



Groceries Code  
Adjudicator

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

23 June 2013 – 31 March 2014



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23 June 2013 – 31 March 2014

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(part 15) of the Groceries Code Adjudicator Act 2013.

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

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

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

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

Christine Tacon – the first Adjudicator – is responsible for monitoring and encouraging compliance with and enforcing the Code. The GCA is funded by a levy on the large retailers. Suppliers, trade associations and other representative bodies are encouraged to provide the GCA with information and evidence about how the large retailers are treating their direct suppliers. All information received is dealt with on a confidential basis and the GCA has a legal duty to preserve anonymity.

The GCA can launch investigations, which are likely to be into practices that appear widespread. The GCA must arbitrate in disputes at the request of suppliers and may also do so following a request from a large retailer. Arbitration awards are binding and may include compensation.

Tough powers and a range of enforcement actions are available to the GCA to achieve fairness for suppliers. If a breach of the Code is found following an investigation, the GCA can make recommendations, require large retailers to publish details of any breach and in the most serious cases can impose a fine.

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

However, the Code does not cover issues such as price setting, the relationship between indirect suppliers and the large retailers, food safety or labelling. These issues are outside the GCA's remit.

## The way the GCA works

The GCA gathers information from suppliers, retailers, trade associations and others to inform its activities. The GCA encourages suppliers to continue to bring Code issues to its attention in order to inform decisions and actions and suppliers should be reassured that their anonymity will be preserved. The stronger the evidence base, the greater the justification for action.

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

Impact	The greater the impact of the practice raised, the more likely it is that the GCA will take action
Strategic importance	Whether the proposed action would further the GCA's statutory purposes
Risks and benefits	The likelihood of achieving an outcome that stops practices that breach the Code
Resources	A decision to take action will be based on whether the GCA is satisfied that it is proportionate to do so

The GCA must carry out its statutory functions set out in the Groceries Code Adjudicator Act 2013 (the Act). In setting the direction for the GCA, the Adjudicator has determined that these functions will be carried out through a three-stage process, beginning with a less formal approach. When issues are raised, the GCA:

**Stage 1:** Will consider whether the issue raised falls under one or more provisions of the Code and if so, against the prioritisation principles. In particular, the GCA will consider whether it appears to be more than an isolated occurrence. In some circumstances the GCA will also raise single incidents with large retailers' Code Compliance Officers (CCOs).

**Stage 2:** Will discuss the issue with the relevant CCOs, who will look into whether a breach has occurred. As a result of what CCOs find and subsequent discussions or correspondence, the GCA may issue advice clarifying or interpreting the relevant provisions of the Code for the retailer and others to follow. A summary of the issue raised and the outcome of discussions, including the view taken by the GCA of the incident, will be published as a case study on the GCA website.

**Stage 3:** May, if the practice continues, issue more formal guidance and/or launch an investigation.

Through this process the GCA ensures that issues are raised with and promptly considered by the large retailers and that any necessary action is agreed and taken as swiftly as possible. This is an efficient way to deal with current groceries sector practices which may not be consistent with the Code. The GCA believes that this will significantly reduce the cost of regulating the large retailers by only carrying out costly investigations when other means of effecting change have failed.

This approach has been discussed with every CCO and all have welcomed this way of working. The GCA believes that this will engender a more collaborative approach and get results faster.

The GCA's responsibilities do not extend to acting as a complaints body, nor can it advise on individual complaints or disputes where a supplier seeks a view on whether a large retailer has breached the Code. This is because the GCA may later be asked to arbitrate in the same dispute between the supplier and the large retailer or the GCA may later launch an investigation into the practice raised by the supplier. Providing a view on individual cases would compromise the GCA's objectivity and may lead to legal challenge. However, the GCA encourages suppliers to approach CCOs directly because they can deal with issues quickly and, where needed, discreetly.

The ultimate goal of the GCA is to promote a stronger, more innovative and more efficient groceries market through compliance with the Code and as a result to bring better value to consumers. The GCA is working with suppliers and the large retailers to respond to issues swiftly and is building the necessary strong relationships to achieve this goal.

# Foreword by Christine Tacon

## Groceries Code Adjudicator



The creation of a significant new role in the form of an Adjudicator to monitor and enforce the Code has meant a hectic and exciting nine months for me.

It helped that I was able to start work as Adjudicator designate six months before the GCA was formally established. In that period I was only able to work one day a week but demands for speaking engagements alone took up more time than this. I was therefore delighted when the the Act came into force and I was able to build a small team which currently stands at three full-time and two part-time members. Thanks to the team's hard

work, focus and dedication I can report good progress in our first year.

My personal experience, supported by much of what I have heard as Adjudicator, is that the groceries supply chain has become so complex that it has added significant costs to doing business. Large retailers have looked beyond straight price negotiation to reduce their costs and exposure to what might be considered normal risks in the supply chain. This has been attempted and, to some extent, achieved through practices involving promotions, packaging and haulage as well as retrospective audits, margin maintenance and requests for lump sum payments. Suppliers have responded to these new demands by seeking something in return further increasing complexity. The success of the discounters, offering simplified ranges and terms of business, is causing people to rethink these approaches. Some of these practices may be in breach of the Code and my office is raising awareness of this. A better approach for suppliers, retailers and consumers would be to make the supply chain simpler and more efficient and this is likely to involve significant culture change from some of the large retailers.

I want to ensure that the UK has a world-leading groceries supply chain. There are indications that overseas suppliers are beginning to recognise that it is easier to do business in other areas of the world than in the UK. With tightening food security, we need to ensure that supplying to overseas markets does not become more attractive than supplying to the UK.

### Providing guidance

To meet the GCA's legal and policy responsibilities our first major task was to issue statutory guidance on investigations and enforcement within six months of the Act coming into force, which included 12 weeks for consultation. The response to the consultation was very positive in terms of its thoroughness and no major areas of concern were raised, although several responses helped us to improve the clarity of the final guidance.

At the same time as we published the statutory guidance, we submitted a recommendation to the Secretary of State for Business, Innovation and Skills on the maximum level of fine. At the time of writing the statutory instrument required to set the maximum level of fine has not yet been laid before Parliament. We have also issued guidance on escalation of disputes and on how we will conduct arbitrations.

## Developing strong relationships

The team and I have also worked hard to build strong relationships with large retailers, suppliers and others well-placed to provide information and evidence to the GCA about practices in the groceries supply sector, such as trade associations. We have introduced quarterly meetings with the 10 CCOs and have now met them three times; we also brought all CCOs together for a group meeting which will be repeated twice yearly. I have spent much of my time raising awareness of my role and responsibilities with suppliers and trade associations across the UK. I have attended nearly 100 engagements, travelling thousands of miles and spoken at over 70 conferences and smaller meetings. As a result I estimate over 3,000 people have heard first-hand about the Code and the role of the GCA.

