

# Summary of consultation responses

Summary of responses to the draft Guidance on the Operation of the CMA's UK Internal Market Functions and draft Statement of Policy on the Enforcement of the OIM's Information Gathering Powers

21 September 2021  
OIM3

**Office for the Internal Market**

Part of the Competition and Markets Authority

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# 1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is the UK's primary competition and consumer authority. The CMA works to promote competition for the benefit of consumers, both within and outside the UK, to make markets work well for consumers, businesses and the economy.
- 1.2 On 27 May 2021, under section 39(1) of the UK Internal Market Act (**the Act**), we published draft guidance (**Draft Guidance**) on how we expect to approach the exercise of the internal market functions assigned to us in Part 4 of the Act and invited the views of interested parties. This Draft Guidance explained the role of the Office for the Internal Market (**OIM**),<sup>1</sup> a new CMA function that was created by the Act to carry out independent advice, monitoring and reporting in support of the effective operation of the UK internal market following the return of powers from the EU to the UK Government and Devolved Administrations.
- 1.3 Our functions can be broadly classified into two: the monitoring and reporting functions set out in section 33 of the Act and our reporting function on specific regulatory provisions upon request from relevant national authorities<sup>2</sup> under sections 34 to 36. Our section 33 functions are broader in scope than our section 34 to 36 functions, as underlined by the fact that the latter are confined to 'regulatory provisions', as defined in Part 4 of the Act.<sup>3</sup>
- 1.4 Under section 42 of the Act, we must also publish and consult on a Statement of Policy in relation to our approach to enforcing our information-gathering powers.<sup>4</sup> We must have regard to this Statement when reaching decisions about what action to take for failure to comply with an information notice. On 16 June 2021, we published a draft version of this Statement (**the Draft Statement**) and invited responses.<sup>5</sup>

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<sup>1</sup> For the remainder of this document, we use the term OIM when referring to the CMA discharging its internal market functions.

<sup>2</sup> Relevant national authorities means the Secretary of State; the Scottish Ministers; the Welsh Ministers; and a Northern Ireland department, as the case may be (section 45(6) of the Act).

<sup>3</sup> See section 30 and in particular section 30(1), which provides 'A regulatory provision is within the scope of this Part so far as it meets the conditions in subsection (2) and (4)' and section 30(8) and (9), which define the meaning of 'regulatory provision' in Part 4 of the Act.

<sup>4</sup> Under section 42 of the Act, the OIM must consult each relevant national authority and such other persons as it sees fit in the process of putting together or revising its policy approach.

<sup>5</sup> From 16 June to 11 August 2021, the Department for Business, Energy & Industrial Strategy (BEIS) also separately consulted under section 43(8) of the Act on the maximum penalty that the OIM can impose for non-compliance with the OIM's information notices. See: BEIS, Setting the maximum level of penalties for non-compliance with Office for the Internal Market requests for information, June 2021.

- 1.5 Our consultations on the Draft Guidance and Draft Statement closed on 22 July 2021. This **Summary of Responses** sets out the key issues raised by the responses, our views on these issues, and changes we have made to the Draft Guidance and Draft Statement as a result.
- 1.6 Having considered the consultation responses and made appropriate amendments to the Draft Guidance and Draft Statement, we have finalised and adopted the Guidance and Statement. These documents are published on the CMA's website alongside this Summary of responses. As set out in our Guidance we are committed to ensuring that we adapt our practice in response to our emerging experience and will amend the Guidance and Statement accordingly.

## 2. Overview of the consultation responses

### Responses received

- 2.1 We received 20 responses to the consultations. All respondents referred to the Draft Guidance in their response and 8 respondents referred to the Draft Statement. A full list of respondents can be found in **Appendix A**. Non-confidential versions of responses to the consultations are available on the consultation webpages.<sup>6</sup> We would like to thank all those who responded to the consultations.
- 2.2 Responses were from a wide range of stakeholders with an interest in our role and functions, including relevant national authorities and organisations representing businesses from all four nations. In addition, we received responses from academics and members of the public.

