



Department for  
Business & Trade

# **Statutory Review of the Groceries Code Adjudicator: 2019-2022**

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

July 2023



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## Ministerial foreword

I am delighted to publish the report on the third statutory review of the Groceries Code Adjudicator covering the period from 1 April 2019 to 31 March 2022. This was an extremely challenging period for the groceries sector, including the impact of the Covid pandemic, the war in Ukraine and cost price inflation linked to these global events.

The importance of the GCA's role was emphasised during the early months of the pandemic when the then Adjudicator, Christine Tacon, who was due to step down in June 2020, agreed to extend her appointment to provide the sector with a degree of certainty during those unsettling times. Mark White took over the role of Adjudicator in October 2020, having served as Deputy for a short period, providing further continuity for the sector.



The groceries sector remained remarkably resilient during the pandemic, with retailers and suppliers working together to ensure customers had access to food and other essentials. It was a testament to the progress the GCA had made in embedding the Code within the sector that there was no evidence of an increase in Code non-compliance during that challenging period.

The recovery from the pandemic and war in Ukraine have brought further challenges to the grocery sector, in particular inflationary pressures which have driven up the price of raw materials, energy and other costs for producers and processors. This has inevitably put pressure on the relationships between suppliers and retailers and is reflected in the GCA's annual suppliers' survey, which has shown the consistent reduction in the proportion of suppliers experiencing Code issues stall at around 36% between the beginning of the review period to the 2023 survey results that were published in June. While suppliers think retailer compliance remained high overall, with the average compliance score at 92% across all retailers, the issues still faced do suggest that the external factors could impact on relationships and behaviours and that the GCA is as important as ever in ensuring fair treatment of suppliers through enforcement of the Code.

The Groceries Code and the GCA do not cover the prices agreed between retailers and suppliers, but the CMA is working to understand whether any failure in competition is contributing to food price inflation and considering whether any product categories might merit close examination. It is also looking into unit pricing practices online and instore in the groceries sector to ensure that customers are able to compare prices and make informed choices.

The GCA does have an interest in ensuring that negotiations around cost price pressures do not lead to non-compliance with the Code and that those discussions are conducted in a transparent and fair way. In January 2022, Mark White issued 7 Golden Rules for considering cost price increases which have been widely welcomed by suppliers and retailers and is a good example of the positive impact the Adjudicator has on the sector.

The overwhelming view of retailers, suppliers and others is that the GCA is a highly regarded, efficient and effective regulator. The Government listened to this feedback and decided not to merge the GCA with the Competition and Markets Authority, in recognition of the importance of the Adjudicator in ensuring fairness in the UK food supply chain. I look forward to seeing how the GCA and CMA work together to ensure the GCA continues to have access to the right staff and other support.

I would like to thank Mark White and his team, and Christine Tacon, for all their excellent and continuing work in ensuring that the supply chain works fairly for suppliers and, ultimately, delivers for consumers.

A handwritten signature in black ink, appearing to read 'Kevin', with a stylized, cursive script.

**KEVIN HOLLINRAKE MP**  
Minister for Enterprise, Markets and Small Business

# Executive summary

1. The Groceries Code Adjudicator (“GCA”) was established under the Groceries Code Adjudicator Act 2013 (“the Act”)<sup>1</sup>. The GCA monitors compliance with and enforces the Groceries Supply Code of Practice (“the Code”)<sup>2</sup> which regulates the relationship between retailers designated under the Code and their direct suppliers. The 14 designated retailers are Aldi, Amazon, ASDA, B&M, Co-op, Marks and Spencer, Iceland, Lidl, Morrisons, Ocado, Sainsbury’s, Tesco, TJ Morris (trading as Home Bargains) and Waitrose. The Competition and Markets Authority (CMA) assesses annually whether retailers which have a turnover of £1bn or more in UK grocery sales (‘large retailers’ as defined by the Code) should be designated under the Code. Amazon was the most recent retailer to be designated on 1 March 2022. More information about the Code and the GCA can be found in Annex B.
2. Section 15 of the Act requires the Secretary of State to review the performance of the GCA every three years. This report covers the third such review (the Review) and is for the period from 1 April 2019 to 31 March 2022<sup>3</sup>. The statutory review is not a review of the Code, which is a competition measure owned by the CMA, nor the remit of the GCA. The Act specifies certain issues which the review must address, what action the Secretary of State may take following the review and who must be consulted as part of the review<sup>4</sup>. These points are covered in the Terms of Reference (‘ToR’), which can be found at Annex A and are summarised below:

Issues the review must address:

- how the GCA’s powers have been exercised;
- how effective the GCA has been in enforcing the Code; and
- whether to limit the information that may be considered by the GCA when deciding whether to investigate.

The review may also consider:

- whether to change the Permitted Maximum Financial Penalty the Adjudicator can impose following an investigation into non-compliance.

Who must be consulted as part of the review:

- the Adjudicator;
- the CMA;
- the retailers designated under the Code;
- suppliers and/or their representatives;
- consumers and/or their representatives; and
- any other person the Secretary of State thinks appropriate.

3. The consultation for this review also asked for views on:
  - whether some or all the GCA’s functions should be transferred to a public body, such as the CMA; and
  - whether to abolish the GCA.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2013/19/contents/enacted>

<sup>2</sup> <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

<sup>3</sup> As required by the Act, the first Review covered the period from the creation of the GCA (in June 2013), to 31 March 2016. The Secretary of State’s response to that review was published in July 2017 (<https://www.gov.uk/government/publications/groceries-code-adjudicator-statutory-review-2013-to-2016>). The second review covered the period from 1 April 2016 to 31 March 2019. The Secretary of State’s response to that review was published 22 August 2019 (<https://www.gov.uk/government/publications/response-to-the-statutory-review-into-the-gca-2019>)