I have also held a stakeholder meeting with a number of trade association representatives and will continue to build relationships with these bodies as they are a very important channel of communication to and from suppliers, who remain reluctant about bringing issues to me or to CCOs. Additionally, trade associations can present issues experienced by a number of suppliers which helps me to assess impact and preserve supplier anonymity.

And of course, we have developed close relationships with the Office of Fair Trading (OFT), with whom we must work closely given its continuing responsibility for the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order), and the Competition Commission (CC), who have all the history on why we were set up. Both organisations have since joined to form the Competition and Markets Authority (CMA) and we are co-located in the same building.

## Building awareness of the GCA's role

With such a new organisation it has been important to raise awareness of what the GCA does. We have set up a comprehensive website on *gov.uk* which includes details of significant activities and all guidance issued, together with records of key meetings and internal policies. An important way that we will make suppliers and all large retailers aware of our interpretation of relevant parts of the Code is through case studies; in the period covered by this report we have published two case studies where large retailers have accepted that the Code has been breached. We have also developed our first survey run by YouGov to hear directly from suppliers and others about Code compliance and their understanding of the role of the GCA. This will set a baseline of market understanding of the Code and of perceptions of large retailers' compliance with it which I will use in future years to monitor progress.

An important event in the GCA calendar is our first annual conference at which I reported on the year's performance and presented my programme for the year ahead. It also provided a forum for interested overseas representatives to follow our progress. We held this on the anniversary of the establishment of the GCA in June.

Media interest in the GCA has been very encouraging and there has been significant coverage in the national and trade press. I have also been interviewed on a wide range of BBC Radio programmes.

Additionally, I have received many enquiries from overseas governments and interested organisations looking to create a similar body to the GCA. We are in close contact with the European Commission as it adopts a voluntary approach across European member states which could lead to a new Directive. I am mindful that a common code of practice with local regulation would allow the GCA to continue and perhaps extend the work we have started.

## Acting to ensure Code compliance

However, the primary purpose of my role is to ensure compliance with the Code. Despite the fact that the Code has been law since February 2010, there appears to be a lack of understanding of what it covers amongst suppliers, both direct and indirect. Many of the issues raised with the GCA have been out of scope. A significant number of correspondents want to bring challenges based on the price they are paid under the “spirit of fair dealing”, although this is not a stand-alone Code provision and there are no provisions of the Code which address price specifically. Indeed, price was explicitly not part of the CC investigation that led to the making of the Order and the Code. I have also been approached about the inclusion of additional retailers. I am not able to extend the reach of the Code; nor would I wish to at present, as there is quite enough to deal with as it currently stands. But I am committed to helping to set a level playing field, so I will continue to direct these questions to the CMA as they fall under the Order and not the Code.

From the outset it has been clear that CCOs, many of whom took up their posts during 2013, wanted to ensure that their businesses complied with the law and all have been happy to work collaboratively with me. I have assured them that I would not launch any investigation based on a single occurrence of issues raised. I will instead work with them to determine the extent of the practice and its compliance with the Code and if necessary, to clarify the Code and change practice. The quarterly meetings and case studies have proved invaluable in doing this and now I note that some large retailers are tightening up their internal processes, improving training and documentation as a result.

I have publicly stated the five areas of Code compliance in respect of which I receive most information and evidence. I am continually checking these with direct suppliers to ensure that these are the key issues for them. These five areas are set out below and are explained more fully later in this annual report:

- **Forensics: third party audits**
- **Drop and drive: delivery performance**
- **Forecasting/service levels**
- **Request for lump sum payments**
- **Packaging and design charges**

I am pleased to report that most of the large retailers are being proactive in addressing these issues and we are starting to make progress. Some of the issues, e.g. improving forecasting, are very complex and will take time to resolve.

I am pleased to report that we have now had three instances where a large retailer has approached us to discuss the Code-related implications of a new corporate initiative before launching it.

It will be clear from this report that we are yet to launch an investigation. We had no power to do so until our statutory guidance on investigations and enforcement was published in December 2013. In the meantime, we developed our collaborative approach to working with CCOs and others, and this is working well. We have not yet reached the point where an investigation would be merited in relation to any issue. No arbitrations have yet been resolved, although we have received two formal requests for arbitration. It would not have been appropriate to proceed with these until the GCA arbitration policy was published on 31 March 2014. It is noteworthy that no requests for arbitration were made to the OFT in the three years since the Code was introduced, yet we have received two in a very short time.

## Challenges and future look

The GCA has coped with a heavy start-up workload while I have spent much time out of the office explaining the Code and my role. We have faced a few operational challenges which I did not anticipate. In particular, recruitment for two positions has stalled due to the requirement for all employees to be secondments from the public sector at a time when departments face severe pressure to reduce staff numbers. Other challenges relate to funding issues which are addressed in the annual accounts.

My goals for the next 12 months include:

- Working with the large retailers to improve the culture of Code compliance in each, from the Board downwards.
- Improving awareness of the reach of the Code and building supplier confidence to raise Code-related issues with the GCA and CCOs.
- Making progress on each of the five priority issues identified this year.
- Increasing the number of responses to the annual market survey to get an even more accurate measure of Code compliance.
- Being fully prepared to launch an investigation when merited.

This new regulatory role is one that I believe can do much to help strengthen the supply chain and bring further innovation to the groceries sector, together with benefits to suppliers, retailers and customers. In the year to come I am determined to maintain the pace of progress that we have achieved in our first nine months.

# About the Groceries Code Adjudicator

The GCA was formally established in June 2013. Before formal appointment Christine had spent one day each week preparing to make a swift and effective official start. This mostly involved raising awareness of the GCA and the Code.

The aim throughout the year has been to establish an efficient and prudent office, only appointing staff as the workload required. The Adjudicator dedicates three days each week to the role and has been supported from the outset by a Chief Legal Adviser who also works three days each week.

In July a full-time Head of Policy and Operations was appointed and an Office Manager joined in October. As the planning of investigations got underway an Investigations Manager was appointed at the beginning of March. Major operational achievements included establishing the GCA office, effectively managing GCA finance and providing skilled support to the GCA. The GCA adheres to the standard civil service governance policies issued by the Cabinet Office and will issue tailored policies specific to the GCA where appropriate.

## Establishing the GCA office

- A significant part of the GCA's early activity was to establish effective operational processes meeting the expected standards of a public body. Our aspiration is to be an exemplar in delivering our public body responsibilities. These processes included:
  - Establishing the Executive Board to support GCA decision making and performance management.
  - Developing corporate policies.
  - Negotiating service level agreements with the CC to provide our accommodation, finance and ICT services.

## Effectively managing GCA finance

- Developing robust financial forecasting and operational protocols to account for the levy paid by the large retailers and on which to base the calculation of future levy payments.
- Establishing arrangements for levy payments to be made.
- Reaching agreement with the Department for Business, Innovation and Skills (BIS) to provide the GCA's procurement service.
- Arranging audit services.

