



Groceries Code  
Adjudicator

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

1 April 2017 – 31 March 2018

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1 April 2017 – 31 March 2018

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

Ordered by the House of Commons to be printed 21 June 2018



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2nd Floor, Victoria House

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London WC1B 4DA

ISBN 978-1-5286-0502-1

CCS0618792810 06/18

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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# Foreword

I am now in my second term of office, and the first four years have shown significant progress. The annual survey results show that where suppliers have raised issues I have been able to make a difference. The charts in the *Top Issues* section of this report show that clearly.

In writing this foreword I have reflected on my time in post and a clear theme emerges. Much of the increased compliance with the Code I have secured has been achieved by getting retailers to stop doing something, introduce a new process or change a policy.

To make progress on the systemic issues that remain, where the solution may be less straightforward, will take a concentrated focus on culture change and strong engagement by both direct suppliers and retailers. I remain convinced that tackling such complex, deep-rooted behaviours will not only ensure high standards of Code compliance but will also help make supply chains better and more efficient, benefitting consumers, suppliers and retailers alike.

## Top Issues

Resolving some of the key concerns of suppliers, such as delay in payments and forecasting needs a more concerted effort from retailers. I am, however, beginning to shift the ground on some specific issues such as resolving whether the supplier or the retailer count is used on disputed deliveries or whether a retailer forecast was given with due care and if not whether compensation may be due.

I am encouraging retailers to adopt processes that are fair to suppliers and which permit challenge if the supplier is confident that its figures are correct. I have made it clear that in situations where figures are not agreed and there is no proof of delivery – either because none was issued or because the haulier has lost it – the solution should not automatically be to the supplier's cost. All retailers who have looked into the detail have found that supplier figures are often more reliable than their own. But there is also a challenge to suppliers. As more retailers move to a system of paying supplier invoices as submitted accompanied by spot audits, suppliers are realising the importance of being certain of their delivery accuracy.

On forecasting I have made clear to retailers that they cannot claim that a forecast produced with no opportunity for the supplier to input has been done with due care. As a result, compensation may be due if the supplier suffers when orders differ significantly from the forecast. During the year I had many discussions with suppliers and from these I learned that many forecasting issues are linked to promotions. Examples of issues encountered are changes to the agreed number of stores running the promotion, positioning (on shelf rather than gondola end) and even cancellation at late or no notice. A frequent story I hear is that a buyer has forgotten to load a promotion on the retailer's system. Many problems also stem from suppliers experiencing significant and repeated challenges when trying to communicate with buyers.

## Supplier Helplines

I am pleased that all the regulated retailers have introduced supplier helplines so that suppliers can have finance-to-finance discussions. This goes some way to reducing concerns that suppliers have about damaging their relationship with the relevant retailer's buyers by chasing payment disputes. I have publicised these helplines on the GCA website and I recommend that suppliers use them.

## Case Study

This year I published a Code clarification case study as a result of Asda Stores Limited's (Asda) notice periods and demands for payments associated with Project Renewal. The case study is reproduced in the *Significant Activities* section of this report. Asda accepted that it had breached the Code and had carried out detailed internal work to repay all suppliers who had been adversely affected, to ensure lessons were learned, and to put in place safeguards to prevent any repetition of the issues brought to light. There was no need to conduct an investigation to establish the facts of what happened; nor to better understand the situation in order to require suitable remedial measures to be put in place.

The latest case study brought my total number of case studies to five. I introduced these to allow me quickly and effectively to communicate situations in which I had established a breach of the Code; the retailer had examined it, accepted the breach and corrected any harm done. Each case study contained an element of Code clarification and lessons for the sector as a whole, suppliers and retailers alike. Each led to a quick resolution of the issue raised, including comprehensive, direct redress for suppliers.

In most cases, these exercises have produced significant cultural re-alignment within the relevant retailer as it dug down to the root cause of the issue. The two most recent case studies involving Wm Morrison Supermarkets plc and Asda were the culmination of significant work on both sides. They included reports from third parties who had examined the issue forensically and the retailer in each case sharing large data sets with my office. I believe my case study approach has been very constructive for the groceries sector and I will continue to take this approach where appropriate.

## Collaborative Approach

Since my appointment as GCA I have intensified the collaborative approach with most of the retailers and it is clear to me that this approach achieves significant change. Once the retailer accepts that there may be an issue with how they interpret the Code I can make fast progress. There are a number of practices that remain on my radar and the individual retailers are well aware of these. I will be expecting to see action on these, including tackling the aggression shown by some buyers, contract lengths which bear no relation to the production time or growing season of the product and retailers choosing not to issue forecasts, instead expecting suppliers simply to fulfil every order, whenever it is issued.

## Investigations and Arbitrations

On 8 March 2018 I launched an investigation into the Co-operative Group Limited relating to De-listing and the introduction of benchmarking and depot quality control charges. I took this decision after escalating my concerns through the collaborative approach. I decided that an investigation was necessary to fully understand the extent to which the Code may have been broken and the root causes of the issues as well as their impact on suppliers.

I have accepted two new arbitrations this year. These are costly and very time consuming for the parties involved, typically taking over 12 months. My role is as arbitrator, not mediator, so although I am proactive and issue directions at an early stage in the dispute, there is a limit to how much I can do to focus parties' efforts on reaching a reasonable commercial outcome. I am disappointed that both parties do not do more to try to reach a realistic position and to resolve issues through commercial discussion and negotiation rather than relying on the arbitration process to deliver a solution. Where possible I try to share any thematic lessons with retailers, but this is difficult given the confidentiality requirements and the fact-specific material involved. Accordingly I believe that my essential work of encouraging, monitoring and enforcing compliance with the Code to be more effectively conducted in other ways.

## Statutory Review and Call for Evidence

I was pleased that the statutory review of the GCA's performance and effectiveness published in July 2017 concluded that no changes were needed to my approach and that the GCA was considered to be 'an exemplary modern regulator with an international reputation'. The establishment of the GCA involved a great deal of rigour. The Code arose from two Competition Commission inquiries followed by two years of parliamentary process to create the legislation for the Groceries Code Adjudicator. I believe these combined to give me a strong platform from which I could succeed.

I have welcomed the Government's response to the call for evidence on the extension of the GCA's remit that was published in February 2018 and which recognised that a process is needed to bring additional retailers under the Code. I am convinced that there should be a level playing field between groceries competitors in terms of regulatory standards. I have heard of many issues concerning the activities of competitors to the regulated retailers that could be breaches of the Code.

During the statutory review some respondents expressed a concern that suppliers would not raise issues with retailers or the GCA. I do not regulate suppliers but at every occasion I encourage them to be trained in the Code. To reinforce that message this year I launched the Code Confident campaign encouraging suppliers to Know the Code, Get Trained and to Speak Up to me and to the regulated retailers' Code Compliance Officers.

Giving me information means I can act – and I do so while treating any information I receive in complete confidence. I can confidently say that I have seen no evidence of any supplier being identified or suffering detriment because I have raised an issue with a retailer. Indeed the opposite is true: there are clear examples of suppliers being recompensed. I have attended events and trade association meetings during the year specifically to raise awareness of the Code Confident campaign particularly in sectors where my survey has shown there is low awareness of the Code.

## Annual Survey

My annual survey is a milestone event each year. This remains a major source of information for me. A record 1,400 responses in 2017 meant we had better data than ever before. I was also able to provide greater analysis of each issue raised so retailers could focus on where they needed to improve. All the retailers care very much where they stand in the league table, with a few openly targeting getting to the top, a spot held by Aldi Stores Limited for each of the four previous surveys. I am looking forward to an equally strong response this year.

## GCA Office

I am delighted to report that I now have a full complement of staff in the office and want to thank the Department for Business, Energy and Industrial Strategy (BEIS) for their support. After a number of failed recruitment rounds for secondees from within the public sector we now have a process through which the GCA can advertise externally, with BEIS recruiting the successful candidate who is then seconded to the GCA. We have one position that has been filled in this way. I am indebted to the support that each and every member of my team provides and I am grateful for the enthusiasm and commitment they show.

## Challenges and Forward Look

My priorities for 2018 to 2019 will be fulfilling my statutory duties, conducting an efficient and thorough investigation, processing and determining arbitrations where necessary, as well as working with regulated retailers on the cultural and systemic issues outlined above. My role remains as exciting and as fulfilling as it was in June 2013. I take enormous pride in making a difference and receiving feedback from suppliers thanking me for the GCA's contribution to levelling the playing field in the groceries sector.

*Christine Toan.*

**1**  
**ADJUDICATOR**



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



**4**  
**NEWSLETTERS PUBLISHED**

**10**  
**RETAILERS**

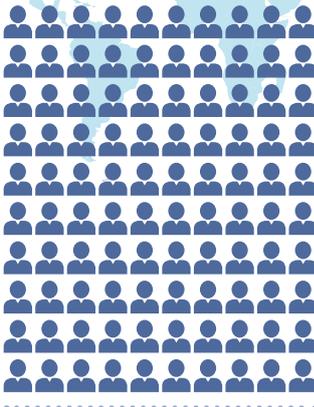


**4<sup>th</sup>**  
**ANNUAL CONFERENCE**



**1**  
**INVESTIGATION LAUNCHED**

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



**AND A**  
**SECTOR WORTH**  
**£184.5bn**

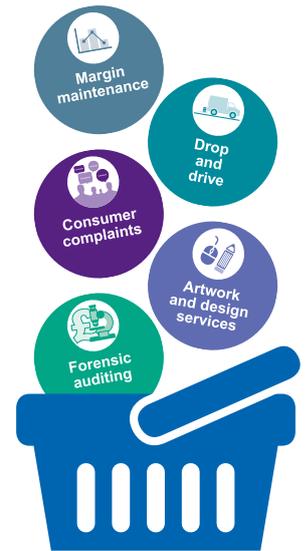
**Top issues**



**Current**



**Monitored**

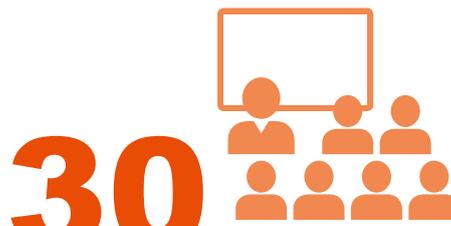


**Previous**

**Engagement**



**61**  
**RETAILER MEETINGS**



**30**  
**SUPPLIER AND TRADE ASSOCIATION EVENTS**



**59**  
**SUPPLIER ONE-TO-ONES**

# Performance Report

## Overview

This overview section explains the role and purpose of the Groceries Code Adjudicator (GCA). The Performance Analysis sets out how the GCA has performed during the year. Key risks are set out in the Governance Statement.

## Groceries Code Adjudicator

### Working for fairness in the groceries supply chain

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

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

Following the Commission's recommendation, the Government introduced the Groceries Supply Code of Practice (the Code) in 2010, designed to regulate the relationship between the 10 retailers with UK annual groceries turnover of more than £1 billion (the regulated retailers) and their direct suppliers. The regulated retailers had 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 regulated retailers. Suppliers, trade associations and other representative bodies are encouraged to provide the GCA with information and evidence about how the regulated 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.

In 2016 the Government carried out a statutory review of the GCA's performance and effectiveness and at the same time called for evidence on the extension of the GCA's powers. The results of the review published in July 2017 concluded that the GCA is regarded as an 'exemplary modern regulator with an international reputation.' Following the call for evidence, Ministers decided not to extend the remit of the GCA however the Competition and Markets Authority was asked to assess whether more groceries retailers should be regulated by the GCA.

## GCA powers

At a supplier's request the GCA must arbitrate in disputes and may also do so following a request from a regulated retailer. Arbitration awards are binding and may include compensation.

The GCA can launch investigations. If a breach of the Code is found, the GCA can make recommendations, require regulated retailers to publish details of any breach and in the most serious cases impose a fine. The GCA power to fine a retailer up to 1% of its UK turnover came into force on 6 April 2015.

Under the Code the regulated 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. This list is not exhaustive and full details are available on [www.gov.uk/gca](http://www.gov.uk/gca).

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

## The way the GCA works

The GCA encourages suppliers to continue to bring Code issues and evidence to its attention in order to inform decisions and actions. The GCA also gathers information from retailers, trade associations and others. The stronger the evidence base, the greater the justification for action.

As a small regulator the GCA must effectively prioritise its activities. When considering whether to launch an investigation and other activities, the GCA applies the following four prioritisation principles, which are set out in its statutory guidance:

<b>Impact:</b>	The greater the impact of the practice raised, the more likely it is that the GCA will take action
<b>Strategic Importance:</b>	Whether the proposed action would further the GCA's statutory purposes
<b>Risks and benefits:</b>	The likelihood of achieving an outcome that stops breaches of the Code
<b>Resources:</b>	A decision to take action will be based on whether the GCA is satisfied the proposed action is proportionate

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

**Stage 1: Will make retailers aware of issues reported by suppliers.**

The GCA will consider whether the issue raised appears to be more than an isolated occurrence. If so, it will be raised with the regulated retailers' Code Compliance Officers (CCOs) for their own action. In some circumstances if they are judged to have significant impact and confidentiality can still be maintained, the GCA will also raise single incidence issues with CCOs.

**Stage 2: Will request that the CCOs investigate the issue and report back to the GCA.**

The GCA will raise the issue with the relevant CCO or all CCOs either if the issue is widespread or to protect the confidentiality of the supplier(s) experiencing the issue. CCOs will be expected to look into whether a breach has occurred in their organisation. Depending on what the CCO finds, the GCA may issue advice clarifying or interpreting the relevant provisions of the Code for the retailer and others to follow. Where a retailer or retailers accept a breach of the Code has taken place the GCA may publish a case study on the GCA website.

**Stage 3: May take formal action if the practice continues.**

If the GCA continues to hear of suppliers experiencing the same issue then the outcome may be to publish more formal guidance and/or launch an investigation.

Through this process the GCA ensures that issues are raised with and promptly considered by the regulated 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 that may not be consistent with the Code. The GCA believes that this collaborative approach has a dual benefit. It significantly reduces the cost of regulating the retailers and it delivers results more quickly.

The GCA does not act as a complaints handling body, nor can it advise on individual disputes where a supplier seeks a view on whether a regulated 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 regulated retailer or may later launch an investigation into the practice raised by the supplier if it becomes apparent that it is a systemic issue experienced by a number of suppliers and of significant impact. Providing a view on individual cases could compromise the GCA's objectivity. Instead, 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 regulated retailers to respond to issues rapidly and relies on suppliers and others to bring evidence of non-compliance quickly to the GCA to achieve this goal.

**More information is available on the GCA website: [www.gov.uk/gca](http://www.gov.uk/gca)**

## Performance Analysis

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

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

The GCA accepted appointment as arbitrator in two disputes in the reporting period.

### Investigations carried out by the GCA

The GCA launched an investigation into the Co-operative Group Limited on 8 March 2018. This is the GCA's second investigation.

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

No enforcement measures were used.

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

The GCA has made no recommendation to the Competition and Markets Authority for any change to be made to the Code.

## Strategic Objectives

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

- Objective 1:** Promoting the work of the GCA
- Objective 2:** Providing advice and guidance
- Objective 3:** Acting on suppliers' issues and information
- Objective 4:** Improving the culture of Code compliance

The GCA considers that these objectives remain fit for purpose.

### Objective 1 Promoting the work of the GCA

A key priority this year has been to build the confidence of suppliers to engage effectively with the GCA. To build on the momentum of previous years' awareness raising, the GCA launched the Code Confident campaign. This delivered three clear and important messages to suppliers, urging them to Know the Code, Get Trained and Speak Up. In support of the campaign the GCA and retailers have distributed a Code Confident folder containing useful information including a Question & Answer document, copies of the Code and the latest GCA newsletter. An email message (e-blast) was sent to subscribers of The Grocer to reiterate the Code Confident message and to encourage them to sign up to receive copies of the GCA newsletter.

The GCA continues to encourage suppliers to talk to the regulated retailers' CCOs. Significantly, some CCOs have stated publicly that they are willing to hear issues in confidence. The GCA encouraged the retailers to set up supplier helplines, particularly for finance queries and has published details on the GCA website.

The Code Confident folder also contains an up-to-date directory of all Code training providers of which the GCA is aware. Ensuring that direct groceries suppliers understand the benefits of being trained in the Code remains an important aim.

This year the GCA commissioned its fourth annual survey. The survey provides vital information about current issues being experienced by direct suppliers to the regulated retailers. In order to achieve a high response the GCA redoubled efforts to promote participation in the 2017 survey, including placing adverts on The Grocer's digital newsletter, distributing a publicity postcard at targeted events and giving interviews to reporters and broadcasters, including BBC Breakfast and Radio 5 Live's Wake Up to Money. The result was a record response which allowed the GCA to get much more detailed information. The GCA also carried out a mini survey in-year on the issues of promotions, forecasting and delay in payments.

Information from the survey has also helped to identify those parts of the sector with lower levels of awareness of the GCA and the Code. As a result the GCA has targeted engagement with specific sectors such as alcoholic beverage suppliers. In addition the GCA office has proactively sought invitations to events attended by target groups as well as encouraging stronger links with trade associations whose members may be protected by the Code. In the year covered by this Annual Report there have been two trade association meetings with 20 new associations attending.

The Adjudicator has spoken at 30 supplier and trade association events. In addition a number of successful supplier workshops were held in London, Birmingham and Manchester and the Adjudicator had 59 one-to-one meetings with suppliers.

Around 250 people attended the GCA annual conference in June 2017 at Church House Conference Centre. This followed the successful format of a review of the year and forward look from the GCA as well as a presentation of the survey results from YouGov. Participants also saw a video address from Margot James MP, the then Minister of State and heard a personal perspective from Adam Leyland, the editor of The Grocer magazine. Following the main conference event, the GCA held a session with direct suppliers only, to hear their experiences relating to the current issues of delay in payments, forecasting and promotions.

The GCA website continues to act as an important source of up-to-date information and the GCA has created a YouTube channel to carry videos promoting the work of the CCOs, emphasising the importance of training and highlighting key issues, as well as containing links to speeches given by video-conference to events overseas. There is a link to them from the GCA's website.

The statutory review of the GCA was 'concerned by evidence that some suppliers are reluctant to raise issues with the Adjudicator for fear of the commercial consequences'. The GCA continues to encourage direct suppliers to raise Code-related issues directly with retailers and the GCA through promoting the Code Confident message, including:

- Targeted spending set out in the GCA budget to cover events and marketing focused on promoting the need to be Code Confident;

- A commitment that the GCA will attend a minimum of one supplier event each month – and where possible, two – to raise awareness of the work of the GCA and the Code Confident message;
- As part of the quarterly reporting under business as usual activity, the retailers are asked to support the Code Confident message with their suppliers and to continue to inform the GCA of any awareness-raising initiatives;
- In line with the annual compliance reporting requirement in the Groceries (Supply Chain Practices) Market Investigation Order 2009, the GCA has encouraged retailers to be more open and transparent about their Code compliance activity and the issues that suppliers have reported and how they have been handled so that suppliers have confidence in the process;
- The GCA annual survey will continue to ask direct suppliers questions about their level of awareness of the GCA, their understanding of the Code, whether they would consider raising issues with the GCA and if they would not the reasons why not;
- Increased work with trade associations to promote the work of the GCA and the need for their members to be Code Confident.

