Accounts

The Competition and Markets Authority (CMA) provided basic accounts support to the GCA. This included all transactional support on accounts payable and receivable. Preparation of the annual financial statements of GCA accounts were prepared by specialist external resource. The GCA manages its own government bank account, approves all invoices for payment by the CMA on our behalf and reimbursement of claims to the CMA.

## Going concern

The GCA will receive levy income for 2015/16 to fund its activities. It has been accordingly considered appropriate to adopt a going concern basis for the preparation of these financial statements. Budget pressures are possible should investigations or arbitrations result in accruals where the GCA has not recovered its costs within the year. As stated in the Funding the GCA section above, the GCA has agreed a loan agreement with BIS that will be put in place should the GCA require short-term funding at the end of the financial year to ensure that the GCA has sufficient funds to meet its costs in 2015/16.

## Payment practices

The GCA is committed to following the Better Payments Practice Code in payments to suppliers. In particular, paying undisputed invoices within five days and 80% of all other invoices within a maximum of 30 days. The GCA approved and processed 100% of invoices within 30 days of receipt and 100% of undisputed invoices were approved and processed within 5 working days. The GCA relies on the CMA to pay GCA invoices in a timely manner following its own commitment to the Better Payments Practice Code. The newly established CMA installed a new finance system which resulted in teething issues and may have had an impact on the payment of some invoices. The CMA will report on its payment performance in its own annual report.



### **Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

13 July 2015

# Director's report

## Overview

The Groceries Code Adjudicator is the accounting officer of the GCA. Governance of the GCA is carried out through and Executive Board and newly established Operations Board. Further details are contained in the Governance Statement.

## Financial position

The GCA's expenditure for 2014/15 was £683,329, increased from £302,858 in 2013/14. Staff costs were £383,788, increased from £232,381 in 2013/14. The increase in staff costs and expenditure reflects the increase in secondment resource in addition to external support provided under contract. Staff costs as a proportion of total expenditure equates to 56%. Other operating costs include finance, ICT and accommodation.

Levy income from the large retailers was £800,000, increased from £450,000 in 2013/14 which was for a period of 9 months from 25 June 2013 until 31 March 2014.

## Sickness absences

There has been no sickness absence at the GCA.

## Pension payments

The GCA is a corporation sole with the Adjudicator as the sole employee. The Groceries Code Adjudicator's pension status has changed and the position has been classified as pensionable from the date of appointment and the GCA is a member of the Principal Civil Service Pension Scheme (PCSPS). Reimbursement to BIS has been accrued and will be made in 2015 to cover a charge for 2013/14 as well as 2014/15. Other pension commitments are met by the home departments of secondees to the GCA.

## VAT

The GCA has sought advice on VAT treatment through the year. The GCA is not registered for VAT. Departments who second employees to the GCA have applied different VAT treatments and the GCA is currently finalising a re-determination of VAT treatment from the Department charging VAT on salaries and associated expenses. Additionally, the CMA has determined that VAT is applied to ICT and Finance services supplied by the CMA but not to accommodation and associated expenses. This differs from the VAT treatment by the Competition Commission in 2013/14.

The GCA is committed to seeking further advice on the application of VAT and to resolving any outstanding VAT issues before the next annual report and accounts. Any VAT implications will be adjusted within the statutory limit of 4 years.

## Audit

The auditor of the GCA is the Comptroller and Auditor General. Details of the audit fee for the period ended 31 March 2015 are disclosed in note 3 to the Financial Statements. The fee is £9,750, increased from £5,000 in 2013/14. No internal audit was carried out in financial year 2014/15. The GCA will consider the need for internal audit in forthcoming years.

## Accounting Officer Disclosure to the auditors

So far as the Accounting Officer is aware, there is no relevant audit information of which the GCA's auditors are unaware. The Accounting Officer has taken all steps necessary to make herself aware of any relevant audit information and to establish that the auditors are aware of that information.

## Personal data

There have been no instances of personal data release in this reporting year.