## Providing skilled support to the GCA

- Establishing a values and people policy.
- Developing a training and development plan, including an induction pack for new staff.

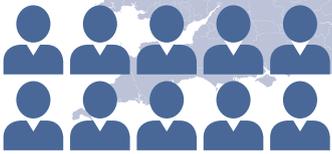
**100** EVENTS AND MEETINGS ATTENDED BY THE GROCERIES CODE ADJUDICATOR

IN TOTAL MORE THAN **3,000** PEOPLE PRESENT

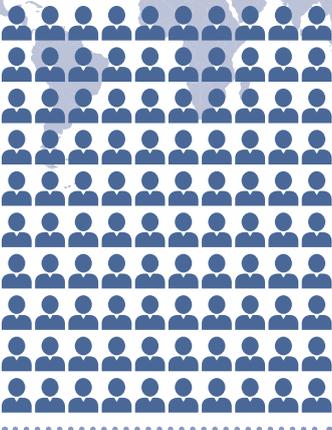
**1** ADJUDICATOR



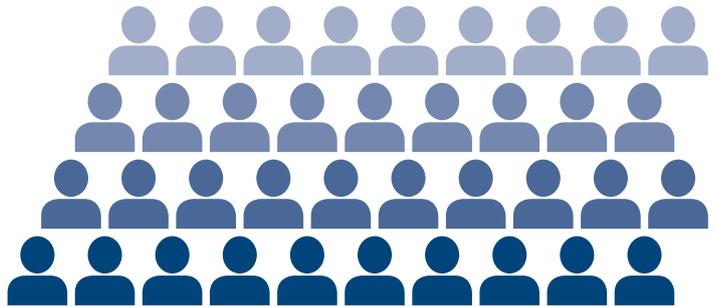
**10** RETAILERS



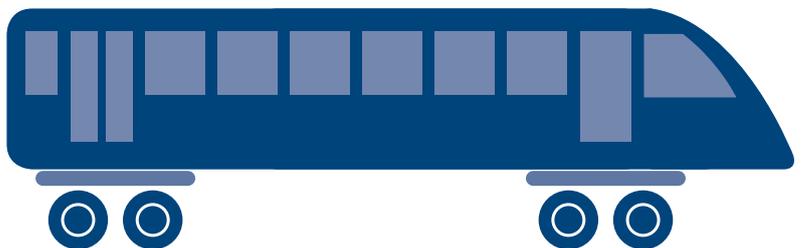
MORE THAN **10,000** SUPPLIERS



AND A SECTOR WORTH **£170bn**



**9,912** MILES TRAVELLED BY THE ADJUDICATOR



# Strategic objectives 2013/14

In its first year of operation, the GCA concentrated on three strategic objectives. These were promoting the work of the GCA, providing advice and guidance and acting on suppliers' issues and information.

## Objective 1 – Promoting the work of the GCA

Because it is a new regulatory body, raising awareness of the work and responsibilities of the GCA has been paramount. The GCA has approached this by:

- Speaking at a comprehensive range of events.
- Meeting stakeholders on a regular basis.
- Engaging proactively with the media.
- Providing timely, accurate and accessible information on the GCA website.

### Speaking at a comprehensive range of events

- During a hectic first year the Adjudicator has travelled to all regions of the UK and attended and spoken at over 70 events. This programme has enabled the Adjudicator to make direct contact with at least 3,000 suppliers as well as their representative bodies.
  - All sectors including dairy, arable and livestock farmers, groceries producers and toiletries manufacturers have been reached through these speaking engagements.
  - At each event the Adjudicator has explained the remit of the GCA and has encouraged suppliers and trade associations to raise Code-related issues directly with the GCA and with the large retailers' CCOs. Suppliers are reassured that the GCA has a statutory duty to handle all information confidentially.
  - The Adjudicator has also held face-to-face discussions with more than 130 suppliers.
  - A video presentation was given to an expert symposium in Australia to respond to interest in the GCA's work.
  - The GCA's work has also attracted interest from overseas. Enquiries have been received from: Australia, Belgium, Canada, Denmark, New Zealand, Norway, Portugal and the European Commission.

### Meeting stakeholders on a regular basis

- The Adjudicator has met Ministers and officials representing the three devolved administrations as well as UK Government Ministers from BIS and the Department for Environment, Food and Rural Affairs.
  - The Adjudicator has also visited Brussels to meet members of the EU Commission and interested MEPs, who are developing a common EU approach to regulating the sector, to explain the GCA approach and to inform EU plans which may affect the GCA.
  - The Adjudicator has given evidence to the Northern Ireland Select Committee and the House of Lords Environment and Agriculture sub-Committee.

- The GCA held its inaugural annual conference in June 2014. This was held at the Queen Elizabeth II Conference Centre in Westminster and provided an opportunity for the Adjudicator to report to UK and overseas attendees on the first year's work programme and to set out her plans for the coming year.

### **Engaging proactively with the media**

- Media engagement has been targeted and proactive in order to ensure that awareness of the GCA's work reaches appropriate audiences.
- The Adjudicator has given interviews to journalists in the national, trade and regional media.
- There have also been regular broadcasts on a range of BBC Radio programmes including Farming Today, You and Yours, Costing the Earth and Any Questions, to increase understanding of activities and successes.

### **Providing timely, accurate and accessible information on the GCA website**

- Information provided on the GCA website has been designed to explain the regulator's role and responsibilities, to provide clarity about the Code and to publicise new developments or activities.
- The GCA has published two case studies, prompted by individual retailer practice, to clarify elements of the Code.
- The GCA team keeps the website content and format under regular review and seeks ways to increase the reach and accessibility of its communications.

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

The GCA made a priority of publishing advice and guidance to describe how the Adjudicator would deal with issues raised. Activity has been focused in three areas:

- Statutory guidance on investigations and enforcement.
- Guidance on escalation of disputes.
- An arbitration policy.

Clarification of elements of the Code has been provided by the published case studies and further guidance will follow in the coming year.

### Providing statutory guidance on investigations and enforcement

- Within four weeks of the office opening the GCA had prepared draft guidance on investigations, enforcement and financial penalties and published it for consultation.
- An active consultation was launched and we held 15 meetings with retailers, suppliers and their representative bodies.
- In December 2013, the GCA published its investigations and enforcement guidance, which included the four prioritisation principles which will guide the GCA's activities.
- In line with the Act, the GCA has written to the Secretary of State for Business setting out the recommendation as to the method by which the maximum financial penalty will be calculated. A statutory instrument is required to permit financial penalties to be applied. This has yet to be made and is likely to come into force in the second half of 2014.
- Separate guidance will be issued by BIS on the financial penalties order.

### Developing an appropriate arbitration policy

- The GCA arbitration policy was published on 31 March 2014. The first step in the process is to complete an arbitration request form. Advice is provided on how the form should be completed.
- Now the policy is published, the GCA can arbitrate in disputes arising after 23 June 2013.

