

Consumer protection: enforcement guidance

CMA58

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1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is the UK's primary competition and consumer authority. It aims to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
- 1.2 This guidance provides an overview of the CMA's role, functions and powers in relation to consumer protection. Specifically, it summarises:
 - (a) The CMA's consumer protection powers, including its civil court-based enforcement powers, criminal powers and investigatory powers. It also provides a high-level overview of its direct enforcement powers, which are described in more detail in the CMA's Direct Consumer Enforcement Guidance ([CMA200](#)).²
 - (b) The CMA's role and engagement in the consumer protection landscape both domestically and internationally.
 - (c) The CMA's approach to the enforcement of consumer protection law.³
- 1.3 This guidance updates and replaces existing CMA guidance on its consumer protection role and powers published in 2016.⁴
- 1.4 This document is focused on the CMA's use of its consumer powers. Whilst this may be useful for other consumer protection enforcers, it does not bind or constrain them – they may wish to produce their own guidance or explanatory content.
- 1.5 The guidance is not intended to serve as a guide to the substantive requirements of the legislation to which it relates. The CMA has produced guidance on a number of these, as have other bodies.⁵ Nor is it a comprehensive account of all aspects of the CMA's exercise of its consumer functions. It is meant to be read alongside the relevant legislation to which it

¹ More information about the CMA and its powers can be found here: [About us - Competition and Markets Authority](#)

² This describes the CMA's general approach to the carrying out of its direct enforcement functions, and has been prepared and published pursuant to section 212 of the Digital Markets, Competition and Consumers Act 2024 (DMCC Act).

³ For more information on the CMA's strategic priorities, see the CMA's webpages. The CMA has also committed to publishing a separate document outlining its approach to direct consumer enforcement for the 12 months from 6 April 2025 when the consumer protection provisions in the DMCC Act will enter into force.

⁴ This guidance acts as an update and a replacement of the previous version of guidance on consumer protection: enforcement guidance (CMA58) which was published in August 2016.

⁵ For example, [Unfair contract terms guidance \(CMA37\)](#) and [Unfair commercial practices guidance \(CMA207\)](#).

refers, not to be a substitute for it. Anyone in doubt about whether they may be affected by the legislation referred to should consider seeking legal advice.

- 1.6 The CMA will always have regard to relevant guidance when dealing with potential breaches of consumer law but may depart from it when the facts of an individual case justify it and it is appropriate to do so.
- 1.7 This guidance has been drafted having regard to the need to balance the pace of the CMA's investigations with proportionality for businesses, ensuring a clear and robust process and predictability for parties in terms of what they can expect from the CMA. This guidance may be revised from time to time, including to reflect changes in best practice, the law or the CMA's approach to consumer enforcement. The [CMA's webpages](#) will always display the latest version of its guidance.
- 1.8 The following chapters of this guidance cover:
 - (a) Chapter 2 (**The CMA's role and powers**) outlines the CMA's role in the consumer protection landscape, and provides a high level overview of the consumer protection powers and tools available to the CMA.
 - (b) Chapter 3 (**The CMA's approach to enforcement**) sets out the principles and considerations that the CMA takes into account when deciding what enforcement action is most appropriate.
 - (c) Chapter 4 (**Working with other consumer protection enforcers and compliance partners**) sets out how the CMA works in partnership, both domestically and internationally, with other bodies that have consumer functions.
 - (d) Chapter 5 (**The use of civil consumer enforcement powers by the CMA and other enforcers**) outlines the civil court-based enforcement regime available to the CMA and other enforcers, as well as the direct consumer enforcement regime, available solely to the CMA.
 - (e) Chapter 6 (**The use of criminal consumer enforcement powers by the CMA**) outlines the criminal consumer enforcement powers available to the CMA.
 - (f) Chapter 7 (**Powers of investigation**) sets out the CMA's powers of investigation and processes related to how it exercises these powers.
 - (g) **Glossary of acronyms** sets out the relevant terminology.

(h) Annex A (**Consumer protection landscape**) provides an overview of the UK's consumer protection landscape, including detail on the functions and responsibilities of consumer protection enforcers and compliance partners.

2. The CMA's role and powers

The CMA's role

- 2.1 The CMA's purpose is to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. The CMA has a statutory duty to 'promote competition, both within and outside the UK, for the benefit of consumers'.⁶
- 2.2 Competition and consumer issues are intrinsically linked. Good consumer outcomes rely on competitive markets to provide choice and value, while vibrant competition relies on consumers confidently shopping around. Effective and proportionate consumer protection safeguards consumer interests and drives economic growth by promoting consumer trust and confidence and deterring poor corporate practices. This gives businesses confidence to invest, knowing that their competitors are playing by the same rules and cannot gain an advantage by breaking the law. Good consumer outcomes rely on competitive markets to provide choice and value, while vibrant competition relies on consumers confidently shopping around.
- 2.3 The CMA's consumer protection work supports competition, in particular, by:
- (a) enabling consumers to make well-informed choices when buying goods and services by tackling practices that hamper their ability to access and assess information.
 - (b) removing obstructions to switching that hamper consumers from driving competition.
 - (c) improving compliance across markets to create a level playing field between fair dealing businesses and businesses that are not complying with the law.

The CMA's powers and tools

- 2.4 The CMA may deal with infringements of consumer law using a number of different powers. The CMA may choose to promote compliance through providing information and advice to people and businesses about their rights and obligations under consumer law. Additionally or alternatively, it may choose to enforce a range of consumer protection legislation through its civil powers, which include the court-based enforcement regime and the direct

⁶ Section 25 Enterprise and Regulatory Reform Act 2013.

enforcement regime, or by bringing criminal prosecutions. The CMA may also do anything that helps to facilitate its functions.⁷

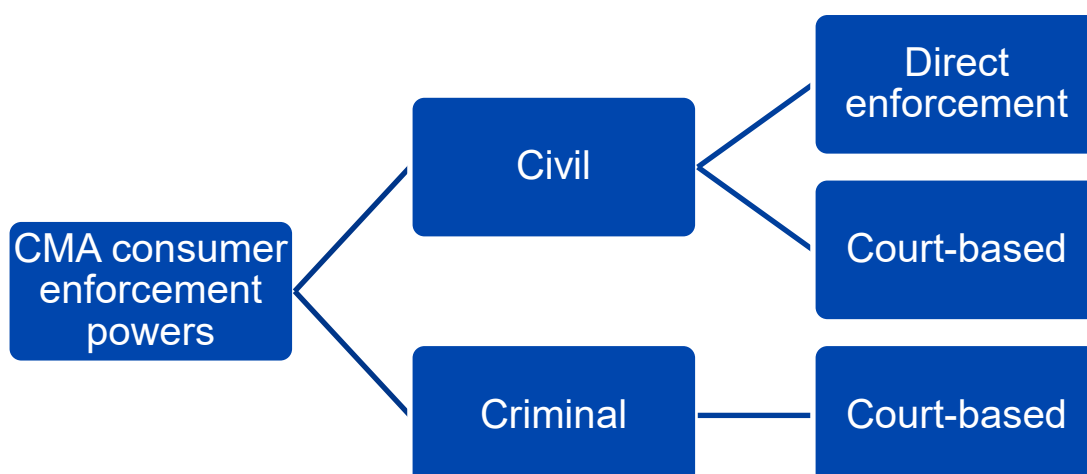


Figure 1: The CMA's consumer enforcement powers

Guidance and compliance advice

- 2.5 Where appropriate, the CMA may publish advice, guidance or information based on detailed knowledge gained from work in the consumer arena through which it has obtained relevant expertise, such as a compliance review, a market study, a decision it has made under its direct enforcement powers, or a precedent-setting court case. The CMA does this as and when appropriate to achieve its objectives, for instance, to make known its findings, to improve compliance or to help consumers get a fair deal. For example, the CMA has issued sector-specific guidance for consumers, including on [veterinary services](#) and [green heating and insulation products](#).
- 2.6 The CMA does not provide advice to individual consumers. This is the responsibility of other bodies, in particular the Citizens Advice service which also takes the national lead in providing published information for consumers. Consumers are also encouraged to report potential breaches of consumer protection legislation to the Citizens Advice Consumer Service.⁸
- 2.7 Additionally, the CMA publishes guidance for businesses and the public generally where this assists in the performance of its functions, in particular in dealing with contractual fairness issues in relation to which it has a lead role. For example, the CMA has published guidance documents setting out the CMA's understanding of the Consumer Rights Act 2015 (CRA) so far as it

⁷ See paragraph 20, Schedule 4, Enterprise and Regulatory Reform Act 2013.

⁸ See paragraphs 11 to 12 of Annex A.

deals with [unfair consumer contract terms and notices](#). The CMA has also published guidance on the unfair commercial practices provisions ([CMA207](#)) in the Digital Markets, Competition and Consumers Act 2024 (DMCC Act), as well as separate guidance on fake reviews ([CMA208](#)).

- 2.8 The CMA may use other compliance tools such as issuing a warning or advisory letter to a business when it is concerned about potential breaches of consumer law and/or to encourage the business to comply with consumer law. While the CMA has no specific legal power to make a business respond to a warning or advisory letter, it may take any response into consideration when determining whether future enforcement action is appropriate.
- 2.9 Finally, the CMA also has the function of making proposals or giving other information or advice on matters relating to any of its functions to any minister or other public authority.

Responding to super-complaints

- 2.10 Under section 11 of the Enterprise Act 2002 (EA02), designated consumer bodies⁹ may make a complaint that any feature or combination of features of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers. This is referred to as a ‘super-complaint’. The CMA must respond to super-complaints within 90 days stating how it proposes to deal with the complaint. In particular, it must state what action, if any, it proposes to take in response to the complaint.

Civil powers

- 2.11 Part 3 of the DMCC Act provides for two regimes for the civil enforcement of consumer protection law to protect the collective interests of consumers:
- (a) a **court-based enforcement** regime, which replaces, simplifies and enhances the predecessor regime under Part 8 of EA02. Under this regime, the CMA may seek several types of court orders¹⁰ from a civil court if it considers that there has been, or there is likely to be, a breach of any of the consumer laws listed in Schedule 15 to the DMCC Act, or in

⁹ As at 6 April 2025, the Campaign for Real Ale Limited, the Consumer Council for Water, the Consumers’ Association (Which?), the General Consumer Council for Northern Ireland, the Money and Mental Health Policy Institute, the National Association of Citizens Advice Bureaux (Citizens Advice) and the Scottish Association of Citizens Advice Bureaux (Citizens Advice Scotland) are designated consumer bodies for the purposes of section 11 of the EA02.