### Other engagement

- 2.3 During the consultation period, we also held three business roundtables attended by representatives from a wide range of organisations. We have also continued to work closely with officials from the relevant national authorities over the course of 2021 and this summary reflects inputs from these contacts.

### Overarching comments

- 2.4 Overall, whilst a number of the respondents were not supportive of the UK Internal Market Act and the provisions within Parts 1 to 3, there was a broad recognition of the need for assessment of the effects of divergence within the UK internal market post EU exit. There was also broad support for the OIM's functions.
- 2.5 Respondents who commented on our Draft Statement also largely accepted the need for us to have powers to impose penalties for non-compliance with information requests, but some raised questions around how and when they would be used.

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<sup>6</sup> See: [Consultation on Draft Guidance on the Operation of the CMA's UK Internal Market Functions](#); and [Consultation on Draft Statement of Policy on the enforcement by the OIM of its information-gathering powers](#).

2.6 The remaining chapters set out in more detail the feedback we have received from respondents and how we have responded.

### **3. Comments on the Draft Guidance**

#### **Introduction**

- 3.1 The comments we received related mainly to: Stakeholder engagement and communication, the operation of Common Frameworks, 'Even-handedness' and our approach to assessing and defining impacts on the effective operation of the internal market.
- 3.2 Other important issues raised included considerations relating to the Northern Ireland Protocol (NIP), Governance arrangements for the OIM and the evidentiary threshold that we would apply to requests. We have set out a broad thematic summary of the points raised and our response below.

#### **Stakeholder engagement**

- 3.3 More than half of respondents highlighted the need for us to adopt a strengthened approach to stakeholder outreach and engagement as well as consultation across the whole of the UK. This was thought to be particularly important given that the concept of a UK internal market and the practical implications of potential regulatory divergence on businesses, consumers and the wider economy were new and therefore not widely understood.
- 3.4 Suggestions included the need for targeted and accessible engagement with businesses of differing sizes in each of the nations of the UK, as well as with key stakeholders in Government, professional bodies and academia to raise awareness of the internal market. Other respondents felt that this engagement was particularly important for us in building the OIM's evidence-base and in the development of baseline data.
- 3.5 Respondents also highlighted the need for ongoing engagement with interested parties throughout the review and report processes and suggested that we build transparency mechanisms into our procedures to give interested parties the opportunity to contribute to the findings and recommendations of our reports.
- 3.6 Generally there was an overall sense from the consultation responses that we should be seen as an authoritative body which could, both reactively through our reporting functions under sections 34 to 36 of the Act and pro-actively through our monitoring and discretionary functions under section 33 of the Act, offer expert advice, guidance and information on the UK internal market to a wide set of stakeholders.



## **Response**

- 3.7 We accept and acknowledge the representations made through the consultation process on the need for an expanded programme of stakeholder outreach and engagement after launch.
- 3.8 We will build on and strengthen the engagement we have undertaken to date, including by:
- developing a further programme of targeted engagement with businesses, trade bodies, national authorities, and regulators in each of the UK nations as well as with legislatures and other key stakeholders;
  - supporting this engagement and our wider programme of stakeholder outreach, where possible, with more accessible materials (such as factsheets, presentations, and audio-visual resources) explaining the broad scope of the internal market role we have been given; and
  - commissioning bespoke research, data gathering and national business level surveys to assist with the building of an overall evidence-base which can be used for benchmarking and comparative analysis.
- 3.9 We also acknowledge both the need for, and benefits of, transparency in the way we fulfil our functions. The Act affords us wide discretion in relation to how we gather information and evidence. We will therefore consider a range of different options which facilitate the transparency of our work. This may include targeted requests for information (formally or informally), publishing calls for information in specific sectors, and giving stakeholders the opportunity to comment on the developing evidence-base and our emerging views.
- 3.10 We will also launch a new online Gateway to gather information from businesses, consumers and others about internal market matters across the UK.
- 3.11 Finally we share the views of many of the consultation respondents that the OIM should look to become a centre of excellence on internal market matters which, consistent with our legislative functions, can be a resource for businesses, policy makers and other stakeholders across the whole of the UK.