### Issuing other guidance

- Guidance is also available on the GCA website on how to raise an issue with, or provide information to, the Adjudicator; and on escalation of disputes.

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

The primary purpose of the GCA is to monitor and enforce compliance with the Code. The Adjudicator has two ways of doing that: by raising issues directly with CCOs, and through investigations.

### Raising issues directly with CCOs

- The GCA introduced a regular programme of meetings with CCOs to discuss issues raised and for a CCO progress update on Code compliance. These meetings follow a standard agenda where all large retailers are made aware of the issues raised with the GCA, irrespective of whether particular large retailers have been identified in connection with the practice. This is because, until an investigation is concluded, it is not possible to identify which large retailers are involved in any practice thought to breach the Code; practices may be particular to one large retailer, common to some or all.
  - Issues raised at these meetings have included: late payment and forecasting practices; supplier contribution to sales performance targets; third party auditing and delisting policies.
- The GCA is committed to transparency and has published the notes of meetings with CCOs on the GCA website.
- Two case studies have been published on the GCA website. The details are set out below. The aim in preparing and publishing these has been to clarify the GCA interpretation of elements of the Code, for wider benefit.

#### – Charging for optimum shelf positioning

The GCA received information from suppliers, a trade body and the media asserting that Tesco plc had requested a payment from suppliers for better shelf positioning of their products. The GCA considered that this was contrary to the Code Part (12): *No Payments for better positioning of goods unless in relation to promotions*. The GCA's view is that to ask for payment for shelf positioning is contrary to the spirit, if not the letter of the Code, and is effectively a requirement. This is because the inference a supplier would draw from such a request is that, unless they agreed to it, they would suffer some detriment.

Tesco plc investigated the issue and assured the GCA that all buyers had been reminded that the Code does not permit payments to be requested in this way; and that all suppliers affected had been contacted to rescind the request which was issued in error.

#### – Payments for failure to meet target service levels

The GCA was advised that some suppliers had been approached to make compensation payments to the Co-operative Group Limited for failure to meet target service levels against actual performance. The suppliers reported that the request was not supported by evidence relating to performance and that suppliers did not recognise that a service level target was in place. The large retailer was reported to have said that under the terms of joint business plans (JBPs), there had been an associated loss of profit and suppliers should reimburse the Co-operative Group Limited. The GCA considered that this was contrary to the Code Part 3(1): *Variation of supply agreement and terms of supply*.

The GCA was pleased to note that the large retailer had recognised the practice was not consistent with the Code that it had been stopped and all affected suppliers had been notified.

### Planning for investigations

- An Investigations Manager was appointed in March and work has begun to prepare the GCA's approach to investigations.

# Groceries Code Adjudicator Act 2013: Statutory reporting requirements

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

## **Disputes referred to arbitration under the Groceries Supply Order**

The GCA has received two requests for arbitration. The GCA arbitration policy was published on 31 March 2014. The GCA made it clear to potential claimants that no arbitration could commence until the GCA policy had been published.

## **Investigations carried out by the GCA**

No investigation has been launched by the GCA.

## **Cases in which the GCA has used enforcement measures**

As no investigation has been launched, no enforcement measure has been recommended.

## **Recommendations that the GCA has made to the Office of Fair Trading for changes to the Code**

The GCA has made no recommendation to the Office of Fair Trading for any change to the Code.

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

## **The Regulators' Code**

The GCA is a non-economic regulator which must have regard to the Regulators' Code. The Regulators' Code obliges the GCA to follow stated principles when developing policy or operational procedures and when setting standards or giving guidance which inform GCA regulatory activity. The GCA contributed to a consultation on the implementation plan for the revised Regulators' Code and is committed to applying it.

## **Growth duty**

The GCA is committed to following the government's better regulation agenda. In particular the government's Deregulation Bill, progressing through Parliament which, includes a growth duty. The duty, if approved, would oblige bodies exercising regulatory functions to have regard to economic growth when making decisions. The GCA would support the need to take account of the economic impact of its regulatory activities by ensuring our actions are proportionate, cost effective, take account of the business lifecycle and keep burdens on business to a minimum.

## **Building a responsible payment culture**

The GCA was used as a case study in the BIS discussion paper calling for action to address the late payment culture which disadvantages businesses, especially Small to Medium (SMEs). The Code contains specific provision that large retailers should not delay in paying suppliers Part (5): *No delay on payments*.

# Issues raised on Code compliance

The GCA has heard from direct and indirect suppliers, trade associations, other bodies and the media on a range of issues covered by the Code and relating to large retailer practice. These issues form part of the GCA evidence base which will inform future actions. These are set out below.

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

Part of the Code	Issues raised
<p><b>Prices and payments</b></p> <p>(5) No delay in payments (<i>includes deductions without notice</i>)</p> <p>(6) No obligation to contribute to marketing costs (<i>including artwork and design of packaging; market research; retailer hospitality</i>)</p> <p>(7) No payments for shrinkage</p> <p>(8) No payments for wastage (unless set out in the Supply Agreement)</p> <p>(9) No payments as a condition of being a supplier (<i>including listing fees</i>)</p> <p>(10) Compensation for forecasting errors</p> <p>(11) No tying of third party goods and services for payment (<i>including payment of packaging and haulage costs</i>)</p>	<p><b>Payment terms not adhered to</b></p> <p><b>Automatic deductions from invoices or trading accounts:</b></p> <ul style="list-style-type: none"> <li>■ Without notice</li> <li>■ Without sufficient or any explanation (particularly where large sums of money are involved or where deductions are acute for smaller supplier cash flows)</li> <li>■ Withholding payment for entire invoice where only one element of invoice is in dispute</li> <li>■ Lack of supplier access to decision-maker in respect of deductions, to understand the deduction and recover monies taken in error</li> <li>■ Third party and internal audit practices</li> <li>■ For delivery discrepancies where there is no agreement to the deduction</li> <li>■ Delay in reverting pricing systems to standard price after promotions</li> <li>■ Individual invoices in multiple batches regularly going missing</li> </ul> <p><b>Perceived high charges for mandated packaging and artwork; where supplier believes they can secure cheaper service elsewhere:</b></p> <ul style="list-style-type: none"> <li>■ Flat rate charge for images</li> <li>■ Numerous design changes through the year; lack of reasonable notice of change resulting in cost of excess packaging stock being borne by supplier</li> <li>■ Charge for packaging changes invoiced without prior agreement that this would be required</li> <li>■ Preferred supplier packaging suppliers more expensive than comparable competitors</li> <li>■ Cost of use of plastic crates (e.g. for fresh produce) and reasonableness of hire conditions</li> </ul>