## Objective 2 Providing advice and guidance

The GCA has continued to publish advice and guidance that responds to concerns raised by suppliers and retailers and to clarify the Code. This has included providing advice to retailers about how to improve their annual compliance reports; and asking retailers to consider, when they have concessions in store, whether the concessionaires might be suppliers under the Code, depending on the arrangements in place. Other activity is recorded in the *Top Issues* section of this annual report.

## Objective 3 Acting on supplier issues

The primary purpose of the GCA is monitoring and encouraging compliance with and enforcing the Code. The GCA continues to do this based on the information it receives from suppliers, trade associations and the sector as a whole.

### Raising Issues with CCOs

Quarterly meetings with the CCOs form a core part of the GCA's interaction with retailers. These are used to raise issues across all regulated retailers as well as issues involving individual retailers. In some circumstances the GCA will raise issues outside the usual meeting round, for example where there is some urgency for the CCO to look into them or the GCA wishes to intensify the collaborative approach with a particular retailer.

Issues raised with the GCA by suppliers either directly or through the annual survey are crucial to identifying the work to be done with retailers. They have helped the GCA to determine where to intensify the collaborative approach with retailers, leading to the publication of case studies or the launch of an investigation, as well as helping to inform the GCA's decision about which issues to prioritise with all regulated retailers and how supplier concerns can best be addressed by retailer action. Where issues have been escalated with a retailer and have been addressed effectively, suppliers notice a difference.

## Commissioning groceries sector surveys

The annual GCA groceries sector survey was conducted in March/April 2017 by YouGov and the results are covered in detail in the *GCA Annual Survey 2017* section of this report. Analysing four years of previous results by issue showed a dramatic reduction in suppliers reporting concerns in specific areas, for example suppliers' experience of issues related to forensic auditing fell over the period from 46% to 12%. The subsequent development of a suite of impact charts has been powerful in demonstrating to different audiences the benefit of telling the GCA about issues and the effectiveness of the collaborative approach taken by the GCA. While overall there has been a reduction in suppliers reporting they have experienced Code-related issues, some issues such as delay in payments, appear more intractable than others. These charts are set out in the *Top Issues* section of this report.

In November, YouGov conducted a mini survey to deepen GCA understanding of the issues of forecasting, promotions and delay in payments. The survey was extremely informative with 268 respondents sharing their experiences of working with the regulated retailers under these areas. These have been very powerful in showing the CCOs where they need to focus their activity as well as informing the GCA where to concentrate its efforts.

## Objective 4 Improving the culture of Code compliance

The GCA has increasingly put the spotlight on cultural and behavioural patterns in the retailers. These regularly come up in discussions with regulated retailers as part of the collaborative approach. More generally the GCA continually reinforces the need for retailers to engage with the spirit of the Code and has spoken particularly about what this means to buyers and other groups set up to improve compliance at five retailers in the past year.

Meeting the chairs of audit committees continues to be a key part of GCA engagement and has led to a number of examples where contact at this level has driven improvements by the retailers.

Additionally the GCA has engaged more this year with CEOs of regulated retailers, especially when escalating an issue within that retailer. There is no doubt that retailers' compliance culture is improving but it seems to need to be triggered each time by increased GCA engagement. The GCA only moves to this level when there is sufficient evidence from suppliers that it is appropriate to do so, so the GCA is heavily reliant on suppliers telling it what the issues are, both face to face and through the supplier survey.

## Annual Survey 2017

In 2017 the GCA maintained its practice of commissioning YouGov to carry out a survey of the groceries sector. This fourth GCA survey was designed to build on its understanding of the current concerns in the sector, measure progress of Code compliance and test some new issues. These issues included how far retailer behaviour had improved in the year and more detailed information about how each retailer performed.

YouGov presented the results to the GCA conference in June 2017.

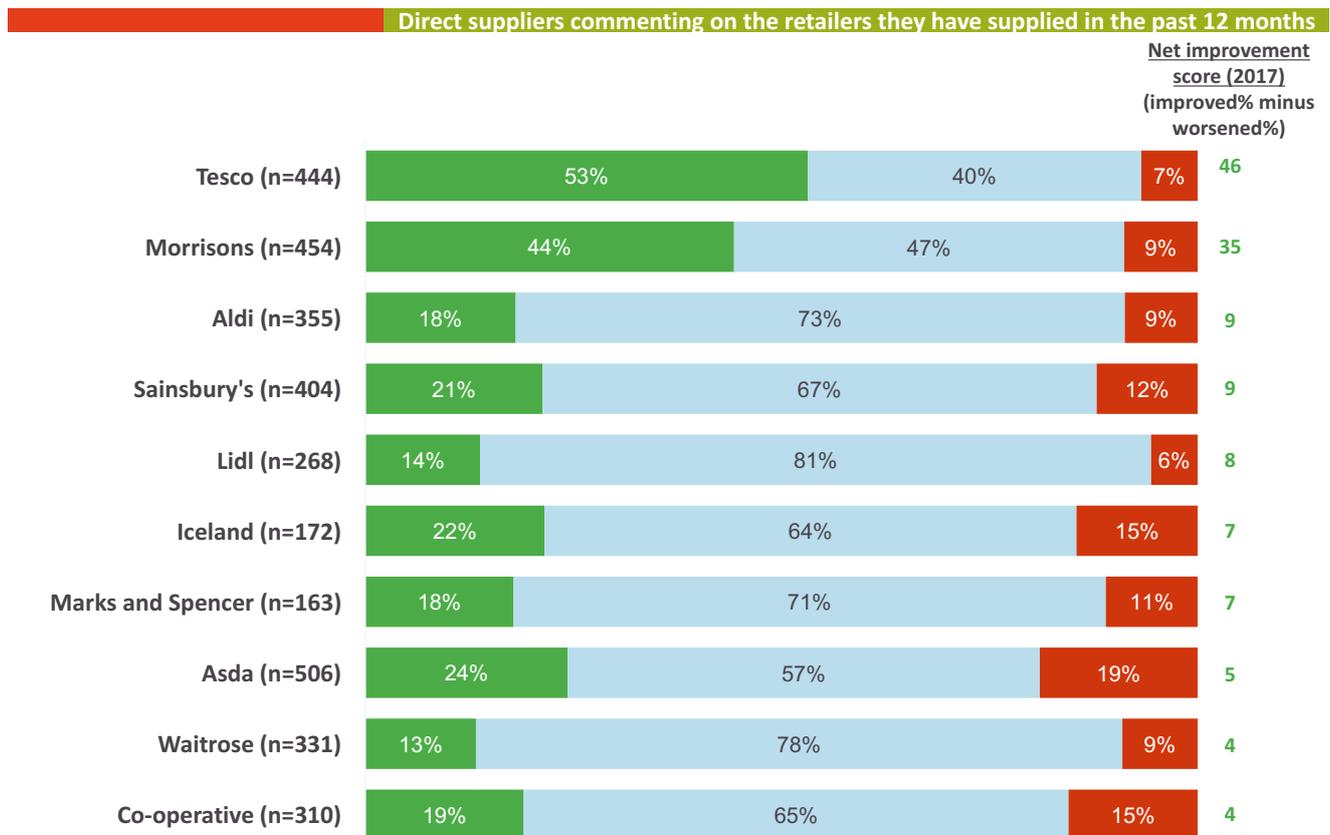
### Participants

The regulated retailers again supported the GCA survey by sending links to their direct suppliers, including those based overseas. Participation remained high with a total of 1,415 responses received, including 1,220 from direct suppliers, 198 indirect suppliers and 35 trade associations.

The number of suppliers stating that they had experienced issues that could be breaches of the Code continued to fall in 2017. The proportion reporting issues fell to 56%, down from 62% in 2016.

Improvements in retailer behaviour were also reflected in the survey results, with Tesco again the most improved over the year (Table 1), having also recorded the biggest improvement in 2016. Morrisons also showed good progress and every retailer showed a net improvement.

**Table 1: Change in retailer practice over the last year**

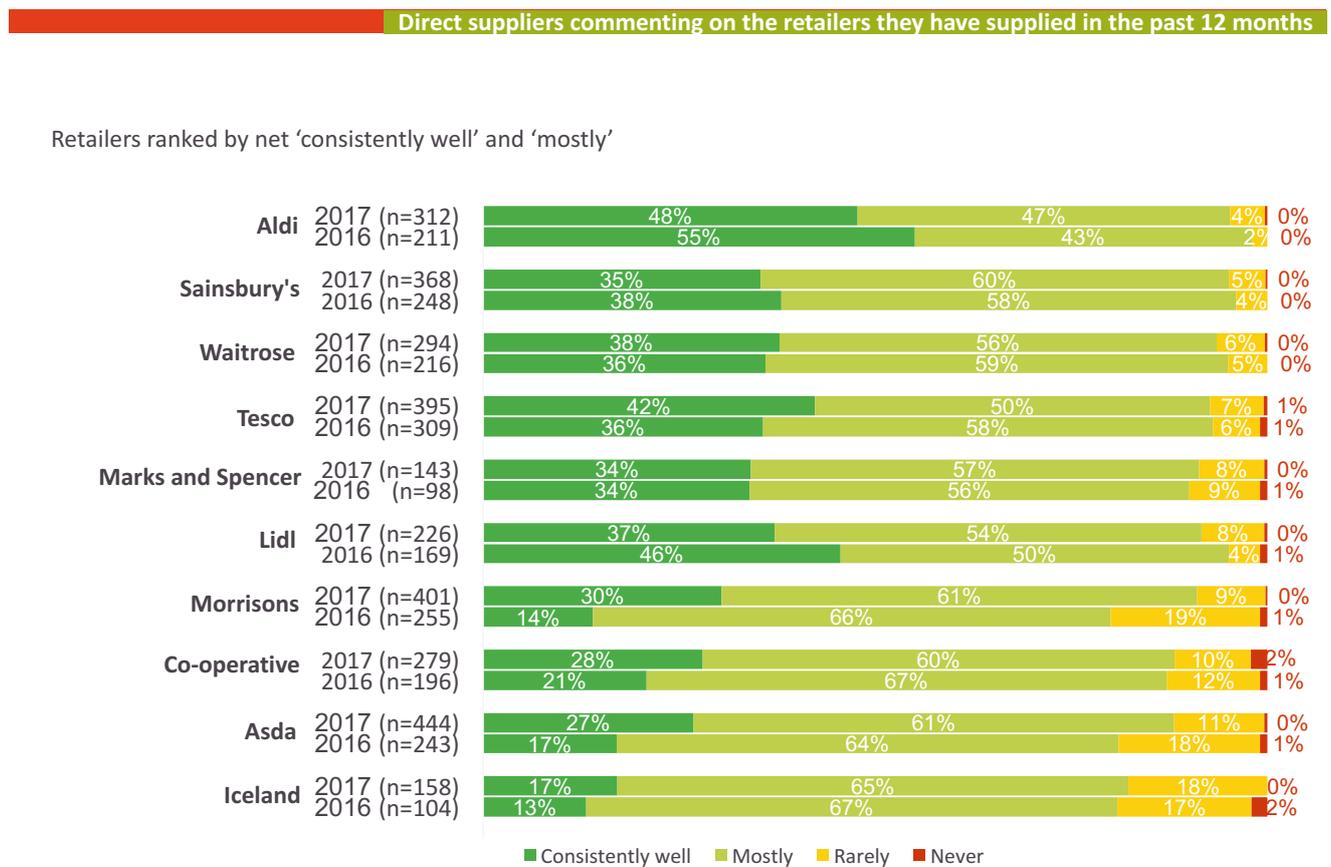


## Views by suppliers on the overall assessment of compliance with the Code

Aldi Stores Ltd was considered by direct suppliers to be the retailer who complied most with the Code, placing them top of the 2017 survey (Table 2).

From the survey results Iceland was assessed by its suppliers as overall being the retailer least likely to comply with the Code, yet these suppliers also reported low levels of specific Code issues if any at all. To find out why, YouGov wrote to suppliers who had given permission to be contacted following the survey. The suppliers who responded indicated that their overall impression of Iceland’s compliance with the Code was influenced by views that the retailer didn’t deal with them fairly overall, rather than by any specific concern about Code compliance.

**Table 2: Overall assessment of compliance with the Code**



### Using data to drive better behaviour

As well as measuring overall performance the YouGov survey focused on specific Code-related areas for each retailer (Table 3) in which the retailers are anonymised and are presented in no particular order, shows the results. The survey used a traffic light system to show where retailers were performing better than the average (green) and worse than the average (red).

It offered the GCA a valuable tool to encourage retailers to improve performance in particular areas, even if their overall rating was good. It also provided valuable insight for the CCOs.

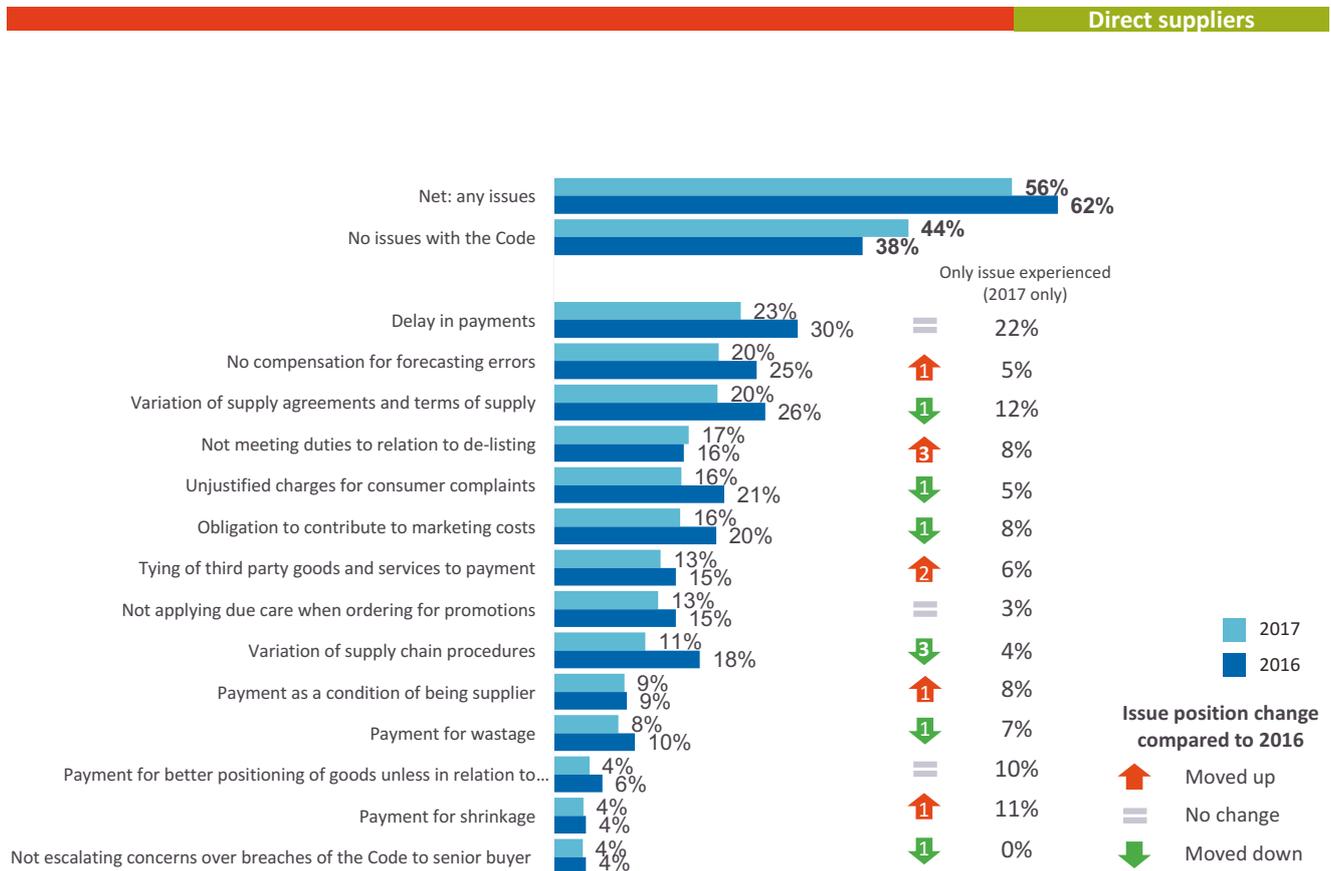
**Table 3: Code related issues per retailer as reported by suppliers**

	All direct suppliers									
	Retailer 1	Retailer 2	Retailer 3	Retailer 4	Retailer 5	Retailer 6	Retailer 7	Retailer 8	Retailer 9	Retailer 10
Incorrect deductions from invoices with or without notice	6%	3%	5%	11%	10%	6%	9%	2%	9%	8%
Data input errors (e.g. pricing) not resolved promptly (e.g. 7 days)	5%	1%	3%	11%	9%	5%	9%	2%	8%	7%
Unfair, unreasonable or unexpected charges for: Artwork and design	6%	9%	3%	9%	5%	4%	6%	2%	8%	7%
De-listing without giving reasonable notice	4%	4%	2%	7%	7%	1%	4%	3%	5%	3%
No compensation/incurring penalty charges for inaccurate forecasting by the retailer	6%	4%	3%	8%	7%	3%	6%	2%	4%	5%
Drop and drive: delays in, or not receiving, payment when there are disputes over deliveries	2%	1%	1%	6%	6%	3%	5%	2%	1%	2%
Forensics: third party audits which have been abusive or excessive in nature	5%	1%	0%	6%	3%	1%	3%	0%	2%	2%
Unjustified payments for consumer complaints	7%	1%	5%	4%	6%	1%	3%	2%	6%	3%
Unfair, unreasonable or unexpected charges for: Packaging	3%	3%	1%	5%	3%	2%	2%	0%	5%	3%
Requests for lump sum payments relating to: Retailer margin shortfall not agreed at the start of the contract period	1%	0%	1%	6%	3%	0%	3%	2%	2%	1%
Other requests for lump sum payment	0%	1%	1%	3%	1%	0%	2%	1%	3%	1%
Overbuying at promotional price and subsequently selling at full price	1%	0%	1%	2%	1%	0%	1%	1%	1%	3%
Requests for lump sum payments relating to: Listing fees for products already stocked (pay to stay)	0%	0%	1%	3%	1%	0%	2%	0%	0%	2%
Requests for lump sum payments relating to: Better positioning or increased shelf space or participation in category captaincy, category management or range reviews	0%	0%	1%	2%	1%	0%	1%	0%	1%	1%
Other	1%	1%	1%	1%	2%	1%	1%	0%	0%	2%

## Code issues

The annual survey identified that the most common issues reported by suppliers were delay in payments (23%), forecasting errors (20%) and variation of supply agreements and terms of supply (20%), as shown in Table 4. This information helped to inform the GCA's decision on the Top 5 issues for the year and GCA activity with retailers throughout 2017.

**Table 4: Code issues experienced by suppliers**



## Training

In 2016 the Adjudicator prioritised promoting the importance of Code training to suppliers so they could use it effectively in negotiations with retailers and this was reflected in the 2017 survey which showed a rise in the number of direct suppliers undertaking training (up from 35% in 2016 to 39% in 2017).

