

Direct consumer enforcement guidance

CMA200con

**Draft guidance on the direct consumer enforcement
regime set out in the Digital Markets, Competition
and Consumers Act 2024**

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1. Introduction

Overview

- 1.1 The Competition and Markets Authority (CMA) is the UK's primary competition and consumer enforcement body. It helps people and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
- 1.2 This document serves two purposes.
 - (a) Firstly, it sets out the CMA's general approach to the exercise of its direct consumer enforcement powers under the Digital Markets, Competition and Consumers Act 2024 (DMCC Act) to enforce certain consumer laws.² The powers are referred to as 'direct' because the CMA has the power to decide whether the law has been infringed by a party.³ This is a change introduced by the DMCC Act, alongside updates to the court-based procedure to enforce consumer law.⁴ Prior to the DMCC Act only a court could determine whether consumer law had been broken.
 - (b) Secondly, it includes the CMA's statements of policy in relation to the exercise of its powers to impose monetary penalties under Chapter 4 of Part 3 of the DMCC Act and under Schedule 5 to the Consumer Rights Act 2015 (CRA), as amended by the DMCC Act.
- 1.3 The CMA will always have regard to relevant guidance and statements of policy when using its direct consumer enforcement powers but may depart from them when the facts of an individual case justify it and it is appropriate to do so.⁵ There are also procedural rules that apply when the CMA exercises direct consumer enforcement powers. See paragraph 1.8 below for further details on relevant guidance and procedural rules.

¹ More information about the CMA and its powers can be found here: [About us - Competition and Markets Authority - GOV.UK \(www.gov.uk\)](https://www.gov.uk/about-us-competition-and-markets-authority).

² Where the CMA mentions 'direct consumer enforcement powers' in this guidance, this means the direct enforcement of consumer laws that are listed in Schedule 16 to the DMCC Act, which the CMA has the power to enforce pursuant to Chapter 4 of Part 3 of the DMCC Act.

³ In this guidance, the term 'party' is used to mean any natural or legal person that is under investigation opened under section 180 of the DMCC Act or is subject to enforcement action by the CMA under Chapter 4 of Part 3 of the DMCC Act or under paragraph 16B or 16C of Schedule 5 to the Consumer Rights Act 2015.

⁴ For the purposes of Chapter 3 of Part 3 of the DMCC Act, the court to which an enforcer may apply for a consumer protection order is the High Court or county court in England and Wales, the High Court or county court in Northern Ireland, or the Court of Session or the sheriff for Scotland (see section 173 DMCC Act).

⁵ The CMA must have regard to Chapter 7 of this Guidance when it is considering imposing and setting a penalty.

- 1.4 This guidance is not a definitive statement of, or a substitute for, the law itself and the legal tests which the CMA applies in assessing infringements of consumer law are not addressed in this guidance. A range of publications on how the CMA carries out this substantive assessment are available on the CMA's webpages.⁶
- 1.5 The CMA recommends that any party who considers that they may be affected by an investigation into suspected consumer law infringements seek independent legal advice.
- 1.6 This guidance may be revised from time to time, including to reflect changes in best practice, the law or the CMA's approach to investigations.
- 1.7 The following chapters of this guidance cover:
- (a) Chapter 2 (**The enforcement process**) details how parties can expect investigations of alleged consumer law (ie 'substantive') infringements to proceed under the direct consumer enforcement regime,
 - (b) Chapter 3 (**Information notices**) sets out the CMA's approach to using its powers to obtain information by written notice to investigate alleged substantive infringements,
 - (c) Chapter 4 (**Undertakings and settlement**) sets out the CMA's approach to, and process for, accepting undertakings or agreeing settlement with parties to resolve its investigations of alleged substantive infringements,
 - (d) Chapter 5 (**Remedies**) sets out how the CMA may approach its selection of remedies for substantive infringements, including Enhanced Consumer Measures, such as redress,
 - (e) Chapter 6 (**Administrative enforcement for failures to comply with requirements set by the CMA**) sets out how the CMA may approach the enforcement of compliance with undertakings, directions and information gathering requirements,
 - (f) Chapter 7 (**Penalties**) provides the CMA's statements of policy in relation to the exercise of its powers to impose monetary penalties under Chapter 4 of Part 3 of the DMCC Act and under Schedule 5 to the CRA,

⁶ Relevant publications on consumer law includes the guidance on unfair contract terms: [Unfair contract terms: CMA37 - GOV.UK \(www.gov.uk\)](#).

- (g) Chapter 8 (**Decision-making**) sets out the internal CMA decision-making arrangements for direct consumer enforcement cases,
- (h) Chapter 9 (**Procedural complaints**) sets out the scope and process for referring and deciding procedural complaints about direct consumer enforcement investigations,
- (i) Chapter 10 (**Glossary**) sets out relevant terminology,
- (j) Annex A (**Legislation in scope of the direct consumer enforcement model**) sets out a summary of the relevant consumer legislation listed in Schedule 16 to the DMCC Act, which may be enforced by the CMA under the direct consumer enforcement regime, and
- (k) Annex B (**Court-based enforcement**) provides an overview of the court-based regime for the civil enforcement of consumer law, which exists in parallel with the CMA's direct consumer enforcement regime.⁷

1.8 This guidance should be read alongside:⁸

- (a) *Direct consumer enforcement rules* ([CMA201con](#)) (the CMA Consumer Rules)
- (b) *Transparency and Disclosure: Statement of the CMA's policy and approach* ([CMA6](#)⁹) insofar as that publication applies to direct consumer enforcement investigations.
- (c) *CMA Prioritisation Principles* ([CMA188](#)), which outlines the basis on which the CMA decides which cases to investigate.

1.9 The CMA also has powers to bring civil and/or criminal proceedings in court to enforce consumer laws. Generally speaking, where multiple enforcement routes apply, the CMA will choose the enforcement route it considers most appropriate, taking into account its published prioritisation principles.

1.10 For more information about the CMA's other consumer law enforcement powers, other enforcers of consumer law and how the CMA works with them see [CMA58: Consumer protection - enforcement guidance](#).

⁷ Chapter 3 of Part 3 of the DMCC Act updates the court-based regime set out in Part 8 of the Enterprise Act 2002. Schedule 15 to the DMCC Act lists those consumer laws in respect of which an enforcer may bring court-based civil enforcement proceedings under Chapter 3 of Part 3 of the DMCC Act.

⁸ In the event of apparent conflict between this guidance and the Consumer Rules, the Consumer Rules prevail.

⁹ This version of CMA6 is currently being revised, a new version will be available in due course.

Duty of expedition

- 1.11 Section 327 of the DMCC Act imposes a duty of expedition on the CMA in relation to its functions under various pieces of legislation including the civil and direct enforcement of consumer law in Part 3 of the DMCC Act, as well as its functions under Schedule 5 to the CRA.
- 1.12 This obliges the CMA to have regard to the need to make a decision or take action as soon as reasonably practicable. The CMA will have due regard to the duty of expedition when carrying out its direct consumer enforcement functions, including evidence gathering. The CMA expects parties to cooperate with the CMA's administrative timetable and respond promptly to requests from the CMA, and will take account of this duty when engaging with parties, setting deadlines and considering requests for extensions to deadlines.

Transitional arrangements

- 1.13 The DMCC Act's consumer law enforcement provisions come into force on the commencement date¹⁰ and apply to parties' infringing conduct which takes place on or after that date. Transitional arrangements, which set out when enforcers can use the existing Part 8 of the Enterprise Act 2002 (EA02) regime (the 'old law'),¹¹ and the new court-based and (for the CMA) direct consumer enforcement powers under the DMCC Act (the 'new law'), are contained in Schedule 19 to the DMCC Act.¹² Key provisions of the transitional arrangements are set out below.
- 1.14 The old law, under which monetary penalties are not available, will continue to apply and will be the appropriate procedure for:
- (a) enforcement action in respect of conduct that takes place before the commencement date and does not continue past this date,
 - (b) enforcement action resulting from breach of an order or undertaking given to the court under the old law, and/or

¹⁰ A commencement date may be specified in the Act itself or on a date appointed by statutory instrument.

¹¹ Part 8 of EA02 and any provision of law (including in particular Schedule 5 of the CRA) relating to Part 8 of EA02.

¹² Paragraph 1, Schedule 19 DMCC Act uses the terminology 'old law' and 'new law'. This defines 'old law' as meaning Part 8 of the EA02, as that Part had effect immediately before the commencement date and any provision of law (including in particular Schedule 5 to the CRA) relating to Part 8 of EA02, as those provisions had effect immediately before the commencement date. It defines 'new law' as meaning chapters 3 and 4 of Part 3 of the DMCC Act (and any provisions of law relating to those chapters, including Schedule 5 to the CRA as amended by the DMCC Act).

(c) the continuation and completion of court proceedings started before the commencement date (including any related appeals).¹³

1.15 Breaches of undertakings which were given to the CMA (or another enforcer) under the old law can only be enforced under the old law regardless of when the breach occurs. However, if the alleged breach occurs after the commencement date and is itself also a ‘relevant infringement’ enforceable under the DMCC Act, the CMA (or other enforcers) can decide whether to take enforcement action for that conduct under either the new or old law.¹⁴ Such conduct may fall within the definition of continuing conduct, described below.

Continuing conduct

1.16 Special provisions apply for ‘continuing conduct’ which refers to conduct that takes place before the commencement date, which then continues or is repeated on or after the commencement date.¹⁵ Where there is continuing conduct, the new law applies to all of the conduct both before and after the commencement date.

1.17 However, for those parts of the conduct occurring before the commencement date the application of the new law is subject to the following limitation: any requirement imposed by the CMA or the court in respect of that pre-commencement conduct can only be imposed to the extent it could have been imposed under the old law. Accordingly, the CMA can only impose a monetary penalty where infringing conduct takes place after the commencement date.¹⁶

1.18 The CMA may have regard to conduct that took place before the commencement date, so far as is necessary or appropriate when determining any matter under the new law, such as when setting directions, Enhanced Consumer Measures (ECMs),¹⁷ and in factors relevant to any monetary penalty for post-commencement conduct.

¹³ Paragraph 2, Schedule 19 DMCC Act.

¹⁴ Paragraphs 4(3), (4) and (5), Schedule 19 DMCC Act.

¹⁵ Paragraph 3, Schedule 19 DMCC Act.

¹⁶ Paragraph 3(4), Schedule 19 DMCC Act.

¹⁷ Enhanced Consumer Measures (ECMs) are measures designed to give public enforcers greater flexibility to get the best outcomes for consumers. ECMs are defined in section 221 of the DMCC Act. ECMs may be redress measures, compliance measures or choice measures. More detail on ECMs is set out in Chapter 5 (Remedies) and [Enhanced consumer measures: guidance for enforcers of consumer law \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

2. The enforcement process

- 2.1 This chapter sets out the different stages of the direct enforcement process, from the period leading up to the opening of an investigation to the issuing of a Final Infringement Notice (FIN) and beyond.

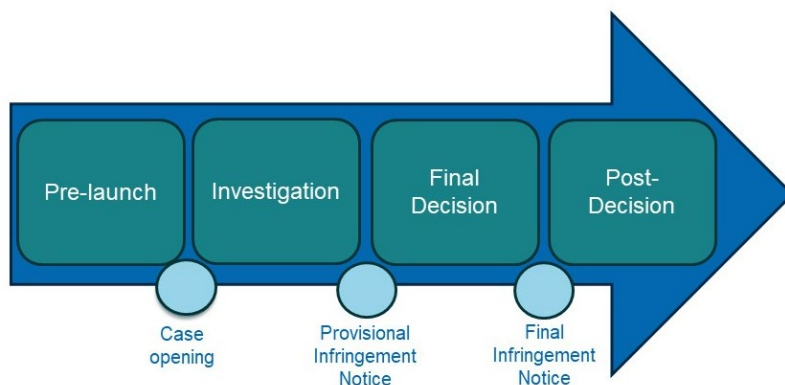


Figure 1: Stages of the direct consumer enforcement process

Pre-launch

- 2.2 Pre-launch is the period leading up to case opening when the CMA decides whether to open a formal investigation under its direct consumer enforcement powers, whether to use another consumer enforcement route or other non-consumer specific tool. During this period, the CMA may carry out preliminary enquiries, research, or other activities such as a call for information from the public.
- 2.3 Prior to opening an investigation, the CMA may take steps to gather information, such as holding discussions or seeking information from relevant sources voluntarily, or may use compulsory powers to gather information. This will inform the CMA's decision whether to open an investigation, with a view to using the CMA's enforcement powers.¹⁸
- 2.4 The CMA may open an investigation with a view to using its direct consumer enforcement powers when it has reasonable grounds to suspect a person has engaged, is engaging or is likely to engage in a commercial practice that

¹⁸ At this point, the CMA may consider which enforcement powers are most appropriate to use in the circumstances.

constitutes an infringement of any of the legislation listed in Schedule 16 to the DMCC Act, or a person is an accessory to such a practice.¹⁹

- 2.5 When the CMA opens a direct consumer enforcement investigation, it may publish a notice which, among other things, may summarise the matter and parties under investigation.²⁰ Unless there are exceptional circumstances, the CMA would expect to continue its established practice of announcing the investigation and identifying the parties under investigation at this stage.
- 2.6 This notice will generally:
- (a) state the CMA's decision to open the investigation,
 - (b) summarise the matter(s) under investigation (including the industry sectors concerned),
 - (c) identify, so far as possible, the persons under investigation, and
 - (d) indicate the timetable for the conduct of the investigation.
- 2.7 For more information on the CMA's approach to making public announcements when the CMA opens an investigation and at other times during an investigation, please see [CMA6](#) insofar as it is applicable to direct consumer enforcement investigations.
- 2.8 The CMA will also usually write to a party under investigation when an investigation is launched, setting out the expected timeframes for the progress of the investigation.
- 2.9 The CMA would generally expect to identify the Senior Responsible Officer (SRO) for the investigation at case opening and update the party of any changes to the SRO as the investigation progresses.

Investigation

- 2.10 The investigation phase covers the period between the CMA opening a direct consumer enforcement investigation and giving a Provisional Infringement Notice (PIN) to parties under investigation, if it is appropriate to do so. During this period, the CMA will investigate whether consumer law has been breached. Subject to the individual circumstances of a case, it may be necessary to take further investigatory steps after the party's representations

¹⁹ Section 180 DMCC Act. See also Annex A which provides detail of the legislation that may be enforced using the CMA's direct consumer enforcement powers.

²⁰ Section 180(3) DMCC Act.

on the PIN are received, for more see paragraphs 2.61 to 2.64 below on letter of facts and supplementary PIN.

- 2.11 The CMA is likely to make use of its compulsory powers to seek information from parties under investigation and/or third parties and may do so more than once. Parties subject to a formal information notice(s) or in respect of whom other investigatory powers are exercised will be given information about the CMA's powers and the implications of non-compliance. See Chapter 3 (Information notices) or [CMA58](#) for more detail. It is important to note that the DMCC Act introduced new penalties for non-compliance with information notices under Schedule 5 to the CRA as well as for supplying false or misleading information in connection with the exercise by the CMA of its direct consumer enforcement functions. See Chapter 6 (Administrative enforcement for failures to comply with requirements set by the CMA) for more information.
- 2.12 While carrying out its investigation, the CMA is likely to have other interactions with parties. In appropriate cases, this may include discussions regarding the possibility of a party providing binding commitments, known as undertakings, to address the CMA's concerns. It may also be possible to discuss settlement of the case (where, among other conditions, the party admits to the infringement and agrees to an expedited administrative procedure, in exchange for receiving a discount to any penalty the CMA considered it appropriate to impose). For more details, please refer to Chapter 4 (Undertakings and settlement) below.

Taking action to tackle ongoing concerns by applying to court during an investigation

- 2.13 The CMA has the power to apply to the court for an interim enforcement order, to prevent or stop consumer harm,²¹ and may do so while continuing to progress a direct consumer enforcement investigation. The CMA will consider whether it is appropriate to make such an application, which may be made prior to or after an investigation has been opened, such as where the CMA considers it is appropriate to secure changes to a party's conduct pending the outcome of the investigation. The court may make such an order where it appears to the court that if the application had been an application for an enforcement order it would be likely to be granted, and the court considers it is expedient that the infringing practice is prohibited or prevented immediately.

²¹ Sections 153 and 159 DMCC Act. Similar provisions apply in relation to interim online interface orders (section 162 DMCC Act).

2.14 In these circumstances, if the court grants an interim enforcement order, this can be discharged by the CMA issuing a FIN that addresses the conduct covered by the order.²²

Provisional Infringement Notice (PIN)

2.15 The CMA may give a PIN to a respondent if it has reasonable grounds to believe that:²³

(a) the respondent has engaged, is engaging or is likely to engage in a commercial practice constituting a relevant infringement ('the infringing practice'), or

(b) the respondent is an accessory to such a practice.²⁴

2.16 The DMCC Act sets out the content that must be included in the PIN, which will include any proposed directions and proposed penalty.²⁵

2.17 The CMA may also require the party to provide evidence substantiating the accuracy of any factual claim, for the purpose of considering any representations on the PIN. This may occur where the CMA gives a PIN relating to relevant infringements concerning the protection from unfair trading provisions of the DMCC Act.²⁶ For more on this see paragraphs 2.54 to 2.56 below concerning substantiation of claims.

2.18 If the case involves more than one party, each party will receive a copy of the PIN. To the extent that the PIN contains information that may be confidential to one party, before disclosing that information to the other party or parties, the CMA will consider whether there is a need to exclude any information whose disclosure would be contrary to the public interest or whose disclosure might significantly harm the interests of the company or individual it relates to. If the CMA considers that disclosure might significantly harm legitimate business interests or the interests of an individual, the CMA will consider the extent to which disclosure of that information is nevertheless necessary for the purpose for which the CMA is allowed to make the disclosure.²⁷

²² Section 159(9)(b) DMCC Act. Alternatively, an interim enforcement order can be discharged on the determination of an application for an enforcement order (see section 159(9)(a) DMCC Act).

²³ A 'respondent' includes a party to whom a PIN, or a FIN is given under Chapter 4, Part 3 of the DMCC Act. A 'respondent' may also be a party to whom a provisional or final administrative enforcement notice, or online interface notice is given.

²⁴ Section 181(2) DMCC Act.

²⁵ Sections 181(4) and 181(8) DMCC Act.

²⁶ Section 195 DMCC Act.

²⁷ See section 244 EA02.

2.19 If the scope of the investigation changes, for example because additional alleged consumer law breaches by the party have been identified as part of the investigation, the CMA may send a supplementary PIN. For more on this see paragraphs 2.61 to 2.64 below on letter of facts and supplementary PINs.

Inspection of the CMA's file and treatment of confidential information

2.20 When the CMA gives a PIN to a party under investigation, it will also give the party the opportunity to inspect the CMA's file. This is to ensure that parties can properly defend themselves against the allegations in the PIN and have an opportunity to make representations including in respect of any proposed penalty.

2.21 The CMA's file will contain documents that relate to matters referred to in the PIN. The CMA may withhold from inspection certain categories of documents as set out in Rule 5(1) of the CMA Consumer Rules. These are any document:

- (a) to the extent that it contains 'confidential information' within the meaning of the CMA Consumer Rules;²⁸
- (b) to the extent that it identifies an individual consumer;
- (c) to the extent it would be contrary to the public interest to disclose the document;
- (d) which is an internal document;²⁹
- (e) which is routine correspondence, which includes but is not limited to emails acknowledging the receipt of documents or information, arranging

²⁸ Under Rule 1 of the CMA Consumer Rules, 'confidential information' means

(a) commercial information whose disclosure the CMA thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the CMA thinks might significantly harm the individual's interests, or

(c) information whose disclosure the CMA thinks is contrary to the public interest.

²⁹ Under Rule 1 of the CMA Consumer Rules, 'internal document' means

(a) a document produced by, or exchanged between, the CMA, a regulator or another public authority and which has not been produced for the purpose of public disclosure by the CMA, a regulator or another public authority, or

(b) a document produced by, or exchanged between, the CMA and any person from time to time retained under a contract for services by the CMA, which has not been produced for the purpose of public disclosure; or

(c) a document which includes but is not limited to internal correspondence, internal advice, papers for and minutes of internal meetings, drafts of minutes with third parties, correspondence and notes of calls with other regulators, government departments and overseas authorities.

conference calls or meetings and other correspondence of a routine administrative nature; or

(f) which was provided by the party.

- 2.22 The CMA will give addressees of the PIN a reasonable opportunity to inspect documents on the CMA's file that relate to matters referred to in the PIN.³⁰ The time given for addressees will take into consideration a number of factors, including the number and nature of the documents and the inspection process being used.³¹ The CMA considers that the period of time for inspecting the file will generally be the same as, and run concurrently with, that given for the provision of written representations.
- 2.23 Documents may be made available in hard copy or by electronic means.³² The CMA would typically expect to provide documents by electronic means, unless there are important reasons to provide documents in hard copy.
- 2.24 In all cases, the CMA will seek to ensure that the process for parties to inspect documents on the CMA's file is as efficient and as practicable as possible, both for the addressees of the PIN as well as the CMA. The CMA will consider the most appropriate process for allowing access to its case file in each case, while ensuring that parties are able to exercise their rights of defence.
- 2.25 Prior to issuing the PIN, the CMA may discuss with the party under investigation the process envisaged for inspecting the CMA's file. This may include a streamlined approach to disclosure. When using a streamlined approach, the CMA would usually expect to provide copies of the documents that are directly referred to in the PIN and a schedule listing all of the other documents relevant to the matters set out in the PIN that are on the CMA's file. These will usually be given to the party in electronic form using a secure process. Under this process, parties would be given a reasonable opportunity to inspect additional documents listed in the schedule upon request. The CMA will set a reasonable deadline within which the party will be able to make any such requests, and consider appropriate arrangements for such disclosure, on a case-by-case basis.

³⁰ See Rule 5 of the CMA Consumer Rules.

³¹ See paragraph 2.20 to 2.31 below on inspection processes.

³² See Rule 5(2) of the CMA Consumer Rules.

Use of confidentiality rings and data rooms in certain circumstances

- 2.26 The CMA may use confidentiality rings or data rooms either (i) as a means of facilitating inspection of the file in general, or (ii) to allow a party's external advisers to view information or data that is confidential in order to further their understanding or prepare confidential submissions.³³
- 2.27 For further information on the CMA's approach to confidentiality rings and data rooms please see paragraphs 4.31 to 4.34 of [CMA6](#).

Handling confidential information

- 2.28 During the course of an investigation the CMA may acquire confidential information relating to both businesses and individuals.
- 2.29 There are strict rules under Part 9 of the EA02 and data protection law governing the use and disclosure of information obtained by the CMA during the course of an investigation. As a result of these rules, the CMA may have to redact or withhold certain information to which such restrictions apply, such as when disclosing documents. For further details regarding the CMA's approach to handling confidential information it gathers during an investigation see paragraphs 3.16 to 3.24 in Chapter 3 (Information Notices) on handling confidential information and seeking representations.

Consumer complaints and personal data

- 2.30 The CMA is required to comply with all relevant legislation when handling confidential information and personal data. Particular issues may arise, for instance, in relation to complaints and other information that the CMA may obtain during an investigation which identify individual consumers. The CMA will generally aggregate and anonymise complaints and other information from consumers including, for example, where this is relied on to show a pattern of behaviour by a business. However, there may be circumstances where the CMA needs to disclose the complaints themselves, which may include the identity of the individuals, for example where this is necessary to safeguard a party's rights of defence. The CMA will consider the appropriate

³³ Confidentiality rings enable disclosure of specific quantitative and/or qualitative data or documents to a defined group. The group is determined on a case-by-case basis but, generally, disclosure is made to the relevant parties' external (legal and/or where relevant economic) advisers. Data rooms may be appropriate to facilitate disclosure in some circumstances, including where additional enhanced security measures are appropriate because the information is considered by the CMA to be particularly sensitive. Like confidentiality rings, data rooms enable access to a specific category of confidential data or documents to a defined group. However, a data room provides access to the confidential data or documents on the CMA premises.

mechanism to disclose such complaints, which may involve the use of a confidentiality ring.

- 2.31 Further detail on the CMA's approach to handling confidential information, and to disclosure more broadly, insofar as it applies to direct consumer enforcement investigations, are set out in [CMA6](#).

Procedure before reaching a final decision

- 2.32 If the CMA gives a PIN to a party under investigation, it will invite the party to make representations about the giving of the notice,^{34, 35} and then consider, in light of any representations received, whether to give the party a FIN.

Representations on the PIN

- 2.33 Parties may make representations in writing or at an oral hearing, or both.
- 2.34 The PIN will set out how any representations must be made and the timetable for submitting representations, taking account of the CMA's duty of expedition. This will include information regarding the date by which the parties must indicate whether they wish to make oral representations, and may set out the expected timeframe within which any oral representations should be made, if the relevant party chooses to do so.³⁶
- 2.35 The CMA would expect the party's representations to address all relevant matters that the party wishes the CMA to take into account. Parties should include with their representations any new evidence or information relevant to matters in the PIN on which they seek to rely.^{37, 38}

³⁴ Certain other provisions of the DMCC Act, including section 188 (concerning provisional breach of undertakings enforcement notice), section 191 (provisional breach of directions enforcement notice) and section 197 (provision of false information enforcement notice) also provide that the party should be invited to make representations (and may, if they wish, make oral representations) to the CMA about the giving of those notices. For further detail please see Chapter 6 (Administrative enforcement for failures to comply with requirements set by the CMA) but, subject to the individual circumstances of the investigation, they will also generally follow the process outlined here.

³⁵ Section 181(4) DMCC Act states the PIN must (among others) (c) "invite the respondent to make representations to the CMA about the giving of the notice" and (d) "specify the means by which, and the time by which, such representations must be made".

³⁶ Sections 181(4)(c), (d) and 181(7) DMCC Act.

³⁷ Prior to this stage, parties may have provided information in response to information notices as part of the CMA's investigatory process. Please see Chapter 3 for guidance on responding to information notices.

³⁸ Where original versions of supporting evidence are not in English the parties should provide official translations of any documents, and should contact the case team in advance to discuss arrangements for this.

Written representations

- 2.36 The precise format and delivery method for representations will be detailed within the information accompanying the PIN.
- 2.37 The deadline for representations will be set on a case-by-case basis having regard to the circumstances of each particular case. In setting the deadline the CMA will remain mindful of its duty of expedition. Typically, it is expected that the deadline for submitting written representations will be between 20 and 30 working days from the date the PIN was given to the party. In appropriate circumstances, the deadline for submitting written representations may be shorter than this. Factors relevant to setting the deadline may include:
- (a) the importance of bringing matters to a swift conclusion to protect consumers from ongoing practices;
 - (b) the extent to which the party has already had time to engage with the CMA's investigation since investigation opening;
 - (c) the amount and type of evidence referred to in the PIN;
 - (d) the scope of the potential infringements and relevant facts set out in the PIN; and
 - (e) the particular situation of the party (such as their size and resources).
- 2.38 In line with the CMA's duty of expedition and to avoid unnecessary delays to the investigation, extensions to the time for submitting written representations will only be granted exceptionally and where there are compelling reasons for doing so. Any requests for an extension to the deadline should be communicated to the CMA as soon as possible and in any event within five working days following receipt of the PIN, unless there are compelling reasons why a request cannot be made in this timeframe. Any requests should specify the reason(s) why an extension is requested and the duration of the extension requested. In deciding whether to accept a request for an extension, the CMA will take into account the circumstances relevant to the request.
- 2.39 Where a party has a complaint about the deadline for submitting written representations, or the CMA's decision in relation to a deadline extension request, this should be raised in writing with the SRO in the first instance. If it is not possible to resolve the dispute, the party may raise a procedural complaint. See Chapter 9 for more detail about Procedural Complaints.

