



Groceries Code  
Adjudicator

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

1 April 2016 – 31 March 2017

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1 April 2016 – 31 March 2017

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

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# Foreword by Christine Tacon

## Groceries Code Adjudicator



This Annual Report marks a four-year milestone in the history of the Groceries Code Adjudicator. It provides a valuable point to look back at the very real progress made in achieving fairness for suppliers in a complex and competitive sector.

The Groceries Supply Code of Practice has been in existence for seven years but initial progress was disappointingly slow, arguably non-existent. The introduction of the GCA has been the engine of change. Looking back to 2013 when my role was established I can see there has been a transformation in both the culture of the sector and the behaviour of the retailers. Retailers are asking me how to improve, suppliers are finally opening up and providing me and my office with more information and I am advancing my top issues – as described later in this report. There is more to be done and not all retailers have made the progress I would have liked. Suppliers could still be more forthcoming in telling me about their issues.

Over the past year suppliers across the sector have told me that relationships are improving and overall there has been a gradual but continual increase in compliance with the Code. I am not relaxing my guard and I have continued to press for change where I identify problems. My preferred approach is to work collaboratively with the retailers but I stand ready to use stronger regulatory intervention if necessary.

One example is the issue of delay in payments with specific reference to the practice of drop and drive, where I was concerned that progress was not swift enough. In response I turned up the pressure on the retailers, advising them that I was going through my internal processes to decide whether to launch an investigation into the issue. Not surprisingly this warning led to several retailers rapidly re-examining their practices on payments relating to disputed deliveries and proactively reporting to me what they were doing. With this clear indication that retailers were still responding to the collaborative approach, I decided not to proceed to an investigation at this stage. This option remains open if progress does not continue and I am keeping this issue under close scrutiny: it is subject to regular review under which the retailers report to me what advances they are making and I continue to get feedback from suppliers on retailers' progress.

### Top 5 Issues

When working collaboratively with the retailers I have continued to put the focus on the Top 5 issues identified by my survey and through engagement with suppliers. I have recently refined the methodology to put issues into three categories: current, monitored and previous. This allows me to introduce an annual review of past issues, under the monitored category, after which the issue moves back into current if it remains of concern, or into previous if it does not.

For example, after working on forecasting with the Code Compliance Officers (CCOs) in 2015/16 to draw up a best practice statement I put the issue in the monitored category. However, it has been clear from suppliers that forecasting remains a concern; indeed I have recently been told it is the major concern, so I intend to review whether I need to move it back to one of my current issues.

Inaccuracies in forecasting still account for major supply chain costs and have a knock-on effect on non-Code but equally important issues such as food waste and import costs for suppliers. Suppliers want retailers to do more to improve forecasting as well as take a share of the risk of things not going to plan. Suppliers are also reporting that poor forecasting is leading to retailers overbuying for promotions at discounted rates then selling the groceries later at full price. The Code is designed to ensure among other things that retailers prepare forecasts in good faith and with due care and following consultation with suppliers. I have this issue clearly on my radar and have recently held workshops with suppliers to understand the situation properly from their experience. I am currently analysing the workshop results before planning my next steps.

One issue – lump sum payments – has been on my agenda from the outset and has proved hard to crack. Lump sum payments may be made in many circumstances. I needed to improve the focus on the particular situations which were of most concern to suppliers. Therefore last year I identified three of these to focus on: payments for better positioning, margin maintenance and pay to stay:

- Payments for better positioning or increased shelf space became clearer to me as a result of my investigation into Tesco plc. During that investigation I did not find that the retailer had breached the Code in this area but came across practices that concerned me. I committed to consulting on this issue; the consultation was launched on 27 June 2016 and was open until 19 September 2016. I published my response on 7 February 2017. The consultation showed that practices which had concerned me in the past had now ceased, but I have made very clear what I consider to be compliant behaviour, so that practices cannot start again. The conclusions from the consultation are reproduced in this report.
- Margin maintenance no longer appears to be as prevalent an issue as it was, as many retailers are reducing the numerous ways of obtaining money from suppliers, of which this was one. However I am keeping this under review until I receive the results of the 2017 survey.
- Pay to stay is a complicated issue. Despite retailers reporting that they do not require payments of this type, some suppliers feel they make payments to retailers in a number of areas all of which they view as part of the costs of keeping business with a retailer. I also covered this subject in the recent workshops with suppliers to understand it better.

## Annual Survey

The annual survey remains a significant exercise in the GCA's year. It has a dual purpose, providing me with up-to-date intelligence on the main Code issues facing suppliers as well as giving me a powerful tool with which to encourage Code compliance. I remain hugely reliant on suppliers to participate so that the results are as representative as possible. A high response rate means that I can drill down to retailer-level detail by issue so I can work really effectively with them to improve their Code compliance.

Last year's survey results prompted retailers who performed badly overall to recognise that they had to make a step change to move up the league table. At the same time the other retailers decided to focus on improving the specific areas where they scored relatively poorly. I have had several meetings with retailers' CEOs and Non-Executive Directors and am pleased that some of them have commissioned significant pieces of work to understand the culture and Code-related behaviour within buying departments. Many retailers have increased their internal auditing processes and some also have conducted their own surveys to try to identify and resolve issues so they can reduce the risk of arbitrations or an investigation as well as improving their ranking in the next GCA survey.

## Overseas Awareness

Retailers send a link to the survey to all their suppliers so I receive responses from people who have no or low awareness of the Code or the GCA. I was particularly concerned in the last survey by the low levels of awareness of the Code by overseas suppliers (67% unaware compared to 12% of UK suppliers). I have asked the retailers to do more to make their overseas suppliers aware of the Code. Progress in this area is slow but to help raise awareness I have recently written a letter and explanation of the role of the GCA for retailers to send to their overseas suppliers; I have presented at a supplier event in Ireland and have one scheduled in Spain. The 2017 survey has asked suppliers to identify which country they are from, so future awareness-raising efforts can be better targeted.

## Training

The need for suppliers to get themselves trained has been a key theme for me and I make the case for training strongly whenever I speak to a supplier audience. This year I launched a fresh initiative to boost this campaign.

The 2016 survey provided more information about supplier training. It established that it was lack of awareness of training that was holding suppliers back, rather than budget or time constraints. I also collected data to encourage training organisations to start offering training in the Code, such as the type of training that suppliers would like. As a result of the survey findings I now publish on my website a list of all the trainers that I am aware of, although I emphasise that I am not endorsing any training organisations.

I am beginning to see the impact of this campaign. One trainer recently celebrated training its 1000th supplier and I am experiencing at first hand what better knowledge among suppliers can achieve. When I speak at events I also hold private sessions for suppliers to see me, and among those who take up that opportunity there is a clear majority who have been trained and are telling me about practices that I need to know about.

## GCA Office

The office was fully staffed up to the end of December when the Compliance Manager, who was coming towards the end of her two-year secondment, returned to her home department. The remaining team did an excellent job in covering the vacancy, supplemented with additional external resource where needed. We continue to work to identify a suitable long-term replacement. In past years we have had a recruitment blocked by a department not wanting to lose people against headcount but I am delighted to report that we now have an undertaking from BEIS to help resolve such headcount issues should they occur in future.

I remain concerned at the difficulty in recruiting from the public sector at a time when the civil service has additional challenges with Brexit on top of the usual workload. Two-year secondments (and an assumed permitted maximum of two in succession) are not good for continuity and staff changes are a significant distraction in a small team.

## Statutory Review and Call for Evidence

As with other legislation setting up arm's-length bodies, the Act which established my role requires a statutory review of the GCA after three years. The Department for Business, Energy and Industrial Strategy (BEIS) conducted this review covering the period up to 31 March 2016 alongside a call for evidence (jointly with the Department for Environment, Food and Rural Affairs) on whether the remit of the GCA should be extended. BEIS has said that the result of the statutory review will be announced in the Spring. However, any remit extension could require amendment of the GCA Act, of the Order or of the Code, or an investigation by the Competition and Markets Authority, so considering the evidence and deciding on next steps will clearly take longer.

My initial appointment was for four years which ends in June 2017. The Act allows reappointment for one or two further terms of up to three years. I have committed to continue for another year while the remit is under consideration. This allows both me and BEIS to consider whether I am the right person for the role if the call for evidence leads to significant change to the GCA.

## Challenges and Future Look

To maintain the challenge on retailers to improve their behaviours I need suppliers to keep coming forward with information. They can do so anonymously, but even if they name themselves I have to protect their identity from retailers unless they agree to waive their anonymity. My view is that trade associations have an important role to play in this area. They could do more to assist the flow of information to my office. I am pleased that some trade associations are now running training for their members and hope that others will follow their lead.

Over the year my team has also reviewed the way we record the evidence we hear as this is important for identifying the main issues I need to raise with retailers. Retailers are keen to know what suppliers really think of what it is like to do business with them. Where I am able to I will share the information I have with retailers without identifying suppliers. Many CCOs also expressly make clear they will take issues from suppliers in complete confidence. They are not part of the buying function of any retailer and are each personally committed to ensuring Code compliance within their respective businesses. I urge suppliers to talk to my office or directly to CCOs.



Looking ahead, my priorities for 2017-2018 will be:

- Obtaining and reacting to supplier input to the issues of pay to stay and forecasting;
- Ensuring that the pace of improvement on delay in payments (with particular reference to drop and drive practices) is kept up;
- Continuing to act on supplier issues that emerge from the 2017 survey or that I am alerted to during the year;
- Urging retailers to continue to critically review the culture of Code compliance within their businesses; and
- Reiterating the importance of suppliers getting trained in the Code and asking Trade associations to do more to support this.

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

12 June 2017

**1**  
**ADJUDICATOR**

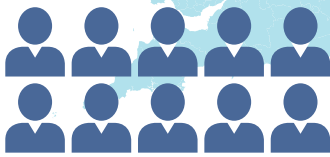


**1**  
**NEW CASE STUDY**



**4**  
**NEWSLETTERS PUBLISHED**

**10**  
**RETAILERS**

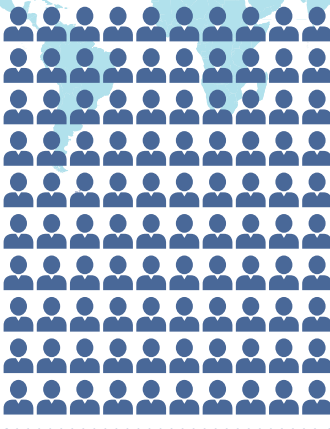


**3<sup>rd</sup>**  
**ANNUAL CONFERENCE**



**2**  
**ARBITRATIONS RESOLVED**

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



**Top issues**

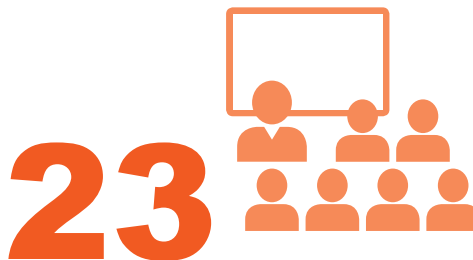
**AND A**  
**SECTOR WORTH**  
**£179.1bn**



**Engagement**



**65**  
**RETAILER MEETINGS**



**23**  
**SUPPLIER AND TRADE ASSOCIATION EVENTS**



**35**  
**SUPPLIER ONE-TO-ONES**

# OVERVIEW

## 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 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. This 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 to regulate the relationship between the 10 groceries retailers with UK annual groceries turnover of more than £1 billion (the large retailers) and their direct suppliers. The government gave the 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 a supplier's request the GCA must arbitrate in disputes 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, reporting on 26 January 2016. If a breach of the Code is found, the GCA can make recommendations, require large retailers to publish details of any breach and in the most serious cases impose a fine. Fining powers – to a maximum of 1% of the relevant retailer's UK turnover – were brought into effect on 6 April 2015.

Under the Code the large retailers are obliged to deal fairly and lawfully with suppliers across a range of supply chain practices. These include: making payments on time; no variations to supply agreements without notice; compensation payments for forecasting errors; no charges for shrinkage or wastage; restrictions on listing fees, marketing costs and 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 remit.

## The way the GCA works

The GCA encourages suppliers 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 the evidence base, the greater the justification for action.

As a small regulator the GCA must effectively prioritise its activities. The statutory guidance on investigation and enforcement functions (the 'statutory guidance') sets out four prioritisation principles to guide decisions about whether to launch an investigation and the GCA will apply 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 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 of the Code.
<b>Resources</b>	A decision to take action will be based on whether the GCA is satisfied it is proportionate.