¹⁰ These are enforcement orders, interim enforcement orders, online interface orders and interim online interface orders. The CMA may seek court orders in relation to other relevant breaches, such as breaches of undertakings given to the CMA or to the court. See Chapter 5 for more details.

certain circumstances where necessary to support its direct enforcement. A number of different enforcers may use the court-based enforcement regime.

- (b) a **direct enforcement** regime, where the CMA may investigate, determine and take enforcement action to address:
- (i) infringements of certain consumer protection laws, as listed in Schedule 16 to the DMCC Act;
 - (ii) breaches of undertakings given to the CMA;
 - (iii) breaches of CMA direct enforcement directions;
 - (iv) the provision of false or misleading information in connection with the CMA's exercise of a direct enforcement function; and
 - (v) non-compliance with statutory information notices.

2.12 The CMA is the only enforcer with these direct enforcement powers (see Chapter 5).

2.13 Additionally, the CMA (and other enforcers) can seek an injunction from the court to stop businesses using unfair terms or notices with consumers under Schedule 3 to the CRA.¹¹ The CMA's enforcement powers under the CRA are described more fully in its guidance document on unfair terms, [CMA37](#).¹²

2.14 The CMA (and other enforcers) can seek an injunction from the court to prevent or stop persons engaging in advertising which misleads traders, unlawful comparative advertising or the promotion of misleading advertising to traders or comparative advertising which is not permitted under the Business Protection from Misleading Marketing Regulations 2008 (BPRs).¹³

Criminal powers

2.15 The CMA has the power to prosecute traders criminally if they engage in most unfair commercial practices; in relation to the offence of failing to provide information about initial cooling-off rights in an off-premises subscription contract under Chapters 1 and 2 of Part 4 of the DMCC Act; or in relation to

¹¹ In Scotland, an interdict rather than an injunction is sought. In this guidance, where the term 'injunction' is used, it should also be interpreted as referring to an interdict, where appropriate.

¹² See in particular Chapter 6 of the CMA's Unfair contract terms guidance ([CMA37](#)).

¹³ Regulations 3, 4, 5 and 15 BPRs.

the offence of engaging in misleading advertising to traders under Regulation 6 of the BPRs. These are outlined in Chapter 6 of this guidance.

Investigatory powers

2.16 The CMA has investigatory powers to enable it to investigate potential breaches of consumer law. These powers are set out in Schedule 5 to the CRA, as amended by Schedule 17 to the DMCC Act. These are outlined in Chapter 7 of this guidance.

3. The CMA's approach to enforcement

- 3.1 The CMA considers a range of factors when prioritising its enforcement actions. For example, it takes into account the likely impact of a CMA intervention, the strategic significance of the intervention, the likelihood of a successful outcome as well as resource implications to achieve this. This approach is further outlined in its Annual Plan.
- 3.2 The CMA aims to ensure that its consumer enforcement interventions deliver high impact results, for example, by changing market behaviour or deterring those who might otherwise flout their legal obligations. As such, the CMA typically focuses its consumer enforcement action on particular types of cases, such as where the unfair treatment of consumers, or the challenges they face in making choices, suggests there may be a systemic market problem.
- 3.3 For the CMA, enforcement action may be appropriate, in particular:
- (a) where breaches of the law point to systemic failures in a market;
 - (b) where changing the behaviour of one business would set a precedent or have other market-wide implications;
 - (c) where there is an opportunity to set an important legal precedent; or
 - (d) where there is a strong need for deterrence or to secure compensation for consumers.

The CMA will consider whether to enforce using civil powers or by carrying out a criminal investigation with a view to prosecuting those responsible. Although the CMA is more likely to take civil cases, it may, where appropriate, additionally or alternatively use its criminal enforcement powers to pursue offenders to protect the public and to provide wider deterrence.¹⁴

Prioritisation principles

- 3.4 The CMA decides its enforcement approach to any particular case in light of all the facts before it, its current overall priorities, resources and powers. Work is generally prioritised having regard to its published [prioritisation principles](#) although, where appropriate, the CMA may also take account of other relevant factors. Under these principles, the CMA will generally prioritise according to the strategic significance and impact of its work on consumers.

¹⁴ See paragraphs 6.4 to 6.6 for circumstances in which the CMA would be more likely to use its criminal powers.

This is balanced against the risks and resources involved, and whether the CMA is best placed to act. It will take into account such issues as:

- (a) the likely direct effect of enforcement on consumer welfare in the market or sector where the intervention takes place;
- (b) the indirect effects of any action, particularly on the functioning of relevant markets. For example, where the practice is new and likely to be repeated or copied, the deterrent effect of enforcement action is likely to be higher;
- (c) whether the CMA is best placed to act or there are alternatives, such as action by other enforcers;
- (d) the risks of not taking action bearing in mind the seriousness of any breach of the law and any impact on the effectiveness of the consumer protection regime; and
- (e) whether the resource requirements of the action are proportionate to achieving the desired results.

3.5 The CMA is committed to the principles of good regulation in relation to its enforcement action.¹⁵ It aims to ensure when carrying out such activity that its action is:

- (a) proportionate;
- (b) consistent;
- (c) targeted;
- (d) transparent; and
- (e) accountable.

3.6 The way the CMA applies these principles is set out below.

Proportionate

3.7 In considering the proportionality of interventions the CMA takes into account issues such as:

- (a) the available options, which may include advice on compliance, compliance partners' intervention, warning letters, undertakings, enforcement orders or other injunctive action (including interim orders or

¹⁵ See section 21 Legislative and Regulatory Reform Act 2006, and the [Regulator's Code](#).

other measures), final infringement notices through the direct enforcement regime, or criminal prosecution;

- (b) the extent of any administrative burdens on business likely to be imposed by these various interventions, particularly taking account of the size of the business or businesses involved;
- (c) the type of action to which the CMA thinks the particular business will best respond; and
- (d) intelligence, including knowledge of the business's intent and past behaviour.

Consistent and targeted

- 3.8 It is the CMA's intention to avoid a situation where a business receives multiple approaches on similar or linked issues (particularly, approaches reflecting different interpretations of the law) so that the business can deal effectively with a single body and expect a consistent approach.
- 3.9 Where powers are shared between separate authorities (see Chapter 4), the CMA works on the principle that action should always be taken by the body that is best placed, following appropriate consultation with other compliance partners, (and taking account of both statutory and non-statutory schemes, including self-regulation).¹⁶ The CMA also works with compliance partners to consider common issues of interpretation of consumer protection laws.
- 3.10 In carrying out its functions, the CMA endeavours to act fairly and applies its procedures to achieve consistent outcomes in the market. This does not mean that the CMA will always rely on the same legislation or take the same steps to enforce the law in the same way on all apparently comparable cases – rather the CMA aims to tailor the action to the individual circumstances. The CMA, across all its consumer enforcement activities, assesses each case on its own merits, taking account of risk (as set out in the [CMA's prioritisation principles](#)) and of the need for proportionality, deterrence and achieving high levels of compliance.
- 3.11 The CMA carries out projects that estimate and evaluate the impact of its work, which seek to ensure its actions are cost-effective, well targeted and that any burdens imposed on legitimate businesses are proportionate to benefits obtained for consumers. For example, each year, the CMA estimates

¹⁶ Consultation may be required. See paragraphs 5.38 to 5.44.

the direct financial benefit of its work for consumers through the annual CMA Impact Assessment.

- 3.12 Alongside the annual Impact Assessment, the CMA considers the impact of its work through for example, reviewing the effectiveness of undertakings and enforcement directions, analysing complaints, soliciting views of trade bodies and businesses affected, and independently commissioned research.

Transparency in the CMA's consumer enforcement work

- 3.13 The CMA is committed to the principle of transparency in its consumer enforcement work. Detail on the CMA's approach to transparency in its consumer enforcement work, including formally opening and closing cases, can be found in Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)).

- 3.14 In general, the CMA aims to be as transparent as it can about its enforcement activities to aid consumer and business understanding of how it seeks to ensure markets work well. The CMA:

- (a) publishes information about its enforcement activities that it considers to be lawful and in the public interest to disclose, in particular on www.gov.uk/cma, issuing press notices where appropriate;¹⁷
- (b) deals with enquiries about its cases and procedures in line with the Freedom of Information Act 2000; and
- (c) may share or exchange enforcement information with other authorities as necessary to facilitate the exercise of its functions and/or those of the authorities concerned.¹⁸

- 3.15 The transparency policy of the CMA takes into account the importance of respecting confidentiality and the need to comply with relevant statutory constraints in this regard, in particular under data protection law and Part 9 of the EA02.

¹⁷ The CMA uses its webpages to comply with its obligations pursuant to the Freedom of Information Act 2000 to maintain a publication scheme in order to make certain classes of information routinely available, such as policies and procedures, minutes of certain meetings, annual reports and financial information.

¹⁸ For further information please see Chapters 6 and 7 of the CMA's Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)).

Accountability and complaints

- 3.16 The CMA aims at all times to deal with parties and members of the public fairly and properly.
- 3.17 The CMA's Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)) sets out how parties to an ongoing case, including consumer enforcement cases, should raise any complaints about the conduct of the CMA in relation to that case. Where the CMA exercises its direct enforcement powers under Chapter 4 of Part 3 of the DMCC Act, the process for raising any procedural complaints is set out in Chapter 9 of the Direct Consumer Enforcement Guidance ([CMA200](#)) and Rule 6 of the [CMA Consumer Enforcement Rules](#).
- 3.18 The CMA has published a complaints policy which explains how it deals with complaints from members of the public about its conduct generally.¹⁹ If, after following the CMA's procedures, a complainant still thinks that an instance of maladministration has not been properly dealt with, the complainant has the right to complain to an MP who may refer the matter to the Parliamentary and Health Service Ombudsman. The Ombudsman has power to investigate and recommend redress for any injustice.

Enforcement route selection

- 3.19 The CMA decides its enforcement approach to any particular case in light of all the facts before it, its current overall priorities, resources, powers and with regard to its published prioritisation principles.
- 3.20 Generally, if pursuing the civil enforcement route, the CMA is likely to use its direct enforcement powers under Chapter 4 of Part 3 of the DMCC Act. However, in certain circumstances, the CMA may pursue action through the courts. These circumstances include where:
- (a) the consumer protection legislation at issue is not in scope of the CMA's direct enforcement regime but the CMA is empowered to take action under Chapter 3 of Part 3 of the DMCC Act through the courts in respect of suspected breaches of that legislation;²⁰

¹⁹ The [CMA's complaints policy](#).