Part of the Code	Issues raised
<p><b>Prices and payments –</b> <i>Continued</i></p>	<p><b>Request for listing fees:</b></p> <ul style="list-style-type: none"> <li>■ Requests by retailer for supplier to stop supplying specific competitors</li> <li>■ Multi-channel listing charges</li> </ul> <p><b>Poor forecasting accuracy:</b></p> <ul style="list-style-type: none"> <li>■ Lack of clarity about what is a forecast and what constitutes an order</li> <li>■ Excessive charges applied for short delivery, particularly when the forecast volume has been met, but the order exceeded forecast</li> <li>■ Failure by large retailers to take account of compensation for the impact of poor forecasting on suppliers, including changes to agreed distribution levels, over-ordering prior to a promotion or at the start of a listing</li> <li>■ No evidence of compensation for suppliers</li> </ul> <p><b>Lack of choice on haulage provider:</b></p> <ul style="list-style-type: none"> <li>■ Where supplier has cheaper alternative</li> </ul>
<p><b>Promotions</b></p> <p>(12) No payments for better positioning of goods unless in relation to promotions</p> <p>(13) No requirement to predominantly fund a promotion</p> <p>(14) Not applying due care when ordering for promotions</p>	<p><b>Attempted charges for better shelf position not related to a promotion</b></p> <p><b>Over-ordering at promotional price</b></p>

Part of the Code	Issues raised
<p><b>Other duties</b></p> <p>(15) No unjustified charges for consumer complaints</p> <p>(16) Not meeting duties in relation to de-listing (<i>including giving reasonable notice and giving commercial reasons behind the decision</i>)</p> <p>(17) Not escalating concerns over breaches of the Code to the Senior Buyer</p>	<p><b>Lack of transparency on customer complaint charges</b></p> <p><b>Unclear large retailer de-listing practice</b></p> <p><b>Different perspectives (retailers compared to suppliers) on reasonable notice periods:</b></p> <ul style="list-style-type: none"> <li>■ Short notice periods don't take account of supplier circumstances</li> </ul> <p><b>Delisting following supplier investment to meet retailer demands</b></p>

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

# Groceries Code Adjudicator

## key actions

The GCA has considered the issues raised, followed the prioritisation principles and decided to focus on five key areas where suppliers believe that large retailer practices breach the Code. These issues were discussed with CCOs at a group meeting in January 2014 and are set out below.

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

### ▪ **Forensics: third party audits**

#### Description:

Under the Limitation Act 1980, contracting parties are able to make claims against one another going back up to six years. This is reportedly being used proactively by some large retailers to make claims against suppliers for historic invoicing errors or omissions. It has been reported that suppliers are being asked for significant sums of money, and that large retailers or their agents have suggested that the burden of proof falls on suppliers to show that alleged discrepancies are not valid claims. The documentary audit trail is often complex and difficult to piece together after a long period of time, during which there will usually have been significant change to both suppliers' and large retailers' systems and staff. In some cases it has been reported that deductions are made from invoices/trading accounts without notice to, or the agreement of the supplier. With little or no notice of when these types of deductions will be applied, suppliers report that they are unable to plan their cash flow effectively. Some sums can be particularly significant for suppliers at certain times of the year and can require considerable resource to challenge. It has been reported that in many cases a negotiated agreement is reached to shortcut the potentially lengthy process of establishing the actual payment due or where there is sufficient doubt about the validity of the claim.

#### Potential Code breach:

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

#### GCA proposal:

The GCA has asked large retailers to consider whether they would be prepared to make a voluntary commitment to settle accounts by the end of the current and previous two financial years. This may oblige suppliers to agree to a reciprocal commitment.

## ■ Drop and drive: delivery performance

### Description:

Suppliers have reported that they experience problems where there is a disparity between what suppliers say they have delivered and invoiced, and what the large retailer says has been received. It has been reported that in some cases large retailers appear to automatically make deductions from invoices for alleged shortages. These deductions are difficult to challenge, dependent on the haulage method but particularly when using prescribed hauliers. Suppliers have informed the GCA that this is a major issue. There appear to be different patterns of deductions among the large retailers in respect of the same suppliers. For example, some large retailers record twice the percentage error rate of others when the supplier believes it uses exactly the same procedures in packing the order for collection by the haulier. The GCA is keen to understand where and how this is happening, at what point in the supply chain and in relation to which products.

### Potential Code breach:

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

### GCA proposal:

Without a more detailed understanding of each large retailer's delivery practice, the GCA is unable to make an assessment of the cause or extent of this issue. CCOs were asked if they would be prepared to provide the GCA with an overview of their delivery practice and a sample review of the percentage of under-deliveries recorded at one of their distribution centres over a period of three months. When this information has been received from all CCOs, the GCA will discuss it with each large retailer individually and consider what further action may be merited.

## ■ Forecasting/service levels

### Description:

Suppliers report that the accuracy of large retailers' forecasts is poor and that significant variations occur between forecasts and orders placed, sometimes at very short notice. In some cases suppliers are charged for non-delivery against orders with inconsistent reference to forecasts. For those with JBPs, this may be used as a means to justify penalties applied. This pushes the risk of managing variability of demand onto the supplier. Some large retailers are reported to be applying penalties for failure to meet service levels set out in supply agreements, without regard to the accuracy of forecasts (both high and low). This can lead to significant wastage in the chain, particularly with regard to fresh produce. The penalty for non-delivery per case tends to be fixed and can be more than the cost of production.

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

#### Potential Code breach:

- The GCA considers that the effect of this practice falls under Part (2) of the Code: *Principle of fair dealing*, specifically as it applies to Part (10) of the Code: *Compensation for forecasting errors*.

#### GCA proposal:

The GCA acknowledges that forecasting cannot be 100% accurate. However, inaccurate forecasting by the retailer should not lead to the supplier being penalised. The standard set out in the Code is that forecasts should be prepared with due care and attention. The GCA has asked CCOs to review their forecasting practice and accuracy rate.

## ■ Request for lump sum payments

#### Description:

It has been widely reported that, particularly at the end of the financial year, some large retailers request lump sum payments from suppliers for a variety of reasons, with margin maintenance through JBPs being the most frequently quoted. Large retailers are said to be using JBP in different ways and the GCA will be looking more closely at this and more particularly, whether practice in relation to any particular large retailer's JBP is effectively requiring suppliers to waive their rights under the Code. The GCA has stated that including something in a JBP mid-contract does not necessarily prevent it from becoming a retrospective demand, although it would depend on how the JBP was used and what it comprised in each case. Some suppliers are reporting that JBPs are imposed and not agreed. This issue is of most concern to those suppliers with JBPs, followed by deductions from payments.

#### Potential Code breach:

- The GCA considers that the effect of this practice falls under Part (2) of the Code: *Principle of fair dealing*, specifically as it applies to Part (3): *Variation of supply agreements and terms of supply*.

#### GCA proposal:

CCOs were asked to review their practice on lump sum payments. Where these are included in supply agreements as a payment against a large retailer commitment, there should be a review of whether those commitments have been met throughout the course of the supply agreement and if not, the lump sum should be repaid to suppliers.