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2013/19/section/15/enacted>

4. The Review was evidence-led and accompanied by a public consultation which ran from 19 July to 11 October 2022. The consultation was available on the gov.uk website and invitations to respond were sent to all 14 designated retailers, organisations representing suppliers and producers, consumer bodies, the CMA and the GCA. 71 responses were received to the Review including 12 from designated retailers, 27 individual suppliers and their representative bodies, the GCA, the CMA, and 30 other trade associations, organisations and individuals. Details of respondents are set out in Annex C. All responses received through the consultation process were assessed against the ToRs.
5. In addition to the public consultation, this Review drew on other publicly available, evidence covering the Review period including the GCA's Annual Reports and Accounts, the independent YouGov Survey ("the Survey") of suppliers carried out annually on behalf of the GCA, and data on business payment practices and performance.<sup>5</sup> Meetings were also held, at their request, with specific organisations. Out of the publicly available external evidence, this Review draws on the Survey as a central source of evidence for measures of the GCA's effectiveness over time. The 2022 Survey includes responses from 2,293 direct suppliers<sup>6</sup> supplying 13 retailers.
6. Following consideration of this evidence, the Review found the GCA to be a highly effective regulator that made good use of its powers to take a balanced and collaborative approach that usually resolved issues before the need for an arbitration or investigation; an approach that was valued throughout the sector. While there had been steady improvement in Code compliance since the GCA had been created, external factors such as the pandemic and the war in Ukraine had brought unprecedented challenges to the grocery sector and meant a continuing need to ensure the enforcement of the Code. In particular, inflationary pressures resulting from these external factors had introduced greater tension between the interests of retailers in limiting price increases and those of suppliers who have faced increased cost pressures. The GCA's understanding of these potential risks to Code compliance, and the action he has taken as a result, such as introducing the 7 Golden Rules<sup>7</sup>, has helped ensure that suppliers are given a fair hearing and that retailers are aware of their Code responsibilities.
7. A small number of respondents to the consultation raised some specific issues which they felt would make the regulatory approach of the GCA more efficient, effective or fairer, but the Review did not find evidence to support these points. The Government also notes that the GCA is subject to the Regulators Code and that the evidence from this Review suggests the GCA is meeting the expectations of that Code (including by taking a transparent approach to regulation and by engaging openly).
8. The Review found no evidence to support the need to change the Permitted Maximum Financial Penalty the Adjudicator can impose following an investigation into non-compliance. The maximum fine of 1% of all turnover gives the Adjudicator significant scope to impose an appropriate financial penalty and was supported by stakeholders as being at an appropriate level. The Review also found, consistent with the views of the majority of respondents to the

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<sup>5</sup> Business payment practices and performance, published by the Department for Business, Energy and Industrial Strategy, 2020. Data includes information on when large businesses report paying their suppliers.

<sup>6</sup> GCA Annual Survey 2022.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1081419/GCA\\_annual\\_survey\\_results\\_2022\\_for\\_publication.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1081419/GCA_annual_survey_results_2022_for_publication.pdf). This edition of the survey includes responses from 2,293 direct suppliers as well as 213 indirect suppliers and 43 trade associations.

<sup>7</sup> <https://www.gov.uk/government/news/edition-28-news-from-the-adjudicator>

consultation, that the information which the GCA may consider when deciding whether to investigate should not be restricted<sup>8</sup>.

9. The Government looked carefully at the case for transferring the functions of the GCA to another public body and agreed with the overwhelming view of respondents that such a move would not increase the effectiveness or efficiency of the enforcement of the Code. The Government did, however, consider there were potential efficiencies for the CMA to provide assistance to the GCA under existing provisions in the Act<sup>9</sup>. As a result, the CMA has agreed to work with the GCA to recruit staff, improve access to professional expertise and explore what other support it might make available.
10. Several respondents to the consultation raised issues which are outside the remit of the Review. This included the suggestion that the effectiveness of the GCA and its impact on the sector would be greater if its remit were not limited to direct suppliers to supermarkets but extended to other parts of the supply chain including producers, wholesalers and catering organisations.
11. The Government recognises that there are issues that need to be addressed further down supply chains, but that these are often specific to each agricultural sector and best addressed by tailored interventions such as the statutory codes that the Secretary of State for the Environment, Food and Rural Affairs is introducing in areas such as dairy and pork under the Agriculture Act 2020.
12. The Government is considering exactly how those codes should be enforced but does not plan to extend the scope of the GCA which should remain tightly focused on the 14 large supermarkets and their direct suppliers. To extend the remit of the GCA down the supply chain would likely mean regulating many hundreds of thousands of transactions and businesses and would need a completely different regulatory model to the collaborative approach that the GCA has been able to successfully develop with the large retailers.
13. Several respondents felt that, although the GCA's impact on the groceries market had been positive, there were issues with the Code itself. This was in part because of the changing nature of the groceries market over the last 15 years which they felt warranted a new market investigation. Changes to the Groceries Code and the question of another market investigation are matters for the CMA to consider and any evidence of competition concerns should be shared with the CMA.
14. Several retailers felt there was an imbalance because they are treated the same, regardless of their market share, despite larger suppliers potentially having greater market power.
15. A retailer also raised that they believed there would be a more level playing field if additional retailers were designated. The Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order), which sets out the turnover criteria for retailer designation under the Code, was informed by the poor supply chain practices identified following a market investigation. It is also for the CMA to consider whether a retailer reaching the turnover threshold should be designated under the Code. In 2018, during the second statutory review, the CMA committed, on an annual basis, to collect information from grocery retailers to determine whether there were further retailers that met the turnover threshold to be considered for designation under the Code. The Government notes that, since the second review period, four retailers have been

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<sup>8</sup> S.15(11) of the Act allows the Secretary of State, following a review, to restrict the information the GCA can consider when deciding whether to launch a review to information provided by a supplier; information that is publicly available; information provided by a person employed by the retailer in question or information provided by the retailer in about its compliance with a recommendation by the GCA following an investigation.

<sup>9</sup> <https://www.legislation.gov.uk/ukpga/2013/19/schedule/1/enacted>



added, including Amazon, which suggests that the CMA's approach is able to reflect changes in the grocery retail market.

## Findings of the Statutory review

### Term of Reference 1: Consider the GCA's performance from 1 April 2019 to 31 March 2022.

16. This section of the report assesses:

- how much the GCA's powers have been exercised and in what circumstances; and
- how effective the GCA has been in enforcing the Groceries Code ("the Code").

### How much the GCA's powers have been exercised and in what circumstances

17. In general, the evidence showed that the GCA had been effective in exercising powers during the review period. Survey findings showed the GCA approach to monitoring, ensuring compliance with and enforcing the Code was successful. For example, responding to the 2022 GCA Annual Survey, 92% of direct suppliers reported that the retailers covered by the Code follow the Code 'consistently well' or 'mostly'<sup>10</sup>. The CMA also responded to the consultation that it believed the GCA's powers were sufficient and it appeared this had contributed to a reduction in issues suppliers had experienced with retailers during the review period. More detail on how the GCA's powers were exercised and in what circumstances are set out below.

