

Written evidence submitted by Mark White, Groceries Code Adjudicator (FFS0008)

Supplementary evidence regarding fairness in the food supply chain

In response to the Committee's call for evidence regarding fairness in the food supply chain, I am pleased to supplement the evidence that I submitted in July 2023 (at Annex A).

I adopt below the definitions in my previous evidence.

The effectiveness of the GCA in enforcing the Code

In my previously submitted evidence, I set out findings from my annual survey of suppliers to the Retailers that show improved perceived compliance with the Code since the establishment of the GCA. My annual survey for 2024 confirmed these findings. The average overall perceived compliance score across the Retailers was 91% compared to 73% in 2014. The slight drop from 92% in 2023 was driven by a fall in perceived compliance by a single Retailer, Amazon.com, Inc.

Given this evidence of improved perceptions of Retailer compliance, I do not believe that the GCA needs any further powers to continue effectively enforcing the Code.

The scope of, and potential reforms to, the Code

In my previous evidence I reported that it had not been necessary for the GCA to recommend to the CMA any changes to the Code. I have not made any such recommendations to the CMA since submission of my previous evidence to the Committee because I believe that the Code remains suitable for its intended purpose of ensuring fair treatment of direct suppliers to the Retailers.

Collaboration between the Agricultural Supply Chain Adjudicator and the GCA

I have met Richard Thompson routinely since his appointment as Agricultural Supply Chain Adjudicator. We have discussed matters including the regulatory regimes that each of us oversees, how we will work together to ensure clear communication to affected businesses and how we will share information about issues in order to collaborate appropriately and effectively. I intend to continue to work closely with Mr Thompson and relevant officials at Defra to that end.

Yours sincerely,

Mark White
Groceries Code Adjudicator

Annex A – GCA written evidence submitted on 25 July 2023

I am pleased to be able to write in response to the Environment, Food and Rural Affairs Committee’s call for evidence regarding fairness in the food supply chain. My evidence relates to the Committee’s question, “Is existing regulation appropriate, for example the Groceries Supply Code of Practice and the Groceries Code Adjudicator for supermarkets’ direct suppliers...?”

The Groceries Supply Code of Practice

On 30 April 2008 the Competition Commission (CC) published its findings following its investigation into the supply of groceries by retailers in the UK. The CC’s report stated that “supply chain practices that transfer excessive risks and unexpected costs to suppliers...[were] sufficiently prevalent to cause concern”¹ and that such transfers of risk and cost were “likely to lessen suppliers’ incentives to invest in new capacity, products and production processes”². Its investigation having concluded that there were adverse effects on competition, the CC made the Groceries (Supply Chain Practices) Market Investigation Order 2009 (“the Order”), which sets out the Groceries Supply Code of Practice (“the Code”) to which designated retailers (“Retailers”) are subject.

The Code imposes obligations on the 14 largest UK grocery Retailers with UK annual groceries turnover of more than £1 billion. The Code states that Retailers must at all times deal with their direct suppliers fairly and lawfully and sets out prohibited supply chain practices informed by the CC investigation. These include harmful conduct such as the retrospective variation of supply agreements, delay in payments, requiring payments for various reasons, and ceasing or significantly reducing the volume of purchases without a genuine commercial reason and without giving reasonable notice.

The Groceries Code Adjudicator Act 2013 (“the Act”) states that if I believe it appropriate that changes be made to the Code, I must recommend those changes to the Office of Fair Trading (now the Competition & Markets Authority (CMA)). To date that has not been necessary. The Code has proven flexible enough to be applied to new circumstances and challenges that have arisen in the sector. For example, the provisions of the Code relating to positioning have been applicable to online retailing as that has become more widespread. This flexibility allowed the Code to remain effective throughout the COVID-19 pandemic, with, for example, its requirement that Retailers give reasonable notice of significant reductions of purchases considered in the context of the prompt decisions necessary to ensure availability for customers.