## Common Frameworks

- 3.12 Approximately half of respondents discussed the role of common frameworks within the internal market. Many advocated a prominent role for them in managing future divergence within the internal market, arguing that this best respected the devolved settlements whilst providing a forum for the effects of divergence to be managed on a pan-UK basis; balancing economic impacts with regulatory autonomy.
- 3.13 A significant number of these respondents queried how our functions would interact with the common framework process, what form our assessment of their interaction with the internal market would take, whether our analysis would be undertaken at the level of individual frameworks or overall; as well as what added value we would bring to the analysis that was otherwise lacking and if we would produce recommendations on these issues.
- 3.14 Some respondents suggested specific roles for us in supporting the common frameworks process such as the provision of advice to national authorities on the potential, or actual, economic effects of potential exclusions from the Market Access Principles (MAPs)<sup>7</sup> on the effective operation of the internal market. This advice could then inform decisions by national authorities across the UK.
- 3.15 Some respondents also queried how our approach to the analysis of the economic effects of regulation on the effective operation of the internal market was consistent with our consideration of the impacts of managed divergence through common frameworks. This point is drawn out specifically later.

### ***Response***

- 3.16 Strategic choices about how potential divergence within the internal market is to be managed, and the role of common frameworks within that process, are matters for the UK Government working with relevant national authorities in Cardiff, Edinburgh and Belfast.
- 3.17 As set out in the Act, our role includes reporting on the impact of common framework agreements on the operation and development of the internal market in the United Kingdom and any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements.

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<sup>7</sup> See Parts 1 to 3 of the Act.

- 3.18 In fulfilling this role, we may consider undertaking analysis both at the level of the individual framework, where appropriate, as well as an overall assessment of the interaction of the MAPs with common frameworks more generally within the context of the evidence-base available.
- 3.19 We have added clarification to the Guidance that the scope of this analysis may include, but not be limited to, defining the respective market conditions and regulatory conditions in place in each of the nations, the scope of permitted and actual divergence; the existence, extent and impact of any related exclusions from the market access principles; and assessment of impacts on trade and other economic variables. This is an illustrative, not an exhaustive list, and we will adapt our analytical approach as we learn from operational experience.
- 3.20 We are open, within the constraints of our functions under the Act, to exploring with national authorities how best we can support them in the operation of the common frameworks process. We will aim to engage with them in developing the evidence-base which will underpin our report in March 2023 and to ensure that our work adds value to the separate assessments that the national authorities will be undertaking as part of the frameworks process.

## **Even-handedness**

- 3.21 Almost half of respondents commented on the concept of ‘even-handedness’ as set out within the Guidance. Whilst the majority of respondents were strongly in favour of the general concept of the OIM being even-handed with respect to each of the national authorities, many queried what this might mean in practice, with some warning against formulaic or quota based approaches to the consideration of requests. Others asked why the locus of ‘even-handedness’ seemed to be expressed within the Prioritisation Principles and not embedded throughout all of our functions.

## **Response**

- 3.22 We have taken on board the consultation responses. The Guidance recognises that when carrying out our functions, we will have regard to the need to act even-handedly in relation to the relevant national authorities.
- 3.23 Where even-handedness is referred to in the Guidance document as a prioritisation principle, it is aimed at ensuring, practically, that we take a balanced approach to our programme of work across the internal market as a whole.

3.24 For the avoidance of doubt, we would reiterate that the prioritisation principle of even-handedness complements and does not replace considerations of significance and impact. We will not apply quotas of any kind. The principle is there to ensure that we treat consumers, businesses and national authorities across the UK fairly and equitably, recognising that the internal market is a shared asset of each nation and citizen equally.