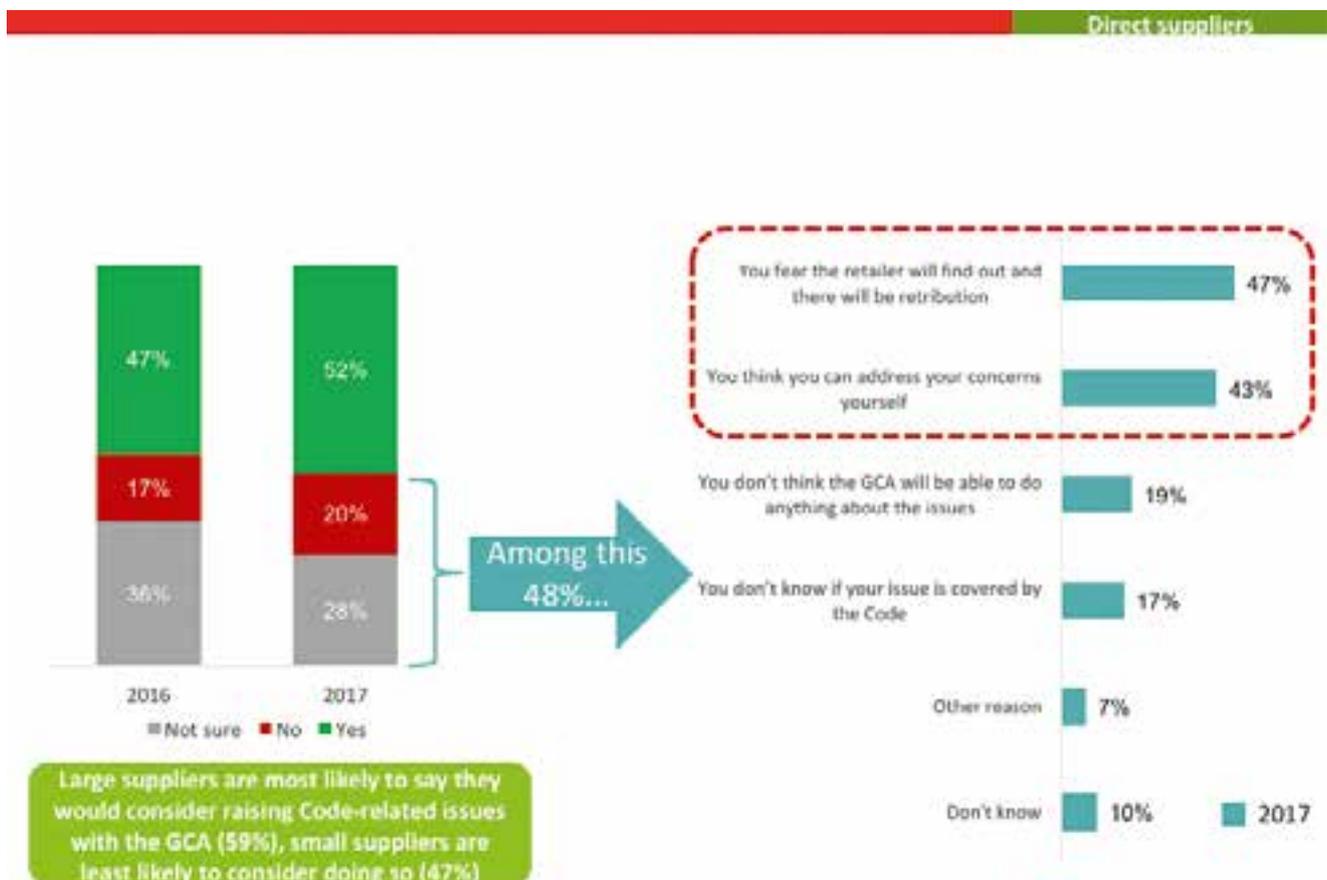
Key findings indicated that a lack of time (15%) and cost (10%) were not barriers to training. However a net 66% of suppliers said they didn't know training was available or how to access it. This was an increase over 2016 (up 10%). The GCA published a directory of training providers in 2016 and at supplier events and meetings regularly encourages suppliers to seek training.

## Raising an issue with the GCA

The number of survey respondents who felt they had a good understanding of the Code rose by 10% in 2017 to 41%, with 35% saying they had a good awareness of the GCA's role and responsibilities. Knowledge of the GCA with overseas suppliers however remains low. For the first time, the 2017 survey identified the country in which overseas suppliers were based.

The proportion of suppliers who said they would not raise an issue with the GCA or were unsure whether they would do so dropped by 5%. The 48% who said they would not raise an issue with the GCA, or were not sure if they would, indicated the reasons for this were a fear the retailer would find out and there might be adverse consequences or that they could simply address the issues themselves (Table 5).

**Table 5: Would you raise an issue with the GCA?**



The Adjudicator has continued to work hard to assure suppliers that they can bring issues to the GCA, confident that their identities will be protected. There has been a significant increase in the number of issues brought forward. At all public engagements the Adjudicator offers suppliers the opportunity to have one-to-one meetings, during which the duty to maintain supplier confidentiality is reinforced.

## Significant Activities

The following section reproduces the core content of three GCA publications concluding significant activities in the year.

### 1. GCA Code clarification case study

On 4 September 2017 the GCA issued the following case study:

#### Theme of case study

Asda Stores Limited implementation of Project Renewal in early 2016, designed to deliver cost price savings and range reduction and resulting in variation of Supply Agreements and behaviour contrary to the overarching principle of fair dealing.

#### Code references

Paragraph 3 of the Code – Variation of Supply Agreements and terms of supply; together with paragraph 2 of the Code – Principle of fair dealing.

#### Retailer involved

Asda Stores Limited (Asda).

#### Summary of the issue

Project Renewal was commissioned in 2015 and implemented by Asda in early 2016. It followed a difficult trading period and was designed to deliver cost price savings and range reduction.

The GCA received information from suppliers between March and July 2016 that indicated they were being asked for significant financial contributions to keep their business with Asda. In some cases, this was as much as 25% of the annual turnover of the stock keeping unit (SKU). If they were not successful in negotiating terms on which to remain listed, some reported being given non-negotiable periods of notice of de-listing, with periods of between four and eight weeks being reported to the GCA. Changes to terms of supply, including cost price reductions and routes to de-listing were presented to suppliers during the course of their existing agreements with Asda, as variations to agreed terms. Suppliers reported being given very little time to agree to any proposed changes, sometimes as little as 24 hours; in one case, overnight.

The GCA raised the issue with Asda at a meeting with the Code Compliance Officer (CCO) in March 2016. The GCA requested more information from Asda about Project Renewal.

The GCA annual survey conducted during April 2016 indicated that issues with Asda were widespread among suppliers.

The GCA raised the issue again in the following CCO meeting. Asda promptly commissioned an internal review into why it didn't perform better in the GCA annual survey, including into de-listing and other activity associated with Project Renewal. Asda's internal review was extensive, starting from a base point of 15 million e-mails and correspondence and interviewing employees. In the meantime, the GCA met with the Chief Executive of Asda, to escalate her concerns.

In the next CCO meeting, in September 2016, Asda updated the GCA on progress with its internal review.

There followed in November 2016 an interim report and a final report in January 2017. Asda had by this time proactively engaged with all its affected suppliers to rectify any lump sum arrangements which should not have been made and to determine appropriate notice periods for any de-listing. It became clear from this final report that much of the Project Renewal strategy had been designed by third party consultants commissioned by Asda to achieve significant cost savings for the business.

The GCA continued to receive supply-side information about the way Project Renewal had been designed and implemented and in March 2017 held a further meeting with Asda to further intensify her approach to the issues raised. In particular, the GCA raised points relating to behaviour and culture which directly contributed to the retailer's compliance risk during the exercise.

Two further meetings followed in May and June 2017, both with the Chief Executive of Asda and his senior team. Asda further intensified its internal work to understand what had happened and to put systems and processes in place to ensure it was not repeated. It became increasingly clear that the role of third party consultants was closely bound up with the issues raised. The consultants were able to achieve bonus payments the more money they saved for Asda. Although Asda had trained its buying teams; put contractual safeguards in place to mandate Code compliance when designing the cost savings package; and tasked its buying teams, not the consultants, with direct contact with suppliers to negotiate revised terms, none of this was enough. It is not clear why certain material produced by the consultants was not challenged at any level within Asda, at design, delivery or implementation stages.

The GCA annual survey results, released in June 2017, showed Asda to be the worst-performing of the 10 retailers regulated by the GCA, in terms of Code-related issues experienced by direct suppliers. Asda suppliers, more than those to any other regulated retailer, reported having raised Code-related issues over the past year. Asda assured the GCA the lessons had been learned, and the results were a low point from which it now wanted to measure significant improvement. The GCA continues to require enhanced engagement from Asda while improvements are made.

226 suppliers took part in Project Renewal.

### **Outcome and/or GCA decision**

Variation of Supply Agreements was the subject of the GCA case study about Wm Morrison Supermarkets plc (Morrison's), published in June 2016. Cultural and behavioural aspects of Code compliance were referred to in the report of the investigation into Tesco plc, published in January 2016. They have been very much part of GCA interaction with regulated retailers since then.

The GCA raised with Asda issues of concern about Code compliance in connection with Project Renewal in March 2016, and maintained her focus as more information became available to her. The GCA specifically raised concerns about culture and behaviour in March 2017, when the role of third party consultants in the exercise began to come to light.

The GCA concluded that Asda appeared to have breached paragraph 3 of the Code, Variation of Supply Agreements and terms of supply, by directly or indirectly requiring suppliers to agree to prospective investments that were not provided for in the relevant Supply Agreement. Many of these were effectively unilateral variations because of the way they were presented to suppliers; others were made without reasonable notice being given.

It was clear to the GCA that even the more nuanced conversations with suppliers were designed to carry an implication of detriment if any supplier declined to agree to requests from Asda buyers. These were accordingly to be understood to be indirect requirements contrary to paragraph 3 of the Code, read with paragraph 2 of the Code, which establishes the overarching principle of fair dealing in interpreting the specific practices covered by the Code.

While the GCA case study published in June 2016 about Morrisons specifically addressed issues of requests for retrospective lump sums, the requests made by Asda were prospective. In common with Morrisons approach recorded in the case study, Asda proactively engaged with suppliers to rectify any lump sum arrangements which should not have been made and to determine appropriate notice periods for any de-listing. Much work has been done by Asda to understand what went wrong and to improve its systems and processes to ensure problems do not reoccur.

The GCA concluded that Project Renewal was not conducted in a wholly Code-compliant way. Asda accepted this. The GCA further concluded that because Asda accepted it had breached the Code and had carried out detailed internal work to ensure lessons were learned and safeguards put in place to prevent any repetition of the issues brought to light, there was no need to conduct an investigation to establish the facts of what happened; nor to better understand the situation in order to require suitable remedial measures to be put in place. It was better promptly now to share the learning from the work with the whole sector.

**Key points of clarification are accordingly:**

1. Requests for prospective investments not explicitly agreed in the Supply Agreement are potentially an attempt by the retailer to vary the Supply Agreement. While retailers retain the right to vary a Supply Agreement unilaterally, there must be provision for this in the Supply Agreement and reasonable notice must be given to the supplier.

In this situation, the negotiation was not positioned as such.

- a. Aggressive tactics, such as inflexible demands to be made by Asda buyers and very short time periods for suppliers to respond, with the threat of de-listing in the background, all point to its being more unilateral than consensual;
- b. This was underlined by the threat of de-listing felt by suppliers and supported by the Project Renewal materials seen by the GCA, in which it was clearly implied if not expressly stated.

Retailers need to be particularly careful when engaging third parties to work on their behalf. The reputational and compliance risks remain with the regulated retailer in these circumstances. Providing incentives to third parties to generate income or cost savings for the retailer may encourage behaviour inconsistent with Code compliance and the retailer's values. Retailers need to balance these competing interests and ensure robust governance is in place to mitigate Code-compliance risks, in particular.

Retailers should ensure that their legal, compliance and audit functions are sufficiently connected to commercial initiatives that they work effectively together to ensure Code compliance.

Individuals within retailers should be sufficiently aware of the Code and empowered in their roles meaningfully to challenge any commercial or other initiative by the retailer which may put them

in breach of the Code. This extends beyond the Code Compliance Officer role and the legal and compliance function of the retailer, and includes individuals at all levels in the business.

Initiatives which are in breach of the Code can be halted quickly and rectified promptly if referred to the GCA by suppliers and others. In this situation specifically, GCA progress in understanding and reaching a view about what happened was slower than it had been with Morrisons because suppliers did not provide information promptly or in sufficient numbers. Much of the insight gained by the GCA into Project Renewal was from Asda itself, by enhanced engagement under the collaborative approach but distinct from business as usual.

Swift action by the retailer in response to regulatory interest from the GCA can in some circumstances avert an investigation, because to investigate may become disproportionate in the circumstances, especially if things have largely been put right; provided the learning points can be shared with the sector as a whole for the benefit of suppliers and consumers.

## Handling

The GCA received information from suppliers between March and July 2016 that indicated they were being asked for significant financial contributions to keep their business with Asda.

The GCA raised the issue with Asda at a meeting with the CCO in March 2016. The GCA requested more information from Asda about Project Renewal.

The GCA annual survey conducted during April 2016 indicated that issues with Asda were widespread among suppliers.

The GCA raised the issue again in the following CCO meeting. Asda indicated it had commissioned an internal review into why it didn't perform better in the GCA annual survey, including into de-listing and other activity associated with Project Renewal. In the meantime, the GCA met with the Chief Executive of Asda, to escalate her concerns.

In the next CCO meeting, in September 2016, Asda updated the GCA on progress with its internal review.

There followed in November 2016 an interim report and a final report in January 2017. It became clear from this final report that much of the Project Renewal strategy had been designed by third party consultants commissioned by Asda to achieve significant cost savings for the business.

The GCA continued to receive supply-side information about the way Project Renewal had been designed and implemented and in March 2017 held a further meeting with Asda to further intensify her approach to the issues raised. In particular, the GCA raised points relating to behaviour and culture which directly contributed to the retailer's compliance risk during the exercise.

Two further meetings followed in May and June 2017, both with the Chief Executive of Asda and his senior team. Asda further intensified its internal work to understand what had happened and to put systems and processes in place to ensure it was not repeated.

The GCA annual survey results, released in June 2017, showed Asda to be the worst-performing of the 10 retailers regulated by the GCA, in terms of Code -related issues experienced by direct suppliers. Asda assured the GCA the lessons had been learned, and the results were a low point from which it now wanted to measure significant improvement.

The GCA met Asda again in August 2017 and proposed publication of a case study, to bring her enhanced engagement on Project Renewal to a close and to share points of clarification and lessons learned. This was agreed with the Chief Executive of Asda.

Date concluded: 4 September 2017.

## 2. GCA decision to launch a second investigation

On 8 March 2018 the GCA issued the following notice of investigation:

### Notice of Investigation

#### GCA statutory responsibilities

1. The role of the Groceries Code Adjudicator (GCA) conferred upon it by the Groceries Code Adjudicator Act 2013 (the Act), is to enforce the Groceries Supply Code of Practice (the Code) and to encourage and monitor compliance with it.
2. The Code applies to 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.

#### GCA decision to launch investigation

The GCA has considered information submitted to it and has made an assessment of that information in line with the published *Statutory guidance on how the Groceries Code Adjudicator will carry out investigation and enforcement functions*.

The GCA holds a reasonable suspicion that the Code has been broken by Co-operative Group Limited by some of its practices in relation to De-listing and the introduction of benchmarking and depot quality control charges, from early 2016 to at least summer 2017.

The GCA has escalated its concerns in accordance with its published collaborative approach to regulation. There has been a period of intense engagement in which Co-operative Group Limited has accepted that it has fallen short of the expectations of the GCA. The GCA has decided that an investigation is necessary to fully understand the extent to which the Code may have been broken, the impact on suppliers of Co-operative Group Limited's conduct and the root causes of the issues.

The GCA has applied its published prioritisation principles to each of the practices under consideration and is satisfied that it would be proportionate in all the circumstances to investigate.

Accordingly, the GCA is launching an investigation into the conduct of Co-operative Group Limited under the following provisions of the Code:

#### **1. De-listing: paragraph 16 of the Code (Duties in relation to De-listing) read with paragraph 2 (Principle of fair dealing)**

Prior to De-listing a Supplier, a Retailer must:

- provide Reasonable Notice to the Supplier of the Retailer's decision to De-list.

#### **2. Variation of Supply Agreements: paragraph 3 of the Code (Variation of Supply Agreements and terms of supply) read with paragraph 2 (Principle of fair dealing)**

If a Retailer has the right to vary a Supply Agreement unilaterally, it must give Reasonable Notice of any such variation to the Supplier.

Paragraph 2 of the Code says: A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal or informal

arrangements, without duress and in recognition of the Suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.

### **Investigation scope**

The investigation will consider the extent, scale and impact of practices which may have resulted in De-listing decisions being issued with no, or short, fixed notice periods, unilaterally imposed by Co-operative Group Limited without due consideration of published GCA De-listing guidance. This will include in particular, but not be limited to De-listing decisions issued between summer 2016 and summer 2017 as part of a project called "Right Range; Right Store".

The investigation will also consider the extent, scale and impact of practices which may have resulted in the introduction without reasonable notice of charges to suppliers. This will include in particular, but not be limited to the introduction of depot quality control and benchmarking charges to suppliers, especially those with fixed cost contracts.

In order fully to understand the factors contributing to the conduct being investigated, the GCA will also consider the quality of Co-operative Group Limited Code-related training for its buyers and the culture contributing to the retailer's approach to Code compliance at the relevant time.

### **Retailers to be investigated**

The investigation will focus on Co-operative Group Limited and will not extend to other designated retailers. If during the course of the investigation evidence is presented to the GCA which indicates that the same practices have been carried out by other designated retailers, consideration will be given to what action would then be appropriate for the GCA to take in respect of them, in line with published GCA guidance including its prioritisation principles.

### **Investigation review time period**

The investigation will consider the conduct of Co-operative Group Limited from January 2016 to 8 March 2018, the date of this notice. The main focus will be on the period between summer 2016 and summer 2017, when the "Right Range; Right Store" programme was underway.

### **Call for evidence**

The GCA accordingly calls for evidence relevant to its determination of whether Co-operative Group Limited has broken paragraphs 16 and 3 of the Code in the ways described in this notice, and of the effect that has had on suppliers.

The deadline for submission of evidence is 4pm on 3 May 2018. Submissions may be made on paper or in electronic form.

Evidence should be submitted to the GCA at:

Groceries Code Adjudicator  
2<sup>nd</sup> Floor  
Victoria House  
Southampton Row  
London WC1B 4DA  
E-mail to: [enquiries@gca.gsi.gov.uk](mailto:enquiries@gca.gsi.gov.uk)

All suppliers who have previously contacted the GCA directly with information about the practices under investigation will be contacted by the GCA before 4pm on 3 May 2018 for more information.