### Arbitrations, investigations and enforcement activity

18. In the review period the GCA undertook four arbitrations of which three were concluded. The current GCA acted as arbitrator in three disputes between a retailer and supplier and has said he used arbitrations to inform wider regulatory activity whilst ensuring confidentiality. No new investigations were launched, nor any formal enforcement measures used, during the review period - although there was ongoing monitoring of Co-op as a result of the investigation in the previous review period. That monitoring was completed in the 2019-2020 reporting year.

19. Most respondents to the public consultation noted that they could not comment on the conduct of arbitrations, having never been party to one, nor investigations as there had been none during the review period. However, the majority of respondents were confident that the GCA would take necessary action if required and that the deterrent effect and the collaborative approach adopted by the Adjudicator meant that issues were resolved before requiring more formal intervention.

20. A small number of retailers raised points about arbitrations, one of whom would like published guidelines on how long after an event suppliers can first raise an issue and another suggesting the arbitration procedure should be changed so that reliance on written arguments is not subject to supplier agreement, thereby limiting the potential expense of an arbitration for which retailers generally bear the costs.

### Providing advice, guidance and recommendations

21. During the review period the GCA provided advice, guidance and recommendations, relying on the collaborative approach that underpins how the GCA operates. In general, respondents felt these were useful tools in understanding and reinforcing the Code and that the GCA used them

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<sup>10</sup> GCA Annual Survey 2022 – 'Overall, how well or not do you think these retailers follow the Code?' This statistic covers all direct supplier respondents supplying any of the 13 retailers covered by the Survey in 2022. Supplier views on retailer specific Code compliance is summarised in the GCA's Annual report: GCA Annual Report and Accounts, 2021-2022, pg32. <https://www.gov.uk/government/publications/2021-to-2022-gca-annual-report-and-accounts>.

in proactive ways to stop issues from escalating and large retailers generally appreciated GCA's engagement before publishing best practice guidance. A producer representative group found the material the GCA provided on the website to be easy to follow and good quality but that the guidance wasn't being utilised across the sector as effectively as it could be.

22. A variety of respondents to the consultation mentioned two pieces of guidance that they found to be particularly helpful.
- The first was the 7 Golden Rules for Cost Price Increase (CPI) requests<sup>11</sup>. Respondents felt that this was timely guidance on best practice to help large retailers and direct suppliers to manage their relationships and stay Code compliant when dealing with CPI requests, although one retailer was concerned that it could create confusion as they saw it as going beyond the role envisaged for the Adjudicator. In 2022, the GCA added a new question to the Annual Survey<sup>12</sup> about CPIs and 26% of direct suppliers had experienced a refusal to consider a CPI or an unreasonable delay in reaching a decision on a CPI request, making it the most common issue reported in the last five years<sup>13</sup>.
  - The second was the best practice statement based on feedback from suppliers and subsequent large retailer voluntary commitment to forensic auditing<sup>14</sup> which respondents felt to be a helpful intervention.
23. A representative group also highlighted the position statement on supply arrangements in March 2020 that responded to the pressures on the food industry during COVID-19 as a good example of proactive action by the GCA<sup>15</sup>.

## How effective the GCA has been in enforcing the Groceries Code

24. The vast majority of respondents to the consultation believed the GCA has been effective in enforcing the Code over the review period. The Survey results showed that the proportion of suppliers reporting Code-related issues, which was 79% when the Survey started in 2014, initially fell during the review period, from 36% in 2020 to 29% in 2021. However, the proportion rose slightly to 35% in 2022<sup>16</sup> which was the first year on year increase in suppliers experiencing Code related issues since the Survey was first conducted in 2014. Several respondents pointed to this increase as being evidence of external pressures having an impact on compliance and not of the GCA's overall effectiveness.
25. Suppliers responding to the consultation believed the existence of GCA was crucial as a deterrent against non-compliance by large retailers with the Code. However, they also said that the GCA's collaborative approach had been very effective and that the importance of having an independent regulator to hold large retailers to account had been especially valuable in the three years of the review period. Representative bodies also spoke highly of the effectiveness

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<sup>11</sup> <https://www.gov.uk/government/news/edition-28-news-from-the-adjudicator>

<sup>12</sup> See footnote 6 for details of the survey. As part of the 2022 GCA Survey, direct suppliers, were asked whether they had experienced the following issues in the previous 12 months: 'Refusal to consider a cost price increase (CPI)/ unreasonable delay in agreeing or in implementing an agreed CPI.

<sup>13</sup> According to the 2021-2022 GCA Annual Report and Accounts, pg 34.

<https://www.gov.uk/government/publications/2021-to-2022-gca-annual-report-and-accounts>

<sup>14</sup> <https://www.gov.uk/government/publications/forensic-auditing-retailer-voluntary-commitment/forensic-auditing-retailer-voluntary-commitment>

<sup>15</sup> <https://www.gov.uk/government/publications/gca-position-statement-on-current-supply-arrangements>

<sup>16</sup> See GCA Survey 2022 for a trend over time from 2014 to 2022. Direct suppliers were asked whether they had experienced listed issues with retailers covered by the Code in the previous 12 months. In the 2022 Survey, 35% of direct suppliers identified at least one issue.

and approach of the GCA, especially in giving SME businesses a voice and the ability to compete fairly.

26. Large retailers believed the oversight of retailer behaviour and sanctions the GCA can issue lead to more consistent behaviours and showed the GCA to be effective. They also pointed to the Survey showing compliance had generally improved<sup>17</sup>. Retailers also commented that the GCA's regular meetings with Code Compliance Officers (CCOs) and the balanced approach had been effective and ensured a business-wide approach was maintained.
27. Other stakeholders mentioned that the GCA was proactive in dealing with specific issues and that arbitrations and investigations were not in themselves good measures of effectiveness, but instead the GCA and Code gave a strong incentive for large retailers to comply. The running costs of the GCA were also seen as proportionate and respondents commented positively on the GCA's engagement with retailers, suppliers and other stakeholders during the review period.
28. More details of the evidence received into how effective the GCA has been in enforcing the Code are set out below.