The GCA must carry out its statutory purposes set out in the Groceries Code Adjudicator Act 2013. The Adjudicator has developed an approach that fits the resources available and the outcome the GCA was set up to deliver. It is a modern regulatory approach, with collaboration and business relations at its core and is delivered through a three-stage process. When Code related issues are raised, the GCA follows the approach set out below.

<b>Stage 1</b>	<b>The GCA will make retailers aware of issues reported by suppliers.</b>
	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' 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.
<b>Stage 2</b>	<b>The GCA will request that the CCOs investigate the issue and report back to the GCA</b>
	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 or retailers accept a breach of the Code has taken place the GCA may publish a case study on the GCA website.
<b>Stage 3</b>	<b>The GCA may take formal action if the practice continues.</b>
	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 with any necessary action 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 when other means of effecting change have failed and it delivers results more quickly. Since the GCA's establishment and with the support of each CCO it has proved to be effective.

The GCA's responsibilities do not extend to acting as a complaints 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 would compromise the GCA's objectivity.

However, 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 to issues rapidly and relies on suppliers and others bringing 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).**

# Performance analysis

The GCA's key performance indicators are set out in the Groceries Code Adjudicator Act 2013 as statutory reporting requirements. There are four statutory reporting requirements on which performance is measured and the performance against these objectives is set out in the table below.

## Disputes referred to arbitration under the Groceries Supply Order

No disputes were referred to arbitration in the reporting period 2016/17. Two arbitrations which were underway from the previous reporting year were resolved.

## Investigations carried out by the GCA

There were no new investigations in the reporting period 2016/17. The GCA was monitoring the implementation by Tesco plc of the recommendations made to it in the report of the investigation dated 26 January 2016. This monitoring was concluded in this reporting period and has been transferred to business as usual engagement.

## Cases in which the GCA has used enforcement measures

No new enforcement measures were used.

## Recommendations that the GCA has made to the Competition and Markets Authority for changes to the Code

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

## Strategic Objectives

In addition to the statutory reporting requirements, the GCA also monitors its performance against four strategic objectives:

**Objective 1:** Promoting the work of the GCA

**Objective 2:** Providing advice and guidance

**Objective 3:** Acting on suppliers' issues and information

**Objective 4:** Improving the culture of Code compliance

The GCA considers that these objectives remain fit for purpose.

### 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. It is also important to dispel misinformation and misunderstanding about the GCA's remit and responsibilities.

The GCA office has continued to promote its work as previously:

- Tailored speaking engagements to specific audiences;
- Meeting stakeholders on a regular basis;
- Disseminating information: engaging proactively with the media, publishing a regular newsletter and providing information on the GCA website; and
- Encouraging suppliers to be well trained in the Code.

### Tailored speaking engagements

The Adjudicator spoke at a number of events during 2016/17, including four organised jointly with Government or Devolved Governments.

After nearly four years of operation the GCA has a good idea about the kind of events that attract its target audiences. For example, events with Ministers speaking attract larger audiences, with good attendance from senior representatives of suppliers. They also secure good press and TV coverage. The Adjudicator has participated in a number of such events during the year.

At each speaking engagement the Adjudicator has allocated time for private pre-booked meetings with suppliers. These meetings are invaluable for hearing directly from suppliers about current practices. Suppliers are often happy to talk face to face, but remain reluctant to contact the office to raise the same issue.

The GCA has also worked in partnership with third parties, such as trade associations, to develop events that attract supplier audiences.

### Meeting stakeholders on a regular basis

The GCA has had contact with each of the Devolved Governments and Westminster during the year, keeping the administrations informed about GCA activities and developments. Meetings with trade associations also continue, including attending functions and organising a workshop with the trade association stakeholder group to encourage them and their members to respond to the consultation on better positioning and to gather views on the issue.

More than 200 people attended the GCA Conference held in June 2016 at the Church House Conference Centre, Westminster. As well as receiving the results of the third annual survey, participants heard from the then Minister of State, Anna Soubry MP. The afternoon session was set aside for suppliers only to discuss the consultation on better positioning. Over 80 suppliers stayed for this session and were involved in a workshop to help them to understand the consultation and encourage them to report relevant practices. This provided extremely useful input to the consultation, again demonstrating the value of face-to-face contact, as many of the suppliers who participated did not submit a written response to the consultation. The GCA will repeat this workshop approach at the 2017 Conference, taking the opportunity to hear at first hand from suppliers on key issues.

### Disseminating information

Journalists continue to be interested in the work of the GCA, particularly in the annual survey, the results of which are announced at the Conference. The GCA holds a media briefing immediately before the Conference to give headline information to journalists and answer questions. The GCA

has maintained a good relationship with key publications which have promoted the GCA survey and news stories. As well as agreeing to news interviews, the Adjudicator has also accepted invitations from broadcast programmes, such as Any Questions, You and Yours, Good Morning Scotland, RTE News, BBC Breakfast and Wake up to Money. These can provide excellent opportunities to promote the work of the GCA to a wider audience which will include suppliers.

The GCA website is regularly updated and has been improved this year to give easier access to useful documents and information about training providers. Four editions of the newsletter were published and sent to about 600 registered recipients.

### **Promoting the need for suppliers to be trained in the Code**

The 2016 survey collected information useful to organisations considering training suppliers in the Code, in particular the format that would be most attractive to suppliers. The contact details of all trainers of which the GCA is aware have been published on the website, although the GCA does not endorse their training programmes.

Promoting the need for supplier training is a key message at every speaking engagement and the GCA is delighted that one training organisation has now trained over 1000 people and that others are asking to be included on the list of trainers.

## **Objective 2 Providing advice and guidance**

The GCA has continued to publish advice and guidance responding to concerns raised by suppliers and retailers and to clarify the Code. This has included:

- Reissuing the GCA arbitration policy to reinstate an earlier paragraph which made clear that the GCA can only determine breaches of the Code taking place after June 2013;
- Supplementary De-listing guidance for the fresh produce sector, recognising that additional clarification in this area would be of benefit; and
- Response to the consultation on payments for better positioning.

Following a decision to update the way the Top 5 issues are categorised the GCA published an infographic and explanation of the new current, monitored and previous categories. Those in the 'previous' category are no longer being worked on, those in the 'monitored' category will be reviewed after a year and moved to 'previous' if they are no longer of concern, or back to the 'current' category if progress has not been satisfactory.

## **Objective 3 Acting on supplier issues**

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

- Raising issues with CCOs;
- Carrying out a consultation;
- Conducting arbitrations; and
- Commissioning a GCA survey.



## Raising issues with CCOs

The quarterly CCO meetings have been the main method of monitoring progress and raising new issues. The Adjudicator attends all these meetings along with key members of the team. The GCA has increased the level of preparation for these meetings and retailers are required not only to submit their usual quarterly report, but often an additional report on a monitored issue or details on a practice, such as charging for charity events. This information-gathering and preparation has increased the effectiveness of the meetings and real progress has been made at each one.

On occasions where timeliness is an issue the GCA raises issues between meetings directly with CCOs. This allows retailers to look into practices immediately and put them right promptly. In this way, the GCA can take action based on an early warning of a few suppliers mentioning an issue. Clearly this way of working can deliver immediate results for suppliers and extra vigilance within the retailer, nipping problems in the bud.

## Carrying out a consultation

During the investigation into Tesco plc the GCA identified a number of practices which could amount to indirect requirements for payment to secure better positioning of goods or increased shelf space within a store. Although the GCA did not find these amounted to a breach of the Code, the Adjudicator promised to carry out a consultation into suppliers' experience of these practices.

Responses received indicate that there was a change in the approach of the regulated retailers between the GCA's appointment in 2013 and the time of the consultation. Practices had in that time been brought into line with the requirements of paragraph 12 of the Code. Notwithstanding this improvement, the GCA set out in its response a number of conclusions to make clear what the Adjudicator's approach would be if the practices returned. These are set out in the Significant Activities section.

Following publication of the response the GCA announced that the issue of payments for better positioning would be moved to the monitored category to allow the retailers to ensure they continued to comply with the Code in light of the GCA's interpretation of paragraph 12 of the Code.

## Conducting arbitrations

No disputes were referred to arbitration during the year. Two arbitrations which were ongoing at the start of the reporting year had been resolved by year end.

## Commissioning a GCA survey

The GCA relies on the annual survey to monitor progress on issues and become aware of any new ones. The high response rate is invaluable and the 2016 survey was the first to break down the issues by retailer. This allowed CCOs to see where they had most work to do. A Red-Amber-Green rating was given to each retailer against specific issues. This prompted valuable discussion between the GCA and CCOs keen to understand what they could do to improve their business practices. This was particularly useful for retailers who were doing well in the overall league table yet still wanted to be able to identify where they could improve further.

The league table of overall compliance and improvement year on year has provoked competition between the retailers, all of whom want to be in the top half of the table and know they have to keep improving to maintain their position. Aldi, who has been the top retailer in terms of Code compliance in every survey to date, has used this fact in their consumer television advertising.

The 2017 survey is similar to 2016 – although with fewer questions on training and more detail on the issue of lump sum payments which has now been targeted at practices amounting to a requirement to pay to stay, payments for better positioning and margin maintenance. There is also a question that looks to identify the countries in which overseas suppliers that respond to the survey are based to enable the GCA better to target future efforts to address non-UK suppliers.

## **Objective 4      Improving the culture of Code compliance**

The GCA has continued to meet the chairs of retailer audit committees, or equivalent. There was one meeting with four retailer representatives present and all the rest were one-to-ones. Both formats worked, with the larger meeting creating a good discussion and the one-to-ones allowing the GCA to be more open about issues in each retailer.

Working with the audit chairs and meeting the CEOs of retailers provides further points of contact for the GCA in each retailer. It also ensures that the businesses are supporting their CCOs. In a few cases, meetings at a senior level have prompted significant action, such as commissioning third party reports into behaviour in the retailer so they find out for themselves what the issues are and can take strong internal action.

Nearly all the retailers have made satisfactory progress in improving their culture of compliance during the year. The GCA has ensured that senior management are aware in each situation where more needs to be done.

# GCA Annual Survey

In 2016 the GCA maintained its practice of commissioning YouGov to carry out a survey of the groceries sector. This third GCA survey was designed to build on understanding of the current concerns in the sector, measure progress of Code compliance and test some new issues. These issues included how well retailer behaviour had improved in the year and a detailed breakdown of how each retailer performed against specific issues.

YouGov presented the results to the GCA conference in June 2016.

## Participants

For the second year the regulated retailers supported the GCA survey by sending links to their direct suppliers, including those based overseas. Participation remained high with a total of 1044 responses received, including 921 direct suppliers, 105 indirect suppliers and 44 trade associations.

The falling number of suppliers stating that they had experienced issues that could be breaches of the Code identified in the 2015 survey continued in 2016. The proportion reporting issues fell to six out of ten – compared to seven out of ten in 2015 and eight out of ten in 2014. The most commonly reported issues were incorrect deductions from invoices (delay in payments), excessive retailer charges for artwork/design, no compensation for inaccurate forecasting, delisting without reasonable notice and unjustified payments for consumer complaints (see Table 1).