**The anonymity of all those providing information will be preserved and no individual or business will be identified without their consent.**

**8 March 2018**

### **3. Addendum to GCA conclusions following the consultation on paragraph 12 of the Code: Supply of groceries for resale online by regulated retailers**

On 16 March 2018 the GCA published the following:

#### **Addendum**

##### **Groceries Code Adjudicator: Response to consultation on payments for better positioning**

Regulated retailers are the retailers designated under the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order). There is no differentiation applied by the Order between the business channels selected by the designated retailers to reach consumers, whether convenience stores or virtual stores. The GCA will interpret paragraph 12 of the Code in the same way for all channels.

For clarity in relation to the supply of groceries for resale online:

- The Code does not permit retailers directly or indirectly to require suppliers to make any payment for better positioning or more space, unless in relation to a promotion.
- Discussions about investment and offers of payment made by suppliers that might come together with a discussion about better positioning should demonstrably be freely held as part of normal commercial negotiations.
- Retailers should make clear on their websites where goods not on promotion appear more visible to customers as a result of:
  - Advertising paid for by a supplier; or
  - Any other payment required directly or indirectly from a supplier to secure more space or better positioning.
- As websites develop and increasingly complex consumer choice algorithms emerge, retailers should be able to demonstrate that they are minimising the risk of any breaches of the Code arising in this area, not just in relation to payments for better positioning of goods but in all relevant areas of the Code.

## Top Issues

The GCA has a range of issues referred to it from direct and indirect suppliers, trade associations, other bodies and the media. These issues give the GCA vital information to inform current and future action.

In order to ensure the GCA meets the duty to preserve the confidentiality of those who provide information, the GCA will not publish statistical information on issues raised. A table of issues raised is included as an Appendix to this report.

Taking into account the information received about retailer practices, applying the GCA's published prioritisation principles and in keeping with the collaborative approach, the GCA identifies on an iterative basis up to five key areas to focus on where suppliers believe that the regulated retailers' practices may breach the Code. These issues are raised with CCOs and discussed on an ongoing basis with them at their individual quarterly meetings.

The GCA keeps the current, monitored and previous Top Issues under regular review, responding to changing supplier concerns and retailer activity.

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

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

If an issue is classified as previous, this means it has been closed as an issue in its own right because the GCA's position or interpretation of the Code has been made clear and the Adjudicator no longer considers that ongoing monitoring or active work on the issue is merited.

Supplier feedback on all issues, whether current, monitored or previous remains welcome and the GCA will take it into account when considering from time to time whether there are grounds to change the status of any particular issue.

This year, delay in payments remained a current issue because it continued to be the issue of number one concern highlighted by suppliers. The GCA also heard that not all retailers had adequate systems and processes in place fully to demonstrate compliance with the GCA's interpretation of the Code on delay in payments, as set out in the report of the investigation into Tesco plc published in January 2016. Forecasting was moved to current issues from monitored following information from suppliers which showed it remained a key area of concern. Linked to forecasting, promotions was added to the current issues in order better to understand what was being reported by suppliers in relation to forecasting for promotions.

Following feedback from suppliers in the annual survey 2017, margin maintenance was moved from current to previous, pay to stay was moved from current to monitored; and finally, payments for better positioning continued to be monitored to see what changes retailers had made as a result of the GCA's published consultation response.

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



## Current Top Issues

### Issue – Delay in payments

#### Description

The report of the investigation into Tesco plc stated clearly for the benefit of all in the sector how the GCA interpreted the practices found to have taken place in relation to delay in payments. Some of the practices that might lead to delay in payments are unilateral deductions relating to drop and drive disputes, duplicate invoices, alleged short deliveries, unknown or unagreed items; current and historic promotion fees. Further practices that might lead to delay in payments include delays in paying entire invoices where only part of an invoice is disputed, not paying in the period set out in the supply agreement, the length of time taken by the retailer to resolve an issue, and depot and retailer haulier practices.

#### Potential Code breach

The GCA considers the effect of unilateral deductions and not paying to terms falls under part 4 (paragraph 5) of the Code: No delay in Payments, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

#### GCA progress

The interpretation of the Code set out in the report of the investigation into Tesco plc is a clear statement of the GCA's view as to what is and is not Code-compliant behaviour and as such, is the regulatory standard required to be met by all regulated retailers. This makes clear that suppliers should be given at least 30 days to challenge any proposed deduction and where this is challenged, a retailer is not entitled to deduct the disputed sum from the supplier's trading account until the query is resolved. Data input errors should be resolved promptly and in particular, pricing errors should be resolved within seven days of notification by the supplier.

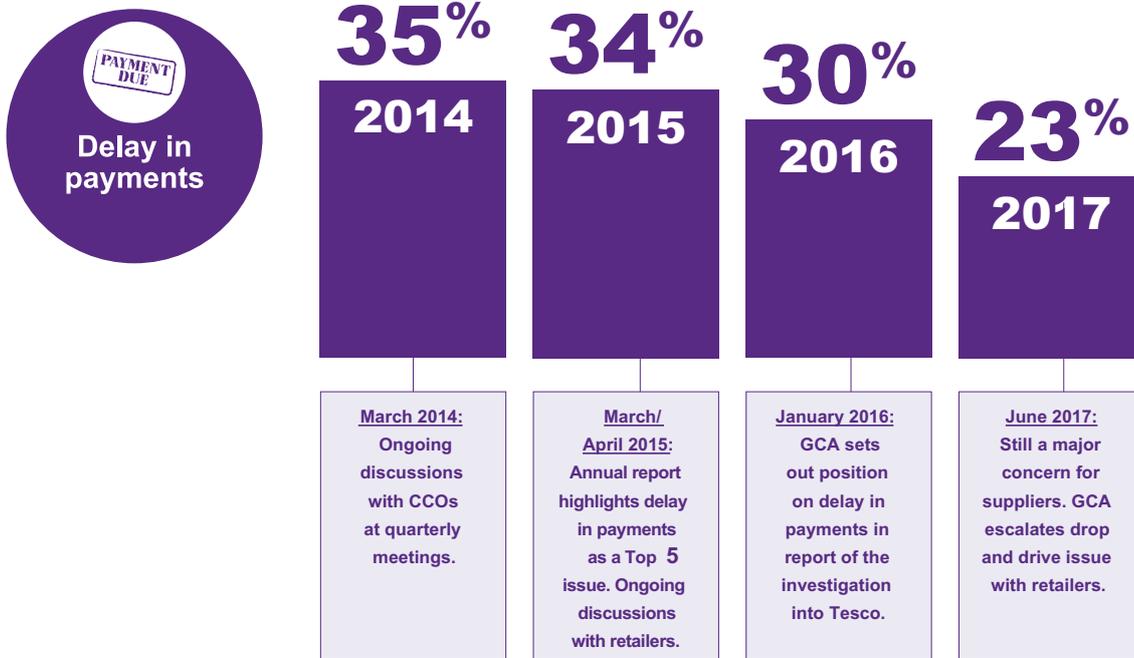
Delay in payments remained the number one concern highlighted by suppliers in the 2017 survey and continued to be an issue widely reported directly to the GCA by suppliers. In particular, the GCA heard that not all retailers had adequate systems and processes in place fully to demonstrate compliance with the GCA's interpretation of the Code on delay in payments as set out in the report of the investigation into Tesco plc. Recurring themes involving delay in payments included the persistence of unilateral deductions and the practice of holding back entire invoices while one element is queried, as well as too much time taken to resolve disputes.

As a result of the Tesco investigation, the GCA recommended the retailer set up a single point of contact for suppliers to resolve queries, and went on to suggest that an effective way to do this would be to set up a supplier helpline to handle payment disputes without involving its buying teams. To facilitate finance-to-finance conversations between retailers and suppliers the GCA has since asked all retailers to explain what arrangements they have in place for a supplier helpline or other means to enable disputes and queries to be handled without the involvement of commercial teams, and has publicised these arrangements on its website.

The GCA has continued to monitor retailer compliance on this issue and has provided retailers with examples of practices reported by suppliers where delays in being paid could arise. In particular, the GCA has escalated the issue of drop and drive (see separate issue under Previous Top Issues)

and all retailers who engage in it have since explained the actions they are taking to minimise the risk of breaches of the Code arising as a result of that practice. The GCA gathered more detailed feedback from suppliers about delay in payments in the mini survey carried out in October 2017 and is continuing to work on this issue with all regulated retailers.

The GCA will use the results of the annual survey 2018 to track the impact of retailer initiatives, before deciding the next steps on this issue.



\*% of direct suppliers reporting in annual survey that they had experienced a delay in payment.

## Issue – Forecasting

### Description

Suppliers experiencing issues with forecasting reported difficulties communicating with buying teams, retailers not taking enough responsibility for forecasts after they have been set and often making last-minute changes, little or no engagement when sales are not meeting forecasts, and inadequate systems which do not take into account known or past issues. Suppliers reported that the accuracy of regulated retailers' forecasts was poor and that significant variations occurred between forecasts made and orders placed, sometimes at very short notice. In some cases, suppliers had been charged for non-delivery against orders when they had only been given an annual target and were then penalised for not meeting a 99% service level on each order, regardless of its variation from average. Suppliers also reported being left with significant amounts of stock through no fault of their own and that it was unclear how to seek compensation for inaccurate forecasting.

### Potential Code breach

The GCA considers that the effect of this practice falls under part 4 (paragraph 10) of the Code: Compensation for forecasting errors, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

### GCA progress

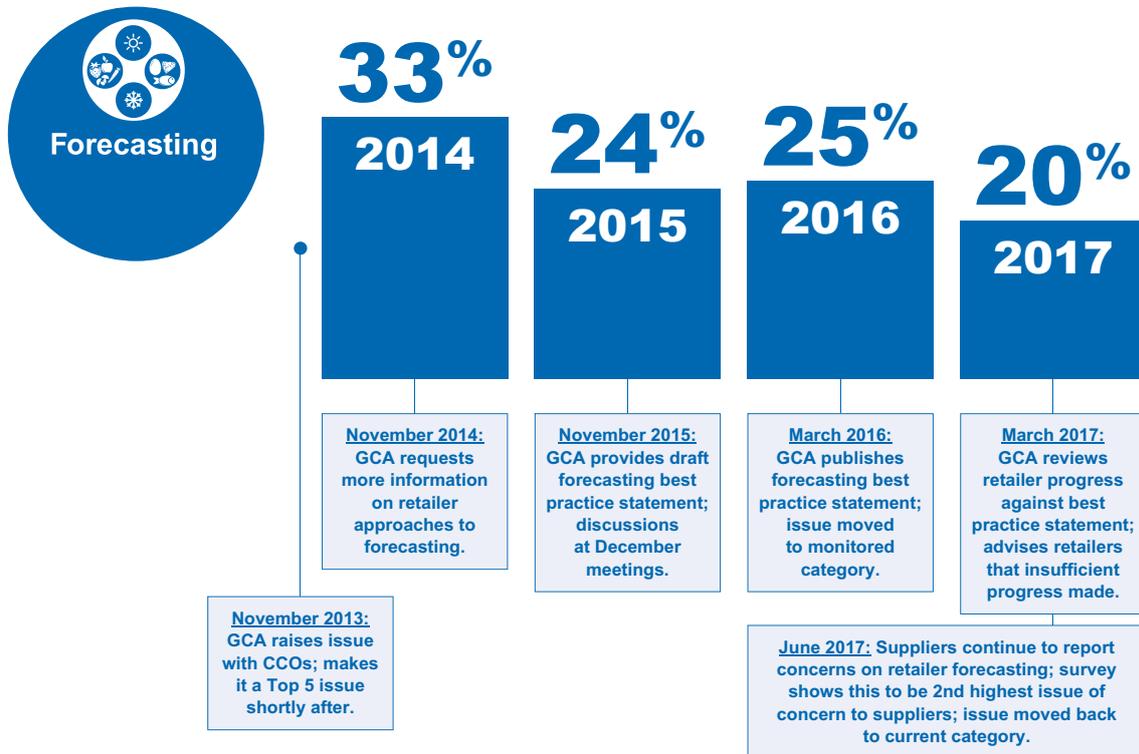
In 2015 the GCA reviewed the forecasting approach of the regulated retailers to assess their compliance with the Code. In March 2016 the GCA published a statement of best practice which the retailers should work towards, intended to promote better working practices by the retailers.

One year on, the GCA asked the retailers to provide information on their progress towards the best practice set out in the statement. Following monitoring, the GCA was unconvinced that sufficient improvements had been made. Forecasting was the second highest issue of concern to direct suppliers reported in the annual survey 2017. For these reasons the issue was moved back to the current category.

The GCA has continued to receive feedback from suppliers about this issue in workshops and from training courses held by third parties. The GCA wrote to retailers in October 2017 to give feedback on their progress and launched a mini survey to learn more about supplier experiences. In December 2017 the GCA reported at a high level the outcome of the mini survey and noted some recurring themes raised by suppliers.

In January 2018 the GCA wrote to retailers again and expressed its view that there would almost always be some circumstances in which compensation was appropriate as a result of a forecasting error, so a blanket exclusion in a supply agreement would be unlikely to be Code compliant. Because suppliers might be unlikely to ask for compensation, the GCA asked retailers to consider the extent to which they might offer it. The GCA also expressed its view that the due care test, as set out in paragraph 10(1)(a) of the Code, was unlikely to be met by a retailer that provided no way for a supplier to contribute to the forecasting process, whether collaboratively in reaching agreed volumes to be ordered or by ensuring suppliers could raise questions and queries if a forecast seemed to them to be inaccurate or to have resulted in an excessive order.

The GCA received retailers' responses in March 2018. The GCA will use this information together with the results of the annual survey 2018 to track the impact of retailer initiatives, before deciding the next steps on this issue.



\*% of direct suppliers reporting in annual survey that they had experienced an issue with no compensation for forecasting errors.

## Issue – Promotions

### Description

Suppliers reported forecasting in relation to promotions in particular was poor and that it led to overbuying at promotional prices or had the impact of suppliers predominantly funding the cost of a promotion. Suppliers were also concerned about a number of poor practices such as buying-in periods for promotions exceeding the promotional period and the shelf life of products, not adhering to timelines agreed for promotional activity, buyers not activating promotions in stores and failure to deliver on agreed promotional activity.

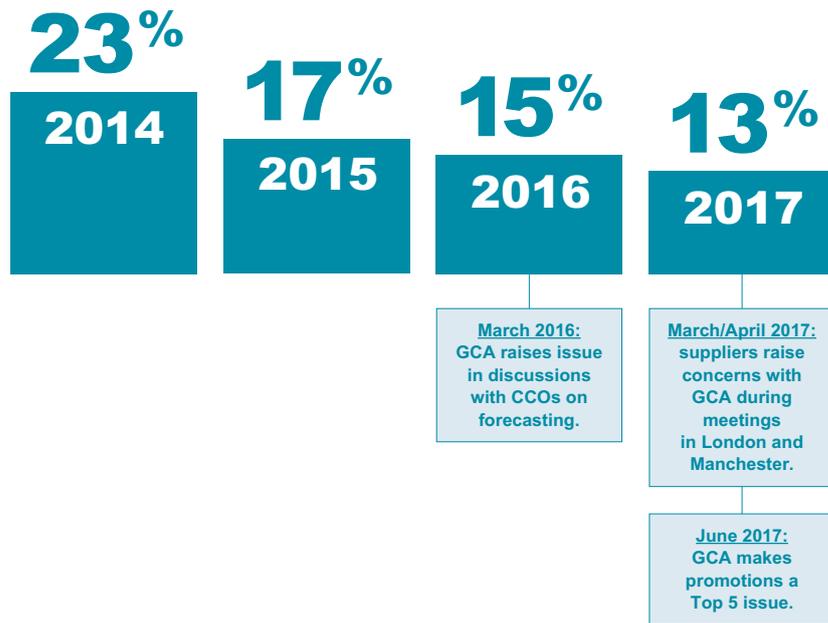
### Potential Code breach

The GCA considers that the effect of this practice falls under part 4 (paragraph 10) of the Code: Compensation for forecasting errors, part 5 (paragraph 13) of the Code: Promotions and part 5 (paragraph 14) of the Code: Due care to be taken when ordering for Promotions, all read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

### GCA progress

The GCA put this issue in the current category to understand it more fully. Issues around promotions were closely related to forecasting, but also included concerns that buying-in periods exceeded the promotional period and the shelf life of products, and failure to deliver on commitments in store for promotions.

The GCA wrote to retailers asking for more information about their practices in relation to running promotions and sought comments from suppliers in the mini survey. The GCA now has a lot more information about the issue, which is being considered particularly in the context of forecasting. The GCA has informed retailers that there appears to be limited evidence of deliberate over-buying for promotions and the way that most retailers now run their promotional activity helps to minimise the risk of Code breaches. However, suppliers have raised some important issues which would appear to engage the Code. The GCA asked all retailers to report on what changes they are making to the way they manage promotional activity to ensure each is compliant with the Code and that any deductions made are consistent with the GCA's interpretation of paragraph 5 of the Code. The GCA received retailers' responses in March 2018. The GCA will use this information together with the results of the annual survey 2018 to track the impact of retailer initiatives, before deciding the next steps on this issue.



\*% of direct suppliers reporting in annual survey that they had experienced an issue with not applying due care when ordering for Promotions.

## Monitored Top Issues

### Issue – Payments for better positioning

#### Description

During the investigation into Tesco plc, the GCA was concerned to find evidence of practices that could amount to an indirect requirement for payments to be made by suppliers to secure better positioning or an increased allocation of shelf space. These practices included large suppliers negotiating better positioning and increased shelf space in response to requests for investment from the retailer, as well as paying for category captaincy and to participate in range reviews. No breach was found but the GCA determined to look into the issue across all regulated retailers.

#### Potential Code breach

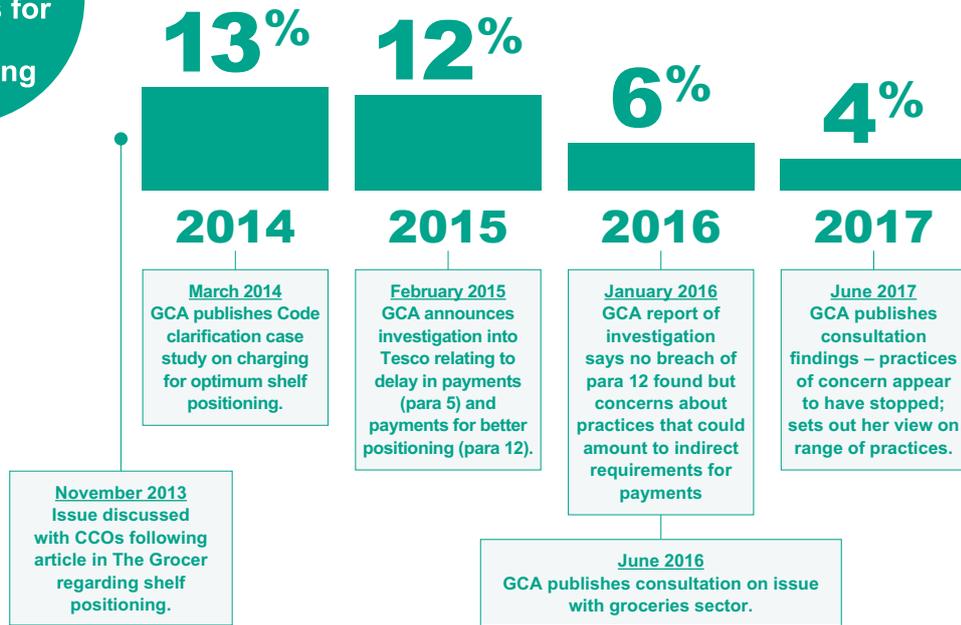
Practices in this area may fall under part 5 (paragraph 12) of the Code: No Payments for better positioning of goods unless in relation to Promotions, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

#### GCA progress

The GCA consulted with the groceries sector on the proper scope of indirect requirements for payment to secure better positioning of goods or increased shelf space within a store. The GCA published its response in February 2017, noting that the practices that had caused concern appeared to have stopped and making clear what it considered to be Code compliant behaviour for the future.