Confidential material in written representations

- 2.40 When a party considers that any information in its written representations is confidential, the CMA may require that the party also provides a non-confidential version of its representations, along with an explanation which sets out why it considers that certain information should be treated as confidential.³⁹ For example, this may be appropriate where it is necessary to disclose copies of the representations to other addressees of a PIN who are not members of the same corporate group as the party. The CMA will consider such representations received and form a view. The CMA will not accept blanket or unsubstantiated confidentiality claims. The non-confidential version should be provided within ten working days of the date of submitting the original response. Any extension to this deadline should be agreed in advance of the deadline with the CMA. Further information about the CMA's approach to confidential information is set out in [CMA6](#).
- 2.41 In the event that an investigation has more than one party, who are not connected with each other,⁴⁰ the CMA will not generally cross-disclose written or oral representations made by one party.

Oral representations

- 2.42 Parties will be offered the opportunity to attend a single oral hearing to make their representations about the giving of the PIN. This includes any representations they wish the CMA to take into account when deciding whether to give the party a FIN.
- 2.43 Any oral hearing will be held after the deadline for the submission of written representations on the PIN, and once the CMA has had sufficient time to consider any written representations that have been made. Parties' representatives should prioritise their attendance so that the oral hearing can take place within the window set by the CMA.
- 2.44 The party can bring legal advisers to the oral hearing to assist in presenting its oral representations at the hearing, subject to any reasonable limits that the CMA may set in terms of the number of persons that may attend on the party's behalf. Third parties will generally not be permitted to attend the party's oral hearing.

³⁹ See paragraph 2.18 above in relation to section 244 EA02.

⁴⁰ That is, respondents not connected to each other as interconnected bodies corporate as set out in section 200 DMCC Act.

- 2.45 The hearing will be attended by the Final Decision Group (FDG), members of the case team and any other relevant CMA members of staff. The hearing will be chaired by a CMA member of staff (the Hearing Chair) who, other than acting as chairperson or considering a procedural complaint, has not been involved as decision maker or in the day-to-day running of the investigation which has resulted in the PIN being given. The oral hearing may take place in-person, as a hybrid hearing or, where necessary, online.
- 2.46 To promote a focussed and productive hearing, the CMA will ask the party to give an indication, in advance, of the matters it proposes to focus on in its oral representations at the hearing. Where a party has made written representations, the CMA would generally expect any points raised orally to be based on those already submitted in writing. If a party wishes to raise additional points at an oral hearing (that is, points which it has not included in written representations) this should be raised ahead of the oral hearing and agreed for inclusion in the agenda. The party and the CMA will aim to agree an agenda at least three working days in advance of the hearing, taking into account any matters which the CMA wishes specifically to cover at the oral hearing. The agenda for the hearing will specify the time allowed for the party to make its representations, and will also make provision for the decision makers, members of the case team and the CMA's advisers to ask the party questions on its representations.
- 2.47 In the event an agenda and associated timings cannot be agreed between the party and CMA at least three working days prior to the hearing, the agenda will be determined by the Hearing Chair.
- 2.48 The oral hearing provides the party with an opportunity to highlight directly to the CMA issues of particular importance to its case, and which have been set out in its written representations. The oral hearing may also provide a useful opportunity for the party to clarify the detail set out in its written representations. If it has been agreed that additional points not raised in written representations will be covered during the oral hearing, the party should clarify in the hearing where it is making points which go beyond those made in written representations.
- 2.49 During the oral hearing, where the party is asked questions, it will be helpful for the CMA and is likely to assist the progress of the investigation, if they provide full responses to these questions. However, there is no obligation to answer. It may be possible to respond to questions in writing shortly after the hearing, within the timescales set by the CMA. The CMA will expect any such responses to be provided promptly after the hearing.

- 2.50 A recording of the oral hearing may be made. A transcript of the oral hearing will be taken, and the party will be asked to confirm the accuracy of this and, if necessary, to identify any material that it considers to be confidential. The CMA will consider submissions made in this regard and form a view. The CMA will not accept blanket or unsubstantiated confidentiality claims. A copy of the transcript will be placed on the CMA's file.
- 2.51 If one, or more, of the FDG change(s) after the oral hearing but before a FIN is given, a new decision maker will, as well as considering the party's written representations, review the transcript of the oral hearing and any recording of the hearing (if available).

Considering representations

- 2.52 The decision makers, supported by the case team and the CMA's advisers, will carefully consider all written and oral representations before deciding whether the party has engaged, is engaging or is likely to engage in any of the infringements set out in the PIN, or the party is an accessory to such an infringement.

No representation cases

- 2.53 There is no obligation on parties to submit representations on the PIN. Where no written representations are provided by the party within the time period specified by the CMA, or no oral representations are made where the CMA has given the party a reasonable opportunity to make these, the CMA may proceed with the case in the absence of such responses,⁴¹ and will proceed to decide whether or not to give a FIN to the relevant party.

Substantiation of claims

- 2.54 The CMA may require the party to provide evidence as to the accuracy of any factual claim made as part of its commercial practice.⁴²
- 2.55 If the CMA requires substantiating evidence, it will set out the method for responding and a deadline for the response. In some cases, the request for substantiation may be set out in the PIN, whereas in other cases substantiation may be required after the party has made its representations. Any requests for an extension of time should be communicated to the CMA as

⁴¹ See Rule 3 of the CMA Consumer Rules.

⁴² Section 195 DMCC Act applies where the CMA gives a provisional notice in respect of a relevant infringement involving a contravention of Chapter 1 of Part 4 of the DMCC Act (protection from unfair trading). See also Rule 4 of the CMA Consumer Rules.

soon as possible and in any event within five working days of receiving the notification unless there are compelling reasons why a request cannot be made in this timeframe. This should set out in full the party's reasons why it is not possible to provide the evidence within the required timeframe. In line with the CMA's duty of expedition and to avoid unnecessary delays to the investigation, extensions to the time for providing this evidence will only be granted in exceptional circumstances, where there are compelling reasons for doing so. Where the party has made a factual claim in connection with a commercial practice, the CMA would expect the party to already have the evidence to substantiate such a claim available to them.

- 2.56 After considering the party's representations on the PIN in respect of which substantiating evidence is sought, the CMA may determine a factual claim is inaccurate if the party fails to provide evidence on the accuracy of the claim as required within the timeframe set by the CMA, or if the CMA considers any evidence provided is inadequate.⁴³

New evidence after the oral hearing

- 2.57 To ensure the CMA has considered all relevant evidence in the case before making a final decision, parties are expected to provide, within their written or oral representations, any new evidence and information (not previously shared with the CMA) which they would like the CMA to take into account.
- 2.58 After the stage for representations has passed, unless the CMA seeks further evidence or representations, in order to reach a timely decision in line with its duty of expedition, the CMA will be unlikely to accept new evidence or representations from the party.
- 2.59 In some cases, the CMA may seek further evidence to investigate representations made by the party in its written representations and/or at any oral hearing. In this case, or where the CMA otherwise acquires new evidence after the PIN has been given, the CMA may issue a letter of facts, a supplementary PIN, or a notice requiring substantiation.
- 2.60 If the party seeks to rely on evidence on appeal which it did not include as part of its representations to the CMA during the investigation, the CMA may seek to object to the admission of such evidence by the court.

⁴³ Section 195(3) DMCC Act. See also Rule 4 of the CMA Consumer Rules.

Letter of facts

2.61 Where the CMA intends to rely on new evidence in the FIN which the CMA considers supports the infringements set out in the PIN, but which was not provided to the party at the PIN stage, the CMA will put that evidence to the addressees of the PIN in writing and give them an opportunity to respond to the new evidence.⁴⁴ The timeframe for responding to such a letter of facts will be set according to the volume and complexity of the new evidence. This process will not apply where a party makes representations on the PIN, and the representations and any further evidence submitted by the party can be adequately addressed in the FIN without the need to rely on additional evidence.

Supplementary PIN

2.62 If new information obtained by the CMA (including where provided in response to the PIN) gives the CMA reason to believe that there is evidence of a different infringement to that set out in the PIN, or there is a material change in the nature of the infringement described in the PIN, the CMA may issue a Supplementary PIN where appropriate.

2.63 Any Supplementary PIN will set out the new facts or changes in the nature of the breach of consumer law on which the CMA proposes to rely to establish an infringement. Where the CMA issues a supplementary PIN, if it proposes to impose directions or a monetary penalty in respect of the infringement alleged in the Supplementary PIN or make amendments to the proposed directions and penalty set out in the PIN, the CMA will include details of these in the Supplementary PIN.⁴⁵

2.64 The CMA will give the Addressee an opportunity to make representations on the Supplementary PIN. The CMA will set the timeframe for responding after taking into account the extent of the difference in the way the case is put in the first PIN compared with the Supplementary PIN and give the Addressees an opportunity to inspect any new documents relevant to the matters set out in the Supplementary PIN. In respect of any such new documents, the process will be broadly the same as that set out in paragraphs 2.20 to 2.31 above on inspection of the file.

⁴⁴ The CMA may issue multiple letters of facts.

⁴⁵ The requirements for what must be included in a PIN are set out in section 181 DMCC Act.

Representations from interconnected bodies corporate⁴⁶

2.65 The FIN may include provision for any of the requirements imposed by the CMA on the party that is a body corporate to also be binding upon some or all other bodies corporate within the same group (in addition to the party), as if each of them were the party.⁴⁷ Where the CMA considers such an approach may be just, reasonable and proportionate at the time the PIN is issued, the CMA will take steps that it considers to be reasonable and proportionate to bring this to the attention of existing members of the party's group and invite written representations from them specifically on:

- (a) whether the members of the group are interconnected with the party, and
- (b) whether it is just, reasonable, and proportionate for the requirements to be imposed on them.

2.66 The CMA may do this by:

- (a) contacting such bodies corporate directly by sending a notification;
- (b) where the party has agreed to do so, asking the party to make arrangements for any interconnected body corporate to be notified that they may be bound by a final notice and invite representations on this from them, in which case, the CMA will request the party to confirm whether it has done so; or
- (c) where neither of the above is practicable, publishing a notification on the CMA's webpage that it has given a PIN and inviting written representations, as described above, from members of the party's group.⁴⁸

2.67 The CMA is more likely to send the notification directly to interconnected bodies corporate and invite representations from them where the number of interconnected bodies corporate is limited. The CMA will rely on information provided by the party to do so. In other cases, the CMA may seek to agree with the party that the party make arrangements for any interconnected body corporate to be notified that they may be bound by the final notice and may

⁴⁶ 'Interconnected Bodies Corporate' is defined in section 200 DMCC Act. A group of interconnected bodies corporate refers to a group consisting of two or more bodies corporate all of whom are interconnected with each other. Any two bodies corporate are interconnected, (a) if one of them is a subsidiary of the other, or (b) if both of them are subsidiaries of the same body corporate.

⁴⁷ Section 200 DMCC Act provides that a final notice (that is a FIN, online interface notice or final breach of directions enforcement notice) may include provision for any of the requirements to also be binding on interconnected bodies corporate. See also Rule 9 of the CMA Consumer Rules.

⁴⁸ See Rule 9 of the CMA Consumer Rules.

make representations as described at paragraph 2.65 above. This may occur, for example, in the case of large corporate structures or in settlement discussions. Further, for the effective management of the case, the CMA is likely to request that a party collates and submits to the CMA the responses from the party's interconnected bodies corporate. The CMA will in any case expect parties and interconnected bodies corporate with subsidiaries to include any representations they wish to make on behalf of all their subsidiaries.

- 2.68 Under the DMCC Act, an interconnected body corporate does not have a right itself directly to make representations in relation to other matters, including the infringement, the amount of the penalty or any other requirements in the PIN. However, it is open to the party to collate and submit any additional observations that an interconnected body corporate may wish the party to include within its own representations. Where appropriate, the CMA may consent to the party providing copies of relevant documentation to an interconnected body corporate for the purpose of providing submissions to the CMA.⁴⁹
- 2.69 For those matters where representations are invited from others in the group, the CMA will set the time period within which representations must be received and will consider any representations before making a final decision on whether the requirement is to be imposed on the interconnected bodies corporate in the FIN. Where no representations are received from interconnected bodies corporate within the time period specified by the CMA, the CMA may proceed in the absence of such responses and will proceed to decide whether or not to make the FIN binding on interconnected bodies corporate.
- 2.70 The CMA will also generally ask the party to provide the names of all the interconnected bodies corporate within its group, together with an address for service for each interconnected body corporate, and to notify the CMA if these change before a FIN is notified to the party. The CMA may rely on this information as accurate for the purpose of seeking representations from interconnected bodies corporate. For reasons of efficiency, parties and their interconnected bodies corporate are strongly encouraged to provide a single address for service.

⁴⁹ Part 9 EA02 governs the use and disclosure of information obtained by the CMA during the course of an investigation.

2.71 Where a new entity becomes interconnected with the party after the PIN is given, the CMA will not generally invite any representations on whether to make any of the requirements in the FIN binding on that entity.

The final decision

2.72 Where, having considered any written and oral representations, the CMA is satisfied that the party has engaged, is engaging or is likely to engage in a commercial practice constituting a relevant infringement, or the party is an accessory to such a practice, the CMA will give a FIN to that party.⁵⁰

2.73 The FIN will set out the grounds on which it is given, including the party's acts or omissions on account of which the notice is given, and any further factors which justify giving the FIN.⁵¹

2.74 In deciding whether to give a FIN, the CMA must, in particular, have regard to whether the party has previously given an undertaking under Chapter 4 or Chapter 3 of Part 3 of the DMCC Act in respect of the acts or omissions in relation to which the FIN would be given.⁵² The CMA will also have regard to whether the party has previously given such an undertaking under Part 8 EA02, as well as whether the party has been subject to a court order (whether secured by the CMA or another enforcer under Part 8 EA02 or Chapter 3 of Part 3 of the DMCC Act).

2.75 A FIN may require the party to comply with such directions as the CMA considers appropriate, which may include directions to take ECMs, and to pay a monetary penalty. A monetary penalty may only be imposed if the CMA is satisfied that the party has engaged in or is engaging in an infringing practice. A monetary penalty cannot be imposed on a party in respect of a practice which the party has not engaged in or is not yet engaging in.⁵³ The FIN may also require the party to publish the FIN (in full or in part) and/or a corrective statement in a form and manner which the CMA considers appropriate to eliminate any continued effects of the infringement. See Chapter 5 (Remedies) for further detail on directions, ECMs and the CMA's approach to remedies generally.

2.76 Where the FIN includes a requirement to pay a penalty, it will set out certain information prescribed by the DMCC Act, including the amount of the penalty, grounds on which it is imposed, how and by when the penalty must be paid,

⁵⁰ Section 182 DMCC Act.

⁵¹ Section 182(7) DMCC Act.

⁵² Section 182(3) DMCC Act.

⁵³ Section 182(5) DMCC Act.

and the party's right to apply to the court or the CMA to specify a different date or dates by which the penalty, or different portions of it, are required to be paid.⁵⁴

- 2.77 If the FIN imposes requirements on a body corporate, and it is part of a wider corporate group, the notice may include provision for the requirements (or any particular requirements) imposed by the FIN on the party also to be binding upon all other members of the group (in addition to the party), as if each of them were the party. The FIN may only do this if the CMA considers it just, reasonable and proportionate to include that provision.⁵⁵
- 2.78 The FIN will also explain that the party has a right to appeal a decision to impose a monetary penalty, the nature or amount of any such penalty, and/or the giving of directions by virtue of the notice.
- 2.79 If, having completed its investigation, the CMA is not satisfied the threshold for issuing a FIN is met, it will close the case. The CMA may also decide to close an investigation at any point on the grounds of administrative priorities.⁵⁶ Where the CMA has previously published a notice regarding its decision to conduct the investigation, if the CMA decides to close the investigation, the CMA is required to publish a notice confirming that the investigation is to be closed.⁵⁷

Announcement of decision

- 2.80 When a FIN is given to a party, the CMA will normally issue a press announcement, make an announcement on the Regulatory News Service and publish details of the decision on the CMA's website.
- 2.81 For more information on the CMA's approach to transparency and disclosure, please refer to [CMA6](#).

⁵⁴ Section 203 DMCC Act.

⁵⁵ Section 200(3)-(4) DMCC Act.

⁵⁶ The CMA may close an investigation on the grounds of administrative priorities where, for example, the investigation no longer merits the continued allocation of resources because it no longer fits with the CMA's casework priorities, or because the CMA does not have sufficient evidence in its possession to determine whether an infringement has occurred, and the CMA considers further investigation is not warranted in the circumstances.

⁵⁷ Section 180(4) DMCC Act.

Confidentiality

2.82 The CMA will publish, as soon as reasonably practicable, a non-confidential version of the FIN⁵⁸ on the CMA's webpages. Prior to this, the CMA will consider whether it is appropriate to seek confidentiality representations on information in the FIN, in accordance with the CMA's approach to confidentiality as set out in this guidance and [CMA6](#). The CMA will consider confidentiality representations received and form a view. Any representations must be limited to confidentiality issues and the CMA will not accept blanket or unsubstantiated confidentiality claims.

Service on interconnected bodies corporate

2.83 Where relevant, the FIN must also be given to any interconnected bodies corporate in relation to which the requirements imposed by the notice are to be binding, as discussed in paragraph 2.77 above.⁵⁹

2.84 In many cases, the notice will be given to these other members of the group at the same time as or soon after the FIN is given to the party. However, it can be given to other members of the group at any time when requirements imposed by the FIN remain in force. The notice may also be given where after the FIN either the party becomes a member of a group of interconnected bodies corporate or a group of interconnected bodies corporate of which the party is a member is increased by the addition of one or more further members.⁶⁰ In such cases, before giving the notice to a member of a group of interconnected bodies corporate, the CMA may approach either the party or the member for information as to the group structure and their business activities.

Record-keeping

2.85 The CMA must keep a record of undertakings it has accepted and enforcement directions it has imposed, as well as of the reviews the CMA has carried out into the effectiveness of those undertakings and directions.⁶¹

⁵⁸ Rule 8 of the CMA Consumer Rules allows for such publication.

⁵⁹ Section 200 DMCC Act.

⁶⁰ Section 200(2) DMCC Act.

⁶¹ Section 201 DMCC Act.

Post-decision

Right of appeal

- 2.86 A person to whom a relevant notice is given may appeal against a decision to impose a monetary penalty, the nature or amount of any such penalty, and/or the giving of directions.⁶² These appeals must be made to the High Court in England and Wales or Northern Ireland or to the Outer House of the Court of Session in Scotland.⁶³
- 2.87 The relevant notices which can be appealed are:
- (a) a final infringement notice,
 - (b) an online interface notice,
 - (c) a final breach of undertakings enforcement notice,
 - (d) a final breach of directions enforcement notice,
 - (e) a final false information enforcement notice,⁶⁴ or
 - (f) a final enforcement notice for non-compliance with an information notice.⁶⁵
- 2.88 The grounds on which a notice of the CMA may be appealed are that:
- (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the penalty or nature of the directions is unreasonable, or
 - (d) the decision was unreasonable or wrong for any other reason.⁶⁶
- 2.89 The appeal court may quash, confirm, or vary the relevant notice. It may also remit any matter that is the subject of the appeal back to the CMA, except for

⁶² Section 202(1) DMCC Act and paragraph 16D(1), Schedule 5, CRA.

⁶³ Section 202(9) DMCC Act and paragraph 16D(8), Schedule 5, CRA.

⁶⁴ Section 202(9) DMCC Act.

⁶⁵ Schedule 17 DMCC Act amends Schedule 5 to the CRA, thereby providing for a final enforcement notice where a respondent has, without reasonable excuse, failed to comply with an information notice under paragraph 14 of Schedule 5.

⁶⁶ Section 202(2)-(3) DMCC Act and paragraph 16D(2), Schedule 5, CRA.

appeals relating to a final enforcement notice for non-compliance with an information notice or a final false information enforcement notice.⁶⁷

2.90 Appeals must be brought within:⁶⁸

(a) 28 days of receiving a final enforcement notice for non-compliance with an information notice or a final false information notice, or

(b) 60 days of receipt in relation to any other relevant notice.⁶⁹

2.91 Where an appeal is brought against either a requirement to pay a monetary penalty or compensation required under directions imposing ECMs, this is not required to be paid until after the appeal is determined.⁷⁰ Any other non-payment requirements set out in the FIN will continue to apply and must be complied with during the appeal period.

2.92 The CMA has certain reporting obligations, including in relation to the number and outcome of appeals brought against its decisions. Please see paragraph 5.32 of Chapter 5 (Remedies) for further detail on these obligations.

⁶⁷ Section 202(4)-(5) DMCC Act and paragraph 16D(4), Schedule 5, CRA.

⁶⁸ The period for bringing an appeal may be extended by the appropriate appeal court, ie the High Court in England and Wales or Northern Ireland, or the Court of Session in Scotland. (Section 202(7) DMCC Act and paragraph 16D(6), Schedule 5, CRA).

⁶⁹ Section 202(6) and 201(9) DMCC Act, and paragraph 16D(5), Schedule 5, CRA.

⁷⁰ Section 202(8) DMCC Act and paragraph 16D(7), Schedule 5, CRA.

3. Information notices

Information gathering powers

- 3.1 The CMA makes evidence-based decisions. Therefore, the ability for the CMA to obtain accurate information in a timely manner is a key factor affecting the CMA's ability to exercise its enforcement functions effectively and to comply with its duty of expedition.
- 3.2 The CMA has a range of powers to obtain information in connection with its consumer enforcement functions.⁷¹ Schedule 17 to the DMCC Act amends Schedule 5 to the CRA to empower the CMA to make use of its powers for the purposes of Part 3 of the DMCC Act. Accordingly, when preparing for or undertaking a direct consumer enforcement investigation, the CMA can require the provision of information in writing, make test purchases, observe the conduct of business, enter premises without a warrant (sometimes without notice), and enter premises with a warrant. The CMA may exercise various powers while on the premises, including requiring assistance from persons on the premises, breaking open containers, accessing electronic devices, inspecting and seizing products and seizing documents. Further detail about the CMA's use of these powers is set out in [CMA58](#).
- 3.3 The CMA may use its information gathering powers to obtain information both before and after it has decided to open an enforcement investigation. In some circumstances the CMA may also use its powers to assist overseas enforcers.⁷²

Written information notices

- 3.4 The DMCC Act makes a number of changes to the CMA's powers to require the production of information in connection with its consumer enforcement functions, notably enabling the CMA itself to enforce failures to properly comply with information notices by imposing a monetary penalty.
- 3.5 The CMA may give notice to a person requiring the person to provide the enforcer with the information specified in the notice. The conditions and formalities for exercising this power are set out in Part 3 of Schedule 5 to the CRA (as amended by the DMCC Act). The CMA may, for example, issue information notices to gather information for the purposes of deciding whether

⁷¹ Schedule 5, CRA sets out the CMA's investigatory powers.

⁷² This section should be read in conjunction with Consumer Protection Enforcement Guidance ([CMA58](#)) and the CMA's Transparency and Disclosure Statement ([CMA6](#)), where applicable to the CMA's consumer functions.

to open an investigation under its direct consumer enforcement powers, as well as after it has opened an investigation, and when it is monitoring compliance with any remedies.

- 3.6 The CMA may request information from a range of sources such as the business(es) under investigation, customers, complainants, and other third parties (such as service providers).
- 3.7 The information notice will:
- (a) specify the purpose for which the information is required;
 - (b) the time within which and the manner in which the person to whom it is given must comply; and
 - (c) the form in which information must be provided.
- 3.8 The information notice will also set out the circumstances in which a monetary penalty may be payable in relation to non-compliance.
- 3.9 Examples of the types of information the CMA may require the production of include internal documents such as business records, reports and policies, details of relevant customers or transactions, copies of customer complaints, information about consumer research and testing and other internal data. The CMA may request evidence as to the accuracy of any factual claim made as part of a commercial practice.⁷³ The CMA can also require the recipient of a request to create documents and provide these to the CMA.
- 3.10 The CMA may send an information notice to a person outside the UK where the CMA considers that the person is a potential enforcement subject, or where that person has a UK connection.⁷⁴ A person has a UK connection if they:
- (a) are a UK national;
 - (b) are an individual who is habitually resident in the UK;
 - (c) are a firm established in the UK; or

⁷³ Requests for substantiation may be made under section 195 DMCC Act (for further information see paragraphs 2.54 to 2.56 of Chapter 2 on substantiation of claims). The CMA may also request evidence as to the accuracy of a factual claim more generally. The CMA encourages information notice recipients to provide any and all evidence substantiating their factual claims underpinning practices of concern early on in the process.

⁷⁴ See paragraph 17A, Schedule 5, CRA.

- (d) carry on business in the UK or by any means direct activities in the course of carrying on a business to consumers in the UK.

Responding to a written information notice

- 3.11 When carrying out its consumer functions the CMA is subject to a statutory duty of expedition, which requires it to have regard to the need to make decisions and take action as soon as reasonably practicable.⁷⁵ This duty will be reflected in the deadlines set for compliance with information notices and will also be taken into account (along with the timetable set by the CMA for the investigation) when considering any requests for extensions to such deadlines.
- 3.12 Requests for extensions to the deadline set for a response should be communicated to the CMA as soon as possible and will be considered on a case-by-case basis. In all circumstances recipients must provide reasons for requesting an extension.
- 3.13 Failing to comply with the requirements of an information notice, without reasonable excuse, may result in a fine from the CMA. Failing to comply includes the provision of false or misleading information to the CMA (which is itself a further infringement) as well as the destruction, disposal, concealment or falsification of requested information (eg the destruction of a document or part of a document which contains the required information). Additionally, a person may commit an offence under the Perjury Act 1911 if they knowingly and wilfully make any false statement, or include any other information that is false, in response to an information notice.
- 3.14 Further guidance in relation to penalties for failing to comply with an information notice, and for the provision of false or misleading information, including the circumstances which the CMA may consider to constitute a reasonable excuse, is set out in Chapter 7 (Penalties).

Return of information

- 3.15 Where it considers it appropriate, the CMA may return information it has gathered during the course of an investigation (irrespective of how that information has been obtained). For example, the CMA may return information where, after careful review, the CMA considers it is duplicate information or information that is outside the scope of the investigation, including where information falls outside the scope of the investigation as a

⁷⁵ Section 25 of the Enterprise and Regulatory Reform Act 2013, as amended.

result of that scope having changed. Any such information that is returned will no longer form part of the CMA's investigation file.

