



Groceries Code Adjudicator Statutory Review Consultation

For the period from 1 April 2019 to 31 March 2022

Response form

The consultation is available at: <https://www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review-2019-to-2022>

The closing date for responses is 11 October 2022

Please email completed forms to GCAreview@beis.gov.uk

Or send by post to:

GCA Review Team
Consumer and Competition
Department for Business, Energy and Industrial Strategy
4th Floor, Victoria 2
1 Victoria Street
London
SW1H 0ET

Information provided in this response, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the invitation to contribute views and evidence for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments: [Click here to enter text.](#)

About You

Name: Dan Crossley

Organisation (if applicable): Food Ethics Council

Address: Impact Hub Kings Cross, 34b York Way, London, N1 9AB

Please check all boxes from the list of options that best describe you as a respondent.

Respondent type

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Direct supplier
- Indirect supplier
- Other (please describe)

Consultation questions

Part 1: Questions for all relevant parties

1. Have you engaged with the GCA?

- a) **Yes**
- b) No

2. If yes, how often?

- a) Regularly
- b) Occasionally
- c) **Rarely**
- d) Never

3. How satisfied were you with how the GCA handled your issue?

- a) Very satisfied
- b) Satisfied
- c) Neutral
- d) Unsatisfied
- e) Very unsatisfied
- f) **not applicable**

4. If you are a representative group (e.g. a trade association), would you consider raising an issue with the GCA on behalf of your members?

- a) Yes
- b) No

Comments: **N/A**

5. What do you believe has been the impact of the GCA on the groceries market?

Comments: We believe the impact of the GCA on the wider groceries market has been overwhelmingly positive. The GCA has continued to use its powers to good effect to prevent further increase in unfair trading practices in major food retailers' supply chains. Supermarkets have been challenged where they have been shown to be breaking the Code. We believe that the GCA should be prepared to inflict fines and other sanctions within its powers, to discourage or prevent future unfair practice. It is vital that major food retailers are held to account – hence we welcome the mix of proactive and reactive approaches that the GCA has taken.

6. How effective do you consider the GCA has been in exercising its powers:

- a) in providing arbitration?
- b) in conducting investigations and undertaking enforcement activity?
- c) in providing advice, guidance and recommendations?

In responding to this question, stakeholders may wish to refer to the GCA's own guidance on its approach to carrying out investigations, enforcement and arbitration¹.

Comments: We consider the GCA to have been effective in each of these areas, particularly during the first part of the review period, when reports of code breaches went down and were significantly lower than when the GCA was first introduced. We note that there was an increase in suppliers experiencing code breaches in 2021, linked in part to COVID-19, but that should not be used as the sole excuse for the rise. From discussions we have had with representatives of food businesses, including suppliers of the major retailers, we have not been made aware of the GCA failing to exercise its powers effectively. However, we are concerned by increasing incidences of unfair practices and this demonstrates the need for a strong GCA.

7. Do you think the GCA has been effective in enforcing the Code?

- a) Yes
- b) No

Please give your reasons This question will allow us to gauge the broad sense of effectiveness in wide terms. Detailed analysis of effectiveness will be judged by responses to all questions.: We believe that the GCA has overall been effective in enforcing the Code, but that the rapidly changing external environment (including but not limited to the COVID-19 pandemic, the cost of living crisis, the Ukraine war) and subsequent pressures on food supply make the role of the GCA even more important than ever.

8. Do you think there are advantages of transferring the GCA functions to the Competition and Markets Authority ("CMA") to increase efficiency, effectiveness and economy in exercise of public functions?

Comments: No, we do not see advantages of transferring GCA functions to the CMA. There are certain unique – and important – features that the GCA have that would be lost if its functions were transferred. These include the risk of loss of confidentiality. Maintaining confidentiality is so important if suppliers are to feel confident enough to report unfair practices. We also believe that transferring functions would be less efficient and would make the work less effective, with the need to train new staff and get up to speed with different ways of working.

9. Do you think there are disadvantages of transferring the GCA functions to the CMA and do you have thoughts on how these might be addressed?

Comments: Yes, we believe there are major disadvantages to the idea of transferring the GCA functions to the CMA. As noted above, one key disadvantage is the risk that confidentiality will be lost, which would have a huge negative impact on supplier

¹ <https://www.gov.uk/government/collections/gca-guidance>

confidence to come forward to raise complaints, because of the risk of delisting etc. Such a transfer may increase costs to the taxpayer, given that the GCA is currently funded by a levy on retailers, which has been shown in the past not to have any negligible negative impact on grocery prices. The GCA has expert knowledge on the sector and on dealings between supermarkets and their suppliers.

