



Briefing: The Groceries Code Adjudicator Review – keeping the GCA independent and focused on the groceries sector

Background to the GCA

- Unfair dealing practices can include routine late payment of invoices, arbitrary charges, discounting or deductions by retailers, and last-minute changes to orders with fines for those that cannot be met.
- Such practices force suppliers to absorb inappropriate risks and costs from retailers, limiting supplier investment and innovation, leading in some cases to routine over-production and waste. These practices affect the ultimate viability of supply chains, with negative consequences for businesses in the supply chain, farmers, workers, and consumers.
- Following an investigation into the UK's largest four supermarkets in 2000, these supermarkets were expected to follow the 2002 Supermarkets Code of Practice which prohibited particular unfair practices. However, it lacked an effective enforcement mechanism. Suppliers were unable to report unfair practices anonymously – essential given the fear of being 'delisted' and losing a high-volume sales channel by major retailers – and so the code was ignored and practices worsened.
- In 2008 an extensive investigation by the predecessor to the Competition & Markets Authority found continuing evidence of supermarkets passing 'excessive risks or unexpected costs' onto suppliers, with instances of poor practice increasing by over 30% between 2002 and 2006.ⁱ
- The Groceries Code Adjudicator (GCA) was established in 2013, with the key feature of confidential reporting by suppliers.
- A 2016 investigation by the GCA into Tesco exposed the scale of debt owed by the company to its suppliers, with some invoices remaining unpaid for several years. Following this, the GCA was given the power to fine retailers under its scope.

The GCA – key facts

- The GCA monitors and enforces the Groceries Supply Code of Practice, which sets an overarching fair dealing provision alongside the practices which are banned. The UK's 14 largest grocery retailers need to abide by this statutory code when dealing with their direct suppliers.
- The availability and price of groceries affects all UK consumers. The UK grocery market is worth approx. £211bn in 2022. As with the financial sector and other sectors of equal size and strategic importance, an effective regulator is essential.
- The GCA enjoys widespread public support. 2009 polls revealed that 80% of shoppers 'want a watchdog appointed to prevent supermarkets bullying suppliers', and 60% 'would consider switching to another supermarket if they found their main shopping retailer abused suppliers.' More than 23,000 contacted the BEIS to call for the establishment of the GCA.
- The GCA is funded by a levy on the supermarkets under its scope, which is altered to reflect the extent to which each supermarket has required regulatory intervention over the past year. The GCA is not funded by tax-payers.
- The GCA does not intervene on product pricing. In fact, after the GCA was established in 2013 the price of groceries increased at less than the rate of inflation.



The GCA – key features at risk if merged with the Competition and Markets Authority (CMA)

- The GCA has been set up with an over-riding requirement to keep information *confidential*. The CMA is not under the same level of obligation to do so, which would result in suppliers not coming forwards when breaches of the Code occur.
- The GCA is also able to conduct *own-initiative investigations*. The trigger for conducting these, and the confidentiality provisions around how investigations are conducted, are tailored to the specific nature of problems between retailers and their suppliers, and differ from the normal working practices of the CMA.
- The GCA has built up *expertise and relationships* and operates on a level of responsiveness that the CMA lacks. In 2016, one of the retailers under the GCA's scope was found to have been demanding lump sums from suppliers for no service. The GCA was able to get the supermarket to communicate to suppliers a reversal of its request within 2-3 weeks.

GCA has been effective but should be strengthened and updated

- Currently the Adjudicator is appointed as Adjudicator sole. This means that the individual who holds the office of the Adjudicator has to sign every document, and this can't be delegated to their staff. This was identified as a bottleneck when the GCA was conducting their investigation into Tesco.
- The Groceries Code Adjudicator Act 2013 requires that the GCA's core staff must be seconded from another public authority. This arrangement does not foster the development of in-house expertise amongst the small six-person team that supports the GCA, and unnecessarily limits the extent to which the GCA can recruit individuals of the highest possible calibre. The requirement for core staff to be seconded should therefore be lifted.

ⁱ https://webarchive.nationalarchives.gov.uk/ukgwa/20140402235418mp_/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2008/fulltext/538.pdf