²⁰ The CMA may only use its direct enforcement powers in relation to breaches of the legislation listed in Schedule 16 DMCC Act. However, the CMA may enforce additional consumer protection laws through the courts. These are listed in Schedule 15 DMCC Act and include, for example, the Estate Agents Act 1979 and Misrepresentation Act 1967.

- (b) the CMA considers that a practice should be prohibited or prevented urgently and doing so requires going through the court, for example to obtain an interim enforcement order;²¹ or
- (c) it is in the public interest to pursue a criminal prosecution.

²¹ An interim enforcement order may be used both under the court-based regime but also in conjunction with the direct enforcement regime where the activity in question falls under both regimes.

4. Working with other consumer protection enforcers and compliance partners

- 4.1 The CMA has a strong history of working in partnership with other bodies that have consumer functions, domestically and internationally. This is a key element of the CMA's consumer strategy to ensure the effectiveness of the consumer protection regime as a whole.

Domestic coordination

Concurrent enforcement powers

- 4.2 The CMA shares its consumer enforcement powers with other enforcers in the civil court-based regime and the criminal regime. However, the CMA is the only enforcer under the direct enforcement regime. This means that the CMA is the only authority, besides the courts, that can make decisions on breaches of certain consumer laws, while other authorities will need to go to court to obtain a decision. Some examples of shared consumer enforcement powers are below:

- (a) Civil court-based enforcement: Chapter 3 of Part 3 of the DMCC Act sets out a court-based regime for the civil enforcement of a wide range of consumer protection laws.²² There are two categories of enforcers that are authorised to use this regime: public designated enforcers (including the CMA, Trading Standards and sector regulators like Ofcom, Ofgem and the Civil Aviation Authority) and private designated enforcers (of which there is currently only one – the Consumers' Association, ie Which?).²³ The consumer laws in respect of which some of these authorities share powers include:
- (i) the unfair commercial practices provisions contained in Chapter 1 of Part 4 of the DMCC Act, which replace and update the Consumer Protection from Unfair Trading Regulations 2008;
 - (ii) the unfair contract terms provisions of the CRA;

²² The full list of consumer protection laws that can be enforced through the civil court-based enforcement regime is in Schedule 15 DMCC Act.

²³ The full list of authorised enforcers is set out in section 151 DMCC Act. Schedule 15 DMCC Act specifies which enforcers are authorised to enforce which consumer laws.

(iii) the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;

(iv) the Package Travel and Linked Travel Arrangements Regulations 2018.

(b) Criminal prosecutions: In England, Wales and Northern Ireland, criminal prosecutions may be conducted by the CMA, Trading Standards or the Department for the Economy in Northern Ireland. In Scotland, prosecutions are conducted by the Crown Office and Procurator Fiscal Service on behalf of the Lord Advocate. The consumer laws in respect of which some of these authorities share criminal prosecution powers include:

(i) the unfair commercial practices provisions contained in Chapter 1 of Part 4 of the DMCC Act. Trading Standards have the duty to enforce these provisions in Great Britain.²⁴ In Northern Ireland, the Department for the Economy has this same duty. The CMA may also enforce the unfair commercial practices provisions through criminal prosecutions but has no duty to do so;

(ii) the offence contained in Chapter 2 of Part 4 of the DMCC Act of failing to provide information about initial cooling-off rights in an off-premises subscription contract;²⁵ and

(iii) the offence contained in Regulation 6 of the BPRs of engaging in misleading advertising to traders. Similarly to the unfair commercial practices provisions, Trading Standards (and in Northern Ireland, the Department for the Economy) have the duty to enforce this provision. The CMA may also enforce this provision through criminal prosecution but has no duty to do so.²⁶

4.3 The existence of enforcement duties and powers does not mean that (civil or criminal) enforcement action must be taken in respect of each and every infringement. Instead, enforcers promote compliance by the most appropriate means, in line with their enforcement policies, priorities and consistent with available resources.

4.4 The CMA has developed a network of strong working relationships with other consumer protection enforcers to share intelligence and coordinate on

²⁴ Section 231(1) DMCC Act.

²⁵ Section 268 DMCC Act.

²⁶ See Regulation 13 BPRs.

emerging areas of consumer detriment and, should enforcement action prove necessary, to establish who is best placed to lead. The CMA also participates in regular forums with enforcement partners together with bilateral discussions which allow for an exchange of knowledge and experience across a wide range of issues relating to their concurrent powers.

Compliance partners

- 4.5 UK consumer legislation encourages, and in some circumstances requires, cooperation between authorities exercising consumer functions to ensure the most appropriate mechanism is used to achieve compliance, including potential alternatives to enforcement action.
- 4.6 Under Chapter 1 of Part 4 of the DMCC Act, the CMA is required to ‘have regard to the desirability of encouraging control of unfair commercial practices by such established means as it considers appropriate having regard to all the circumstances of the particular case’.²⁷ The BPRs contain similar provisions.²⁸
- 4.7 These provisions are intended to encourage the use of arrangements other than taking enforcement action, where appropriate, as a means of controlling unfair commercial practices and misleading marketing activities. Bodies with other powers, in particular, the Advertising Standards Authority (ASA),²⁹ are regarded as an ‘established means’ in the sense referred to above, and thus as compliance partners for the purposes of ensuring consumer protection.
- 4.8 The CMA may choose to bring a matter to the attention of another enforcer who it considers may be best placed to resolve the problem.^{30, 31} When considering whether another enforcer may be best placed, the CMA will consider the enforcer’s ability to achieve maximum compliance in a way that is both effective and appropriate. In deciding how to proceed, the CMA takes account of all the relevant circumstances, and may not rely on its compliance partners, where it considers this to be inappropriate.

²⁷ Section 231 DMCC Act.

²⁸ Regulation 13 BPRs.

²⁹ As the UK’s independent regulator of advertising across all media, the ASA ensures compliance with the Advertising Codes and has a range of potential sanctions to address non-compliance. See [the ASA website](#). Its sister organisation, the Committee of Advertising Practices (CAP) is responsible for writing the Advertising Codes and forms the link with advertisers, the media, online platforms and other carriers of advertising in enforcing ASA rulings.

³⁰ Further information is also available in paragraphs 5.38 to 5.44.

³¹ See Transparency and Disclosure: Statement of the CMA’s Policy and Approach ([CMA6](#)) for more on the CMA’s approach to transparency and information disclosure.

4.9 Further detail on the role of the CMA and other compliance partners is described in Annex A.

Consumer Protection Partnership

4.10 The Consumer Protection Partnership (CPP) brings together organisations within the consumer landscape to identify areas where there is greatest harm caused to consumers to help inform action by its members. Its role is to ensure that important issues do not fall between any gaps in the landscape and that by working together, where appropriate, detriment can be tackled more effectively than through working in isolation. The membership of the CPP and their respective roles in the consumer landscape is summarised below.

Body/Group	Primary responsibilities in consumer landscape
Advertising Standards Authority	Non-statutory organisation. Ensures compliance with the Advertising Codes and has a range of potential sanctions to address non-compliance. National Trading Standards acts as the legal backstop for the Advertising Standards Authority.
Advice Direct Scotland	Education and advice.
Citizens Advice (England and Wales)	Consumer advocacy, education and advice.
Citizens Advice Scotland	Consumer advocacy, education and advice.
Chartered Trading Standards Institute	Business education and Consumer Codes Approval Scheme.
Consumer Council for Northern Ireland	Consumer advocacy, education and advice.
Consumer Scotland	Consumer advocacy and advice (Scotland).
Competition and Markets Authority	Enforcement for market-wide impact Where appropriate, guidance, compliance advice and unfair terms leadership.
Department for Business and Trade	Government lead for consumer policy in the UK. Chair of the CPP.
Department for the Economy (Northern Ireland)	Consumer advocacy, enforcement, education, and advice.
Financial Conduct Authority	Conduct regulator of financial services and markets. Concurrent court-based consumer enforcement powers, administers the Consumer Duty rules and consumer credit licensing.
Office for Product Safety & Standards	Responsible for the regulation of product safety, legal metrology, standards and accreditation, and hallmarking. Exercises the powers of the Secretary of State in relation to a range of regulations.
National Trading Standards (NTS)	Allocates government funding to national and regional Trading Standards in England and Wales for intelligence gathering and the

	operating of, for example, the eCrime, Estate Agency, and Scams teams.
The Scottish Government	Consumer advocacy and advice (observer at CPP).
Trading Standards Scotland, overseen by the Convention of Scottish Local Authorities (CoSLA)	Enforcement – national enforcement in Scotland.

Table 1: Membership of the Consumer Protection Partnership

4.11 CPP partners share intelligence, identify current or future issues that are likely to affect consumers adversely and work to resolve or mitigate such problems. Along with other members the CMA may lead CPP working groups and attends the CPP Intelligence Group through which it contributes to the CPP Knowledge Hub, which carries out informal reviews of consumer detriment in markets based on intelligence provided by members.³² Where appropriate, the CMA may take the lead in compliance action on behalf of the CPP, such as giving advice to businesses identified as at risk of breaching unfair terms law.

National Trading Standards Board

4.12 The National Trading Standards Board (NTSB) provides governance for National Trading Standards (NTS) and ensures that the enforcement cases which generate the most significant consumer detriment on a national level are allocated to whoever is best placed to address them. The main forum for doing this is the National Tasking Group (NTG), a sub-group of the NTSB. The CMA works closely with NTS and attends the NTG. Further details are in Annex A.

Consumer Detriment Survey

4.13 The Consumer Detriment Survey is a large-scale survey of UK consumers which aims to examine the incidence of consumer detriment across the main consumer markets in the UK, to estimate its cost and analyse its distribution.

4.14 Since 2008, leadership of the survey has rotated between the largest bodies in the consumer landscape and more recently between members of the CPP, including the Department for Business and Trade, Citizens Advice and the CMA.

³² For example, in 2024, the CMA commissioned the Consumer Detriment Survey on behalf of the CPP which aims to identify what is causing problems for UK consumers.