Handling confidential information and seeking representations

- 3.16 During the course of an investigation the CMA may acquire confidential information relating to both businesses and individuals.
- 3.17 There are strict rules under Part 9 of the EA02 and data protection law governing the use and disclosure of information obtained by the CMA during the course of an investigation. As a result of these rules, the CMA may have to redact or withhold certain information to which such restrictions apply such as when it is necessary to disclose documents during the course of an investigation.
- 3.18 During the course of an investigation, the CMA may request confidentiality representations on the documents held on its file. Any such requests will generally provide an explanation as to the types of material the CMA is likely to consider to be confidential under Part 9 of the EA02. It may also include a framework for the provision of any such confidentiality representations. A deadline will be set for the provision of confidentiality representations reflecting the extent of the material provided. Any request for an extension to the deadline, along with reasons for such a request, should be made to the case team as soon as possible and well in advance of the deadline.
- 3.19 Representations should be provided where a person or business considers that any information they are giving the CMA, or that the CMA has acquired from them, is commercially sensitive or contains details of an individual's private affairs and that disclosing it might significantly harm the interests of the business or person, explaining why the CMA should treat the information as confidential. The CMA will not accept blanket or unsubstantiated confidentiality claims.
- 3.20 In the event that the CMA does not receive any confidentiality representations within the deadline stated (and has not been notified that none will be provided), the CMA will assume that no confidentiality is being claimed in respect of the information when deciding whether it should be disclosed.
- 3.21 Where the CMA proposes to disclose information for which confidentiality has been claimed, the CMA will take such steps as it considers reasonable and practicable in the circumstances of the case to seek further views on confidentiality from the person who provided the information, or the person to whom the information relates.

- 3.22 Generally, the CMA would not expect complaints from consumers to contain confidential information. In cases where there is a large number of complainants, it will generally not be practicable to contact complainants individually. In such circumstances, the CMA, will typically not seek further representations before making a decision on whether to disclose the information of the parties concerned.
- 3.23 Where there are good grounds to consider that a complaint contains confidential information, the CMA may (where it is practicable to do so) provide details of the information it proposes to disclose to the person concerned and provide them with a reasonable opportunity to comment.
- 3.24 Further information on the CMA's approach to the treatment and disclosure of information, including to identifying confidential information and seeking views as to confidentiality, is available in [CMA6](#).

4. Undertakings and settlement

- 4.1 There are several ways in which direct consumer enforcement investigations may be resolved. This chapter sets out the process where a case may be resolved by way of undertakings to the CMA to address the CMA's concerns, and where there is a settlement.

Accepting undertakings

- 4.2 Where the CMA has not issued a FIN (or an online interface notice (OIN)), the CMA may accept an undertaking from any person the CMA believes:
- (a) has engaged, is engaging or is likely to engage in a commercial practice that constitutes a 'relevant infringement', or
 - (b) is an accessory to that practice.⁷⁶
- 4.3 An undertaking is a voluntary commitment from a person relating to their conduct which is intended to resolve the CMA's concerns, without requiring the admission that there has been an infringement or the payment of a monetary penalty as part of the resolution. For example, among other things, such a commitment includes making a change to the person's own practices so as not to continue or repeat the conduct of concern, or where the person is an 'accessory', may involve making changes to ensure the person does not consent or connive in respect of another person's practices. The CMA would expect any changes to a person's conduct to be made promptly.
- 4.4 In addition to this, an undertaking may also include such ECMs as the CMA considers just, reasonable and proportionate (which are more particularly set out in Chapter 5 (Remedies) below).
- 4.5 A failure to comply with one or more of the terms of an undertaking without reasonable excuse may result in the imposition of a monetary penalty.⁷⁷

When might the CMA consider accepting an undertaking?

- 4.6 The CMA has a broad discretion in determining which cases are suitable for undertakings, and whether to accept undertakings in a particular case.

⁷⁶ Section 185 DMCC Act. 'Accessory' is defined in section 219 DMCC Act.

⁷⁷ Section 189 DMCC Act. Further detail on breach of undertakings is set out in Chapter 6 (Administrative enforcement for failures to comply with requirements set by the CMA).

- 4.7 The CMA is more likely to accept undertakings in cases where the CMA is satisfied:
- (a) they adequately address the CMA's concerns in relation to the issues covered by the undertakings, including, where relevant, taking appropriate steps to address the position of affected consumers (for example, removing problematic contract terms, releasing consumers from agreements or ceasing particular conduct, as appropriate in the circumstances) and paying redress to affected consumers, and
 - (b) the undertakings can be implemented effectively and within a short period of time.
- 4.8 The CMA is very unlikely to accept undertakings in cases where the CMA considers that:
- (a) they do not satisfactorily address the CMA's concerns in relation to the issues covered by the undertakings, or
 - (b) a party has previously failed to comply with undertakings (including undertakings provided to the CMA or another enforcer under Part 8 of EA02, or under Chapter 3 of Part 3 of the DMCC Act), a court order (whether secured by the CMA or another enforcer under Part 8 of EA02 or Chapter 3 of Part 3 of the DMCC Act), or directions imposed in a FIN given under Chapter 4 of Part 3 of the DMCC Act.
- 4.9 Where undertakings do not address all of the issues being investigated by the CMA, the CMA may accept those undertakings but continue the investigation into the issues which remain outstanding.
- 4.10 The CMA will not accept undertakings in circumstances where the CMA considers that:
- (a) compliance with and the effectiveness of any undertakings would be difficult to monitor, and/or
 - (b) not to complete its investigation and make a decision as to whether or not there has been an infringement would undermine deterrence.

Procedure

- 4.11 Undertakings may be proposed by a party under investigation or the CMA. Neither the party nor the CMA is under an obligation to do so. If a party indicates that it wishes to engage in such discussions, and the CMA considers such discussions are appropriate, the CMA will generally set out:

- (a) a summary of its concerns to the party,
 - (b) the key aspects that the CMA would expect the undertakings to cover, including the type of ECMs, if appropriate, and
 - (c) the expected time period in which undertakings must be agreed.
- 4.12 The CMA would expect to continue the investigation during the period of these discussions but would not give the party a PIN (or where applicable, a FIN) while discussions regarding undertakings are taking place.
- 4.13 If undertakings are accepted, the CMA will publish the undertakings on its webpages.⁷⁸
- 4.14 The CMA may, where it considers it appropriate to do so, seek views of third parties as to the content of proposed undertakings before deciding whether or not to accept the undertakings. When considering whether to take such steps, the CMA will take into account its obligations regarding confidential information and personal data.
- 4.15 Further information on the CMA's approach to the treatment and disclosure of information, including to identifying confidential information and seeking views as to confidentiality, is available in [CMA6](#).⁷⁹
- 4.16 If it appears to the CMA that it may not be possible to agree undertakings that the CMA considers are acceptable within the time period indicated by the CMA, the CMA may cease the discussions at any time. If discussions cease, the CMA will continue with the usual administrative procedure and, if appropriate, give the party a PIN (or where applicable, a FIN).⁸⁰ In these circumstances, the CMA will not place any admissions regarding the party's conduct made for the purposes of exploring the possibility of resolving the case by way of undertakings (for example, contained in correspondence, or minutes of meetings, with the CMA) on the file, and will not rely on such material in any PIN or FIN. Other material, including evidence obtained by the CMA during the period of discussions and material otherwise provided during such discussions, may be placed on the CMA's file.

⁷⁸ Any public announcements the CMA makes, including when publishing undertakings, will consider the relevant legal provisions in this regard, for example under data protection law and Part 9 of the EA02.

⁷⁹ [CMA6](#)

⁸⁰ References to 'the usual administrative procedure' refer to the procedure set out in Chapter 2 (The enforcement process).

Discussions regarding undertakings at other times during an investigation

- 4.17 A party under investigation can offer undertakings at any time during the investigation, and as noted at paragraph 4.2 above, the CMA has the power to accept undertakings until a FIN has been issued. However, the CMA is unlikely to consider it appropriate to enter into further discussions where it has not been possible to agree undertakings previously, or to accept undertakings at a very late stage in an investigation, such as after the CMA has considered representations on a PIN.
- 4.18 If a party wishes to discuss offering undertakings, it should contact the case team in the first instance.

Impact of decision to accept undertakings

- 4.19 Once an undertaking has been accepted in respect of conduct giving rise to consumer law concerns, the CMA may only give a FIN or an OIN to the party in relation to the matter under investigation in limited circumstances.⁸¹ These circumstances include where:
- (a) the notice relates to matters that are not addressed by the undertakings the CMA has accepted,
 - (b) the CMA considers there has been a material change in circumstances,
 - (c) the CMA has reasonable grounds for suspecting there has been a failure to comply with the undertaking,⁸² or
 - (d) the CMA has reasonable grounds for suspecting that information that led it to accept the undertaking was incomplete, false or misleading in a material way.⁸³
- 4.20 When an undertaking has been accepted, the CMA may accept any such variation as it considers appropriate to meet the purposes of the undertaking or may release the party from the undertaking where the CMA considers it is no longer necessary to meet these purposes.⁸⁴ Where the CMA has reasonable grounds to believe a party has breached an undertaking it may take enforcement action.⁸⁵ For more information on enforcement of

⁸¹ These circumstances are set out in section 186(3) DMCC Act.

⁸² This may also give rise, separately, to liability for the party to pay a penalty for breach of the undertaking.

⁸³ In addition, the CMA may also be able to impose a separate penalty for the provision of false or misleading information.

⁸⁴ Section 187 DMCC Act.

⁸⁵ Sections 188 and 189 DMCC Act.

undertakings, see Chapter 6 (on Administrative enforcement for failures to comply with requirements set by the CMA) below.

Variation and release of undertakings

- 4.21 The CMA may accept any variation of the undertaking that it considers appropriate for meeting the purposes for which the undertaking was given.⁸⁶
- 4.22 The CMA may also release a party from the undertaking (whether on its own initiative or at the party's request) if the CMA considers that the undertaking is no longer necessary to further those purposes.
- 4.23 Variation or release of undertakings may be initiated by either the CMA or by the party who gave the undertaking. The CMA may, if it considers it appropriate, seek input from relevant third parties in relation to the proposed variation and release of undertakings.
- 4.24 Where the party giving the undertaking seeks to vary the undertaking or, considers the undertaking is no longer necessary and should be released, it may write to the CMA setting out the change requested and giving detailed reasons for this. If requesting a variation, it should explain why it considers the proposed variation is appropriate for meeting the purpose for which the undertaking was given. The CMA will generally consider any requests received and may, if necessary, seek further clarification from the party.
- 4.25 Where a variation or release has not been requested by the party who gave the undertaking, and the CMA proposes to:
- (a) accept a material variation of an undertaking;⁸⁷ or
 - (b) release a party from any such undertaking,
- the CMA must first give notice to the party who gave the undertaking and consider any representations made in accordance with the notice.⁸⁸
- 4.26 The notice must state the fact that the CMA is proposing a material variation or release of the undertaking, the reasons for doing so, and the means, and time by which, representations may be made in relation to the proposed

⁸⁶ Section 187 DMCC Act.

⁸⁷ Section 187(5) DMCC Act confirms a material variation is any variation that the CMA considers to be material in any respect.

⁸⁸ Section 187 DMCC Act. Although the means and timeline by which the CMA will accept representations will be set out within the notice on a case-by-case basis, for the CMA's general approach to written representations see paragraphs 2.36 to 2.41 of Chapter 2 (The enforcement process).

action.⁸⁹ If, after considering any representations, the CMA decides to take a proposed action, the CMA must give notice to the party of that decision.⁹⁰

When might the CMA consider accepting a variation or release of an undertaking

- 4.27 The decision to accept a variation to or to release an undertaking is at the CMA's discretion. The CMA will take into account the factors set out below when determining whether to accept a variation or release an undertaking.⁹¹
- 4.28 The CMA is more likely to agree to a variation to an undertaking where:
- (a) the undertaking no longer addresses the purpose for which it was given and the CMA considers the variation will better address this purpose; or
 - (b) there has been a material change in circumstances which the variation addresses; and
 - (c) in all cases, the proposed variations can be implemented effectively and, where necessary, within a short period of time.
- 4.29 The CMA is unlikely to agree to a variation to an undertaking where it considers the variation may render the undertaking less effective, may mean the undertaking fails to address all of the issues of concern identified in the CMA's investigation, or may make compliance with the undertaking more difficult to discern.
- 4.30 The CMA is more likely to agree to a release of an undertaking where the undertaking is no longer necessary because:
- (a) the party giving the undertaking has ceased trading or no longer operates a consumer facing business with a UK connection;⁹²
 - (b) the provisions of the undertaking are no longer applicable to the commercial practices (for example, where changes in technology and commercial practices render provisions of the undertaking obsolete).

⁸⁹ Section 187(3) DMCC Act.

⁹⁰ Section 187(4) DMCC Act.

⁹¹ The CMA is required to provide information about the factors it will take into account in determining whether to accept, vary or release an undertaking (section 212(2)(a) DMCC Act).

⁹² See section 149 DMCC Act in respect of 'UK connection'.

4.31 The CMA is unlikely to agree to release an undertaking where it considers there is an ongoing risk in relation to the areas of concern addressed by the undertaking.

The CMA's decision regarding variation or release

4.32 The CMA will notify the party who made the request as to whether it decides it is appropriate to accept the variation or release of the undertaking. Where the CMA decides to vary the undertaking, it will publish the revised version. Where the CMA decides to release the undertaking, it will provide an update regarding the release on its webpages.

Settlement

What is settlement?

4.33 In the context of enforcement cases under Chapter 4 of Part 3 of the DMCC Act, 'settlement' is the process whereby a party under investigation:

- (a) will admit to the facts and conduct in question, and will admit that it has infringed consumer law;
- (b) agrees:
 - (i) to take such steps to stop or mitigate the relevant infringement as the CMA considers appropriate within a time period specified by the CMA following the start of settlement discussions;
 - (ii) to comply with any requirements in the FIN, including directions (which may include ECMs) and, where the CMA considers it appropriate, to pay a monetary penalty;
- (c) accepts that a streamlined administrative procedure will govern the remainder of the CMA's investigation; and
- (d) agrees not to appeal any matter set out in the FIN.

4.34 The requirements set out at paragraph 4.33 above are the basic conditions of settlement that the CMA will require in order to follow a settlement procedure.⁹³

⁹³ The basic conditions of settlement are set out in Rule 7 of the CMA Consumer Rules. Depending on the circumstances, the CMA may specify additional conditions of settlement.

- 4.35 Settlement, in appropriate cases, allows the CMA to achieve efficiencies through a streamlined administrative procedure, resulting in earlier adoption of a FIN, and/or resource savings including the resource savings that come from the settling party accepting that they will not challenge or appeal against the FIN, and the CMA therefore not having to defend an appeal from the settling party.
- 4.36 Where the CMA agrees to settle and the conditions of settlement are met, the CMA will apply a reduction to the penalty imposed on the settling party. Further details regarding the CMA's approach to applying a reduction to the penalty where settlement is agreed are set out below at paragraphs 4.69 to 4.72.

Discretionary nature of settlement

- 4.37 There is no right or obligation on the CMA or on any party to enter into settlement discussions, or to agree to settlement. To decide whether to settle any case is at the CMA's discretion.
- 4.38 In determining whether a case is suitable for settlement, and whether to engage in settlement discussions, the CMA will have regard to a number of factors. These include the likely procedural efficiencies and resource savings that can be achieved.

Impact of settlement

- 4.39 A settling party may withdraw from settlement discussions at any time before confirming in writing its acceptance of the requirements for settlement.
- 4.40 Once a settling party has confirmed in writing its acceptance of settlement, even if the settling party subsequently seeks to withdraw from settlement, the CMA may still rely on any admissions that have been made. If a settling party does not comply with certain requirements of settlement that it has agreed to, the CMA will remove any settlement discount that was applicable to the penalty. The application of any settlement discount is set out in further detail below.
- 4.41 A settling party agrees not to bring an appeal and the CMA may apply to the court to strike out any appeal notice.

Settlement procedure

- 4.42 Settlement discussions can be initiated either before or after a PIN is issued. Parties may wish to approach the CMA during an investigation to discuss the

possibility of exploring settlement by contacting the case team. The CMA may also contact parties to ask whether they wish to enter into settlement discussions. The CMA will not make any assumptions about a party's liability from the fact that it is interested in engaging in or engages in settlement discussions.

- 4.43 Settlement discussions will be subject to a set timetable. The timetable will be appropriate to the circumstances of the case, taking into account the CMA's duty of expedition. If the CMA considers settlement discussions are not proceeding with sufficient pace or are unlikely to result in the party agreeing to or complying with the conditions of settlement, the CMA may terminate the discussions at any time. If settlement discussions are terminated, the CMA will revert to the usual administrative procedure. Settlement discussions will generally be overseen by the SRO.
- 4.44 If the CMA has not yet issued a PIN, the CMA will send a party interested in exploring settlement a 'Summary Statement of Case'.
- 4.45 The Summary Statement of Case will set out a succinct explanation of the CMA's concerns, including:
- (a) the identity of the parties and, where relevant, accessories to the conduct;
 - (b) the key facts relevant to the CMA's concerns, including the relevant dates when the conduct took place;
 - (c) details of the infringements the CMA considers it has reasonable grounds to believe the party has engaged or is engaging in, or is an accessory to.
- 4.46 After receiving the Summary Statement of Case, parties interested in exploring settlement further will be required promptly to agree to certain requirements (the 'Terms for Settlement Discussions'), including:
- (a) to enter into settlement discussions to a timetable set by the CMA;
 - (b) to take such steps as the CMA considers are appropriate to cease or otherwise mitigate the impact of the concerning conduct, if such conduct is ongoing. The CMA will specify any steps the relevant party is required to take in this regard, and the time period for those steps to be completed;
 - (c) the party must acknowledge and agree to the conditions of settlement that will apply, including those set out in Rule 7 of the CMA Consumer Rules.
- 4.47 If the Terms for Settlement Discussions are not agreed promptly, or not complied with, the CMA will revert to the usual administrative procedure.

Submissions on Summary Statement of Case

4.48 Where settlement discussions continue, the CMA will invite the settling party to make any submissions on the Summary Statement of Case. Depending on the nature and extent of any submissions received, the CMA will assess whether the case remains suitable for settlement. If a party's submissions are extensive or the CMA considers that they suggest that the party is not ready substantially to accept the facts or admit the alleged infringements as set out in the Summary Statement of Case, the CMA may terminate the settlement discussions. In this situation, the CMA will revert to the usual administrative procedure.

Provisional Infringement Notice

4.49 If the CMA considers it is appropriate to continue settlement discussions after considering any submissions on the Summary Statement of Case, the CMA will provide the party with a PIN.⁹⁴ The CMA will provide the party with access to the documents referred to in the PIN, as well as a list of the documents on the CMA's file. Access to specific documents included on that list can be requested, although the provision of such access will influence the CMA's ongoing assessment of the procedural efficiencies and resource savings that can be achieved from settlement.⁹⁵

4.50 Among other things, the PIN will include details of any proposed directions the party will be required to comply with, including any ECMs, and details of the maximum proposed penalty that the settling party will be required to pay.

4.51 In some circumstances it may be appropriate to provide a PIN in draft as part of settlement discussions, such as where further investigation is required, for example to determine the proposed directions.

Representations on the Provisional Infringement Notice

4.52 As a term of settlement, the party will agree not to make written representations other than limited representations in respect of:

(a) manifest factual inaccuracies in the PIN,

(b) where appropriate, submissions on the proposed directions, and

⁹⁴ The legal threshold to issue a PIN is set out in section 181 DMCC Act.

⁹⁵ These documents may be subject to confidentiality redactions where appropriate.

(c) submissions on the proposed penalty.

- 4.53 Representations will be required to be made promptly and in accordance with the timetable set by the CMA, and, save in exceptional circumstances, it is not generally expected that the deadline for submissions will exceed ten working days from the issue of the PIN.
- 4.54 The party will agree not to make oral representations in these circumstances.
- 4.55 If a party's representations on the PIN are extensive or the CMA considers that they suggest that the party does not accept the facts or admit the alleged infringements set out in the PIN, or the party otherwise does not follow the requirements for settlement, the CMA may terminate the settlement discussions. In this situation, the CMA will revert to the usual administrative procedure.

Circumstances where settlement discussions commence after the PIN is issued

- 4.56 The CMA may be willing to enter into settlement discussions after a PIN has been issued, although in such circumstances the maximum level of the penalty discount available to the party will be reduced (see paragraphs 4.72 below).
- 4.57 For discussions to proceed, the party will be required to agree to the requirements set out in the Terms for Settlement Discussions (see paragraph 4.46 above), and to do so promptly.
- 4.58 In this situation, if the party has not yet received access to the CMA's case file, then the CMA will provide the party with access to the documents referred to in the PIN, as well as a list of the documents on the CMA's file. The CMA will assess the procedural efficiencies and resource savings that can be achieved from settlement when considering arrangements for providing access to such documents.⁹⁶
- 4.59 If representations have not yet been made on the matters set out in the PIN, the provisions of paragraphs 4.52 to 4.55 above will apply.

Acceptance of settlement

- 4.60 The CMA will specify a deadline for the party to admit the infringements and accept the other matters set out in the PIN by way of a written 'letter of

⁹⁶ These documents may be subject to confidentiality redactions where appropriate.

acceptance', which includes that the party accepts the conditions of settlement including those contained in Rule 7 of the CMA Consumer Rules. This letter must be signed by an individual authorised to sign on behalf of the party.

- 4.61 The admission will be made by reference to the infringement(s) as set out in the PIN, reflecting any amendments agreed between the CMA and the party.
- 4.62 If the party has made representations on the PIN before settling, the CMA will require the party, in its confirmation that it has accepted the requirements of settlement, formally to withdraw those representations.
- 4.63 The letter of acceptance will be placed on the CMA's file and may not be withdrawn.
- 4.64 If settlement discussions are not successful and no letter of acceptance is given within the time the CMA requires, the case will continue according to the usual administrative procedure. In these circumstances, the CMA will not place any admissions regarding the party's conduct on the file, and will not rely on such material in any PIN or any FIN. Other material, including evidence obtained by the CMA during the period of discussions and material otherwise provided during such discussions, may be placed on the CMA's file.

Final Infringement Notice (FIN)

- 4.65 If settlement discussions are successful, the CMA will generally give a FIN to the party.⁹⁷
- 4.66 The FIN will reflect the admissions made by the party.
- 4.67 The FIN will include findings of fact and law, any directions being imposed, the amount of any penalty imposed on the party and a statement of any discount that the CMA will apply to such penalty following settlement, as well as a description of the key requirements of the settlement procedure.
- 4.68 The CMA may also take other steps that it is empowered to do under the DMCC Act, including that the CMA may issue an OIN to the party or to any other person.⁹⁸

⁹⁷ The legal threshold to issue a FIN is set out in section 182 DMCC Act.

⁹⁸ The provisions regarding OINs are set out in section 184 DMCC Act.

Penalty discount

- 4.69 As part of the minimum requirements for settlement, a party must agree to pay a monetary penalty if it is given a FIN imposing such a penalty.
- 4.70 In the FIN, the CMA will set out the total penalty, together with the settlement discount that will apply provided the party complies with certain settlement conditions (the 'Settlement Discount Conditions'). These will include that the party must not have brought an appeal or acted in a way that is contrary to its admission that it has infringed the law, as well as having complied and where applicable continuing to comply with any other conditions that the CMA specifies in writing.⁹⁹ Such Settlement Discount Conditions will be set out in the FIN and the 'letter of acceptance'.¹⁰⁰
- 4.71 The maximum settlement discount available will depend on the stage of the investigation at which settlement discussions take place. The actual discount applied to the penalty will take account of the resource savings achieved in settling that particular case at that particular stage in the investigation. For further information regarding penalty setting see Chapter 7 below.
- 4.72 The maximum settlement discounts that may be applied to the penalty by the CMA are as follows:

STAGE AT WHICH SETTLEMENT TAKES PLACE	MAXIMUM PENALTY DISCOUNT
Party agrees to Terms for Settlement Discussions prior to issue of PIN	40%
Party agrees to Terms for Settlement Discussions after issue of PIN	25%

Table 1: Stages of settlement discussions and their corresponding maximum settlement discount

⁹⁹ See Rule 7(5) of the CMA Consumer Rules.

¹⁰⁰ See paragraphs 4.60 to 4.64 above.

Withdrawal of the settlement discount by the CMA

- 4.73 Following the completion of successful settlement discussions, and the signature by the settling party of the 'letter of acceptance', the CMA will retain the right to withdraw the settlement discount if the settling party does not comply with the Settlement Discount Conditions.
- 4.74 Where any of the Settlement Discount Conditions are not complied with, the settlement discount will no longer apply to the penalty and the party will be required to pay the full amount of the penalty as set out in the FIN. It will not be possible to withdraw admissions that have been made as part of settlement. In addition, the CMA will not be precluded from pursuing additional infringements where these are supported by the evidence.

External communications during or post settlement

- 4.75 The CMA will generally not make a public announcement that settlement discussions are taking place, or, where discussions break down, that they have broken down. Parties must not disclose the content of settlement discussions or the fact that those discussions have taken place to any third parties (including any other parties engaging in settlement discussions) without the prior written authorisation of the CMA.
- 4.76 Where a party agrees to settle, the CMA will issue a press release announcing this and update the CMA's webpages to refer to the settlement.
- 4.77 Once the case has concluded, the CMA will announce the outcome of the case, including the issue of a FIN. See paragraphs 2.80 to 2.81 of Chapter 2 (The enforcement process).

5. Remedies

- 5.1 This chapter explains when the CMA may impose directions and ECMs and what they might include. It also considers:
- (a) online interface notices;
 - (b) monitoring of enforcement directions and undertakings; and
 - (c) variation and revocation of directions.
- 5.2 If the CMA gives a FIN, the CMA may impose a requirement to comply with directions (which may include ECMs) and may impose a requirement to pay a monetary penalty.¹⁰¹ This decision will be made on a case-by-case basis depending on the particular factual circumstances of the individual infringements identified.¹⁰²
- 5.3 Third parties will not generally have a right to comment on any remedies the CMA is looking to impose. However, where the CMA considers that it would be of material assistance to it in a particular case, the CMA may seek input from relevant third parties in relation to the remedies it proposes to impose.¹⁰³

Directions

- 5.4 Directions are such measures as the CMA considers appropriate for, or in connection with, the purpose of ensuring that the party does not engage in, continue or repeat the infringing practice, or does not consent to, or connive in the infringing practice either itself or by a body corporate with which the party has a special relationship.¹⁰⁴ Directions may include ECMs, which are described more fully below.
- 5.5 The CMA has wide discretion in relation to the directions it considers appropriate to achieve compliance with consumer law. The form and scope of

¹⁰¹ A monetary penalty may only be imposed if the CMA is satisfied that infringing practice has occurred or is occurring, it cannot be imposed for infringing practices which are only likely to occur.

¹⁰² Where directions are proposed the PIN will set out the proposed directions and where the directions include ECMs the PIN will state that fact and include details of the proposed measures. Where monetary penalties are proposed the PIN will confirm the CMA is considering imposing a monetary penalty, the proposed amount of that penalty and any further factors the CMA considers may justify the imposition of the proposed penalty and amount. (see section 181(4)(b), (6) and (8) DMCC Act).

¹⁰³ The CMA will only seek input in line with applicable legal restrictions on disclosure (which are set out in detail in the CMA's Transparency and Disclosure Statement, [CMA6](#)), to the extent doing so would not risk prejudicing the CMA's investigation or another case and in line with its duty of expedition.

