

Transparency in Consumer Enforcement Cases – Updated Supplementary Note

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1. This note provides information about the CMA’s approach to transparency in consumer enforcement cases, in particular the circumstances in which it may publicly name parties under investigation. It is based on the CMA’s experience in conducting consumer enforcement work to date, and supplements the guidance on the CMA’s broader approach to transparency in CMA6 *Transparency and Disclosure: Statement of the CMA’s Policy and Approach* and CMA58 *Consumer Protection: Enforcement Guidance*. It replaces *Transparency in Consumer Enforcement Cases – Supplementary Note*, which was published on 18 June 2018.

The CMA’s general approach to transparency

2. The CMA is committed to the principle of transparency in its consumer protection work and in general aims to be as transparent as it can about its enforcement activities, for example, to aid consumer and business understanding of how it seeks to ensure that markets work well.¹
3. The CMA’s experience of consumer enforcement cases is that there is a clear public interest in the transparency of such work. Sharing information about its consumer cases – including, where appropriate, the names of parties – can facilitate the performance of the CMA’s functions² by, among other things:
 - encouraging business and consumers to come forward with information that can assist the CMA’s investigation and protection of the public in appropriate cases
 - enhancing consumer and business understanding of when the CMA does, and does not, consider it appropriate to take enforcement action in relation to consumer law infringements
 - keeping the public informed of the progress of a case, including to make clear when businesses in a sector are not under investigation, and
 - developing public confidence in consumer markets and the consumer protection regime as a whole, by demonstrating how the CMA is acting to ensure that consumer law is complied with.
4. The CMA publishes information about its enforcement activities that it considers lawful and in the public interest to disclose, in particular on www.gov.uk/cma and through issuing press notices where appropriate.³ In doing so it will take into account the importance of respecting confidentiality and the need to comply with any relevant statutory provisions in this regard, for example under

¹ See para. 3.21 and 3.22 of CMA58.

² Such as under Part 8 of the EA02 and the Consumer Rights Act 2015.

³ See para. 3.22 of CMA58.

data protection law or Part 9 of the Enterprise Act 2002 (EA02).⁴

The CMA's guidance on transparency in consumer enforcement cases

5. The importance of transparency in consumer enforcement cases is recognised in CMA guidance such as CMA6 and CMA58 which, for example, make clear that:
 - the CMA will place a case opening announcement on www.gov.uk/cma announcing its decision formally to begin a consumer enforcement case, except if doing so would prejudice the case or otherwise be inappropriate.⁵
 - at the same time or as soon as reasonably practicable thereafter, the CMA will also publish a brief description of the case, the relevant legislation, the industry sector concerned and the CMA's reasons for starting a formal case.⁶
6. The level of information about a case provided in a case-opening announcement may vary according to the circumstances of the case.

Transparency as to the identity of parties under investigation

7. The information that may be published under the transparency policy of the CMA mentioned above may include naming the trader whose conduct is subject to investigation. CMA6 and CMA58 are clear that parties in a consumer enforcement case will generally be named in announcements made at the following points in such a case when:
 - the CMA makes an application for an enforcement order in civil consumer enforcement actions,⁷ and
 - the outcome of a case is announced.⁸
8. However, these are not the only circumstances in which the CMA would expect to name parties in a consumer enforcement case.
9. In particular, the CMA would also normally expect to identify publicly all parties who are the subject of CMA consumer enforcement action:
 - other than in exceptional circumstances, when making any relevant case-opening and/or case update announcements⁹
 - when the CMA issues a consultation letter in the case,¹⁰ and
 - when the CMA informs that party that it proposes to seek a court order to address identified consumer law infringements. The CMA would

⁴ See para. 3.23 of CMA58.

⁵ See para. 3.9 of CMA6.

⁶ See para. 3.7 and 3.9 of CMA6.

⁷ See para. 3.13 of CMA6.

⁸ See para. 3.16-3.17 of CMA6 and para. 4.20-4.21 of CMA58.

⁹ For example, it would not be appropriate to name parties at this early stage of a case where doing so could prejudice an investigation by the CMA or by one of the CMA's enforcement partners.

¹⁰ See para. 4.4 – 4.7 of CMA58.

normally expect this to happen where that party has failed to provide suitable undertakings (under section 219 of the EA02) to address those identified infringements by a reasonable deadline notified to the party.

10. Where, exceptionally, the CMA does not name one or more parties in one of the circumstances listed in para. 9 above, it may subsequently decide to do so where it considers it appropriate, such as where:

- continuing to leave such parties unidentified could be expected to result in significant consumer detriment and/or significant harm to other businesses (including those in the same sector)
- the party's involvement in a CMA investigation has subsequently come into the public domain or become the subject of significant public speculation
- the subject matter of the investigation has become of widespread public concern
- a party has requested that it be named by the CMA
- the CMA considers that it would be appropriate to do so to enable the case to be progressed more effectively, or
- enforcement action is associated with similar action being undertaken by one or more other regulators and/or consumer enforcement agencies, whether in the United Kingdom or elsewhere.

11. Any public announcements it makes, including in a consumer case where a party is named, will be made in compliance with the CMA's relevant legal provisions in this regard, for example under data protection law and Part 9 of the EA02.