



Groceries Code
Adjudicator

GCA arbitration policy

Introduction

1. This policy sets out the position of the Groceries Code Adjudicator (GCA) in relation to arbitration. It is primarily aimed at suppliers considering making a request for arbitration after having escalated a dispute about the Groceries Supply Code of Practice (the Code) in accordance with Article 11 of the Groceries (Supply Chain Practices) Market Investigation Order (the Order). It does not set out in any detail the Adjudicator's powers and duties, arbitration practice or procedure. The Adjudicator's powers and duties are set out in the Groceries Code Adjudicator Act 2013 (the 2013 Act) and the Order. Arbitration in England, Wales and Northern Ireland is conducted under the Arbitration Act 1996 (the 1996 Act). Scotland has separate provision. The Order specifies the rules of the Chartered Institute of Arbitrators (CI Arb) as also governing arbitration of disputes under the Code and the Order. These are contained in the CI Arb Arbitration Rules, which also apply only to England, Wales and Northern Ireland.
2. The GCA intends to run arbitration in Scotland in the same way as the rest of the UK, as far as possible. The GCA may need to consider adaptations to the processes derived from the 1996 Act for Scottish cases, however; and to obtain Scottish legal advice in doing so.
3. Arbitration is a quasi-judicial process. It is binding on the parties, has significant cost implications and arbitration awards are appealable through the courts on only a restricted range of grounds. Suppliers and retailers considering or involved in arbitration should seek independent legal advice on arbitration itself and on how best to prepare and present their arguments, and their likely prospects of success. Although the Order provides that unless the claim is vexatious or wholly without merit, the costs of the arbitrator are to be met by the retailer; by contrast, the costs of the arbitration as a whole are to be apportioned in the discretion of the arbitrator. These may be significant, as they will include each party's legal costs. They would usually follow the event, meaning the unsuccessful party pays.
4. The GCA's role is to encourage, monitor and enforce compliance with the Code. Arbitration is only one way in which the GCA can do this. Others include informal discussions and actions involving suppliers and retailers; investigations and enforcement actions. Guidance on investigations and enforcement is available on the GCA website.
5. To avoid conflicts of interest, the GCA is not able to advise suppliers or retailers individually on issues or disputes in which the Adjudicator may later be asked to arbitrate. The role of the GCA office is to provide information about the process the Adjudicator will follow but the GCA cannot advise on the 1996 Act or on the possible consequences of decisions to be taken by any party in pursuing their claim. The GCA office will also ensure, before any request for arbitration is taken further, that it sets out the claim in sufficient detail by reference to specific provisions of the Code so that it is clear that the Adjudicator is empowered to arbitrate.
6. The GCA cannot determine disputes about the Order, or commercial contractual disputes which go beyond interpretation of the Code and determining whether or not it has been breached. These should be brought to the CMA under the Order or to the courts as commercial litigation or a commercial arbitrator for arbitration outside the GCA Act, respectively. However, as the power to interpret the Code has been given to the Adjudicator, it may be that to progress or resolve a commercial claim involving questions of Code compliance, a declaratory award is first needed from the GCA.
7. The GCA will tailor its approach in each case, reflecting wherever possible the agreement of the parties about how their arbitration will be conducted. Some

arbitrations will be relatively quick and wholly or mostly dealt with by correspondence and exchange of documents; others will take longer, require case management meetings, directions, a hearing and possibly interim applications and awards. In all cases, the GCA will take a practical approach. The Adjudicator expects the parties to narrow the issues purely to Code-related points and to articulate these clearly and succinctly, having regard to normal commercial practice in the sector.

8. In some cases, the Adjudicator may need to engage expert assistance, on technical or other elements. In others, the parties may engage their own experts; or none will be required. Fees will be incurred for these services, that will go to the costs of the arbitrator or of the arbitration, respectively.