Table 1

## What issues have suppliers experienced: Issues in the language of suppliers

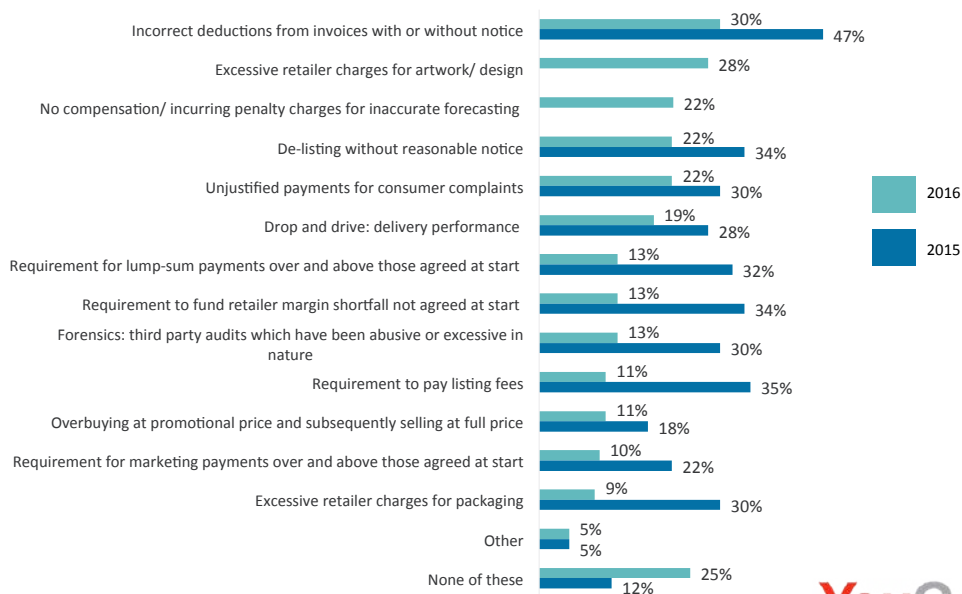
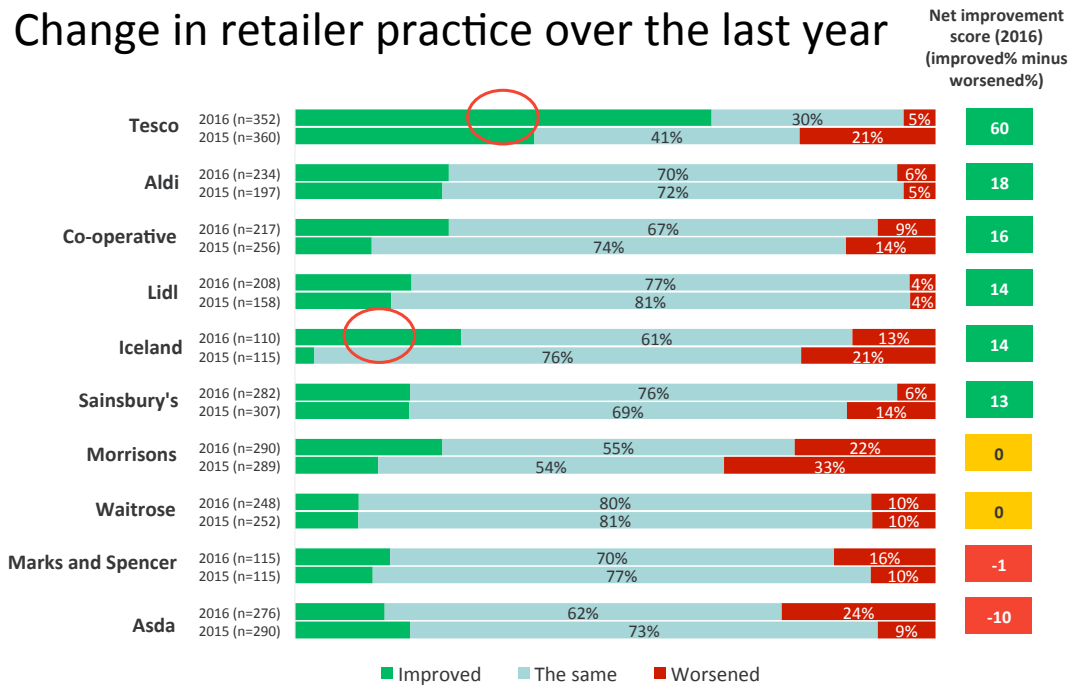


Table 2

## Change in retailer practice over the last year



Retailers ranked by net improvement minus worsened score



Improvements in retailer behaviour were also reflected in the survey results, with Tesco emerging as the most improved over the year (Table 2). As the Adjudicator describes in the foreword to this report, this turnaround has prompted some of the retailers to carry out their own enquiries and surveys to explore how they can improve their performance in future years.

### Using data to drive better behaviour

As well as measuring overall performance the YouGov survey focused on specific Code-related areas for each retailer providing information. Table 3 is an extract from the data, in which the retailers are anonymised (and are presented in no particular order). The survey used a traffic light system to show where retailers were performing better than the average (green) and worse than the average (red). It offered the GCA a valuable tool to encourage retailers to improve performance in particular areas even if their overall rating was good.

As a result, a number of retailers discussed with the GCA ways to improve their performance.

Table 3

## Issues categorised by the Code: Which issues have direct suppliers experienced? – by retailer

	Retailer 1	Retailer 2	Retailer 3	Retailer 4	Retailer 5	Retailer 6	Retailer 7	Retailer 8	Retailer 9	Retailer 10
De-listing without giving reasonable notice	7%	4%	6%	2%	9%	3%	2%	2%	3%	3%
Incorrect deductions from invoices with or without notice	14%	8%	13%	2%	9%	5%	3%	5%	6%	5%
No compensation for/incurring penalty charges as a result of inaccurate forecasting by the retailer	11%	3%	10%	3%	8%	6%	4%	3%	3%	5%
Excessive retailer charges for artwork/design	10%	13%	9%	15%	11%	7%	3%	5%	7%	5%
Unjustified payments for consumer complaints	10%	10%	8%	0%	5%	9%	3%	0%	5%	6%
Drop and drive: delivery performance	8%	8%	9%	2%	6%	5%	1%	5%	5%	3%



### Focus on training

The Adjudicator has prioritised promoting supplier training and the survey revealed a rise in the numbers of direct suppliers undertaking training (up from 29% in 2015 to 35%). However, the GCA used the 2016 survey to delve deeper into the detail behind this data to explore what holds suppliers back from training and to get information to support organisations and individuals providing Code training. Key findings included that a net 56% either did not know training was available or did not know how to access it. Few cited lack of time (19%) or cost (10%).

In response the GCA decided to publish a directory of training providers on the GCA website. Providers were invited to submit descriptions of their courses and contact details but the GCA made clear that publication did not imply endorsement of the courses. Survey data was also helpful to trainers, revealing that 63% of direct suppliers would find online training useful and there was a preference for training on how to use the Code (71%) and practical examples/case studies (71%) above legal training on what the Code entails (50%).

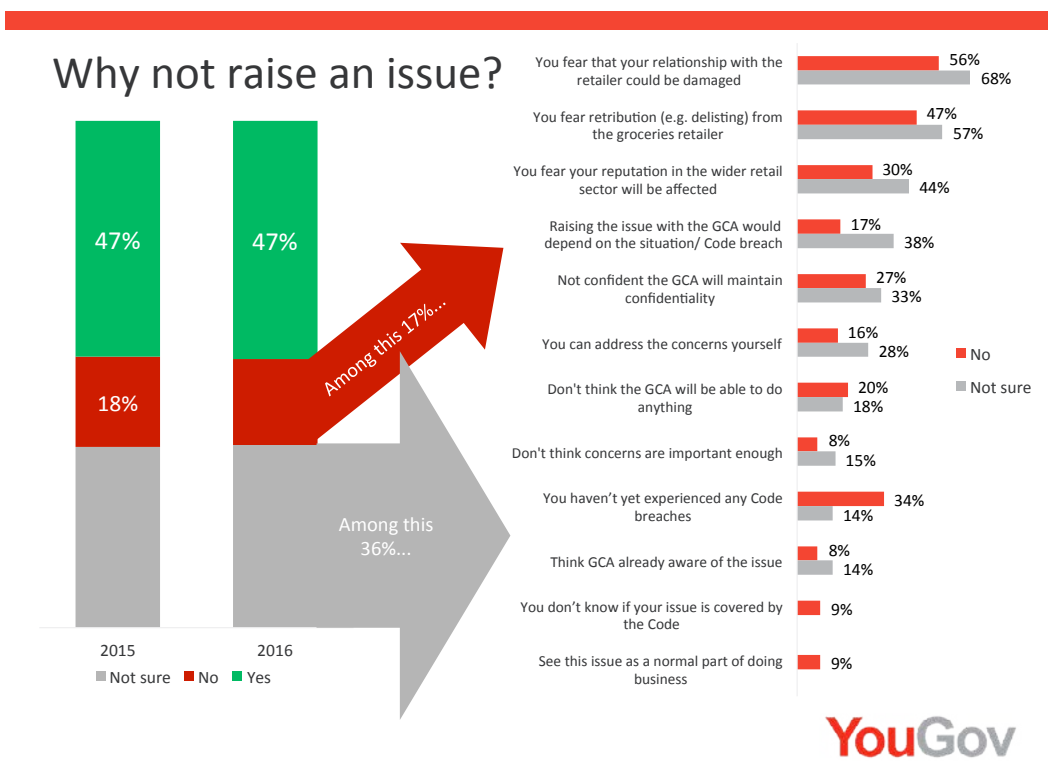
### Raising an issue with the GCA

Good understanding of the Code and the GCA’s role and responsibilities both rose by 7% in the 2016 survey although the overall figure was dented by the smaller proportion of overseas suppliers aware of the Code.

Disappointingly, the proportion of suppliers who said they would not raise an issue with the GCA or were unsure whether they would do so remained static at 53%. Fear that this could have an impact on the relationship with the retailer or they would suffer retribution remained the top factors behind this response. (See Table 4)

The Adjudicator has continued to work hard to persuade suppliers that they can bring issues to her office confident that their identities will be protected. For all public engagements the Adjudicator offers suppliers opportunities to have one-to-one meetings with her, during which she reinforces her duty to maintain supplier confidentiality.

Table 4



# Significant activities

The following section covers three GCA publications concluding significant activities in the year.

## GCA investigation into Tesco plc – progress towards following the recommendations

Requirements of Tesco to enable the GCA to monitor its compliance with recommendations (paragraph 61.1 of the investigation report)	GCA view as of 7 September 2016
<p>The GCA required Tesco to provide a detailed implementation plan within four weeks of publication of the investigation report setting out how it would comply with recommendations.</p> <p>The GCA required a response from Tesco to the recommendations on a quarterly basis, specifically to include:</p> <ul style="list-style-type: none"> <li>■ An analysis of reasons for invoice errors and evidence that systems were being improved to reduce errors caused by Tesco;</li> <li>■ Value of invoices in dispute;</li> <li>■ Number of invoices in dispute; and</li> <li>■ Average length of time of invoices in dispute, by value and number.</li> </ul> <p>The GCA also required sample documentation from Tesco to illustrate how it was providing suppliers with greater transparency and clarity.</p>	<p>The GCA considers that Tesco has met this requirement.</p> <p>In order to continue monitoring compliance with recommendations, the GCA requires information to continue to be provided.</p>
Recommendations made to Tesco plc	
<p><b>Recommendation 1:</b> Money owed to suppliers for goods supplied must be paid in accordance with the terms for payment agreed between Tesco and the supplier.</p>	<p>While noting the progress still to be made, in particular on the new terms and conditions being agreed with suppliers, the GCA considers that Tesco has an appropriate approach to follow this recommendation.</p> <p>The GCA will monitor compliance through the provision of information by Tesco, including on the rate of acceptance of the new terms and conditions.</p>

<p><b>Recommendation 2:</b> Tesco must not make unilateral deductions.</p>	<p>The GCA considers that Tesco has put in place appropriate systems to follow this recommendation.</p> <p>The GCA will monitor compliance through the GCA annual survey and supplier feedback. Tesco's Annual Compliance Report, required by the Groceries (Supply Chain Practices) Market Investigation Order 2009, should highlight where complaints about unilateral deductions have been escalated and the GCA expects to be kept informed of any issues that emerge.</p>
<p><b>Recommendation 3:</b> Data input errors identified by suppliers must be resolved promptly.</p>	<p>The GCA considers that Tesco has put in place an appropriate system to follow this recommendation.</p> <p>The GCA will continue to require Tesco to provide information to enable the GCA to monitor progress against the recommendation.</p>
<p><b>Recommendation 4:</b> Tesco must provide transparency and clarity in dealing with suppliers.</p>	<p>The GCA is content that Tesco has taken steps to provide transparency and clarity in its dealings with suppliers.</p> <p>The GCA will monitor this recommendation through the GCA annual survey, supplier feedback and from Tesco's own survey of suppliers.</p>
<p><b>Recommendation 5:</b> Tesco finance teams and buyers must be trained in the findings from the investigation.</p>	<p>The GCA considers that Tesco has met this requirement.</p>



## GCA conclusions on the consultation on paragraph 12 of the Code (No payments for better positioning of goods unless in relation to Promotions)

### Executive Summary

The GCA has concluded that while some limited information or anecdotal evidence was provided of practices which might be in breach of the Code, there was not enough information provided to support the need for interpretative guidance or other regulatory intervention. It appears that there has been a change in the approach taken by the regulated retailers in the period since the appointment of the GCA in 2013, to bring practices into line with the requirements of paragraph 12 of the Code. This is consistent with the general improvement in compliance with the Code reported in the GCA annual grocery sector survey and reinforces the benefits of the collaborative regulatory approach pioneered by the GCA. By highlighting potential concerns about this issue in the report of the investigation into Tesco plc, it appears that the GCA has successfully incentivised all regulated retailers to consider further their practices in this area and to ensure they are Code-compliant.