### **What has been the impact of the GCA on the groceries market?**

29. The majority of suppliers who responded to the consultation believed that the impact of the GCA on the groceries market had been positive as retailer behaviour had improved, it had addressed the previous imbalance of power and made the grocery market fairer to operate in. This is broadly supported by the 2022 Survey, where 68% of direct suppliers agreed that the retailers covered by the Code conducted supplier relationships fairly<sup>18</sup>. Some thought the way the GCA had approached the role in a collaborative way, yet not afraid to use regulatory intervention, had been positive, led to more innovation and investment and ultimately benefitted consumers (which was the original intent of the Code). Several suppliers also mentioned that the impact on SMEs had been positive with the protection and support the Adjudicator provided against bad practices by the large retailers. They also mentioned that the GCA had shown what best practice looked like and this too had contributed to the reduction in poor behaviour from retailers.
30. Supplier representative groups largely agreed with suppliers on the positive impact of the GCA but did point out that the Survey results continued to show that Code compliance is not yet fully embedded in all retailers. Some supplier representative groups thought there were still some concerns preventing suppliers raising issues.
31. Most large retailers felt that the GCA's impact on the groceries market had been positive as it had ensured good practice across retailers and levelled the playing field. They also believed the GCA was still needed to ensure there were checks and balances and appreciated the guidance and clarity provided by the GCA.
32. One retailer suggested that the confidentiality requirements placed on the GCA were a barrier to their CCO working effectively and proposed that the GCA should be able to share confidential information with the CCO under a confidentiality umbrella. Confidentiality was also raised by another retailer but this was in reference to wanting the same protection as suppliers to confidentiality unless a formal investigation is needed. They also believed that there should

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<sup>17</sup> As referenced in Paragraph 17, the 2022 GCA annual suppliers survey showed that 92% of direct suppliers felt that retailers they have supplied had followed the Code consistently well or mostly. See footnote 10.

<sup>18</sup> GCA Annual Survey 2022. See footnote 6. New question for 2022 – 'To what extent do you agree or disagree that each of the following retailers conducts its trading relationships with its suppliers fairly, in good faith and without duress?' Reported statistic is aggregate score for those responding 'strongly agree' or 'tend to agree', across 13 retailers.

be a route of appeal for investigations. It was also raised that the amount of information required for large retailer progress reports was becoming an administrative burden and unmanageable.

33. Retailers also thought that suppliers were still not clear on the differing roles of the GCA, CMA and Small Business Commissioner with many believing the GCA had a role in ensuring fair prices, when he does not. They also thought more best practice statements and guidance on the Code would help provide clarity on areas which were considered ambiguous, however, retailers did recognise and value the progress the GCA had made and would like to see his current approach continue.
34. Other respondents, including services/consultants, individuals, consumer groups and charity/social enterprises also agreed that the impact on the groceries market has been positive noting that large retailer behaviour had been fairer. They also welcomed the impact of the collaborative approach of the GCA which meant less regulatory intervention.

### **How effective has the GCA been in improving retailer and supplier awareness of the Code?**

35. The GCA reported that it had restructured the team to enhance communications and engagement with stakeholders. In the final year of the review period, the GCA met (or presented to) over 100 suppliers to discuss the Code and his annual conference reached over 500 registrants. The GCA held 68 meetings with the large retailers in the 2021-22 reporting period and 79 the previous year. Although during COVID-19 it was difficult to meet face-to face, the GCA felt that online engagement due to COVID helped to reach a wider geographical spread and planned to continue online and face-to face engagement to improve understanding of the Code and to aid the GCA's understanding of stakeholders' businesses.
36. The Survey results, and some responses to the consultation, showed that overall awareness of the GCA and understanding of the GCA's role was consistent but there was still room for improvement. Throughout the review period, between 83-85%<sup>19</sup> of direct supplier respondents to the annual Survey were aware of the GCA and the Code. In addition, between 69%-72% of respondents had a good or fair understanding of the GCA role<sup>20</sup>.

### **How effective has the GCA been in improving supplier confidence in raising issues with retailer and GCA?**

37. In response to the consultation the GCA reported that he prioritised communication of the statutory requirement to maintain supplier confidentiality. The GCA had relaunched the Code Confident campaign,<sup>21</sup> adding a QR code to make it downloadable to make it more accessible, had launched a confidential reporting platform called *Tell the GCA*<sup>22</sup> and published a Code Compliance Officer (CCO) commitment to confidentiality<sup>23</sup>. Results from the 2022 Survey showed that 81% of respondents were aware that the GCA operates confidentially, which was up from 78% in 2020-21 and 66% in 2019-20<sup>24</sup>. The annual supplier Survey results also showed improving confidence from direct suppliers as 55% said they would raise an issue with

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<sup>19</sup> GCA Survey 2022. See footnote 6. 'How would you rate your understanding of the Groceries Code Adjudicator (GCA)'s role and responsibilities?' The proportion responding options other than 'unaware' was 83% in 2022, 84% in 2021 and 85% in 2020.

<sup>20</sup> GCA Survey 2022. See footnote 18. The proportion responding 'Good' or 'Fair' was 69% in 2022, 70% in 2021 and 72% in 2020.

<sup>21</sup> <https://www.gov.uk/government/publications/code-confident-pack>

<sup>22</sup> <https://www.tellthegca.co.uk/>

<sup>23</sup> <https://www.gov.uk/government/news/cco-commitment-to-confidentiality>

<sup>24</sup> GCA Survey 2022. See footnote 6. 'Did you know the GCA operates confidentially?'

the GCA in 2022, which is up from 45% of direct suppliers in 2020, continuing a positive trend<sup>25</sup>.

38. For those who, as part of the Survey, said that they would not consider raising an issue with the GCA, the most common reason given was that the suppliers believed retailers would find out and that there would be resulting consequences for their business. The second most common reason given was that suppliers believed that they could address such issues themselves<sup>26</sup>. This is broadly in line with the responses given by the small number of suppliers responding to the consultation, who were generally satisfied with how concerns were dealt with.
39. Several suppliers commented, as part of the consultation, that they were able to address concerns with buyers or a CCO (by reminding them of their obligations) and come to a resolution without taking it further.
40. Others said that they have resolved issues through their trade association when they felt unable to resolve themselves (and before going directly to GCA).
41. Most of the suppliers who responded to the question in the consultation about raising an issue with the GCA said they would consider raising issues about grocery supplies with the GCA in the future. The barriers to raising an issue in the future are consistent with the reasons highlighted above, including possible consequences for their business or that the issue could be addressed by themselves. Suppliers felt that it was good to be able to reach out to an actual person in the Adjudicator and they would be encouraged to reach out if it was really clear the retailer has breached the Code. One supplier felt that any breach would have to be significant for them to raise an issue with the GCA as they would rather try and agree a solution with the retailer first and they saw this as a positive part of the way the GCA was set up; it encourages the resolution of disputes via commercial negotiation before regulatory intervention.