## In-year awards for secondees

In-year award decisions for secondees below senior civil servant level are dealt with by the Adjudicator and Head of the GCA Office, taking account of recommendations from all members of the GCA team. Consideration of awards for activities in 2013/14 was assessed at the same time as for activities in 2014/15. A total of £2,000 was awarded in recognition of performances which; demonstrated flexibility whilst carrying out demanding tasks; sustaining performance under pressure where resources were limited; and demonstration of strong teamwork. The awards were made for: Drafting, consulting and publishing statutory guidance; Establishing the GCA accounts and office systems; and Devising and delivering the Annual Survey and Conference. An accrual has been made in the accounts.

## Donations

The GCA made no charitable donations.

## Register of interests

A register of interests of Board members is maintained by the Secretary to the Board and is available on the GCA website.

## Reporting on the tax arrangements of public sector appointees

All government departments and their arm's length bodies that employ individuals 'off payroll' for more than six months have to report to HM Treasury about the financial arrangement, to make sure it is transparent and that the individual in question is paying the right amount of tax and National Insurance. We have reviewed the way we make these appointments to ensure our processes are robust. We have the right to request assurances, and do so, from the individual in relation to monies received from HMRC. We can terminate any contract if these assurances are not provided.

The table below sets out the status of off-payroll contractors engaged by the GCA using the standard reporting format. This records new off-payroll engagements, or those that reached six months in duration, between 1 April 2014 and 31 March 2015, for more than £220 per day and that last for longer than six months.

	Number of contractors
No. of new engagements, or those that reached six months in duration, between 1 April 2014 and 31 March 2015	1
No. of the above which include contractual clauses giving the department the right to request assurance in relation to income tax and National Insurance obligations	1
No. of the above which include contractual clauses giving the department the right to request assurance in relation to income tax and National Insurance obligations	
No. for whom assurance has been requested	1
Of which...	
No. for whom assurance has been received	1

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

13 July 2015

# Remuneration report (audited)

## Overview

The GCA has no remuneration responsibilities. The remuneration of the Groceries Code Adjudicator is determined by the Secretary of State for Business Innovation and Skills under Schedule 1 of the Act. The Groceries Code Adjudicator is designated as Office Holder and is a corporation sole.

The salary of the Groceries Code Adjudicator is set by BIS. The GCA team, all of which are secondees from the public sector, retain the terms and conditions of their parent departments. Remuneration decisions are taken by the relevant department of the secondee. The Groceries Code Adjudicator's salary payments in this financial year were in the band of £65-£70,000, a pro rata from an annual salary within the band of £110-£115,000 for a full time equivalent.

The Groceries Code Adjudicator is a pensionable position. Other pension commitments are met by the home departments of the secondees to the GCA.

No calculation of a median staff pay figure has been made for the year as there is only one member of staff.

## Benefits in kind

No allowances, bonuses or benefits in kind have been made to the Groceries Code Adjudicator.

## Remuneration (salary, benefits in kind and pensions)

Single total figure of remuneration								
Public appointee	Salary (£'000)		Bonus payments (£'000)		Pension benefits (to nearest £1,000)		Total (£'000)	
	2014-15	2013-14	2014-15	2013-14	2014-15	2013-14	2014-15	2013-14
Christine Tacon	65-70 (£110-£115,000 for a full time equivalent)	60-65 (£110-£115,000 for a full time equivalent)	-	-	18,000	13,000	85-90	75-80

## Salary

'Salary' includes gross salary; overtime; reserved rights to London weighting or London allowances; recruitment and retention allowances; private office allowances and any other allowance to the extent that it is subject to UK taxation. This report is based on accrued payments made by the GCA and thus recorded in these accounts.

## The Cash Equivalent Transfer Value (CETV)

This is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The GCA is required to disclose the CETV and the real increase in this value, however the GCA has been advised that this is not available due to the introduction of a new pension system at My Civil Service Pension (the pension provider). This information will be reported in the next annual report and accounts.

## Civil Service Pensions

Pension benefits are provided through the Civil Service pension arrangements. From 30 July 2007, civil servants may be in one of four defined benefit schemes; either a final salary scheme (classic, premium or classic plus); or a whole career scheme (nuvos). These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under classic, premium, classic plus and nuvos are increased annually in line with Pensions Increase legislation. Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a 'money purchase' stakeholder pension with an employer contribution (partnership pension account).