How arbitration works

9. The 1996 Act sets out the framework within which arbitration should be conducted in England, Wales and Northern Ireland. The object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. The parties are largely free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest. The courts have limited powers to intervene.
10. The first step in the GCA arbitration process is the arbitration request form (Appendix 1). Completed forms should be sent to enquiries@groceriescode.gov.uk and served on the respondent in accordance with the CI Arb Rules at the same time. It should set out the main elements of the dispute that will later form the basis of the statement of claim. It should summarise relevant events, give details of the alleged Code breach, and make reference to specific provisions of the Code and how they should be interpreted. It should also give an indication of the loss suffered directly as a result of the alleged Code breach, together with details of any attempt to mitigate that loss, and the remedy sought. If an arbitration request form does not do this, the GCA cannot properly determine whether it would be appropriate to accept jurisdiction or appointment as arbitrator in the dispute.
11. In preparing the arbitration request form, the requestor will find it helpful to think ahead to how its pleadings might be constructed, and the supporting evidence it will need for its arguments. A chronology of events and correspondence, including contracting cycles, notice periods, deadlines, variations, communication about renewing the contract are all examples of relevant details to include. Supporting evidence will be required when the statement of claim and defence (and any counterclaim) are exchanged, and might consist of e-mails, letters, contemporaneous notes of conversations and witness evidence. Parties may each present a different interpretation of these events, so should be prepared to explain why their interpretation is the better one. Critical to any claim will be each party's explanation of how the events described amount to a breach of the Code, or not. This should have become clear through discussions between the parties as part of the earlier dispute escalation process so that by the time the dispute reaches the GCA, much of the analysis has been done. It is not for the GCA to do this for the parties as the dispute progresses.
12. Any loss suffered as a result of the alleged Code breach should be expressed as an amount, with sufficient detail given as to its calculation to enable the GCA to understand how it has been reached, together with any attempt to mitigate it. Again, the detail will be submitted later, but it is important to think carefully about it at an early stage as it is likely to be disputed as part of the arbitration.

13. The GCA cannot consider disputes arising before its establishment on 25th June 2013. Earlier disputes are for the Competition and Markets Authority, as the legacy body for the Office of Fair Trading.
14. The GCA will not treat as validly submitted any request that does not set out the details of the alleged breach by reference to specific provisions of the Code. This is to ensure that resources are not engaged prematurely, with later costs implications, on claims that fall outside the GCA's powers or are insufficiently particularised. Where requests are received which contain insufficient analysis of the dispute, the GCA office will request further explanation and may require a fresh arbitration request form to be submitted before taking any further action.
15. Usually, any parallel legal proceedings are stayed (i.e. stopped).
16. The next stage in the majority of cases will be a preliminary case management meeting of both parties with the Adjudicator. At this meeting, representations about substantive jurisdiction may be made, and a timetable will be set for exchange of the statement of claim, defence, any counterclaim and supporting evidence, including witness statements if needed. The GCA will take as straightforward and time-efficient an approach as is possible to do justice in each case, and to keep disputes as focused as possible on the core issues of Code compliance. Attempts to widen the issues during the progress of the dispute e.g. by seeking overly extensive disclosure, are unlikely to be viewed favourably by the Adjudicator. If there is no real need to call witnesses because the questions can be dealt with sufficiently by pleadings and documentary evidence, that is the better course to take. At all times the Adjudicator will encourage ongoing settlement negotiations between the parties.
17. The statement of claim and defence and any counterclaim will set out the parties' respective accounts of the facts, applicable law and remedy sought, including damages.
18. Depending on the complexity of the dispute, further case management meetings and preliminary hearings may be held. The Adjudicator may give directions, engage experts and technical assistance. The parties may agree to a documents-only procedure, especially if no witness evidence is to be introduced, or there is no need to cross-examine witnesses. Alternatively, a date will be set for an arbitration hearing. The Adjudicator may choose to hold a pre-hearing meeting to ensure the hearing runs smoothly, witnesses are available, time for examination in chief and cross examination is agreed, and appropriate administrative arrangements are made in good time. The location and date of the hearing will be agreed as far as possible.
19. At any hearing, the Adjudicator will listen to each party's case in turn, will be referred to relevant documents and may hear from witnesses, and will then retire to consider and write the award, which is a reasoned decision setting out the findings of fact, interpretation of the relevant Code provisions and any financial or other remedy. Awards are binding, although appealable on a narrow range of grounds. Provisional awards may be made if both parties agree to give a power to make them to the Adjudicator. The GCA may make a declaratory award on a narrow Code-related point of interpretation if this is required to progress or resolve a mixed dispute.
20. Unlike mediation, there is little opportunity to identify or work with the parties' underlying interests. The GCA has no powers in relation to mediation and any form of alternative dispute resolution other than arbitration should be addressed by the parties directly between themselves.