### **Would representative groups consider raising an issue with the GCA on behalf of their members?**

42. All the representative groups who responded to this question in the consultation said they would consider raising an issue with the GCA on behalf of their members. Many said that they would still encourage members to engage with retailers first, however, there was still a fear of potential reprisal from retailers despite the GCA's commitment to confidentiality and therefore sometimes suppliers felt more comfortable going through a representative group or not escalating their complaint to the GCA at all. Several groups felt that it was helpful for them to be able to raise common issues confidentially while others felt their remit meant it was more difficult to provide anonymity to their members. One group noted that being able to raise concerns from a number of their members enabled the GCA to understand more widespread issues and enable these to be raised with the retailers promptly which could then lead to stronger compliance.

### **Have direct suppliers experienced any issues with retailers covered by the Code since April 2019? How do suppliers feel retailer practice overall has changed since the last review?**

43. The responses to the Survey show that since the first Survey in 2014, the prevalence of the most common issues experienced by suppliers had generally fallen, though over the most recent three-year period covered by the Review, this decline slowed. In some areas, more suppliers experienced Code related issues in the last 12 months of the review period than in the previous year. This point is illustrated by the chart below. For example, the most common

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<sup>25</sup> GCA Survey 2022. See Annual Report and Accounts pg 35 for the trend over time.

<https://www.gov.uk/government/publications/2021-to-2022-gca-annual-report-and-accounts>

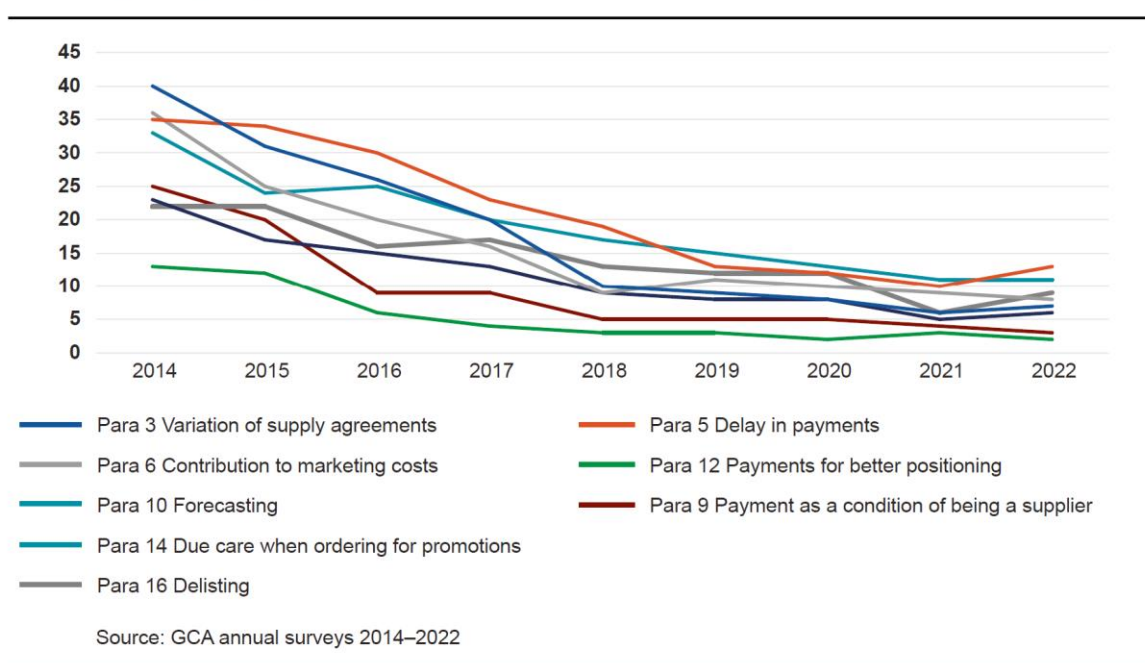
<sup>26</sup> GCA Survey 2022. See Annual Report and Accounts pg 35.



Code-related issue identified by the 2022 Survey was issues related to delays in payments, which 13% of direct suppliers had experienced in the past 12 months. This is up slightly from 10% in the previous year, but overall, since the introduction of the Code, the prevalence of this issue is less common, down from 35% in 2014. The top five Code-compliance issues identified by suppliers as part of the 2022 Survey were: Delay in payments, no compensation for forecasting errors, not acting in good faith and without duress, not meeting duties in relation to de-listing and obligating suppliers to contribute to marketing costs. This is broadly in line with the list of common Code issues identified by suppliers in the consultation<sup>27</sup>.

## Which issues have direct suppliers experienced in the past 12 months? (in Code terms)<sup>28</sup>

### Suppliers that report an issue with these Code paragraphs



44. Issues related to a delay in payments were also highlighted in response to the consultation. One supplier noted that they were not being paid on the date of their invoice but on the date of the retailer’s next payment run which they thought should warrant a potential investigation. However, one supplier commented that although they were still experiencing issues the impact was much smaller than it was before the Code and the GCA. One response to the consultation from a representative organisation suggested that the GCA had led to beneficial conditions for groceries’ suppliers, evidenced by business payment practices and performance data which

<sup>27</sup> The main issues with designated retailers that were identified by suppliers at consultation were: variation of supply agreements and terms of supply, delay in payments, no compensation for forecasting errors, not meeting duties in relation to de-listing, and equal amounts of issues for variation of supply chain procedures and not applying due care when ordering for promotions.

<sup>28</sup> Chart taken from GCA Annual Report 2021-2022, pg 34, covering some of the main issues experienced by suppliers. Data based on GCA Annual Supplier Survey 2022.

indicated shorter payment periods compared to suppliers of clothing and other products.<sup>29</sup> The comments from direct suppliers mainly pointed to inexperience/churn of buyers being a big problem and led to a lot of the issues they experienced.

45. Seven out of thirteen retailers had improved their practice in 2022 relative to 2021, according to their suppliers<sup>30</sup>. Out of the suppliers that responded to the consultation, several felt things had improved but recently had been slipping due to outside pressures such as COVID-19 and the war in Ukraine. They pointed to the GCA's interventions such as the confidentiality commitment agreed with CCOs, voluntary commitments on forensic audits and the 7 Golden Rules which had helped to keep retailers in check and ensure their practice had improved/stayed the same.

### **Has the introduction of the GCA had an impact on product or process innovation for suppliers?**

46. Of suppliers who answered the consultation question on spending on product or process innovation, most considered that the introduction of the GCA had either had a positive impact on their likelihood to undertake product or process innovation, or no impact. None were less likely to innovate. Suppliers fed back that the more secure business environment afforded by the GCA had given them confidence to innovate which they could focus on instead of having to devote time to poor retailer behaviour and have more chances of making a return.

