

# Direct consumer enforcement

**CMA199**

**Consultation on draft guidance and rules for the  
direct consumer enforcement regime set out in the  
Digital Markets, Competition and Consumers Act  
2024**

31 July 2024

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## 1. About this consultation

- 1.1 On 24 May 2024 Parliament passed the Digital Markets, Competition and Consumers Act (**DMCC Act**). This legislation grants new direct enforcement powers to the Competition and Markets Authority<sup>1</sup> (**CMA**) in relation to consumer protection law.
- 1.2 These new powers enable the CMA to investigate, determine and take enforcement action to address:
- (a) infringements of certain consumer protection laws,
  - (b) breaches of undertakings given to the CMA,
  - (c) breaches of CMA direct enforcement directions,
  - (d) providing false or misleading information in connection with the CMA's exercise of a direct enforcement function, and
  - (e) non-compliance with statutory information notices.
- 1.3 Previously only a court could determine such breaches and take action to stop or rectify them.
- 1.4 The CMA has produced draft guidance (**Draft Guidance**) to fulfil its obligations under section 212 of the DMCC Act which requires it to prepare and publish guidance about its general approach to the carrying out of its direct consumer enforcement functions.
- 1.5 The DMCC Act provides that the CMA must keep the guidance under review and may alter it from time to time. Before issuing the first guidance, the CMA must consult the Secretary of State and other appropriate persons and must secure the approval of the Secretary of State.
- 1.6 The Draft Guidance sets out the CMA's procedures and explains how the CMA will generally conduct direct consumer enforcement investigations. This represents the CMA's practice as at the date of publication of the Draft Guidance. The final guidance, once updated as needed following this consultation and approved by the Secretary of State, may be revised from

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<sup>1</sup> The Competition and Markets Authority (CMA) is the UK's primary competition and consumer enforcement body. It helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. 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).

time to time to reflect changes in best practice, the law or the CMA's approach to investigations.

- 1.7 Chapter 7 of the Draft Guidance sets out the CMA's statements of policy in relation to the exercise of its powers to impose penalties as required by section 199 of the DMCC Act and paragraph 16F of Schedule 5 to the Consumer Rights Act 2015 (as amended by the DMCC Act). These statements of policy, including any future revisions, are subject to Secretary of State approval following a consultation process. The CMA must have regard to the statement of policy most recently published at the time of the act or omission giving rise to the penalty.
- 1.8 The CMA has also produced draft procedural rules (**Draft Consumer Rules**) on the CMA's use of its direct enforcement powers as permitted under section 210 of the DMCC Act. The Draft Consumer Rules, which are to be legally binding in all cases when the CMA exercises its direct consumer enforcement functions, are subject to approval by the Secretary of State through secondary legislation, following a consultation process.
- 1.9 The CMA is inviting comments on the Draft Guidance and Draft Consumer Rules. The specific questions on which we are seeking respondents' views are provided in section 3 of this consultation document.
- 1.10 The Draft Guidance and Draft Consumer Rules should be read alongside:
  - (a) *Transparency and Disclosure: Statement of the CMA's policy and approach* ([CMA6<sup>2</sup>](#)) insofar as that publication applies to direct consumer enforcement investigations, and
  - (b) *CMA Prioritisation Principles* ([CMA188](#)), which outlines the basis on which the CMA decides which cases to investigate.
- 1.11 As Parliament has approved the DMCC Act, this consultation is not seeking views on the underlying legal structures or key decisions already taken by the legislature. For example, this consultation does not seek views on the scope of the direct consumer enforcement regime or on the maximum amount of penalties as these are both explicitly set out in the legislation.
- 1.12 The CMA's direct consumer enforcement powers under Chapter 4 of Part 3 of the DMCC Act exist alongside other CMA consumer enforcement powers as well as enforcement powers held by other enforcement agencies in the UK.

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<sup>2</sup> This version of CMA6 is currently being revised, a new version will be available in due course.

For more information about the CMA's other consumer enforcement powers, see Annex B to the Draft Guidance.

- 1.13 The table below sets out the key powers held by different bodies at the time of publication. This consultation does not cover the procedures used by other enforcers of consumer law in their consumer law investigations or how the CMA works with them. For more information see [CMA58: Consumer protection - enforcement guidance](#).

<b>ENFORCER</b>	<b>DIRECT ENFORCEMENT<sup>3</sup></b>	<b>ENHANCED CIVIL ENFORCEMENT<sup>4</sup></b>	<b>CRIMINAL ENFORCEMENT OF UNFAIR TRADING PROHIBITIONS<sup>5</sup></b>	<b>OTHER</b>
CMA	Yes	Yes	Yes	Various other functions
Trading Standards in Great Britain	No	Yes	Yes	Product safety and other regulatory functions
Northern Ireland Trading Standards/ Department for the Economy	No	Yes	Yes	Product safety and other regulatory functions
Sectoral regulators e.g. Financial Conduct Authority, Ofcom, Civil Aviation	No	Yes	No	Licensing and other regulatory functions

<sup>3</sup> Chapter 4 of Part 3 of the DMCC Act provides a new direct enforcement regime for the CMA in respect of the consumer protection laws listed in Schedule 16 to the Act.

<sup>4</sup> Chapter 3 of Part 3 of the DMCC Act sets out a court-based regime for the civil enforcement of consumer protection law to protect the collective interests of consumers. That regime simplifies and enhances the regime provided by Part 8 of the Enterprise Act 2002.