The Groceries Code Adjudicator

The Groceries Code Adjudicator (GCA) was established under the Act on 25 June 2013.³ The 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 and choice to consumers.

I was appointed Adjudicator on 31 October 2020. To shape my work I engage proactively with grocery suppliers and their representatives, including with food producers, to ensure that I understand their concerns. Although the Code only covers direct suppliers to the Retailers, I engage with suppliers through the supply chain, believing that understanding pressures faced by all suppliers is important in anticipating likely issues in the relationships that I regulate directly. I am also mindful that as Retailers alter their commercial strategies, either starting to

¹ Competition Commission (2008), [The supply of groceries in the UK market investigation](#), Para 9.66

² Ibid. Para 9.83

³ The establishment of the GCA followed a period in which large retailers were given some time to set up a voluntary Ombudsman, but this self-regulatory approach did not progress.

contract with consolidators or removing intermediaries from their supply chains, today's indirect supplier may become tomorrow's direct supplier to a Retailer.

I use the information that I receive from suppliers to drive improvements in Retailer practice through the GCA's collaborative approach to regulation. When suppliers tell me about an issue, I make Retailers aware of it so long as that is proportionate and possible while protecting the supplier's identity. CCOs then investigate the issue and identify any action by the Retailer that is necessary. I am able to give advice or guidance where necessary. If it is not possible to resolve issues in this way, I have the power to investigate and, if I am satisfied that a Retailer has broken the Code, take enforcement measures including the possibility of fining the Retailer up to one per cent of its UK turnover. As the informal stages of my collaborative approach have been the best way to quickly resolve supplier issues, I have not conducted any investigations since my appointment, but I would not hesitate to do so if I believed that was the best way to ensure compliance with the Code.

Some suppliers are reluctant to contact me because they believe there might be negative consequences for their businesses if Retailers found out. Given the importance of information from suppliers to the GCA, I emphasise whenever possible my statutory obligation to maintain supplier confidence. For those suppliers that remain concerned I have established an anonymous reporting platform. I am pleased that the proportion of suppliers reporting in my annual survey that they would not contact the GCA because of the fear of retaliation has dropped steadily in recent years.

I have also worked with Retailers to reduce supplier concerns about retaliation should they contact the Retailers directly. All Retailer Code Compliance Officers (CCOs) have committed to handling information from suppliers confidentially, so not sharing concerns within the Retailer's business unless they have the supplier's consent to do so. Retailers have also committed to ensuring that suppliers do not face negative consequences if suppliers raise issues with them and I am monitoring Retailers' work to meet that commitment.

The Secretary of State for Business and Trade ("the SoS") reviews the GCA's performance every three years and is required to consult in doing so, providing suppliers, Retailers and others the opportunity to hold the GCA to account including regarding the exercise of my powers and my effectiveness. The results of the first statutory review, published in July 2017, concluded that the GCA is regarded as an "exemplary modern regulator with an international reputation". The results of a second review, published in July 2020, found that the GCA continued to be highly effective in enforcing the Code and in exercising its powers, and that there was still a need for the GCA to ensure Retailers comply with the requirements of the Code.

The most recent statutory review of the GCA covered the period 1 April 2019 to 31 March 2022. In its report laid before Parliament on 19 July 2023 the government concluded that the GCA was "a highly effective regulator that made good use of its powers to take a balanced and collaborative approach that usually resolved issues before the need for an arbitration or investigation; an approach that was valued throughout the sector."

GCA action to support food suppliers

Given my regular engagement with food suppliers I am aware of and committed to alleviating the pressures that they face. I recognise the high level of business insolvencies in the wider economy and the impact of food supplier insolvencies or economic unviability of production on availability of food for consumers. In this environment, fair treatment of suppliers is vital.

As GCA I have taken action, detailed below, that brings benefits primarily for food suppliers that supply directly to Retailers and action that likely brings benefits for all food suppliers no matter their position in the supply chain.

