

CMA – Direct Consumer Enforcement Guidance Consultation

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In responding to these questions, please have regard to the Draft Guidance and where relevant to the Draft Consumer Rules.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?

The proposed process is clear, we have no concerns or suggestions for amendments.

Q2. Do you have any comments on the proposed process for conducting oral hearings on provisional infringement and/or administrative enforcement notices?

The proposed process is clear, we have no concerns or suggestions for amendments.

Q3. Do you have any comments on the factors that the CMA proposes to consider when deciding whether to accept, vary or release undertakings?

The proposals around when to accept undertakings appear to be proportionate and sensible. The desired impact of the new regime should be to prevent and reduce consumer detriment in the most effective way, and this could well be through an undertaking which can be put in place relatively quickly. It is also sensible to have provisions that allow undertakings to be put in place for some aspects whilst the investigation continues. This again should help to reduce consumer harm and detriment. We also agree that undertakings should only be used where effective monitoring arrangements can be put in place.

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?

We agree with the provision that requires a trader to admit the breach before settlement will be accepted. Whilst we understand that this may make it less likely that traders will agree to settlement, we feel that the system would be weakened without the admission. We note that settlement agreements will be publicised on the CMA website and welcome this. Publicising outcomes will help build consumer confidence.

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?

We have no comment to make on the factors determining reasonable excuse.

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?

We have no comment to make on this.

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?

We would like some further detail on how the harm will be calculated and in particular which data sets and considerations will be used to quantify the harm to consumers. Consumer harm does not always equate to financial detriment. Whilst we recognise the guidance document may not be the place for this information, we would welcome further discussion on this. The level of “harm” may well be one which decides whether the CMA takes forward an investigation rather than a trading standards service.

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?

We have no comment on this.

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?

The approach laid out is a sensible one.

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?

We have no comment on this.

Q11. Do you have any comments on the proposed internal CMA decision-making arrangements for direct consumer enforcement cases?

The approach laid out is clear and sensible.

Q12. Do you have any comments on the proposed scope and process for referring and deciding procedural complaints?

The approach laid out is clear and sensible.

Q13. Do you have any other comments on topics not covered by the specific questions above?

Whilst we understand that the guidance itself may not be the place for this information, we would welcome a discussion on how the CMA and Trading Standards will interface in relation to the new regime. For the new regime to have maximum impact it will be important to ensure that there are mechanisms for either referring cases up to the CMA from Trading Standards or vice versa. If such a mechanism is put in place it would make sense to have some reporting arrangements between enforcers in order to ensure there is accountability within the whole system.