

Regulated Payment Systems Appeals Rules and Guide

Consultation document

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Contents

	<i>Page</i>
1. Introduction	2
2. Consultation process	4

1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on draft rules of procedure to govern appeals that may be made to it under section 79 of the Financial Services (Banking Reform) Act 2013 (the Act) in respect of certain decisions made by the Payment Systems Regulator (the Authority) under the Act.
- 1.2 This CMA is at the same time also consulting on a draft guide that is intended to assist participants involved in such appeals.

Background

- 1.1 The Act among other things provides that decisions of the Authority to require:
 - the granting of access to a payment system;
 - the variation of certain agreements relating to payment systems; or
 - a person who has an interest in the operator of a regulated payment system to dispose of all or part of that interest;are appealable to the CMA by any person who is affected by the decision (CMA-appealable decisions).¹
- 1.2 The CMA may allow appeals only to the extent that it is satisfied that the Authority's decision was wrong on one or more of the following grounds:
 - That the Authority failed properly to have regard to, or give appropriate weight to, the matters to which the Authority must have regard, in the carrying out of its functions under Part 5 of the Act.
 - That the decision was based, wholly or partly, on an error of fact.
 - That the decision was wrong in law.²
- 1.3 To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.
- 1.4 Where the CMA allows an appeal, it must quash the decision (to the extent that the appeal is allowed) and may:

¹ Section 76(7) of the Act.

² Section 79(5) of the Act.

(a) refer the matter back to the Authority with a direction to reconsider and make a new decision in accordance with its ruling; or

(b) substitute the CMA's decision for that of the Authority.³

1.5 Elements of the procedures for regulating appeals, including the time periods for appealing and completing them and provision relating to the payment of costs by the parties to an appeal, are set out in the Act. The Act, however, also provides that the CMA may make rules of procedure regulating the conduct and disposal of these appeals.⁴

Scope of this consultation

1.6 The CMA proposes to exercise its discretion to make rules of procedure for the purpose of regulating the conduct and disposal of appeals against CMA-appealable decisions and to publish a guide that is intended to assist participants involved in such appeals.

1.7 The CMA therefore seeks views on draft *Regulated Payment Systems Appeals: Competition and Markets Authority Rules* and draft guide to appeals, entitled *Regulated Payment Systems Appeals: Competition and Markets Authority Guide*.

Questions for consultees

1.8 We are asking consultees the following questions:

Do you have any comments on the draft:

(a) *Regulated Payment Systems Appeals: Competition and Markets Authority Rules*; and/or

(b) *Regulated Payment Systems Appeals: Competition and Markets Authority Guide*?

³ See section 79(4) and (6) of the Act.

⁴ Paragraph 16 of Schedule 5 of the Act.

2. Consultation process

2.1 This consultation is being published on the CMA webpages.

2.2 The CMA is seeking views on the following questions:

Do you have any comments on the draft:

(a) Regulated Payment Systems Appeals: Competition and Markets Authority Rules; and/or

(b) Regulated Payment Systems Appeals: Competition and Markets Authority Guide?

2.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role.

2.4 In accordance with its policy of openness and transparency, the CMA will publish non-confidential versions of responses on its webpages, along with a summary of responses received that fall within the scope of the consultation. Respondents will be notified when they are available.

2.5 If your response contains any information you regard as sensitive and that you would not wish to be published, please also provide a non-confidential version for publication and explain why you regard the information excluded as sensitive.

2.6 The consultation will run for three weeks, from 20 June 2017 to 12 July 2017. Responses should be submitted by post or email, **by no later than 5pm on 12 July 2017** and should be sent to:

The Regulatory Appeals Team
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: steven.preece@cma.gsi.gov.uk

Compliance with government consultation principles

2.7 In consulting, we have taken into account the government consultation principles, which set out the principles that government departments and

other public bodies should adopt when consulting with stakeholders. Full details can be found on [GOV.UK](https://www.gov.uk).

Data use statement for responses

- 2.8 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.
- 2.9 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.