### **Assessing and defining impacts on the ‘effective operation of the internal market’**

3.25 A number of responses to the consultation asked whether, in our reports and analysis, we would consider the economic effects of regulatory provisions only, and/or to what extent we would consider other wider effects including those relating to public policy objectives. The broad majority of responses suggested that we should consider these wider effects as part of our analysis.

3.26 The thrust of those arguments was that the economic concept of a ‘market’ was inevitably bound up with the socio-political context in which it operates. Thus political choices are made about, for example, what may be traded and the impact of such choices cannot and should not be considered separately from purely economic effects.

3.27 Furthermore, a number of respondents contrasted paragraph 2.21 of the legal chapter of the Guidance, which restricts the matters on which we will provide advice and analysis to economic effects only, with paragraph 3.2 of the analytical chapter which discusses how we will take account of “*effective management of regulatory divergence (including through the use of common frameworks)*”.

3.28 Here, it was argued that the consideration of the effective management of such divergence involved a consideration of effects wider than purely economic ones.

3.29 Respondents also raised other discrete points in relation to various definitions within the Guidance, including the evidentiary base underpinning assessments of the effective operation of the internal market and its ‘health’. It was strongly suggested that a key early priority for us should be to compile empirical data on the functioning of the internal market and the effects of regulatory divergence upon it, perhaps through the development of a baseline report.

## **Response**

- 3.30 When carrying out our functions we will have due regard to our objective to support the effective operation of the internal market in the UK through the application of economic and technical expertise, with particular reference to the purposes of Parts 1 to 3 of the Act.<sup>8</sup>
- 3.31 A key purpose of Parts 1 to 3 of the Act is to promote the functioning of the internal market by establishing the MAPs, so as to ensure that ‘people and businesses...can work and trade freely across the whole of the UK’.<sup>9</sup>
- 3.32 In light of the above, when exercising our functions, our analysis is likely to be focused on trade between the nations and, in particular, on the economic effects on trade (either actual or anticipated), with due regard to Parts 1 to 3 of the Act. Such economic effects could include, for instance, distortion of competition or trade, impacts on prices, the quality of goods and services or choice for consumers.<sup>10</sup>
- 3.33 However, we accept that non-economic policy goals are likely to play a role informing proposals and regulatory provisions upon which we receive a request for a report under our section 34 to 36 functions. The Act also recognises this position, for example, by excluding certain regulatory provisions from the scope of our section 34 to 36 functions.<sup>11</sup> Our role is, however, to assess regulatory provisions against the operation of the UK internal market, not against wider policy considerations.
- 3.34 Notwithstanding, where it is appropriate to do so, we will clarify the scope of our report, or acknowledge the requesting national authority’s wider considerations which fall outside the scope of the report. In addition, our prioritisation principles may play a role in ensuring that we appropriately exercise our discretion under sections 34 to 36 to provide reports (or advice as applicable) which are relevant, of assistance to national authorities, and support effectively the operation of the internal market.
- 3.35 We do not consider there to be any contradiction between our primary focus on economic effects, particularly in the context of our sections 34 to 36 functions, and paragraph 3.2 of the draft guidance, which referred to us

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<sup>8</sup> Section 31(2) of the Act

<sup>9</sup> See paragraph 1 of the Act’s Explanatory Notes.

<sup>10</sup> Section 34(4) of the Act

<sup>11</sup> See for example Schedule 1 (exclusions from market access principles) and section 30 (2)(a) and (b).

considering the effective management of regulatory divergence (including through the use of common frameworks) in the context of our overall responsibilities (including our monitoring and reporting functions under section 33).<sup>12</sup> Common frameworks and other managed divergence processes (for example the MAPs) are themselves grounded in the operation of Parts 1 to 3.<sup>13</sup> Therefore, matters directly related to their operation can be considered by us in a way that other effects not directly related to the functioning of the internal market cannot be.