The statutory framework

21. The Order sets out the legislative framework for escalating disputes and ultimately taking them to arbitration. There is separate guidance on the GCA website about [escalating disputes](#).
22. In summary, the supplier may contact the Code Compliance Officer (the CCO) of a retailer if the supplier considers that the retailer has not complied with the retailer's obligations under the Code. Whenever the supplier contacts the CCO about an alleged breach of the Code, the CCO should inform the supplier of the supplier's right to initiate a dispute, and confirm with the supplier whether or not it wishes to do so. If the CCO does not request confirmation as to whether or not a dispute should be initiated, a dispute will be deemed to arise. If the supplier and the retailer are unable to resolve the dispute within 21 days of its having arisen, the supplier may request arbitration. The supplier must do this within 4 months of the dispute having arisen. Under the 2013 Act, the Adjudicator will act as arbitrator or appoint someone else to do so.
23. For a supplier, then, the route to arbitration under the Order is by escalating a dispute through the CCO. If a supplier refers a dispute to arbitration under the Order, the Adjudicator is then obliged to arbitrate or to appoint someone else to arbitrate (section 2(1) of the 2013 Act). The Adjudicator's costs are published in a separate paper covering all cost-recoverable work undertaken by the GCA, available on the GCA website and updated from time to time. Any other arbitrator will apply fees as set out in his or her terms and conditions. They are likely to be higher than those of the Adjudicator.
24. For a retailer, the route to arbitration is not directly under the Order but rather, under the supply agreement with the supplier, provided that the supply agreement contains an arbitration clause. The arbitration must be on the same terms as those set out in the Order (Article 11(9)). If a retailer refers a dispute to arbitration under a supply agreement, the Adjudicator may accept appointment as the arbitrator (section 2(2) of the 2013 Act), but is not obliged to accept.
25. The arbitration will be administered by the GCA (Article 11(5) of the Order). If there is a conflict of interest in relation to a particular dispute, the GCA will facilitate the appointment of someone else in accordance with the CI Arb Arbitration Rules. CI Arb will charge for this service and this will be a cost of the arbitration, to be allocated in the final award.
26. To the extent they are compatible with Article 11 of the Order, the arbitration will be conducted in accordance with the CI Arb Arbitration Rules, or those of another dispute resolution body nominated by the arbitrator. There will only be one arbitrator and the seat of the arbitration will be London, or another city in the UK nominated by the supplier (Article 11(6)).
27. The retailer will pay all costs of the arbitrator, unless the arbitrator decides that the supplier's claim was vexatious or wholly without merit, in which case costs are within the arbitrator's discretion (Article 11(7)). This is a high threshold. All other costs of the arbitration are assigned at the arbitrator's discretion. The usual approach is that the unsuccessful party pays. This includes the successful party's legal expenses.
28. The decision of the arbitrator is binding, although appealable on the narrow grounds set out in sections 67-69 of the 1996 Act (Article 11(8)).
29. A range of remedies is available. The arbitrator may make a declaration as to any matter to be determined in the proceedings. He or she may order payment of any sum

of money; and has the same powers as the court to order a party to do or to refrain from doing something, and to order specific performance of a contract (i.e. that what is promised to be done is done, on the terms agreed).

Key elements of GCA arbitration policy

Timing

30. A retailer should not so delay its response to disputes that the supplier is effectively “timed-out” from requesting arbitration. To protect its position in those circumstances, a supplier would need to have escalated the dispute in accordance with the Order and to request arbitration in the absence of any fruitful engagement with the retailer’s CCO, within the time permitted.
31. The GCA expects the parties to continue to try to resolve the dispute between themselves, and to keep the GCA informed of any progress. Failure to engage in settlement discussions may influence the allocation of costs of the arbitration in any final award. Once arbitration is underway, any agreement to settle is usually reflected in an agreed award, which records the agreement to settle and discharges the duties of the arbitrator. It also enables provision to be made for GCA costs, where appropriate. The parties are free to agree on the form of this, including whether or not it should contain reasons.

Who will arbitrate?

32. The GCA intends to run most arbitrations itself, with the Adjudicator as arbitrator. This is likely to be the quickest, most cost-effective option and will use the Adjudicator’s expertise to resolve disputes under the Code. These arrangements will be discussed at the case management meeting, or at later meetings if the need for them only becomes apparent later.
33. Exceptionally, a dispute may genuinely be too large or complex for the small GCA office to handle without adversely impacting other important work. Some elements may only be capable of resolution by a court. Rarely, a conflict of interest may prevent the Adjudicator from acting as arbitrator.
34. If the Adjudicator does not act as arbitrator in a case, an arbitrator will be identified within 28 days, as required by the 1996 Act. Under Article 11(5) and (6) of the Order, the arbitrator will be identified by the GCA, rather than by the parties.

Location

35. Under the Order, this could be London or another city in the UK, at the supplier’s nomination. This will be discussed at the case management meeting, or in correspondence.

How will arbitration be conducted?

36. The Order provides that arbitration will be conducted under the CIArb Arbitration Rules, to the extent these are compatible with the provisions of Article 11 of the Order. The seat of the arbitration will be London or another city in the UK nominated by the supplier.
37. In most cases, one or more case management meetings will be held to help determine the location and date of the hearing, and the requirements for preparation and

exchange of arguments and evidence, including the number of copies needed for the Adjudicator and anyone providing advice to the Adjudicator. There will be no closed or private evidence taken into account. Everything that is sent to the GCA should be copied at the same time to the other party. Further requirements which may be included are set out in section 34 of the 1996 Act.

