

Summary of Procedural Officer Decision 2018/1

Decision 2018/1 relates to the timeframe for considering applications made to the Procedural Officer.

A non-confidential summary of this decision is set out below. The details of the Procedural Officer's process and the nature of this application have been omitted. In light of the conclusion on the timing of the application, the Procedural Officer did not consider it necessary to reach a view on the issues raised in the application.

1. The role of the Procedural Officer to consider procedural complaints in a Competition Act case is set out in the CMA Rules.¹ The CMA's view about the role of the Procedural Officer and the process for making a procedural complaint is provided in the Guidance on the CMA's Investigation Procedures, CMA8 (the Guidance),² and also in the Procedural Officer content on the CMA's webpage.³

2. The Procedural Officer content on the CMA's webpage explains that:

'The role of the Procedural Officer is intended to ensure that procedural issues can be addressed quickly, efficiently and cost effectively.'

3. The Guidance states:

'If a party wishes to refer a dispute to the Procedural Officer for review, that party will need to make an application as soon as possible and, in any event, within five working days of being notified of the SRO's decision on the issue in question.' (paragraph 15.7).

4. The information set out on the CMA webpage states:

'A party wishing to refer an issue to the Procedural Officer needs to make an application as soon as possible after being notified of the SRO's decision on the issue in question and, in any event, within five working days of that notification.'

5. The Guidance also sets out the information that is required to make an application. It states:

¹ Rule 8, The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 SI 2014/458.

² The CMA's Guidance on the CMA's investigation procedures in Competition Act 1998 cases (CMA8), paragraphs 15.4-15.11.

³ [CMA webpage](#)

‘A party must provide a short written summary of the issues in question and provide copies of relevant correspondence with the case team and the SRO.’ (paragraph 15.7).

6. The information on the webpage is similar. It explains:

‘The application should be no longer than five sides of A4 paper.’

7. The information on the webpage also explains that if an applicant has concerns about providing a copy of any information or documents, ‘they should raise these concerns with the Procedural Officer before submitting an application’. It is therefore open to any party considering whether or not to make an application to contact the Procedural Officer.

8. The application was received later than five working days following the decision of the Senior Responsible Officer (SRO). This is longer than the period set out in the Guidance as the longstop date for making any application to the Procedural Officer. The application was therefore made out of time. The first issue considered in this decision was whether or not there were reasons why the application should nevertheless be considered.

9. The CMA has clearly stated that the purpose of the Procedural Officer role is to ensure that procedural issues can be addressed quickly and efficiently. The timetable for making an application has been designed to achieve this, with five working days set as a final longstop date. Any application made to the Procedural Officer outside this timetable must therefore be supported by a good explanation for the delay together with strong and compelling reasons why the application should nevertheless be considered.

10. In the decision, the Procedural Officer carefully considered the points made by the applicants and the observations of the CMA case team. These were weighed against the purpose of the Procedural Officer role and the clear guidance on the process for making applications which has been published by the CMA.

11. The Procedural Officer did not consider that there was a good explanation for the delay in making the application in this case which would mean that it should be considered irrespective of the fact that it was made outside the five-day longstop date. There were a number of reasons for this conclusion. They included matters related specifically to this application and matters of more general relevance in relation to applications to the Procedural Officer.

12. Aside from detailed reasons related to the circumstances of this application, the Procedural Officer noted that:

- No indication had been given of any steps which had been taken or which might have been taken to advise of any practical problems in making the application within time.
- The published information provided by the CMA indicates that the Procedural Officer can be contacted in advance of making an application, but no steps were taken to do so and indicate any problems there might be with meeting the timeframes in this case.
- It was also noted that that the process is designed to be a straightforward procedural one, since it relates to the challenge of a decision made by the SRO on any matter.

13. The Procedural Officer therefore did not consider that the points which had been put forward provided a good explanation for the delay in making an application in this case. In addition, in light of the purpose of the Procedural Officer role in ensuring procedural issues can be addressed quickly and efficiently, there would need to be strong and compelling reasons for nevertheless considering any delayed application.

14. Therefore, after careful consideration, the Procedural Officer decided to reject the application on the grounds that it was made out of time.