This consultation response nonetheless summarises current market practice and draws conclusions. Accordingly, it serves a number of purposes:

- It indicates at a high level what practices exist in relation to:
  - indirect requirements by retailers either when a retailer requests or a supplier offers money for better positioning or as part of a wider commercial negotiation;
  - payments for category captancy or category management; and
  - payments to participate in range reviews.
- It gives a strong indication as to what is and is not likely to be Code-compliant behaviour, although the conclusions are not exhaustive; and
- It builds on and effectively brings up to date the market investigations undertaken by the Competition Commission in 2000 and 2008, taking into account current views from the groceries sector on the proper scope of paragraph 12 of the Code.

### **Indirect requirements by retailers either when a retailer requests or a supplier offers money for better positioning or as part of a wider commercial negotiation.**

The Code does not permit direct or indirect requirements from retailers to suppliers for payments for better positioning or increased shelf space unless in relation to a promotion.

It is the GCA's view that any retailer demand for payment to be made other than in accordance with the Supply Agreement that results in a supplier negotiating better positioning in return is not part of normal commercial negotiations and might amount to an indirect requirement contrary to paragraph 12 of the Code.

Discussions about 'investment' and offers of payments made by suppliers to retailers that might come together with a discussion about better positioning or increased space should demonstrably be freely held as part of normal commercial negotiations, if they are to comply with paragraph 12 of the Code.

### **Payments for category captaincy and category management**

The GCA considers that any direct or indirect requirement from retailers to suppliers to make any payment to participate in category captaincy or category management and which results in the supplier receiving better positioning or increased space, is likely to be a breach of paragraph 12 of the Code.

The GCA has noted the responses from suppliers who provide category advice that they do this to help grow the category as a whole and to improve the overall offer to consumers. The GCA supports this as the principal aim of category advice provided by suppliers.

The GCA has noted that some retailers have clear policies on how they manage supplier involvement in category advice, including how they make sure that suppliers involved in this activity act objectively. Not all retailers mentioned whether they had such policies. It might be prudent for regulated retailers who engage with suppliers on category captaincy or category management to have a policy setting out how they manage supplier involvement, including consideration of whether other suppliers are able to contribute to or challenge the category advice received from the appointed category captain or category manager.

### **Payments to participate in range reviews**

The GCA considers that any direct or indirect requirement from retailers to suppliers to make any payment to participate in a range review and which results in the supplier receiving better positioning or increased space, is likely to be a breach of paragraph 12 of the Code.

While several retailers indicated that they had policies setting out how they managed category advice from suppliers, none expressly indicated that it had any policy in relation to supplier participation in range reviews. This might be something for retailers to consider in future.

## Code clarification case study

### Theme of case study

The GCA determination of Wm Morrison Supermarkets plc requests for retrospective and prospective lump sum payments from suppliers in June 2015.

### Summary of the issue

The GCA received evidence of Wm Morrison Supermarkets plc requesting a lump sum payment from a supplier in July 2014. The lump sum did not form part of the Supply Agreement, but the supplier felt it had no option but to make the payment to keep the business. Wm Morrison Supermarkets plc was informed, conducted an internal investigation into the issue and did not find any evidence of the payment having been requested or made. It was believed the payment requested was prospective, not retrospective. The GCA did not progress the issue due to the limited evidence available and the risk of compromising supplier confidentiality.

In June and early July 2015 the GCA received evidence from a number of sources which indicated that Wm Morrison Supermarkets plc had requested lump sums to be paid for the first half year (which ended 1 August) within 4 weeks, in most cases, sometimes less. It was not clear whether these were prospective or retrospective, given the short time remaining to the half year end. No negotiation was offered, there were no references made to Supply Agreements nor to any variation being made to the relevant Supply Agreement, with due notice being given.

The GCA wrote to Wm Morrison Supermarkets plc Chief Executive Officer alerting him to the issue. As a result, Wm Morrison Supermarkets plc immediately launched an extensive internal investigation, including reviewing 66,000 emails, interviewing employees and taking disciplinary action where appropriate. Further training for staff on negotiation techniques permitted by the Code was immediately put in place, with particular focus on variation to existing Supply Agreements.

The request for lump sum payments was reported in the press including a national newspaper. Over the following few weeks, the GCA received anecdotal evidence from a number of suppliers, and from a trade association, that there had been requests made for lump sum payments for the first half year from Wm Morrison Supermarkets plc, including clear indications that suppliers would suffer detriment, perhaps de-listing, if payments were not made. Still it was not clear whether these were prospective or retrospective. These had reportedly “gone away when it hit the press”.

The GCA then received evidence over the summer at supplier interviews conducted during the investigation into Tesco plc, that Wm Morrison Supermarkets plc had called a meeting of its largest suppliers in June 2015, with senior personnel present, and requested lump sum payments, not only for the first half year but also for the second half. Figures of around £2m for each half year were mentioned by a number of suppliers as having been requested following the conference. These suppliers said that requests for money in the first half year had not been pursued by Wm Morrison Supermarkets plc but in some cases suppliers had turned the request for money in the second half into a “more for more” negotiation and were satisfied with the outcome.

In September 2015 the GCA visited Wm Morrison Supermarkets plc and the internal investigation was discussed. The GCA requested and received a written report of the internal investigation which found that there had been requests for lump sum payments from suppliers, only some of which were related to the terms recorded in the relevant Supply Agreements. Wm Morrison Supermarkets plc accepted that 19 of the requests made had not been related to the relevant Supply Agreements and were therefore in breach of the Code. These may also have been retrospective requests, i.e. relating to an activity that had passed. A further 25 requests were clearly prospective and had resulted in a “more for more” agreement.

In March 2016, following the end of the investigation into Tesco plc, the GCA requested a full report from Wm Morrison Supermarkets plc. This presented the retailer with a table of questions to be answered and set a date to discuss the report. The report was received and the meeting held in May.

### Outcome and/or GCA decision

Lump sum requests have been one of the GCA’s Top 5 issues for some time, and there had been engagement between the GCA and Wm Morrison Supermarkets plc specifically on this issue since July 2014.

The GCA concluded that Wm Morrison Supermarkets plc had breached paragraph 3 of the Code, Variation of Supply Agreements and terms of supply, by indirectly requiring suppliers to pay lump sums that were not provided for in the relevant Supply Agreement, at least some of which requirements were retrospective.

The GCA concluded further that if Wm Morrison Supermarkets plc was making unilateral variations to the relevant Supply Agreement, that it had not given reasonable notice of the variation in each case.

It was clear to the GCA that the requests for payments from suppliers were made with an implication of detriment if any supplier declined to contribute. The requests were accordingly to be understood to be indirect requirements contrary to paragraph 3 of the Code, read with paragraph 2 of the Code, which establishes the overarching principle of fair dealing in interpreting the specific practices covered by the Code.

The GCA acknowledged that Wm Morrison Supermarkets plc had responded immediately when alerted to the issue, had conducted an extensive internal investigation, and this had led to the requests not being followed up. Requests for money for the second half year then became genuine negotiations between retailer and supplier. Wm Morrison Supermarkets plc told the GCA that it had contacted suppliers who had paid money for no clear benefit and offered it back, which in some cases was accepted. Those suppliers suffered no detriment and said they were happy with the outcome.

The GCA has been assured that additional training, more robust internal processes and increased audits are now in place and that Wm Morrison Supermarkets plc checked to see that no similar activity occurred at its year end in February 2016. This was a relatively small-scale incident confined to a short trading period, which was rapidly investigated and corrected. No supplier complained to Wm Morrison Supermarkets plc about the incident and all suppliers have continuing trading arrangements with the retailer.

The GCA advised Wm Morrison Supermarkets plc that its swift action and subsequent processes put in place, such that either (i) there was no supplier detriment; or (ii) where there was, that it had been put right, meant that the issue would be treated as a case study rather than meriting investigation. There was no need for the GCA to conduct an investigation to establish the facts of the incident or its effect on suppliers; nor to better understand the situation in order to require suitable remedial measures to be put in place. All of that could be done, and indeed had already been achieved, on the facts as now understood and accepted by Wm Morrison Supermarkets plc.

Key points of clarification are accordingly:

1. Requests for retrospective lump sum payments not explicitly agreed in the Supply Agreement are in breach of the Code. Requests for lump sum payments relating to future business not explicitly agreed in the Supply Agreement are potentially an attempt by the retailer to vary the Supply Agreement. While retailers retain the right to vary a Supply Agreement unilaterally, there must be provision for this in the Supply Agreement and reasonable notice must be given to the supplier.
2. Initiatives which are in breach of the Code can be halted quickly and rectified promptly if referred to the GCA by suppliers and others.
3. Swift action by the retailer in response to regulatory interest from the GCA can in some circumstances avert an investigation, because to investigate may become disproportionate in the circumstances.

# Issues and priorities

## 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 practices. These issues form part of the growing GCA evidence base which will inform future action. All the issues that have been raised with the GCA since its establishment in June 2013 are set out below.

The GCA maintains a full set of issues raised so that retailers can remain aware of the issues faced by suppliers and for suppliers to be aware of these issues in the event that they too face similar challenges. It also allows suppliers to provide the GCA with new information on issues which have not previously been raised but which are causing problems.

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 statistical information on issues raised.

Part of the Code	Issues raised
<p><b>Variation</b> (3) Of Supply Agreements and terms of supply (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>■ Request for lump sums for previous periods, not previously agreed</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>■ Request to agree to a retrospective overrider for new supply</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 unilateral deductions and 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 <i>(unless set out in the Supply Agreement)</i></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>■ Disproportionate charges for late delivery of small quantities delivered through a consolidator</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> <li>■ Not providing suppliers with thirty days to challenge any proposed deductions or deducting even if a supplier challenges the deduction</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>■ Delay in refund of money deducted in error due to 'failure' to hit agreed Service Level</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 artwork, 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> <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>

Part of the Code	Issues raised
	<p><b>Payments for wastage:</b></p> <ul style="list-style-type: none"> <li>■ Request for deficit due to wastage to be covered in full by supplier.</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> <li>■ Lump sum requested to secure arrangements in a range review</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 being added to email footers</li> <li>■ Lack of clarity about what is a forecast and what constitutes an order</li> <li>■ Lack of information about what lies behind retailers' forecasts making it difficult for retailers to challenge whether they are prepared in good faith and with due care and attention</li> <li>■ No mechanism in place whereby suppliers can challenge retailer forecasts – particularly difficult for small suppliers to get access or “air-time” with buyers to help improve accuracy</li> <li>■ Retailers' practice of ordering fresh produce daily but only forecasting on longer time scales undermines suppliers planning to get the right produce in place</li> <li>■ Retailers very late in confirming details of quantities and stores in forecasting for promotions</li> <li>■ Retailers have different systems for forecasting and ordering making it difficult to compare forward looking data with what actually happened to learn from experience and improve forecasting practice</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>■ Poor forecasting results in suppliers being left with over-ordered packaging</li> <li>■ No evidence of compensation for suppliers</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>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> <p><b>Attempted charges for better shelf position not related to a promotion:</b></p> <ul style="list-style-type: none"> <li>■ Payments for Category Captaincy and range reviews</li> <li>■ Better positioning being negotiated in response to retailer requests for investment</li> </ul> <p><b>Over-ordering at promotional price:</b></p> <ul style="list-style-type: none"> <li>■ Over-buying at discounted price agreed for promotions, linked to poor forecasting practice</li> </ul> <p><b>Changes to promotions at short notice:</b></p> <ul style="list-style-type: none"> <li>■ Distribution, price, quantities, timing and funding</li> </ul> <p><b>Request to fund a promotion:</b></p> <ul style="list-style-type: none"> <li>■ Concern that impact of over-buying at discounted prices means suppliers end up funding promotions</li> </ul>
<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 commercial reasons for the decision and reasonable notice)</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 and to increase share of shelf space</li> <li>■ Compensation for short notice De-listing decisions does not take account of all associated costs to the supplier</li> <li>■ Standard De-listing notice periods not in line with GCA published guidance</li> <li>■ Suppliers being asked to identify competitor Stock Keeping Units (SKUs) for De-listing</li> </ul>

# 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. Applying the prioritisation principles and in keeping with the collaborative approach, the GCA identifies on an iterative basis up to five key areas to focus on where suppliers believe that the regulated retailers' practices may breach the Code. These issues are raised with CCOs and discussed on an ongoing basis with them at their individual quarterly meetings.