International cooperation

- 4.15 The CMA has certain functions, powers and duties to act in the interests of consumers that involve working with international partners and organisations. For example, the CMA promotes good practice outside the UK to protect the interests of UK consumers and businesses and the UK economy by representing the UK in international networks including:
- (a) International Consumer Enforcement Protection Network (ICPEN)
 - (b) Organisation for Economic Cooperation and Development (OECD)
 - (c) United Nations Trade and Development (UNCTAD), and
 - (d) when requested by the Secretary of State to represent the UK government internationally on any matters relating to its functions.
- 4.16 The CMA also engages with international enforcers when cross-border consumer protection issues arise. To enable this, the CMA has mechanisms such as cooperation agreements, Memoranda of Understanding, and overseas investigative assistance arrangements. In regard to overseas investigative assistance, the CMA may assist an overseas regulator in carrying out its functions where these correspond to or are similar to our domestic consumer ones.³³ Further information on overseas investigative assistance is detailed in Chapter 8 and in Chapter 7 of Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)).
- 4.17 In deciding whether the CMA will pursue enforcement action against businesses in another jurisdiction, the CMA considers the UK connection condition³⁴ and its prioritisation principles. It may also, where appropriate, liaise with overseas regulators where the underlying conduct, market conditions and laws are similar before deciding whether to take enforcement action. If action in another jurisdiction will effectively address issues arising for UK consumers and businesses, the CMA will seek to avoid duplicating the activities of overseas enforcers.

³³ Section 319 DMCC Act.

³⁴ A commercial practice meets the UK connection condition for the purposes of section 148 of the 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.

International Consumer Enforcement Protection Network (ICPEN)

4.18 The CMA is a member of ICPEN.³⁵ ICPEN is an informal network of nearly 80 consumer protection authorities worldwide. Its mission is to protect consumers globally, which it does through sharing of best practice, sharing of intelligence and collaboration on enforcement matters.

Organisation for Economic Cooperation and Development (OECD)

4.19 The OECD seeks to assist countries in fostering good governance and reforming and improving their economic policies to generate greater economic growth. It provides a forum in which governments can work together to share experiences and seek solutions to common problems.

4.20 The UK is a member of the OECD's Committee on Consumer Policy (CCP) and its subsidiary Working Party on Consumer Product Safety. The CCP seeks to enhance the development and enforcement of effective consumer policies through research and analysis, sharing information on current and emerging issues, developing guidelines to address problematic areas and promoting cooperation between governments and other stakeholders.

United Nations Trade and Development (UNCTAD)

4.21 UNCTAD is a permanent intergovernmental body within the United Nations (UN) that promotes trade, investment, development, and a fairer global economy. The UK is a member of UNCTAD's Intergovernmental Group of Experts (IGE) on Consumer Protection Law and Policy. This body provides a forum for consultations among UN member states, produces research and studies, provides technical assistance, and undertakes voluntary peer reviews. The IGE also monitors the application and implementation of the UN Guidelines for Consumer Protection which it periodically updates.³⁶

4.22 The UK (via the CMA) participates in the annual IGE conference as well as in meetings of various Informal Working Groups.

International representation

4.23 Under paragraph 19, Schedule 4, Enterprise and Regulatory Reform Act 2013, the CMA may, if so requested by the Secretary of State, represent the government of the UK in matters relating to international relations in any field

³⁵ The presidency of [ICPEN](#) rotates between its members.

³⁶ The UN Guidelines for Consumer Protection were first adopted by the UN General Assembly in 1985 and were later expanded upon and updated in 1999 and 2015. More information can be found [here](#).

connected to its functions, and promote good practice outside the UK in the carrying on of activities which may affect the economic interests of consumers in the UK.

5. The use of civil consumer enforcement powers by the CMA and other enforcers

5.1 The CMA may deal with infringements of consumer law using different powers provided for in Part 3 of the DMCC Act. In Part 3, there are two civil enforcement regimes of consumer protection law available to the CMA:

(a) The court-based enforcement regime; and

(b) The direct enforcement regime.

5.2 The CMA may also take civil enforcement action under Schedule 3 to the CRA to prevent the use of unfair terms in consumer contracts and unfair consumer notices issued by a trader. It may also take civil enforcement action under the BPRs. These powers will be described below.

Court-based enforcement regime

5.3 Under the civil court-based regime, the CMA, along with other enforcers,³⁷ 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 practice³⁸ which constitutes a 'relevant infringement',³⁹ or if a person is an accessory to such a practice.

5.4 The provisions in Chapter 3 of Part 3 of the DMCC Act replace the previous civil court-based enforcement regime provided for in Part 8 of the EA02, subject to transitional provisions.⁴⁰ The new provisions allow that:

(a) the courts 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;⁴¹

(b) the courts have the power to impose monetary penalties for breaches of undertakings given by parties to the court, as well as undertakings given

³⁷ 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.

³⁸ 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.

³⁹ See paragraph 5.6 below for more detail of what constitutes a relevant infringement.

⁴⁰ Further information relating to transitional provisions and continuing conduct is available in paragraphs 1.13 to 1.18 of the Direct Consumer Enforcement Guidance (CMA200).

⁴¹ Section 158 DMCC Act.

to public designated enforcers (where the breach was 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 £150,000 or, 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.⁴²

- (c) public designated enforcers have the power to apply to court for online interface orders (OIOs) and interim OIOs to, among other things, modify or remove online content that infringes consumer law.^{43, 44}

5.5 The provisions in Chapter 6 of Part 3 of and Schedule 17 to the DMCC Act contain amendments to Schedule 5 to the CRA to:

- (a) 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.⁴⁵
- (b) 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.⁴⁶

Relevant infringements

5.6 The court-based enforcement regime applies to ‘relevant infringements’.⁴⁷ A ‘relevant infringement’ occurs where a trader’s commercial practice harms the collective interests of consumers,⁴⁸ and is in breach of an enactment,

⁴² Section 168 DMCC Act,

⁴³ As specified in section 151(1) DMCC Act. Public designated enforcers include the CMA, Trading Standards and sector regulators such as Ofcom, Ofgem and the FCA.

⁴⁴ See paragraphs 5.28 to 5.33 below for more detail on OIOs and interim OIOs.

⁴⁵ Paragraph 16A(5) of Schedule 5 to the CRA, as amended by paragraph 2 of Schedule 17 to the DMCC Act.

⁴⁶ Paragraph 32 of Schedule 5 to the CRA, as amended by paragraph 5 of Schedule 17 to the DMCC Act.

⁴⁷ Section 148 DMCC Act.

⁴⁸ The concept of ‘harm to the collective interests of consumers’ has been discussed in caselaw interpreting the parallel references under Part 8 of the EA 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 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.

obligation or rule of law listed in Schedule 15 to the DMCC 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 EA02.

- 5.7 A commercial practice also has to meet a UK connection condition to be enforceable under the court-based regime.⁴⁹ 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.

Persons who can be subject to enforcement action

- 5.8 Where a business is a body corporate, enforcement action may be directed towards those who own or direct the running of the business in addition to, or instead of, the business itself. Under Chapter 3 of Part 3 of the DMCC Act, the court or an enforcer may accept an undertaking from, or the court may make an enforcement order against, an ‘accessory’.⁵⁰ This means a person who has a special relationship with the company and who has consented to or connived in the infringement. There is a special relationship where a person is a director, manager, secretary or other similar officer (or person purporting to act in such a capacity) or a person who is a controller of the company.⁵¹ Orders can also be made under Chapter 3 of Part 3 of the DMCC Act that are binding on all members of a group of interconnected companies.⁵²

Consultation

- 5.9 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).⁵³ The purpose of the consultation is to prevent, bring an end to or prevent repetition of relevant infringements, as well as to inform the respondent that an application for an enforcement order may result in a monetary penalty.

⁴⁹ Section 149 DMCC Act.

⁵⁰ Sections 156 and 163 DMCC Act.

⁵¹ Sections 219 and 220 DMCC Act.

⁵² Two bodies corporate are interconnected if one of them is a subsidiary of the other, or if both are subsidiaries of the same company. If the company that is subject to an order, or interim order, becomes a member of a group of interconnected companies after the order is made, or an existing group of which it is a member is enlarged, the order may be binding on all other members including new ones. See section 176 DMCC Act.

⁵³ Under section 155 of the DMCC Act, the enforcer is not required to consult where the CMA considers that an application for the order should be made without delay, or if it is not reasonably practicable for the enforcer to ascertain the identity and whereabouts of the respondent.

- 5.10 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).⁵⁴ In the case of an application for an interim enforcement order, the minimum consultation period is seven days.
- 5.11 Enforcers are required to give a written consultation request by notice to the enforcement subject.
- 5.12 The enforcer is not required to consult where the CMA considers that an application for the order is urgent,⁵⁵ or if it is not reasonably practicable for the enforcer to ascertain the identity and whereabouts of the respondent.⁵⁶

Undertakings to enforcers

- 5.13 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. Where the enforcer accepts an undertaking, it may publish the undertaking and/or accept a further undertaking from the respondent to do so. If undertakings are given or statements are made with no admission that any infringement has occurred to the CMA, the publicity given to them by the CMA will make this clear.
- 5.14 An undertaking requires that the business, as applicable:
- (a) does not continue or repeat the infringing conduct (if the conduct has already taken place);
 - (b) does not engage in the infringing conduct in the course of its business, or another business;
 - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which it has a special relationship, for example, a director or a controller;⁵⁷ and
 - (d) take such enhanced consumer measures as are included in the undertaking.

⁵⁴ 'Approved representative body' is defined further in section 155(8) DMCC Act.

⁵⁵ For example, where ongoing serious or irreversible harm to a number of consumers is suspected.

⁵⁶ Section 155 DMCC Act.

⁵⁷ Section 163 DMCC Act.

Failure to comply

5.15 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 order⁵⁸ 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:

- (a) in the case of a fixed amount, £150,000 or, if higher, 5% of the total value of the turnover of the respondent;
- (b) 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
- (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount, and such amount per day.⁵⁹

5.16 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.⁶⁰

Enforcement orders and undertakings to the court

5.17 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 in a commercial practice which constitutes a relevant infringement, or a person is an accessory to such a practice.^{61, 62, 63}

⁵⁸ A consumer protection order is an enforcement order, interim enforcement order, online interface order or interim online interface order. See section 166 DMCC Act.

⁵⁹ Sections 167 and 168 DMCC Act.

⁶⁰ Section 167 DMCC Act.

⁶¹ Section 153 DMCC Act.

⁶² 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 DMCC Act.

⁶³ 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. See section 154 DMCC Act.

- 5.18 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,⁶⁴ 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.
- 5.19 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).⁶⁵
- 5.20 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.⁶⁶ The court can also include a requirement that the respondent publish the order or the terms of the undertaking and/or a corrective statement.⁶⁷
- 5.21 An enforcement order or undertaking to the court may include a requirement to take such enhanced consumer measures (ECMs; see paragraphs 5.24 to 5.27) as the court considers ‘just and reasonable’. 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.⁶⁸
- 5.22 Where the court finds that the respondent has engaged or is engaging in infringing conduct, an enforcement order may also include a requirement for the respondent to pay a monetary penalty in respect of the breach.⁶⁹ 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

⁶⁴ 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. See section 219 DMCC Act.