¹⁰⁴ Section 182(4) DMCC Act.

the directions imposed will depend on the individual circumstances of a particular case.

Enhanced Consumer Measures (ECMs)

- 5.6 Directions contained in a FIN may also require the party to take such ECMs as the CMA considers just and reasonable.¹⁰⁵
- 5.7 ECMs were introduced as part of the consumer enforcement framework, within Part 8 of EA02 in 2015.¹⁰⁶
- 5.8 This section provides some detail on the three different types of ECMs (redress, compliance, and choice measures) and how they may be used in the context of the CMA's direct consumer enforcement powers under the DMCC Act.¹⁰⁷

Redress measures

- 5.9 The CMA will consider whether to require a party to offer compensation or other redress to consumers affected by the infringing practice. Affected consumers are not limited to consumers who have suffered loss as a result of the infringing practice but also covers consumers who have been otherwise affected – for example, consumers who have suffered non-financial losses or instances of distress or inconvenience.¹⁰⁸
- 5.10 Where the infringement relates to a contract, redress may include, for example, measures enabling affected consumers the option to terminate (but not vary) the contract.
- 5.11 Where affected consumers can be identified, the CMA may require redress for the consumers' direct losses (either in full or a proportion of the loss) and other impacts such as lost time, productivity, distress or inconvenience due to the issue with the product or service.
- 5.12 Where it is not possible to identify affected consumers or it is disproportionately costly to do so, the CMA may require redress measures in the collective interest of consumers. For example, the CMA can impose a

¹⁰⁵ ECMs may also be included in undertakings, see Chapter 4 on Undertakings and settlement, and section 185(3) DMCC Act.

¹⁰⁶ In May 2015, the Department for Business, Innovation and Skills (BIS) (a predecessor of the current Department for Business and Trade) published guidance on ECMs, see Department for Business, Innovation and Skills, [guidance on Enhanced Consumer Measures](#).

¹⁰⁷ See section 221 DMCC Act.

¹⁰⁸ See paragraph 1321, [DMCC Act Explanatory Notes](#).

measure requiring the party to pay the equivalent of the loss suffered to a consumer charity, or to fund a particular scheme or educational programme for consumers administered by a government department.

Compliance measures

- 5.13 Compliance measures are intended to prevent or reduce the risk of the occurrence or repetition of the infringing conduct (which may include measures imposed for the purpose of improving compliance with consumer law more generally).
- 5.14 For example, the CMA could direct the party to implement compliance measures, such as one or more of:
- (a) the appointment of a compliance officer;
 - (b) the provision of better training and guidance for staff;
 - (c) making changes to policies, processes and procedures;
 - (d) auditing internal processes and procedures;
 - (e) signing up to the [Primary Authority Scheme](#): a Primary Authority allows businesses to form a statutory partnership with a Trading Standards to provide it with consistent, tailored, assured advice, which other enforcers must take into account when addressing non-compliance.

Choice measures

- 5.15 Choice measures are measures intended to help consumers obtain relevant information to enable them to choose more effectively between persons supplying goods, services or digital content.
- 5.16 This could include information about the party's compliance history, to assist consumers to make better informed purchasing decisions.
- 5.17 For example, the CMA could direct the party to:
- (a) advertise the fact of its infringement and state what positive steps it has taken to remedy the situation in the press or on its website, social media, or in-store;
 - (b) disclose where a component of its product or service is available for free elsewhere;

- (c) include its products in online comparison tools; or
- (d) facilitate online customer reviews of its products.

When can ECMs be required?

- 5.18 ECMs may be imposed where the CMA considers them to be just and reasonable.¹⁰⁹
- 5.19 The CMA must also consider whether the proposed ECMs are proportionate having regard to:
- (a) the likely benefit of the measures to consumers;
 - (b) the costs likely to be incurred by the respondent; and
 - (c) the likely cost to consumers of obtaining the benefit of the measures.
- 5.20 The costs likely to be incurred by the respondent are:
- (a) the cost of the measures; and
 - (b) the reasonable administrative costs associated with taking the measures.

Waiver of rights

- 5.21 If an ECM includes redress measures, consumers are not required to accept any redress and may, if they wish, reject the redress offered (for example, if they wish to pursue their own individual civil court claim). If a consumer chooses to accept redress, they may be required to agree to waive their right to take any legal action against the party for the infringing conduct which is the subject of the FIN. This waiver would not, however, prevent a consumer from taking their own civil action for compensation for infringing conduct other than that which has given rise to the FIN.¹¹⁰

Online Interface Notices (OINs)

- 5.22 An online interface means any software including websites, applications and other digital content, which is operated for, or in connection with, giving access to or promoting goods, services or digital content.¹¹¹ An OIN may be

¹⁰⁹ Section 183 DMCC Act.

¹¹⁰ Section 183(6) DMCC Act.

¹¹¹ Section 184(10) DMCC Act— ‘Online interface’ means any software, including a website, part of a website, an application or other digital content which— (a) is operated by a person (“P”) acting for purposes relating to P’s

given to an infringing party,¹¹² or any third party,¹¹³ and is designed to prevent serious harm to the collective interests of consumers.¹¹⁴ An OIN may set out directions that the recipient of the notice must comply with, including in connection with an online interface, as described at paragraph 5.27 below.

5.23 An OIN may be given only if the CMA is satisfied that:

(a) there are no other available means (under section 162 or under another provision of Chapter 4 of Part 3 of the DMCC Act) of bringing about the cessation or prohibition of the infringement which, by themselves, would be wholly effective; and

(b) it is necessary for the directions contained in the notice to be given to avoid the risk of serious harm to the collective interests of consumers.¹¹⁵

5.24 Subject to the particular circumstances of an investigation, it is possible that the CMA may give an OIN to a third party and, simultaneously, a FIN to the infringing party. This may occur for example, where the CMA is not satisfied that giving the FIN to the infringing party would, by itself, be wholly effective and is satisfied that the directions in the OIN are necessary to avoid the risk of serious harm to the collective interests of consumers.¹¹⁶

To whom can an Online Interface Notice be given?

5.25 The CMA may give an OIN to a party that the CMA is satisfied has engaged, is engaging or is likely to engage in a commercial practice constituting an infringement of legislation listed in Schedule 16 to the DMCC Act.¹¹⁷

5.26 The CMA may also give an OIN to any other person, including a person who is outside the United Kingdom where that person is:

(a) a UK national;

(b) an individual who is habitually resident in the UK;

business or by a person acting in the name of, or on behalf of, P, and (b) is operated for or in connection with the purposes of giving access to, or promoting, the goods, services or digital content that P or another person supplies.

¹¹² That is, the person who, under section 184 DMCC Act, the CMA is satisfied has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement.

¹¹³ An OIN may be given to any third party including an overseas party, subject to certain jurisdictional conditions set out in section 184(4) DMCC Act, see paragraph 5.25.

¹¹⁴ Section 184(5) DMCC Act.

¹¹⁵ Section 184(5) DMCC Act.

¹¹⁶ Paragraph 1089, [DMCC Act Explanatory Notes](#).

¹¹⁷ Section 184(1) DMCC Act.

- (c) a firm established in the UK;¹¹⁸ or
- (d) carries on business in the UK or by any means directs activities in the course of carrying on a business to consumers in the UK.

What can an Online Interface Notice contain?

5.27 An OIN may contain whatever directions the CMA considers appropriate for the purpose of requiring the party to whom it is given to do, or to co-operate with another party so that party can do, one of more of the following:

- (a) remove content from, or modify content on, an online interface;
- (b) disable or restrict access to an online interface;
- (c) display a warning to consumers accessing an online interface;
- (d) delete a fully qualified domain name and take any steps necessary to facilitate the registration of the domain name by the CMA.¹¹⁹

5.28 An OIN will be in writing and must set out the grounds on which it is given and state that the party has the right to appeal against the notice.¹²⁰

5.29 Where the CMA gives an OIN to a third party, such as the operator of the online interface, in appropriate circumstances it may contact the third party in advance of giving the OIN. This may be appropriate where, for example, it would be of material assistance to the CMA to confirm information relevant to the action that the OIN seeks to secure.

Publication of Online Interface Notices

5.30 The CMA may publish an OIN when it has been given and may also publish the identity of the party who has engaged, is engaging or is likely to engage in a commercial practice which constitutes the relevant infringement, where such identity is known.¹²¹ The CMA has wide discretion in relation to publication of this notice and the party's identity, but it must be in a form and manner as the CMA considers appropriate to eliminate any continuing effects of the relevant infringement.¹²²

¹¹⁸ Section 184(9) DMCC Act.

¹¹⁹ Section 184(4) DMCC Act.

¹²⁰ Section 184(6) DMCC Act.

¹²¹ Section 184(7) DMCC Act.

¹²² Section 184(8) DMCC Act.

Monitoring of enforcement directions and undertakings

Record-keeping and reporting requirements

- 5.31 The CMA must keep a record of undertakings it has accepted, enforcement directions it has given and reviews it has carried out in relation to the effectiveness of such undertakings and directions.¹²³
- 5.32 The CMA must also prepare a report, if requested to do so by the Secretary of State, on:
- (a) the effectiveness of undertakings and enforcement directions, and
 - (b) the number and outcome of appeals against the CMA decisions to impose a monetary penalty, the nature or amount of that monetary penalty or against the giving of directions.¹²⁴
- 5.33 The report must be provided to the Secretary of State and published in such a manner as the CMA considers appropriate.¹²⁵ Generally, the CMA would expect to publish such reports on its webpages but may publish by other means where it is considered appropriate.
- 5.34 For further details on the CMA's approach to transparency, and the CMA's approach to publication, please see [CMA6](#).

Monitoring of directions and undertakings

- 5.35 In order to help the CMA comply with these requirements, and to assist with the monitoring of compliance with directions and undertakings, the CMA may require directions and undertakings to include such monitoring and reporting requirements as the CMA considers appropriate such as the provision of information or documents – including by way of compliance ECMs.

¹²³ Section 201 DMCC Act.

¹²⁴ Section 201(2) and section 202 DMCC Act.

¹²⁵ Section 201(3) DMCC Act.

Variation and revocation of enforcement directions

*Variation and revocation of directions*¹²⁶

- 5.36 The CMA may vary or revoke enforcement directions.¹²⁷ The process for this is set out below. A party to whom directions apply may request that enforcement directions be varied or released by contacting the CMA case team.
- 5.37 The decision to vary or revoke an enforcement direction, or any part of an enforcement direction, is at the CMA's discretion. The CMA will take into account the factors set out below when determining whether to do so.
- 5.38 It may be appropriate to vary an enforcement direction in certain circumstances, for example where:
- (a) the enforcement direction no longer addresses the purpose for which it was given, and the CMA considers the variation will better address this purpose; or
 - (b) there has been a material change in circumstances which the variation will address.
- 5.39 The CMA is unlikely to agree to a variation to an enforcement direction where it considers the variation may render the direction less effective, may mean the direction fails to address all of the CMA's concerns, or may make compliance with applicable enforcement directions more difficult to discern.
- 5.40 It may be appropriate to revoke an enforcement direction where the direction is no longer necessary, for example because the relevant party has ceased trading or no longer operates a consumer facing business with a UK connection.
- 5.41 The CMA is unlikely to revoke an enforcement direction where it considers there is an ongoing risk in relation to the areas of concern addressed by the direction.

¹²⁶ Section 196 DMCC Act.

¹²⁷ This includes directions given through a FIN, an OIN, a final breach of undertakings notice or a final breach of directions enforcement notice (under sections 182, 184, 189, 192 DMCC Act respectively). It includes directions given in a FIN where the party or parties agree to settlement with the CMA.

- 5.42 Where the CMA proposes to make a material variation¹²⁸ of an enforcement direction, or to revoke any such direction, the CMA must first give notice to the relevant party and consider any representations made in accordance with the notice.¹²⁹
- 5.43 This notice must state the fact that the CMA is proposing such action, the reasons for doing so, and the means and time by which, representations may be made in relation to the proposed action.¹³⁰
- 5.44 If, after considering any representations made the CMA decides to take the proposed action, the CMA must give notice to the party of that decision.¹³¹ The CMA may, if it considers it appropriate, seek input from certain relevant third parties in relation to the variation and revocation of directions.¹³² If the CMA has previously published a FIN and directions in the matter, it will publish the notice of the variation or revocation on its webpage.

¹²⁸ The DMCC Act indicates a material variation is any variation that the CMA considers to be material in any respect (section 196(5) DMCC Act).

¹²⁹ Section 196(2). Although the means and timeline by which the CMA will accept representations will be set out within the notice on a case-by-case basis, for the CMA's general approach to written representations see paragraphs 2.36 to 2.41 of Chapter 2 (The enforcement process).

¹³⁰ Section 196(3) DMCC Act.

¹³¹ Section 196(4) DMCC Act.

¹³² See paragraph 5.3 above.

6. Administrative enforcement for failures to comply with requirements set by the CMA

- 6.1 This chapter explains when the CMA may take enforcement action for breach of undertakings and directions, for the provision of false or misleading information, and for non-compliance with information notices.
- 6.2 This chapter also sets out factors relevant to the recovery of outstanding monetary penalties and court enforcement of directions.

Enforcement of undertakings and directions, and for the provision of false or misleading information and non-compliance with information notices

- 6.3 The DMCC Act provides the CMA with powers directly to enforce directions and undertakings, including by imposing monetary penalties for breaches.¹³³ The DMCC Act also provides the CMA with powers to impose monetary penalties where parties fail to comply with information notices or where they provide materially false or misleading information to the CMA in connection with the exercise of its direct consumer enforcement functions.¹³⁴ We refer to this as ‘administrative enforcement’. The process the CMA must follow to conduct any administrative enforcement is very similar to that which applies to enforcement in relation to substantive infringements.
- 6.4 The guidance set out in this chapter relates to the operation of the statutory powers in the DMCC Act to take action in the circumstances described above. Subject to individual circumstances, there may be other steps the CMA may take instead of or in addition to administrative enforcement, where it has concerns about compliance with directions, undertakings or information notices. For example, this may include, where appropriate, contacting a party to raise concerns informally. Where the CMA has reasonable grounds for suspecting that a person from whom the undertaking was accepted has failed to adhere to one or more of the terms of the undertaking, or if the CMA has reasonable grounds for suspecting that information which led it to accept the

¹³³ Undertakings sections 188 to 190 DMCC Act, and Directions sections 191 to 193.

¹³⁴ Schedule 17 to the DMCC Act amends Schedule 5 of the CRA to enhance the enforceability of statutory information notices given to a person under paragraph 14 of Schedule 5, including by inserting new paragraphs 16A to 16J to Schedule 5. Paragraph 16C allows the CMA to impose a requirement to pay a monetary penalty or a requirement to comply with directions that the CMA considers appropriate to secure compliance with the information notice or both. Sections 196 and 197 DMCC Act detail the CMA’s powers to impose penalties for materially false or misleading information provided to the CMA in connection with its direct consumer enforcement functions under Chapter 4 of Part 3 of the DMCC Act or under paragraphs 16B or 16C of Schedule 5 to the CRA.

undertaking was incomplete, false or misleading in a material way, the CMA may also recommence substantive enforcement of the underlying infringement as well as commencing administrative enforcement.¹³⁵

- 6.5 The CMA will consider whether to take administrative enforcement action on a case-by-case basis, taking into account all the relevant circumstances, and having regard to the CMA's duty of expedition and its prioritisation principles.¹³⁶ The CMA will consider relevant factors including the need to incentivise compliance with directions, undertakings and information notices and deterring future breaches, both by those on whom penalties have been imposed and other persons who may consider not complying in future.

Reasonable excuse

- 6.6 The CMA may take administrative enforcement action for certain breaches only where a party has acted 'without reasonable excuse'. For certain other breaches the CMA may take administrative enforcement action irrespective of whether a party has a 'reasonable excuse' but can only impose a penalty if it is satisfied that the party lacks a reasonable excuse for its non-compliance.

(a) The CMA may only commence enforcement in respect of the provision of false information or breach of directions if it has reasonable grounds to believe the failure is without reasonable excuse.¹³⁷

(b) The CMA may enforce any undertaking and any failure to comply with an information notice, and may impose directions to secure compliance, but may only impose a monetary penalty where it is satisfied the breach was without reasonable excuse.¹³⁸

- 6.7 Examples of the CMA's approach to this assessment are set out in paragraphs 7.48 to 7.49 of Chapter 7 (Penalties). Those examples and considerations will be relevant when the CMA considers whether there is a 'reasonable excuse' as outlined in this chapter.

¹³⁵ See section 186(3) DMCC Act.

¹³⁶ [CMA Prioritisation Principles - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/cma-prioritisation-principles)

¹³⁷ See sections 191(1)(b) and 197(1)(a) DMCC Act.

¹³⁸ See paragraphs 16B and 16C, Schedule 5, CRA; and see sections 188 and 191 DMCC Act.

Process for administrative enforcement

Provisional notice

- 6.8 The CMA may give a provisional notice to a party where it has reasonable grounds to believe that the party has:
- (a) failed to comply with one or more of the terms of an undertaking given to the CMA;¹³⁹
 - (b) without reasonable excuse, failed to comply with a direction imposed by the CMA (fully or in any respect);¹⁴⁰
 - (c) failed to comply with the terms of an information notice given by the CMA;¹⁴¹
 - (d) without reasonable excuse, provided information to the CMA that is materially false or misleading.^{142, 143}
- 6.9 The provisional notice will:
- (a) set out the grounds on which it is given, including the alleged acts or omissions giving rise to the CMA's belief;
 - (b) where applicable, set out proposed actions or directions for the purpose of securing compliance;¹⁴⁴
 - (c) where applicable, state that the CMA is considering imposing a monetary penalty and the proposed amount of that penalty (including, where applicable, whether the penalty would be a fixed amount, an amount calculated by way of reference to a daily rate, or both),¹⁴⁵ together with any further factors the CMA considers justify the imposition of the proposed penalty and its amount;

¹³⁹ A provisional breach of undertakings enforcement notice - section 188(2) DMCC Act.

¹⁴⁰ A provisional breach of directions enforcement notice - section 191(2) DMCC Act.

¹⁴¹ A provisional enforcement notice - paragraph 16B, Schedule 5, CRA.

¹⁴² Provided information in connection with the carrying out of a direct consumer enforcement function, see section 197(1) DMCC Act.

¹⁴³ A provisional false information enforcement notice, section 197(2) DMCC Act.

¹⁴⁴ This is not required for a provisional false information enforcement notice.

¹⁴⁵ The CMA may not impose a daily penalty in a false information enforcement notice.

- (d) invite the party to make any representations to the CMA about the giving of the notice, including representations as to whether there is a reasonable excuse for the alleged breach;
- (e) specify the means and the time, by which, such representations must be made; and
- (f) inform the party that they may choose to make representations orally if they wish to do so.

Representations

- 6.10 Parties who receive a provisional notice have the right to make representations to the CMA. These may be in writing, orally or both. The provisional notice will set out how any representations must be made and the timetable for submitting representations, taking account of the CMA's duty of expedition.
- 6.11 The process is broadly similar to that followed for giving a PIN and a FIN, as set out in Chapter 2 (The enforcement process).
- 6.12 As a result of the similarities in these processes, the means by which parties make representations on these provisional administrative enforcement notices, is similar and only key differences are described here.
- 6.13 One key difference is that the deadline for written representations in respect of provisional administrative enforcement notices will generally be no more than ten working days unless exceptional circumstances apply. Further, any requests for an extension to the deadline should be communicated to the CMA as soon as possible and in any event within three working days following the receipt of the provisional administrative enforcement notice.
- 6.14 Where no representations are provided within the specified time period the CMA may proceed with the administrative enforcement case in the absence of such responses.
- 6.15 Where the CMA gives a provisional breach of undertakings or breach of directions notice, as with the giving of a PIN, it may require the party to provide, for the purposes of considering the party's representations, evidence as to the accuracy of any factual claim made as part of its commercial practice.¹⁴⁶

¹⁴⁶ Section 195 DMCC Act.

6.16 See paragraphs 2.54 to 2.56 for further information on substantiation.

Final notice

6.17 The CMA may give the party a final notice where the CMA has given a provisional notice, the time for the party to make representations to the CMA in accordance with that notice has expired, and after considering any such representations the CMA is satisfied that the party has:

- (a) failed to comply with one or more of the terms of an undertaking given to the CMA;
- (b) without reasonable excuse, failed to comply with a direction imposed by the CMA (fully or in any respect);
- (c) failed to comply with the terms of an information notice given by the CMA;
or
- (d) without reasonable excuse, provided information to the CMA that is materially false or misleading.¹⁴⁷

6.18 A final notice may impose on the party a requirement:

- (a) to comply with such directions as the CMA considers appropriate for the purpose of securing compliance (where this is applicable); and
- (b) to pay a monetary penalty if the failure is without reasonable excuse.

6.19 A final breach of directions enforcement notice may also vary or revoke any enforcement direction given previously.¹⁴⁸

6.20 A final notice must:

- (a) set out the grounds on which it is given;
- (b) state any further factors which the CMA considers justify the giving of the notice;
- (c) if directions are given, specify the actions to be taken by the party in accordance with the directions;

¹⁴⁷ A final breach of undertakings enforcement notice under section 189(2), a final breach of directions enforcement notice under section 192(2), a final enforcement notice under paragraph 16C(2), Schedule 5, CRA or a final false information enforcement notice under section 198(2) DMCC Act, respectively.

¹⁴⁸ Section 191(5) DMCC Act.

- (d) if a penalty is imposed, specify the monetary penalty information;¹⁴⁹ and
- (e) state the relevant right to appeal that the party has against the notice and the main details of that right.

- 6.21 Parties who have received a final notice may appeal against decisions to impose a monetary penalty, the nature or amount of any such penalty or the giving of directions.¹⁵⁰
- 6.22 For further information on appeals see paragraphs 2.86 to 2.92 of Chapter 2 (The enforcement process).
- 6.23 The CMA may publish the final notice in such manner, and to such extent, as the CMA considers appropriate.¹⁵¹
- 6.24 For more information on the CMA's approach to transparency and disclosure, please see [CMA6](#).

Recovery of monetary penalties and court enforcement of directions

Time to pay applications

- 6.25 Where a notice requires payment of a monetary penalty, the party may apply to the CMA to specify a different date or dates by which the penalty, or different portions of it, are to be paid.¹⁵² An application for a different date by which to pay a penalty must be made within 14 days of the date of the notice, and should be supported by evidence on the reasons for the application. Such an application is a 'time to pay application'.
- 6.26 In considering whether to grant additional time to pay any portion of a penalty pursuant to a time to pay application, and any new deadline(s) by which such

¹⁴⁹ The DMCC Act specifies detailed information which must be set out in any notice requiring payment of a monetary penalty. This includes (among others) information on the amount of the penalty (including whether it is a fixed amount or calculated by reference to a daily rate or both), the grounds on which the penalty is imposed together with any other factors the CMA consider justify the giving of the penalty or its amount, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate, the date or dates, no earlier than the end of 28 days beginning with the date of service of the notice on the party, by which the penalty or (as the case may be) different portions of it are required to be paid, that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid, that the party has the right to apply to the CMA for it to specify a different date or dates by which the penalty, or different portions of it, are to be paid, and that the party has a right to appeal.

¹⁵⁰ Section 202 DMCC Act.

¹⁵¹ Section 189(6), 192(7), 198(6) and paragraph 16C(10), Schedule 5, CRA.

¹⁵² Section 203(4) DMCC Act.

payments are to be made, the CMA will consider the relevant circumstances. These considerations will include whether the party is also subject to ECMs which include redress measures, and whether timely payment of any such redress would be likely to be adversely affected by the deadline for payment of the penalty.

Recovery of monetary penalties

- 6.27 The deadline for payment of monetary penalties must be no earlier than the end of the 'applicable period' beginning on the date on which the notice is given to the party. For a final false information enforcement notice or a final enforcement notice for non-compliance with an information notice, the applicable period is 28 days. For all other notices pursuant to which a monetary penalty is imposed, the period is 60 days.¹⁵³ Where a time to pay application has been made to the CMA, the penalty is not required to be paid until the application has been determined, withdrawn or otherwise disposed of.¹⁵⁴
- 6.28 A penalty becomes payable where the penalty, or part of the penalty, has not been paid by the date on which it is required to be paid and:
- (a) an appeal to the court against the imposition of the penalty has not been brought within the relevant time; or
 - (b) if an appeal to the court against the imposition of the penalty has been brought within the relevant time, any such appeal has been determined, withdrawn, or otherwise disposed of.¹⁵⁵
- 6.29 Once the penalty becomes payable, if any part of the penalty is not paid, the CMA may recover any of the monetary penalty and any interest not paid from the party on whom the penalty was imposed as a civil debt.^{156, 157}

¹⁵³ Section 203(2) DMCC Act. Paragraph 16D(5), Schedule 5, CRA.

¹⁵⁴ Section 207(2) DMCC Act.

¹⁵⁵ Section 207(3) DMCC Act.

¹⁵⁶ Where the provisions of section 200 DMCC Act on interconnected bodies corporate are met, penalties imposed by a FIN or final breach of directions enforcement notice may be imposed on both the respondent and all other members of a group of interconnected bodies corporate which the respondent is or becomes a member of. Please see paragraph 2.83 of Chapter 2 for more detail.

¹⁵⁷ See section 206 DMCC Act, the penalty and interest may be recovered summarily or (in Scotland recovered) as a civil debt. See also section 207 DMCC Act confirming the unpaid balance carries interest at the statutory rate.

- 6.30 Where the CMA has given a FIN which requires payment of a monetary penalty and includes directions imposing redress ECMs, in deciding whether to recover the penalty, the CMA must have regard to:
- (a) whether any compensation required to be paid to consumers under redress measures has been, or is likely to be, paid; and
 - (b) where any such payments have not yet been paid (in full or in part), any effect that recovery of the penalty may have on that party's ability to make those payments.¹⁵⁸
- 6.31 The CMA will consider the individual factual circumstances of each case when deciding whether to start proceedings for recovery of an unpaid monetary penalty. However, factors the CMA will take into account in reaching this decision include:¹⁵⁹
- (a) whether the party:
 - (i) has made a time to pay application, as set out in paragraph 6.25 above, and the CMA's decision in respect of that application;
 - (ii) has proactively engaged with the CMA ahead of the payment deadline to provide a detailed explanation of, and supporting evidence on the reasons why, payment of a monetary penalty sum will not be received in time;
 - (iii) has provided a proposed timescale or plan for payment of the monetary penalty which the CMA considers to be reasonable in the circumstances; and
 - (b) whether the party is also subject to ECMs which include redress measures as part of the same notice or as part of another notice payable at the same time.
- 6.32 Where appropriate, the CMA may prioritise the enforcement of directions requiring affected consumers to receive redress ahead of the recovery of unpaid monetary penalties. In reaching such decisions the CMA may consider the direct benefit to affected consumers from receiving compensation against the need to enforce a penalty as soon as feasible, for example, in

¹⁵⁸ See section 206(5) DMCC Act.