Direct suppliers to Retailers

Inflation and the subsequent scale of cost price increase (CPI) requests has created significant pressures for both suppliers and Retailers. In my 2022 survey, 80% of direct suppliers reported having requested a price increase from at least one Retailer in the preceding 12 months and in the 2023 survey, this had risen to 91%.

After hearing concerns from suppliers, I developed a best practice approach for the negotiation of CPIs, which is encapsulated in 7 Golden Rules⁴ published in January 2022. The rules include clear communication about timescales, prioritisation of smaller suppliers, and prohibition of automatic de-listing of products after price negotiations.

Retailers have made changes to their internal processes, guidance and training to reflect the 7 Golden Rules and I believe these changes have had a positive impact. In my 2022 survey, 26% of suppliers reported that in the previous 12 months they had experienced a refusal to consider a CPI or an unreasonable delay in implementing an agreed CPI. In 2023, once responses related to the latest designated retailer are removed, this percentage was unchanged at 26% despite an increase in CPI requests. I believe that this stability in supplier concerns suggests my work on best practice has been effective in making negotiations fairer, while not seeking myself to determine the agreed negotiated price. As some commodity prices start to fall and inflation slows, I will ensure that any requests from Retailers for suppliers to reduce cost prices are also made fairly.

My annual surveys for 2022 and 2023 show slightly increased supplier reporting of delays in payments and issues including invoices not paid to terms, difficulty promptly resolving invoice discrepancies, slow resolution of data input errors, and insufficient time to challenge proposed invoice deductions. I believe that it is likely that many of these issues are the downstream impact of price negotiations, for example where communication has been poor or Retailers' systems have been unable to cope with the volume of price changes. Through my discussions with Retailers about the 7 Golden Rules and through visits to Retailer distribution centres to examine their receipting and payment processes, I have focused on minimising payment-related issues and will continue to work intensively in this area.

All food suppliers

I have engaged with Retailers to improve their understanding of and response to the issues faced by producers. While my remit under the Act means that my focus is on fair treatment of direct suppliers to Retailers, I believe that improved Retailer understanding of issues faced by food suppliers may benefit companies throughout the supply chain, and ultimately consumers.

For example, I understand the difficulty faced by producers in setting their own plans before knowing whether there will be a buyer for their products. I have therefore discussed with Retailers what they are doing to enhance their understanding of crop growing cycles and the challenges created for producers by any late setting by Retailers of supply programmes. I have heard from producers that they have had to repeatedly explain the issues they face to Retailers, including in relation to product specifications, weather impacts, and required accreditations. I have therefore also asked Retailers to consider improved training for buyers and to extend the period of time buyers spend in a particular category to improve their knowledge of suppliers' concerns and challenges. Retailers are committing to making these changes and I expect that this will enable them to work more collaboratively with food suppliers.

I have been determined to ensure fair and lawful treatment of suppliers as efficiently as possible. I am supported in my work by a small team (currently 7.3 full-time equivalents) of seconded civil and public servants. I am pleased that the levy on the Retailers that funds the GCA's work for the financial year 2023/24 was £2 million in total, the same amount as in the

⁴ GCA (2022), [Edition 28: News from the Adjudicator](#)

year before my appointment despite the designation of an additional Retailer and the effects of inflation. The levy was approved by the SoS in accordance with the Act on 8 June 2023.

A decade of improving fair and lawful treatment

The work of the GCA over the last decade has resulted in improved compliance with the Code. In the first GCA annual survey in 2014, the average reported overall Code compliance among the then-designated retailers was 73%. This compares to 92% in my 2023 survey. Over ten years since the GCA's establishment the proportion of suppliers reporting a specific issue has also fallen and the proportion willing to report an issue to the GCA has risen. These results demonstrate in my view the ongoing effectiveness of the GCA in the exercise of its functions.

This improvement in reported overall Code compliance represents suppliers becoming less exposed to the Retailer practices that caused the transfer of excessive risk or unexpected costs. The existing regulation has been instrumental in delivering this progress and continues to exert a positive influence over an ever-changing sector.