3.36 In any event, our focus is likely to remain grounded in the economic effects of divergent regulatory choices on the effectiveness of the internal market.

3.37 On the issue of evidentiary base, we agree with the need to build the data in relation to the functioning of the internal market, and to establish baselines where it is possible to do so. We have provided further detail within the Guidance document on our plans in this regard.

## **Other issues of note**

3.38 There were a number of other issues raised by a small number of respondents, including:

### ***Northern Ireland Protocol (NIP)***

3.39 Some respondents mentioned the effects of the NIP and its interaction with the MAPs, common frameworks and our work. Respondents requested further clarification on the interaction of our functions and the NIP.

### ***Response***

3.40 We have added clarification within the Guidance document, which makes clear that the NIP and legislative provisions which are necessary to give effect to the NIP are outside the scope of our functions. This has been achieved by adding relevant text to the description of the monitoring and reporting functions under section 33 of the Act in Chapter 2 of the guidance.

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<sup>12</sup> As noted at paragraph 3.17 above, the OIM's functions include reporting on the impact of common framework agreements on the operation and development of the internal market in the UK and any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements (see section 36(c) and (d)).

<sup>13</sup> For common frameworks, see for example sections 10(3) and 18(3) of the Act.

- 3.41 More generally, in light of this position and after careful consideration of the consultation responses, we will acknowledge the NIP as a matter of fact and make clear the scope of our reports, where it is appropriate to do so.

### ***Evidentiary Thresholds***

- 3.42 A small number of respondents queried whether we had, in the context of our functions under sections 34 to 36, imposed thresholds upon relevant national authorities which were inconsistent with the Act.

#### *Response*

- 3.43 We have carefully reviewed the relevant sections of the draft guidance document in light of the consultation responses received and made appropriate amends.

### ***Governance and Task Groups***

- 3.44 A small number of respondents sought further clarification with regard to the OIM's governance arrangements, including how it would retain its independence both from UK Government and within the CMA as well as information on the role of Task Groups and how they would be constituted.
- 3.45 We also received questions on how we would handle information, including potentially sensitive information.

#### *Response*

- 3.46 We are working to develop effective and bespoke systems of Governance for the OIM in recognition of the new functions and duties placed on the CMA through the UKIM Act. This includes the preparation of CMA Board Guidance for the OIM panel on its procedures.
- 3.47 As at September 2021, a public appointments process is underway to recruit an OIM panel and Panel Chair. We expect to work with the Panel Chair in finalising these Governance procedures in the coming months.
- 3.48 We are committed to being transparent about our work. The CMA is also subject to strict rules governing the extent to which it is permitted to disclose information relating to both businesses and individuals, as set out in Part 9 of the Enterprise Act 2002 (EA02). As confirmed in the Guidance, the OIM's use of all information and personal data received in the context of carrying out our functions is also subject to Part 9 EA02 and data protection legislation.

## 4. Comments on the Draft Statement

### Introduction

- 4.1 The comments we received on our Draft Statement focused, in particular, on the proportionality of the OIM's approach to the use and enforcement of its information-gathering powers, and on the way that the OIM would gather and use information more generally.
- 4.2 The Draft Statement set out how the OIM will undertake the enforcement of its information gathering powers and the factors that the OIM will use to decide the nature and amount of any financial penalty imposed. Some of the comments we received related to more general issues concerning how the OIM would gather and use information. We address a number of those comments here, but note that they are not directly relevant to the content of the Statement itself.
- 4.3 A small number of respondents also indicated that they would respond to BEIS' consultation on the maximum penalties that the OIM can impose.<sup>14</sup>