¹⁵⁹ Section 212(2) DMCC Act indicates CMA guidance must provide information about the factors the CMA will take into account when determining whether to start proceedings for recovery of an unpaid monetary penalty.

circumstances where a party may lack sufficient financial resources to pay both compensation and the monetary penalty concurrently.¹⁶⁰

Court enforcement of directions

- 6.33 Where the CMA considers that a party has failed to comply with either an enforcement direction or a direction given in a final breach of directions enforcement notice, the CMA may make an application to the appropriate court.¹⁶¹
- 6.34 If the court finds that the party has failed to comply with the direction concerned, the court may make an order imposing such requirements on the party as the court considers appropriate for the purpose of remedying the failure.
- 6.35 This order may provide for all of the costs or expenses of, and incidental to, the application for the order to be met by the party or any officer of a person that is responsible for the party's failure to comply with the direction. An application for court enforcement of directions may also be combined with an application under Chapter 3 of Part 3 of the DMCC Act for a consumer protection order.¹⁶²

¹⁶⁰ See paragraphs 1189 and 1190, [DMCC Act Explanatory Notes](#).

¹⁶¹ See section 194 DMCC Act. Provisions of section 173 DMCC Act apply and if the respondent has a place of business in or carries on business in part of the UK the appropriate court is the High Court in England and Wales and Northern Ireland and the Court of Session or the sheriff in Scotland.

¹⁶² See section 194(5) DMCC Act, these provisions do not limit the powers of the Court to make orders under Chapter 3 of Part 3 of the DMCC Act.

7. Penalties

Introduction

- 7.1 This chapter sets out the CMA's approach to its powers to impose penalties for:
- (a) infringements of relevant consumer law under section 182 of the DMCC Act;
 - (b) breaches of undertakings and directions under sections 189 and 192 of the DMCC Act;
 - (c) the provision of false or misleading information under section 198 of the DMCC Act; and
 - (d) non-compliance with an information notice under Schedule 5 to the CRA (as amended by Schedule 17 to the DMCC Act).

Requirement for a statement of policy and scope of this document

- 7.2 Under section 199 of the DMCC Act, the CMA is required to prepare and publish a statement of policy in relation to the exercise of powers to impose a monetary penalty under Chapter 4 of Part 3 of the DMCC Act.
- 7.3 This includes penalties for infringements of consumer law, as well as penalties for breach of undertakings and directions, and the provision of false or misleading information.
- 7.4 Under Schedule 5 to the CRA, as amended by Schedule 17 of the DMCC Act, the CMA is also required to prepare and publish a statement of policy in relation to the exercise of its powers to impose a penalty for non-compliance with an information notice.
- 7.5 Both statements are required to include considerations relevant to the determination of:
- (a) whether to impose a penalty; and
 - (b) the nature and amount of any such penalty.
- 7.6 This chapter serves to satisfy these requirements. Penalties for infringements of consumer law ('substantive' penalties) are covered in the first part of this chapter. Penalties for breach of undertakings and directions, the provision of false or misleading information, and non-compliance with an information notice ('administrative' penalties) are covered in the second part.

Whether to impose penalties and the amount of such penalties

7.7 When deciding whether to impose a substantive or administrative penalty and the amount of any such penalty, the CMA will have regard to the policy objectives outlined below, together with the other factors referred to in this chapter, including the actual or potential harm of the conduct and the culpability of the party. Where the CMA considers it is appropriate to impose a penalty, the steps the CMA will follow when setting the amount of the penalty are set out below.

Policy objectives

7.8 The underlying policy intent, as set out in the Explanatory Notes to the DMCC Act,¹⁶³ is to provide for penalties which act as a meaningful deterrent for all businesses, including those with a substantial turnover. Similarly, the DMCC Act aims to create strong incentives for parties to comply with undertakings they have given, and with directions and information notices given by the CMA. In each case this is reflected in the maximum penalties that may be imposed, which may be up to the higher of a fixed amount or a percentage of turnover.

7.9 The CMA's objectives in imposing penalties are to:

- (a) deter infringements and incentivise compliance with both consumer law and remedies, whether agreed or imposed, in order to protect consumers;
- (b) reflect the seriousness of infringements and breaches that the CMA finds to have occurred; and
- (c) encourage parties to co-operate fully with CMA investigations, so that the CMA is able to take timely decisions based on accurate and complete information.¹⁶⁴

7.10 The CMA will impose monetary penalties in support of these objectives, in a way that is proportionate and which provides a meaningful deterrent,¹⁶⁵ both

¹⁶³ [Digital Markets, Competition and Consumers Act 2024 – Explanatory Notes \(legislation.gov.uk\)](#).

¹⁶⁴ The CMA has a duty of expedition under the DMCC Act. Where parties fail to comply properly with information notices or otherwise fail to co-operate with CMA investigations, it is likely that the investigation will take longer, at greater cost to the taxpayer, and to the detriment of consumers and fair dealing businesses. The accuracy and quality of CMA decisions may be impacted, and in extreme circumstances the CMA could come to a different decision from the one it would have reached if the missing information had been available.

¹⁶⁵ See paragraph 962, [DMCC Act Explanatory Notes](#). The underlying policy intent is to provide for a penalty of up to the higher of a fixed amount or a percentage of turnover because: a penalty of up to only a fixed amount might not act as a meaningful deterrent for large companies with substantial turnover; conversely, there may be

to the party and to others. In some cases, for example where UK turnover represents only a small proportion of global activity, this may mean substantial uplifts to the final penalty in order to achieve meaningful deterrence.

Determination of turnover

- 7.11 The DMCC Act provides that the CMA may impose substantive penalties capped at £300,000 or, if higher, 10% of a party's world-wide turnover. For substantive infringements and breaches of undertakings and directions, however, the CMA will generally determine a starting point of up to 30% of the party's UK turnover. This is because generally the CMA's concerns will be focussed on harm to the UK market and consumers within that market, whilst recognising that businesses operating within the UK will often also have sources of turnover originating outside the UK and the need to ensure that the penalty reflects the seriousness of the conduct and is sufficient to act as a meaningful deterrent.
- 7.12 For the purpose of determining turnover in relation to the statutory cap, the DMCC Act provides that turnover includes:¹⁶⁶
- (a) turnover both in and outside the United Kingdom; and
 - (b) where a person controls another person or is controlled by another person, the turnover of that other person.
- 7.13 For these purposes the Secretary of State may make regulations for determining turnover (for the purposes of calculating the statutory cap) and for determining when a person is to be treated as controlled by another person. These will also set out which accounting period should be used when calculating the statutory cap. However when assessing the level of turnover for the starting point and subsequent stages before the application of the statutory cap, the CMA will assess the applicable turnover of the party based on the last full year's figures preceding the date on which the infringement ended, or where the infringement appears to be ongoing, the date of the relevant provisional notice (except, if figures are not available for that business year, the CMA will use the one immediately preceding it).¹⁶⁷

smaller companies (such as a new start up) which have a low or negligible turnover, such that a penalty of up to only the relevant percentage of turnover might not act as a meaningful deterrent, and some individuals in scope of the penalty powers, such as a company director who consents or connives in the infringing practice (as an accessory) will not have a turnover.

¹⁶⁶ See section 204(1) DMCC Act and paragraph 16H(1) of Schedule 5 to the CRA (as amended).

¹⁶⁷ The proposed approach set out in this paragraph is subject to the content of the final regulations for the determination of turnover which may be made by the Secretary of State.

- 7.14 In finalising the penalty to be imposed, the CMA will also satisfy itself that the final penalty is no higher than the relevant statutory cap, based on the party's worldwide turnover.
- 7.15 In determining the party's turnover for any purpose, the CMA may request turnover information from that party and/or a third party, use public or non-public information and/or estimate using any available information.
- 7.16 Where the party has no turnover (for example a company director who consents or connives in the infringing practice as an accessory) or its turnover is low or negligible (such as a start-up), the CMA can apply a fixed penalty of up to £300,000.
- 7.17 Where the CMA is not in a position to determine a party's turnover, for example where a party has not provided the CMA with turnover information and there is no publicly available information, the CMA may apply an appropriate monetary penalty ('Appropriate Monetary Penalty').¹⁶⁸ The Appropriate Monetary Penalty applied by the CMA will be based on the CMA's estimate of the party's UK turnover, and it will be set at a level that the CMA considers is less than the relevant percentage cap based on the party's world-wide turnover.
- 7.18 To the extent a party considers that the CMA's proposed Appropriate Monetary Penalty exceeds that cap, it can set out why in any representations it makes in response to the provisional notice. Such representations should include evidence in support of the party's claims regarding its turnover, which the CMA will assess.

Monetary penalties for infringements of consumer law (substantive penalties)

Statutory background

- 7.19 Section 182 of the DMCC Act provides that, where the CMA issues a FIN, it may require the party to whom the FIN is given ('the party') to pay a monetary penalty.

¹⁶⁸ The penalty may therefore be higher than the maximum fixed penalty specified in the DMCC Act. In some cases, the Appropriate Monetary Penalty may be calculated using Worldwide Turnover, where it is not possible to estimate UK turnover to apply the turnover-based penalties in Tables 4 and 5.

7.20 The amount of any such penalty must be a fixed amount not exceeding £300,000 or, if higher, 10% of the total value of the worldwide turnover of the party.¹⁶⁹

Method of calculation

7.21 A monetary penalty imposed by the CMA when it gives a FIN under section 182 of the DMCC Act will be calculated following a stepped approach:

- Step 1 – calculation of the starting point having regard to the seriousness of the infringement and the relevant turnover.
- Step 2 – adjustment for deterrence and to take account of the size of the party.
- Step 3 – adjustment for aggravating or mitigating factors.
- Step 4 – adjustment to ensure the penalty is proportionate and the maximum cap of 10% of world-wide turnover is not exceeded.
- Step 5 – application of a settlement discount where applicable.

Step 1: Starting point

7.22 The CMA will determine the seriousness of the infringement, and the relevant infringement category, by reference to the harm caused by the infringement, or the risk of harm from the infringement, and the culpability of the party.

Step 1A: Determining the level of harm

7.23 The CMA will decide on the level of harm by applying the principles set out in the table (and applicable ‘escalating factors’) immediately below – Category 1 being the most serious and Category 4 being the least.

7.24 When assessing which category the harm falls into, the CMA will have regard to factors including the duration of the conduct, the total likely economic loss to consumers (if any), the overall level of non-economic harm, eg distress caused to consumers (if any) and the impacts on consumers’ decision-making.

¹⁶⁹ See section 182(6) DMCC Act.

LEVEL OF HARM	
CATEGORY 1	<ul style="list-style-type: none"> • Infringements which have had the overall effect of causing major economic or non-economic harm to consumers.¹⁷⁰ • Infringements which would otherwise fall into Category 2, but one or more Escalating Factors apply (see below).
CATEGORY 2	<ul style="list-style-type: none"> • Infringements which have had the overall effect of causing significant economic or non-economic harm to consumers. • Infringements which would otherwise fall into Category 3, but one or more Escalating Factors apply. • Infringements which created a risk of Category 1 conditions being met.
CATEGORY 3	<ul style="list-style-type: none"> • Infringements which have had the overall effect of causing moderate economic or non-economic harm to consumers. • Infringements which would otherwise fall into Category 4, but one or more Escalating Factors apply. • Infringements which created a risk of Category 2 conditions being met.
CATEGORY 4	<ul style="list-style-type: none"> • Infringements which created a risk of Category 3 conditions being met. • Any other infringements.

Table 2: Level of harm categories and their corresponding descriptions

7.25 The relevant ‘Escalating Factors’ are as follows:

- (a) infringements which have a particular impact on vulnerable consumers;¹⁷¹
- (b) infringements which predominantly involve products of an essential nature (such as medicines, or day-to-day necessities);

¹⁷⁰ For completeness, ‘non-economic harm’ may include, for example, distress, delay or a loss of privacy.

¹⁷¹ The concept of ‘vulnerable consumers’ includes people who are vulnerable due to characteristics personal to them (such as infirmity), the situation they are in (such as personal bankruptcy or recent bereavement) or the operation of any legal or regulatory definition that categorises them as vulnerable.

- (c) infringements which involve the use of threatening or abusive language or behaviour;
- (d) infringements which involve the use of physical force or financial coercion; and
- (e) infringements which have caused an individual consumer to suffer large economic or non-economic losses.¹⁷²

Step 1B: Determining the level of culpability

7.26 Having considered the harm, the CMA will look at the extent to which the act or acts of the party were the result of deliberate action by the party or were a genuine mistake. The categories described below are relative levels of culpability and the CMA will make a judgement as to the appropriate category based on the evidence before it. The CMA is not required to identify a deliberate intention to break the law, in order to place behaviour in the ‘high’ category. There are three categories of culpability, set out below. To the extent a party exhibits behaviour which matches factors in more than one category, the party will be designated to the higher of the categories.¹⁷³

LEVEL OF CULPABILITY	
High	<p>Example of factors indicating high culpability include <u>one or more of</u>:</p> <ul style="list-style-type: none"> • Where the party’s business operations regularly involve the infringing practice. • Where the party has operated with a deliberate strategy to carry out the practices that amount to the infringement, for example shown by Board documents, internal discussions of pros and cons of adopting/continuing the strategy. • Where the CMA, Trading Standards or another regulator or self-regulatory body has provided advice or issued a decision that the practice does not comply with the law or relevant applicable industry standards, or where they had published a statement or guidance that the practice does not comply, or is unlikely to comply, with the law or relevant applicable industry standards.

¹⁷² For example, where even though the overall impact of the infringements is modest, perhaps because few consumers have been impacted, individual consumers have suffered large losses.

¹⁷³ For example, if a party exhibits behaviour which matches one of the factors in the ‘Low Culpability’ category and one of the factors in the ‘High Culpability’ category, it will be designated to the High Culpability category.

LEVEL OF CULPABILITY	
	<ul style="list-style-type: none"> • Where the party's business model is premised on use of the infringing practice. • Where the party has trained staff to act in ways which amount to infringements.
Medium	<p>Example of factors indicating medium culpability include <u>one or more of</u>:</p> <ul style="list-style-type: none"> • Where the party has engaged in a deliberate decision to engage in the practice, with a failure to consider whether the practice was lawful. • Where the party's business operations occasionally involve the infringing practice. • Where the party has failed to control and/or train staff to comply with the law.
Low	<p>Example of factors indicating low culpability include <u>one or more of</u>:</p> <ul style="list-style-type: none"> • One off infringements, for example as a result of actions committed by isolated staff, acting contrary to clear instructions. • Infringements that are accidental in nature. • Infringements where the party has taken specific active steps tailored to preventing the infringement or infringements of a similar nature.¹⁷⁴

Table 3: Factors determining the level of culpability

Step 1C: Determining the starting point code (A, B, C or D)

STARTING POINT CODE			
	High	Medium	Low
Category 1	High A	A	B
Category 2	A	B	C
Category 3	B	C	D
Category 4	C	D	Low D

Table 4: Determining the starting point code

¹⁷⁴ Note the CMA will not view generic compliance training as being sufficient where this is not specific to the practice in question.

Step 1D: Applying the starting point code

APPLYING THE STARTING POINT <i>(%s refer to UK turnover)</i>	
Starting Point A	£225,000 or 22.5% (whichever is higher) up to £300,000 or 30% (whichever is higher)
Starting Point B	£150,000 or 15% (whichever is higher) up to £225,000 or 22.5% (whichever is higher)
Starting Point C	£75,000 or 7.5% (whichever is higher) up to £150,000 or 15% (whichever is higher)
Starting Point D	Up to £75,000 or 7.5% (whichever is higher)

Table 5: Applying the starting point code

Step 2: Adjustment for deterrence and to take account of the size of the party

- 7.27 Having determined an appropriate starting point, the CMA will consider whether it is likely to be sufficient to meet the objectives set out above, in particular, whether it is likely to deter future infringements by the party and others. Any penalty that is too low to deter a party from further breaches is also unlikely to deter others.
- 7.28 It may be necessary to impose a higher penalty on a larger party than a smaller one involved in similar conduct in order to have a sufficient deterrent effect. Therefore, and given that the statutory cap is based on worldwide turnover, when assessing a party's financial position for the purposes of deterrence, the CMA will generally take into account the party's total worldwide turnover as the primary indicator of the size and financial position of the party.
- 7.29 The CMA will consider indicators of size and financial position at the time the penalty is being imposed, but it may, for example, consider three-year averages for turnover where the turnover at the time the penalty is imposed is not considered to be representative of the party's size and financial position.
- 7.30 The CMA considers that an increase at this step may be appropriate, for example, in situations in which a party has a significant proportion of its turnover outside of the UK, or where the potential fine is otherwise too low to achieve the objective of deterrence in view of the party's size and financial position.
- 7.31 An increase at this step will also be appropriate where the CMA has evidence that the party has made, or is likely to derive, an economic or financial benefit

from the infringement that is above the level of the penalty reached at the end of Step 1. An important part of effective deterrence is that a party should not be in a position in which it is able to make a profit from infringing consumer law, even after having paid any penalty levied in respect of that infringement. Nor is it sufficient for any penalty only to neutralise a party's likely gains from an infringement. To constitute an effective deterrent in this context, any penalty imposed should also exceed a party's likely actual gains from an infringement by a material amount.¹⁷⁵ In carrying out this assessment, the CMA will have regard to any redress the CMA may require the party to pay by way of its directions – see Chapter 5 (Remedies).

Step 3: Adjustment for aggravating/mitigating factors

7.32 The monetary penalty may be increased at Step 3 where there are aggravating factors or decreased where there are mitigating factors. The CMA will consider whether any adjustments are appropriate in all cases based on the specific circumstances of the infringement. A non-exhaustive list of factors is provided below.

7.33 Factors that the CMA may consider at this stage include (but are not limited to):

Aggravating factors

7.34 At any time (whether pre- or post-commencement, including by any interconnected body corporate):

- continuing the infringement after having been warned that the relevant conduct may be unlawful by an enforcer;¹⁷⁶
- the infringement involves breach of an undertaking (including undertakings under EA02) given to any enforcer in respect of any infringement;
- the infringement involves breach of a direction in respect of any infringement;

¹⁷⁵ If the penalty imposed on a party which infringes the law only neutralises the gains made (ie puts the party in the same position as it would have been absent the infringement) there is little economic incentive for the party not to infringe the law as it has the potential to gain without the risk of any material losses, even if the party is caught and sanctioned.

¹⁷⁶ This includes, for example, all private and public designated enforcers under the DMCC Act, as well as the Advertising Standards Authority (ASA).

- previous infringement(s) of consumer law or breach(es) of regulatory codes (for example, as evidenced by an ASA adjudication);
- involvement of senior management within the business, whether through their own involvement in the breaches or by their failure to prevent the breaches, in circumstances where they were aware or ought to have been aware of the conduct in question;
- continuing the infringement after being notified of the opening of the CMA's investigation;
- any attempt to conceal the breach from the CMA.

Mitigating factors

- Acting in compliance with assured advice from a Primary Authority,¹⁷⁷ or with an approved Consumer Code,¹⁷⁸ where the advice or code compliance was prior to the launch of the CMA investigation.
- Full redress having been paid to affected consumers either prior to launch of the CMA investigation or before the CMA gives a PIN requiring redress to be paid.
- Co-operation with the CMA which enables the enforcement process to be concluded more effectively and/or speedily, including proactively admitting the infringement before the launch of the CMA investigation.

Step 4: Adjustment to ensure the penalty is proportionate and check that the penalty is within statutory maximum

7.35 At this step, the CMA will first assess whether, in its view, the overall penalty proposed is proportionate in the round.

7.36 The CMA will take a step back to check whether, in its view, the overall penalty reached after Steps 1 to 3 is proportionate in the circumstances. The assessment of proportionality is not a mechanistic assessment, but one of evaluation and judgement. The CMA is not restricted to imposing the lowest

¹⁷⁷ A Primary Authority is a means for businesses to receive assured and tailored advice. See here for more information: <https://assets.publishing.service.gov.uk/media/5f4e163ed3bf7f0a2c9679e9/pa-overview-2019A.pdf>.

¹⁷⁸ An approved Consumer Code is one which is approved by the Chartered Trading Standards Institute. See here for more information: <https://www.tradingstandards.uk/business-hub/consumer-codes-approval-scheme/>.

penalty that could reasonably be justified and it will select the figure which it considers is appropriate in the circumstances of the case.

- 7.37 Where necessary, the penalty may be decreased to ensure that the level of penalty is not disproportionate. A penalty may be appropriate even if it exceeds the statutory cap. However, if that is the case, a further adjustment will be needed as set out below.
- 7.38 In carrying out the overall assessment of whether a penalty is proportionate, the CMA will have regard to all the relevant circumstances, including the nature and duration of the infringing conduct, the conduct of the party, the impact of the party's infringing activity on consumers, and the party's size and financial position. The overall assessment should appropriately reflect the seriousness of the infringement and the need sufficiently to deter both the party and others from similar breaches.
- 7.39 Following the proportionality assessment, the CMA will also adjust the penalty, if necessary, to ensure that it does not exceed the maximum penalty allowed by statute.
- 7.40 The final amount of the penalty calculated according to the method set out above may not exceed £300,000 or, if higher, 10% of the worldwide turnover of the party.

Step 5: Application of settlement discount (where relevant)

- 7.41 The penalty that the CMA imposes will be set at the conclusion of Step 4. However, the CMA may apply a discount to the amount of the penalty of up to 40% where the party has settled with the CMA, which will include, amongst other things, the admission and cessation of the infringements, as well as agreeing to adhere to the conditions of settlement. This means that if the party does not adhere to specified conditions of settlement, the party will be required to pay the full penalty without the discount.
- 7.42 The level of the discount will depend upon the point at which the party engages with the CMA and settlement is agreed, as well as the other factors set out in the Chapter 4 (Undertakings and settlement). See paragraphs 4.33 to 4.77 of Chapter 4 for more details.

Administrative penalties

Statutory background

- 7.43 In addition to giving the CMA the power to impose penalties for infringements of consumer law, the DMCC Act also provides that the CMA may impose

monetary penalties for breaches of directions and undertakings,¹⁷⁹ the provision of false or misleading information,¹⁸⁰ and for non-compliance with information notices.¹⁸¹ We refer to this as ‘administrative enforcement’.

7.44 In the case of breaches of undertakings, directions and non-compliance with an information notice, the CMA may impose a fixed penalty, a daily penalty, or a combination. A penalty for the provision of false or misleading information is a fixed penalty. These are together referred to as ‘administrative penalties’. The maximum penalties in each case are as follows:

(a) Breaches of undertakings and directions:

- (i) in the case of a fixed amount up to £150,000 or, if higher, 5% of the total value of the turnover (if any) of the party;
- (ii) in the case of an amount calculated by reference to a daily rate, for each day up to £15,000 or, if higher, 5% of the total value of the daily turnover (if any) of the party.

The same caps apply where both a fixed amount and a daily penalty are imposed.

(b) Non-compliance with an information notice:

- (i) in the case of a fixed amount, £30,000 or, if higher, 1% of the total value of the turnover (if any) of the party;
- (ii) in the case of an amount calculated by reference to a daily rate, either £15,000 per day or, if higher, 5% of the total value of the daily turnover (if any) of the party.

The same caps apply where both a fixed amount and a daily penalty are imposed.

(c) Provision of false or misleading information:

- (i) a fixed amount not exceeding £30,000 or, if higher, 1% of the total value of the turnover (if any) of the party.

¹⁷⁹ Sections 189 and 192 DMCC Act.

¹⁸⁰ Section 198 DMCC Act.

¹⁸¹ Paragraph 16C(3), Schedule 5, CRA.

7.45 In calculating the above penalties, the CMA will follow a stepped process similar to that set out in Steps 1 to 4 (see paragraphs 7.22 to 7.40), subject to taking account of relevant differences at Steps 1 and 3:

- Step 1 – calculation of the starting point having regard to the seriousness of the infringement.
- Step 2 – adjustment for deterrence and to take account of the size of the party.
- Step 3 – adjustment for aggravating or mitigating factors.
- Step 4 – adjustment to ensure the penalty is proportionate and the relevant maximum cap of world-wide turnover is not exceeded.

Reasonable excuse

7.46 The CMA may only impose monetary penalties for breaches of undertakings or directions, for non-compliance with an information notice or for the provision of materially false or misleading information if the party lacks a reasonable excuse for its non-compliance.¹⁸²

7.47 What constitutes a reasonable excuse is not fixed, and the CMA will consider whether any reasons for failure to comply amount to a reasonable excuse on a case-by-case basis. The CMA will apply an objective test as to whether an excuse put forward by a party is reasonable. As a starting point, the CMA expects parties to comply with their obligations on time, and to organise themselves in order to do so. This remains the case when using external advisers or parties to assist them. In determining whether a reasonable excuse exists, the sorts of factors the CMA will consider include whether a significant and genuinely unforeseeable or unusual event or an event beyond the party's control has caused the failure. The CMA will consider to what extent this event is the cause of the non-compliance, or whether the failure would otherwise have taken place.

7.48 Depending on the circumstances, the following may amount to a reasonable excuse:

¹⁸² Section 212(2) DMCC Act indicates CMA guidance must provide information about the factors the CMA will take into account when determining whether a reasonable excuse exists (in cases where the exercise of any such power is exercisable only if the CMA considers a person has acted or failed to act without reasonable excuse).

- (a) A significant and demonstrable IT failure (which could not reasonably have been foreseen or avoided) which prevented the party from meeting a deadline or making required changes to a party's website;
- (b) for small businesses or sole traders, the death or incapacity of a key official;
- (c) obvious typographical errors in an information notice response;¹⁸³
- (d) staff error where the mistake is promptly brought to the CMA's attention before the CMA relies on the information.

7.49 The following examples are unlikely to constitute a reasonable excuse:

- (a) Failing to make reasonable efforts to meet a deadline, including, for example because it was forgotten or overlooked;
- (b) failure to obtain appropriate senior approval in good time;
- (c) the absence of officials or other advisers acting for the party due to annual leave or another planned reason;
- (d) for larger companies, the unplanned absence of specific personnel, as it would be reasonable to make contingency plans in order to meet deadlines;
- (e) any claim that compliance would constitute a breach of a non-disclosure agreement by which the party is bound or a claim that the party cannot comply because of its duties under the Data Protection Act 2018; or
- (f) the fact a party considers there are good commercial reasons for non-compliance.

Foreign law

7.50 A party might claim that it has a reasonable excuse for not complying with their obligations because doing so could put the party in breach of a foreign law. The CMA recognises that there may be circumstances in which this will be the case. In order to protect UK consumers and businesses from harmful practices, the CMA's starting position is that it is of the utmost importance that it is able properly to conduct investigations and that parties comply with their

¹⁸³ In relation to provision of false or misleading information, the CMA can only impose a penalty if the information given is materially false or misleading. Accordingly, the CMA will not impose a penalty where the falsity is not material.

obligations. Every claim of reasonable excuse will be considered on its facts. Where there is an express legislative barrier in foreign law, this will ordinarily be acceptable as a reasonable excuse, provided the party shows:

- that the express legislative barrier in question prohibits compliance with the relevant obligation; and
- that there are no steps the party could feasibly take to facilitate compliance (such as, for example, the use of redactions or confidentiality rings).

7.51 In the case of other potential restrictions which fall short of an express legislative barrier, it should not be assumed that a risk of breaching these will constitute a reasonable excuse for non-compliance with an obligation. Such claims will be considered on a case-by-case basis.

Step 1: Determining the starting point of the breach

7.52 The CMA will determine the starting point by reference to the seriousness of the breach and the culpability of the party.