The GCA keeps the Top 5 issues under regular review, responding to changing supplier concerns and retailer activity on them. As highlighted in the Adjudicator's foreword, to provide more clarity to retailers and suppliers the GCA changed the way the Top 5 issues were categorised. They are now described as current, monitored or previous.

The current issues are the main focus of the GCA's attention at any one time, whether because the GCA needs to understand more about them or because they reflect significant ongoing work: retailers report progress against these issues quarterly.

The monitored issues are those where the GCA has made clear her position or retailers have committed to carrying out some form of action, but the GCA wants to monitor what supplier feedback is on the issue and what steps retailers have taken. These are reviewed a year after being classed as monitored and thereafter moved back into current or into previous, depending on whether or not they remain of concern.


Where an issue is classified as previous it means it has been closed as an issue in its own right because the GCA position or interpretation of the Code has been made clear and the Adjudicator no longer considers that ongoing monitoring or active work on the issue is required. Supplier feedback on all the issues, whether current, monitored or previous remains welcome and the GCA will take that into account when considering whether there is a need to change the status of any of the issues.


During the year, the issue of lump sum payments was considered in the form of three distinct issues, each reflecting a situation in which suppliers may be required to make such payments to retailers: margin maintenance; pay to stay; and payments for better positioning. Payments for better positioning was put in the monitored category following publication of the GCA's consultation response on the issue. Pay to stay and margin maintenance remained open. Of the other Top 5 issues, artwork and design services was moved to be a previous issue. Drop and drive as an issue in its own right was moved to previous because GCA consideration of the matter with suppliers and retailers made clear that it was firmly an issue in relation to Code compliance under the Top 5 issue of delay in payments.


The status of the Top 5 issues at the end of the reporting year was as follows:




### Current Top 5 issues


Issue	Margin maintenance 
<b>Description</b>	The report of the investigation into Tesco plc identified a number of practices taking place, such as a focus on hitting budgeted or aspirational margin targets. Suppliers have provided information to the GCA that other regulated retailers occasionally engaged in this practice.
<b>Potential Code breach</b>	The GCA considers that the effect of this practice falls under part 3 (paragraph 3) of the Code: <i>Variation of Supply Agreements and terms of supply</i> , read with part 2 (paragraph 2) of the Code: <i>Principle of fair dealing</i> .
<b>GCA progress</b>	The GCA made clear in the report of the investigation into Tesco plc that unilateral deductions made in order to satisfy an unachieved aspirational margin target are unreasonable, and has set out that requests for margin maintenance must be unambiguously supported by the Supply Agreement. In autumn 2016 the GCA requested that all retailers inform her of their practice in relation to margin maintenance. Margin maintenance has remained current to highlight the issue and to encourage suppliers to provide information to the GCA about this practice. The GCA has assessed the information provided by retailers and suppliers and is awaiting the results of the GCA 2017 grocery sector survey to determine next steps.

Issue	Pay to stay 
<b>Description</b>	<p>Suppliers have continued to raise concerns about potential ‘pay to stay’ arrangements. The terminology ‘pay to stay’ has been used informally in the context of lump sum payments being made.</p> <p>A GCA Code clarification case study on requests for lump sum payments made by one retailer highlighted instances where payments were requested for the first half of the financial year and where suppliers felt they would suffer a detriment if payments were not made.</p> <p>The GCA has also been informed about a range of other payments that suppliers might make to retailers, such as to participate in social events, which those suppliers view as contributions they make as part of the cost of doing business with the retailer.</p>
<b>Potential Code breach</b>	<p>The GCA considers that the effect of this practice falls under part 3 (paragraph 3) of the Code: <i>Variation of Supply Agreements and terms of supply</i>, and part 4 (paragraph 9) of the Code: <i>Limited circumstances for Payments as a condition of being a supplier</i>, read with part 2 (paragraph 2) of the Code: <i>Principle of fair dealing</i>.</p>
<b>GCA progress</b>	<p>The GCA has continued to keep this issue under scrutiny. In autumn 2016 the GCA requested that all retailers inform her of their practice in this area, by outlining a number of potential ‘pay to stay’ scenarios. The issue has remained current to highlight the matter and to encourage suppliers to provide information to the GCA about this practice.</p> <p>The GCA has also held two workshops with suppliers on this specific issue. The GCA has assessed the information provided by retailers and suppliers and is awaiting the results of the GCA annual grocery sector survey 2017 to determine next steps.</p>


Issue	Delay in payments 
<b>Description</b>	<p>The report of the investigation into Tesco plc stated clearly for the benefit of all in the sector how the GCA will interpret the practices found to have taken place in relation to delay in payments.</p> <p>Some of the practices that might lead to delay in payments are: deductions relating to 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.</p>
<b>Potential Code breach</b>	<p>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: <i>No delay in payments</i> read with part 2 (paragraph 2) of the Code: Principle of fair dealing. 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: <i>No delay in payments</i>, read with part 2 (paragraph 2) of the Code: <i>Principle of fair dealing</i>.</p>
<b>GCA progress</b>	<p>The interpretation of the Code set out in the report of the investigation into Tesco plc is a clear statement of the GCA's view as to what is and is not Code-compliant behaviour and as such, is binding on all regulated retailers.</p> <p>This makes clear that suppliers must be given at least 30 days to challenge any proposed deduction; and where this is challenged a retailer is not entitled to deduct the disputed sum from the supplier's trading account. Data input errors must be resolved promptly and in particular, pricing errors should be resolved within seven days of notification by the supplier.</p> <p>The GCA has continued to monitor retailer compliance on this issue and to receive supplier information about progress. The GCA has escalated the issue of drop and drive with all retailers.</p>


## Monitored Top 5 issues

Issue	<b>Payments for better positioning</b> 
<b>Description</b>	<p>The investigation into Tesco plc found no breach in relation to paragraph 12. However, the GCA was concerned to find evidence of practices that could amount to an indirect requirement for payments to be made by suppliers to secure better positioning or an increased allocation of shelf space.</p> <p>These practices included large suppliers negotiating better positioning and increased shelf space in response to requests for 'investment' from the retailer, as well as paying for category captaincy and to participate in range reviews.</p>
<b>Potential Code breach</b>	<p>Practices in this area may fall under part 5 (paragraph 12) of the Code: <i>No Payments for better positioning of goods unless in relation to Promotions</i>, read with part (paragraph 2) of the Code: <i>Principle of fair dealing</i>.</p>
<b>GCA progress</b>	<p>Following the investigation by the GCA into Tesco plc which considered the issue of payments for better positioning of goods under paragraph 12 of the Code, the GCA consulted with the groceries sector on the proper scope of indirect requirements for payment to secure better positioning of goods or increased shelf space within a store. As part of this consultation, the GCA held workshops on the issue with direct suppliers and trade associations representing direct suppliers.</p> <p>The GCA published its response in February 2017, noting that the practices that had concerned her appear to have ceased and making clear what it considered to be Code compliant behaviour for the future. The issue will be monitored to consider any changes retailers might make as a result of the consultation response and to take into account any supplier feedback on the issue.</p>

Issue	Forecasting 
<b>Description</b>	Suppliers reported that the accuracy of regulated retailers' forecasts was poor and that significant variations occurred between forecasts made and orders placed, sometimes at very short notice. In some cases, suppliers had been charged for non-delivery against orders, with inconsistent reference to forecasts.
<b>Potential Code breach</b>	The GCA considers that the effect of this practice falls under part 4 (paragraph 10) of the Code: <i>Compensation for forecasting errors</i> , read with part 2 (paragraph 2) of the Code: <i>Principle of fair dealing</i> .
<b>GCA progress</b>	<p>The GCA reviewed the forecasting approach of the regulated retailers to assess their alignment with the Code and concluded from the information provided that retailers were compliant with the Code. The GCA however requested that retailers considered what improvements they could make to the transparency of their communications with suppliers about forecasting, to allow suppliers to meet orders and to anticipate the full costs of supply.</p> <p>In March 2016 the GCA published a statement of best practice which the retailers should work towards. It is intended to promote better working practices by the retailers in the spirit of continuous improvement. In March 2017 the GCA asked the retailers to provide information on their progress towards the statement of best practice.</p> <p>The GCA has continued to receive feedback from suppliers on this issue and has held two workshops with suppliers specifically to discuss this issue. The GCA is assessing the information provided by retailers and suppliers and is awaiting the results of the GCA 2017 grocery sector survey to determine next steps.</p>


## Previous Top 5 issues


Issue	Forensic auditing 
<b>Description</b>	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 regulated 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. It was noted that the documentary audit trail is often complex and difficult to piece together after a long period of time. It was alleged by suppliers that, with little or no notice, deductions would be applied.
<b>Potential Code breach</b>	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 regulated retailers against suppliers' current invoices, the effect of this practice falls under part 4 (paragraph 5) of the Code: <i>No delay in payments</i> , read with part (paragraph 2) of the Code: <i>Principle of fair dealing</i> .
<b>GCA progress</b>	Eight out of ten of the retailers signed 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 retailers who signed up have since set out how they would implement it.

Issue	Artwork and design services 
<b>Description</b>	The GCA heard concerns from suppliers about the arrangements, costs and services in relation to packaging, artwork and design services. A workshop with suppliers in September 2015 on the issue delivered positive news that the position on packaging for suppliers had improved in previous years. As a result of these considerations with suppliers, this Top 5 issue was refined to focus on artwork and design services. Suppliers remained concerned that the charges made by artwork and design companies approved or designated by some retailers were considerably higher than those available on the open market.
<b>Potential Code breach</b>	The GCA considers that the effect of this practice falls under part 4 (paragraph 6) of the Code: <i>No obligation to contribute to marketing costs</i> ; and part 4 (paragraph 11) of the Code: <i>No tying of third party goods and services for Payment</i> , read with part (paragraph 2) of the Code: <i>Principle of fair dealing</i> .



**GCA progress** Following a review of the issue, the Adjudicator noted that all retailers were taking steps to bring their practices and charges closer to the principles of being reasonable, predictable and transparent for suppliers. The GCA’s review did not identify any breach of the Code and the issue was moved to the previous category.

Issue	Consumer complaints 
<b>Description</b>	Suppliers reported that regulated retailers dealt with consumer complaints in different ways. Practices included applying variable rates depending on the seriousness or the complaint and fixed rates while some make no charges. Suppliers were concerned that the retailers may be overcharging for dealing with consumer complaints and deriving profit from them.
<b>Potential Code breach</b>	Consumer complaints fall under part 6 (paragraph 15) of the Code: <i>No unjustified payment for consumer complaints</i> , read with part (paragraph 2) of the Code: <i>Principle of fair dealing</i> .
<b>GCA progress</b>	The GCA announced a best practice statement on consumer complaints at the 2015 conference. Since then the Adjudicator has been closely monitoring this issue and CCOs were asked to report back in September 2016 on what improvements they had made. Following this monitoring, the Adjudicator has confirmed that retailers’ practices are broadly in line with the best practice statement and the issue is now categorised as previous.

Issue	Drop and drive 
<b>Description</b>	Suppliers reported that they experienced problems where there was a disparity between what suppliers said they had delivered and invoiced, and what the regulated retailers said had been received. In some cases, retailers appeared to make automatic deductions from invoices for alleged shortages and these deductions were difficult to challenge depending on the haulage method and where no Proof of Delivery (POD) had been issued. Suppliers informed the GCA that this was a major issue for them with different patterns of deductions between retailers and varying error rates being recorded despite suppliers using the same processes.
<b>Potential Code breach</b>	The GCA considers that the effect of this practice falls under part 4 (paragraph 5) of the Code: <i>No delay in payments</i> , read with part (paragraph 2) of the Code: <i>Principle of fair dealing</i> .

**GCA progress**

The GCA received more information on this issue from retailers and suppliers. With the GCA's support the representative of a large number of suppliers met with the regulated retailers at a group CCO meeting in November 2014.

While some progress had been made on this issue, it became clear that the GCA's interpretation of the Code as set out in the report of the investigation into Tesco plc in relation to the Top 5 issue of delay in payments clearly engaged drop and drive practices when these resulted in unilateral deductions being made. Drop and drive therefore continues to be pursued as an issue under delay in payments.

## Retailer comment on GCA issues

### De-listing

Aldi was extremely pleased with the results of the GCA's annual survey in 2016, and is committed to maintaining high levels of compliance with the Code through a process of continual improvement. From Aldi's perspective, it sees this as essential to maintain and develop long-lasting supplier relationships.