⁶⁵ Section 156 DMCC Act.

⁶⁶ Defined further at section 176 DMCC Act.

⁶⁷ Section 156 DMCC Act.

⁶⁸ Section 157 DMCC Act.

⁶⁹ 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).

of the decision to impose the penalty and/or the nature or amount of the penalty.⁷⁰

- 5.23 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:
- (a) it is alleged 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 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.⁷¹

Enhanced consumer measures (ECMs)

- 5.24 The CMA may seek ECMs as part of an undertaking, and these may be included in an enforcement order or undertakings given to the court.⁷² ECMs fall within three categories:
- (a) redress measures, which provide for compensation or other redress (such as the right to cancel the contract) in cases where consumers have suffered loss or have been otherwise affected as a result of conduct giving rise to the enforcement action;
 - (b) compliance measures intended to prevent or reduce the risk of future breaches;
 - (c) choice measures to enable consumers to choose more effectively between suppliers.⁷³
- 5.25 ECMs are available as an additional remedy in relation to infringements of the laws that may be enforced under the court-based regime.⁷⁴

⁷⁰ Section 158 DMCC Act.

⁷¹ Section 159 DMCC Act.

⁷² Sections 157 and 164 DMCC Act.

⁷³ Section 221 DMCC Act.

⁷⁴ Sections 157 and 164 DMCC Act.

5.26 An order or undertakings can only include an ECM if the court or the enforcer (as the case may be) considers that it is just and reasonable. In reaching this conclusion it must consider whether the proposed ECM is proportionate. This involves taking into account:

- (a) the likely benefit to consumers of any measure to be proposed;
- (b) the likely cost to the business of putting the measure in place; and
- (c) whether there will be a cost to consumers of obtaining the benefit of the measure.

5.27 In addition to the ECMs, an order or undertaking may also include a requirement for the trader to provide information or documentation to enable the enforcer to determine if the required measures are being taken.

Online Interface Orders (OIO)

5.28 An enforcer may apply to court for an OIO or an interim OIO, if the enforcer considers that a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement.

5.29 The OIO application may be made in respect of (i) the person that the enforcer 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' (that is, 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.⁷⁵

5.30 The court may make an OIO on an application if it finds that:

- (a) a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement;
- (b) 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

⁷⁵ Section 160 DMCC Act.

(c) it is necessary to make the order to avoid the risk of serious harm to the collective interests of consumers.

5.31 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:

(a) remove content from, or modify content on, an online interface;⁷⁶

(b) disable or restrict access to an online interface;

(c) display a warning to consumers accessing an online interface; or

(d) delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the enforcer.

5.32 Where an OIO is made, the enforcer 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.⁷⁷

5.33 As with enforcement orders, the court may make an interim OIO if certain criteria are met,⁷⁸ including in relation to expediency.

Consequences of breaches to court orders and undertakings to the court

5.34 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.⁷⁹

5.35 Breach of a consumer protection order may be a contempt of court, which is punishable by up to two 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

⁷⁶ 'Online interface' is defined in section 161(5) DMCC Act as 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 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, goods, services or digital content that P or another person supplies.

⁷⁷ Section 161 DMCC Act.

⁷⁸ 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. See section 162 DMCC Act.

⁷⁹ Section 166 DMCC Act.

pay a monetary penalty.⁸⁰ The maximum level of monetary penalties imposed due to a breach of undertakings to the court is the same as for a breach of undertakings to enforcers.⁸¹

Jurisdiction

- 5.36 The courts of England and Wales, Scotland or Northern Ireland (as the case may be) have jurisdiction to make a consumer protection order where:
- (a) the respondent has a place of business in, or carries on business in, that part of the UK; or
 - (b) if the respondent does not have a place of business in and does not carry on business in any part of the UK, the part of the UK in which a relevant consumer is domiciled.⁸²
- 5.37 The appropriate court will be the High Court or county court in England and Wales and Northern Ireland, and the Court of Session or the Sheriff Court in Scotland. Consumer protection orders have effect throughout the UK.⁸³

Coordination between enforcers

- 5.38 Prior to making an application for a consumer protection order, enforcers other than the CMA must provide the CMA notice of their intention to do so.⁸⁴ 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 OIO, or seven days in the case of an interim enforcement order or an interim OIO).
- 5.39 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:
- (a) only to be made by the CMA;
 - (b) only to be made by a particular enforcer; or

⁸⁰ Section 166 DMCC Act. There is no requirement to show that a breach of an undertaking to the court was without reasonable excuse for a penalty to be imposed.

⁸¹ Section 168 DMCC Act.

⁸² Section 173 DMCC Act.

⁸³ Section 174 DMCC Act.

⁸⁴ Section 169 DMCC Act.

(c) 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 direct enforcement regime in Chapter 4 of Part 3 of the DMCC Act.⁸⁵

- 5.40 Enforcers 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,⁸⁶ as well as any applications to the court in respect of a failure to comply with a consumer protection order or undertakings to the court.⁸⁷
- 5.41 Enforcers are required to inform the CMA of the outcome of any application they make.
- 5.42 Where a Trading Standards Authority intends to start proceedings for a criminal offence, it must inform the CMA and must only proceed 14 days after the notice is sent, or if sooner, 14 days after the date the CMA has acknowledged receipt. Trading Standards must also notify the CMA of the outcome of the proceedings.⁸⁸
- 5.43 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.⁸⁹
- 5.44 Schedule 3 to the CRA and Regulations 14 and 19 of the BPRs also contain provisions requiring other enforcers to notify the CMA about any proposed enforcement action, the outcome of any court applications or terms of any court orders or whether any undertakings have been accepted.

Transparency

- 5.45 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 Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)).
- 5.46 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:

⁸⁵ Section 154 DMCC Act.

⁸⁶ Section 170 DMCC Act.

⁸⁷ Section 169 DMCC Act

⁸⁸ Section 171 DMCC Act.

⁸⁹ Section 172 DMCC Act.

- (a) issues a consultation letter in the case; and/or
 - (b) informs a party that it proposes to seek a court order to address identified consumer law infringements.
- 5.47 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 announcements 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).
- 5.48 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.⁹⁰
- 5.49 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.
- 5.50 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,⁹¹ among other things:
- (a) encouraging business and consumers to come forward with information that can assist the CMA's investigation and protection of the public in appropriate cases.
 - (b) 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.
 - (c) keeping the public informed of the progress of a case, including to make clear when businesses in a sector are not under investigation; and
 - (d) 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.

⁹⁰ See Chapter 3 of Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)) for further information.

⁹¹ Such as under Part 3 of the DMCC Act, and the CRA.

5.51 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 EA02.

Direct enforcement regime

5.52 The CMA is the only authority that can use the direct enforcement regime set out in Chapter 4 of Part 3 of the DMCC Act and Schedule 5 to the CRA. Under this regime, the CMA has powers to investigate, determine and take enforcement action to address breaches of certain consumer protection laws⁹² and various administrative breaches.

5.53 In particular, the CMA has powers to give enforcement notices in relation to infringements,⁹³ breach of undertakings,⁹⁴ breach of directions⁹⁵ and provision of information.⁹⁶ These notices may, where appropriate, include enforcement directions, impose monetary penalties and, for infringement notices, enhanced consumer measures.⁹⁷ The CMA may also give online interface notices.⁹⁸

5.54 The CMA may also accept an undertaking instead of giving a final infringement notice and where it has not given an online interface notice.⁹⁹

5.55 Any person to whom a relevant final notice is given may appeal against the CMA's decision(s) to give directions, to impose a monetary penalty or the nature and amount of any such penalty.¹⁰⁰ The appeal may be made to the High Court in England and Wales or Northern Ireland or the Outer House of the Court of Session in Scotland.

5.56 The CMA's Direct Consumer Enforcement Guidance ([CMA200](#)) provides a comprehensive summary of its direct enforcement powers and sets out the CMA's guidance about its general approach to carrying them out, as required by section 212 of the DMCC Act.

⁹² As listed in Schedule 16 DMCC Act.

⁹³ Sections 181 and 182 DMCC Act.

⁹⁴ Sections 188 and 189 DMCC Act.

⁹⁵ Sections 191 and 192 DMCC Act.

⁹⁶ Sections 197 and 198 DMCC Act.

⁹⁷ Section 183 DMCC Act.

⁹⁸ Section 184 DMCC Act.

⁹⁹ Section 185 DMCC Act.

¹⁰⁰ Section 202 DMCC Act.

Other civil powers

- 5.57 The CMA may also take civil enforcement action under Schedule 3 to the CRA to prevent the use of unfair terms in consumer contracts and unfair consumer notices issued by a trader. If the CMA considers that a term or notice is unfair, fails to meet the requirement of transparency, or excludes or restricts liability in a way Parts 1 or 2 of the CRA renders not binding or enforceable, the CMA has powers to ask a court for an injunction or an interim injunction to prevent it being used or recommended for use.¹⁰¹ The CMA can also accept undertakings from a person against whom it has applied, or thinks it is entitled to apply, for an injunction under paragraph 3 of Schedule 3 to the CRA in relation to unfair terms of notices.¹⁰² Further information is available in the CMA's guidance on unfair contract terms ([CMA37](#)).
- 5.58 The CMA may also take civil enforcement action under the BPRs. Under the BPRs, the CMA has the power to seek an injunction or an interim injunction¹⁰³ to prevent or stop advertising which misleads traders, unlawful comparative advertising or the promotion of misleading advertising to traders, or comparative advertising which is not permitted.^{104, 105} The CMA may also accept undertakings where there has been or is likely to be a breach of these provisions of the BPRs.¹⁰⁶ The powers under the BPRs are shared with other bodies.¹⁰⁷

¹⁰¹ Paragraph 3, Schedule 3 CRA.

¹⁰² Paragraph 6, Schedule 3 CRA.

¹⁰³ Regulation 15 BPRs.

¹⁰⁴ A comparative advertisement is one that, in any way, either explicitly or by implication, identifies a competitor or a product offered by a competitor. See Regulation 2 BPRs.

¹⁰⁵ Regulations 3, 4 and 5 BPRs.

¹⁰⁶ Regulation 16 BPRs.

¹⁰⁷ It is the duty of Trading Standards, and in Northern Ireland, the Department for the Economy to enforce the BPRs. The CMA and Ofgem have the power to enforce them. See Regulation 13 BPRs. Public and private designated enforcers (as detailed in section 151 DMCC Act) are also authorised to enforce Regulations 2, 4, 13, 15 and 18 BPRs under Chapter 3 of Part 3 of the DMCC Act. See Schedule 15 DMCC Act.