Formal monitoring was then carried out in February 2018 to evaluate recent supplier information and to identify whether retailers had decided to make any changes as a result of the GCA's published consultation response.

The GCA also considered the issue of better positioning of goods in relation to retailers' online sales. The GCA asked all retailers to provide information about their practices. In March 2018 the GCA issued an addendum to the conclusions published following the consultation on paragraph 12 of the Code. The addendum is reproduced in the Significant Activities section of this report.



\*% of direct suppliers reporting in annual survey that they had experienced an issue related to No payments for better positioning of goods unless in relation to Promotions.

## Issue – Pay to stay

### Description

Suppliers raised concerns about potential pay to stay arrangements. The terminology has been used informally in the context of lump sum payments being requested or required and the supplier feeling they would experience detriment if they refused. A GCA Code clarification case study on requests for lump sum payments made by one retailer highlighted instances where payments were requested for the first half of the financial year and suppliers felt they would suffer a detriment if these payments were not made. The GCA was also informed about other payments that suppliers might make to retailers which those suppliers saw as contributions they had to make in order to do business with the retailer, such as to participate in social events or marketing initiatives, payments made immediately prior to or at the time of a tender not as part of the tender or bidding process and payments to secure exclusivity.

### Potential Code breach

The GCA considers that the effect of this practice falls under part 3 (paragraph 3) of the Code: Variation of Supply Agreements and terms of supply, and part 4 (paragraph 9) of the Code: Limited circumstances for Payments as a condition of being a supplier, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

### GCA progress

The GCA sought views from retailers on their practices in a range of circumstances and also from direct suppliers in one-to-one meetings and workshops arranged specifically to discuss pay to stay. Examples were raised in each context that retailers clearly saw as normal commercial negotiations but suppliers saw differently.

The GCA clarified the meaning of pay to stay and what behaviours are not considered to be Code compliant. The GCA emphasised that retailers needed carefully to consider when making any request for lump sum payment, not only what the payment was for and the basis for it in the supply agreement, but also how it would appear to the supplier and how payment was documented to provide clarity about the arrangement.

Following the GCA's annual survey 2017 and what was reported to the GCA by suppliers and retailers on the issue of pay to stay, the GCA moved it to the monitored category as it was not a major issue reported in the survey.

The GCA continued to monitor feedback from suppliers on this issue and in December 2017 informed all retailers that although the issue of pay to stay appeared to be of less concern to suppliers now, some suppliers still reported they felt pressured, for example, to agree to a promotion in order to keep their business with a retailer. The GCA effectively saw this as a pay to stay arrangement. The GCA advised retailers that accordingly, in seeking to manage their compliance risk, retailers should avoid these differences in understanding wherever possible, whether by avoiding lump sum payments altogether or by clear communication between the retailer and supplier about what any money paid is for. The GCA also urged retailers to ensure that their training was properly updated. The GCA will monitor progress on this issue again in summer 2018.



**25%**

**2014**

**20%**

**2015**

May 2015  
GCA raises concerns with retailers over alleged 'lump sum requests'. Ongoing discussion.

**9%**

**2016**

June 2016  
Annual Report highlights suppliers reporting lump sum requests relating to possible pay to stay arrangements. GCA makes Pay to Stay a Top 5 issue.

**9%**

**2017**

March 2017  
Two supplier workshops on issue.

June 2017  
GCA sets out her view on pay to stay; moved from current to monitored.

December 2016  
GCA asks retailers to report back on a number of scenarios where suppliers consider pay to stay arrangements might arise.

% of direct suppliers reporting in annual survey that they had experienced an issue related to Limited circumstances for Payments as a condition of being a Supplier.

## Previous Top Issues

### Issue – Margin maintenance

#### Description

The report of the investigation into Tesco plc identified a number of practices occurring as a result of a focus on hitting budgeted or aspirational margin targets. Suppliers provided information to the GCA that other regulated retailers occasionally engaged in this practice.

#### Potential Code breach

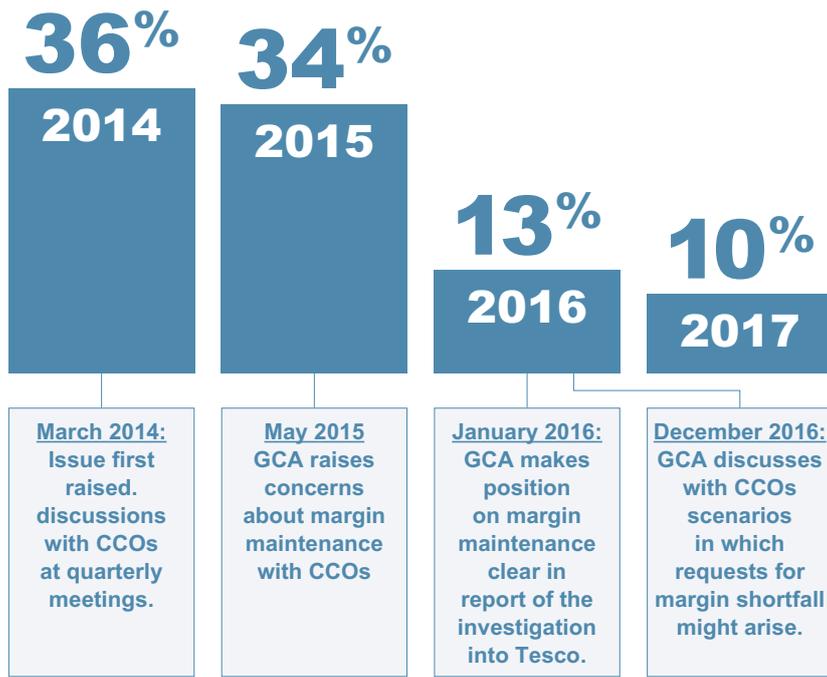
The GCA considers that the effect of this practice falls under part 3 (paragraph 3) of the Code: Variation of Supply Agreements and terms of supply, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

#### GCA progress

The GCA made clear in the report of the investigation into Tesco plc how the Code will be interpreted and that unilateral deductions made in order to satisfy an unachieved aspirational margin target are unreasonable. The GCA set out that requests for margin maintenance must be unambiguously supported by the supply agreement.

Since the GCA issued the report of the investigation into Tesco plc, it has been listening to suppliers on this issue. The GCA wrote to all retailers in November 2016 requesting information about practices that related to margin made on a particular product and the impact of those practices on suppliers. The responses from retailers showed that their practices were generally compliant with the Code. In addition there was little supplier feedback on margin maintenance over the past year, including in the GCA's annual survey 2017.

In light of this, the GCA decided to move this issue to the previous category, as suppliers were not reporting margin maintenance to be a continuing or current issue. It was nonetheless made clear to retailers that as the issue had been explored and the GCA had promulgated a clear interpretation of the Code in this area, if the GCA found evidence of the practice reoccurring it may indicate the collaborative approach had been effectively exhausted, making further regulatory action likely.



% direct suppliers reporting in annual survey they have experienced requests for lump sum payments relating to retailer margin shortfall.

## Issue – Drop and drive

### Description

Suppliers reported that they experienced problems where there was a disparity between what suppliers said they had delivered and invoiced, and what the relevant regulated retailer said had been received. In some cases retailers appeared to make automatic deductions from invoices for alleged shortages. These deductions were difficult to challenge, depending on the haulage method and particularly where no proof of delivery had been issued.

Suppliers informed the GCA that this was a major issue for them. There appeared to be different patterns of deductions among retailers in respect of the same suppliers; and varying error rates being recorded despite suppliers using the same processes with each retailer.

Drop and drive continues to be considered as an example of a practice which can lead to delay in payments.

### Potential Code breach

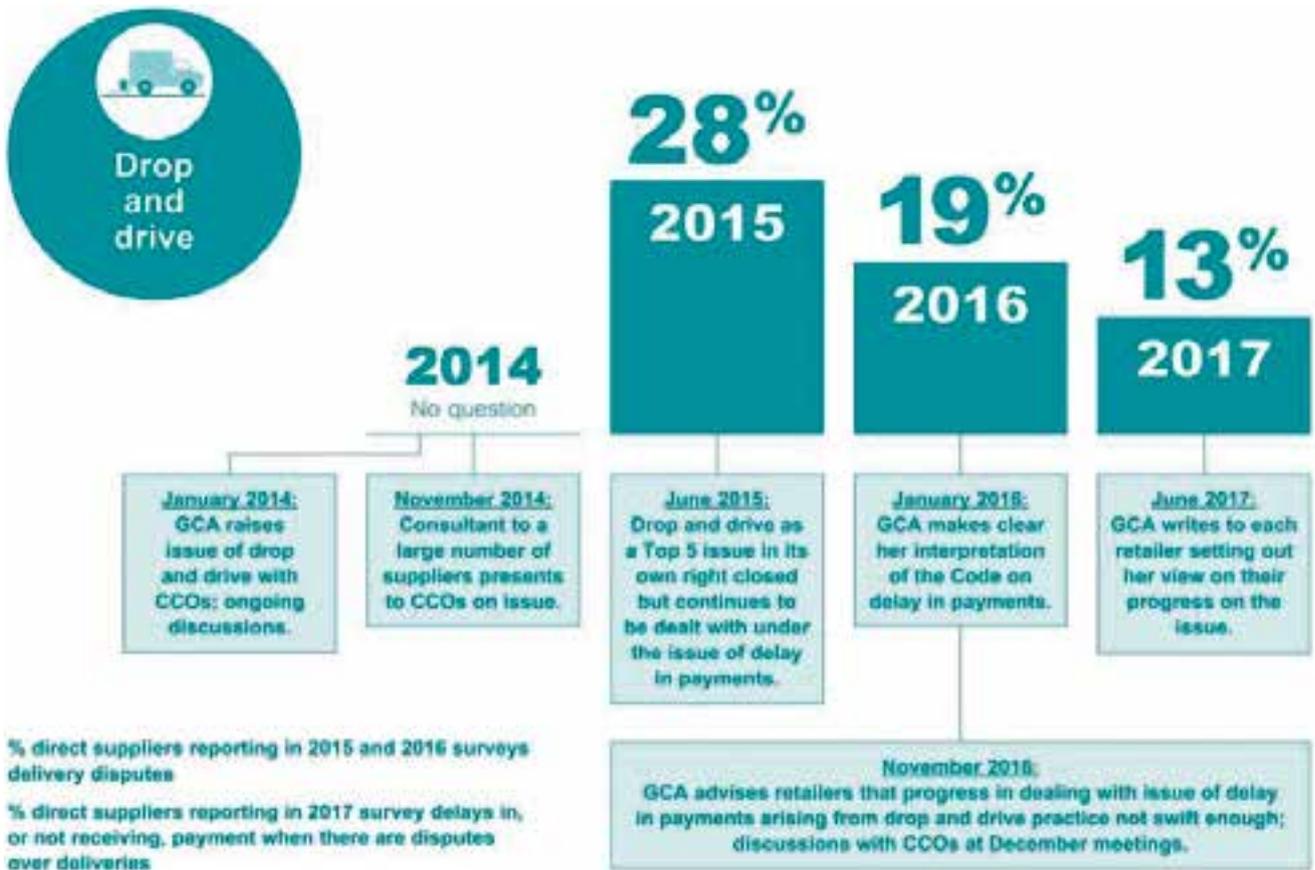
The GCA considers that the effect of this practice falls under part 4 (paragraph 5) of the Code: No delay in payments, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

### GCA progress

The GCA received more information on this issue from retailers and suppliers. While some progress had been made on this issue, it was clear that some retailers' progress in responding to supplier concerns had been too slow and the GCA accordingly escalated its concerns on drop and drive. The GCA intensified its collaborative engagement and in May 2017 wrote to all regulated retailers setting out its view on their progress in actively managing the risk of breaches of the Code occurring under paragraph 5 (No delay in payments) arising from the practice of drop and drive.

The GCA received detailed responses from those retailers whose progress on tackling delay in payments arising from drop and drive was causing most concern. The GCA was satisfied that based on the information provided by retailers and the updated evidence received from suppliers, that all retailers that carry out drop and drive appeared to have adequate systems and processes in place to minimise the risk of delay in payments arising. For example, some retailers chose to implement good faith receiving for suppliers as a commercial solution to drop and drive issues.

Retailers have continued to make progress on the issue and many are implementing new operational and supply chain practices as a result. Supplier feedback has been that these systems are delivering benefits in terms of greater certainty about payments and better supply chain management. The GCA expects all retailers to continue to focus on this issue and continues to monitor what suppliers say about drop and drive. The results of the next annual survey will be used to track the effectiveness of retailer initiatives in securing Code compliance.



## Issue – Consumer complaints

### Description

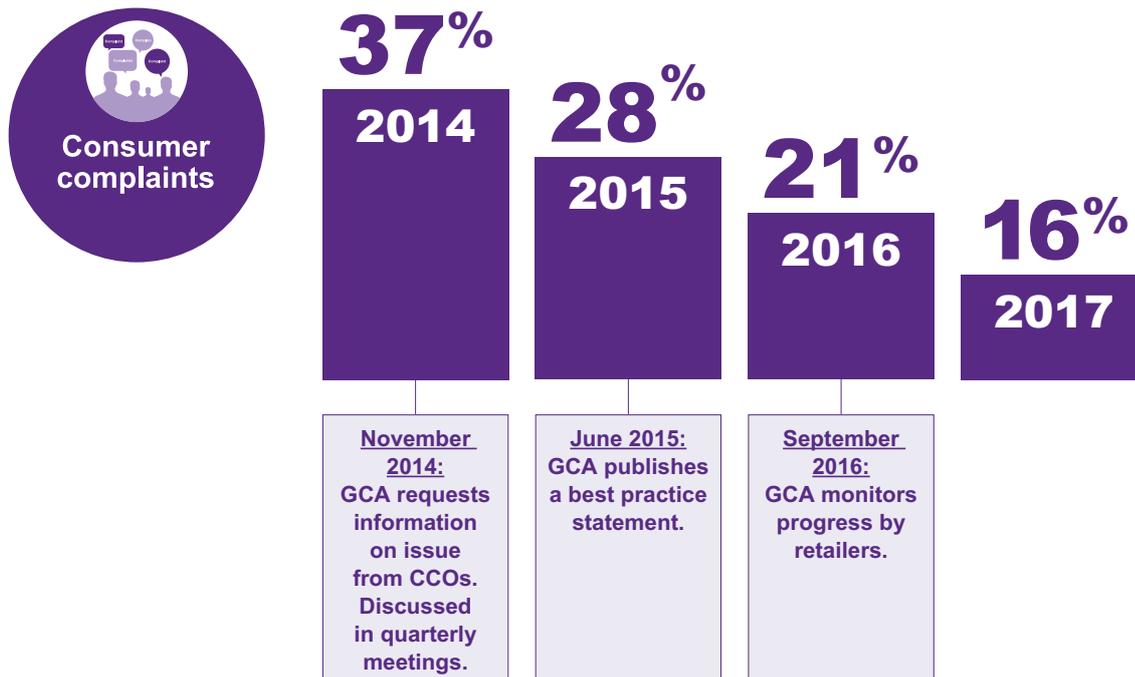
Suppliers reported that regulated retailers dealt with consumer complaints in different ways. Practices included applying fixed rates, applying variable rates depending on the seriousness of the complaint, while some made no charge. Suppliers were concerned that retailers may be overcharging for dealing with consumer complaints and deriving profit from them.

### Potential Code breach

Consumer complaints fall under part 6 (paragraph 15) of the Code: No unjustified payment for consumer complaints, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

### GCA progress

The GCA announced a best practice statement on consumer complaints at the 2015 conference. Since then the Adjudicator has been closely monitoring this issue and CCOs were asked to report back in September 2016 on what improvements they had made. Following this monitoring, the Adjudicator has confirmed that retailers’ practices are broadly in line with the best practice statement and the issue is now categorised as previous.



% direct suppliers reporting in annual survey that they have experienced unjustified payments for consumer complaints.

## Issue – Artwork and design services

### Description

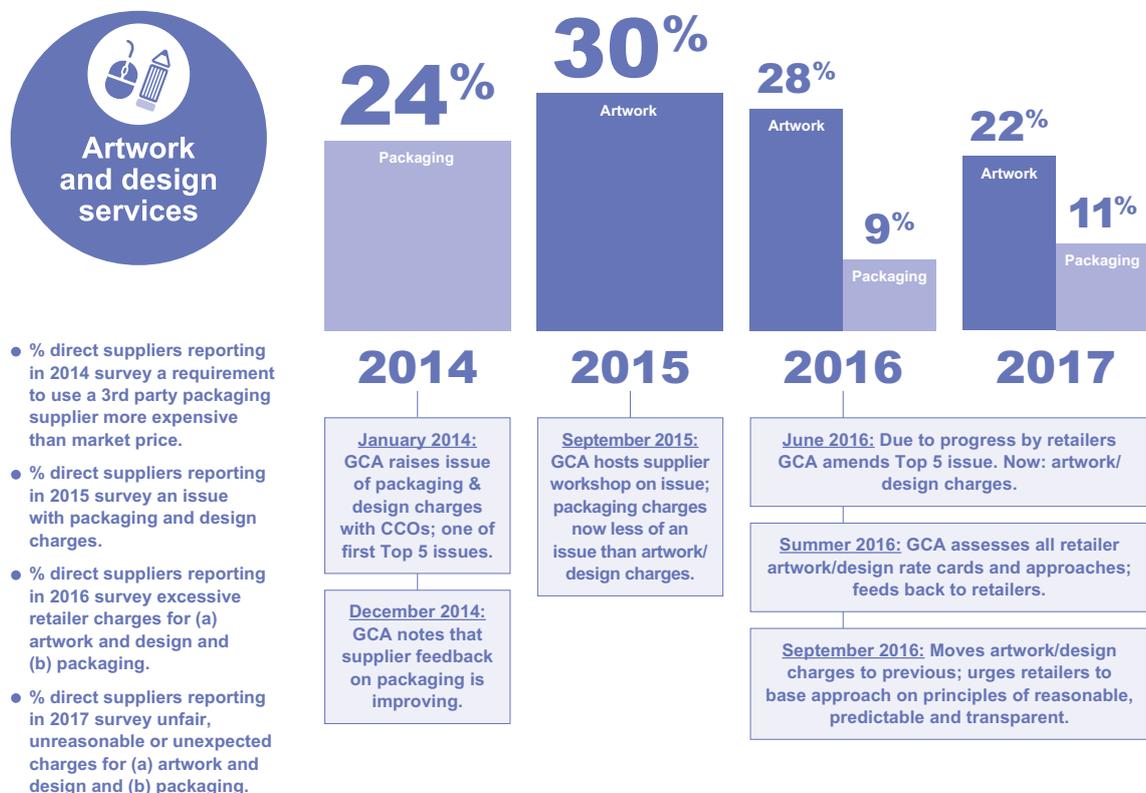
The GCA heard concerns from suppliers about the arrangements, costs and services in relation to packaging, artwork and design services. A workshop with suppliers in September 2015 on the issue delivered positive news that the position on packaging for suppliers had improved. As a result, this Top Issue was refined to focus on artwork and design services. Suppliers remained concerned that the charges made by artwork and design companies approved or required to be used by some retailers were considerably higher than those available on the open market.