One such example is a formal change to Aldi's dispute resolution procedure, whereby suppliers can request that de-listing decisions be reviewed by a different Senior Buyer, who was independent of the original de-list decision. Aldi considers this provides a level of impartiality on the original decision, and ensures its suppliers can take confidence that the retailer is continually working hard to maintain compliance with the Code.

*Aldi Stores Limited*

### Reducing charges for suppliers and new procedures on De-listing

Iceland has continued to work hard to make business easier and cheaper for its suppliers. It has already removed charges for customer complaints and standard charges for packaging; it has now implemented more changes which should reduce costs further for suppliers, for example reducing the level of insurance cover which the retailer expects of its suppliers.

More generally, a focal point has been the sensitive issue of de-listing. Iceland has introduced new procedures to ensure that when products are de-listed, it is carried out not just in compliance with the letter of the Code, but always in a sensitive manner bearing in mind the specific requirements of each supplier.

*Iceland Foods Limited*

### Training on the Code

Lidl was encouraged by the results of last year's annual GCA Survey and was pleased to see that within a highly challenging and competitive purchasing environment, its suppliers felt they were being treated in line with Code requirements.

Lidl recognises there is a clear benefit of having Code awareness in place in the wider organisation and therefore its annual training on the Code is delivered not only to the groceries buying team but also to related departments for which there is no legal requirement to be trained on the Code. This includes, for example, relevant heads of its non-food, quality assurance, public relations, administration and accounting departments.

Lidl's objective is to continue to conduct its day-to-day dealings with suppliers in a fair, transparent and collaborative manner, and to continuously keep up-to-date its internal compliance arrangements so as to safeguard the relationships built up with suppliers over many years.

*Lidl UK GmbH*

## Improving supplier experience

Tesco has made extensive changes to how it operates in the last two years, and plans to continue improving practices in line with its key performance measure of 'building trusted partnerships'. Tesco launched several initiatives last year that exemplify these changes.

Tesco has promoted transparency by becoming the first retailer to publish its standard payment terms, and by sharing a comprehensive supplier guide explaining all types of deals and charges within its grocery business. Tesco has also done a lot of work on resolving supplier queries: when designing its supplier invoice query process it applied the GCA's recommendation to resolve queries within seven days beyond just pricing errors, and has still been able to resolve queries in less than four days on average. Finally, to supplement the engagement buying teams already have with suppliers, Tesco has created a dedicated Supplier Relationship team to provide extra personal support for new suppliers from set-up through their initial months of partnering with Tesco, and expanded the Supplier Engagement team to support a greater focus on supplier communications, including the development of guidance and training resources which suppliers can access through an online training portal.

Tesco is pleased that its suppliers have responded positively to the changes made, with suppliers rating their "overall satisfaction" at 78.3% in the retailer's own February 2017 survey, an improvement of 10.6% since February 2016.

*Tesco plc*

## Forecasting

As part of Waitrose's ongoing relationship with the GCA it has welcomed guidance and the publication of best practice which has benefited retailers and suppliers in developing a better understanding of mutually-beneficial trading arrangements. Following the GCA identifying forecasting as an area of focus, Waitrose has improved its communications with suppliers and collaborative working arrangements, especially when planning for key events such as Christmas.

*Waitrose Ltd*

# ACCOUNTABILITY REPORT

## Corporate Governance Report

### Format of the accounts

These accounts have been prepared in accordance with the direction from the Secretary of State for Business, Energy and Industrial Strategy.

### Financial position

The GCA's expenditure for 2016/17 was £622,024 decreased from £1,785,741 in 2015/16. This decrease reflects the decline in expenditure due to no investigation costs being incurred in 2016/17. Staff costs were £415,483 in 2016/17, compared to £453,403 in 2015/16. A small increase in costs year on year was more than offset by a rebate of VAT previously charged against secondment costs. Staff costs as a proportion of total expenditure equated to 67% in the financial year 2016/17. (This is an increased proportion of GCA expenditure compared to the financial year 2015/16 where the figure was 25% and reflects that the majority of GCA expenditure in the year 2015/16 was the cost of running an investigation.)

Other operating costs include finance, ICT and accommodation. Remuneration of the GCA is in the range £65-£70,000, pro rated from an annual salary within the band £115-£120,000 for a full-time equivalent.

The levy was set at £2,000,000 from the regulated retailers, which was an increase from 2015/16 of £900,000. This increase was to provide sufficient funding to resource any future investigation and is based on the experience of running an investigation.

### Funding the GCA

The GCA is funded by a levy on the regulated 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. Unspent levy at the end of each financial year is returned to the regulated retailers in the proportions in which it was contributed.

The Act states that the consent of the Secretary of State for Business, Energy and Industrial Strategy is required before a levy can be imposed on the retailers.

The levy methodology for this financial year was approved by the Secretary of State for Business, Energy and Industrial Strategy at a level of £2,000,000. A new methodology for calculating the levy was introduced for the financial year 2016/17 which charged each retailer a variable amount. In line with section 19 of the Groceries Code Adjudicator Act 2013 this variable percentage was

based on criteria broadly intended to reflect the expense and time that the Adjudicator, in the light of previous experience, expected to spend in dealing with matters relating to different retailers. 70% of the levy was split in equal shares between each retailer; 20% of the levy was split in different shares per retailer based on a methodology which reflects the complexity and size of the retailer's business and of practices falling within the GCA's Top 5 issues, whether current or monitored issues; and 10% of the levy was split in different shares between those retailers that: had an open investigation at the beginning of the financial year; were being monitored for compliance with recommendations from a closed investigation at the beginning of the financial year; were a party to a chargeable arbitration opened in a previous financial year requiring significant GCA involvement; and were the subject of a case study published in the previous financial year relating to practice at that retailer.

The GCA has received approval from the Secretary of State for Business, Energy and Industrial Strategy for the same amount of levy funding and use of the same methodology for the year 2017/18.

The increased levy should reduce the need to rely on a temporary loan facility from BEIS. However, in the event that the GCA should find itself temporarily short of reserves BEIS has indicated that a loan facility would be provided.

The GCA has also recovered the remainder of the costs from Tesco plc relating to the investigation which was concluded in 2016 together with the costs of monitoring the retailer's implementation of the recommendations made. Arbitration costs of £19,098 were recovered from retailers. In addition, the GCA secured rebates on VAT of £67,210 which had erroneously been charged by other Government departments on the costs of seconding staff to the GCA.

## Accounts

The GCA has procured an accounting system and now manages its own accounts and payments, no longer relying on support from the CMA. Preparation of the annual financial statements of GCA accounts was carried out by specialist external resource.

## Going concern

The GCA will receive levy income for 2017/18 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 increased the amount of levy it raises to ensure sufficient funds in such circumstances with additional support from BEIS where necessary.

## VAT

The GCA is not registered for VAT. Departments that second employees to the GCA no longer apply VAT on those costs following a determination from the VAT Centre of Excellence based in the Ministry of Justice. Where VAT has been charged in previous years, this has been recovered.

## Audit


The auditor of the GCA is the Comptroller and Auditor General. Details of the audit fee for the period ended 31 March 2016 are disclosed in note 3 to the Financial Statements. The fee is £7,000, the same as that charged in 2015/16. A proportionate internal audit mechanism is being implemented by the GCA, consisting of a regular review of the risk register, an audit of financial controls, and a review schedule of policies and publications.

## Payment practices

The GCA is committed to following the Better Payments Practice Code in payments to suppliers, in particular, paying all invoices within a maximum of 30 days. The GCA approved and processed 100% of all undisputed invoices within 30 days of receipt.

## Sustainability

The GCA does not fall within scope of the Greening Government Commitments. As a tenant of the CMA, reporting associated with the GCA will be incorporated into the CMA annual report and accounts.



### **Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

12 June 2017

# Director's report

The Groceries Code Adjudicator is a corporation sole and is an independent regulator sponsored by the Department for Business, Energy and Industrial Strategy.

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 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. I also chair the Audit and Risk committee and the Operations sub-committee which report 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. A review of Board effectiveness was carried out in 2016/17 and will be carried out on a bi-annual basis.

## Executive Board

Ensures that the GCA's statutory obligations are met and that decision-making and financial management are carried out appropriately

Members: The Adjudicator; Head of Policy and Operations; and Chief Legal Adviser

## Audit and Risk committee

Reviewing and monitoring risks and ensuring sound financial management of the GCA in meeting its statutory purposes

Members: The Adjudicator; Head of Policy and Operations; and Chief Legal Adviser

## Operations sub-committee

Ensures the GCA has the right resources, efficient financial management and has the appropriate procedures in place for the effective running of the office

Members: The Adjudicator; Head of Policy and Operations; Operations and Policy Manager



## Register of interests

A register of interests of the GCA is maintained by the Secretary to the Executive Board and is available on the GCA website. The Adjudicator is the only Senior Civil Servant level member of the Executive Board and is the only person subject to disclosure rules.

## Personal data

The GCA reviewed its procedures on the handling of personal data during 2016/17 and will carry out an Information Commissioner Office self-audit in 2017/18. There were no personal data incidents in 2016/17.



### **Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

12 June 2017

# 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 detailing the resources acquired, held or disposed of during the year and the use of resources by the GCA during the year. These must be published and submitted to the Secretary of State for Business, Energy and Industrial Strategy 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 a going concern basis.

The Accounting Officer for the Department for Business, Energy and Industrial Strategy 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 responsibilities

The 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. The GCA was appointed by the Secretary of State for Business, Innovation and Skills (now Business, Energy and Industrial Strategy). It is a corporation sole based in the UK with a sole employee; the Adjudicator.

The GCA is responsible for monitoring and encouraging compliance with and enforcing the Groceries Supply Code of Practice (the Code), introduced in 2010. It applies to the 10 groceries retailers with UK annual groceries turnover of more than £1 billion (the regulated 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 purposes 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.

The Groceries Code Adjudicator is the accounting officer of the GCA. Governance of the GCA is carried out through an Executive Board, a new Audit and Risk committee and an Operations sub-committee.

## Governance framework: GCA Executive Board

The Executive Board discusses and takes strategic decisions which govern the actions of the GCA office. The creation of the Operations sub-committee in February 2014 has allowed the Executive Board to focus on strategic issues. The Adjudicator chairs the Executive Board. There are two other members of the Executive Board; the Head of Policy and Operations and the Chief Legal Adviser. Two members of the Executive Board are female and one is male. One member of the Board identifies as Lesbian, Gay, Bisexual or Transgendered (LGBT); all identify as being from a White British ethnic background.

The Executive Board meets approximately every 6 – 8 weeks and met 7 times in this reporting period with full attendance each time. There are standing items for discussion at each meeting. These are: forward look, work plan, financial statement and resources. Other policy and operational agenda items are scheduled as required.

The Board ensures the GCA meets the statutory obligations set out in the Act.

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

## Governance framework: GCA Operations sub-committee

The Operations sub-committee dealt 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 the Head of Policy and Operations and the Operations and Policy Manager. It met 5 times in this reporting period with full attendance at each meeting. Two members of the Operations sub-committee are female and one male; one identifies as LGBT and one is from a Black, Asian or minority ethnic (BAME) background.

The Operations sub-committee generally meets every 4-6 weeks and 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.

## Governance framework: GCA Audit and Risk committee

The Audit and Risk committee meets twice a year. Its main task is to consider management of the GCA's financial position, review the risk register and approve the Annual Report and Accounts. It is chaired by the Adjudicator and other members are the Head of Policy and Operations, the Chief Legal Adviser and the Operations and Policy Manager. The Policy and Programme Manager attends when the risk register is reviewed. The National Audit Office attends in an observation capacity. Three members of the Audit and Risk committee are female and one male; one identifies as LGBT and one is from a BAME background.

The risk register was renewed this year to update the categorisation of the risks, assign a named manager to each risk and introduce a formal process to record progress against each mitigating action. This renewal has added clarity to the risk register and improved the way it is taken into consideration as part of the day to day work of the GCA. The new risk register has been reviewed once by the Executive Board, on 6 February.

## Key Risks

The risk categories are finance, procurement and audit; HR and recruitment, operational, stakeholder management, evidence and systems, governance, reputation and legal.