6. The use of criminal consumer enforcement powers by the CMA

- 6.1 In addition to its civil powers outlined in Chapter 5, the CMA also has criminal prosecution powers under certain legislation, for example the unfair commercial practices provisions in Chapter 1 of Part 4 of the DMCC Act,¹⁰⁸ the offence of failing to provide information about initial cooling-off rights in an off-premises subscription contract in Chapter 2 of Part 4 of the DMCC Act,¹⁰⁹ or the offence of engaging in misleading advertising under Regulation 6 of the BPRs.¹¹⁰ Its criminal powers, too, are shared with other enforcers.¹¹¹ The CMA works with other enforcers to ensure any action is taken by the most appropriate body (see Chapter 4).
- 6.2 The CMA will generally use its civil powers to enforce consumer protection law wherever doing so is likely to meet its objectives. However, it may use its criminal enforcement powers in an appropriate case.
- 6.3 The remainder of this section provides guidance on the circumstances in which the CMA is likely to take criminal enforcement action. It should be recognised, however, that each case must be considered on its merits and particular circumstances, and in some circumstances an approach different from that suggested by this guidance may be required.

Considerations in deciding whether to commence a criminal investigation

- 6.4 The CMA is more likely to use its criminal powers when:
- (a) either court-based or direct civil enforcement is unlikely to be effective in achieving a change in behaviour; and/or
 - (b) the breach is sufficiently serious that the conviction and punishment of offenders ought to be pursued, for example to protect the public and to provide wider deterrence.

¹⁰⁸ Sections 237 to 241 DMCC Act.

¹⁰⁹ Section 268 DMCC Act.

¹¹⁰ As indicated above, the CMA's criminal powers are in addition to its civil powers to enforce both sets of regulations.

¹¹¹ For other bodies with criminal powers, see Annex A. In Scotland, however, prosecutions are brought by the Crown Office and Procurator Fiscal Service (COPFS) on behalf of the Lord Advocate.

- 6.5 See below under 'Prosecution' the tests to which the CMA must have regard when it is considering prosecution.
- 6.6 Particular circumstances in which the CMA is therefore likely to consider commencing a criminal investigation include:
- (a) where traders deliberately or recklessly use deceptive, misleading or fraudulent practices;
 - (b) where traders deliberately or recklessly use aggressive, intimidating or coercive practices;
 - (c) where flagrant and/or persistent offending by a trader or group of associated traders has occurred or is occurring;
 - (d) where a particular unlawful practice is widespread, or there is a risk of it becoming widespread, to the serious detriment of consumers and criminal enforcement is best calculated to send a strong deterrent message;
 - (e) where false statements are made or false documents provided in the course of dealings with the CMA or another enforcement body or where an investigation is otherwise obstructed.^{112, 113}
- 6.7 As Chapters 1 and 2 of Part 4 of the DMCC Act and the BPRs may be enforced using civil and criminal enforcement powers, if it becomes apparent during the course of an investigation that a breach of any of the criminal provisions in Chapters 1 and 2 of Part 4 of the DMCC Act or the BPRs has occurred, but for any reason criminal enforcement is no longer appropriate, the CMA may stop the criminal investigation and deal with the breach by another means, such as civil enforcement.

Prosecution

- 6.8 A decision by the CMA to prosecute a case criminally will be taken in accordance with the two-stage tests set out in the 'Code for Crown

¹¹² These are also likely to be factors relevant to a subsequent decision to prosecute. While these are particular circumstances which may lead the CMA to open a criminal investigation, they should not be interpreted as precluding criminal investigation where these circumstances do not appear present. The CMA will consider each case on its own facts.

¹¹³ Under sections 197 and 198 DMCC Act, where information is provided to the CMA in connection with the carrying out of a CMA direct enforcement function, a person who, without reasonable excuse, provides information that is materially false or misleading, may be sent a provisional or final false information enforcement notice from the CMA and be liable for a penalty. Where sections 197 and 198 DMCC Act are available they are more likely to be used by the CMA, but otherwise a criminal investigation may be commenced in respect of false statements or documents.

Prosecutors' (the Code), that is, the 'evidential stage' and the 'public interest' stage.¹¹⁴

Evidential stage

6.9 The CMA must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect. It must be satisfied that the evidence is admissible, reliable and credible. The CMA must also consider (at this stage and throughout the case) whether there is any other material that may affect the assessment of the sufficiency of evidence. If the case does not pass the evidential test, it will not go ahead with a criminal prosecution, no matter how important or serious the allegation may be. The CMA may however decide to look at the case under its other powers or refer to another body if this is considered appropriate.

Public interest stage

6.10 If the evidential stage is passed, then the CMA will go on to consider whether a prosecution is in the public interest. A prosecution will usually take place unless the CMA is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

Subjects of prosecution

6.11 Prosecutions may be brought against:

- (a) individuals responsible for the offences;
- (b) corporate bodies; or
- (c) officers of corporate bodies who have consented or connived in the commission of the offence or where the commission of the offence by the relevant corporate body is proved to be attributable to the officer's neglect.

6.12 The CMA decides who should face prosecution on a case-by-case basis, having regard to the stages of the Code.

6.13 The CMA will determine the most appropriate charge or charges in each case on the evidence and with a view to ensuring that a court on conviction will have sufficient powers to impose sentences that properly reflect the

¹¹⁴ See [Code for Crown Prosecutors](#). The Code does not apply to offences committed in Scotland which are subject to considerations in the COPFS Prosecution Code.

seriousness of the offence. Charges may include offences under Chapters 1 and 2 of Part 4 of the DMCC Act or under Regulation 6 of the BPRs and any other statutory or common law offences that are disclosed by the evidence.

Penalties

6.14 Where a person is convicted of an offence they may face a penalty such as:

- (a) on summary conviction, a fine of any amount or imprisonment up to the statutory maximum (where applicable);
- (b) on conviction on indictment, an unlimited fine or imprisonment not exceeding the maximum set out in legislation or both;
- (c) a community sentence;
- (d) an ancillary order such as a compensation order.

Confiscation orders

6.15 Where appropriate, the CMA will ask the sentencing court to make a confiscation order under the Proceeds of Crime Act 2002.

Director disqualification orders

6.16 Under the Company Directors Disqualification Act 1986, the court may make a disqualification order if an offender has been convicted of any indictable offence committed in connection with the promotion, formation, management, liquidation or striking off of a company, or with the receivership of the company's property. The maximum period of disqualification is 15 years in the Crown Court and five years when imposed in the Magistrates' Courts. Breach of a disqualification order is a criminal offence.

Time limits

6.17 Time limits for prosecutions vary depending on the offence committed. For example, prosecutions for a breach of the unfair commercial practices provisions under Chapter 1 of Part 4 of the DMCC Act or for a breach of the offence of engaging in misleading advertising in the BPRs are subject to a time limit of three years from the commission of the offence, or one year from the date of discovery of the offence by the prosecutor, whichever is earlier,¹¹⁵

¹¹⁵ Section 241 DMCC Act and Regulation 10 BPRs.

whereas prosecution for an offence under Chapter 2 of Part 4 of the DMCC Act must commence within 6 months of when the offence was committed or the matter of complaint arose.¹¹⁶ Other offences may be subject to different time limits set out in legislation.

¹¹⁶ Time limitations for bringing proceedings for summary offences are set out in section 127 Magistrates' Courts Act 1980.

7. Powers of investigation

- 7.1 The CMA makes evidence-based decisions. Therefore, the availability of evidence and accurate information is a key factor affecting its ability to exercise its enforcement functions effectively and to comply with its duty of expedition, which requires it to have regard to the need to make decisions and take action as soon as reasonably practicable.¹¹⁷
- 7.2 The CMA has a range of powers to obtain information in connection with its consumer enforcement functions.¹¹⁸ The CMA can, for example, require the provision of information in writing, make test purchases, observe the conduct of business, enter premises without a warrant (whether with or 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.
- 7.3 The CMA may use its information gathering powers to obtain information both before and after it has decided to open an enforcement investigation.¹¹⁹ In some circumstances, the CMA may also use its powers to assist overseas enforcers.¹²⁰

Written information requests

- 7.4 The CMA may send out formal information requests (also referred to as Information Notices) in writing to require the production of information that it considers relevant to carrying out its consumer enforcement functions.¹²¹ This could include requesting information so that the CMA can consider whether to open an investigation using its consumer enforcement powers, as well as to carry out such investigations and to enable the CMA to use its consumer enforcement powers to seek, impose, enforce or monitor remedies, including orders and undertakings obtained by other enforcers.

¹¹⁷ See section 25 Enterprise and Regulatory Reform Act 2013, as amended.

¹¹⁸ Schedule 5 CRA sets out the CMA's investigatory powers.

¹¹⁹ Paragraphs 13, 19 and 20 Schedule 5, CRA.

¹²⁰ This section should be read in conjunction with the CMA's Transparency and Disclosure: Statement of the CMA's Policy and Approach (CMA6), where applicable to the CMA's consumer functions.

¹²¹ Paragraph 14, Schedule 5, CRA gives the CMA the power to require the production of information in writing.

- 7.5 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).¹²²
- 7.6 The information request will specify the purpose for which the information is required, the time within which and the manner in which the person to whom it is given must comply, and the form in which information must be provided. The request will also set out the circumstances in which a monetary penalty may be payable in relation to non-compliance with the information request.¹²³ In addition, where information is provided to the CMA in connection with the carrying out of a CMA direct enforcement function, a person who, without reasonable excuse, provides information that is materially false or misleading, may also be liable for a penalty.¹²⁴
- 7.7 Examples of the types of information the CMA may require the production of include internal documents (whether in draft or final form) such as business records, reports and policies, details of customers or transactions, copies of customer complaints, information about consumer research and testing and other internal data.¹²⁵ The CMA may request evidence as to the accuracy of any factual claim made as part of a commercial practice.¹²⁶ The CMA can also require the recipient of a request to create documents and provide these to the CMA.
- 7.8 The CMA may send out more than one request to the same person or company. For example, the CMA may ask for additional information after considering material submitted in response to an earlier request.
- 7.9 The CMA will ask for information which, in its opinion, is relevant for the purpose set out in the request. Any queries about the scope of an information

¹²² An information notice may be sent to an individual as well as bodies corporate. Such information requests may be served in the following ways: delivering it to the person to whom it is addressed; leaving it at their proper address; sending it by post to that address; or sending it by email to the person's email address. See paragraph 17B, Schedule 5, CRA.