### Potential Code breach

The GCA considers that the effect of this practice falls under part 4 (paragraph 6) of the Code: No obligation to contribute to marketing costs; and part 4 (paragraph 11) of the Code: No tying of third party goods and services for Payment, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

### GCA progress

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



## Issue – Forensic auditing

### Description

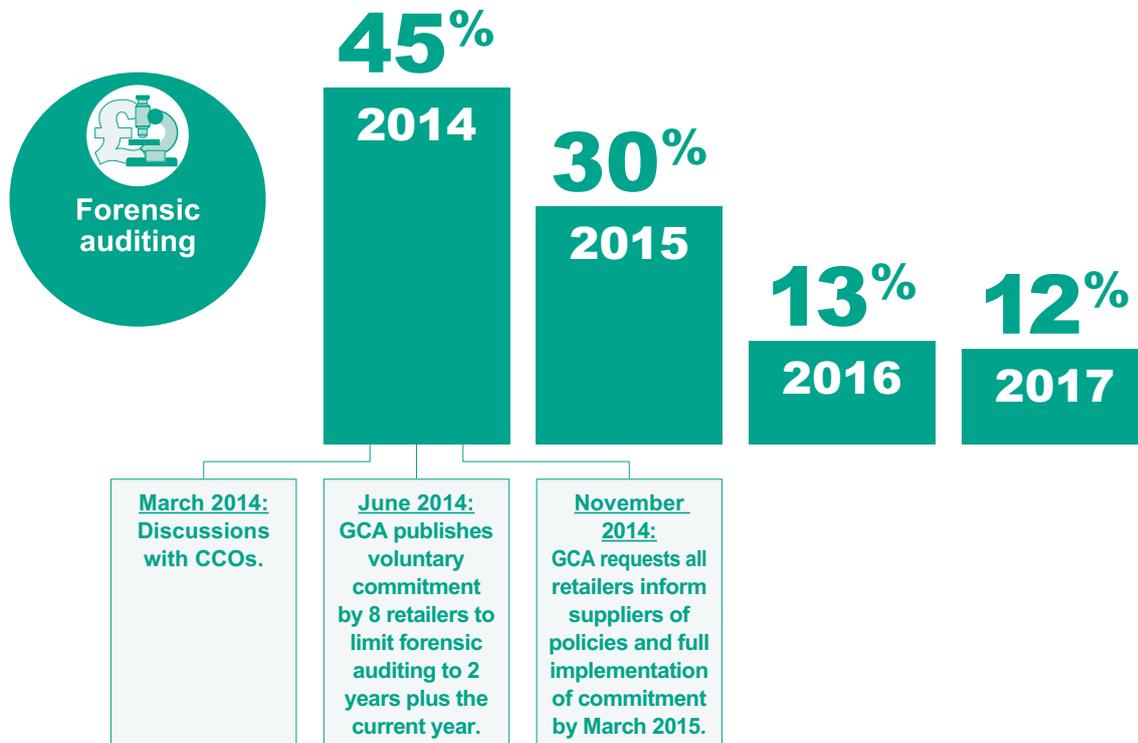
Under the Limitation Act 1980, contracting parties are able to make claims against one another going back up to six years. The GCA heard this was being used proactively by some regulated retailers to make claims against suppliers for historic invoicing errors or omissions. Suppliers were being asked for significant sums of money with the burden of proof falling on them to show that alleged discrepancies were not valid claims. It was noted that the documentary audit trail was often complex and difficult to piece together after a long period of time. Suppliers reported that deductions would be applied with little or no notice.

### Potential Code breach

Although it cannot and would not interfere with parties’ statutory rights to bring contractual claims, the GCA considers that where unilateral deductions are made by regulated retailers against suppliers’ current invoices, the effect of this practice falls under part 4 (paragraph 5) of the Code: No delay in payments, read with part 2 (paragraph 2) of the Code: Principle of fair dealing.

### GCA progress

Eight out of ten of the regulated retailers signed up to the GCA’s voluntary commitment to limit the auditing of suppliers’ trading accounts in search of missed claims to no more than the current and previous two financial years, on a reciprocal basis with those suppliers. This commitment was announced in June 2014 and those retailers which signed up have since set out how they would implement it and have done so on a continuing basis. The GCA continues to monitor what suppliers say, particularly in relation to the two retailers who did not sign up to the voluntary commitment.



% direct suppliers reporting in annual survey having experienced 3rd party audits which have been abusive or excessive.



## Retailer comments

### Artwork and design changes

Aldi was once again extremely proud of the results of the GCA annual survey in 2017, as this demonstrates their commitment to maintaining high levels of compliance with the Code, which it sees as fundamental to maintaining and developing long-lasting supplier relationships.

In their desire to continually improve, and in light of the feedback on artwork and design in the GCA annual survey, Aldi introduced a number of changes. A dedicated team has been established to enable central control, and to provide additional support to agencies and suppliers. This has resulted in a number of initiatives, which include the introduction of a revised rate card, and establishment of a brand calendar to control the brand redesign process, preventing multiple artwork changes (and associated charges) across products.

*Aldi Stores Limited*

### Enhancing Supplier Engagement

During the last 12 months, Asda has worked closely with the GCA to enhance its relationship and engagement with its supplier partners.

Asda has listened to feedback from suppliers and in collaboration with the GCA has taken action to reaffirm its full commitment to enhancing the experience of an Asda Supplier. It has established a new "Supplier Engagement Team", which coordinates all aspects of the Asda-supplier relationship and maintains a comprehensive supplier contact database to support consistent and clear communication. Asda has also re-launched its Supplier Helpdesk, so suppliers can easily contact the business. In collaboration with its suppliers and the commercial team, Asda has also launched 10 Supplier Commitments to support great communication and transparency in all of its dealings.

To supplement this enhanced level of engagement, and underpin everything Asda colleagues do, Asda has revisited its training programme on the Code and made this more practical and case study led. Over 400 colleagues across different departments have been trained using these new materials.

*Asda Stores Limited*

## Improving supplier relations

The Co-op is committed to improving its supplier relations. In March 2018, the GCA opened an investigation regarding two specific areas – de-listing and charges for quality control checks and benchmark testing – and the business is supporting the GCA's work.

In the area of delay in payments the Co-op used the GCA's guidance to fundamentally change how it handles quantity and cost price discrepancies in July 2017. This reduced the compliance risk of making unilateral payments and breaching the Code.

The Co-op is working hard to make other improvements. It cares about its relationships with suppliers and has taken steps to address matters where it has not met its own high standards. Adhering to the letter and spirit of the code are priorities for the Co-op business.

*The Co-operative Food Group*

## Training on the Code

Iceland has continued to work hard to make business easier for, and to work in collaboration with, its suppliers. Its internal training has been extended to its merchandising team, to ensure that they are fully aware of their commitments, under the Code (not least in relation to fair de-listing procedures). Iceland has also continued to ensure that its annual training pays particular attention to the GCA's top 5 issues.

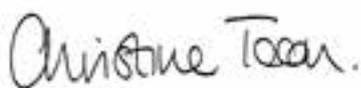
*Iceland Foods Limited*

## Drop and Drive

The GCA's focus on Drop and Drive during 2016/17 and engagement with M&S senior stakeholders had an important impact on it. Although already committed to paying suppliers on time and addressing the issues arising from Drop and Drive, the GCA's intervention led M&S to escalate and prioritise their plans to tackle it and bring forward the necessary investment.

Marks & Spencer's Supply Chain visibility project lies at the heart of those plans. This project is now in the implementation stage and is bearing fruit; providing valuable real time supply chain data to suppliers, hauliers and M&S teams. The enhanced transparency means that issues are less likely to arise and enables speedier resolution of queries when they do.

*Marks & Spencer plc*



### **Christine Tacon**

Groceries Code Adjudicator and Accounting Officer

June 2018

# Accountability Report

## Corporate Governance Report

### Format of the accounts

These accounts have been prepared in accordance with the direction from the Secretary of State for Business, Energy and Industrial Strategy (BEIS) and HM Treasury's Financial Reporting Manual.

### Financial position

The GCA's expenditure for 2017/18 was £697,302 increased from £622,024 in 2016/17. This increase reflects additional costs incurred for awareness-raising activities, including the Code Confident campaign, an additional sector survey to support the consideration of the GCA's Top Issues and the launch of an investigation. Staff costs were £450,156 in 2017/18 compared to £415,483 in 2016/17. Last year there was a slight increase in staff costs on the year 2015/16 but this was more than offset by a rebate of VAT previously charged against secondment costs. The increased figure for staff costs in 2017/18 therefore reflects in part that the VAT rebate last year was recorded against the budget line for staff costs, making expenditure appear lower than it was. Staff costs as a proportion of total expenditure equated to 65% in the financial year 2017/18, compared to 67% in 2016/17. Other operating costs include finance, Information Communications Technology (ICT) and accommodation.

Remuneration of the GCA is in the range £75-£80,000 pro-rated from an annual salary within the band £130-£135,000 for a full-time equivalent. There was an increase to the GCA's remuneration to bring this in line with the advertised range for the Pubs Code Adjudicator.

The total levy to be applied between the regulated retailers was set at £2,000,000. This was the same as the previous year.

### Funding the GCA

The GCA is funded by a levy on the regulated retailers. This takes two forms: (i) a general levy on the regulated retailers; and (ii) recovery of costs of arbitrations undertaken, and of those investigations where one or more retailers are found to have breached the Code. Unspent levy at the end of the financial year is returned to the regulated retailers in the proportions in which it was contributed.

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

The levy methodology for this financial year was approved by the Secretary of State for Business, Energy and Industrial Strategy and at a level of £2,000,000. The methodology for calculating the

levy in 2017/18 was the same as was approved in 2016/17. This charges each retailer a variable amount. In line with section 19 of the Groceries Code Adjudicator Act 2013 (the Act), this variable percentage was based on criteria broadly intended to reflect the expense and time that the Adjudicator, in the light of previous experience, expected to spend in dealing with matters relating to the different retailers. 70% of the levy was split in equal shares between each retailer; 20% of the levy was split in different shares per retailer based on a methodology which reflects the complexity and size of the retailer's business and of practices falling within the GCA's Top Issues, whether current or monitored issues; and 10% of the levy was split in different shares between those retailers that: had an open investigation at the beginning of the financial year; were being monitored for compliance with recommendations from a closed investigation at the beginning of the financial year; were a party to a chargeable arbitration opened in a previous financial year; or were the subject of a case study published in the previous financial year relating to practice at that retailer.

The GCA has received approval from the Secretary of State for Business, Energy and Industrial Strategy for the same amount of levy funding for the year 2018/19. The same levy methodology has also been approved for the year 2018/19 with one change, which is that the 10% of the levy allocated to those retailers that have had an investigation, monitoring of an investigation, a case study published or a chargeable arbitration in the last financial year, will be increased to 20% where there are three, four or five events falling into that category, with a corresponding decrease to the percentage share (currently at 70%) for business as usual activities; and where there are six or more events falling into this category, the percentage of the levy applied to that category will be increased to 30%, again with a corresponding decrease to the percentage share for business as usual activities. This approach remains in line with the Act and has been decided based on information that this approach helps to drive improved Code compliance by retailers.

The levy has been set at this amount to provide the GCA with sufficient funds should it decide to launch an investigation in line with section 4 of the Act. The Department for Business, Energy and Industrial Strategy (BEIS) has also indicated previously that in the event that the GCA should find itself temporarily short of reserves, a loan facility would be provided.

No arbitrations were closed in 2017/18 so no costs have been recovered from retailers for the GCA as arbitrator during the period. No investigations were concluded in 2017/18 so no costs associated with an investigation have been recovered from retailers during the period.

## Going concern

The GCA will receive levy income for 2018/19 to fund its activities. Approval for the levy was received on 28 March 2018 from the Secretary of State for Business, Energy and Industrial Strategy. It has been accordingly considered appropriate to adopt a going concern basis for the preparation of these financial statements. Budget pressures are possible should investigations or arbitrations result in accruals where the GCA has not recovered its costs within the year. As stated in the *Funding the GCA* section above, the GCA has increased the amount of levy it raises to ensure sufficient funds in such circumstances with additional support from BEIS where necessary.

## VAT

The GCA is not registered for VAT. Following a determination from the VAT Centre of Excellence based in the Ministry of Justice, departments that second employees to the GCA no longer apply VAT on those costs. However, note 11 to the financial statements highlights a possible contingent liability of £270,111 pending a further review of this issue by HMRC.

## Audit

The auditor of the GCA is the Comptroller and Auditor General. The audit fee for the period ended 31 March 2018 is £7,000 (2016/17: £7,000), as disclosed in note 3 to the Financial Statements. A proportionate internal audit mechanism is implemented by the GCA, consisting of a regular review of the risk register, an audit of financial controls and a review schedule of policies and publications.

## Payment practices

The GCA has committed to pay all undisputed supplier invoices within a maximum of 30 days. The GCA approved and processed 99.4% of invoices within 30 days of receipt, failing on one invoice which was paid in 35 days. On average it took 5.68 days to pay each invoice.

## Sustainability

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

# Director's report

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

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

As Accounting Officer, I chair the GCA Executive Board which is my governance body responsible for ensuring that the GCA's statutory obligations are met and that decision-making and financial management are carried out appropriately and that the GCA office is managed effectively. I also chair the Audit and Risk committee and the Operations committee which report to the Executive Board. I am personally responsible for promoting and safeguarding regularity, propriety, affordability, sustainability, risk and value for money; and accounting accurately and transparently for the GCA's financial position and transactions. A review of Board effectiveness is carried out on a bi-annual basis and will next take place in 2018/19. As reported in my last Annual Report, the 2016/17 review of Board effectiveness introduced some minor amendments to the way governance was implemented.

## Executive Board

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

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

## Audit and Risk committee

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

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

Observers: National Audit Office (NAO), Director of Consumer and Competition Policy, Department for Business, Energy and Industrial Strategy (Personal invitation).

## Operations committee

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

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

## Register of interests

A register of interests of the GCA is maintained by the Secretary to the Executive Board and is available on the GCA website. The Adjudicator is the only Senior Civil Service (SCS) level member of the Executive Board and is the only person subject to disclosure rules. The Adjudicator has no interest which is considered to give rise to any conflict.

## Personal data

The GCA carried out an audit of its handling of personal data and preparedness for the General Data Protection Regulation (GDPR) in 2017/18. No changes were required to the GCA's systems and procedures. Staff are aware of GDPR and will undergo relevant training. There were no personal data disclosure incidents in 2017/18 and therefore nothing was referred to the Information Commissioner.

# Governance Statement

## The Groceries Code Adjudicator responsibilities

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

The GCA is responsible for monitoring and encouraging compliance with and enforcing the Groceries Supply Code of Practice (the Code), introduced in 2010. It applies to the 10 retailers with UK annual groceries turnover of more than £1 billion (the regulated retailers) and their relationships with their direct suppliers. These are: Aldi Stores Limited, Asda Stores Limited, Co-operative Group Limited, Iceland Foods Limited, Lidl UK GmbH, Marks & Spencer plc, Wm Morrison Supermarkets plc, J Sainsbury plc, Tesco plc, and Waitrose Limited.

The GCA statutory purposes set out in the Act are to:

- Provide advice to both suppliers and regulated retailers on matters relating to the Code;
- Arbitrate in disputes between suppliers and regulated retailers;
- Investigate issues to ascertain whether there has been a breach of the Code;
- Impose sanctions and other remedies for breaches of the Code; and
- Publish an annual report on the Adjudicator's activities.

The Groceries Code Adjudicator is the accounting officer. Governance of the GCA is carried out through an Executive Board, Audit and Risk committee and an Operations committee. Board and committee members assess the information provided to them and challenge it where appropriate to ensure robust considerations. As the GCA is a small regulator there are no non-executive directors.

## Governance framework: GCA Executive Board

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

The Executive Board meets approximately every six to eight weeks and met eight times in this reporting period with full attendance each time. Policy, financial and operational agenda items are scheduled as required.

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

The Board follows the Corporate Governance Code of Good Practice 2017 but applies it in a way proportionate to the nature and size of the GCA.

## **Governance framework: GCA Operations committee**

The Operations committee deals with all responsibilities associated with the running of the GCA office. Its main task is to ensure that the GCA has the right resources, practices, effective and efficient financial management and the appropriate procedures in place for the effective running of the office. It is chaired by the Adjudicator and other members are the Head of Policy and Operations and the Operations and Policy Manager. It met nine times in this reporting period with full attendance at each meeting. Two members of the Operations committee are female and one male; one identifies as LGBT and one is from a Black, Asian or minority ethnic (BAME) background.

The key responsibilities of the Operations Committee are to ensure that the strategic objectives set by the Executive Board are reflected in the operations and financial planning of the office, to review the 'Rolling Work Programme' and to oversee the proportionate internal audit approach.

## **Governance framework: GCA Audit and Risk committee**

The Audit and Risk committee meets twice a year. Its main tasks are to consider the GCA's financial position management, review the risk register and approve the Annual Report and Accounts. It is chaired by the Adjudicator and other members are the Head of Policy and Operations, the GCA Legal Adviser and the Operations and Policy Manager. The Policy and Programme Manager attends when the risk register is reviewed. The National Audit Office and Director of Consumer and Competition Policy from the Department for Business, Energy and Industrial Strategy attend, in an observation capacity. Three members of the Audit and Risk committee are female and one male; one identifies as LGBT; three are from a white British and one from a BAME background. There was full attendance at both meetings.

### **Key risks**

The risk register is reviewed every six months. The risk categories are finance, procurement and audit; HR and recruitment, operational, relations with regulated retailers, stakeholder management, governance, reputation and legal.

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

### **Suppliers (both UK and overseas) don't come forward with information and evidence**

The GCA relies on direct suppliers to the regulated retailers coming forward with information about and evidence of retailer behaviour to decide where to focus attention. Having insufficient information and evidence brought forward, both in terms of quantity and quality, could compromise the GCA's effectiveness. To mitigate this risk, the GCA has undertaken a campaign urging suppliers to become Code Confident through training on the Code and familiarisation with the GCA's work. A strategic approach to stakeholder engagement is used to spread this message and the GCA's strict approach to confidentiality is emphasised. The amount and quality of information and evidence submitted by suppliers continues to increase and no failures in maintaining supplier confidentiality have occurred in this reporting period.

## **Difficulties in recruiting staff undermine the effectiveness of the GCA office in delivering to the Adjudicator's priorities**

The GCA office is a small team so long-term vacancies can undermine the ability of the Adjudicator to function effectively. This risk is mitigated by planning of future recruitment needs in advance of the secondment agreements of current staff ending either to renew them or to ensure the recruitment of new staff is managed in a phased way as far as possible, and by working with the Department for Business, Enterprise and Industrial Strategy (BEIS) to make use of all available recruitment options, including the use of agency staff. This long-term planning has this year been reflected in the successful recruitment of two new staff members and extensions to the secondment agreements of two existing staff.