### **What impact has the GCA had on large retailers' relationships with suppliers and has resolving a complaint with suppliers become more or less burdensome than before the GCA?**

47. Some retailers believed the Code and GCA had not had much of an impact on their relationships with suppliers because of the way their businesses were already operating or that they had always responded to complaints in an appropriate way. They did appreciate that the GCA had helped to level the playing field or introduced consistency with how all retailers should deal with suppliers and that the GCA had done a good job of raising awareness of the Code. Some retailers felt the Code helped to set parameters by which they needed to comply but that some suppliers were 'weaponising' the Code and a misunderstanding of the GCA's remit made it burdensome. One retailer noted that being regulated had created additional administrative requirements and that it had become more burdensome to deal with suppliers.

### **What has been the impact of the GCA on consumers in relation to the quality or choice of groceries supplied by retailer?**

48. There is a lack of quantitative evidence on the causal impact on the quality or choice of groceries supplied. However, the majority of consumers/consumer representatives who answered this question as part of the consultation believed that the impact has been positive as the GCA has made retailers deal with suppliers in a more ethical manner which was important to them as consumers and has increased the choice and quality of products. They believed that treating suppliers better had trickled down the supply chain to workers, farmers and growers. Several also mentioned finding the survey results useful to see which retailers are more compliant with the Code as this may influence where they shop.

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<sup>29</sup> See footnote 5. Although this evidence is indicative of a positive impact by the GCA, there is no requirement for each retailer to report their payment terms in a consistent manner or split by product category. It is therefore difficult to make further conclusions using this data, which only covers a subset of the retailers covered by the Code.

<sup>30</sup> GCA Annual Report and Accounts 2022, pg 31. <https://www.gov.uk/government/publications/2021-to-2022-gca-annual-report-and-accounts>. 'How, if at all, do you feel the following retailers' practice has changed over the past 12 months?' Seven retailers had positive net improvement scores in 2022, which is defined as the proportion of direct suppliers responding that retailer practices had improved minus the proportion of direct suppliers responding that retailer practices had worsened, over the previous 12 months.



## **The Government's conclusions on how much the GCA's powers have been exercised and in what circumstances and how effective the GCA has been in enforcing the Groceries Code**

49. It is clear from the responses to the consultation that stakeholders, including suppliers and retailers, continue to consider the GCA to be effective and to have exercised its powers appropriately. This is supported by the GCA Survey results which broadly improve from year to year. The Government therefore concludes that the GCA should continue in its work and will ensure that the Adjudicator continues to be adequately resourced to carry out its statutory functions.
50. The Government notes that there continued to be an element of fear of reprisal which may be deterring suppliers from reporting issues and that, while there have been welcome improvements noted in the GCA Survey results across the statutory review period, the Adjudicator has acknowledged the need to continue his work in this area. While recognising that some retailers thought the confidentiality requirements made it more difficult for them to address issues, the Government believes that those safeguards are required to meet the overriding aim for suppliers to have confidence in raising concerns. The Government notes that the number of arbitrations remains low and agrees with stakeholders that this is an indication of the effectiveness of the GCA's approach and the role of CCOs in resolving issues before they are brought to formal arbitration.
51. The GCA continues to develop and adapt his approach to meet the changing challenges facing the sector and issues arising for suppliers. The collaborative approach has enabled the Adjudicator to react quickly to concerns and resolve issues without the need to use formal regulatory interventions. The Government believes this is an effective and proportionate approach and supports initiatives such as the 7 Golden Rules which fully utilise the Adjudicator's powers and have been widely welcomed by stakeholders as a helpful and timely intervention.
52. The specific issues raised by a small number of stakeholders were not widely made and it is not possible on the basis of the available evidence for the Review to conclude that these are significant issues that require action following the review, for example by issuing statutory guidance to the GCA. The Government suggests that these points should be raised directly with the GCA.
53. As set out above, a concern was raised about the length of time that a supplier can raise a concern after an issue has occurred. There is a limit set out in the Order that an arbitration has to be submitted within four months from the supplier *initiating a dispute* with the retailer. However, there is no time limit specified in the Order between the alleged breach of the Code occurring, for example a delisting, and a dispute being initiated with the retailer and statutory limitation periods (under the Limitation Act 1980) would apply.
54. One retailer suggested that parties should be able to make written submissions rather than for there to be an in-person hearing which drives additional costs that usually fall to the retailer. Parties are always at liberty to make an application to decide issues on the papers rather than a formal hearing and the GCA also has the opportunity to mandate if he sees fit. The process is consensual so both parties have to agree to the process unless the Adjudicator decides otherwise. This is therefore a decision for the Adjudicator in each case and there is insufficient evidence to suggest that parties are generally unhappy with his approach.
55. On the question of an appeal mechanism in relation to an investigation, should a designated retailer wish to appeal against the imposition of a financial penalty or its amount, they can do so through High Court proceedings as provided for in s.9(3) of the Act. A retailer can also seek

Judicial Review if it thinks the Adjudicator has not acted within its powers, has acted unreasonably or not followed the correct procedure.

## **Term of Reference 2: whether it would be desirable for the Secretary of State to exercise her Order-making powers contained in Section 9(6) and Section 15(11) of the Act.**

56. S9(6) and S15(11) Order-making powers allow the Secretary of State to amend the maximum fine that the GCA can impose following an investigation and to limit the information that the Adjudicator can consider when deciding whether to launch an investigation<sup>31</sup>. The response from the GCA and other stakeholders was that the GCA needs to be able to fine retailers at an amount that dissuades them from not following the Code and that a maximum fine of 1% of turnover still seems to be a relevant amount. The possibility of a fine was one part of the successful formula of how the GCA regulates.
57. The majority of respondents agreed that it would not be necessary to make an order specifying the information the GCA may consider in deciding whether to carry out an investigation. The information which the GCA can consider was seen to be quite wide ranging but any limitations would hinder the Adjudicator's ability to be effective. Although some retailers believed that it would help transparency if the information the GCA may consider when deciding to investigate was outlined in more detail, they did not see this as a priority issue.
58. Some respondents would like the Adjudicator to be able to launch investigations on his own initiative rather than requiring information about non-compliance and some would also welcome the greater use of fines.