## ■ Packaging and design charges

#### Description:

Some reported charges applied for photography and packaging design do not appear to be reasonable. Some suppliers that buy their own packaging and design consider the charges made by some large retailers for a similar product to be expensive. A few large retailers have been told by suppliers that prescribed sources are overcharging for packaging. Some suppliers have reported that they have been charged for up to three changes to design in a single year. Another practice raised is the charge for photographs which is reported to have increased four-fold over the past two years.

#### Potential Code breach:

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

#### GCA proposal:

CCOs were asked to consider if it was practicable to make a voluntary commitment that a supplier would only be charged for one redesign in any year with any subsequent changes paid for by the large retailer. CCOs were also asked to look into their practice and charges to ensure these were compliant with the Code.

## Case studies

The GCA has adopted a case-study based approach to providing an early view on some topical areas of Code compliance. The GCA has in this way provided clarification of some elements of the Code. During this first reporting year the GCA has published two case studies and is satisfied that the large retailers involved have each taken action to address the breach of the Code.

# Glossary

BIS	Department for Business Innovation and Skills
CC	Competition Commission
CMA	Competition and Markets Authority
CCO	Code Compliance Officer
EU	European Union
GCA	Groceries Code Adjudicator
JBP	Joint Business Plan
MEP	Member of European Parliament
OFT	Office of Fair Trading
SME	Small to Medium Enterprise
The Act	Groceries Code Adjudicator Act 2013
The Code	Groceries Supply Code of Practice
The Order	The Groceries (Supply Chain Practices) Market Investigation Order 2009

# Annual Accounts Management Report

## Format of the accounts

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

## The Groceries Code Adjudicator responsibilities

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

I am responsible for monitoring and encouraging compliance with and enforcing the Groceries Supply Code of Practice (the Code), introduced in 2010. It applies to the ten groceries retailers with UK annual turnover of more than £1 billion (the large retailers) and their relationships with their direct suppliers. These are: Aldi Stores Limited, Asda Stores Limited, Co-operative Group Limited, Iceland Foods Limited, Lidl UK GmbH, Marks & Spencer plc, Wm Morrison Supermarkets plc, J Sainsbury plc, Tesco plc, and Waitrose Limited.

My statutory functions set out in the Act are to:

- a) provide advice to both suppliers and large retailers on matters relating to the Code;
- b) arbitrate in disputes between suppliers and large retailers;
- c) investigate issues to ascertain whether there has been a breach of the Code;
- d) enforce the Code;
- e) impose sanctions and other remedies for breaches of the Code; and
- f) publish an annual report on the Adjudicator's activities.

## Resources

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

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

I currently have two stalled recruitments; a legal adviser and a part-time personal assistant (PA). Both have been advertised and the PA has been advertised twice at part-time and full-time. The main reason for the difficulty in recruiting is the fact that I can only recruit public sector secondees. At a time when the public sector is contracting, departments and public bodies are reluctant to allow people to be seconded due to how secondees continue to be recorded on headcount. The impact of the recruitment challenges has meant additional pressure on the existing staff and delay in progressing some activities.

I will continue to seek the resources required to meet the needs of the office.

## **Sickness absences**

There has been no sickness absences at the GCA.

## **Pension payments**

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

## **Operations**

Establishing the office and putting in place systems and processes to help manage our responsibilities have been key tasks this year. Given the size of the office, I have prioritised the GCA resources on the critical areas where governance and controls are needed to ensure the effective setting up and running of the office.

Establishing an Executive Board and developing a work plan and risk register have been my priorities to guide the work of the GCA and support decision making. Our work plan has three objectives and actions to establish the GCA office. The work plan will be further developed into a business plan in the next reporting period. Elements which will inform future development will centre around the survey of attitudes of suppliers and others on Code compliance by retailers and awareness and confidence in the GCA.

Whilst I have powers to carry out whatever actions will enable me to fulfil my statutory duties, I have been hampered in making progress on a number of activities due to the lack of the infrastructure for some operational activities. In particular, the delay in establishing a procurement vehicle for the GCA, which, despite several requests for assistance, was not established by BIS until January 2014, meant I was unable to commission a survey of the groceries sector and procure the main elements of the communications and media support needed in this financial year. As well as the obvious impact on operational progress, this has had a consequential effect on the budget profile as these two aspects were factored into the 2013/14 budget and informed the levy calculation.

## Funding the Groceries Code Adjudicator

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

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

My levy methodology presented to the Secretary of State for approval was guided by the analysis carried out by BIS in the impact assessment (IA) supporting the legislation. The rationale for this approach was that it was recent analysis of the role of the GCA, the limited resource and priority to issue the consultation on the draft statutory guidance on investigations and enforcement (to meet our statutory timetable); I decided that additional analysis was not required and I accepted the IA methodology which ensures a consistency with the Act.

The IA proposed a best estimate annual support cost of £800,000. In setting the levy amount for 2013/14, rather than apply a proportionate amount for the 9 months of the year of operation, I adopted a more prudent approach using a forecast of likely costs for the first year. This included known costs (salaries, accommodation and services) with a refined estimate of other potential costs (arbitrations and investigations). This resulted in a levy of £450,000, applied equally to each of the 10 large retailers. The GCA also presented the Secretary of State with a proposal for the financial year 2014/15 which adopted the best estimate of the annual support cost of £800,000. Both proposals were approved by the Secretary of State.

Subsequent to the submission to BIS, it came to light that the cost estimate included in the IA had not factored in the true costs of the GCA office. In particular, that VAT was due on the total salary bill and that the cost of National Insurance and pension contributions did not appear to have been taken into account in the staff cost estimate. For financial year 2013/14 this is a manageable additional cost as there have been no investigations or arbitrations. However, this is expected to present considerable budget pressure in 2014/15. Options to deal with any shortfall could result in an additional levy on the large retailers or an application for payment by the Secretary of State of grants or loans to ensure that the GCA has sufficient funds to meet its costs.

## Register of interests

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

## Accounts

The Competition Commission (now the Competition and Markets Authority) provided full accounts support to the GCA. This included all transactional support on accounts payable and receivable and preparation of the annual financial statements of GCA accounts. The GCA manages its own government bank account, approves all invoices for payment by the Competition Commission on our behalf and reimbursement of claims to the Competition Commission.

## Financial position

The GCA's expenditure for 2013/14 was £302,858. Staff costs were £232,381 which equates to 77% of expenditure. Other operating costs include finance, ICT and accommodation.

Levy income from the large retailers was £450,000.

## Payment practices

The GCA is committed to following the Better Payments Practice Code. In particular, paying undisputed invoices within five days and 80% of all other invoice payments within a maximum of 30 days. The GCA relies on the Competition Commission (now the Competition and Markets Authority) to process invoices in a timely manner following its own commitment to the Better Payments Practice Code. The GCA partially met these targets this financial year due to the expected settling in phase of the GCA. We will be working closely with the CMA to ensure the targets are consistently met in 2014 –15.