## **Statement by the Adjudicator**

As Accounting Officer, I ensure that the GCA has an appropriate governance structure to meet the requirements of the office and to provide the right level of control over decision making. I can confirm there have been no data losses or ministerial directions. A formal governance review will next be carried out in 2018/19.

I have considered the evidence that supports this Governance Statement and I am assured the GCA has a strong system of controls to support the achievement of my statutory purposes. I therefore have no disclosures of control weaknesses to make for the 2017/18 financial year.

## Statement of the GCA Accounting Officer's responsibilities

The Groceries Code Adjudicator Act 2013 (the Act), at Schedule 1, paragraph 15(1), specifies the Groceries Code Adjudicator (GCA) to keep proper accounts and proper records in relation to the accounts. For each financial year the Adjudicator must prepare a statement of accounts in respect of that financial year detailing the resources acquired, held or disposed of during the year and the use of resources by the GCA during the year. These must be published and submitted to the Secretary of State for Business, Energy and Industrial Strategy who will be responsible for laying the accounts before Parliament.

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

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

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

The Principal Accounting Officer for the Department of Business, Energy and Industrial Strategy has designated the Groceries Code Adjudicator as the Accounting Officer. 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*.

So far as I am aware, there is no relevant audit information of which the auditors are unaware. I have taken all the steps I ought to have taken to make myself aware of any relevant audit information and to establish that the auditors are aware of that information.

I take personal responsibility for the Annual Report and Accounts and the judgements required for determining that it is fair, balanced and understandable, which I confirm.

# Remuneration and staff report

## Overview

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

The salary of the Adjudicator is set by BEIS. The GCA team, all of which are on secondment from the public sector, retain the terms and conditions of their parent departments. Note 2 to the financial statements provides further information about this. Remuneration decisions are taken by the relevant department of the secondee. The Adjudicator's salary payments in this financial year were in the band of £75-£80,000, pro-rated from an annual salary within the band of £130-£135,000 for a full-time equivalent.

The Adjudicator receives a civil service pension. Other pension commitments are met by the home departments of the secondees to the GCA.

## Pay multiples

The GCA only has one employee. All other staff during the year were seconded from other public bodies. One post was temporarily filled for part of the year by a member of agency staff.

Reporting bodies are however required to disclose the relationship between the remuneration of the highest-paid 'director' in their organisation and the median remuneration of the organisation's workforce.

The banded remuneration of the highest-paid 'director' at the GCA in the financial year 2017-18 was £130,000-£135,000. This was 2.6 times the median remuneration of the workforce.

No remuneration range has been provided as this would disclose the salaries of those individuals that work at the GCA.

Total remuneration includes salary non-consolidated performance-related pay and benefits-in-kind. It does not include severance payments, employer pension contributions and the cash equivalent transfer value of pensions.

The GCA notes that the salaries of seconded staff will also be included in assessments of pay multiples at the public bodies they are employed by.

No comparative figures are provided as in previous years the GCA's view has been that it was inappropriate to calculate a median staff pay figure for the year as there is only one member of staff. This was because the GCA has no control over the remuneration of seconded staff and it was accordingly not felt to be appropriate to calculate a median pay figure. Comparative figures will be provided in future years.

## Benefits in kind

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

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

Single total figure of remuneration (audited)										
Public appointee	Salary (in £5k bandings)		Bonus payments (in £5k bandings)		Benefits in kind (to the nearest £100)		Accrued pension benefits (to nearest £'000)		Total (in £5k bandings)	
	2017-18	2016-17	2017-18	2016-17	2017-18	2016-17	2017-18	2016-17	2017-18	2016-17
Christine Tacon	75-80 (£130-135 for a full time equivalent)	65-70 (£115-120 for a full time equivalent)	-	-	-	-	35	28 *Restated	110-115	95-100

\*The 2016-17 Accrued pension benefits have been restated due to a calculation error by MyCSP and pension increase factors which are applied on an annual basis.

This table has been subject to audit.

## Salary

'Salary' includes gross salary; overtime; reserved rights to London weighting or London allowances; recruitment and retention allowances; private office allowances and any other allowance to the extent that it is subject to UK taxation. This report is based on accrued payments made by the GCA and thus recorded in these accounts.

## The Cash Equivalent Transfer Value (CETV)

This is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time.

Pension Benefits (audited)						
Officials	Accrued pension at age 60 as at 31 March 2018 and related lump sum	Real increase in pension and related lump sum at pension age	CETV at 31 March 2018	CETV at 31 March 2017	Real increase in CETV	Employer contribution to partnership pension account
	£'000	£'000	Nearest £1,000	Nearest £1,000	Nearest £1,000	Nearest £100
Christine Tacon	8	2	122	90	32	0

This table has been subject to audit.

## Civil Service Pensions

Pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015 a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension

Scheme or **alpha**, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension Age (or 65 if higher). From that date all newly appointed civil servants and the majority of those already in service joined alpha. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS).

These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under classic, premium, classic plus, nuvos and alpha are increased annually in line with Pensions Increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012, remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 will switch into alpha sometime between 1 June 2015 and 1 February 2022. All members who switch to alpha have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave alpha.

Employee contributions are salary-related and range between 4.6% and 8.05% for members of nuvos and alpha. In nuvos a member builds up a pension based on his pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. Benefits in alpha build up in a similar way to nuvos, except that the accrual rate is 2.32%. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 65 for members of nuvos, and the higher of 65 or State Pension Age for members of alpha. (As the Adjudicator has benefits in both the PCSPS – nuvos – and alpha the figure quoted is the combined value of their benefits in the two schemes, but note that part of that pension may be payable from different ages).

Further details about the Civil Service pension arrangements can be found at the website [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk)

Career Average pension arrangements were introduced from 1 April 2015 and the GCA joined this scheme. Further details of this scheme are available at

<http://www.civilservicepensionscheme.org.uk/members/the-new-pension-scheme-alpha/>

## **Staff report**

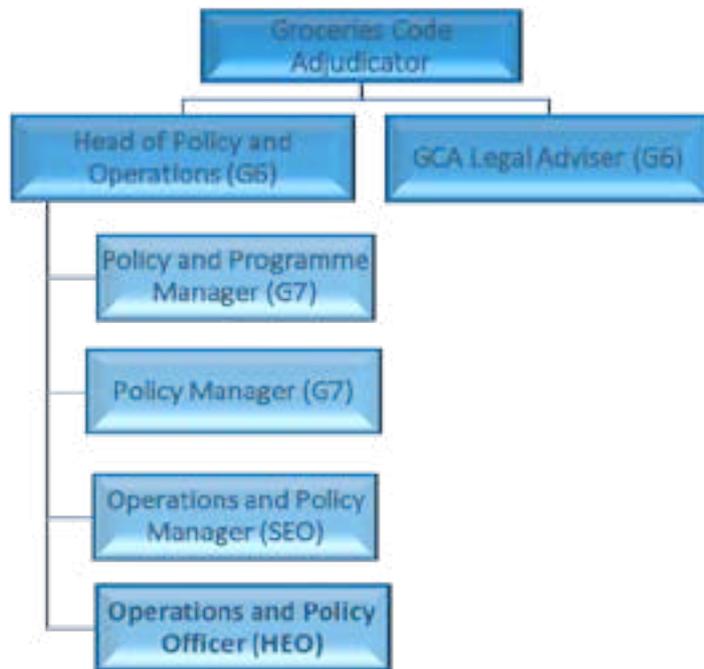
The GCA is designated as a corporation sole and therefore the only employee of the GCA. Staff supporting the GCA are seconded from public sector organisations, with occasional support from temporary contractors where a position has been unable to be filled from the public sector. The guiding principle in resourcing the GCA has been to recruit the resources needed in a phased way based on anticipated workload. In the model of the GCA designed by BEIS it was predicted that a staff of eight would be required, including the GCA. Staff costs for 2017/18 were £450,156 comprising: £106,892 permanent staff costs; and £343,264 of other staff costs for secondees and temporary staff.

The GCA is employed for three days each week and is a senior civil servant equivalent and is female. There was a team of six secondees during the reporting year: GCA Legal Adviser, who

works four days each week, a full-time Head of Policy and Operations, a full-time Policy Manager (from January 2018), a full-time Policy and Programme Manager, a full-time Operations and Policy Manager and a full-time Operations and Policy Officer (from December 2017). Through the year, temporary support has been engaged to fill the role of Operations and Policy Officer and Policy Manager when required and on a part-time basis. Media and communications support is provided under contract following a competitive public procurement exercise in 2016.

Every effort has been made to ensure that the office has the right skills and resources and has a diverse representation. In the GCA team there were five females and two males; one from a BAME background; and one who identifies as LGBT. There was an induction plan for new joiners and the learning and development plan was revised this year. One member of staff became a Fellow of the Chartered Institute of Arbitrators during 2017/18.

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



During the reporting year the GCA successfully recruited candidates to the positions of Policy Manager and Operations and Policy Officer. Budget is held by the GCA Legal Adviser to obtain additional specialist legal support where necessary.

Staff numbers and related costs tables are included in Note 2 of the Financial Statements on page 81.

**Sickness absence**

There has been no sickness absence at the GCA.

**Consultancy expenditure**

Consultancy expenditure and expenditure relating to the procurement contract for the annual GCA survey are shown in Note 3 of the Accounts.

## Reporting on the tax arrangements of public sector appointees

All government departments and their arm's length bodies that employ individuals 'off payroll' for more than six months have to report to HM Treasury about the financial arrangement, to make sure it is transparent and that the individual in question is paying the right amount of tax and National Insurance (NI). We have reviewed the way we make these appointments to ensure our processes are robust. We have the right to request assurances, and do so, from the individual in relation to monies received from HMRC. We can terminate any contract if these assurances are not provided.

New legislation came into effect from April 2017. The reform shifts the responsibility for deciding whether tax and NI are due from the individual contractor to the organisation for whom the contractor will work. The GCA has ensured that arrangements are in place to determine if contractors are in or out of scope, where relevant that arrangements are in place for the deduction of tax and NI, and that assurances are sought.

The tables below set out the status of off-payroll contractors engaged by the GCA using the standard reporting format. This records new off-payroll engagements, or those that reached six months in duration, between 1 April 2017 and 31 March 2018, for more than £245 per day and that last for longer than six months.

**Table 1: For all off-payroll engagements as of 31 March 2018, for more than £245 per day and that last for longer than six months**

<b>No. of existing engagements as of 31 March 2018</b>	<b>1</b>
Of which...	
No. that have existed for less than one year at time of reporting.	<b>0</b>
No. that have existed for between one and two years at time of reporting.	<b>1</b>
No. that have existed for between two and three years at time of reporting.	<b>0</b>
No. that have existed for between three and four years at time of reporting.	<b>0</b>
No. that have existed for four or more years at time of reporting.	<b>0</b>

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

**Table 2: For all new off-payroll engagements, or those that reached six months in duration, between 1 April 2017 and 31 March 2018, for more than £245 per day and that last for longer than six months**

Nil return

**Table 3: For any off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, between 1 April 2017 and 31 March 2018**

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

# Parliamentary accountability and audit report

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

## Wider government and parliamentary input

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

### Statutory review

The Groceries Code Adjudicator Act 2013 requires the Government to review the performance of the GCA. Between 18 October 2016 and 10 January 2017, the Government sought views and evidence on the GCA's performance through a public consultation exercise. This covered the period from June 2013 to March 2016. The Government published its response on 19 July 2017. The review found that the GCA is regarded as 'an exemplary modern regulator with an international reputation'.

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

The Government sought views on whether the remit of the GCA should be extended.

The Government published its response on 16 February 2018 which did not find that there should be an extension of the GCA's remit. However, the Competition and Markets Authority has agreed to review publicly available information on an annual basis and where there are grounds to suspect that a retailer may have reached a threshold of £1 billion in UK turnover of groceries, more evidence will be requested to assess whether that retailer should be designated under the Groceries (Supply Chain Practices) Market Investigation Order 2009.

### Public Bodies Relocation Programme

The GCA submitted a business case to Cabinet Office to continue to co-locate with the Competition and Markets Authority, which is scheduled to vacate its current premises in September 2019. This business case was approved on 13 February 2018.

### The Regulators' Code

The GCA is a non-economic regulator which must have regard to the Regulators' Code. The Regulators' Code obliges the GCA to follow stated principles when developing policy or operational procedures and when setting standards or giving guidance which informs GCA regulatory activity.

## Growth duty

The GCA is committed to following the Government's better regulation agenda and the GCA will take account of the economic impact of its regulatory activities on growth. This follows the requirement of section 108 of the Deregulation Act 2015, which stipulates that:

- (1) A person exercising a regulatory function to which this section applies must in the exercise of the function have regard to the desirability of promoting economic growth.
- (2) Consider the importance for the promotion of economic growth of exercising the regulatory function in a way which ensures that:
  - (a) Regulatory action is taken only when it is needed, and
  - (b) Any action taken is proportionate.

## Business Impact Target

The Small Business, Enterprise and Employment Act 2015 requires the Government to publish, then report on, its performance against a deregulation target – the Business Impact Target (BIT). The Enterprise Act 2016 brought a number of regulators, including the GCA, into scope for this target. The GCA published its response for the reporting period of 8 May 2015 to 8 June 2017. The GCA had no qualifying regulatory provisions. The Government will set a new target and metric for the 2017-2022 Parliament after which the GCA can publish its response for the next reporting period. This response is again likely to reflect that the GCA has no qualifying regulatory provisions.

## Review of business appeals procedure

The Small Business, Enterprise and Employment Act 2015 contained the introduction of a new review mechanism for the appeals procedure of each non-economic regulator, which includes the GCA. The law provides for the appointment of a reviewer by the Secretary of State to:

- (a) Review the effectiveness during each reporting period of the procedures (both formal and informal) of the relevant regulator for handling and resolving complaints and appeals made by businesses to the regulator in connection with the exercise by the regulator of the function, and
- (b) Prepare a report about the findings of the review.

The GCA will work with BEIS on the implementation of this requirement when necessary.

## General Data Protection Regulation (GDPR)

The GCA has reviewed its preparedness for the General Data Protection Regulation.

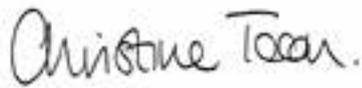
## Parliamentary and Ministerial engagement

During the reporting year the GCA met once with Margot James MP the Minister for Small Business, Consumers and Corporate Responsibility and once with her successor, Andrew Griffiths MP. The GCA met once with George Eustice MP the Minister for Agriculture, Fisheries and Food and also with the Shadow Minister for Business, Energy and Industrial Strategy.

The GCA attended an event in Wales with Lesley Griffiths AM and her officials. The GCA also met with Archie Gibson, the Agri-Champion for the Scottish Government and attended an event in Northern Ireland.

## **Parliamentary Accountability Disclosures**

The GCA has nothing to report in respect of: losses and special payments; remote contingent liabilities; fees and charges income; or gifts. This has been subject to audit.



**Christine Tacon**

Groceries Code Adjudicator and Accounting Officer  
June 2018

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

## Opinion on financial statements

I certify that I have audited the financial statements of the Groceries Code Adjudicator for the year ended 31 March 2018 under the Groceries Adjudicator Act 2013. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, Changes in Taxpayers' Equity; and the related notes, including the significant accounting policies. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration and Staff Report and Parliamentary Accountability disclosures that is described in that report as having been audited.

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 2018 and of net expenditure for the year then ended; and
- the financial statements have been properly prepared in accordance with the Groceries Adjudicator Act 2013 and Secretary of State directions issued thereunder.

## Opinion on regularity

In my opinion, in all material respects the income and expenditure 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.

## Basis of opinions

I conducted my audit in accordance with International Standards on Auditing (ISAs) (UK) and Practice Note 10 'Audit of Financial Statements of Public Sector Entities in the United Kingdom'. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my certificate. Those standards require me and my staff to comply with the Financial Reporting Council's Revised Ethical Standard 2016. I am independent of the Groceries Code Adjudicator in accordance with the ethical requirements that are relevant to my audit and the financial statements in the UK. My staff and I have fulfilled our other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

## Responsibilities of the Accounting Officer for the financial statements

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.

## Auditor's responsibilities for the audit of the financial statements

My responsibility is to audit, certify and report on the financial statements in accordance with the Groceries Adjudicator Act 2013.

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. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISAs (UK), I exercise professional judgment and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Groceries Code Adjudicator's internal control.
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Groceries Code Adjudicator's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the entity to cease to continue as a going concern.
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

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

## Other Information

The Accounting Officer is responsible for the other information. The other information comprises information included in the annual report, other than the parts of the Remuneration and Staff Report and Parliamentary Accountability disclosures described in that report as having been audited, the financial statements and my auditor's report thereon. My opinion on the financial statements does not cover the other information and I do not express any form of assurance conclusion thereon. In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.

## Opinion on other matters

In my opinion:

- the parts of the Accountability Report to be audited have been properly prepared in accordance with Secretary of State directions made under the Groceries Code Adjudicator Act 2013;
- in the light of the knowledge and understanding of the Groceries Code Adjudicator and its environment obtained in the course of the audit, I have not identified any material misstatements in the Performance Report or the Accountability Report; and
- the information given in Performance Report and Accountability Report for the financial year for which the financial statements are prepared is consistent with the financial statements.

## Matters on which I report by exception

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

adequate accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my staff; or

the financial statements and the parts of the Remuneration and Staff Report and Parliamentary Accountability disclosures to be audited are not in agreement with the accounting records and returns; or

I have not received all of the information and explanations I require for my audit; or

the Governance Statement does not reflect compliance with HM Treasury's guidance.

## Report

I have no observations to make on these financial statements.

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

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

June 2018

# Financial statement

## Statement of Comprehensive Net Expenditure for the year ended 31 March 2018

	Note	Year ending 31-Mar-18 £	Year ending 31-Mar-17 £
<b>Expenditure</b>			
Staff costs	<b>2</b>	450,156	415,483
Other expenditure	<b>3</b>	247,146	206,541
		<u>697,302</u>	<u>622,024</u>
<b>Income</b>			
Other income	<b>4</b>	<u>(697,302)</u>	<u>(622,024)</u>
<b>Net Expenditure</b>		<u>–</u>	<u>–</u>
<b>Total Comprehensive Expenditure for the year ended 31 March</b>		<u>–</u>	<u>–</u>

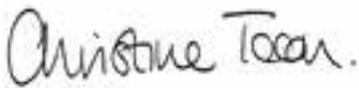
The notes on pages 78 to 85 form part of these financial statements.

There was no other comprehensive expenditure.

