

# **The Competition and Markets Authority**

## **Consumer Enforcement Transparency Consultation**

### **Chartered Trading Standards Institute Response**

**September 2020**

## **About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is the professional membership association for trading standards in the UK. Founded in 1881, we represent the interests of trading standards officers and their colleagues working in the UK.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence based policy advice to support local and national stakeholders including central and devolved governments.

Following a Government reorganisation of the consumer landscape, CTSI are responsible for business advice and education in the area of trading standards and consumer protection legislation. To this end, we have developed the [Business Companion website](#) to deliver clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI are also responsible for the [Consumer Codes Approval Scheme](#) which facilitates high principles of assisted self regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

CTSI is also a key member of the [Consumer Protection Partnership](#), set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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***A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. Since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.***  
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This response has been composed by Peter Stonely - CTSI Lead Officer for Civil Law, Sylvia Rook - CTSI Lead Officer for Fair Trading and Trade Descriptions and David MacKenzie - CTSI Lead Officer for E-Commerce. Should you have any queries or wish to discuss the response please do not hesitate to contact Laura Kane - CTSI Policy Executive.

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# Consumer Enforcement Transparency Consultation

## Executive Summary

CTSI welcomes the opportunity to comment on the CMA consultation on Transparency in Consumer Cases – Draft Updated Supplementary Note (the Draft Updated Supplementary Note) that 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 in such cases.

In the Draft Updated Supplementary Note, the CMA among other things states that it will normally expect to identify publicly all parties which are the subject of CMA consumer enforcement action in a case:

- other than in exceptional circumstances, when making any relevant case-opening and/or case update announcements
- when the CMA issues a consultation letter in the case
- when the CMA informs that party that it proposes to seek a court order to address identified consumer law infringements. The CMA would normally expect this to happen where that party has failed to provide suitable undertakings (under section 219 of the Enterprise Act 2002 (EA02) to address those identified infringements by a reasonable deadline notified to the party
- when the CMA makes an application for an enforcement order in civil consumer enforcement actions, and
- when the outcome of a case is announced.

The consultation contains two questions which we have responded to below.

## CTSI Response

### CMA Question 1

**Is the Draft Supplementary Note clear as to the circumstances in which the CMA will name parties in consumer enforcement cases, or is there further information that you consider should be provided.**

We believe that the Draft Supplementary Note is clear with regards to the proposed revised policy. We like the clear explanation of when a business will be named whilst recognising that there will be situations where this may not be appropriate. This enables CMA staff to make the right decision in each case, taking account of other factors such as an ongoing trading standards investigation. In our opinion, there must always be a balance between fairness and transparency.

We fully support the CMA's approach to transparency; the revised document allows for disclosure earlier in an investigation than currently. By this stage in an investigation the CMA will have gathered considerable evidence to enable them to name the business, and they will also be in a position to assess, fairly, when this would not be appropriate.

We believe that it is important for consumers to be aware when CMA action is being taken and against whom. This may avoid consumers' own personal costs of litigation whilst removing suspicion from other businesses. As we have seen, with recent Covid-19 action, a public statement of action being taken against 'significant players' in a market can lead to SME's realising that they may need to review their dealings with their own consumers.

In making this response we have considered the restrictions on disclosure of specified information under Part 9 of the Enterprise Act 2002 and are satisfied that a gateway exists to allow the CMA to exercise its function.

## **CMA Question 2**

### **Do you have any other comments on the information provided in the Draft Supplementary Note?**

We believe the switch from a policy of requiring a decision to be taken whether to name a business, to one where this will automatically be done unless there is an exceptional reason not to do so, should lead to greater consistency and fairness.

We see this policy change as an important shift in the role of the CMA enabling consumers to be better informed, which is essential in the modern marketplace where information is key for helping consumers to make the right decisions when dealing with business. This also beneficial to those businesses who work hard to comply with the law and to treat their customers fairly.