Step 1A: Determining the seriousness of the breach

7.53 When assessing the seriousness of the breach, the CMA will have regard to factors including:

- (a) the nature of the breached requirement(s), such as the extent to which they are core to the requirement as a whole;
- (b) the extent and nature of the breach, including its duration; and
- (c) the impact of the breach (on consumers, competitors and/or the CMA's investigation, as the case may be).

7.54 Examples of more serious breaches are:

- (a) non-compliance with undertakings or directions which address the underlying infringement;
- (b) breaches of undertakings or directions which risk having a direct adverse impact on consumers;
- (c) information notice breaches which risk having a material impact on the CMA's ability to understand and assess evidence relevant to the determination of substantive issues being investigated; and

(d) information notice breaches which risk impacting the CMA's ability to progress the case and/ or meet internal deadlines.

7.55 It is not necessary for the CMA to prove the breach caused any individual consumers economic or non-economic harm or distress, or had an actual impact on the CMA's investigation to place a breach in Category 1 or 2 (or indeed 3 or 4). Whether a breach caused harm or distress, or had actual impact will only be relevant as an 'Escalating Factor' (see below).

SERIOUSNESS OF THE BREACH	
CATEGORY 1 (highest)	<ul style="list-style-type: none"> a) Major breaches of the requirement. b) Breaches which would otherwise fall into Category 2, but one or more Escalating Factors apply.
CATEGORY 2	<ul style="list-style-type: none"> • Significant breaches of the requirement • Infringements which would otherwise fall into Category 3, but one or more Escalating Factors apply.
CATEGORY 3	<ul style="list-style-type: none"> • Moderate breaches of the requirement • Infringements which would otherwise fall into Category 4, but one or more Escalating Factors apply.
CATEGORY 4 (lowest)	<ul style="list-style-type: none"> • Any other breaches.

Table 6: Categories of seriousness of the breach and its corresponding descriptions

7.56 The relevant 'Escalating Factors' are as follows:

- (a) escalating factors applicable to substantive infringements, where applicable,
- (b) breaches which have caused any economic or non-economic harm to individual consumers,
- (c) breaches which created a risk of moderate, significant or major economic or non-economic harm to individual consumers,
- (d) (in relation to information notice requirements) breaches which had an impact on the CMA's investigation.

Step 1B: Determining the level of culpability

7.57 Having considered the harm, the CMA will then look at the culpability of the party.

7.58 To the extent the party has a ‘reasonable excuse’ for the failure to comply, the CMA cannot apply a monetary penalty. Therefore, the following categories assume there is no such excuse.

7.59 There are three categories of culpability, set out below. The categories described are relative levels of culpability and the CMA will make a judgement as to the appropriate category based on the evidence before it. To the extent a party exhibits behaviour which matches factors in more than one category, the party will be designated to the higher of the categories.¹⁸⁴

LEVEL OF CULPABILITY FOR BREACHES OF UNDERTAKINGS OR DIRECTIONS	
High Culpability	<p>Factors indicating high culpability include:</p> <ul style="list-style-type: none"> • Where the party has breached regularly. • Where the party has operated a deliberate strategy to carry out the practices that amount to the breach. • Where the CMA has alerted the party that carrying out the practice would likely breach the direction or undertaking. • Where the party has trained staff to act in ways which amount to breaches.
Medium Culpability	<p>Factors indicating medium culpability include:</p> <ul style="list-style-type: none"> • Where the party has breached occasionally. • Where the party has engaged in a deliberate decision to engage in the practice, with a failure to consider whether practice breached the direction or undertaking. • Where the party has failed to control and/or train staff to comply with the direction or undertaking.
Low Culpability	<p>Factors indicating low culpability include:</p> <ul style="list-style-type: none"> • A one-off breach for example as a result of actions committed by isolated staff, acting contrary to clear instructions. • Breaches that are accidental in nature. • Breaches where the party has taken some active steps (even if deficient) to try to prevent the breach.

Table 7: Level of culpability for breaches of undertakings or directions

LEVEL OF CULPABILITY FOR INFORMATION NOTICE BREACHES	
High Culpability	<p>Factors indicating high culpability include:</p> <ul style="list-style-type: none"> • Where a party has failed to engage with the CMA at all, or only engaged minimally, following receipt of an information notice.

¹⁸⁴ For example, if a party exhibits behaviour which matches one of the factors in the ‘Low Culpability’ category and one of the factors in the ‘High Culpability’ category, it will be designated to the ‘High Culpability’ category.

LEVEL OF CULPABILITY FOR INFORMATION NOTICE BREACHES	
	<ul style="list-style-type: none"> • Where the CMA considers the party may have engaged in a deliberate strategy to provide false or misleading information or to fail to provide the information, including by refusing to provide the information. • Where the CMA considers the party has taken any steps to conceal or put the information out of reach. • Where the CMA considers a party may have sought to obtain an advantage or derive benefit for themselves or another person from the breach.
Medium Culpability	<p>Factors indicating medium culpability include:</p> <ul style="list-style-type: none"> • Where the CMA considers a party may have failed to expend or allocate necessary resources to respond to the information notice promptly and properly. • Where the party has failed to take reasonable steps to verify the accuracy of the information provided.
Low Culpability	<p>Factors indicating low culpability include:</p> <ul style="list-style-type: none"> • Where the breach is as due to isolated staff, acting contrary to clear instructions. • Where the breach is accidental in nature. • Where the breach was due to a failure by someone else and the party took reasonable and active steps to try to prevent the breach from occurring

Table 8: Level of culpability for information notice breaches

Step 1C: Determining the starting point code (A, B, C or D)

STARTING POINT CODE			
	High culpability	Medium culpability	Low culpability
Category 1	High A	A	B
Category 2	A	B	C
Category 3	B	C	D
Category 4	C	D	Low D

Table 9: Starting point code for determining breaches

Step 1D: Applying the starting point code

7.60 Having determined the starting point code, the CMA will use this to decide what percentage of the party's turnover to use in order to begin the calculation of the penalty (or, where a party does not have a turnover, how close to the statutory maximum the starting point will be). Generally, the CMA expects the starting point for level A breaches to be in the upper range of the maximum starting point, whereas level D breaches are likely to start in the lower range,

and level B and C breaches will fall between these. The maximum starting point for breaches of undertakings and breaches of directions is 30% of UK turnover. The maximum starting point for breaches relating to information notices (provision of false or misleading information and non-compliance with information notices) is the relevant statutory cap.

Step 1E: Decide between fixed rate, daily penalty or a combination

7.61 The CMA will decide between fixed rates and daily penalties on a case-by-case basis, taking into consideration the factors set out here.

7.62 Where the CMA has a choice as to whether to impose a fixed or daily penalty, or both it will consider a number of factors, on a case-by-case basis. These may include the following non-exhaustive factors:

- (a) **The factual circumstances in which a penalty is being considered, including the urgency that the breach comes to an end.** The assessment of whether to impose a fixed or daily penalty, or a combination of the two, will involve consideration of the need to incentivise timely compliance. Daily penalties, for example, (either alone or in combination with a fixed penalty) may create greater incentives for parties to comply swiftly since the penalty imposed on the party is directly related to the time the party takes to comply. It is also likely that daily penalties may result in a greater overall penalty than the maximum fixed penalty if the party fails to comply promptly.
- (b) **The deterrent effect of the penalty.** The CMA will consider the level of penalty that is likely to have the requisite deterrent effect, both on the party and more generally on those who may be subject to undertakings, directions or information notices in the present or in future investigations, having regard to the need for the penalty to be proportionate in all the circumstances. This assessment may affect the level of fixed, daily or combined penalty that is set. Further, where it is important to send a strong deterrent message, for example where there is an egregious or persistent failure to comply, it may be important to impose a penalty at a level that can only be reached by a combination of fixed and daily penalties.
- (c) **Whether the failure to comply has been remedied.** Where an initial failure has been remedied, it may still be appropriate to impose a penalty to reflect the nature and gravity of the failure and/or to achieve deterrence. In those circumstances, only a fixed penalty would be available as daily penalties can only be used for a continuing period of non-compliance after service of a provisional penalty notice. In cases of an extended and

unremedied failure to comply with undertakings, directions or information notices, the CMA may be more likely to impose a daily penalty for the duration of the failure, together with an additional fixed penalty to underline the seriousness of the failure and/or achieve deterrence, while still ensuring that the penalty is proportionate in all the circumstances.

Step 2: Adjustment for deterrence and to take account of the size of the party

7.63 The CMA will take into account the same factors as set out at paragraph 7.27 to 7.31 above.

Step 3: Adjustment for aggravating/mitigating factors

7.64 The monetary penalty may be increased at Step 3 where there are aggravating factors or decreased where there are mitigating factors. The CMA will consider whether any adjustments are appropriate in all cases based on the specific circumstances of the breach. A non-exhaustive list of factors is provided below.

7.65 Factors that the CMA may consider at this stage include (but are not limited to) the following:

Aggravating factors¹⁸⁵

- Continuing the breach after being notified the CMA is investigating the breach.
- Previous breach of any direction, undertaking,¹⁸⁶ or information notice requirement whether or not as part of a CMA investigation.
- Previous infringement/s of consumer law or regulatory codes (for example, an ASA adjudication), or associated administrative infringements (for example, a failure to provide information).
- Lack of co-operation with the CMA investigation of the breach, such as a lack of engagement.
- Any attempt to conceal the breach from the CMA.
- In the case of an information notice breach, failing to request an extension from the CMA within a short time after initial receipt of the Information

¹⁸⁵ Including, where applicable, activities by any interconnected body corporate.

¹⁸⁶ Including undertakings under Part 8 of EA02.

Notice, or failure to provide information following an extension granted by the CMA.

- Involvement of senior management, either actively or in failing to prevent the breach.
- Where the breach was caused by any member of staff, failure to discipline the staff member.

Mitigating factors

- Proactive co-operation with the CMA during the investigation.
- Where the CMA's attention was brought to the breach by the party.
- The party remedied the breach in full prior to receiving the relevant provisional notice.
- The party both warned the CMA at an early stage of the likelihood of failure to comply and also engaged constructively to resolve the issue.

Step 4: Adjustment to ensure the penalty is proportionate and check that the penalty is within statutory maximum

7.66 At this step the CMA will make the appropriate adjustment applying the considerations set out at paragraphs 7.35 to 7.40 above. In addition, where the CMA intends to impose both a fixed penalty and a daily penalty, this will include considering proportionality in relation to each individually as well as both in totality.

7.67 Because the CMA does not envisage offering the opportunity for parties to settle in cases of administrative breaches, there is no Step 5.

8. Decision-making

Decisions under Chapter 4 of Part 3 of the DMCC Act

- 8.1 There are numerous decisions that will be taken by the CMA in the exercise of its direct consumer enforcement functions. More details on process can be found in earlier chapters of this guidance. A table at paragraph 8.26 below sets out a list of certain key decisions and the relevant decision maker.
- 8.2 This chapter explains the decision-making process in cases where the CMA makes a finding of substantive breach of consumer law under the direct enforcement model.¹⁸⁷ These decisions will often be made in two stages, with an initial decision maker and then a final decision group.
- 8.3 The DMCC Act provides that the CMA's direct consumer enforcement functions may be carried out on its behalf:¹⁸⁸
- (a) by one or more members of the CMA Board;
 - (b) by one or more members of the CMA Panel;
 - (c) by one or more members of staff of the CMA;
 - (d) jointly by one or more of the persons mentioned in paragraphs (a) to (c).
- 8.4 These are 'relevant persons' for the purposes of the CMA Consumer Rules, such persons having been authorised by the CMA.¹⁸⁹
- 8.5 Under the CMA Consumer Rules a 'relevant person' will oversee an investigation carried out under the DMCC Act, and will decide whether a PIN or interconnected bodies corporate notice is given. This will be the SRO for the investigation.
- 8.6 Other than where the parties agree to a settlement, the decision whether to give a FIN will be made by a group of three 'relevant persons'. This decision group is referred to in this guidance as the 'Final Decision Group' or 'FDG'.
- 8.7 The decision makers may change over the course of time, for example when there is unavoidable absence or an individual changes roles. Accordingly

¹⁸⁷ Specifically, the provisional and final infringement notices in sections 181, 182 and 183 DMCC Act.

¹⁸⁸ Section 210 DMCC Act enables Rules to be made to achieve this effect. Draft Rules are subject to Parliamentary approval.

¹⁸⁹ See Rule 1 (Interpretation) of the CMA Consumer Rules.

references in this chapter to the decision makers are to the persons who carry out this function from time to time.

- 8.8 The procedure that the CMA will follow before making a final infringement decision, including the opportunity for the parties to make representations, are set out in Chapter 2 (Enforcement process). For details of the procedure where a final infringement decision is made following settlement, please refer to Chapter 4 (Undertakings and settlement). The procedure that will be followed in the case of an administrative enforcement decision are set out in Chapter 6 (Administrative enforcement for failures to comply with requirements set by the CMA).

Internal scrutiny

- 8.9 The CMA will scrutinise the way it handles the investigation into a suspected relevant infringement and assesses the evidence before it, to ensure that its actions and decisions are well-founded, fair and robust. This involves seeking internal advice from CMA staff, including specialist advisers, on the legal and policy issues that arise throughout the investigation. In some instances, the CMA may also seek advice from external sources, such as external counsel and other external advisors appointed by the CMA.
- 8.10 The General Counsel and the Chief Economic Adviser are responsible for ensuring that there has been a thorough review of the robustness of the legal and the economic analysis (and of the evidence being used to support this), respectively, before a PIN is given or a final decision on infringement is taken and a FIN given. This includes ensuring the decision maker(s) is/are aware of any significant risks before the relevant decision is taken.
- 8.11 The General Counsel and, where appropriate, the Chief Economic Adviser (or their representatives) will attend the oral hearing following a PIN being given, if one is held, and may ask questions of the parties.

Decision making by the Senior Responsible Officer

- 8.12 The initial decision maker will be the SRO appointed by the CMA to lead the case. This may be a member of CMA staff, Board member or Panel member.
- 8.13 Initial decision makers may be advised by members of CMA staff and/or external advisors appointed by the CMA.
- 8.14 Among other decisions during the course of an investigation, the SRO will make the decision whether:

- (a) there are sufficient grounds to open an investigation;
- (b) to close an investigation prior to issuing a PIN;
- (c) there are sufficient grounds to give a PIN to any party;¹⁹⁰
- (d) to accept undertakings offered by a party under investigation, and whether to agree to a variation or to release undertakings previously accepted;
- (e) a case is appropriate for settlement;
- (f) to give other provisional or initial notices, such as a breach of directions notice or breach of undertakings notice;
- (g) to give a provisional notice in respect of a failure to comply with an information notice or the provision of false or misleading information;
- (h) to give a final enforcement notice, where a provisional notice has been given, in respect of a failure to comply with an information notice or the provision of false or misleading information;
- (i) to seek an interim order through the courts;
- (j) to issue an OIN.

Decisions regarding undertakings and settlement

- 8.15 Decisions to accept, release or vary undertakings will be made by the SRO. Decisions to follow a settlement procedure (including to make a FIN following settlement) will also be made by the SRO, save that where a FDG has already been appointed the decision to issue a FIN following settlement may be made by the FDG. The reason such decisions, including the decision to issue a FIN following settlement, may be made by the SRO is because an investigation may only be resolved through the acceptance of undertakings or settlement with the consent of both the relevant party and the CMA.
- 8.16 The SRO will consult and where appropriate seek approval from the CMA's Case and Policy Committee before resolving a direct consumer enforcement

¹⁹⁰ The SRO may also decide whether to require substantiation of factual claims pursuant to section 195 DMCC Act and may decide whether to include this in the PIN. See Chapter 2 paragraphs 2.54 to 2.56 for further details on substantiation of claims.

case through the acceptance of undertakings or by following a settlement procedure.

Consulting other senior officials

8.17 In addition to taking advice from specialist advisers as detailed above, the SRO will consult two other senior officials as appropriate at key stages of the investigation for example when considering whether to give a final enforcement notice for failure to comply with an information notice.

Other decisions of the SRO

8.18 The SRO will make other decisions in relation to the CMA's direct consumer enforcement functions, including as follows:

- (a) where undertakings have been accepted, whether there are grounds to give a provisional breach of undertakings notice;
- (b) where this possibility is provided for in a FIN, whether to give the FIN to an interconnected body corporate;¹⁹¹
- (c) where a FIN has been given that includes directions:
 - (i) whether there are grounds to give a provisional breach of directions notice;
 - (ii) whether to agree to vary or revoke directions;
- (d) decisions regarding any investigatory steps to be taken or taken during the course of the investigation;
- (e) any other decisions in relation to the running of the case, including after a FIN has been given, including:
 - (i) whether to take steps to enforce through the courts for non-payment of penalties or for breach of undertakings or directions;
 - (ii) whether to make or defend any other application to a court.

¹⁹¹ For example, this may be appropriate where the FIN anticipates that the FIN may be given to an Interconnected Body Corporate.

Decision making by the Final Decision Group

- 8.19 As described at paragraph 8.6 above, the final decision makers in respect of an investigation will be a group of three 'relevant persons' (FDG), one of whom may be the SRO in the case.
- 8.20 With the exception of the SRO, the persons in the FDG will not have been involved in the investigation since it was opened. In addition, where the SRO is a member of the FDG, the other members will be of equivalent or greater seniority.¹⁹² The CMA will decide on each investigation who to appoint to the FDG, including whether it is appropriate to include the SRO.
- 8.21 The CMA will inform the parties of the identity of the members of the FDG.
- 8.22 Once the FDG has been appointed, the case team will remain in place to progress the investigation under the direction of the FDG as appropriate. The case team will remain the primary point of contact for the parties.
- 8.23 The FDG will act as the decision maker on the following matters:
- (a) whether, based on the facts and evidence before it, the legal test for giving a FIN has been met, and accordingly whether a FIN should be given;
 - (b) if a FIN is given, the appropriate directions (if any) and the appropriate amount of any penalty;
 - (c) where the FDG considers there is insufficient evidence, whether to close the investigation without issuing a FIN;
 - (d) where the CMA proposes to make provision for a FIN (or other notice as applicable) to be binding on any interconnected body corporate, the assessment of whether this is just, reasonable and proportionate and the decision whether to include such a provision in the notice.
- 8.24 In addition, where the CMA requires the party to substantiate any factual claim, this will be confirmed by the FDG.
- 8.25 The FDG will also consider whether the legal test for giving a:
- (a) final breach of undertakings notice, or

¹⁹² A panel member is taken to be of the same or greater seniority to the SRO for these purposes.

(b) final breach of directions notice,

has been met and whether such a final notice should be given.

Examples of decision makers for different decisions

TYPE OF DECISION	RELEVANT DMCC ACT SECTION NUMBER(S)	DECISION MAKER
Case opening (and case closure pre-PIN)	180	SRO
PIN	181	SRO
Acceptance or release of Undertakings	185	SRO
Variation of undertakings	185	SRO
Matters relating to settlement, such as whether to engage in or proceed with settlement discussions, and whether to agree to settle a case. FIN in a settled case.	N/A	SRO
OIN	184	SRO
Variation or revocation of Directions	196	SRO
Provisional Breach of Undertakings Notice	188	SRO
Provisional Breach of Directions Notice	191	
Provisional false information enforcement notice	197 and	
Provisional enforcement notice for failure to comply with an information notice	Schedule 17 amendments to Schedule 5 to the Consumer Rights Act	
Final False information notices	198	SRO
Final Non-compliance with information notices	Schedule 17 amendments	SRO

	to Schedule 5 to the Consumer Rights Act	
Substantiation	195	SRO may decide whether to include in PIN FDG confirms requirement or requests substantiation, and considers the response
FIN (including any directions and penalty)	182 and 183	FDG
Final Breach of Undertakings Notice	189	FDG
Final Breach of Directions Notice	192	FDG

Table 10: Examples of decisions and its respective decision maker

8.26 The table above lists the main decisions in the direct enforcement model. This is intended to help respondents and others understand how different decisions are made and is not intended to be exhaustive.

9. Procedural complaints

Procedural complaints process

- 9.1 Parties to an investigation into a suspected relevant infringement under the direct enforcement regime have recourse to a procedural complaints process if they are unhappy with certain aspects of the investigation procedure after a formal investigation under Chapter 4 of Part 3 of the DMCC Act has been opened.¹⁹³
- 9.2 Once a formal investigation has been opened into a suspected breach of consumer law, any concerns or complaints about the CMA's procedures or how investigations are handled should be made in writing to the SRO in the first instance. If a party wishes to complain to the SRO, it should set out details of its complaint and provide copies of any relevant supporting documents or correspondence.¹⁹⁴
- 9.3 If, during an investigation, a party is unable to resolve the dispute with the SRO, complaints about certain procedural decisions followed during the investigation may be referred to a 'procedural complaints adjudicator' (PCA) under Rule 6 of the CMA Consumer Rules. As set out in Rule 6(1), a PCA will not have been involved in the day to day running of the investigation, or as a decision maker in the case.
- 9.4 Rule 6(2) sets out the matters that may be referred to a PCA. These are:
- (a) decisions regarding the disclosure of information over which claims of confidentiality have been made; or
 - (b) the period provided by the CMA to:
 - (i) respond to an information notice,
 - (ii) respond to a PIN, or
 - (iii) attend an oral hearing to make representations in relation to a PIN; or

¹⁹³ This does not prejudice the party's rights in respect of judicial review and/or any appeal before the courts.

¹⁹⁴ Please see Chapter 8 on Decision-making. During an investigation, up to and including the PIN, concerns/complaints will be directed to the SRO. Thereafter, when the party has been notified of the FDG, such concerns/complaints should be directed to the FDG.

- (iv) other significant procedural issues that may arise from procedural decisions during the course of an investigation, including the making of representations and any oral hearing.

9.5 A PCA does not have jurisdiction to review decisions on the scope of requests for information or other decisions relating to the substance of a case. Decisions made by a PCA about complaints referred during direct enforcement investigations, including those complaints found to fall outside the scope of a PCA's role, will be published on the CMA's website.

Process for referring a complaint to a PCA

9.6 If a party wishes to refer a dispute to a PCA for review, that party will need to make an application within five working days of being notified of the decision of the SRO on the issue in question. A party must provide a short, written summary of the issue in question and provide copies of relevant correspondence with the case team and SRO. Details of how to raise a procedural complaint will be published on the CMA's webpages.

9.7 On receipt of a complaint reference, the CMA will inform the party of the name of the individual who will act as the PCA in respect of the complaint. The PCA will provide an opportunity for the case team and the party to present their arguments to the PCA at a virtual or in-person meeting, before issuing a reasoned decision either confirming the decision of the SRO,¹⁹⁵ or reaching a different decision in whole or in part. The PCA's decision will be binding on the case team.

9.8 The PCA will endeavour to deal with the complaint as quickly as possible and will reach a decision within 15 working days from the date the CMA receives the complaint. This period may be extended by no more than ten working days if the PCA considers there are special reasons to do so.¹⁹⁶

9.9 If appropriate, the PCA will carefully assess how long any extension will be and will endeavour to make only one extension where it is required. The party's cooperation will assist the PCA to make a robust and timely decision, in particular by attending meetings and/or providing information on short notice.

¹⁹⁵ This may be a decision of the SRO or the FDG, please see Chapter 8 on Decision-making.

¹⁹⁶ For example, where complaints require the PCA to deal with large volumes of data or materials, or where the PCA receives several complaints within a short period of time and is unable to deal with one or more complaints within the original 15 working day period.

9.10 The CMA will publish the PCA's decision, or a summary of that decision, on the CMA's website. This publication will generally either be at the time of the decision or at the end of the case, and publication will be subject to any confidentiality redactions that may be appropriate.

Complaints outside the scope of the procedural complaints process

9.11 If a party's dispute falls outside the scope of the CMA's procedural complaints process set out in this chapter, there may be options available to pursue the complaint further. See [CMA6](#) for further details.¹⁹⁷

¹⁹⁷ If a party is not satisfied with the senior CMA contact's response and the complaint falls outside of the scope of the CMA's procedural complaints process, they may request a review of the handling of their complaint by the General Counsel's Office. (See Chapter 5, [CMA6](#)).

10. Glossary

- 10.1 In this Guidance, the CMA generally uses the language in the DMCC Act. While this section sets out relevant terminology from the DMCC Act, it is not a definitive statement of, or a substitute for, the DMCC Act itself. Key terms used in the guidance include the following:
- 10.2 **Accessory:** A person (“A”) is an accessory to a commercial practice of another person (“B”) if– (a) B is a body corporate, (b) A has a special relationship with B, (c) the commercial practice is one that B has engaged in or is engaging in, and (d) the commercial practice takes place with the consent or connivance of A.¹⁹⁸
- 10.3 **Administrative Enforcement Notices:** This term is used where the CMA is collectively referring to final breach of undertakings enforcement notices, final breach of directions enforcement notices, final false information enforcement notices and final enforcement notices for non-compliance with an information notice.
- 10.4 **Appropriate Monetary Penalty:** Where the CMA is not in a position to estimate the party’s UK turnover, for example where a party has not provided the CMA with turnover information and there is no publicly available information, the CMA may apply an appropriate monetary penalty.
- 10.5 **Commercial practice:** An act or omission by a trader relating to the promotion or supply of, (a) the trader’s goods, services or digital content to a consumer, (b) another trader’s goods, services or digital content to a consumer, or (c) a consumer’s goods, services or digital content to the trader or another person.¹⁹⁹
- 10.6 **Confidentiality rings:** Enable disclosure of specific data or documents to a defined group. Generally, disclosure is made to the relevant parties’ external (legal and/or where relevant economic) advisers.
- 10.7 **Consumer:** An individual acting for purposes that are wholly or mainly outside the individual’s business.²⁰⁰
- 10.8 **Continuing conduct:** In the context of the transitional arrangements, this refers to conduct that takes place before the commencement date, which then

¹⁹⁸ Section 219 DMCC Act.

¹⁹⁹ Section 148(2) DMCC Act.

²⁰⁰ Section 148(2) DMCC Act.

continues or is repeated after the commencement date.²⁰¹ The commencement date will be added here once it has been established.

- 10.9 **Data rooms:** Like confidentiality rings, data rooms enable access to a specific category of confidential data or documents to a defined group. However, a data room provides access to the confidential data or documents on the CMA premises.
- 10.10 **Directions:** Measures designed to achieve compliance with consumer law. As such, they may require the respondent to take action to bring an infringement to an end or to prevent an infringement from occurring. Further details are set out in Chapter 5.
- 10.11 **DMCC Act:** The Digital Markets, Competition and Consumers Act 2024.
- 10.12 **Duty of expedition:** Obliges the CMA and others to have regard to the need for making a decision or taking action as soon as reasonably practicable. This is set out in section 327 of the DMCC Act.
- 10.13 **EA02:** The Enterprise Act 2002.
- 10.14 **ECMs:** Enhanced consumer measures, as set out in section 221 of the DMCC Act. ECMs may feature redress, choice and/or compliance measures.
- 10.15 **Final Administrative Enforcement Notice:** This term is used where the CMA is collectively referring to a final breach of undertakings enforcement notice, final breach of directions enforcement notice, final false information enforcement notice and final enforcement notices for non-compliance with an information notice.
- 10.16 **Final breach of directions enforcement notice:** A final decision notice where the CMA is satisfied that the respondent has, without reasonable excuse, failed to comply with the direction.²⁰²
- 10.17 **Final breach of undertakings enforcement notice:** A final decision notice where the CMA is satisfied that the respondent has failed to comply with one or more of the terms of the undertaking.²⁰³
- 10.18 **Final enforcement notice:** A final decision notice where the CMA is satisfied that the respondent has failed to comply with an information notice, the CMA may, by final enforcement notice, impose on the respondent a penalty and/or

²⁰¹ Paragraph 3, Schedule 19, DMCC Act.