The key risks for this period have evolved to reflect the activities of the GCA over that time and the impact of outside events. The key risks are:

**Supplier confidence in the Adjudicator's assurance of confidentiality is low:** The GCA's assurance to retailers and suppliers is undermined by the accidental disclosure of confidential information by email, media or in conversation. This could compromise the GCA's effectiveness by limiting the amount and quality of evidence brought forward. To mitigate this risk, robust internal procedures have been regularly reviewed and strictly applied. No failures have occurred in this reporting period.

**Difficulties in recruiting staff impacts the effectiveness of the GCA office in delivering the Adjudicator's decisions:** The GCA's office is a small team so long-term vacancies can undermine the ability of the Adjudicator to function effectively. This risk is mitigated by long-term planning of future recruitment needs before the secondment agreements of current staff come to an end, either to renew them or to ensure the recruitment of new staff in a phased way. The GCA has also liaised with BEIS to make use of all available recruitment options and the use of agency staff.

### Statement by the Adjudicator

As Accounting Officer, I ensure that the GCA has an appropriate governance structure to meet the requirements of the office and to provide the right level of control over decision making. A formal governance review was carried out in the autumn of 2016 in line with my decision to carry this out bi-annually under business as usual conditions. Some minor amendments to the way governance is implemented at the GCA were introduced. This included ensuring that meetings were scheduled twelve months in advance and aligned with the GCA's project and programme management approach. The formal creation of the Audit and Risk committee with its own terms of reference has also supported the organisation's governance. A proportionate internal audit mechanism is being implemented by the GCA, consisting of a regular review of the risk register, an audit of financial controls, and a review schedule of policies and publications.

The appointment of a Policy and Programme Manager led to a more formalised approach to managing the GCA's flow of work. A 'Rolling Work Programme' has been developed, setting out the key tasks and activities throughout the year, enabling the office to manage peaks of work. This has supported the resilience of a small office in managing a large amount of important activity.

I have taken all the steps that I ought to have taken to make myself aware of any relevant audit information and to establish that GCA's auditors are aware of that information. I am not aware of any relevant audit information which has not been disclosed to the auditors.

I have considered the evidence that supports this Governance Statement and I am assured the GCA has a strong system of controls to support the achievement of my statutory purposes. I therefore have no disclosures of control weaknesses to make for the 2016/17 financial year.

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

12 June 2017

# Remuneration and staff report

## Overview

The GCA has no remuneration responsibilities. The remuneration of the Adjudicator is determined by the Secretary of State for Business, Energy and Industrial Strategy under Schedule 1 of the Act. The Adjudicator is designated as Office Holder and is a corporation sole.

The salary of the Adjudicator is set by BEIS. The GCA team, all of which are on secondment 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 Adjudicator's salary payments in this financial year were in the band of £65-£70,000, pro rated from an annual salary within the band of £115-£120,000 for a full-time equivalent. These figures have been subject to audit.

The Adjudicator's position is pensionable. 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. Secondees are not included as the GCA has no control over the remuneration of seconded staff and as such it would not be appropriate to calculate a median pay figure. This has been subject to audit.

## Benefits in kind

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

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

Single total figure of remuneration (audited)										
Public appointee	Salary (£'000)		Bonus payments (£'000)		Benefits in kind (to the nearest £100)		Accrued pension benefits (to nearest £1,000)		Total (to nearest (£',000))	
	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16
Christine Tacon	65-70 (£115-£120 for a full time equivalent)	65-70 (£115-£120 for a full time equivalent)	–	–	–	–	24,000	27,000 <i>*Restated</i>	93-94	96-97

\*The 2015-16 Accrued pension benefits have been restated due to a change to the methodology in how this is calculated.

## 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.

Pension Benefits (audited)						
Officials	Accrued pension at age 60 as at 31 March 2017 and related lump sum	Real increase in pension and related lump sum at pension age	CETV at 31 March 2017	CETV at 31 March 2016	Real increase in CETV	Employer contribution to partnership pension account
	£'000	£'000	Nearest £1,000	Nearest £1,000	Nearest £1,000	Nearest £100
Christine Tacon	6	1	90	67	22	0

## Civil Service Pensions

Pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015 a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension Scheme or **alpha**, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension Age (or 65 if higher). From that date all newly appointed civil servants and the majority of those already in service joined alpha. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS).

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, nuvos and alpha are increased annually in line with Pensions Increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012, remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 will switch into alpha sometime between 1 June 2015 and 1 February 2022. All members who switch to alpha have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave alpha.

Employee contributions are salary-related and range between 4.6% and 8.05% for members of nuvos and alpha. 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. Benefits in alpha build up in a similar way to nuvos, except that the accrual rate is 2.32%. 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 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 65 for members of nuvos, and the higher of 65 or State Pension Age for members of alpha. (As the Adjudicator has benefits in both the PCSPS – nuvos – and alpha the figure quoted is the combined value of their benefits in the two schemes, but note that part of that pension may be payable from different ages).

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 were introduced from 1 April 2015 and the GCA joined the new scheme. Further details of this new scheme are available at <http://www.civilservicepensionscheme.org.uk/members/the-new-pension-scheme-alpha/>

## Staff report

The GCA is designated as a corporation sole and therefore the only employee of the GCA. Staff supporting the GCA are seconded from public sector organisations, with occasional support from temporary contractors where a position has been unable to be filled from the public sector. The guiding principle in resourcing the GCA has been to recruit the resources needed in a phased way based on anticipated workload. In the model of the GCA designed by the then Department for Business, Innovation and Skills it was predicted that a staff of eight would be required, including the GCA. Staff costs for 2016/17 were £415,483 comprising: £95,262 permanent staff costs; and £320,221 of other staff costs for secondees and temporary staff. The permanent staff costs include salary, Earnings-Related National Insurance Contributions (ERNIC) and pension costs. These figures have been subject to audit.

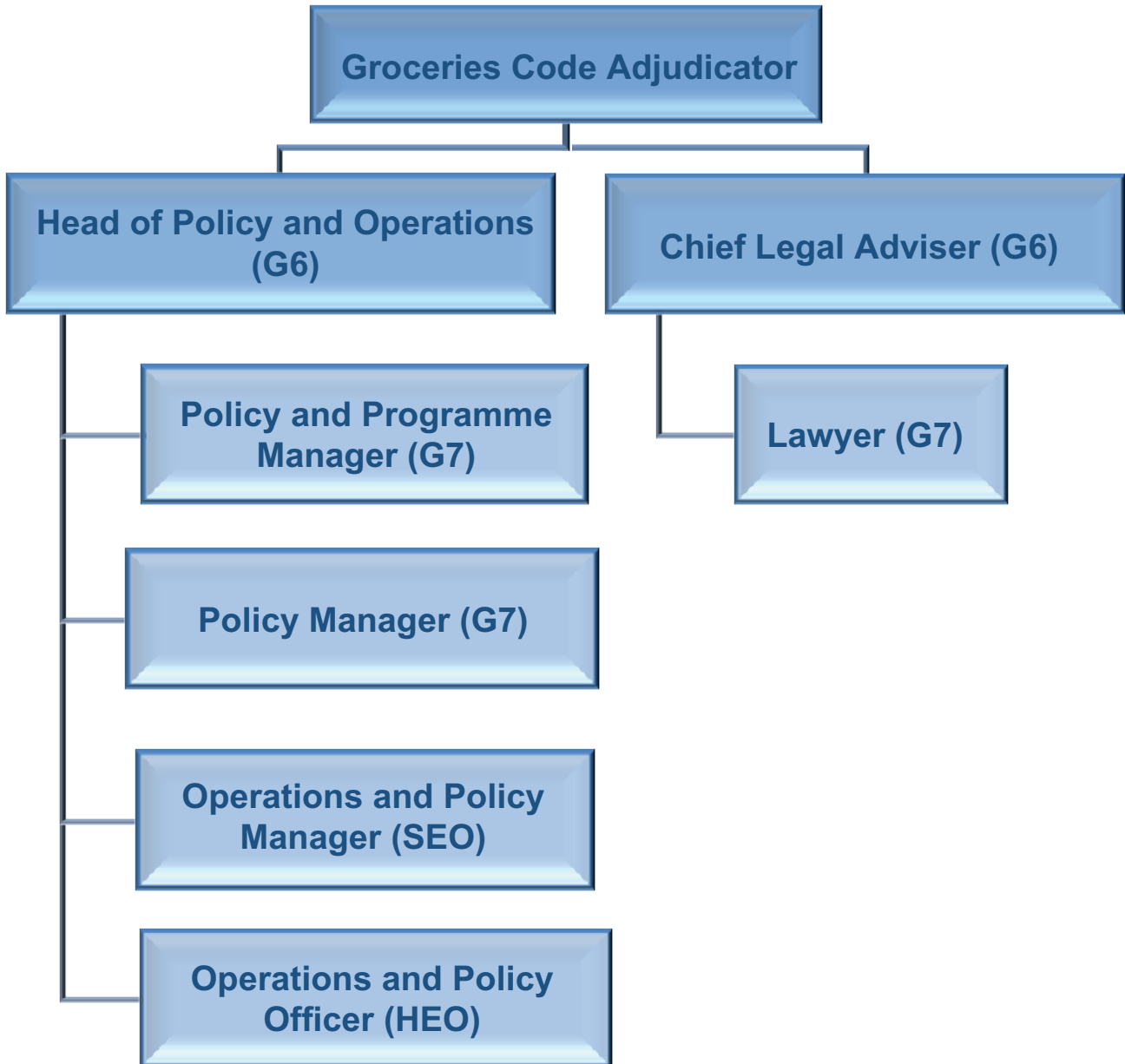
The Adjudicator is employed for three days each week and is a senior civil servant equivalent and is female. There was a team of five secondees during the reporting year: Chief Legal Adviser, who works four days each week, a full-time Head of Policy and Operations, a full-time Compliance Manager (until January 2017), a full-time Policy and Programme Manager and a full-time Operations and Policy Manager. Through the year, temporary support has been engaged to fill the role of Operations and Policy Officer on a part-time basis, and additional support has been engaged after the Compliance Manager's secondment ended. Media and communications support was awarded under contract, following a competitive public procurement exercise.

Every effort has been made to ensure that the office has the right skills and resources and has a diverse representation. In the GCA team there were four females and two males; two from BAME backgrounds; and one who identifies as LGBT.



The Adjudicator continues to review the relevant resources required to meet its objectives. The organisation chart at the end of the reporting period was:

The GCA Organisation chart for 16/17:



During the reporting year, a recruitment exercise was carried out successfully to appoint someone on secondment to the position of Operations and Policy Manager. There were two recruitment exercises held for the position of Operations and Policy Officer but no candidate was appointed. The Compliance Manager position was modified slightly into a more general Policy Manager role, with monitoring compliance with the Code as one of its main features. A recruitment exercise was run to fill this position but no candidate was appointed. A position for additional legal resource remains available but the need to create this post continues to be kept under review. External legal resources could be bought as needed, from panel firms and Counsel.

**Sickness absence**

There has been no sickness absence at the GCA.

## Consultancy expenditure

The GCA has no consultancy expenditure in this reporting period. Transactions listed in Note 3 of the Accounts comprise off-payroll services and a procurement contract for the annual GCA survey.

## 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.

For the financial year 2017/18, new legislation (with effect from April 2017) will affect contingent labour workers engaged via an intermediary, usually a Personal Service Company (PSC). It will apply to payments made on or after 6 April 2017, regardless of when the contract was entered into.

The reform shifts the responsibility for deciding whether tax and national insurance are due from the individual contractor to the organisation for whom the contractor will work. The GCA has ensured that arrangements are in place to determine if contractors are in or out of scope and where relevant that arrangements are in place for the deduction of tax and NI, and that assurances are sought.

The tables below set 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 2016 and 31 March 2017, for more than £220 per day and that last for longer than six months.

**Table 1: For all off-payroll engagements as of 31 March 2017, for more than £220 per day and that last for longer than six months**

<b>No. of existing engagements as of 31 March 2017</b>	2
<b>Of which...</b>	
No. that have existed for less than one year at time of reporting.	1
No. that have existed for between one and two years at time of reporting.	0
No. that have existed for between two and three years at time of reporting.	1
No. that have existed for between three and four years at time of reporting.	0
No. that have existed for four or more years at time of reporting.	0

Declaration: all existing off-payroll engagements, outlined above, have at some point been subject to a risk based assessment as to whether assurance needs to be sought that the individual is paying the right amount of tax and, where necessary, that assurance has been sought.