38. Notice of hearing and the opportunity to appear and to present their case will be given to both parties. Neither party has to appear at the hearing, although hearing dates will be set with both parties' availability in mind.

Status of decision and award

39. Under the 1996 Act, an arbitration award is binding and enforceable through the courts.
40. Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), an arbitration award is binding and enforceable worldwide.

Costs of arbitration and interest

41. Sections 37 and 59 of the 1996 Act deal with costs of the arbitration and interest. Care should be taken to distinguish between the costs of the arbitrator, and those of the arbitration as a whole. Under section 37, if the arbitrator appoints experts, legal advisers or technical assessors, their fees and expenses are included in those of the arbitrator. Under section 59, costs of the arbitration are the arbitrator's fees and expenses, those of any arbitral institution, such as the CI Arb and the legal costs of the parties. GCA costs are set out in a separate paper, available on the GCA website, which includes the rates applied for all cost-recoverable work by the GCA. They may be updated from time to time.
42. The Order provides that all costs of the arbitrator will be met by the retailer, 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. All other costs of the arbitration will be assigned at the arbitrator's discretion (Article 11(7)). The usual practice is that the unsuccessful party pays. In cases involving interim applications, significant delay, disputed expert evidence and so on, interim costs applications may be made to be dealt with as the case progresses and brought together in the final award.

Confidentiality

43. Both the process and the award can be kept confidential by agreement of the parties. Suppliers or retailers involved in arbitration should inform the GCA at the earliest possible stage if they want any of the following details kept confidential:
- a. The identity of the parties;
 - b. The subject-matter of the dispute;
 - c. The decision; and
 - d. Any order or award.

If there is a difference between the confidentiality requests made by the parties, the arbitrator will discuss this at any case management meeting and will take submissions at any hearing and make provision in the final award.

In any event, under section 18 of the 2013 Act, the GCA is required to keep confidential the identities of the parties to any arbitration unless they consent to the disclosure, or it is required to satisfy a European obligation or under rules of court or a court order.

Reporting

44. Under section 14 of the 2013 Act, the GCA's annual reports to the Secretary of State for Business must include a summary of disputes referred to arbitration under the Order.

Commercial litigation

45. Commercial litigation remains an option for contracting parties, but would not normally run in parallel with any arbitration proceedings. The 1996 Act contains provisions allowing issues to be determined by the courts where necessary. The GCA can only arbitrate in disputes about alleged breaches of the Code, and related points of interpretation. The GCA cannot determine points under the Order or of wider commercial or contract law.

GCA February 2024

Appendix 1

Arbitration request form (supplier)

REQUESTOR DETAILS
<p>Name:</p> <p>Address:</p> <p>Email:</p> <p>Telephone Number:</p>
RESPONDENT DETAILS
<p>Name:</p> <p>Title: [Retailer] Code Compliance Officer</p> <p>Address:</p> <p>Email:</p> <p>Telephone Number:</p>
<p>I request that the Groceries Code Adjudicator arbitrate in a dispute between the above parties.</p> <p>I confirm that the dispute has been escalated in accordance with Article 11 of the Groceries (Supply Chain Practices) Market Investigation Order 2009, through the Code Compliance Officer of [retailer].</p> <p>The formal dispute resolution process was initiated on [date].</p> <p>I understand that the retailer will pay all the costs of the arbitrator, unless the arbitrator decides that that the supplier's claim was vexatious or wholly without merit, in which case costs are within the arbitrator's discretion. All other costs of the arbitration, including the parties' legal expenses, are assigned at the arbitrator's discretion. Usually, the unsuccessful party pays.</p> <p>I understand that the decision of the arbitrator is binding and is only appealable on the grounds set out in sections 67-69 of the Arbitration Act 1996.</p>

Please set out a history of the events leading up to the dispute, with dates. You should include details such as contracting cycles, notice periods, deadlines, variations, communication about renewing the contract, etc.

Please set out which provisions of the Code are claimed to have been breached, and why. Be as specific as you can.

Please set out what loss has been suffered as a direct result of the alleged breach, what if any mitigating steps have been taken and what remedy is sought.

Signed:

Dated:

Completed forms should be sent to enquiries@groceriescode.gov.uk and served on the respondent in accordance with the CI Arb Rules at the same time.

Please do not send supporting evidence now.

A timetable will be set for the exchange of evidence and arguments.

Appendix 2

References

You may find it useful to refer to the following in considering arbitration as a route to dispute resolution:

[Groceries \(Supply Chain Practices\) Market Investigations Order 2009](#) (the Order)

[The Arbitration Act 1996](#) (the 1996 Act)

[The Groceries Code Adjudicator Act 2013](#) (the 2013 Act)

[GCA guidance on escalation of disputes](#)