²⁰² Section 192 DMCC Act.

²⁰³ Section 189 DMCC Act.

directions to secure the respondent's compliance with the information notice.²⁰⁴

10.19 Final false information enforcement notice: A final decision notice where the CMA is satisfied that- (i) the information provided by the respondent is materially false or misleading, and (ii) the respondent provided the false or misleading information without reasonable excuse.²⁰⁵

10.20 Final Infringement Notice (FIN): The final decision setting out relevant findings of infringements of the law, and where appropriate, any directions and penalties, in accordance with section 182 of the DMCC Act.

10.21 Internal document: Defined in the CMA Consumer Rules and includes, but is not limited to, internal correspondence, internal advice, papers for and minutes of internal meetings, drafts of minutes with third parties, correspondence and notes of calls with other regulators, government departments and overseas authorities.²⁰⁶

10.22 Interconnected Bodies Corporate: A group consisting of two or more bodies corporate all of whom are interconnected with each other. Any two bodies corporate are interconnected, (a) if one of them is a subsidiary of the other, or (b) if both of them are subsidiaries of the same body corporate.²⁰⁷

10.23 Investigatory requirements: The legislative intention behind the CMA's power to take action in respect of non-compliance with information notices and provision of misleading information.

10.24 Legal thresholds:

- The CMA may conduct an investigation into a matter where it has reasonable grounds for suspecting that- (a) a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement, or (b) a person is an accessory to such a practice.²⁰⁸
- The CMA may give to the respondent a PIN if it has reasonable grounds to believe that- (a) the respondent has engaged, is engaging or is likely to engage in a commercial practice constituting a relevant infringement ("the

²⁰⁴ Paragraph 16C, Schedule 5, CRA.

²⁰⁵ Section 198 DMCC Act.

²⁰⁶ See Rule 1 of the CMA Consumer Rules.

²⁰⁷ Section 200 DMCC Act.

²⁰⁸ Section 180 DMCC Act.

infringing practice”), or (b) the respondent is an accessory to such a practice.²⁰⁹

- The CMA may give to the respondent a FIN if it is satisfied that- (a) the respondent has engaged, is engaging or is likely to engage in a commercial practice constituting a relevant infringement, or (b) the respondent is an accessory to such a practice.²¹⁰

10.25 Online interface: Any software including websites, applications, and other digital content, which is operated for, or in connection with, giving access to or promoting goods, services, or digital content.²¹¹

10.26 Online Interface Notice (OIN): A notice that may be given where the CMA is satisfied that a person has engaged, is engaging or is likely to engage in a relevant infringement, which may be addressed to that person or a third party. An OIN may, where appropriate, set out directions including in connection with an online interface, in accordance with section 184(4) of the DMCC Act.²¹²

10.27 Party: Any natural or legal person that is subject to an investigation opened under section 180 of the DMCC Act or is subject to enforcement action by the CMA under Chapter 4 of Part 3 of the DMCC Act or under paragraph 16B or 16C of Schedule 5 of the CRA 2015.

10.28 Provisional Administrative Enforcement Notice: This term is used where the CMA is collectively referring to a provisional breach of undertakings enforcement notice, provisional breach of directions enforcement notice, provisional false information enforcement notice and provisional enforcement notices for non-compliance with an information notice.

10.29 Provisional breach of directions enforcement notice: A notice which may be given where the CMA has reasonable grounds to believe that the respondent has without reasonable excuse failed to comply with the direction (fully or to any respect).²¹³

²⁰⁹ Section 181 DMCC Act. The same threshold of ‘reasonable grounds to believe’ applies where the CMA takes a decision to give a provisional breach of undertakings enforcement notice, a provisional breach of directions enforcement notice or a provisional false information enforcement notice under sections 188, 191 and 197 of the DMCC Act respectively.

²¹⁰ Section 182 DMCC Act. The same threshold of ‘satisfied’ applies where the CMA gives an online interface notice, final breach of undertakings enforcement notice, final breach of directions enforcement notice or a final false information notice under sections 184, 189, 192 and 198 of the DMCC Act respectively.

²¹¹ Section 184(10) DMCC Act.

²¹² Section 184 DMCC Act.

²¹³ Section 191 DMCC Act.

- 10.30 **Provisional breach of undertakings enforcement notice:** A notice which may be given where the CMA has accepted undertakings under section 185 of the DMCC Act, and the CMA has reasonable grounds to believe that respondent has failed to comply with one or more of the terms of the undertaking.²¹⁴
- 10.31 **Provisional enforcement notice:** A notice which may be given where the CMA has given an information notice to the respondent and the CMA has reasonable grounds to believe that the respondent has failed to comply.²¹⁵
- 10.32 **Provisional false information enforcement notice:** A notice which may be given where the CMA has reasonable grounds to believe that the respondent has, without reasonable excuse, provided information to the CMA that is materially false or misleading, and (b) the information was provided in connection with the carrying out by the CMA of a direct enforcement function.²¹⁶
- 10.33 **Provisional Infringement Notice (PIN):** A provisional decision notice setting out alleged infringements of the law, and where appropriate, any proposed directions and penalties, in accordance with section 181 of the DMCC Act.
- 10.34 **Relevant infringement:** Occurs where a trader's commercial practice harms the collective interests of consumers, there is a 'UK connection' and there is a breach of the legislation specified in Schedule 16 to the DMCC Act.²¹⁷
- 10.35 **Remedies:** May include directions (which may include ECMs), and/or penalties. Further details are set out in Chapter 5.
- 10.36 **Remedy requirements:** These may address and, as relevant, resolve concerns the CMA has identified in its consumer enforcement cases.
- 10.37 **Representations:** A statement, information or material provided by a party to the CMA in response to the matters set out in a PIN or by a party in response to a provisional infringement of directions enforcement notice, a provisional infringement of undertakings enforcement notice or a provisional false information enforcement notice.
- 10.38 **Respondent:** Includes a person to whom a Provisional Administrative Enforcement Notice, a Final Administrative Enforcement Notice, a Provisional Infringement Notice or a Final Infringement Notice is given under Chapter 4,

²¹⁴ Section 188 DMCC Act.

²¹⁵ Paragraph 16B, Schedule 5, CRA.

²¹⁶ Section 197 DMCC Act.

²¹⁷ Section 148(1) DMCC Act.

Part 3 of the DMCC Act (or paragraphs 16B and 16C of Schedule 5 of the CRA 2015) save where the notification is made under Rule 9 of the CMA Consumer Rules or section 200(7) of the DMCC Act.

- 10.39 **Settlement:** Occurs when a party under investigation admits to the facts and conduct in question, that it has infringed consumer law and accepts a streamlined administrative procedure for the remainder of the CMA's investigation. Where settlement is agreed, subject to certain conditions, the CMA will reduce the penalty to be paid by the settling party. Further details are set out in Chapter 4.
- 10.40 **Summary Statement of Case:** If settlement discussions commence prior to the PIN being issued, the person or business will be provided with a Summary Statement of Case. This will set out relevant matters concerning the CMA's concerns, as set out in paragraph 4.45 of Chapter 4.
- 10.41 **Trader:** (a) A person ("P") acting for purposes relating to P's business, or (b) a person acting in the name of, or on behalf of, P for purposes relating to P's business.²¹⁸
- 10.42 **UK connection:** A commercial practice meets the UK connection condition for the purposes of section 148 DMCC Act if at least one of the following conditions are met, (a) the trader has a place of business in the United Kingdom; (b) the trader carries on business in the United Kingdom; (c) the commercial practice occurs in the carrying on of activities by the trader that are, by any means, directed to consumers in the United Kingdom. It is immaterial for the purposes (c) whether the activities are carried on in the United Kingdom or elsewhere.²¹⁹
- 10.43 **Undertaking:** A commitment from a person relating to its conduct. For example, among other things, such a commitment may address making a change to the person's own practices, or not consenting or conniving in respect of another person's practices. Further details are set out in Chapter 4.

²¹⁸ Section 148(2) DMCC Act.

²¹⁹ Section 149 DMCC Act.

Annex A: Legislation in scope of the direct enforcement model

1. This annex sets out a summary of the relevant consumer legislation, listed in Schedule 16 of the DMCC Act, which may be enforced by the CMA under the direct enforcement powers.²²⁰ This document is not a definitive statement of, or a substitute for, the DMCC Act itself, or of the relevant consumer legislation.²²¹

Consumer Rights Act 2015: direct enforcement provisions are applicable to Parts 1 and 2, Chapter 5 of Part 3, Schedules 2 and 3 and Part 3 of Schedule 5

2. The Consumer Rights Act 2015 (CRA) is split into three parts, together with a number of schedules. Part 1 sets out consumers' rights and remedies in relation to contracts for the supply of goods, digital content and services. Part 2 and Schedules 2 and 3 set out provisions relating to unfair terms in consumer contracts and notices. Part 3 includes a range of general and miscellaneous provisions, and Chapter 5 of Part 3 relates to secondary ticketing.
3. Part 1 of the CRA gives consumers certain statutory rights in relation to contracts for the supply of goods, digital content, and services (or any combination of these), and those rights are treated as having been included as terms of the contract. It also gives consumers statutory remedies (while preserving most remedies under the general law). These statutory remedies may include:
 - short-term right to reject;²²²
 - right to repair or replacement;²²³
 - right to a price reduction or final right to reject;²²⁴
 - right to require repeat performance of a service;²²⁵

²²⁰ Legislation listed in Schedule 16 DMCC Act, which may be applied under the powers set out in Chapter 4 of Part 3 of the DMCC Act.

²²¹ Legislation applicable to the Court-based regime in Chapter 3 of Part 3 of the DMCC Act is set out in Schedule 15 of the DMCC Act which also lists the enforcers who may use the court-based regime to enforce that provision. Please see Schedule 15 for a full list of the relevant provisions applying to the court-based regime.

²²² Sections 19, 20 and 22 CRA.

²²³ Sections 19 and 23 CRA.

²²⁴ Sections 19, 20 and 24 CRA.

²²⁵ Sections 54 and 55 CRA.

- right to a price reduction for a service or digital content, which may be the full amount of the price.²²⁶
4. Part 1 of the CRA also provides that pre-contract information required under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 for on-premises, off-premises and distance contracts are to be treated as a contractual term.²²⁷ Contractual terms which are inconsistent with any of those rights or remedies are generally not binding on consumers.²²⁸
 5. Part 2 of the CRA applies to contract terms and consumer notices that set out rights and obligations between a trader and consumers.²²⁹ It applies a test of fairness to all terms in consumer contracts and notices. There is an exception for terms defining the main subject matter or setting the price, provided they are transparent and prominent and do not have the object or effect of a term on the 'grey list' (the non-exhaustive list of illustrative terms which may be regarded as unfair, set out in Schedule 2 to the CRA). The exception is narrowly construed. A term is unfair if '*contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer*'.²³⁰ Unfairness is assessed taking into account the nature of the contract's subject matter and by reference to all the circumstances at the time the contract was made and to all its other terms.²³¹ If terms are found to be unfair they are not enforceable against consumers.
 6. The CRA prohibits some terms which are never binding on a consumer and are automatically unenforceable.²³²
 7. Part 3 of Schedule 5 of the CRA details investigatory powers in relation to the production of information.²³³

²²⁶ Sections 54 and 56 CRA.

²²⁷ Section 50(3) CRA.

²²⁸ Sections 31 and 47 CRA.

²²⁹ Part 2 of the CRA supersedes the unfair terms provisions in the Unfair Terms in Consumer Contract Regulations (UTCCRs), see further below, and applies to contracts entered into after 1 October 2015. More information on Part 2 can be found here [Unfair contract terms: CMA37 - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

²³⁰ Section 64(2) CRA.

²³¹ Section 62(5) CRA.

²³² Including terms which have the effect of restricting a service provider's liability for services are not provided with reasonable care and skill. See CRA, Part 1, section 57 (in relation to services) and CRA, Part 2, section 65(1).

²³³ Schedule 17 of the DMCC Act amends certain investigatory powers provisions of Schedule 5 of the CRA concerning the production of information to include (among others) provisions for enforcement and penalties for non-compliance.

8. Chapter 5 of Part 3 of the CRA relates to secondary ticketing.²³⁴ The provisions include:
- a duty to provide certain information when tickets are re-sold through a secondary ticketing facility,
 - a prohibition on cancelling tickets which have been resold (unless specific criteria is met), and
 - a duty on operators of secondary ticketing facilities to report criminal activity.

Digital Markets, Competition and Consumers Act 2024: direct enforcement provisions are applicable to Chapters 1, 2 and 3 of Part 4

Chapter 1: Unfair commercial practices

9. Chapter 1 of Part 4 of the DMCC Act sets out broad rules protecting consumers from unfair commercial practices. These replace the rules on unfair commercial practices set out in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), subject to certain transitional arrangements.^{235, 236}
10. The prohibition on unfair commercial practices applies to a wide range of commercial practices which may affect consumers, including the promotion or supply of the trader's or another trader's products to a consumer.²³⁷ A commercial practice may take place at any stage of a trader's interactions with consumers, before, during or after the promotion or supply of the products and may include advertising, marketing, sales, supplies and after-sales services.
11. A commercial practice is unfair if:
- it is a misleading action, misleading omission, aggressive practice or contravention of professional diligence requirements, which is likely to

²³⁴ Section 216 of the DMCC Act amends section 93 of Chapter 5 of Part 3 to provide that the CMA may also enforce the provisions of this chapter.

²³⁵ Provisions on unfair commercial practices in Chapter 1, Part 4 of the DMCC Act are similar, but not identical, to those set out in the CPRs, for example the DMCC Act creates a new prohibition for the omission of material information from an invitation to purchase without requiring an effect on transactional decision-making.

²³⁶ The provisions on unfair commercial practices in the DMCC Act apply only in relation to an act or omission occurring on or after the commencement date. The CPRs continue to have effect for acts or omissions occurring before the commencement date. (See section 252 DMCC Act).

²³⁷ Or the consumer's product to a trader section 225(3) DMCC Act.

cause the average consumer to take a transactional decision they would not otherwise have taken,^{238, 239}

- it omits material information from an invitation to purchase,
- it is a commercial practice set out in Schedule 20 of the DMCC Act, which practices are always regarded as unfair.²⁴⁰

12. Misleading actions, include the provision of certain false or misleading information or information where its overall presentation is likely to deceive the average consumer.

13. Misleading omissions include the omission of material information (or material required under enactment), failing to identify its commercial intent, or providing material information in a manner which is unclear, untimely or in such a way that the consumer is unlikely to see it.²⁴¹

14. Aggressive practices involve the use of harassment, coercion or undue influence.²⁴²

15. A contravention of professional diligence, occurs where a trader falls short of the standard of skill and care a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice in the trader's field of activity or the general principle of good faith in the trader's field of activity.²⁴³

Chapter 2: Subscription contracts

16. Chapter 2 of Part 4 gives consumers' rights in relation to certain subscription contracts where traders fail to provide certain specified information. It also provides a right to cancel certain contracts during cooling off periods.

17. Where a contract is within scope, traders are under a duty to provide certain key pre-contract information and to make available full pre-contract

²³⁸ The average consumer is reasonably well informed and reasonably observant and circumspect. Where a commercial practice is directed at a particular group, including particularly vulnerable group, the average consumer refers to the average member of that group, see sections 246 and 247 DMCC Act. A group of consumers may be vulnerable as a result of (among other things) their age, their physical or mental health, their credulity, and the circumstances they are in.

²³⁹ Section 225(4)(a) DMCC Act.

²⁴⁰ Section 225(4)(b) and (c) DMCC Act.

²⁴¹ Section 227 DMCC Act.

²⁴² Section 228 DMCC Act.

²⁴³ Section 229 DMCC Act.

information (listed in parts 1 and 2 of Schedule 23 respectively).²⁴⁴ Specific requirements apply to some subscription contracts entered online, including that a consumer expressly acknowledges the obligation to make payments.²⁴⁵ Traders are also required to give consumers regular six monthly reminder notices ahead of renewal payments.²⁴⁶ The DMCC Act imposes both an initial and a renewal cooling-off period of 14 days during which a consumer may cancel the contract without penalty or charge.²⁴⁷ Provisions are also made to simplify the process for ending subscription contracts.²⁴⁸ Traders must also provide a notice confirming the subscription is cancelled and refund any overpayments.

18. These requirements are implied terms in every subscription contract.²⁴⁹ Where a trader breaches certain specified implied terms the consumer has a right to cancel the contract without penalty or charge.²⁵⁰

Chapter 3: Consumer saving schemes

19. Chapter 3 of Part 4 requires that traders operating certain consumer saving schemes protect consumer payments by way of insurance or trust arrangements to ensure consumers are repaid if the trader becomes insolvent.²⁵¹ The DMCC Act also requires that traders must provide certain information about the insurance or trust arrangements to the consumer.²⁵²

²⁴⁴ Section 256 and Schedule 23 DMCC Act provides key pre-contract information includes that the contract will continue unless the consumer takes steps to bring it to an end and liabilities will continue under the contract and any minimum period before the consumer can end the contract (paragraph 2, Schedule 23). Full pre-contract information also includes the trader's complaint handling policy (paragraph 20, Schedule 23).

²⁴⁵ Section 257 DMCC Act.

²⁴⁶ Sections 258 and 259 DMCC Act.

²⁴⁷ Sections 265 and 266 DMCC Act. A trader must also give the consumer a cooling off notice explaining, among other things, that the contract is continuing, and they have the right to cancel during the cooling off period. In certain circumstances it is also a criminal offence to fail to provide information about initial cooling off rights. (See sections 268 to 271 DMCC Act).

²⁴⁸ Section 260 DMCC Act.

²⁴⁹ See section 262 DMCC Act, these include implied terms on the duties to provide key pre-contract information, to make full pre-contract information available, as well as provisions on reminder notices and arrangements to end the contact.

²⁵⁰ Section 263 DMCC Act.

²⁵¹ Schemes restricting when a consumer may redeem the funds saved in their account, or incentivising consumers to redeem (or not redeem) the funds at a specific time or if the scheme is marketed or advertised to encourage consumers to redeem (or refrain from redeeming) funds in the consumers account at a time specified in marketing or advertising material. See sections 282(2) to 282(4) and 285 DMCC Act.

²⁵² Section 288 DMCC Act.

Consumer Protection from Unfair Trading Regulations 2008: direct enforcement powers are applicable to all the regulations

20. As noted above, provisions of the Consumer Protection from Unfair Trading Regulations (CPRs) have been revised and set out within Chapter 1 of Part 4 of the DMCC Act. However, the CPRs remain in force for conduct prior to the commencement of the DMCC Act, and certain transitional provisions are applicable, so the CPRs continue to be relevant.
21. The CPRs are similar in content to the unfair commercial practices provisions in the DMCC Act. They prohibit businesses from engaging in unfair practices in their dealings with consumers and prohibit misleading actions, misleading omissions, aggressive practices and breach of the standards of professional diligence, where they are likely to have an impact on consumers' decisions or their economic behaviour.²⁵³
22. Certain practices, set out in Schedule 1 to the CPRs, are always unfair whether or not they are likely to have an impact on consumers' decisions.
23. Traders are also responsible for the commercial practices of anyone who acts on their behalf or in their name. Both the trader and those acting on their behalf may be held liable for breaches of the CPRs.²⁵⁴

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013: direct enforcement provisions are applicable to all the regulations

24. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) require businesses to give consumers certain information in a clear and comprehensible manner before the consumer is bound by the contract.²⁵⁵ They also give consumers certain cancellation and refund rights.
25. The information requirements apply to certain on-premises, off-premises, and distance contracts. Information listed in Schedule 1 of the CCRs relates to on-premises contracts and information in Schedule 2 relates to off-premises and distance contracts.²⁵⁶ Information must be provided in a clear and

²⁵³ Regulations 3 to 7 CPRs.

²⁵⁴ Regulation 2 CPRs.

²⁵⁵ Certain provisions of the CCRs will be disapplied to subscription contracts when Chapter 2 of Part 4 of the DMCC Act comes into force.

²⁵⁶ Distance contract means a contract concluded without the simultaneous physical presence of parties with the exclusive use of distance communication. Off-premises means a contract concluded in the simultaneous physical

comprehensible manner. A failure to provide the required information will be treated as breach of the contract.²⁵⁷

26. When a distance contract within scope is concluded electronically, certain Schedule 2 information (such as the total price, any additional delivery charges and the duration of the contract) must be provided in a clear and prominent way directly before the consumer places the order. The trader must also ensure the consumer expressly acknowledges that placing the order implies an obligation to pay.²⁵⁸
27. Consumers may be entitled to cancel a distance or off premises contract at any time within the cancellation period without giving any reason and without incurring any liability.²⁵⁹ The normal cancellation period when purchasing services and goods is 14 days from the date the contract for services is entered into or from the date goods are delivered.²⁶⁰ The cancellation period can be extended if the trader does not provide the consumer with information on their right to cancel as required.²⁶¹ A consumer who cancels a contract is generally entitled to a full refund within 14 days (subject to certain qualifications).²⁶²
28. Consumers are also protected from additional charges (required in addition to the charge for a main obligation) unless they give express consent before entering the contract.²⁶³

Consumer Credit Act 1974: direct enforcement provisions are applicable to the whole Act ²⁶⁴

29. The Consumer Credit Act (CCA) regulates consumer credit activities and includes detailed requirements on a range of matters such as the information to be provided both before and after consumers enter into a credit agreement; the content and form of credit agreements; the cancellation or withdrawal from

presence of both parties in a place not the business premises of the trader or concluded through distance communication after the parties were simultaneously present in a place which is not the trader's business premises. On-premises contract means a contract which is neither a distance or off-premises contract (Regulations 10 and 13 CCRs).

²⁵⁷ Regulation 18 CCRs.

²⁵⁸ Regulation 14 CCRs.

²⁵⁹ Regulation 29 CCRs.

²⁶⁰ Regulation 30(2) and (3) CCRs.

²⁶¹ Regulation 31 CCRs.

²⁶² Regulation 34 CCRs.

²⁶³ Regulation 40 CCRs.

²⁶⁴ Although parts of the CCA were repealed from 1 April 2014 large parts were retained, the current legislation sits alongside the framework in the Financial Services and Markets Act 2000 and the FCA's Consumer Credit Sourcebook rules.

certain agreements; procedures relating to default, termination and early settlement. It also provides consumers with protections for certain credit card purchases and gives courts power to change the terms of credit agreements where there is an unfair relationship between the borrower and lender.

Sale of Goods Act 1979: direct enforcement provisions are applicable to Sections 1 to 10; Section 11 (other than subsection (4)); Sections 16 to 19; Sections 20A and 20B; Sections 21 to 28; Section 29 (other than subsection (3)); Section 34; Section 37; Part 5; Sections 49 and 50; Section 57; and Sections 60 to 62

30. The Sale of Goods Act 1979 (SGA) sets out the law governing contracts for the sale of goods and regulates a wide range of matters including contract formation; certain implied terms; transfer of ownership of goods; performance of the contract and actions for breach of contract.
31. Much of the original detail in the SGA has since been revoked and replaced by the CRA for contracts entered into after 1 October 2015, this includes sections relating to a consumer's right to remedies for instance a consumer's right to require goods to be repaired or replaced.
32. Direct enforcement is available to the CMA for certain retained parts of the SGA, which are listed above. These include areas such as contract formation, certain implied terms, provisions relating to the effect of the contract including property and title transfers and certain rules concerning contractual performance including seller and buyer duties and rules about delivery.

Business Protection from Misleading Marketing Regulations 2008: direct enforcement provisions are applicable to regulations 2, 4, 13, 15 and 18

33. The Business Protection from Misleading Marketing Regulations 2008 (BPRs) prohibit misleading business-to-business advertising, but this provision is not enforceable under the DMCC Act direct enforcement regime. However, the BPRs also set out the conditions under which comparative advertisements (that is, any advertisement which identifies a competitor or a competitor's product) are permitted.²⁶⁵ The DMCC Act gives the CMA the power to enforce the provisions of the BPRs relating to comparative advertising under the direct enforcement regime.²⁶⁶

²⁶⁵ Regulation 4 BPRs.

²⁶⁶ Regulation 13 BPRs.

Consumer Rights (Payment Surcharges) Regulations 2012: direct enforcement provisions are applicable to regulations 4, 6A to 10

34. For most retail payments (where the payment service providers are based in the UK), the Regulations prohibit traders from charging a fee in addition to the advertised price of a transaction on the basis of a consumer's choice of payment instrument (for example, credit card, debit card or e-money).²⁶⁷ For other retail payments and most payments between businesses made with commercial payment instruments, the Regulations ban traders from charging customers more than the direct cost borne by them for use of the means of payment.²⁶⁸

Electronic Commerce (EC Directive) Regulations 2002: direct enforcement provisions are applicable to regulations 6 to 9, and 11

35. The Electronic Commerce (EC Directive) Regulations 2002 (Regulations) oblige providers of information society services (which include online traders) to give certain information about the service provider and its services, including:

- *Business identity*: Including the service provider's name and contact details.
- *Pricing transparency*: The total price, including taxes and delivery charges.
- *Adherence to authorisation schemes, professional rules*: If the service provider adheres to any specific codes, professional bodies, or industry standards.²⁶⁹

36. The Regulations require that advertisements and commercial communications comply with certain requirements including that they are clearly identifiable as such and ensure that conditions to meet any promotional offers are presented clearly.²⁷⁰ Unsolicited commercial communications sent by email must be clearly identifiable as such.²⁷¹ The Regulations also require certain information to be provided where contracts are concluded electronically,²⁷² and certain measures to take place following the placing of an order (including acknowledgement of the order placed without delay and by electronic means

²⁶⁷ Regulation 6A, Consumer Rights (Payment Surcharges) Regulations.

²⁶⁸ Regulation 4, Consumer Rights (Payment Surcharges) Regulations.

²⁶⁹ Regulation 6, Electronic Commerce (EC Directive) Regulations 2002.

²⁷⁰ Regulation 7, Electronic Commerce (EC Directive) Regulations 2002.

²⁷¹ Regulation 8, Electronic Commerce (EC Directive) Regulations 2002.

²⁷² Regulation 9, Electronic Commerce (EC Directive) Regulations 2002.

and give the consumer appropriate, effective and accessible technical means to identify and correct input errors).²⁷³

Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions: direct enforcement provisions are applicable to regulation 10(4)

37. Under Article 10(4), merchants that decide not to accept all cards of a payment card scheme must inform consumers of this at the same time, as they inform them of which cards they do accept. This information must be displayed, in a clear and unequivocal manner and prominently at the entrance to a premises and at the point of sale (for example, by the till). In the case of distance sales (for example, online), this information should be displayed prominently on the payee's website or any other electronic or mobile medium (such as a mobile phone app). The information should be provided in good time before the payer enters into a purchase agreement with the payee.

