

# GCA FINDS TESCO BREACHED GROCERIES CODE ON PAYMENT DELAYS

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# Tesco told to introduce significant changes to its practices and systems

Christine Tacon, the Groceries Code Adjudicator (**GCA**), has found that Tesco has seriously breached binding requirements of the Groceries Supply Code of Practice (the **Code**) that require it to pay suppliers in accordance with contractual terms and in any event within a reasonable time.<sup>1</sup>

The GCA has required Tesco to introduce significant changes to the way it deals with payments to suppliers, including stopping Tesco from making unilateral deductions from money owed to suppliers, requiring it to pay for goods delivered in accordance with agreed terms, promptly resolving data input errors, and providing transparency and clarity in its dealings with suppliers. In addition, Tesco's buyers and finance teams must be trained on the findings of the investigation.

## GCA's investigation

The GCA launched her investigation on 5 February 2015 following Tesco's announcement on its profit over-statement (which is the subject of a separate investigation by the Serious Fraud Office). The investigation focused on whether Tesco's dealings with suppliers from 25 June 2013 to 5 February 2015 had breached paragraph 5 of the Code (delays in payments) and paragraph 12 (payments by suppliers to secure better positioning or an increase in shelf space).

## Breaches, and potential breaches, of the Code

- ▶ **Delays in payment:** The GCA found that Tesco breached the Code, with cultural factors a major contributor to unreasonable delays in payments. Delays in payment were a widespread issue affecting a broad range of suppliers on a significant scale. The GCA received evidence of a number of factors that caused delays in payment, including:
  - ▶ Data input errors
  - ▶ Duplicate invoicing
  - ▶ Tesco's focus on meeting financial targets
  - ▶ Unilateral deductions made in relation to historic claims
  - ▶ Unilateral deductions for short deliveries and service level charges
  - ▶ Unilateral deductions made for other items or unknown items
- ▶ **Payments for better positioning or shelf space:** The GCA found no evidence that Tesco had breached of the Code by directly requiring suppliers to make payments to secure better positioning or increased shelf space. However, the GCA found evidence of practices that may amount to an indirect requirement for payments to secure better positioning or increased shelf space. The GCA intends to launch a consultation on this issue.
- ▶ **Payments for category captaincy:** The GCA found evidence of significant payments by suppliers for category captaincy and considers there is some risk of the Code being circumvented through indirect payments being made in order to secure better positioning or increased shelf space via other business arrangements. She has written to the CMA to request that they consider this issue.

## Adjudicator's recommendations

- ▶ Money owed to suppliers for goods supplied must be paid in accordance with the terms for payment agreed between Tesco and the supplier
- ▶ Tesco must not make unilateral deductions – suppliers must be given 30 days to challenge any proposed deduction and if challenged Tesco will not be entitled to make the deduction
- ▶ Data input errors identified by suppliers must be resolved promptly, and pricing errors should be fast-tracked and resolved within seven days of notification by a supplier
- ▶ Tesco must provide transparency and clarity in its dealings with suppliers – the methodology for calculating any money due must be clear and Tesco must adopt consistent language in its invoices

<sup>1</sup> The Adjudicator's press release is available here: <https://www.gov.uk/government/news/tesco-breached-code> and the full report here: <https://www.gov.uk/government/publications/gca-investigation-into-tesco-plc>

- ▶ Tesco finance teams and buyers must be trained in the findings from this investigation

Tesco has four weeks to provide a detailed implementation plan and must then provide regular reports, so that the GCA can monitor compliance with the recommendations.

## Comment

Whilst it will take some time to assess the recommendations' effectiveness, suppliers may take comfort from the changes Tesco is already understood to be making to improve Code compliance.

In addition, the GCA's report contains detailed consideration of the types of practices that breach elements of the Code and provides guidance on the GCA's interpretation of interpret those elements. This should help clarify awareness and compliance throughout the industry, as other large retailers will be able to assess their own practices and make improvements where needed.

The GCA was limited in the enforcement actions she could take against Tesco – she could only make recommendations or require information to be published, as the power to fine relevant retailers only applies to breaches of the Code that occurred from 6 April 2015 onwards. Some commentators may see the recommendations as evidence that the GCA lacks the necessary powers to adequately enforce the Code, but although the impact of the recommendations remains to be seen we can appreciate the GCA's approach in actively targeting the specific causes of the breaches. It should be noted that significant fines are anticipated when the Serious Fraud Office concludes its own investigation of Tesco.

Suppliers should also be aware that the Adjudicator may seek information from them in relation to her consultation on indirect requirements for better positioning or increased shelf space, in the context of her new consultation.

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