Employee contributions are salary-related and range between 1.5% and 6.85% of pensionable earnings for classic and 3.5% and 8.85% for premium, classic plus and nuvos. Benefits in classic accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum. Classic plus is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per classic and benefits for service from October 2002 worked out as in premium. In nuvos a member builds up a pension based on his pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The partnership pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 3% and 12.5% (depending on the age of the member) into a stakeholder pension product chosen by the employee from a panel of providers. The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.8% of pensionable salary to cover the cost of centrally-provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 60 for members of classic, premium and classic plus and 65 for members of nuvos.

Further details about the Civil Service pension arrangements can be found at the website [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk)

New Career Average pension arrangements was introduced from 1st April 2015 and the majority of classic, premium , classic plus and nuvos members will have joined the new scheme. Further details of this new scheme are available at <http://www.civilservicepensionscheme.org.uk/members/the-new-pension-scheme-alpha/>

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

13 July 2015



# Statement of the GCA Accounting Officer's responsibilities

The Groceries Code Adjudicator Act 2013 (The Act), at Schedule 1, paragraph 15(1), specifies that the Groceries Code Adjudicator (GCA) must keep proper accounts and proper records in relation to the accounts. For each financial year the Adjudicator must prepare a statement of accounts in respect of that financial year. These must be published and submitted to the Secretary of State for Business Innovation and Skills who will be responsible for laying the accounts before Parliament.

The accounts follow the form and the basis set out in the accounts direction. The financial statements are prepared on an accruals basis and must give a true and fair view of the GCA's state of affairs at the year end and of its income and expenditure, recognised gains and losses and cash flows for the financial year.

In preparing financial statements the GCA is required to comply with the requirements of the Government Financial Reporting Manual and in particular:

- (i) Observe the accounts direction issued by the Secretary of State, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- (ii) Make judgements and estimates on a reasonable basis;
- (iii) State whether applicable accounting standards as set out in the Government Financial Reporting Manual have been followed, and disclose and explain any material departures in the financial statements; and
- (iv) Prepare the financial statements on the going concern basis, unless it is inappropriate to presume that the GCA will continue in operation.

The Accounting Officer for the Department of Business Innovation and Skills has designated the Groceries Code Adjudicator as the Accounting Officer for the GCA. The responsibilities of an Accounting Officer, including responsibility for the propriety and regularity of the levy funding (classified as public finances) for which the Accounting Officer is answerable, for keeping of proper records and for safeguarding the GCA's assets, are set out in the Accounting Officer's Memorandum issued by the Treasury and published in *Managing Public Money*.

# Governance statement

The Groceries Code Adjudicator is a corporation sole and is an independent regulator sponsored by BIS.

As Accounting Officer, I am responsible for ensuring that the GCA has an appropriate governance structure and systems to ensure I meet my statutory obligations. I am personally responsible for safeguarding the public funds for which I have charge; for ensuring propriety and regularity in the handling of public funds; and for the day-to-day operations and management of the GCA as set out in Managing Public Money. The GCA governance structure combines efficient decision making with accountability and transparency.

As Accounting Officer, I chair the GCA Executive Board (the Board) which is my governance body responsible for ensuring that the GCA's statutory obligations are met and that decision-making and financial management are carried out appropriately and that the GCA office is managed effectively. Following a review of GCA governance this year, I have created a new Operations Board, which I chair, and which reports to the Executive Board. I am personally responsible for promoting and safeguarding regularity, propriety, affordability, sustainability, risk, and value for money; and accounting accurately and transparently for the GCA's financial position and transactions.

## Governance framework: GCA Executive Board

The Executive Board discusses and takes strategic decisions which govern the actions of the GCA office. The governance review held this year has resulted in the creation of an Operations Board which has allowed the Executive Board to focus on strategic issues. The new arrangements came into place at the February Executive Board meeting.

The Executive Board meets every 6–8 weeks and met 5 times in this reporting period with full attendance each time. The Board discussed both operational and policy issues in the 4 meetings held until December 2014 and then focused on strategic issues only at the 5th meeting, following the establishment of the Operations Board. There are standing items for discussion at each meeting. These are: forward look, work plan, risk register, financial statement and resources. Other policy and operational agenda items are scheduled as required.

