

News story

Tesco breached Code

From: Groceries Code Adjudicator
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The Adjudicator publishes her report into the compliance of Tesco plc with the Groceries Supply Code of Practice.



Tesco breached Groceries Code on Payment Delays – Tacon

Groceries Code Adjudicator Christine Tacon has told Tesco to introduce significant changes to practices and systems after finding Britain’s largest supermarket seriously breached a legally-binding Groceries Supply Code of Practice (the Code) to protect groceries suppliers.

During a thorough investigation covering the period from 25 June 2013 to 5 February 2015 she found that the retailer had acted unreasonably when delaying payments to suppliers, often for lengthy periods of time.

The Adjudicator was concerned about three key issues: Tesco making unilateral deductions from suppliers, the length of time taken to pay money due to suppliers and in some cases an intentional delay in paying suppliers.

She considered Tesco’s breach of the Code to be serious due to the varying and widespread nature of the delays in payment. The Adjudicator has used her powers to order the retailer to make significant changes in the way it deals with payments to suppliers.

Her five recommendations include stopping Tesco from making unilateral deductions from money owed for goods supplied. Suppliers will be given 30 days to challenge any proposed deduction and if challenged Tesco will not be entitled to make the deduction.

The Adjudicator also insists that the company corrects pricing errors within seven days of notification by a supplier.

Tesco has also been told to improve its invoices by providing more transparency and clarity for suppliers and to put its finance teams and buyers through training on the findings from the Adjudicator’s investigation.

Adjudicator Ms Tacon said: “The length of the delays, their widespread nature and the range of Tesco’s unreasonable practices and behaviours towards suppliers concerned me. I was also troubled to see Tesco at times prioritising its own finances over treating suppliers fairly.

“My recommendations will deal with the weaknesses in Tesco’s practices during the period under investigation.

“I am pleased that many suppliers have reported improvements in their relationship with Tesco to me since the period under investigation. Tesco has also kept me informed of changes it is making to deal with the issues. This is a demonstration of the impact my role is making. I believe that my recommendations will lead to significant improvements at Tesco and in the sector.”

She launched the GCA’s first investigation in February following the Tesco announcement on its profit over-statement and the receipt of information from the retailer and the sector. The information available to the Adjudicator gave her a reasonable suspicion that the retailer had breached areas of the Groceries Supply Code of Practice.

During the investigation she found delay in payments arising from data input errors, duplicate invoicing, deductions to maintain Tesco margin; and unilateral deductions resulting from forensic auditing, short deliveries and service level charges.

Ms Tacon said: “The sums were often significant and the length of time taken to repay them was too long.

“For example one supplier was owed a multi-million pound sum as a result of price changes being incorrectly applied to Tesco systems over a long period. This was eventually paid back by Tesco more than two years after the incorrect charging had begun.”

The GCA has set a four-week deadline for Tesco to say how it plans to implement her recommendations. She will then require regular reports from the company on progress, including information on the number and value of invoices in dispute as well as the length of time they remain unresolved.

The Adjudicator also investigated whether Tesco had required suppliers to make payments to secure better shelf positioning or an increased allocation of shelf space in breach of the Code. She found no evidence of this.

However, she was concerned to find practices that could amount to an indirect requirement for better positioning. These practices included large suppliers negotiating better positioning and increased shelf space in response to requests for investment from Tesco, as well as paying for category captaincy and to participate in Tesco range reviews.

She said: “I am concerned that as a result of these practices the purpose of the Code may be circumvented to the detriment of smaller suppliers who cannot compete with payments for better positioning, category captaincy or to participate in range reviews.

“I have decided to launch a formal consultation with the sector, involving both retailers and suppliers, to help me reach a firm conclusion on whether these practices are acceptable.”

Ms Tacon has also written to the Competition and Markets Authority (CMA) asking them to consider the issue of category captaincy as well as referring evidence that Tesco may have breached CMA rules by operating without all its terms of supply agreement being in writing – a factor that may have contributed to payment disputes and delays.

Note to editors:

- The GCA report on the investigation into Tesco plc is available [here](#).
- Provisions of the Groceries Supply Code of Practice (the Code) covered by the investigation were:
 - Paragraph 2: A retailer must at all times deal with its suppliers fairly and lawfully.
 - Paragraph 5: A retailer must pay a supplier for groceries delivered to that retailer’s specification in accordance with the relevant supply agreement, and, in any case within a reasonable time after the date of the supplier’s invoice.
 - Paragraph 12: No payments for better positioning of goods unless in relation to promotions.
- Category management is described in the 2000 Competition Commission report as “a leading supplier being responsible for analysing data on consumer preferences; identifying the best means of meeting these; determining the most effective ways in which suppliers provide the relevant products, in terms of range and allocation of space; and advising the multiple accordingly”. Category captaincy is an expression to describe the lead supplier in this arrangement.
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