## Audit

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

## Accounting Officer Disclosure to the auditors

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

*Christine Tacon.*

### **Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

17 July 2014

# Remuneration Report (audited)

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

The salary of the Groceries Code Adjudicator is set by BIS and the GCA team, all of which are secondees from the public sector, retain the terms and conditions of their parent departments. Remuneration decisions are taken by the relevant department of the secondee. The Groceries Code Adjudicator's salary payments in this financial year were in the band of £50 – £55,000, a pro rata from an annual salary within the band of £110 – £115,000 for a full time equivalent.

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

No calculation of a median staff pay figure has been made for the year as it would not be meaningful given the number of part time secondees and that those seconded have been with the GCA for varying periods of time.

In-year award decisions are dealt with by the Adjudicator and Head of the GCA Office, taking account of recommendations from all members of the GCA team. There was no consideration of awards during the period of this report due to other priorities taking precedence but activities in 2013/14, which are judged to merit an award, will be considered in the next financial reporting period.

## Benefits in kind

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



**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

17 July 2014

# Statement of the GCA Accounting Officer's Responsibilities

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

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

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

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

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

# Governance Statement

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

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

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

## Governance framework: GCA Executive Board

The Executive Board discusses and takes strategic and operational decisions which govern the actions of the GCA office. Due to the size and phase of development of the GCA, all members of the GCA team have sat on the Board during 2013/14 to represent their individual responsibilities. It meets every 6 – 8 weeks. Others may be invited to attend from time-to-time. The Board discusses both operational and policy issues. There are standing items for discussion at each meeting. These are: forward look; work plan; risk register; financial statement; and people. Other policy and operational agenda items are scheduled as required.

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

- a) provide advice to both suppliers and large retailers on matters relating to the Code;
- b) arbitrate in disputes between suppliers and large retailers;
- c) investigate issues to ascertain whether there has been a breach of the Code;
- d) enforce the Code;
- e) impose sanctions and other remedies for breaches of the Code; and
- f) publish an annual report on the Adjudicator's activities.

The Board met 4 times and had full attendance each time. The Board follows the governance Code of Good Practice 2011 but applies it in a way proportionate to the nature and size of the GCA.

## Review of Executive Board effectiveness

Through this first year, the format and frequency of the Board has been kept under review and adjustments made to improve decision making. A formal review of the effectiveness of the Board will be carried out in the next reporting period, and 12 months from its inception.

## Risk and assurance

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

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

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

**Stakeholder awareness is low:** Stakeholder organisations and trade bodies do not understand the role of the GCA, leading to misrepresentation across the sector and in the media.

To manage this risk the GCA has: made contact with all key stakeholder bodies in the groceries sector; spoken at 13 events hosted by trade associations; and held a group meeting of key trade associations which will become an annual event. This event was also a means to introduce the trade associations to each other and encourage dialogue between them. (The Code covers a range of products where there is not always contact between trade associations and their roles in supporting their members can differ.)

**Supplier misunderstanding of GCA role:** Suppliers do not raise issues with the GCA. A significant proportion of issues that are raised are out of scope. Moreover, they are often not through proper channels but rather by individuals expecting GCA to take up their case on their behalf. The Adjudicator has spoken at around 100 events and directly to 3,000 suppliers, many of whom are direct suppliers to the large retailers. The media (national and trade) has also been used as a channel to continue to raise awareness with a greater number of suppliers, encouraging them to bring issues to our attention. We have also encouraged the trade associations to co-ordinate the issues from their members and to bring any evidence of possible breaches of the Code to the GCA.

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

A new risk emerged through the year:

**Insufficient levy funding:** Calculation of the costs of running the GCA is underestimated. This is a live issue which has not yet been resolved. Financial year 2013/14 is unaffected but this may become an issue in financial year 2014/15. However, the GCA does have options available to deal with any shortfall: to apply for a grant or loan from the Secretary of State for Business Innovation and Skills; or to apply an additional levy on the large retailers.

A review of control weaknesses has not been carried out as our systems are still under development and refinement. This will be carried out in the forthcoming year.

## Data handling

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



**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

17 July 2014

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

I certify that I have audited the financial statements of the Groceries Code Adjudicator for the period ended 31 March 2014 under the Groceries Code Adjudicator Act 2013. The financial statements comprise: the Statements of Comprehensive Net Income, Financial Position, Cash Flows, Changes in Taxpayers' Equity; and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

## **Respective responsibilities of the Accounting Officer and auditor**

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

## **Scope of the audit of the financial statements**

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

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

## Opinion on regularity

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

## Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of Groceries Code Adjudicator's affairs as at 31 March 2014 and of the net income for the year then ended; and
- the financial statements have been properly prepared in accordance with the Groceries Code Adjudicator Act 2013 and Secretary of State directions issued thereunder.

Opinion on other matters

In my opinion:

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

## Matters on which I report by exception

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

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

## Report

I have no observations to make on these financial statements.

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

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

**17 July 2014**

# Statement of Comprehensive Net Income for the Year Ended 31 March 2014

	<b>Note</b>	<b>2013/14</b> <b>£</b>	<b>2012/13</b> <b>£</b>
<b>Expenditure</b>			
Staff costs	<b>2</b>	232,381	–
Other expenditure	<b>3</b>	70,477	–
		<u>302,858</u>	<u>–</u>
<b>Income</b>			
Other income	<b>4</b>	(450,000)	–
		<u>(147, 142)</u>	<u>–</u>
<b>Net Income</b>		<u>(147, 142)</u>	<u>–</u>
<b>Net income after interest</b>		<u>(147, 142)</u>	<u>–</u>
<b>Net income after interest and tax</b>		<u>(147, 142)</u>	<u>–</u>
<b>Total Comprehensive income for the year ended 31 March</b>		<u>(147, 142)</u>	<u>–</u>

The notes on pages 42 to 47 form part of these financial statements.

There was no other comprehensive expenditure.

# Statement of Financial Position as at 31 March 2014

	Note	31-Mar-14 £	31-Mar-13 £
<b>Current assets:</b>			
Trade and other receivables due within one year	<b>6</b>	11,151	–
Cash and cash equivalents	<b>7</b>	172,614	–
<b>Total current assets</b>		183,765	–
<b>Total assets</b>		183,765	–
<b>Current liabilities:</b>			
Trade and other payables	<b>8</b>	36,623	–
<b>Total current liabilities</b>		36,623	–
<b>Non-current assets less current liabilities</b>		147,142	–
<b>Assets less liabilities</b>		147,142	–
<b>Taxpayers' equity</b>			
Income and expenditure reserve		147,142	–
		147,142	–

The notes on pages 42 to 47 form part of these financial statements.