<sup>5</sup> Chapter 1 of Part 4 of the DMCC Act replaces (with minor amendments) the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277) and is enforceable through criminal prosecutions (in addition to being enforceable by authorised enforcers through the civil enforcement regimes under Part 3 of the DMCC Act).

Authority, Ofgem				
The Consumers' Association (Which?)	No	Yes (not all)	No	Private enforcer
Non-statutory enforcers e.g. Advertising Standards Authority	No	No	No	Self- and co-regulatory systems

**Table 1: Key powers held by consumer law enforcers**

- 1.14 CMA58 also details the investigatory powers available to the CMA to investigate breaches of consumer law. This consultation does not cover these powers as they are not new and remain largely unchanged by the DMCC Act.
- 1.15 However, the DMCC Act introduces new monetary penalties for non-compliance with CMA written information notices. Therefore, Chapter 3 of the Draft Guidance provides more information about the CMA's approach to using its information notice powers and Chapter 6 sets out the CMA's approach to enforcing compliance with information notices.
- 1.16 The CMA intends to consult on a revised CMA58 in due course.

## 2. Consultation process

### How to respond

- 2.1 The CMA is consulting for 6 weeks with a closing date of 11 September 2024. On 10 September 2024 the CMA extended the consultation for a week until 18 September 2024.
- 2.2 Responses should be submitted by email to [consumerguidance@cma.gov.uk](mailto:consumerguidance@cma.gov.uk) or through the [CMA's consultation portal](#). Any queries about this consultation should be sent to [consumerguidance@cma.gov.uk](mailto:consumerguidance@cma.gov.uk).
- 2.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 2.4 In pursuance of the CMA's policy of openness and transparency, the CMA will publish a non-confidential version of responses on its webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on the CMA's webpages which omits that material and which explains why you regard it as sensitive at the same time.

### Use of information and personal data that is supplied in consultation responses

- 2.5 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 2.6 The CMA is processing this personal data for the purposes of its work under Part 3 of the Digital Markets, Competition and Consumers Act 2024. This processing is necessary for the performance of the CMA's functions and is carried out in the public interest, in order to take consultation responses into account.
- 2.7 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact the CMA, details of the CMA's Data Protection Officer, and how long the CMA retains personal data, see the CMA's Privacy Notice.



- 2.8 The CMA's use of all information and personal data that it receives is also subject to Part 9 of the Enterprise Act 2002.<sup>6</sup>
- 2.9 The CMA may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, the CMA will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business, where the CMA considers that disclosure might significantly harm the interests of that individual or business.
- 2.10 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, the CMA will take fully into consideration representations made by you in support of confidentiality. The CMA will also be mindful of its responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.
- 2.11 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

## **After the consultation**

- 2.12 Following this consultation, the CMA will publish a non-confidential version of responses received during the consultation on its webpages.
- 2.13 Taking into account feedback received as part of this consultation, the CMA will prepare its final guidance and Consumer Rules and will seek Secretary of State approval as required by the DMCC Act. Once approval is obtained, the CMA will publish the guidance and will work with the Department for Business and Trade to lay a statutory instrument containing the Consumer Rules for approval by Parliament.
- 2.14 While all the Draft Guidance content is currently presented in a single document to aid consultees, the CMA may restructure the guidance document into more than one document at final publication.

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<sup>6</sup> Part 9 of the EA02 imposes a general restriction on the disclosure of information which the CMA obtains during the exercise of any of its functions (referred to as 'specified information') to other persons. This will include the functions of the CMA under the DMCC Act, as exercised by the CMA. Guidance on the application of Part 9 EA02 and when disclosure of specified information may be permitted is set out in [CMA6](#).

### 3. Consultation questions

In responding to these questions, please have regard to the Draft Guidance and where relevant to the Draft Consumer Rules. Please give your reasons and any relevant supporting information or evidence in relation to your response.

- Q1. Do you have any comments on the proposed process for submitting written representations on provisional infringement and/or administrative enforcement notices?
- Q2. Do you have any comments on the proposed process for conducting oral hearings on provisional infringement and/or administrative enforcement notices?
- Q3. Do you have any comments on the factors that the CMA proposes to consider when deciding whether to accept, vary or release undertakings?
- Q4. Do you have any comments on the factors the CMA proposes to consider, the proposed minimum conditions and process for engaging in settlement discussions and accepting a settlement?
- Q5. Do you have any comments on the factors that the CMA proposes to consider when determining whether a reasonable excuse for certain breaches exists?
- Q6. Do you have any comments on the objectives and considerations that the CMA proposes to apply in imposing monetary penalties for substantive and/or administrative breaches?
- Q7. Do you have any comments on the step-by-step approach and/or on any particular steps that the CMA proposes to apply in calculating monetary penalties for substantive breaches?
- Q8. Do you have any comments on the factors that the CMA proposes to consider when deciding whether to impose a fixed or daily penalty for administrative breaches?
- Q9. Do you have any comments on the step-by-step approach and/or on any particular steps that the CMA proposes to apply in calculating monetary penalties for administrative breaches?
- Q10. Do you have any comments on the factors that the CMA proposes to consider when deciding whether to start proceedings for recovery of unpaid monetary penalties?
- Q11. Do you have any comments on the proposed internal CMA decision-making arrangements for direct consumer enforcement cases?
- Q12. Do you have any comments on the proposed scope and process for referring and deciding procedural complaints?
- Q13. Do you have any other comments on topics not covered by the specific questions above?