### Proportionality

- 4.4 Some respondents commented on the proportionality of the OIM's approach to requesting information, its consideration of when to apply penalties for non-compliance with information requests and its decisions on the level of such penalties. In particular, some respondents noted that the OIM should take into account the scale and resources available to addressees of **section 41 notices**<sup>15</sup> – suggesting, for instance, that smaller businesses might not realise the significance of an information request from OIM and could also find it harder to comply.
- 4.5 One respondent suggested that by default the OIM should not impose penalties on smaller firms (with fewer than 250 employees), provided that there was no evidence of the firm having acted in bad faith. The same respondent also suggested that consideration of 'reasonable excuse' included whether an addressee had intended to respond to a section 41 notice and

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<sup>14</sup> See: BEIS, Setting the maximum level of penalties for non-compliance with Office for the Internal Market requests for information, June 2021.

<sup>15</sup> Under section 41 of the Act, the OIM has the power to send a written notice (hereafter referred to as a '**section 41 notice**') requiring a person to provide information or documents, to assist it to carry out its functions of reporting, monitoring and advising under Part 4 of the Act, or to use section 5 of the EA02 for these purposes.



thus a failure to respond in good faith should be 'crystallised' in the form of an exemption from penalties for small businesses. We also heard informal feedback that we should consider expanding the meaning of 'reasonable excuse' to include lack of resources.

## **Response**

4.6 We intend to take a proportionate approach to gathering information as well as any enforcement of our powers. As set out in the Statement, the OIM will:

- only ask for documents or information which are relevant to its functions at the time of the request;
- be fair and reasonable in its requests for information and adopt a flexible approach, having regard to a respondent's individual circumstances and the impact of any such request on the addressee;
- use its discretion when deciding whether the request for information has been complied with;
- have regard to all the relevant circumstances, including the size and administrative and financial resources available to the addressee, when assessing whether and in what amount a penalty should be set; and
- assess all the relevant circumstances of the case in the round in order to determine a penalty that is reasonable, appropriate and thus proportionate in the circumstances.

4.7 The Statement also makes clear that:

- Where possible, the OIM will share draft section 41 notices so that the addressees can comment on them. Such comments could include whether the addressee has the resources to respond.
- Recipients of section 41 notices should make known to the OIM any potential difficulties in responding – including administrative, resourcing, financial, logistical and practical issues.
- Parties will be able to make representations where the OIM provisionally decides to impose a fine and appeal to the Competition Appeal Tribunal where the OIM decides to impose a penalty.

4.8 Addressees will therefore be able to raise concerns about their ability to respond to requests and the OIM will give these responses careful consideration. In particular, the OIM will take into account the resources

available to addressees when issuing information notices and the possible application of penalties for non-compliance.

4.9 We have made this clearer in the final Statement with additional text in Chapter 4 to include available resources as one of the non-exhaustive list of factors that may inform the OIM's consideration of the appropriate level of penalty.

4.10 We have also made the following clarifications to Chapter 3 of the Statement:

- Gathering information through informal and voluntary means would not require the OIM to use its statutory information-gathering powers.
- The OIM will use its formal information-gathering powers only for the purposes of fulfilling its Part 4 functions.
- The OIM will, wherever possible, actively invite addressees to comment on the information request and their ability to comply within the deadline.
- We will take into careful consideration any concerns raised by notice addressees about their ability to provide the information required and deadline for doing so, including given the nature of the information requested and the resources available to them.

4.11 We will also continue to work with stakeholders and business representatives to increase awareness of the OIM's role for businesses of all sizes, to help address concerns that some businesses may not be aware of the role of the OIM and its information-gathering powers.

4.12 Given the above, we do not consider that there is a need to exempt small businesses from penalties provided they acted in good faith. Nor do we consider that the concept of reasonable excuse should be expanded to incorporate a lack of resource, since addressees will be able to raise their capacity and capability to respond on receipt of a notice.<sup>16</sup>

4.13 The Statement draws on the experience of the CMA in having the ability to impose administrative financial penalties for non-compliance with formal information-gathering powers.<sup>17</sup> The CMA has taken a proportionate approach when considering whether to use these powers and ensured that recipients of information notices are aware where there are penalties for non-

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<sup>16</sup> For the avoidance of doubt, the intention requirement applies to section 42(2) of the Act, but not section 42(1) of the Act. The Act does not imply that the concept of reasonable excuse means there should be intention.