# Statement of Financial Position as at 31 March 2018

	Note	Year ending 31-Mar-18 £	Year ending 31-Mar-17 £
<b>Current assets:</b>			
Other receivables due within one year	<b>6</b>	7,694	21,181
Cash	<b>7</b>	1,538,716	1,588,148
<b>Total current assets</b>		<u>1,546,410</u>	<u>1,609,329</u>
<b>Total assets</b>		<u>1,546,410</u>	<u>1,609,329</u>
<b>Current liabilities:</b>			
Deferred income	<b>8</b>	1,311,657	1,479,359
Other payables and accruals	<b>8</b>	234,753	129,970
<b>Total current liabilities</b>		<u>1,546,410</u>	<u>1,609,329</u>
<b>Current assets less current liabilities</b>		<u>–</u>	<u>–</u>
<b>Taxpayers' equity</b>			
Income and expenditure reserve		<u>–</u>	<u>–</u>
<b>Total Equity</b>		<u>–</u>	<u>–</u>

The notes on pages 78 to 85 form part of these financial statements.



**Christine Tacon**  
Groceries Code Adjudicator  
and Accounting Officer

June 2018

# Statement of Cash Flows for the year ended 31 March 2018

	<b>Note</b>	<b>Year ending 31-Mar-18 £</b>	<b>Year ending 31-Mar-17 £</b>
<b>Cash flows from operating activities</b>			
Net operating expenditure		–	–
(Increase)/Decrease in receivables	<b>6</b>	13,487	(21,181)
(Decrease)/Increase in payables	<b>8</b>	(62,919)	1,017,187
<b>Net cash outflow from operating activities</b>		<u>(49,432)</u>	<u>996,006</u>
There are no cashflows from investing or financing activities			
<b>Net (decrease)/increase in cash in the period</b>	<b>7</b>	(49,432)	996,006
<b>Cash at the beginning of the period</b>		1,588,148	592,142
<b>Cash at the end of the period</b>		1,538,716	1,588,148

The notes on pages 78 to 85 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 2016</b>	–	–
<b>Changes in Taxpayers' Equity comprehensive income for the year</b>		
Comprehensive income for the year	–	–
<b>Balance as at 31 March 2017</b>	<u>          </u>	<u>          </u>
<b>Changes in Taxpayers' Equity comprehensive income for the year</b>		
Comprehensive income for the year	–	–
<b>Balance as at 31 March 2018</b>	<u>          </u>	<u>          </u>

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

# Notes to the financial statements

## 1. Accounting policies

These financial statements have been prepared in accordance with the 2017/18 Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be the most appropriate to the particular circumstances of the GCA for the purposes of giving a true and fair view has been selected. The particular policies adopted by the GCA for the purpose of financial reporting are described below. They have been applied consistently in dealing with items that are considered material to the accounts. The accounts have been prepared under the direction of the Department for Business, Energy and Industrial Strategy (BEIS).

There were no new standards issued up to 31 March 2018 and not applied, that would materially affect the accounts. The GCA has also not adopted any standards early but has considered future changes in standards.

### Standards not yet effective

The GCA has not applied any new IFRS standards that have been issued but are not yet effective, this includes changes to IFRS 9, IFRS 15 and IFRS 16 as they either do not effect the accounts or have a material impact. In relation to IFRS 9 the GCA does not hold complex financial instruments, and significant judgements aren't required in respect of bad debts as the GCA is solely funded by 10 major retailers. In relation to IFRS 15 the GCA raises revenue through the form of a levy on the retailers it regulates. The Groceries Code Adjudicator Act 2013 does not impose specific performance measures on the GCA which would impact its current revenue recognition policy. The GCA has a memorandum of understanding with the CMA for the rental of accommodation. Rentals are due under an operating lease which is charged to the Statement of Comprehensive Net Expenditure over the lease term on a straightline basis, and the lease amount is so small that the GCA believes this will not have a material impact. As such the GCA does not believe that the changes to IFRS 16 will have any major impact. This will be subject to further consideration in 2018-19.

### Income

#### *General levy*

The GCA received levy income for 2017/18 to fund its activities. Approval for the levy for the year 2017-18 was received on 23 March 2017. The levy is invoiced once audited accounts are published. The Groceries Code Adjudicator Act 2013 [Section 19] provides that the full costs of the GCA will be funded through a levy on the 10 designated retailers with a UK annual groceries turnover in excess of £1billion, as per the Code provisions set out by the Competition Commission. These are: Aldi Stores Limited, Asda Stores Limited, Co-operative Group Limited, Iceland Foods Limited, Lidl

UK GmbH, Marks & Spencer plc, Wm Morrison Supermarkets plc, J Sainsbury plc, Tesco plc, and Waitrose Limited.

### *Arbitration and investigations*

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

The GCA has the discretion to charge the applicable retailer(s) the full costs of an investigation which results in a finding that there has been a breach of the Code. 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 and are recognised in full in the year that it is billed. The Adjudicator may repay some or all of any surplus income, in such situations, these repayments will be shown as a liability in the GCA accounts.

### **Going concern**

The GCA will receive levy income for 2018/19 to fund its activities. Approval for the levy was received on 28 March 2018 from the Secretary of State for Business, Energy and Industrial Strategy, and there is no reason to believe that future approval will not be granted. In assessing whether the going concern assumption is appropriate, management takes into account all available information about the future, which is at least, but not limited to, twelve months from the end of the reporting period. It has been accordingly considered appropriate to adopt a going concern basis for the preparation of these financial statements.

### **Financial instruments**

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

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

### *Financial assets*

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

### *Financial liabilities*

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

### **Reserves**

#### **Income and expenditure reserve**

The GCA does not hold any funds in their reserves. Additional income received via the Levy is held as deferred income and offset against the following year's levy.

### **Expenditure**

All expenditure is recognised on an accruals basis. Purchases of individual capital items over £1,000 will be recognised in the accounts as an asset and appropriately depreciated or amortised.

The GCA does not hold any capital assets.

### **Staff Costs**

All short term staff costs payable at the end of the year, which will be paid within one year from the reporting date are included in the Statement of Net Expenditure.

### **Value Added Tax**

Output tax does not apply to the GCA's activities and input tax is not recoverable. Irrecoverable input tax is charged to the relevant expenditure category.

### **Leases**

Payments in relation to operating leases are calculated on a straight line basis and charged to the Statement of Net Expenditure.

### **Key Judgements and estimates**

The GCA makes judgements and estimates in the preparation of the financial statements. The judgements and estimates that have a significant risk and may cause a material impact are below.

### **Provisions and contingent liabilities**

Provisions and contingent liabilities rely on the application of professional judgement, historical experience and other factors expected to influence future events. Where the likelihood of a liability crystallising is deemed probable and can be measured with reasonable certainty, a provision is recognised.

## 2. Staff numbers and related costs

The cost of staff remuneration was:

	<b>Year ending 31-Mar-18</b>	<b>Year ending 31-Mar-18</b>	<b>Year ending 31-Mar-18</b>	<b>Year ending 31-Mar-17</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
	<i>Permanent staff</i>	<i>Other staff</i>	<i>Total</i>	<i>Total</i>
Wages and salaries	78,780	267,361	346,141	322,301
Social security costs	9,409	30,465	39,874	36,449
Pension costs	18,703	45,438	64,141	56,733
<b>Total</b>	<b>106,892</b>	<b>343,264</b>	<b>450,156</b>	<b>415,483</b>

- (i) The remuneration of the Adjudicator is the only permanent staff cost.
- (ii) There have been no severance payments in year.
- (iii) Other staff includes the costs for the staff seconded to the GCA and for agency staff. Agency costs are £33,704 (2016/17 - £52,000).
- (iv) A gross refund of £67,210 for VAT charged on previous years secondment costs is included in 16/17 staff costs. This comprised a cash rebate of £60,588 from one government department and a credit against an invoice from another government department. Consequently the staff costs shown for year 16/17 include the refund and appear lower than they actually were.
- (v) The Adjudicator's remuneration increased to bring it into line with the advertised rate for the Pubs Code Adjudicator.

### Average number of staff employed

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

	<b>2017/18</b>	<b>2016/17</b>
	FTE	FTE
Employed on references:		
Permanent staff	0.6	0.6
Other staff	4.83	5.25
	<b>5.43</b>	<b>5.85</b>

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

### 3. Other expenditure

	Year ending 31-Mar-18 £	Year ending 31-Mar-17 £
Investigation into the Co-operative Group Ltd	30,415	–
Investigation into Tesco Plc	–	12,337
Rentals under the terms of occupation lease	15,313	15,313
Running costs - Victoria House	10,488	10,133
Survey & Consultancy	77,323	60,116
Marketing and Promotion Materials	31,256	–
Legal costs	–	1,114
Licences	1,470	1,711
Photocopying & Printing	2,887	10,929
Press Cuttings	420	1,778
Travel, subsistence and hospitality:	7,931	9,375
Staff training	6,244	4,012
Subscriptions	1,047	1,410
Corporates Services from Competition Markets Authority (CMA) & BEIS	23,644	23,103
Office equipment (IT and other consumables)	1,136	14,291
Conferences & events	27,902	25,021
Arbitration	1,833	3,598
Audit fee	7,000	7,000
Other expenditure	837	5,300
Total other operating charges	<u>247,146</u>	<u>206,541</u>

- (i) Other expenditure relates to accountancy charges, postage and office furniture.
- (ii) Marketing and Promotion materials is new expenditure for 2017/18 which also captures some spend previously included in photocopying and printing, and Survey and Consultancy. This amounted to £10,402 in 2016/17.

## 4. Income

	<b>Year ending 31-Mar-18 £</b>	<b>Year ending 31-Mar-17 £</b>
Investigation into Tesco plc	–	96,798
Levy raised	529,600	1,621,000
Deferred income	167,702	(1,095,774)
Total income	<u>697,302</u>	<u>622,024</u>

Income for 16/17 includes £1m raised through the levy from the retailers for future investigations.

## 5. Financial instruments

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

## 6 Receivables and other assets

	<b>As at 31-Mar-18 £</b>	<b>As at 31-Mar-17 £</b>
<b>Amounts falling due within one year</b>		
Other debtors	–	17,307
Prepayments	7,694	3,874
	<u>7,694</u>	<u>21,181</u>

All other debtors are with central government.

## 7. Cash

	<b>As at 31-Mar-18 £</b>	<b>As at 31-Mar-17 £</b>
Balance at 1 April	1,588,148	592,142
Net change in cash balances	(49,432)	996,006
Balance at 31 March	<u>1,538,716</u>	<u>1,588,148</u>

The following balances at 31 March were held at: 1,538,716 1,588,148

### Government Banking Service

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

## 8. Other payables and liabilities

### Amounts falling due within one year

	<b>As at 31-Mar-18 £</b>	<b>As at 31-Mar-17 £</b>
Deferred income	1,311,657	1,479,359
Accruals	234,753	129,970
	<u>1,546,410</u>	<u>1,609,329</u>
Analysis of other accruals		
Balances with other central government organisations	196,000	104,336
Balances with bodies external to government	38,753	25,634
	<u>234,753</u>	<u>129,970</u>

Deferred income solely relates to the retailers. The accruals mainly relate to invoices for the secondment of staff.

## 9. Capital commitments

The GCA had no capital commitments.

## 10. Commitments under leases

### Commitments under leases

	<b>As at 31-Mar-18 £</b>	<b>As at 31-Mar-17 £</b>
Other leases:		
No later than one year	7,398	7,657
	<u>7,398</u>	<u>7,657</u>

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

## 11. Contingent liabilities & assets

There are no contingent assets to report. In relation to contingent liabilities, following a determination from the VAT Centre of Excellence based in the Ministry of Justice, departments that seconded employees to the GCA no longer apply VAT on those costs. However, the GCA is aware that BEIS has requested a view from HMRC on the position. The GCA did this on its own behalf in 2015 but HMRC declined to give a view. The GCA estimates the VAT that could be owed on past invoices from BEIS is £89,874. No other government department has indicated currently that they are seeking a view from HMRC on this issue. The GCA estimates the VAT that could be owed on past invoices from other Government departments is £180,237. The GCA is not registered for VAT. GCA has sought advice and engaged with VAT specialists within government, and on the basis of information received, considers that the GCA has a case for not being charged VAT on expenditure for seconded staff. BEIS expect to receive a decision from HMRC in 2018-19, and the GCA will subsequently reassess whether any liability has materialised in accordance with IAS 37 Provisions and Contingent Liabilities.

## 12. Related party transactions

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

The GCA also has related party transactions with the CMA, these related to accommodation as the GCA is co-located with the CMA. The GCA also had transactions with the Department for Culture Media and Sport, Defra, Housing Ombudsman Service, BEIS and the Government Legal Service for the secondment of staff.

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

## 13. Events after the reporting period

There are no post-balance sheet events to report.

In accordance with the requirements of IAS10 'Events After the Reporting Period', post-Statement of Financial Position events are considered up to the date on which the Accounts are authorised for issue. This is interpreted as the same date as the date of the Certificate Report of the Comptroller and Auditor General. There are no post-Statement of Financial Position events between the balance sheet date and this date to report.

# Appendix

## Issues raised on Code compliance

The GCA has continued to hear from direct and indirect suppliers, trade associations, other bodies and the media about a range of issues covered by the Code and relating to large retailer practices. These issues form part of the growing GCA evidence base which will inform future action. All the issues that have been raised with the GCA since its establishment in June 2013 are reflected below.

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

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

### Issues raised under Part 3 of the Code – Variation:

- (3) Of Supply Agreements and terms of supply
- (4) To supply chain procedures

### Terms of supply varied during the contract term:

- Written supply agreements not in place
- Request for lump sum payments, often at key accounting periods
- Request for lump sums for previous periods, not previously agreed
- Retailer margin maintenance: inclusion in agreements (contracts and Joint Business Plans) of elements over which suppliers have no influence
- Attempts to alter prices paid to suppliers once agreement/contract is in place
- Request to agree to a retrospective overrider for new supply
- Use of service levels: not agreed with supplier or unclear methodology applied; and where penalties are applied for allegedly failing to meet targets
- 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
- Introduction of audits paid for by suppliers, e.g. ethical, traceability
- Changes to payment terms and method of payment

### Issues raised underpart 4 of the Code – Prices and payments:

- (5) No delay in payments (includes unilateral deductions and deductions without notice)
- (6) No obligation to contribute to marketing costs (including artwork and design of packaging; market research; retailer hospitality)
- (7) No payments for shrinkage
- (8) No payments for wastage (unless set out in the Supply Agreement)
- (9) No payments as a condition of being a supplier (including listing fees)
- (10) Compensation for forecasting errors
- (11) No tying of third party goods and services for payment (including payment of packaging and haulage costs)

**Payment terms not adhered to****Automatic deductions from invoices or trading accounts:**

- Without notice and sometimes before supplier requests payment for goods
- Without sufficient or any explanation (particularly where large sums of money are involved or where deductions are acute for smaller supplier cash flows)
- Withholding payment for entire invoice where only one element of invoice is in dispute
- Disproportionate charges for late delivery of small quantities delivered through a consolidator
- Drop and drive: deductions for alleged delivery discrepancies where there is little or no ability to check or challenge retailer's paperwork
- Not providing suppliers with thirty days to challenge any proposed deductions or deducting even if a supplier challenges the deduction

**Erroneous deductions and delays in repaying:**

- Lack of supplier access to decision-maker in respect of deductions, to understand the deduction and recover monies taken in error
- Delay in refund of money deducted in error due to 'failure' to hit agreed Service Level
- Third party and internal audit practices
- Repeated chasing required for agreed refunds to be processed and refunds not processed until after closure of key accounting periods
- Delay in reverting pricing systems to standard price after promotions
- Delays in changing prices, resulting in delays in resolving queries
- Individual invoices in multiple batches regularly going missing
- Charges for use of a supplier portal to query a disputed invoice
- Delay in repayment when invoice discrepancy identified and agreed

**Perceived high charges for mandated packaging and artwork, where supplier believes it can secure cheaper service of comparable quality elsewhere:**

- Flat rate charge for images
- Charges for artwork much higher than open market
- Numerous design changes through the year; lack of reasonable notice of change resulting in cost of excess packaging stock being borne by supplier
- Charge for packaging changes invoiced without prior agreement that this would be required
- Pressure to use 'recommended suppliers' for packaging
- Preferred supplier packaging suppliers more expensive than comparable competitors
- Cost of use of plastic crates (e.g. for fresh produce) and reasonableness of hire conditions
- Compulsory spend of marketing costs through retailer product e.g. in-house magazines

**Payments for wastage:**

- Request for deficit due to wastage to be covered in full by supplier

**Request for listing fees:**

- Requests by retailer for supplier to stop supplying specific competitors
- Fees requested not reflecting the risk of listing a new product
- Multi-channel charges – listing fees for additional channels to market for products already stocked
- Fees to access retailer order/forecasting systems
- Lump sum requested to secure arrangements in a range review

**Poor forecasting accuracy:**

- Disclaimers by retailers that all forecasts are prepared in good faith being added to email footers
- Lack of clarity about what is a forecast and what constitutes an order
- Lack of information about what lies behind retailers' forecasts making it difficult for suppliers to challenge whether they are prepared in good faith and with due care and attention
- No mechanism in place whereby suppliers can challenge retailer forecasts – particularly difficult for small suppliers to get access “air-time” with buyers to help improve accuracy
- Retailers' practice of ordering fresh produce daily but only forecasting on longer time scales undermines suppliers planning to get the right produce in place
- Retailers very late in confirming details of quantities and stores in forecasting for promotions
- Retailers have different systems for forecasting and ordering making it difficult to compare forward looking data with what actually happened to learn from experience and improve forecasting practice
- Excessive charges applied for short delivery, particularly when the forecast volume has been met, but the order considerably exceeded the volume forecast
- 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
- Poor forecasting results in suppliers being left with over-ordered packaging
- No evidence of compensation for suppliers

**Lack of choice on haulage provider:**

- Where supplier has access to a cheaper alternative
- Poor service levels by haulier mandated or provided by retailers resulting in supplier penalty

**Issues raised under Part 5 of the Code – Promotions:**

- (12) No payments for better positioning of goods unless in relation to promotions  
 (13) No requirement to predominantly fund a promotion  
 (14) Not applying due care when ordering for promotions

**Attempted charges for better shelf position not related to a promotion:**

- Payments for Category Captaincy and range reviews
- Better positioning being negotiated in response to retailer requests for investment

**Over-ordering at promotional price:**

- Over-buying at discounted price agreed for promotions linked to poor forecasting practice

**Changes to promotions at short notice or not actioning agreed promotions:**

- Distribution, price, quantities, timing and funding

**Request to fund a promotion:**

- Concern that impact of over-buying at discounted prices means suppliers end up funding promotions

**Issues raised under Part 6 of the Code – Other duties:**

- (15) No unjustified charges for consumer complaints  
 (16) Not meeting duties in relation to De-listing (*including giving commercial reasons for the decision and reasonable notice*)  
 (17) Not escalating concerns over breaches of the Code to the Senior Buyer

**Lack of transparency on customer complaint charges:**

- Different flat fees charged which do not appear to relate to retailer's cost of handling complaints

**Unclear large retailer De-listing practice:**

- Different perspectives (retailers compared to suppliers) on reasonable notice periods
- Short notice periods may not take account of supplier circumstances
- De-listing following supplier investment to meet retailer demands
- De-listing following competitor lump sum payment to obtain business and to increase share of shelf space
- Compensation for short notice De-listing decisions do not take account of all associated costs to the supplier
- Standard De-listing notice periods not in line with GCA published interpretive guidance
- Suppliers being asked to identify competitor SKUs for De-listing

978-1-5286-0502-1

CCS0618792810