The Board ensures I meet my statutory obligations set out in the Act, which are to:

- provide advice 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;
- enforce the Code;
- impose sanctions and other remedies for breaches of the Code; and
- publish an annual report on the Adjudicator's activities.

The Board follows the governance Code of Good Practice 2011 but applies it in a way proportionate to the nature and size of the GCA.

## Review of Executive Board effectiveness

A formal review of the effectiveness of the Board was carried out in the Autumn of 2014 and the recommendations approved at the December Executive Board.

There were two substantive recommendations which have been adopted:

- To reduce the membership of the Executive Board to 3 members; the Adjudicator, Head of Legal and Head of Policy and Operations. The Office Manager will continue as minute taker.
- The creation of an Operations Board to deal with all matters relating to the smooth running of the office.

Alongside these, procedural changes have also been made on matters such as meeting scheduling and improving the board paper format.

## Governance framework: GCA Operations Board

The new Operations Board will deal with all responsibilities associated with the running of the GCA office. Its main task is to ensure that the GCA has the right resources, practices effective and efficient financial management and has the appropriate procedures in place for the effective running of the office. It is chaired by the Adjudicator and other members are: Head of Policy and Operations; Investigations Manager and Office Manager. It met once in this reporting period.

The GCA has no Audit and Risk Committee. The GCA has considered the corporate governance good practice guidance and on proportionality grounds decided that a separate committee is not required and that the Executive Board would deal with audit and risk issues. Due to the size of the organisation and the roles performed by the team, the composition of the Executive Board would be the same people involved in an Audit and Risk Committee. Additionally, the Operations Board has responsibility for advising the Executive Board on financial and other risks including regular reviews of the risk register.

The Operations Board meets every 4-6 weeks and at least 2 week's prior to the Executive Board. Its key responsibilities are to ensure that the strategic objectives set by the Executive Board are reflected in the operations and financial planning of the office.

## Risk and assurance

The Executive Board is responsible for devising, reviewing and monitoring risks to the GCA in meeting its statutory functions.

The first year has been focused on assessing the key risks to the GCA and devising a robust and evolving risk register which properly sets out the anticipated impact of the risk and developing actions to mitigate the impact of the risks. The risk register will be reviewed by the Executive Board twice each year and by the Operations Board at alternate meetings. There has been one full review of the risk register this year.

The corporate risks are categorised by theme: financial; recruitment; reputation; legislation; legal; stakeholder engagement; and knowledge management. The key risks to the GCA this year are:

**Stakeholder awareness is low:** Stakeholder organisations and trade bodies do not understand the role of the GCA, leading to misrepresentation across the sector and in the media. To manage this risk the GCA has: made contact with all key stakeholder bodies in the groceries sector; spoken at 13 events hosted by trade associations; and hosted a group meeting of key trade associations which is an annual event.

**Supplier misunderstanding of GCA role:** Suppliers do not raise issues with the GCA or significant proportion of issues that are raised are out of scope. Moreover, they are often not through the channels set out in Order (i.e. through the buyer, senior buyer and CCO) but rather by individuals expecting the GCA to take up their case on their behalf. In this reporting period alone the Adjudicator has spoken at more than 50 events and met a significant number of direct suppliers to the large retailers. The media (national, regional and trade) have also been used as a channel to continue to raise awareness with a greater number of suppliers, urging them to bring issues to our attention. We have also encouraged the trade associations to co-ordinate issues from their members and to bring any evidence of possible breaches of the Code to the GCA.


**Confidence in the Adjudicator:** This risk applies to retailers in respect of their willingness to work with the Adjudicator's chosen approach of informally seeking resolution of Code issues; and to suppliers in their concern that the GCA will be unable to preserve their anonymity, which may impact on their relationships and supply agreements with the large retailers. For retailers, the GCA is building relationships with each Code Compliance Officer through quarterly meetings to explain and reinforce the benefits of a collaborative approach. In addition the GCA has emphasised the need for behaviour change across the supply chain which can be more quickly and efficiently introduced through informal means rather than by an investigation. For suppliers, the GCA continues to stress the legal duty to maintain anonymity in all dealings (whether face-to-face, in communications and through the media) and through GCA actions such as production of case studies and examples of where retailer practices are improved as a result of GCA intervention.