10. Do you think there would be advantages of transferring to another public body. If so, could you explain which one and why and whether there are any disadvantages?

Comments: No, we do not see any advantages of transferring functions to another public body. The GCA is relatively lean, has been effective and is not a burden on the taxpayer. As noted above, the GCA has specialist expertise that could not easily be replicated/replaced if it were transferred to a separate body.

11. Do you think it is still necessary to have an Adjudicator to enforce the Code?

Comments: Yes, absolutely. The recent rise in code breaches shows that there is still a vital need for an independent Adjudicator, with appropriate powers and remit. Market and political power in the food system is still concentrated in the hands of relatively few companies. The resulting economies of scale have enabled customers to access wide product ranges at affordable prices. However, major food businesses have not always been held accountable for their actions, which has led to allegations of abuse of power and unfair treatment of suppliers in some instances. The introduction of the Groceries Supply Code of Practice and then the GCA has been hugely important in beginning to address unfair trading practices in food supply chains. At a time when there is a growing risk of supermarkets taking 'short cuts' that will negatively impact suppliers, now is the time to maintain – and ideally further strengthen – the GCA, rather than water it down, move it or eliminate it altogether. The GCA must not be allowed to fall victim to any desire to reduce (so-called) 'red tape'. Having spoken to lots of farmers, growers, food manufacturers and others over the past few years, we strongly believe that the GCA should be retained. We feel it is important to have a regulator with the remit and specialist experience to tackle unfair purchasing practices in the groceries sector.

Part 2: Questions for the Groceries Code Adjudicator

1. For the statutory review period, please explain how you have met your statutory duties set out in the Groceries Code Adjudicator Act 2013?

Please comment in particular on:

- a) how much you have exercised your powers;
- b) how effective you have been in enforcing the Groceries Code.

Comments: [Click here to enter text.](#)

2. We would also welcome any comments you may have on the Order-making powers contained in the Act and whether you would find it helpful for the Secretary of State to:

a) amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015;

b) make an order setting out the information which you may consider when deciding whether to investigate (see section 15(11) of the Act).

Comments: [Click here to enter text.](#)

3. How effective has the GCA been since 2019 in:

a) improving retailer and supplier awareness of the Code; and

b) improving supplier confidence in raising issues with retailers and with the GCA?

Comments: [Click here to enter text.](#)

Part 3: Questions for the Competition and Markets Authority

The Competition Commission's investigation into the UK's retail grocery market recommended the creation of an Ombudsman to monitor and enforce compliance with the Code. This recommendation was taken forward in the Groceries Code Adjudicator Act 2013.

1. For the statutory review period, please comment on the GCA's effectiveness in fulfilling the role intended for it by the Competition Commission in 2009²?

Please comment in particular on:

a) whether the GCA has sufficient and proper powers to enforce the Code effectively.

Comments: [Click here to enter text.](#)

2. We would also welcome any comments you may have on how effective the GCA has been in exercising its powers.

Comments: [Click here to enter text.](#)

Part 4: Questions for retailers

(i.e. retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order and in the Notices of Designation issued by the CMA. While responding, retailers should only

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/461114/GSCOP-Order_v2.pdf

consider their experience with the GCA from April 2019 or from when they were designated under the Code.)

1. What impact, if any, has the GCA had on your relationships with your suppliers?

Comments: [Click here to enter text.](#)

2. Has resolving a complaint with suppliers become more or less burdensome than before the GCA?

Comments: [Click here to enter text.](#)

3. What do you believe has been the impact of the GCA on the groceries market?

Comments: [Click here to enter text.](#)

4. Is there any way to make the GCA more effective in delivering its key objectives?

Comments: [Click here to enter text.](#)

5. Do you think the Secretary of State should make an order setting out the information which the GCA may consider when deciding whether to investigate (see section 15(11) of the Act)? If so, please explain why.

Comments: [Click here to enter text.](#)

Part 5: Questions for suppliers

1. To which of these retailers do you currently supply groceries?

Please tick all that apply:

- Aldi Stores Limited
- Amazon.com, Inc.
- Asda Stores Limited
- B&M European Value Retail SA
- Co-operative Group Limited
- Iceland Food Limited
- J Sainsbury plc
- Lidl UK GmBH
- Marks and Spencer plc
- Ocado Retail Ltd
- Tesco plc
- TJ Morris Ltd (trading as Home Bargains)
- Waitrose Limited
- WM Morrison Supermarkets plc

2. During your contract period, and since April 2019, have you experienced any issues with the retailers which are covered by the Code areas below? (If the retailers were designated under the Groceries Code between April 2019 and March 2022, you should only consider your experience with these retailers since the designation).