Package Travel and Linked Travel Arrangements Regulations 2018: direct enforcement provisions are applicable to all the regulations

38. The Package Travel and Linked Travel Arrangement Regulations (PTRs) provide protection for consumers who purchase package holidays. The PTRs include both civil and criminal aspects. Key protections include:

- making the organiser liable for the performance of the travel services making up the package (even if performed by third parties);²⁷⁴
- protection against the insolvency of package organisers, ensuring travellers are refunded, or where applicable, repatriated should the organiser become insolvent;²⁷⁵
- providing for travellers and organisers to terminate package holiday contracts in certain unavoidable and extraordinary circumstances (and requiring the organiser to give a full refund);²⁷⁶ and
- imposing detailed information requirements that make it clear what product the traveller is buying and the associated protections.²⁷⁷

²⁷³ Regulation 11, Electronic Commerce (EC Directive) Regulations 2002.

²⁷⁴ Regulation 15 PTR.

²⁷⁵ Regulation 19 PTR.

²⁷⁶ Regulations 12 and 13 PTR.

²⁷⁷ Regulations 4-7 PTR.

Price Marking Order 2004: direct enforcement provisions are applicable to the whole Order

39. This Order sets out rules concerning the way prices for goods are presented to consumers, for example, it requires the selling price to be given in writing and in sterling to the consumer.²⁷⁸ In certain circumstances, unit prices must also be clearly displayed to consumers.²⁷⁹ The Order requires prices to be unambiguous, easily identifiable as well as clearly legible. Consumers should not need to seek assistance to find out the price of a product.²⁸⁰

Price Marking Order (Northern Ireland) 2004 (S.R. (N.I.) 2004 No 368): direct enforcement provisions are applicable to the whole Order

40. This Order broadly mirrors the provisions of the Price Marking Order 2004 above, applying them to Northern Ireland.

Provision of Services Regulations 2009: direct enforcement provisions are applicable to all the regulations

41. The Provision of Services Regulations 2009 (PSRs) apply to organisations that provide a service for which they normally charge.²⁸¹ Their scope is very broad and, unless specifically excluded, all services are in scope.

42. Under the PSRs a trader must:

- Provide consumers with certain information about itself in good time before the conclusion of a contract (including the business' name, geographical address, legal status, and price and main features of the service).²⁸²
- Deal with customer complaints promptly and make their best efforts to find a satisfactory solution to complaints.²⁸³

43. The PSRs also oblige businesses to provide certain information if requested by a consumer. This includes:

- Where the price is not pre-determined by the business, the price of the service or, if an exact price cannot be given, the method for calculating the price.

²⁷⁸ Articles 6 and 7, Price Marking Order 2004.

²⁷⁹ Article 5, Price Marking Order 2004.

²⁸⁰ Article 7, Price Marking Order 2004.

²⁸¹ Regulation 2, Provision of Services Regulations 2009.

²⁸² Regulations 7 and 8, Provision of Services Regulations 2009.

²⁸³ Regulations 12, Provisions of Services Regulations 2009.

- If the business is carrying out a regulated profession, a reference to the professional rules applicable and how to access these.²⁸⁴

44. The requirements of the PSRs in relation to information provision are similar to those under the CCRs (discussed above).

Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010: direct enforcement provisions are applicable to all the regulations

45. The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations (the Regulations) govern timeshare contracts. The regulations primarily concern the:

- provision of key information,²⁸⁵
- control of advertising,²⁸⁶ and
- creation of a right to withdrawal.²⁸⁷

46. The Regulations apply to any 'regulated contract' including holiday accommodation contracts such as timeshare, long term holiday products, and resale and exchange contracts.²⁸⁸ Under the regulations consumers are given a 14-day cooling off period.²⁸⁹ Consumers must also be provided with specified information to be provided before contracting and within the contract.²⁹⁰

47. The trader must specifically draw the consumer's attention to the right of withdrawal, the length of the withdrawal period and the prohibition on advance consideration during this period.²⁹¹

Saved legislation

48. The CMA's direct enforcement powers also apply in relation to the saved legislation specified below, for example where conduct may be continuing conduct for the purposes of Schedule 19. Saved legislation is legislation which has subsequently been replaced by later legislation, subject to certain transitional provisions. The replacing legislation has been described in the

²⁸⁴ Regulation 9, Provision of Services Regulations 2009.

²⁸⁵ Regulation 12, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

²⁸⁶ Regulation 14, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

²⁸⁷ Regulation 20, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

²⁸⁸ Regulation 3, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

²⁸⁹ Regulation 21, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

²⁹⁰ Parts 3 and 4, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

²⁹¹ Regulation 16, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

sections above. For the saved legislation listed below, direct enforcement powers will apply only to contracts entered into (or notices given) before the commencement date of the replacing legislation, and so will only be enforceable in respect of specific periods of time. The table below sets out the saved legislation, the dates between which relevant contracts have been entered (or notices given) and the replacing legislation.

SAVED LEGISLATION	APPLICABLE FOR CONTRACTS ENTERED INTO BETWEEN	REPLACING LEGISLATION
Sales of Goods Act 1979	1 January 1980 and 1 October 2015	Consumer Rights Act 2015
Supply of Goods and Services Act 1982	4 July 1983 and 1 October 2015	Consumer Rights Act 2015
Supply of Goods (implied Terms Act) 1973	1 May 1973 and 1 October 2015	Consumer Rights Act 2015
Unfair Contract Terms Act 1977	1 February 1978 and 1 October 2015	Consumer Rights Act 2015
Cancellation of Contracts made in a Consumers Home or Place of Work etc Regulations 2008	1 October 2008 and 13 June 2014	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013/3134
Consumer Protection (Distance Selling) Regulations 2000	31 October 2000 and 13 June 2014	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013/3134
Package Travel, Package Holidays and Package Tours Regulations 1992	23 December 1992 and 1 July 2018	Package Travel and Linked Travel Arrangements Regulations 2018/634

Sale and Supply of Goods to Consumers Regulations 2002	31 March 2003 and 1 October 2015	Consumer Rights Act 2015
Unfair Terms on Consumer Contracts Regulations 1999	1 October 1999 and 1 October 2015	Consumer Rights Act 2015

Table 11: Saved legislation.

Annex B: Court-based enforcement: consumer protection orders and undertakings

Introduction and background

1. Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act (DMCC Act) provides for a civil court-based regime for enforcers, which runs in parallel with the CMA's powers under the direct enforcement regime and the criminal enforcement regime. The CMA may choose to pursue enforcement action via criminal law enforcement, the civil court-based enforcement regime or the direct enforcement regime depending on what it deems more appropriate in any given case (see paragraphs 2.2 to 2.3 of Chapter 2 (The enforcement process)).
2. Under the civil court-based regime, the CMA, along with other enforcers,²⁹² may apply to court for an enforcement order or interim enforcement order if they consider that a person has engaged, is engaging or is likely to engage in, a commercial practice which constitutes a 'relevant infringement',^{293, 294} or if a person is an accessory to such a practice.
3. The provisions in Chapter 3 of Part 3 replace the previous civil court-based enforcement regime provided for in Part 8 of the Enterprise Act 2002, subject to transitional provisions (in respect of which see Chapter 1 (Introduction)). The regime largely mirrors the regime under Part 8, save for some significant differences:
 - the courts will now have the power to impose monetary penalties for breach of the law of a fixed amount of up to £300,000 or, if higher, 10% of turnover;
 - the court will now have the power to impose monetary penalties for breaches of undertakings given by parties to the court, as well as undertakings given to public designated enforcers. The penalty imposed may be of a fixed amount, an amount based on a daily rate, or a combination of both. A penalty for a fixed amount is limited to £150,000 or,

²⁹² Enforcers include, among others, Trading Standards, the Financial Conduct Authority, the Office of Communications and the Office of Rail and Road. The full list can be found in section 151 DMCC Act. Not every enforcer is authorised for every infringement.

²⁹³ A commercial practice is any act or omission by a trader that relates to the promotion or supply of goods, services, or digital content, which can be those of either that trader, another trader, or a consumer. Therefore, for example, a trader dealing in the goods of, or on behalf of, another trader or a consumer would be engaging in a commercial practice for the purposes of the DMCC Act.

²⁹⁴ See paragraph 6 below for more detail of what constitutes a relevant infringement.

if higher, 5% of the total turnover. A penalty on the basis of a daily rate is limited to £15,000, or, if higher, 5% of daily turnover.

- public designated enforcers have the power (currently limited to the CMA) to apply to court for online interface orders (OIOs) and interim OIOs to, inter alia, modify or remove online content that infringes consumer law.²⁹⁵

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4. The provisions in Chapter 6 and Schedule 17 contain amendments to Schedule 5 to the Consumer Rights Act 2015 (CRA) to:

- Provide the courts with a power to impose a monetary penalty where the court finds there has been non-compliance with an information notice without reasonable excuse. The penalty imposed may be of a fixed amount, an amount based on a daily rate, or a combination of both. A penalty for a fixed amount is limited to £30,000 or, if higher, 1% of the total turnover. A penalty on the basis of a daily rate is limited to £15,000, or, if higher, 5% of daily turnover.
- Amend the prescribed conditions for seeking a premises entry warrant to make clear that they cover documents accessible from the premises as well as documents located on the premises.

5. For conduct constituting relevant infringements occurring after the entering into force of the DMCC Act, this Annex B updates Chapter 4 of [CMA58](#) (which is the chapter relating to the civil court-based enforcement model under Part 8 of the Enterprise Act 2002). Where a relevant infringement took place before the entering into force of the DMCC Act, the position is more nuanced, but Part 8 of the Enterprise Act 2002 and Chapter 4 of [CMA58](#) may continue to apply (for more information see Chapter 1 of the CMA Direct consumer enforcement guidance).

Relevant infringements

6. The court-based enforcement regime applies to ‘relevant infringements’. A ‘relevant infringement’ occurs where a trader’s commercial practice harms the collective interests of consumers,²⁹⁷ and is in breach of an enactment,

²⁹⁵ As specified in section 151(1) DMCC Act. Public designated enforcers include Trading Standards and sector regulators like Ofcom, Ofgem, the FCA, etc.

²⁹⁶ See paragraphs 22 to 27 below for more detail on OIOs and interim OIOs.

²⁹⁷ The concept of ‘harm to the collective interests of consumers’ has been discussed in caselaw interpreting the parallel references under Part 8 of the Enterprise Act 2002, notably in *OFT v MB Designs* (2005) SLT 69; *OFT v Vance Miller* [2009] EWCA Civ 3 and *OFT v Purely Creative* [2011] EWHC 106 (Ch). The following principles

obligation or rule of law listed in Schedule 15 to the Act. Schedule 15 covers a wide range of consumer protection and sectoral legislation, broadly mirroring the scope of the legislation covered by Part 8 of the Enterprise Act 2002.

7. As with the direct enforcement regime, a commercial practice has a sufficient UK connection where the trader has a place of business in the UK, the trader carries on business in the UK, or the commercial practice occurs in the carrying on of activities by the trader that are, by any means, directed to consumers in the UK.

Consultation

8. Before making an application for an enforcement order or an interim enforcement order, an enforcer will usually consult with the parties under investigation (the respondents). The purpose of the consultation is to prevent, bring an end to or prevent repetition of relevant infringements, as well as also informing the respondent that an application for an enforcement order may result in a monetary penalty.
9. Where an enforcer is applying for an enforcement order, the consultation period is a minimum of 14 days (extending to 28 days if the respondent is a member of, or is represented by, an approved representative body).²⁹⁸ In the case of an application for an interim enforcement order, the minimum consultation period is seven days.
10. The enforcer is not required to consult where the CMA considers that an application for the order is urgent, or if it is not reasonably practicable for the CMA to ascertain the identity and whereabouts of the respondent.

Undertakings to enforcers

11. Instead of making an application to the court for an enforcement order or interim enforcement order, the CMA or another enforcer may accept an undertaking from the respondent as an alternative to seeking an enforcement order.
12. An undertaking may include a requirement to take such enhanced consumer measures (ECMs) as the enforcer considers 'just and reasonable', having regard to whether any proposed ECMs are proportionate given the benefits to

follow these cases: (i) there must be harm to a section of the public and not just to an individual consumer; (ii) this will usually be inferred from an accumulation of a number of individual breaches (which need not be identical in nature); (iii) however, it could be one breach provided it affected a number of people; and (iv) a risk of repetition can be harmful to the collective interests of consumers.

²⁹⁸ 'Approved representative body' is defined further in section 155(8) DMCC Act.

consumers, costs to the respondent, and likely costs to consumers of receiving the measures. As under the Part 8 regime, ECMs can fall into one of the following categories: (a) the redress category;²⁹⁹ (b) the compliance category;³⁰⁰ or (c) the choice category.³⁰¹

13. Where the enforcer accepts an undertaking, it may publish the undertaking and/or accept a further undertaking from the respondent to do so.
14. An enforcer may apply to the court in respect of a failure to comply with an undertaking given to that enforcer. If the court finds that the undertaking is not being complied with, it may make a consumer protection order and/or make an order requiring the respondent to pay a monetary penalty. A requirement to pay a monetary penalty can only be imposed if the court decides that the respondent's failure is 'without reasonable excuse'. The monetary penalty imposed must not exceed:
 - in the case of a fixed amount, £150,000 or, if higher, 5% of the total value of the turnover of the respondent;
 - in the case of an amount calculated by reference to a daily rate, £15,000 or, if higher, 5% of the total value of the daily turnover of the respondent; and
 - in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount, and such amount per day.
15. A person liable to pay a monetary penalty for a breach of an undertaking to an enforcer may appeal in respect of the decision to impose the penalty and/or the nature or amount of the penalty. The monetary penalty will be suspended until the outcome of the appeal.

Enforcement orders and undertakings to the court

16. Authorised enforcers may apply for an enforcement order if the enforcer considers that a person has engaged in, is engaging in or is likely to engage

²⁹⁹ Redress measures are those that offer compensation or other redress to affected consumers, or, where not possible to identify such consumers, one that is intended to be in the collective interest of consumers.

³⁰⁰ Compliance measures are those intended to prevent or reduce the risk of the infringing conduct.

³⁰¹ Choice measures are those intended to enable consumers to choose more effectively between different suppliers.

in a commercial practice which constitutes a relevant infringement, or a person is an accessory to such a practice.^{302, 303}

17. If the court finds that the respondent has engaged, is engaging, or is likely to engage in a commercial practice which constitutes a relevant infringement or is an accessory to the infringing practice,³⁰⁴ it may (a) make an enforcement order against the respondent requiring them not to continue or repeat the practice in question, or (b) accept an undertaking from the respondent to the same effect. When determining whether it will make an enforcement order, the court must consider if the respondent has previously breached an undertaking given to an enforcer (including undertakings given under the direct enforcement regime).
18. The court can make an enforcement order binding on 'interconnected bodies corporate' if the court considers it is just, reasonable and proportionate to do so.³⁰⁵ The court can also include a requirement that the respondent publish the order or the terms of the undertaking and/or a corrective statement.
19. An enforcement order or undertaking may include a requirement to take such ECMs as the court considers 'just and reasonable'. As set out at paragraph 12 above, these fall into either: (a) the redress category; (b) the compliance category; or (c) the choice category. For this purpose, the court must consider whether any proposed ECMs are proportionate, having regard to the benefits to consumers, to costs to the respondent and the likely costs to consumers of receiving the measures.
20. Unlike under the previous regime in Part 8 of the Enterprise Act 2002, an enforcement order may also include a requirement for the respondent to pay a monetary penalty in respect of the breach.³⁰⁶ The amount of a monetary penalty must be a fixed amount not exceeding £300,000 or, if higher, 10% of the total value of the turnover (if any) of the respondent. A person liable to pay a monetary penalty may appeal in respect of the decision to impose the

³⁰² An enforcer may only make an application in respect of a relevant infringement if the enforcer is an 'authorised enforcer' as set out in Schedule 15 to the DMCC Act.

³⁰³ Where an enforcer other than the CMA intends to make an application, the CMA may direct that an application for such an order may only be made by the CMA, by a particular enforcer or, in some circumstances, not by any enforcer. Section 154 DMCC Act.

³⁰⁴ A person 'A' is an accessory to a commercial practice of another person 'B' if (a) B is a body corporate, (b) A has a special relationship with B, (c) the commercial practice is one that B has engaged in or is engaging in, and (d) the commercial practice takes place with the consent or connivance of A. Section 219 DMCC Act.

³⁰⁵ Defined further at section 176 DMCC Act.

³⁰⁶ A monetary penalty is only possible if the court finds that the respondent has engaged, or is engaging, in a commercial practice constituting a relevant infringement (but not in respect of a practice that the court finds a person is likely to engage in).

penalty and/or the nature or amount of the penalty. The monetary penalty will be suspended until the outcome of the appeal.

21. Where a matter is particularly urgent, an enforcer may seek an interim order with a shorter consultation period, or without notice. The court may make an interim enforcement order against the respondent (or accept an undertaking) if certain criteria,³⁰⁷ including in relation to expediency, are met.

Online Interface Orders (OIO)

22. The CMA may apply for an OIO or an interim OIO, if the CMA considers that a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement.
23. The OIO application may be made in respect of (i) the person that the CMA considers is engaged, is engaging, or is likely to engage in a commercial practice that constitutes a relevant infringement or (ii) any other person. However, an application may only be made in respect of 'any other person' (ie a person that is not an enforcement target) outside the UK if the person is a UK national, is habitually resident in the UK, is a firm established in the UK, or carries on business in the UK or by any means directs activities in the course of carrying on a business to persons in the UK.
24. The court may make an OIO on an application if it finds that:
- a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement;
 - there are no other available means under the court-based enforcement regime which would, by themselves, be wholly effective to bring about the cessation or prohibition of the infringement; and
 - it is necessary to make the order to avoid the risk of serious harm to the collective interests of consumers.

³⁰⁷ The court may make an interim enforcement order against the respondent (or accept an undertaking) if: (a) it is alleged that the respondent has engaged, is engaging or is likely to engaged in a commercial practice which constitutes a relevant infringement or is an accessory to an infringing practice; (b) it appears to the court that if the application had been an application for an enforcement order (rather than an interim enforcement order), it would be likely to be granted; and (c) the court considers it is expedient that the infringing practice is prohibited or prevented immediately.

25. An OIO is an order that directs the person against whom it is made to do, or to co-operate with another person so that person can do, one or more of the following:

- remove content from, or modify content on, an online interface;³⁰⁸
- disable or restrict access to an online interface;
- display a warning to consumers accessing an online interface; or
- delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the CMA.

26. Where an OIO is made, the CMA may publish the order and the identity of the person who has engaged/is engaging or is likely to engage in a commercial practice which constitutes the relevant infringement.

27. As with enforcement orders, the court may make an interim OIO if certain criteria are met,³⁰⁹ including in relation to expediency.

Consequences of breaches to court orders and undertakings to the court

28. Where the court has made an enforcement order, interim enforcement order, OIO or interim OIO (together, consumer protection orders), or accepted an undertaking, an enforcer may make an application to the same court where there is failure to comply.

29. Breach of a consumer protection order may be a contempt of court, which is punishable by up to 2 years imprisonment and/ or an unlimited fine. Where the court finds that undertakings to the court have been breached, it may also treat the breach as contempt of court. Alternatively, the court may make a consumer protection order and/or make an order requiring the respondent to pay a monetary penalty. The maximum level of monetary penalties imposed due to a breach of undertakings to the court is the same as for breach of undertakings to enforcers, which is set out at paragraph 14.

³⁰⁸ Online interface is defined further at section 161(5) DMCC Act.

³⁰⁹ The criteria are: (a) it is alleged that there has been or is likely to be a relevant infringement; (b) it appears to the court that if the application had been an application for an OIO it would be likely to be granted; and (c) the court considers it expedient to bring about the cessation or prohibition of the infringement immediately. Section 162 DMCC Act.

Jurisdiction

30. The CMA, and other enforcers, will apply to the following courts for the purposes of seeking a consumer protection order:

- If the respondent has a place of business in, or carries on business in, a part of the UK, the appropriate court will be the High Court or county court in England and Wales and Northern Ireland, and the Court of Session of the Sheriff Court in Scotland, depending on whether the respondent carries on business or has a place of business in England and Wales, Northern Ireland or Scotland.
- If the respondent does not have a place of business in, and does not carry on business in, any part of the UK, the appropriate court will be the High Court of county court in the country in which a relevant consumer is domiciled.

31. Consumer protection orders shall have effect throughout the UK.

Coordination between enforcers

32. Prior to making an application for a consumer protection order, enforcers other than the CMA must provide the CMA notice of their intention to seek the relevant orders.³¹⁰ Prior to making the application, they must either obtain the CMA's consent to make the application, or wait for a minimum period to expire (14 days beginning with the day on which the notice was given in the case of an enforcement order or an online interface order, or seven days in the case of an interim enforcement order or an interim online interface order).

33. Where the CMA is aware that another enforcer intends to make an application for an enforcement order or an interim enforcement order, the CMA has the power to direct that the application is:

- only to be made by the CMA;
- only to be made by a particular enforcer; or
- not to be made by any enforcer. Note the CMA can only direct this where it is conducting, or planning to conduct, an investigation of the infringement under the administrative regime in Chapter 4 of Part 3 of the DMCC Act.³¹¹

³¹⁰ Section 169 DMCC Act.

³¹¹ Section 154 DMCC Act.

34. Enforcers other than the CMA must also inform the CMA if they accept an undertaking, including the terms of the undertaking and the identity of the party that gave the undertaking.³¹²
35. Where Trading Standards intends to start proceedings for an offence, it must inform the CMA and must only proceed after the CMA has acknowledged receipt, or, if sooner, 14 days after the notice is sent. Trading Standards must also notify the CMA of the outcome of the proceedings.³¹³
36. Where a person is convicted of an offence, or a judgment is given in civil proceedings, the Court may make arrangements to bring the conviction or judgment to the attention of the CMA in appropriate cases.³¹⁴

Transparency

37. The CMA's policy on transparency, including at which stages the CMA would expect to make announcements in relation to its investigations under the court-based system is set out in detail within at [CMA6](#).
38. For proceedings brought under the civil court-based model, in addition to the circumstances set out in CMA6, the CMA would also expect to make an announcement when the CMA:
- issues a consultation letter in the case; and/or
 - informs a party that it proposes to seek a court order to address identified consumer law infringements.
39. In such cases the CMA will place the case opening announcement, on www.gov.uk/cma and where relevant update the CMA's case pages, except if to do so would prejudice the case or would otherwise be inappropriate. In such an announcement the CMA would normally expect to identify parties directly involved, unless in the circumstances it is not appropriate to do so (such as if doing so would risk prejudicing the CMA's case).
40. As it considers appropriate, the CMA may also provide public updates at certain junctures as a case progresses. Such an update will, as relevant, usually include the identity of the parties in respect of whom such steps have been taken.³¹⁵

³¹² Section 170 DMCC Act.

³¹³ Section 171 DMCC Act.

³¹⁴ Section 172 DMCC Act.

³¹⁵ See paragraphs 3.12 to 3.16 of [CMA6](#) for further information.

41. Where, exceptionally, the CMA does not name one or more parties in an announcement, it may subsequently decide to do so where it considers it appropriate.
42. 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 functions by,³¹⁶ 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.
43. Any public announcements the CMA makes will be made in compliance with the relevant legal provisions in this regard, for example under data protection law and Part 9 of the Enterprise Act 2002.

³¹⁶ Such as under Part 3 of the DMCC Act, and the Consumer Rights Act 2015.

Annex C: Process map for the CMA's direct consumer enforcement investigations

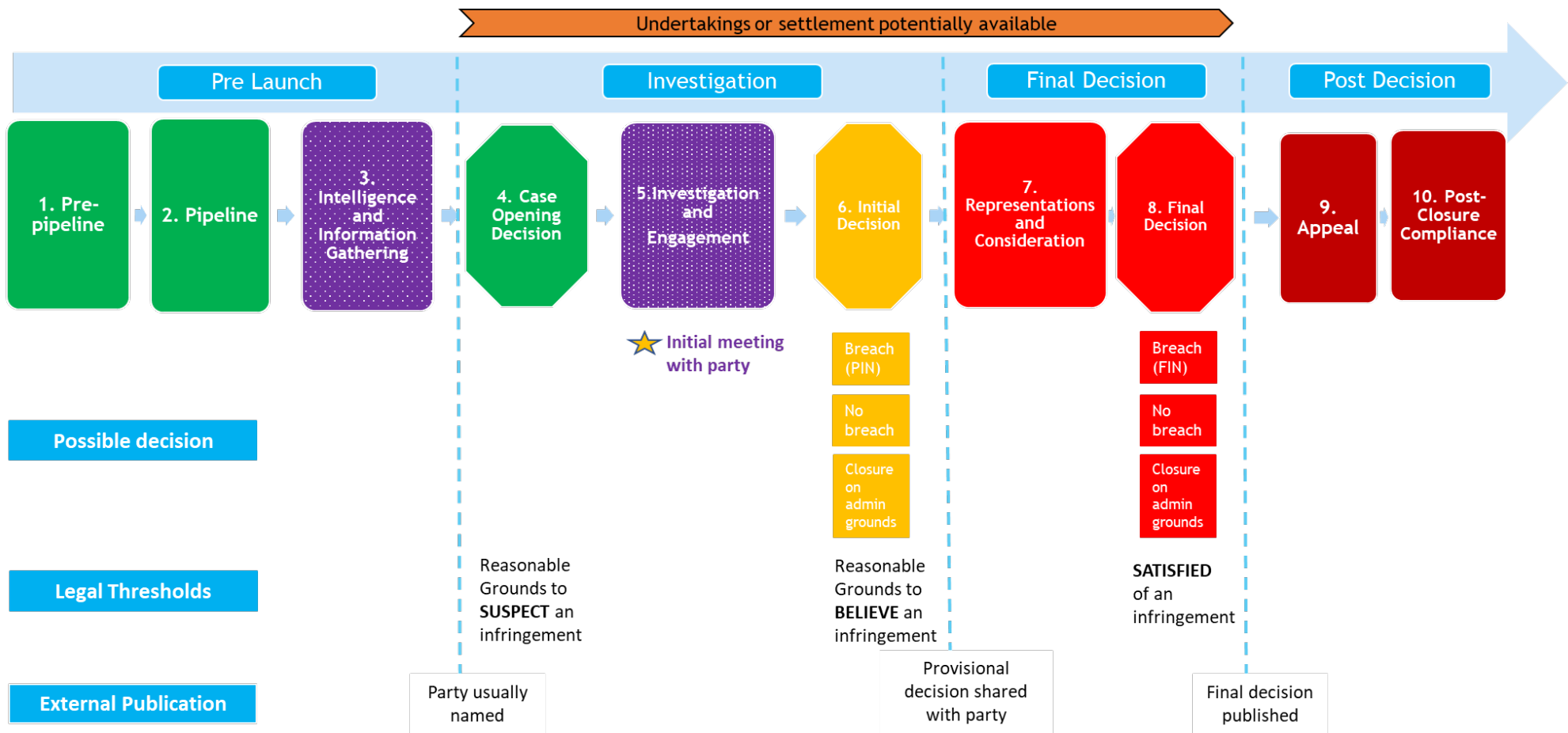


Figure 2: CMA's direct consumer enforcement investigations process map