## Data handling

The Competition and Markets Authority is responsible for the provision of, and all risk assessments and assurance, relating to the ICT systems provided to the GCA. There have been no incidents of personal data being lost by the GCA.

## Conclusion

An annual review of the effectiveness of the GCA's governance structures and risk management has been conducted. I have considered the evidence provided in drawing up the annual governance statement and taken account of the scale of the GCA operations. I conclude that the GCA has satisfactory governance and risk management systems with effective plans to ensure continuous improvement.



**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

13 July 2015

# The Certificate of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements of the Groceries Code Adjudicator for the period ended 31 March 2015 under the Groceries Adjudicator Act 2013. The financial statements comprise: the Statements of Comprehensive Net Income, Financial Position, Cash Flows, Changes in Taxpayers' Equity; and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

## Respective responsibilities of the Board, Accounting Officer and auditor

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. My responsibility is to examine, certify and report on the financial statements in accordance with the Groceries Code Adjudicator Act 2013. I conducted my audit in accordance with International Standards on Auditing (UK and Ireland). Those standards require me and my staff to comply with the Auditing Practices Board's Ethical Standards for Auditors.

## Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Groceries Code Adjudicator's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by Groceries Code Adjudicator, and the overall presentation of the financial statements. In addition, I read all the financial and non-financial information in the Annual Report to identify material inconsistencies with the audited financial statements and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by me in the course of performing the audit. If I become aware of any apparent material misstatements or inconsistencies, I consider the implications for my certificate.

I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

## Opinion on regularity

In my opinion, in all material respects the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

## Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of Groceries Code Adjudicator's affairs as at 31 March 2015 and of the net income for the year then ended; and
- the financial statements have been properly prepared in accordance with the Groceries Code Adjudicator Act 2013 and Secretary of State directions issued thereunder.

Opinion on other matters

In my opinion:

- the part of the Remuneration Report to be audited has been properly prepared in accordance with Secretary of State directions made under the Groceries Code Adjudicator Act 2013; and
- the information given in the Strategic Report, Directors Report, and Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements.

## Matters on which I report by exception

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my staff; or
- the financial statements and the part of the Remuneration Report to be audited are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Governance Statement does not reflect compliance with HM Treasury's guidance.

## Report

I have no observations to make on these financial statements.

**Sir Amyas C E Morse**  
**Comptroller and Auditor General**

National Audit Office  
157–197 Buckingham Palace Road  
Victoria  
London SW1W 9SP

**14 July 2015**

# Statement of comprehensive net income for the year ended 31 March 2015

		Year ending 31-Mar-15 £	Period ending 31-Mar-14 £	<u>Restated</u> Period ending 31-Mar-14 £
	Note			
<b>Expenditure</b>				
Staff costs	2	383,788	232,381	232,381
Other expenditure	3	299,541	70,477	70,477
		<u>683,329</u>	<u>302,858</u>	<u>302,858</u>
<b>Income</b>				
Other income	4	(683,329)	(450,000)	(302,858)
		<u>–</u>	<u>(147,142)</u>	<u>–</u>
<b>Net Income</b>				
		<u>–</u>	<u>(147,142)</u>	<u>–</u>
<b>Net income after interest</b>				
		<u>–</u>	<u>(147,142)</u>	<u>–</u>
<b>Net income after interest and tax</b>				
		<u>–</u>	<u>(147,142)</u>	<u>–</u>
<b>Total Comprehensive income for the year ended 31 March</b>				
		<u>–</u>	<u>(147,142)</u>	<u>–</u>

The notes on pages 57 to 62 form part of these financial statements.

There was no other comprehensive expenditure.