**Table 2: For all new off-payroll engagements, or those that reached six months in duration, between 1 April 2016 and 31 March 2017, for more than £220 per day and that last for longer than six months**

<b>No. of new engagements, or those that reached six months in duration, between 1 April 2016 and 31 March 2017</b>	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. for whom assurance has been requested	1
<b>Of which...</b>	
No. for whom assurance has been received	0
No. for whom assurance has not been received	*1
No. that have been terminated as a result of assurance not being received.	0

\* assurance has been sought and is expected to be received for the 1 engagement included here

**Table 3: For any off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, between 1 April 2016 and 31 March 2017**

<b>No. of off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, during the financial year.</b>	0
Total no. of individuals on payroll and off-payroll that have been deemed "board members, and/or, senior officials with significant financial responsibility", during the financial year. This figure should include both on payroll and off-payroll engagements.	1

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

12 June 2017

# Parliamentary accountability and audit report

Details of the GCA statutory reporting requirements are set out in the performance report.

## 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 the GCA will take account of the economic impact of its regulatory activities on growth. This follows the requirement of 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.

### Business Impact Target

The Small Business, Enterprise and Employment Act 2015 requires the Government to publish, then report on, its performance against a deregulation target – the Business Impact Target (BIT). The Enterprise Act 2016 brought a number of regulators, including the GCA, into scope for this target. The GCA will publish its response for the relevant reporting period of 8 May 2015 to 26 May 2017 by the deadline of 9 June 2017.

### 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 BEIS on the implementation of this new requirement when plans are in place.

## **Statutory review**

The Groceries Code Adjudicator Act 2013 requires the Government to review the performance of the GCA. Between 18 October 2016 and 10 January 2017, the Government sought views and evidence on the GCA's performance between through a public consultation exercise. The Adjudicator responded to the specific questions posed to her in the review by a letter to the Minister for Small Business, Consumers and Corporate Responsibility. This response was published on the GCA website. As at the end of the reporting year, the Government had not published its response.

## **Call for evidence on whether to extend the remit of the GCA**

The Government also sought views on whether the remit of the GCA should be extended. The Adjudicator decided that it was not appropriate to issue a response to this call for evidence but encouraged stakeholders to provide responses.

## **Parliamentary and Ministerial engagement**

During the reporting year the Adjudicator met once with the Minister for Small Business, Industry and Enterprise and once with her successor, the Minister for Small Business, Consumers and Corporate Responsibility. The Adjudicator also met the Shadow Minister for Business, Energy and Industrial Strategy.

During a visit to Edinburgh, the Adjudicator met the Cabinet Secretary for Rural Economy and Connectivity and the convenors in the Scottish Parliament of the rural economy and connectivity committee and economy, jobs and fair work committee.

While there were no meetings with representatives of the Northern Ireland Assembly or Welsh Government, the Adjudicator attended an event in Belfast and TasteWales in Newport where she met representatives of the food and drink industry and devolved governments.

The Adjudicator spoke at an event in Dublin and met the Minister for Jobs, Enterprise and Innovation in the Republic of Ireland Government.

The Adjudicator also spoke at an event at the European Parliament on 28 September 2016 *Fixing the food supply chain: Solutions to address unfair trading practices* and attended a lunch with MEPs.

# 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 2017 under the Groceries Code 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 and Staff Report and the Parliamentary Accountability Disclosures 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 audit, 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 the 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 the Groceries Code Adjudicator's affairs as at 31 March 2017 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 and Staff Report and the Parliamentary Accountability disclosures 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 Performance Report, and Accountability Report 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 and Staff Report and the Parliamentary Accountability disclosures 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

**15 June 2017**

# FINANCIAL STATEMENT

## Statement of Comprehensive Net Expenditure for the year ended 31 March 2017

	Note	Year ending 31-Mar-17 £	Year ending 31-Mar-16 £
<b>Expenditure</b>			
Staff costs	2	415,483	453,403
Other expenditure	3	206,541	1,332,338
		<u>622,024</u>	<u>1,785,741</u>
<b>Income</b>			
Other income	4	(622,024)	(1,785,741)
		<u>—</u>	<u>—</u>
<b>Net Expenditure</b>			
		<u>—</u>	<u>—</u>
<b>Total Comprehensive Expenditure for the year ended 31 March</b>			
		<u>—</u>	<u>—</u>

The notes on pages 67 to 73 form part of these financial statements.

There was no other comprehensive expenditure.



# Statement of Financial Position as at 31 March 2017

	Note	31-Mar-17 £	31-Mar-16 £
<b>Current assets:</b>			
Other receivables due within one year	6	21,181	–
Cash	7	1,588,148	592,142
<b>Total current assets</b>		<u>1,609,239</u>	<u>592,142</u>
<b>Total assets</b>		<u>1,609,239</u>	<u>592,142</u>
<b>Current liabilities:</b>			
Deferred income	8	1,479,359	383,585
Other payables and accruals	8	129,970	208,557
<b>Total current liabilities</b>		<u>1,609,329</u>	<u>592,142</u>
<b>Current assets less current liabilities</b>		<u>–</u>	<u>–</u>
<b>Taxpayers' equity</b>			
Income and expenditure reserve		–	–
<b>Total equity</b>		<u>–</u>	<u>–</u>

The notes on pages 67 to 73 form part of these financial statements.

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

12 June 2017

# Statement of Cash Flows for the year ended 31 March 2017

	Year ending 31-Mar-17 £	Period ending 31-Mar-16 £
Note	<u>£</u>	<u>£</u>
<b>Cash flows from operating activities</b>		
(Increase)/Decrease in receivables	6 (21,181)	11,151
Increase in payables	8 1,017,187	186,482
<b>Net cash inflow from operating activities</b>	<u>996,006</u>	<u>197,633</u>
There are no cashflows from investing or financing activities		
<b>Net increase in cash in the period</b>	7 996,006	197,633
<b>Cash at the beginning of the period</b>	592,142	394,509
<b>Cash at the end of the period</b>	1,588,148	592,142

The notes on pages 67 to 73 form part of these financial statements.

# Statement of Changes in Taxpayers' Equity

	I&E Reserve £	Total Reserves £
	<u>          </u>	<u>          </u>
<b>Balance as at 31 March 2015</b>	–	–
<b>Changes in Taxpayers' Equity comprehensive income for the year</b>		
Comprehensive income for the year	–	–
<b>Balance as at 31 March 2016</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 2017</b>	<u>          </u> –	<u>          </u> –

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

# Notes to the financial statements

## 1. Accounting policies

These financial statements have been prepared in accordance with the 2016/17 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. The accounts have been prepared under the direction of BEIS.

There were no new standards issued up to 31 March 2017 and not applied, that would materially affect the accounts. The GCA has also not adopted any standards early but has considered future changes in standards.

### Accounting convention

These accounts have been prepared under the historical cost convention modified to account for the revaluation of property assets.

### 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. 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. Following investigation into Tesco plc, the GCA recovered 85% of the investigation costs from the retailer, and all the costs of monitoring implementation by Tesco plc of the GCA's recommendations. 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.

The Adjudicator may repay some or all of any surplus income. In such situations, these repayments will be shown as a liability in the GCA accounts.

Further information on the levy income is contained in the GCA's Annual Report.

### Going concern

The GCA will receive levy income for 2017/18 to fund its activities. It has been accordingly considered appropriate to adopt a going concern basis for the preparation of these financial statements.

### 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. Management determined the categorisation of assets and liabilities at initial recognition and re-evaluated this designation at each reporting date.

#### *Financial assets*

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

#### *Financial liabilities*

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

### Reserves

#### *Income and expenditure reserve*

The GCA does not hold any funds in its reserves. Additional income received through the levy is held as deferred income for future year's expenditure.

### Expenditure

All expenditure is recognised on an accruals basis. Purchases of individual capital items over £1000 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-17</b>	<b>Year ending 31-Mar-17</b>	<b>Year ending 31-Mar-17</b>	<b>Year ending 31-Mar-16</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
	<i>Permanent staff<sup>(i)</sup></i>	<i>Other staff<sup>(iii)</sup></i>	<i>Total</i>	<i>Total</i>
Wages and salaries	69,690	252,611	322,301	349,842
Social security costs	8,498	27,951	36,449	34,433
Pension costs	17,074	39,659	56,733	69,128
<b>Total</b>	<b>95,262</b>	<b>320,221</b>	<b>415,483</b>	<b>453,403</b>

- (i) The remuneration of the Adjudicator is the only permanent staff cost.
- (ii) There have been no severance payments in year.
- (iii) Other staff includes the costs for the staff seconded to the GCA and for agency staff.  
Agency costs are £52,000 (15/16 – £17,000).
- (iv) A gross refund of £67,210 for VAT charged on previous years secondment costs is included in other staff costs. This comprised a cash rebate of £60,588 from one government department and a credit against an invoice from another government department.

### Average number of staff employed

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

	<b>2016/17</b>	<b>2015/16</b>
	FTE	FTE
Employed on references:		
Permanent staff	0.6	0.6
Other staff	5.25	4.7
	<u>5.85</u>	<u>5.3</u>

- (i) The total number of staff reported outside of 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-17 £	Period ending 31-Mar-16 £
Tesco Investigation	12,337	1,130,082
Rentals under the terms of occupation	15,313	15,313
Running costs – Victoria House	10,133	9,791
Survey & Consultancy	60,116	67,683
Legal costs	1,114	9,073
Licences	1,711	1,950
Photocopying & Printing	10,929	9,259
Press Cuttings	1,778	1,940
Travel, subsistence and hospitality:	9,375	5,313
Staff training	4,012	–
Subscriptions	1,410	495
Corporates Services from Competition Markets Authority (CMA) & BEIS	23,103	37,209
Office equipment (IT and other consumables)	14,291	13,900
Conferences & events	25,021	18,986
Arbitration	3,598	1,936
Audit fee	7,000	7,000
Other expenditure	5,300	2,409
<b>Total other operating charges</b>	<b>206,541</b>	<b>1,332,338</b>

(i) The reduction in Corporate Service costs from the CMA & BEIS is due to services being taken on inhouse by the GCA.

(ii) Other expenditure relates to accountancy charges, postage and office furniture.

### 4. Income

	Year ending 31-Mar-17 £	Period ending 31-Mar-16 £
Tesco Investigation	96,798	1,065,513
Levy raised	1,621,000	980,000
Deferred income	-1,095,774	-259,772
<b>Total income</b>	<b>622,024</b>	<b>1,785,741</b>

## 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. Receivables and other assets

	<b>As at 31-Mar-17 £</b>	<b>As at 31-Mar-16 £</b>
<b>Amounts falling due within one year</b>		
Other debtors	17,307	–
Prepayments	3,874	–
	<u>21,181</u>	<u>–</u>

The total amount of other debtors are with central government.

## 7. Cash

	<b>As at 31-Mar-17 £</b>	<b>As at 31-Mar-16 £</b>
Balance at 1 April	592,142	394,509
Net change in cash balances	996,006	197,633
Balance at 31 March	<u>1,588,148</u>	<u>592,142</u>
The following balances at 31 March were held at:	1,588,148	592,142

### Government Banking Service

The GCA's bank account is a current account with the Government Banking Service.



## 8. Other payables and liabilities

### Amounts falling due within one year

	<b>As at 31-Mar-17 £</b>	<b>As at 31-Mar-16 £</b>
Deferred income	1,479,359	383,585
Accruals	129,970	208,557
	<u>1,609,329</u>	<u>592,142</u>
Analysis of other accruals		
Balances with other central government organisations	104,336	134,208
Balances with bodies external to government	25,634	74,349
	<u>129,970</u>	<u>208,557</u>

Deferred income solely relates to the retailers.

## 9. Capital commitments

The GCA had no capital commitments.

## 10. Commitments under leases

### Commitments under leases

	<b>As at 31-Mar-17 £</b>	<b>As at 31-Mar-16 £</b>
Other leases	7,657	7,657
Not later than one year	<u>7,657</u>	<u>7,657</u>

The GCA has a service Memorandum of Terms of Occupancy with the CMA for rent and services. The minimum notice period is 6 months but the GCA intends to stay longer.

## 11. Contingent liabilities & assets

There are no contingent liabilities or assets to report.

## 12. Related party transactions

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

The GCA also has related party transactions with the CMA. In 2016/17 these related to accommodation and finance (for the first two months of the financial year) as the GCA is co-located with the CMA. Thereafter the only transactions with the CMA relate to accommodation. The GCA also had transactions with the Department for Culture Media and Sport, Defra and the Government Legal Service for the secondment of staff.

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

## 13. Events after the reporting period

There are no post-balance sheet events to report.

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 to report.

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