## **The Government's conclusions on whether it would be desirable for the Secretary of State to exercise her Order-making powers contained in Section 9(6) and Section 15(11) of the Act.**

59. The maximum fine the GCA can issue is 1% of all turnover (and not just turnover from a retailer's groceries' business), giving significant scope to impose an appropriate financial penalty. Also, the Government sees no case to restrict the information which GCA can consider before deciding whether to launch an investigation as set out in s.15(13) of the Groceries Code Adjudicator Act. However, as an investigation is a potentially significant regulatory intervention, it is right that it is based upon some evidence or intelligence of non-compliance. It is also appropriate that, as required by the Act, the grounds for undertaking an investigation are set out in guidance issued by the GCA, ensuring transparency in the GCA's decision-making approach.

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<sup>31</sup> The Groceries Code Adjudicator Act 2013 allows the Secretary of State, following a review, to insert a new section into the Act which would state that, in deciding whether to carry out an investigation the Adjudicator may consider only—

- (a) information provided by a supplier;
- (b) information that is publicly available;
- (c) information provided by a person who obtained the information at a time when the person was a worker employed by the retailer in question or a company in the same group;
- (d) information provided by the retailer in question about whether it has complied with a recommendation made under section 7 (i.e. following an investigation).

### **Term of Reference 3: whether some or all of the GCA's functions should be transferred to a public body, such as the Competition and Markets Authority**

60. The overwhelming majority of the responses to the public consultation did not agree with, or identify any advantages to, the transfer of the GCA's functions to the CMA or another public body. Respondents felt that there could be a loss of independence, expertise, supplier confidentiality and the collaborative approach valued by all categories of stakeholders. There were also concerns that the GCA role would be lost in other priorities of the CMA and that the GCA's role in the grocery sector was too important to be merged.
61. Stakeholders felt the GCA was already running efficiently and effectively and believed it achieved significant impacts for a low cost - the total levy on large retailers (each with over £1bn groceries turnover) being approximately £2m per annum. Some stakeholders did feel there could be greater efficiency in the GCA's access to professional support and expertise and that enhancing the ability to recruit and retain the right staff was crucial to allow the Adjudicator to fulfil his statutory role. However, the benefit of achieving this by subsuming the GCA into a larger body was considered to be outweighed by the disadvantages. There was also a concern that suppliers and representative bodies may be less willing to come forward with evidence of Code breaches.
62. Retailers, on balance, were opposed to a transfer of GCA functions, and one pointed out that, as the cost is borne by them, there would be no direct savings to the public purse in merging with the CMA. Retailers also commented that the focus of the GCA would be reduced and diluted if it were to become a part of the CMA and that the continued separation between the GCA and the wider competition law regime was important.
63. Suppliers, representative bodies and consumer groups were overwhelmingly against transferring the functions to the CMA or another public body. Much like the retailers, stakeholders referred to the possibility that the impact of the GCA would be diluted which in turn would reduce the efficiency and effectiveness of the GCA. There was also concern over the independence, or perceived independence, of the GCA if its functions were transferred to the CMA and this could damage the collaborative approach which was working well.

### **The Government's conclusions on whether some or all of the GCA's functions should be transferred to a public body, such as the Competition and Markets Authority**

64. Consideration of the views and evidence from the consultation suggests that the GCA should remain an independent statutory body but that the GCA and CMA should explore ways to realise efficiencies around staffing and expertise as per Schedule 1 para 17 of the Act which states "The Competition and Markets Authority may provide staff, premises, facilities or other assistance to the Adjudicator (with or without charge)." The potential cost savings associated with any transfer of functions was explored as part of the Review. Overall, the analysis showed that only minimal savings could be realised under a full transfer of functions, related to possible administrative and IT efficiencies. The analysis showed that these small benefits would be largely outweighed, each year, by costs introduced as a result of the need to re-establish the role as an effective independent statutory body. The conclusion is that the GCA should instead remain an independent statutory body, but further efficiencies could be realised should the GCA work closely with the CMA. This would give GCA access to expertise and the ability to recruit through the CMA to ensure GCA seconded staff have the skills and experience they

need to fulfil statutory role of GCA, leading to potential small savings in the future, relative to the status quo.

## **Term of Reference 4: whether to abolish the GCA**

65. All respondents considered it was still necessary to have an Adjudicator to enforce the Code. Suppliers believed that if there was no adjudicator in place then retailers would swiftly return to their previous poor behaviour towards suppliers as there would be no one to hold them to account. The retailers recognised that although the amount of work created for them by the GCA is significant, it is still beneficial to retailers and ensures they are being compliant with the Code. They also pointed out that the competitive market they are operating in might see some retailers regress and could overall have a detrimental impact on all suppliers. Other stakeholders mentioned that not only did they think the GCA was still absolutely necessary but they felt the scope of the GCA should be strengthened or expanded. Many respondents felt that due to the pressures resulting from external factors during the review period there was still a need for the GCA to ensure Code compliance.

## **The Government's conclusions on whether to abolish the GCA**

66. It is clear that retailers and suppliers alike value the GCA and the highly effective way it enforces the Code. The Government agrees that it is still necessary to have an independent adjudicator and notes that despite the significant improvements in business behaviours since the introduction of the Code and the creation of the GCA, there remains a risk of poor practices re-emerging without an effective regulator to enforce the Code and address supplier concerns.

# Annex A: Terms of Reference

## Term of Reference 1

Consider the GCA's performance from 1 April 2019 to 31 March 2022.

This will in particular:

- Consider how much the GCA's powers have been exercised and in what circumstances; and
- Assess how effective the GCA has been in enforcing the Groceries Code ("the Code").

## Term of Reference 2

Consider whether it would be desirable for the Secretary of State to exercise his Order-making powers contained in Section 9(6) and Section 15(11) of the Act.

This will consider whether:

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

## Term of Reference 3

Consider whether some or all of the GCA's functions should be transferred to a public body, such as the Competition and Markets Authority.

In deciding whether to exercising the power to transfer, the Secretary of State must take account of the desirability of:

- Increasing efficiency, effectiveness and economy in the exercise of public functions; and
- Ensuring appropriate accountability to Ministers in the exercise of public functions.

## Term of Reference 4

Consider whether to abolish the GCA.

This power may be exercised if:

- review findings demonstrate that the GCA has not been sufficiently effective in enforcing the Code to justify its continued existence;
- review findings demonstrate that it is no longer necessary for there to be a GCA to enforce the Code;
- all of the GCA's functions are transferred to a public body; or
- the Code is revoked and not replaced.

## Consultation process

There will be a consultation paper for the GCA review, and the following will be consulted:

- (a) The GCA;
- (b) The Competition and Markets Authority;
- (c) The retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order and in the Notices of Designation issued by the CMA;
- (d) One or more persons representing the interests of suppliers;
- (e) One or more persons representing the interests of consumers; and
- (f) Any other person (we have not identified any specific person or persons here and welcome contributions from any interested person).