# Statement of financial position as at 31 March 2015

		As at 31-Mar-15 £	As at 31-Mar-14 £	Restated As at 31-Mar-14 £
	Note			
<b>Current assets:</b>				
Trade and other receivables due within one year	6	11,151	11,151	11,151
Cash and cash equivalents	7	394,509	172,614	172,614
<b>Total current assets</b>		405,660	183,765	183,765
<b>Total assets</b>		405,660	183,765	183,765
<b>Current liabilities:</b>				
Deferred income	8	123,813	–	147,142
Trade and other payables	8	281,847	36,623	36,623
<b>Total current liabilities</b>		405,660	36,623	183,765
<b>Non-current assets less current liabilities</b>		–	147,142	–
<b>Assets less liabilities</b>		–	147,142	–
<b>Taxpayers' equity</b>				
Income and expenditure reserve		–	147,142	–
		–	147,142	–

The notes on pages 57 to 62 form part of these financial statements.

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

13 July 2015



# Statement of cash flows for the year ended 31 March 2015

		Year ending 31-Mar-15 £	Period ending 31-Mar-14 £	<u>Restated</u> Period ending 31-Mar-14 £
	Note			
<b>Cash flows from operating activities</b>				
Net deficit after interest		–	147,142	–
(Increase) in receivables	6	–	(11,151)	(11,151)
Increase in payables	8	221,895	36,623	183,765
<b>Net cash inflow from operating activities</b>		<u>221,895</u>	<u>172,614</u>	<u>172,614</u>
<b>Net (decrease)/increase in cash and cash equivalents in the period</b>	7	221,895	172,614	172,614
<b>Cash and cash equivalents at the beginning of the period</b>		172,614	–	–
<b>Cash and cash equivalents at the end of the period</b>		394,509	172,614	172,614

The notes on pages 57 to 62 form part of these financial statements.

# Statement of changes in taxpayers' equity

	<b>I&amp;E Reserve £</b>	<b>Total Reserves £</b>
	<u>          </u>	<u>          </u>
<b>Balance as at 31 March 2013</b>	–	–
<b>Changes in Taxpayers' Equity comprehensive income for the year</b>		
Comprehensive income for the year	(147,142)	(147,142)
<b>Balance as at 31 March 2014</b>	<u>(147,142)</u>	<u>(147,142)</u>
Change in treatment of unspent Levy Funds	147,142	147,142
<b>Restated balance as 31 March 2014</b>	<u>          </u>	<u>          </u>
	–	–
<b>Changes in Taxpayers' Equity comprehensive income for the year</b>		
Comprehensive income for the year	–	–
<b>Balance as at 31 March 2015</b>	<u>          </u>	<u>          </u>
	–	–

(i) The GCA holds no reserves. The GCA is levy funded and unspent levy is reflected in deferred income.

(ii) There was no other comprehensive expenditure.

# Notes to the financial statements

## 1. Accounting policies

These financial statements have been prepared in accordance with the 2014/15 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be the most appropriate to the particular circumstances of the GCA for the purposes of giving a true and fair view has been selected. The particular policies adopted by the GCA for the purpose of financial reporting are described below. They have been applied consistently in dealing with items that are considered material to the accounts.

There were no new standards issued up to 31 March 2015 and not applied, that would materially affect the accounts. The GCA has also not adopted any standards early.

### 1.1 Accounting convention

These accounts have been prepared under the historical cost convention.

### 1.2 Restatement of previous year accounts

The 13/14 financial statements have been restated. During 14/15 the accounting treatment of reserves was confirmed by HM Treasury. Reserves cannot be retained and must be returned to the levy payees. The amount remaining in deferred income must be offset against the levy on retailers each year.

#### (a) Income

##### *General levy*

The Groceries Code Adjudicator Act 2013 [section 19] provides that the full costs of the GCA will be funded through a levy on the 10 designated retailers with a UK annual groceries turnover in excess of £1billion, as per the Code provisions set out by the Competition Commission (now the Competition and Markets Authority). These are: 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.

##### *Arbitration and investigations*

The GCA will, in the great majority of cases, recoup the full cost of arbitrations, in accordance with Article 11(7) of the Groceries [Supply Chain Practices] Market Investigation Order 2009. All costs of the arbitrator are to be borne by the retailer which is the party to the arbitration; 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. The other costs of the arbitration, such as the parties legal costs, can be apportioned in the final award.