*Christine Tacon.*

**Christine Tacon**

Groceries Code Adjudicator  
and Accounting Officer

17 July 2014

# Statement of Cash Flows for the Year Ended 31 March 2014

	<b>Note</b>	<b>2013/14</b> <b>£</b>	<b>2012/13</b> <b>£</b>
<b>Cash flows from operating activities</b>			
Net deficit after interest		147,142	–
(Increase) in receivables	<b>6</b>	(11,151)	
Increase in payables	<b>8</b>	36,623	–
<b>Net cash inflow from operating activities</b>		<u>172,614</u>	<u>–</u>
<b>Net (decrease)/increase in cash and cash equivalents in the period</b>		172,614	–
<b>Cash and cash equivalents at the beginning of the period</b>			–
<b>Cash and cash equivalents at the end of the period</b>		172,614	–

(i) The GCA has not repaid any surplus income.

The notes on pages 42 to 47 form part of these financial statements.

# Statement of Changes in Taxpayers' Equity

	I&E Reserve £	Total Reserves £
	<u>          </u>	<u>          </u>
<b>Balance as at 31 March 2012</b>	–	–
<b>Changes in Taxpayers' Equity comprehensive income for the year</b>		
Comprehensive income for the year	–	–
Grant from parent	–	–
<b>Balance as at 31 March 2013</b>	<u>          </u>	<u>          </u>
	–	–
<b>Changes in Taxpayers' Equity comprehensive income for the year</b>		
Comprehensive income for the year	(147,142)	(147,142)
<b>Balance as at 31 March 2014</b>	<u>(147,142)</u>	<u>(147,142)</u>

(i) The GCA has not repaid any surplus income.

# Notes to the Financial Statements

## 1. Accounting policies

These financial statements have been prepared in accordance with the 2013/14 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be the most appropriate to the particular circumstances of the GCA for the purposes of giving a true and fair view has been selected. The particular policies adopted by the GCA for the purpose of financial reporting are described below. They have been applied consistently in dealing with items that are considered material to the accounts.

There were no new standards issued up to 31 March 2014 and not applied, that would materially affect the accounts. The GCA has also not adopted any standards early.

### 1.1 Accounting convention

These accounts have been prepared under the historical cost convention.

#### (a) Income

##### *General levy*

The Groceries Code Adjudicator Act 2013 [section 19] provides that the full costs of the GCA will be funded through a levy on the 10 designated retailers with a UK annual groceries turnover in excess of £1billion, as per the Code provisions set out by the Competition Commission (now the Competition and Markets Authority). These are: Aldi Stores Limited, Asda Stores Limited, Co-operative Group Limited, Iceland Foods Limited, Lidl UK GmbH, Marks & Spencer plc, Wm Morrison Supermarkets plc, J Sainsbury plc, Tesco plc, and Waitrose Limited.

##### *Arbitration and investigations*

The GCA will, in the great majority of cases, recoup the full cost of arbitrations, in accordance with Article 11(7) of the Groceries [Supply Chain Practices] Market Investigation Order 2009. All costs of the arbitrator are to be borne by the retailer which is the party to the arbitration; unless the arbitrator decides that the supplier's claim was vexatious or wholly without merit, in which case costs will be assigned at the arbitrator's discretion. The other costs of the arbitration, such as the parties legal costs, can be apportioned in the final award.

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

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

#### (b) Going concern

The GCA will receive levy income for 2014/15 to fund its activities. It has been accordingly considered appropriate to adopt a going concern basis for the preparation of these financial statements. Considerable budget pressure is expected in 2014/15. Options to deal with any shortfall could result in an additional levy on the large retailers or an application for payment by the Secretary of State of grants or loans to ensure that the GCA has sufficient funds to meet its costs.

#### (c) Financial instruments

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

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

##### *Financial assets*

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

##### *Financial liabilities*

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

#### (d) Reserves

Income and expenditure reserve

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

#### (e) Expenditure

All expenditure is recognised on an accruals basis. Purchases of capital items over £1000 will be recognised in the accounts as an asset and appropriately depreciated or amortised.

## 2. Staff numbers and related costs

The cost of staff remuneration was:

	2013/14 £	2013/14 £	2013/14 £	2012/13 £
	<i>Permanent staff</i>	<i>Other staff</i>	<i>Total</i>	<i>Total</i>
Wages and salaries	63,020	126,263	189,283	–
Social security costs	6,689	11,349	18,038	–
Pension costs	–	25,060	25,060	–
Total	<u>69,709</u>	<u>162,672</u>	<u>232,381</u>	<u>–</u>

(i) The remuneration of the Groceries Code Adjudicator is the only permanent staff cost.

(ii) There have been no severance payments in year.

(iii) VAT is charged on salaries

### Average number of staff employed

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

Permanent staff	0.6
Other staff	<u>2.3</u>
	<u>2.9</u>

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

### 3. Other expenditure

	2013/14 £	2012/13 £
Rentals under operating leases	21,681	–
Running costs – Victoria House	2,925	–
Consultants' fees – inquiry related	700	–
Software licences	778	–
IT equipment and consumables	6,157	–
Telecommunications and Internet charges	809	–
Photocopying	112	–
Travel, subsistence and hospitality:	10,868	–
Staff training	2,160	–
Subscriptions	210	–
Corporates Services from Competition Commission	17,349	–
Stationery	1,058	–
Conferences	419	–
Audit fee	5,000	–
Other expenditure	251	–
Total other operating charges	<u>70,477</u>	<u>–</u>

### 4. Income

	2013/14 £	2012/13 £
Income from Levy	450,000	–
	<u>450,000</u>	<u>–</u>

### 5. Financial instruments

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

## 6. Trade receivables and other assets

	<b>2013/14</b>	<b>2012/13</b>
	<b>£</b>	<b>£</b>
<b>Amounts falling due within one year</b>		
Other receivables	9,545	–
Prepayments	1,606	–
	<u>11,151</u>	<u>–</u>

Transactions are with central government.

## 7. Cash and cash equivalents

	<b>2013/14</b>	<b>2012/13</b>
	<b>£</b>	<b>£</b>
Balance at 1 April		–
Net change in cash and cash equivalent balances	172,614	–
Balance at 31 March	172,614	–
The following balances at 31 March were held at:		
Government Banking Service	<u>172,614</u>	<u>–</u>

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

## 8. Trade payables and other liabilities

	<b>2013/14</b>	<b>2012/13</b>
	<b>£</b>	<b>£</b>
<b>Amounts falling due within one year</b>		
Other payables	36,623	–
	<u>36,623</u>	<u>–</u>

Transactions are with central government.

## 9. Capital commitments

The GCA had no capital commitments.

## 10. Commitments under leases

The GCA has no leases. The service level agreement under which we had an operating lease in 2013–14 expired on the 31st March 2014, and has not yet been replaced.

## 11. Contingent liabilities & assets

There are no contingent liabilities or assets to report.

## 12. Related party transactions

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

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

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

## 13. Events after the reporting period

There are no post-balance sheet events to report.

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