¹²³ Paragraph 15, Schedule 5, CRA.

¹²⁴ Sections 197 and 198 DMCC Act.

¹²⁵ This covers documents in electronic as well as physical form, and, in addition, as well as letters, emails, reports or similar, includes, for example, text messages or other electronic communications such as instant messaging through any digital platform. To the extent that documents are stored electronically, information recorded also includes meta data associated with that document such as the date of creation, modification, author, date of sending etc. In addition, under paragraph 31, Schedule 5, CRA when entering premises the CMA can access any electronic device in which information may be stored or from which it may be accessed.

¹²⁶ Requests for substantiation may be made under section 195 DMCC Act (for further information see paragraphs 2.54 to 2.56 of Chapter 2 in the Direct Consumer Enforcement Guidance ([CMA200](#)) 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.

request or the time given to respond should be raised with the case team as soon as possible.

7.10 The CMA may send an information request to a person outside the UK where either, the CMA considers the person to be a potential enforcement subject, or the person has a UK connection.¹²⁷ A person is a potential enforcement subject if the notice is given for a purpose such as enabling the CMA to:

- (a) exercise or consider whether to exercise a function such as enforcement under Part 3 of the DMCC Act against the person; or
- (b) ascertain whether the person has breached the unfair commercial practices provisions in Chapter 1 of Part 4 of the DMCC Act.¹²⁸

7.11 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
- (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.¹²⁹

Giving advance notice and using draft information requests

7.12 The CMA recognises that when making information requests, this will have an impact on the recipient, which is likely to be more acute for smaller firms or consumer organisations.

7.13 In appropriate cases, the CMA may give recipients of large information requests advance notice so that they can manage their resources appropriately. In certain circumstances, where it is practicable and appropriate to do so, the CMA may also send an information notice in draft for discussion with the recipient. The CMA can then consider comments on the scope of the request, the actions that will be needed to respond, and the deadline by which the information must be received. The timeframe for comment on the draft will depend on the nature and scope of the request.

¹²⁷ Paragraph 17A, Schedule 5, CRA.

¹²⁸ Paragraphs 13 and 17A, Schedule 5, CRA.

¹²⁹ Paragraph 17A, Schedule 5, CRA.

Responding to a written information request

- 7.14 The written information request will set a deadline by which the response must be received. It will also set out the format in which the response must be submitted to the CMA.¹³⁰ Given the CMA's duty of expedition, it expects recipients to comply fully with any information request within the given deadline.
- 7.15 The deadline specified in the information request will depend on the nature and the amount of information that the CMA has requested. The CMA's duty of expedition will also be reflected in the deadlines set for compliance with information requests and will also be taken into account when considering any representations received about difficulties in meeting that deadline.
- 7.16 Where the CMA is using its direct consumer enforcement powers it has a power to publish a timetable for the conduct of an investigation.¹³¹ Any published timetable will also be taken into account when setting deadlines and considering any representations about them.
- 7.17 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.
- 7.18 Where the CMA is using its direct enforcement powers and a recipient has a complaint about the deadline set for a response to a written information request, the recipient should raise this as soon as possible with the Senior Responsible Officer (SRO) or Final Decision Group (FDG), as the case may be. If it is not possible to resolve the dispute with the SRO or FDG, the recipient may refer the matter to the procedural complaints adjudicator (PCA). Further information on the procedural complaints process is available in Chapter 9 of the Direct Consumer Enforcement Guidance ([CMA200](#)).
- 7.19 In all circumstances recipients must provide reasons for requesting an extension. In particular, unless there are exceptional circumstances, the CMA is unlikely to agree to an extension if a request has been provided in draft or the timescale for response to the final request already discussed. This is to minimise any delay to the investigation.
- 7.20 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 as well as

¹³⁰ Paragraph 15, Schedule 5, CRA.

¹³¹ Section 180(3)(d) DMCC Act.

the destruction, disposal, concealment or falsification of requested information (for example, 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.

- 7.21 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 Chapters 3 and 7 of the Direct Consumer Enforcement Guidance ([CMA200](#)).
- 7.22 A fine may be either a fixed or daily penalty, or a combination of the two, depending on what is appropriate in the circumstances and on what the fine relates to.¹³²

Power to observe the carrying on of business

- 7.23 The CMA may observe how a trader carries on business under its general power to acquire information under section 5 of the EA02 (for example by viewing their website or visiting their retail premises). In addition, Schedule 5 to the CRA contains an express power that the CMA can enter the public parts of premises to observe the carrying on of a business.^{133, 134} This power can be exercised at any reasonable time (whether or not the public has access at that time) without giving notice and without a warrant.¹³⁵

Power to purchase products

- 7.24 The CMA also has the power to make test purchases or enter into an agreement to do so¹³⁶ where it has the appropriate grounds to do so.¹³⁷

¹³² See paragraph 16C, Schedule 5, CRA, Sections 197 and 198 DMCC Act and Chapter 7 of the Direct Consumer Enforcement Guidance ([CMA200](#)).

¹³³ Paragraph 22, Schedule 5, CRA.

¹³⁴ Depending on the circumstances, the CMA can exercise this power either to ascertain compliance with certain laws in its capacity as a 'domestic enforcer' or where it reasonably suspects an infringement of laws it can enforce as an 'authorised enforcer'. See paragraphs 19 and 20, Schedule 5, CRA for further information on the circumstances in which the CMA may act as a domestic or authorised enforcer, respectively.

¹³⁵ Paragraph 22, Schedule 5, CRA.

¹³⁶ See paragraph 21, Schedule 5, CRA. This could apply, for example, to making test purchases of goods, services or digital content from a trader's website.

¹³⁷ The CMA may make a test purchase, for example, for the purpose of ascertaining compliance with certain laws which it enforces as a domestic enforcer, or where it reasonably suspects an infringement of laws which it

7.25 For the purpose of exercising this power, at any reasonable time (whether or not the public has access at that time) the CMA can also enter the public parts of premises (or, for example, view websites)¹³⁸ to inspect products available to the public. This power can also be exercised without giving notice and without a warrant.

Power to enter premises

7.26 In addition to the power to observe the carrying on of business and to purchase products, the CMA can enter premises,¹³⁹ and exercise various other powers,¹⁴⁰ where it has the appropriate grounds to do so.^{141, 142} The CMA can enter premises with or without a warrant, depending on the circumstances and the type of premises. This is explained in more detail below.

Entering premises with a warrant

7.27 The CMA can apply to the Magistrates' Court (Sheriff Court in Scotland) for a warrant to enter business and domestic premises without notice.¹⁴³

7.28 The CMA can apply for a warrant in the circumstances set out in paragraph 32 of Schedule 5 to the CRA. This includes where, for example, access to the premises is likely to be refused, or it is likely that products or documents would be concealed or interfered with if notice was given, or the premises are unoccupied.¹⁴⁴

7.29 If the Magistrates' or Sheriff Court is satisfied that certain conditions are met then it may issue a warrant authorising entry to the premises at any reasonable time. Where necessary, this includes the use of reasonable force to gain entry.¹⁴⁵

enforces as an authorised enforcer. See paragraph 19, Schedule 5, CRA for further information on powers given to 'domestic enforcers' and paragraph 20, Schedule 5, CRA for further information on powers given to 'authorised enforcers' for the purposes of Schedule 5 to the CRA.

¹³⁸ See paragraph 7.31 and section 5 EA02.

¹³⁹ Paragraphs 23 and 33, Schedule 5, CRA.

¹⁴⁰ See for example paragraph 7.36.

¹⁴¹ In exercising its powers, the CMA will have regard to any relevant codes of practice issued under the Police and Criminal Evidence Act 1984.

¹⁴² The CMA may enter premises, for example, for the purpose of ascertaining compliance with certain laws which it enforces as a domestic enforcer, or where it reasonably suspects an infringement of laws which it enforces as an authorised enforcer. Paragraph 19 and 20, Schedule 5, CRA.

¹⁴³ Paragraph 32, Schedule 5, CRA.

¹⁴⁴ Paragraph 32, Schedule 5, CRA.

¹⁴⁵ Paragraphs 32 and 33, Schedule 5, CRA.

- 7.30 Where access is obtained by force (and the premises were unoccupied or the occupier is temporarily absent) the investigator must leave a notice explaining what has happened, and leave the premises secured as effectively as they were found against trespassers. The CMA must produce a copy of the warrant to persons on the premises.¹⁴⁶

Entering premises without a warrant

- 7.31 In certain circumstances, the CMA can enter premises without a warrant, except those used wholly or mainly as a dwelling.¹⁴⁷ It can only do so at a reasonable time. In order to use this power, the CMA must have a reason specified in the CRA, such as in order to ascertain compliance with consumer laws, or where the CMA reasonably suspects an infringement of laws which it enforces as an authorised enforcer.^{148, 149} Generally such visits must only be made on notice (a 'routine inspection'), but they can be unannounced where certain conditions are met.

- 7.32 The CMA anticipates that it will typically use its powers to enter premises without a warrant where the circumstances mean it is more appropriate to carry out a site visit to gather evidence instead of issuing written information notices. For example, the CMA may need to observe a particular process in person, or it may be more efficient or effective for the CMA to review records at a business' premises rather than engaging in written correspondence.

Routine inspections on notice without a warrant

- 7.33 When carrying out routine inspections, the CMA must give the occupier at least two working days' notice before exercising its powers of entry (unless the occupier waives the requirement).¹⁵⁰ However in many cases the CMA is likely to give more than two working days' notice to businesses to ensure that the CMA's objectives in visiting the premises can be met (for example, ensuring that the right staff are present to assist the CMA) and that any potential disruption to the business can be appropriately managed.

¹⁴⁶ Paragraph 33, Schedule 5, CRA.

¹⁴⁷ Paragraph 23, Schedule 5, CRA.

¹⁴⁸ Paragraphs 19 and 20, Schedule 5, CRA.

¹⁴⁹ See paragraph 20, Schedule 5, CRA for further information on authorised enforcers for the purposes of Schedule 5 to the CRA.

¹⁵⁰ Paragraph 23, Schedule 5, CRA.

Unannounced visits without a warrant

- 7.34 In certain circumstances, the CMA can also carry out unannounced visits without a warrant, where it is not required to provide notice, for example if:
- (a) it reasonably suspects a breach of law it enforces as a domestic enforcer;¹⁵¹
 - (b) it reasonably considers that giving notice would defeat the purpose of the visit; or
 - (c) it is not reasonably practicable to give notice particularly if there is an imminent risk to health or safety.¹⁵²
- 7.35 When carrying out unannounced visits without a warrant, the CMA must generally provide persons on the premises with a document setting out why entry is necessary and informing them that obstructing is a criminal offence. CMA officers should also produce evidence of their identity and authority.¹⁵³

What powers does the CMA have when it has entered premises?