The GCA has the discretion to charge the applicable retailer(s) the full costs of an investigation which results in a finding that there has been a breach of the Code. It is expected that this will be the approach adopted. Any appeals will be funded initially from the general levy. If the GCA is successful, it would expect to recover most of its costs from the losing party. Costs required to be paid are recoverable by the Adjudicator as a debt.

It is recognised in full in the year that it is billed, and that the adjudicator may repay some or all of any surplus income, in such situation, these repayments will be shown as a debt in the GCA accounts.

#### (b) Going concern

The GCA will receive levy income for 2015/16 to fund its activities. It has been accordingly considered appropriate to adopt a going concern basis for the preparation of these financial statements. Budget pressures are possible should investigations or arbitrations result in accruals where the GCA has not recovered its costs within the year. The GCA has agreed a loan agreement with BIS that will be put in place should the GCA require short-term funding at the end of the financial year to ensure that the GCA has sufficient funds to meet its costs in 2015/16.

#### (c) Financial instruments

Financial instruments were initially measured at fair value plus transaction costs unless they were carried at fair value through profit and loss in which case transaction costs are charged to operating costs.

The categorisation of financial assets and liabilities depends on the purpose for which the asset or liability was held or acquired. The categorisation of assets and liabilities is determined at initial recognition and re-evaluated this designation at each reporting date.

##### *Financial assets*

The GCA held financial assets, which comprised of cash at bank and receivables. These were non-derivative financial assets with fixed or determinable payments that are not traded in an active market. Since these balances were expected to be realised within 12 months of the reporting date, there was no material difference between fair value, amortised cost and historical cost.

##### *Financial liabilities*

The GCA held financial liabilities, which comprised of payables and deferred income. Since these balances were expected to be settled within 12 months of the reporting date, there was no material difference between fair value, amortised cost and historical cost.

#### (d) Reserves

Income and expenditure reserve

The GCA accounted for its accumulated surplus in the income and expenditure reserve.

#### (e) Expenditure

All expenditure is recognised on an accruals basis. Purchases of capital items over £1,000 will be recognised in the accounts as an asset and appropriately depreciated or amortised.

## 2. Staff numbers and related costs

The cost of staff remuneration was:

	<b>Year ending 31-Mar-15</b>	<b>Year ending 31-Mar-15</b>	<b>Year ending 31-Mar-15</b>	<b>Period ending 31-Mar-14</b>	<b>Restated Period ending 31-Mar-14</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
	<i>Permanent staff</i>	<i>Secondees</i>	<i>Total</i>	<i>Total</i>	<i>Total</i>
Wages and salaries	69,000	214,113	283,113	189,283	189,283
Social security costs	7,259	22,773	30,032	18,038	18,038
Pension costs	29,529	41,114	70,643	25,060	25,060
<b>Total</b>	<b>105,788</b>	<b>278,000</b>	<b>383,788</b>	<b>232,381</b>	<b>232,381</b>

- (i) The remuneration of the Groceries Code Adjudicator is the only permanent staff cost.
- (ii) There have been no severance payments in year.
- (iii) VAT is charged on salaries where levied by the seconding organisation.
- (iv) Pension costs for permanent staff include pension payments made for 13/14 that now need to be paid by the GCA.

### Average number of staff employed

The average annual number of full-time-equivalent staff (FTE) during the year, including secondees from other government departments, other organisations, staff employed on short-term contract and temporary staff, was:

	<b>Year ending 31-Mar-15</b>	<b>Period ending 31-Mar-14</b>
	<b>£</b>	<b>£</b>
	FTE	FTE
Employed on references:		
Permanent staff	0.6	0.6
Secondees	3.7	2.3
	<u>4.3</u>	<u>2.9</u>

- (i) The total number of staff reported outside the accounts are based on head count, whereas the above figures are average FTE's for the year.