Please tick all that apply:

- Variation of supply agreements and terms of supply
- Unjustified charges for consumer complaints
- Obligation to contribute to marketing costs
- Delay in payments
- No compensation for forecasting errors
- Payment as a condition of being supplier
- Not applying due care when ordering for promotions
- Not meeting duties in relation to de-listing
- Variation of supply chain procedures
- Payment for wastage
- Payment for better positioning of goods
- Payment for shrinkage
- Tying of third party goods and services to payment
- No issues with the Code
- Not aware of the Code
- Don't know (Please explain below)

Comments: [Click here to enter text.](#)

3. If you ticked any of the boxes above:

How often did you experience each of these issues?

- a) Regularly
- b) Occasionally
- c) Rarely

4. Did you raise the issue with the GCA?

- a) Yes
- b) No

5. If you raised an issue with the GCA how satisfied were you with your dealings with the GCA?

- a) Very satisfied
- b) Satisfied
- c) Neutral
- d) Unsatisfied
- e) Very unsatisfied

Comments: [Click here to enter text.](#)

6. If you did not raise an issue with the GCA, why not?

Please tick all that apply:

- Fear of some form of penalty from retailer
- Didn't think the GCA would be able to do anything
- You can address the concerns yourself
- Didn't feel that the concerns were important enough
- You already alerted a trade association
- Concerns over confidentiality
- Not sure what is covered by the Code.
- Other reason

Comments: [Click here to enter text.](#)

7. Would you say the issues you have highlighted have happened to a greater, the same or lesser extent since the previous review of the GCA?

- a) Greater
- b) Same
- c) Lesser

Comments: [Click here to enter text.](#)

8. How do you feel retailer practice overall has changed since the previous review of the GCA?

- a) Improved
- b) Stayed the same
- c) Worsened
- d) Not sure

Comments: [Click here to enter text.](#)

9. In future, would you consider raising any issues you have about groceries supply with the GCA?

- a) Yes
- b) No
- c) Don't know

10. If no, why not?

Please tick all that apply:

- Fear of some form of penalty from retailer
- Don't think the GCA will be able to do anything
- You can address the concerns yourself
- Don't think the concerns are important enough
- You already alerted a trade association
- Concerns over confidentiality
- Not sure what is covered by the Code
- Other reason

What would encourage you to raise an issue with the GCA?

Comments: [Click here to enter text.](#)

11. Has the introduction of the GCA had an impact on product or process innovation?

- a) Substantially more likely to undertake product or process innovation
- b) Slightly more likely to undertake product or process innovation
- c) No impact on undertaking product or process innovation
- d) Less likely to undertake product or process innovation
- e) Substantially less likely to undertake product or process innovation

If the introduction of the GCA has had an impact on product or process, could you please give examples of product or process innovation that you have carried out?

Comments: [Click here to enter text.](#)

12. Do you now spend relatively more, or relatively less, on product or process innovation than you did 3 years ago.

- a) Relatively more
- b) Relatively less
- c) No change

Comments: [Click here to enter text.](#)

13. What do you believe has been the impact of the GCA on the groceries market?

Comments: [Click here to enter text.](#)

Part 6: Questions for consumers

1. What do you believe has been the impact of the GCA on consumers in relation to:

- a) the quality of groceries supplied by the retailers.
- b) the choice of groceries supplied by the retailers.
- c) any other impact or effects?

Comments: The general public increasingly expect and demand high standards relating to environment, food safety, animal welfare and fair treatment of workers. If the definition of 'quality' incorporates sustainability and fairness, which it should, then the GCA has played an important role in (at worst) preventing decline in quality. The public want to know fairness is assured in grocery supply chains and that farmers and those manufacturing our food are not mistreated. Separately, we want to highlight the importance of introducing robust and legally binding fair dealing supply chain codes, as promised in the Agriculture Act, but these have not yet materialised. We have a particular interest in the Dairy Code, but a broader interest in Codes for other supply chains. We would urge those responsible to introduce these Codes soon and to work in close contact with the GCA to ensure food supplies are resilient and that workers & organisations are treated fairly.