<sup>17</sup> See [Administrative Penalties: Statement of policy on the CMA's approach \(CMA4\)](#).

compliance. The CMA has imposed penalties for such non-compliance only where it has considered it to be necessary and to date this has amounted to eight occasions since 2014.

- 4.14 We also note that the OIM is a new function and it will review the Statement in light of experience after an appropriate period of operation.

## **Information-gathering and use**

- 4.15 Some respondents raised issues relating to how the OIM would request information, the nature of the information it would be requesting, how it would identify the most appropriate addressees for information requests and how it would be setting deadlines for responses (including whether the OIM would liaise with national authorities).

### ***Response***

- 4.16 These comments were more relevant to the explanations provided in OIM's Draft Guidance (in particular Chapters 2 and 3). We have noted the points raised, many of which are familiar to the CMA in respect of its approach to information gathering, and we will continue to keep our approach under review in light of experience once OIM has commenced its work.
- 4.17 For clarity we have expanded in Chapter 3 of the Statement the non-exhaustive and illustrative list of information the OIM might request. More generally, we intend to take a proportionate and appropriate approach to sourcing information:
- We would expect to discuss deadlines for responses to information requests made to relevant national authorities. In terms of deadlines for other addressees, we will seek to set reasonable deadlines for all section 41 notices, depending on the nature and the amount of information that we have requested and, as noted above, will ask addressees to raise any concerns about meeting these deadlines.
  - We will identify the most appropriate addressees for section 41 notices on a case-by-case basis depending on the information required and who would be most appropriate to provide it.

## **Other issues of note**

- 4.18 Respondents individually raised a number of other issues in their comments on the Draft Statement which we address below.

## ***Transparency***

- 4.19 One respondent proposed that the OIM make records of its decision-making and disciplinary process public, for example by publishing them on its website.

### ***Response***

- 4.20 The CMA has published its policy on transparency<sup>18</sup> and the same principles will apply to the OIM. We expect to publish an OIM Transparency Statement in due course. We have also addressed this issue in Chapter 4 of the Statement with an explanation that the OIM will make public any decision to apply a penalty.

## ***Appeals***

- 4.21 One respondent asked for clarification of the appeals process set out in the Draft Statement – in particular, whether daily penalties would continue to increase at the daily rate while an application for appeal or the appeal itself was being considered, or would be frozen as at the date of the appeal being lodged.

### ***Response***

- 4.22 We have added text in Chapter 4 of the Statement to explain that, if there is an appeal, the OIM will not require a penalty to be paid until the application has been determined, withdrawn or otherwise dealt with by the Competition Appeal Tribunal.

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<sup>18</sup> [CMA 6 - Transparency and disclosure: Statement of the CMA's policy and approach.](#)

## **Appendix A: List of respondents**

1. Charles Whitmore, Cardiff University
2. Churches Together in Wales
3. Council for Licensed Conveyancers
4. David Harries (individual respondent)
5. Department for Business, Energy & Industrial Strategy
6. Federation of Small Businesses
7. Food Standards Scotland
8. Innovate UK
9. Institute for Government
10. Macfarlanes
11. Michael Bridges (individual respondent)
12. Northern Ireland Department for the Economy (official-level comments)
13. Northern Ireland Department of Finance (official-level comments)
14. Ombudsman Services
15. Phillip McCann, University of Sheffield
16. Propertymark
17. Royal Society of Edinburgh
18. Society of Motor Manufacturers and Traders (SMMT)
19. Stephen Weatherill, University of Oxford
20. Welsh Government