### 3. Other expenditure

	Year ending 31-Mar-15 £	Period ending 31-Mar-14 £	Restated Period ending 31-Mar-14 £
Rentals under operating leases	15,054	21,681	21,681
Running costs - Victoria House	9,460	2,925	2,925
Survey & Consultants' fees - inquiry related	79,609	700	700
Legal costs	88,206	–	–
Licences	1,496	778	778
IT equipment and consumables	–	6,157	6,157
Telecommunications and Internet charges	3,198	809	809
Photocopying & Printing	7,924	112	112
Press Cuttings	5,666	–	–
Travel, subsistence and hospitality:	4,144	10,868	10,868
Staff training	1,860	2,160	2,160
Subscriptions	967	210	210
Corporates Services from Competition & Markets Authority	34,089	17,349	17,349
Stationery	–	1,058	1,058
Conferences	36,736	419	419
Audit fee	9,750	5,000	5,000
Other expenditure	1,382	251	251
Total other operating charges	<u>299,541</u>	<u>70,477</u>	<u>70,477</u>

- (i) The services for press cuttings started in this financial year.  
(ii) Photocopying and printing include the cost of publishing the annual report.  
(iii) GCA held a conference in June 2014, which was not held the previous year.  
(iv) Survey & consultants costs are annual costs that began in 2014/15.

### 4. Income

	Year ending 31-Mar-15 £	Period ending 31-Mar-14 £	Restated Period ending 31-Mar-14 £
Levy raised	660,000	450,000	450,000
Deferred income (recognised)/released	23,329	–	(147,142)
	<u>683,329</u>	<u>450,000</u>	<u>302,858</u>

## 5. Financial instruments

The majority of financial instruments relate to contracts to buy non-financial items in line with the GCA's expected purchases and usage requirements and the GCA was therefore exposed to little credit, liquidity or market risk.

## 6. Trade receivables and other assets

	<b>As at 31-Mar-15 £</b>	<b>As at 31-Mar-14 £</b>	<b>Restated As at 31-Mar-14 £</b>
<b>Amounts falling due within one year</b>			
Other debtors	11,151	9,545	9,545
Prepayments	–	1,606	1,606
	<u>11,151</u>	<u>11,151</u>	<u>11,151</u>

Transactions are with central government.

## 7. Cash and cash equivalents

	<b>As at 31-Mar-15 £</b>	<b>As at 31-Mar-14 £</b>	<b>Restated As at 31-Mar-14 £</b>
Balance at 1 April	172,614	–	–
Net change in cash and cash equivalent balances	221,895	172,614	172,614
Balance at 31 March	<u>394,509</u>	<u>172,614</u>	<u>172,614</u>
The following balances at 31 March were held at:	394,509	172,614	172,614

### Government Banking Service

The GCA's bank account was an interest-bearing current account with the Government Banking Service.

## 8. Trade payables and other liabilities

	As at 31-Mar-15 £	As at 31-Mar-14 £	Restated As at 31-Mar-14 £
Deferred income	123,813	-	147,142
Other payables & accruals	281,847	36,623	36,623
	<u>405,660</u>	<u>36,623</u>	<u>183,765</u>

Transactions are with central government and the deferred income with the retailers.

## 9. Capital commitments

The GCA had no capital commitments.

## 10. Commitments under leases

The GCA has no leases. The GCA has a service Memorandum of Terms of Occupancy with the CMA for rent and services.

## 11. Contingent liabilities & assets

There are no contingent liabilities or assets to report.

## 12. Related party transactions

The GCA is a corporation sole sponsored by BIS and funded by a levy on 10 large retailers. BIS is regarded as a related party. During the year, the GCA has had various material transactions with BIS, through the provision of payroll for the Adjudicator and procurement and contracting services.

The GCA also has related party transactions with the Competition and Markets Authority. These relate to accommodation, finance and ICT services as the GCA is co-located with the Competition and Markets Authority.

None of the GCA members or key managerial staff undertook any material transactions with BIS during the year, except for remuneration paid for their services.

## 13. Events after the reporting period

In accordance with the requirements of IAS10 'Events After the Reporting Period', post-Statement of Financial Position events are considered up to the date on which the Accounts are authorised for issue. This is interpreted as the same date as the date of the Certificate Report of the Comptroller and Auditor General. There are no post-Statement of Financial Position events between the balance sheet date and this date.









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