## Annex B: The Code and the GCA

### The Groceries Code

In May 2006 the Competition Commission<sup>32</sup>(CC) launched a Market Investigation into the UK Groceries market in response to long-standing concerns about practices of the large retailers (supermarkets). The CC published its findings in 2008<sup>33</sup> stating that, while the sector was broadly competitive, some large retailers were transferring excessive risk and unexpected costs to their direct suppliers by using their buyer power. The CC considered that this might have an adverse effect on suppliers' ability to invest and innovate which could ultimately reduce choice and/or increase prices for consumers. As a result of these findings, the CC issued the Groceries (Supply Chain Practices) Market Investigation Order 2009<sup>34</sup> ("the Order") containing a new strengthened code of practice for groceries retailers' dealings with their direct suppliers i.e. The Groceries Supply Code of Practice<sup>35</sup> ("the Code").

Large retailers were given some time to set up a voluntary Ombudsman but, as this self-regulatory approach did not progress, the Groceries Code Adjudicator (GCA) was established under the Groceries Code Adjudicator Act 2013 ("the Act")<sup>36</sup>.

### The Groceries Code Adjudicator

The GCA is an independent regulator sponsored by the Department for Business and Trade. It was established under the Act. The purpose of the GCA is to monitor and enforce the Code<sup>37</sup>.

The first Groceries Code Adjudicator, Christine Tacon CBE served from June 2013 until October 2020. Mark White became the second Groceries Code Adjudicator on 31 October 2020, appointed by the Secretary of State for a four-year term. The GCA is wholly funded by a levy on the retailers which for 2023/24 is £2 million. Mark White works four days per week and has a small team made up of public sector secondees.

### The Remit

The Code applies to the fourteen largest UK grocery retailers<sup>38</sup> ("the retailers") with UK annual groceries turnover of more than £1 billion and which are designated in writing by the CMA as a Designated Retailer. Designated Retailers must incorporate the Code into their supply agreements with their direct suppliers. It imposes an over-arching principle of fair dealing and includes specific provisions governing the variation of supply agreements and terms of supply; the timing of payments; payments for marketing costs and the funding of promotions; and payments as a condition of being a supplier.

The Code does not directly regulate the actual prices paid by retailers to their direct suppliers. In addition, the Code does not cover disputes between the retailers and consumers, which are regulated by consumer protection legislation.

### Duties

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<sup>32</sup> In April 2014, most of the functions of the Competition Commission were transferred to the Competition and Markets Authority.

<sup>33</sup> [www.gov.uk/cma-cases/groceries-market-investigation-cc](http://www.gov.uk/cma-cases/groceries-market-investigation-cc)

<sup>34</sup> <https://www.gov.uk/government/publications/groceries-supply-chain-practices-market-investigation-order>

<sup>35</sup> <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

<sup>36</sup> <https://www.legislation.gov.uk/ukpga/2013/19/contents>

<sup>37</sup> <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

<sup>38</sup> These are – Amazon, Aldi, ASDA, B&M, Co-op, Marks and Spencer, Iceland, Lidl, Morrisons, Ocado, Sainsburys, Tesco, Waitrose and Home Bargains. Ocado and B&M were added to the list in November 2018, Home Bargains was added to the list in September 2019 and Amazon was added on 1 March 2022.

The GCA is responsible for monitoring and encouraging compliance with and enforcing the Code. Under the Code the large retailers are obliged to deal with suppliers to ensure fairness across a range of supply chain practices. These include making payments on time; no variations to supply agreements without notice; compensation payments for forecasting errors; no charges for shrinkage or wastage; restrictions on listing fees, marketing costs and delisting. The GCA website includes a list of issues covered by the Code<sup>39</sup>.

### **Statutory functions**

The statutory functions of the GCA, set out in legislation, are to:

- provide advice and guidance to both suppliers and large retailers on matters relating to the Code;
- arbitrate in disputes between suppliers and large retailers [or appoint someone else to arbitrate];
- investigate issues to ascertain whether there has been a breach of the Code;
- impose sanctions and other remedies for breaches of the Code; and
- to prepare and publish an annual report on the GCA's activities.

### **Information sources**

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 [unless the person sharing the information gives consent for disclosure, disclosure is required for the purpose of an EU obligation, disclosure is required under the rules of a court or a court order, for the purposes of legal proceedings of any description].

### **Powers**

#### **Investigative powers**

Under the Act, the GCA may launch an investigation if the GCA has reasonable grounds to suspect that a large retailer has:

- (a) broken the Code; or
- (b) failed to follow a recommendation issued by the GCA following a previous investigation.

#### **Enforcement powers**

If a breach of the Code is found following investigation, the GCA can take one of more of the following enforcement measures:

- (a) make recommendations;
- (b) require large retailers to publish details of any breach; and
- (c) impose a fine.

### **Role of Government**

The GCA is operationally independent of Government.

The Secretary of State for the Department of Business and Trade is responsible for appointing the GCA. The current GCA was appointed following an open competition in accordance with Cabinet Office guidelines on public appointments. The Secretary of State is also required to approve the GCA's annual levy. The GCA must submit a levy proposal and supporting business case in advance to the Secretary of State. The Secretary of State will consider the proposal and write to the GCA confirming whether she has approved the levy, and whether she has done so in full or in part. Once

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<sup>39</sup> <https://www.gov.uk/government/organisations/groceries-code-adjudicator>

in receipt of this approval, the GCA may invoice the retailers for their share of the levy. Non-payment of the levy is recoverable by the GCA as a civil debt.

The Groceries Code Adjudicator Act 2013 also provides powers for the Secretary of State to transfer the GCA's functions to a public body or abolish the GCA. The Secretary of State can use the findings of the GCA Review to consider whether and to what extent it is necessary to exercise these powers.



## **Annex C: Breakdown of responses to public consultation**

### **Statutory Respondents listed in the Groceries Code Adjudicator Act 2013.**

- the Adjudicator;
- the Competition and Markets Authority;
- retailers subject to the Code;
- one or more persons representing the interests of suppliers;
- one or more persons representing the interests of consumers; and
- any other person the Secretary of State thinks appropriate.

### **Responses broken down by sector**

- large retailers (ie those designated under the Code) – 12
- suppliers – 21
- representative organisations – 27
  - of which there were 11 trade associations; 10 charity/social enterprise groups, 6 supplier representative groups
- consumers/consumer groups/individuals – 5
- Other - 6
  - including services/consultants, the CMA, and the GCA



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