- 7.36 Once lawfully on the premises, whether with or without a warrant, and whether they are business or domestic premises, the CMA can exercise a range of powers. In particular, it can:
- (a) search the premises and inspect products;¹⁵⁴
 - (b) require persons on the premises to provide assistance;¹⁵⁵
 - (c) break open containers and access electronic devices, including devices from which information may be stored or accessed (for example, where it is stored on a server off site, potentially in a different jurisdiction);¹⁵⁶
 - (d) test equipment;¹⁵⁷

¹⁵¹ See paragraph 19, Schedule 5, CRA for further information on powers given to 'domestic enforcers'.

¹⁵² Paragraph 23, Schedule 5, CRA.

¹⁵³ Paragraph 23, Schedule 5, CRA.

¹⁵⁴ Paragraph 25, Schedule 5, CRA.

¹⁵⁵ Paragraph 34, Schedule 5, CRA.

¹⁵⁶ Paragraph 31, Schedule 5, CRA.

¹⁵⁷ Paragraph 26, Schedule 5, CRA.

- (e) require traders or persons on the premises to produce and give explanations of documents¹⁵⁸ if it reasonably suspects a breach of the law, as well as provide copies of such documents;¹⁵⁹ and
- (f) seize and detain goods and documents if it reasonably suspects they are or might be evidence of a breach of the law.¹⁶⁰

7.37 The CMA officer entering premises may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.¹⁶¹

What will happen upon arrival?

7.38 The CMA's authorised officers will normally arrive at the premises during normal business hours to exercise the power to enter. On entry, the information that the officers will provide depends on which power the CMA is exercising to enter (warrant, routine inspection on notice or unannounced visit without a warrant). Assuming the premises are occupied, they will provide evidence of their authorisation or the warrant, as applicable. Where the entry is made without notice as part of an unannounced visit without a warrant, the officers will provide a document setting out what the investigation is about and describing what criminal offences may be committed if a person fails to co-operate.¹⁶²

7.39 Where the CMA has obtained a warrant, the CMA officer will produce it on entry for inspection.¹⁶³

7.40 Where possible, the person in charge at the premises should designate an appropriate person to be a point of contact for CMA authorised officers during the inspection.

Can a legal adviser be present?

7.41 The occupier may ask legal advisers to be present during an inspection, whether conducted with or without a warrant. If the occupier has not been

¹⁵⁸ Documents include information recorded electronically. Please also see paragraph 7.7 for further information on documents that may be requested.

¹⁵⁹ Paragraph 27, Schedule 5, CRA.

¹⁶⁰ Paragraphs 28 and 29, Schedule 5, CRA.

¹⁶¹ Paragraphs 23 and 33, Schedule 5, CRA.

¹⁶² Paragraphs 23 and 33, Schedule 5, CRA.

¹⁶³ Paragraph 33, Schedule 5, CRA.

given notice of the visit, and there is no in-house lawyer on the premises, CMA officers may wait a reasonable time for legal advisers to arrive.

- 7.42 During this time, the CMA may take necessary measures to prevent tampering with evidence or warning other persons about the investigation.¹⁶⁴

What if there is nobody at the premises?

- 7.43 A warrant authorises the CMA to enter any premises at any reasonable time, using reasonable force if necessary. If there is no one at the premises when CMA officers arrive, the officers will take reasonable steps to inform the occupier that the CMA intends to enter the premises. In such cases, once the CMA has informed them, or taken such steps as it is able to inform them, the CMA will also allow the occupier or their legal or other representative a reasonable opportunity to be present when the CMA carries out a search under the warrant.
- 7.44 If the CMA has entered premises that are unoccupied or where the occupier is temporarily absent, using force, upon leaving those premises the CMA must leave a notice stating that the premises have been entered under a warrant under the CRA and leave them secured as effectively as they were found against trespassers.¹⁶⁵

Seized or detained goods and documents

- 7.45 If the CMA seizes and detains goods or documents, the person who had custody or control at the time they were seized can ask for supervised access (although they may have to pay the reasonable costs of complying with the request). This can include access to take photographs or copies. The CMA does not have to allow access if it might prejudice its investigation.¹⁶⁶
- 7.46 If certain conditions are met, a person with an interest in the goods or documents can apply to the court for them to be released or for compensation for loss or damage caused by the seizure.¹⁶⁷
- 7.47 If the CMA tests goods it has seized (or purchased), and as a result it brings proceedings for a breach of the law, then it must notify the person from whom

¹⁶⁴ This could include sealing filing cabinets, keeping business records in the same state and place as when CMA officers arrived, suspending external email or the making and receiving of calls, and/or allowing CMA officers to enter and remain in offices of their choosing. It may be a criminal offence to tamper with evidence protected in this way.

¹⁶⁵ Paragraph 33, Schedule 5, CRA.

¹⁶⁶ Paragraph 38, Schedule 5, CRA.

¹⁶⁷ Paragraphs 40 and 41, Schedule 5, CRA.

they were seized or purchased of the results of the test and, if reasonably practicable, allow them to test the goods themselves.¹⁶⁸

Return of information

7.48 Where it considers it appropriate, the CMA may return information¹⁶⁹ it has gathered during the course of an investigation (irrespective of how that information has been obtained).¹⁷⁰ For example, the CMA may return information where, after careful review, the CMA considers it is duplicate information or information that is outside the nature and scope of the investigation, including where information falls outside the scope of the investigation as a result of that scope having changed. Any such information that is returned will no longer form part of the CMA's investigation file.¹⁷¹

Offence of obstruction

7.49 A person commits a criminal offence and is liable on summary conviction to a fine¹⁷² where the person:

- (a) intentionally obstructs the CMA or an officer of the CMA in exercising its powers;
- (b) intentionally fails to comply with a requirement properly imposed by the CMA or an officer of the CMA; or
- (c) without reasonable cause fails to give the CMA or an officer of the CMA any other assistance or information which is reasonably required of the person. Where information is reasonably required, a person may commit an offence where the person knowingly or recklessly makes a statement which is false in a material respect;

in each case when the CMA is acting under Part 4 of Schedule 5 to the CRA, for example when observing the conduct of business or when entering premises without a warrant (whether with or without notice) or with a warrant.¹⁷³

¹⁶⁸ Paragraph 39, Schedule 5, CRA.

¹⁶⁹ In relation to information which is stored in any electronic form, references to the return of information in this paragraph include deletion.

¹⁷⁰ However, the CMA may retain all of the information or materials it has gathered in the course of its investigation if it is not reasonably practicable to separate the relevant information from the irrelevant information.

¹⁷¹ The CMA file will include all information which remains relevant to the investigation.

¹⁷² A fine not exceeding level 3 on the standard scale, see section 122 Sentencing Act 2020.

¹⁷³ Paragraph 36, Schedule 5, CRA.

7.50 In addition, where information is provided to the CMA in connection with the carrying out of a CMA direct enforcement function, a person who, without reasonable excuse, provides information that is materially false or misleading, may be liable for a penalty.¹⁷⁴

Legally privileged communications

7.51 Under the CRA, the CMA cannot use its powers to require someone to produce privileged communications. This limitation does not affect the CMA's powers under Part 2 of the Criminal Justice and Police Act 2001, which makes specific provision for the treatment of privileged communications.¹⁷⁵ Privileged communications are defined in the CRA as information or documents which the person would be entitled to refuse to produce:

- (a) in proceedings in the High Court on the grounds of legal professional privilege; or
- (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.¹⁷⁶

7.52 During a search or an inspection, if a party considers that a communication is privileged, it should provide the CMA officer with material of such a nature as to demonstrate to the officer's satisfaction that the communication, or parts of it, for which privilege is claimed fulfils the conditions for it being privileged. If there is a dispute as to whether a communication (or part of a communication) is privileged which cannot be resolved during the search or inspection, the CMA officer may request that it is placed in a sealed envelope or package. The CMA officer will then discuss the arrangements for the safe-keeping of any such items pending resolution of the dispute.

7.53 Where the CMA obtains electronic material during an inspection which may contain privileged communications,¹⁷⁷ specialist CMA staff who are operationally separate from the case team will filter the material using a set of keywords designed to isolate items which are, or may be, privileged. The CMA will invite suggestions for proposed keywords. The CMA will give the party an opportunity to make representations on any amendments made to the list of proposed keywords but the final determination on the

¹⁷⁴ Sections 197 and 198 DMCC Act.

¹⁷⁵ See in particular sections 50, 54, 62 and 65(8B) Criminal Justice and Police Act 2001.

¹⁷⁶ Paragraphs 27(6) and 29(6), Schedule 5, CRA.

¹⁷⁷ This may arise, for example, where the CMA exercises its powers under Part 2 of the Criminal Justice and Police Act 2001 or where a party has given consent to the CMA taking electronic material away from the site of an inspection.

appropriateness of keywords will be made by the CMA. The CMA will typically reject the use of overly general keywords, such as 'privilege' or 'privileged', which risk capturing a large number of items that are not privileged.¹⁷⁸ If any keyword generates an unexpectedly large number of hits, the CMA will discuss with the party ways in which the keyword might be modified or replaced in order to remove any items that are not privileged, for example by adding a first name where a surname has generated a large number of hits.

- 7.54 Any items identified as potentially privileged will be provided to a lawyer not involved in the investigation, typically a member of CMA staff. Having first invited and considered the party's representations, that lawyer will consider whether these items are in fact privileged. At the end of this process, any communication or part of a communication that is considered to be privileged will not be provided to the CMA case team. The CMA will return or delete any such privileged material unless it is not reasonably practicable to separate it from the rest of the electronic material without prejudicing its lawful use, for example as evidence. Where it is not reasonably practicable to return or delete such privileged material, it will be retained and secured on a separate computer network which is not accessible by the CMA case team.¹⁷⁹

Self-incrimination

- 7.55 When the CMA requests information using its information gathering powers in Part 3 of Schedule 5 to the CRA, it cannot require a business to provide it with information or an explanation that would involve an admission that the business has infringed the law.¹⁸⁰ The CMA may, however, require the provision of factual information or the production of documents already in existence.
- 7.56 If the CMA is carrying out a criminal investigation and there are grounds to suspect that a person has committed an offence, the person will be cautioned under the Police and Criminal Evidence Act 1984 (PACE) before any questions about the offence are put to them.¹⁸¹ The person does not have to say anything, but anything they do say may be given in evidence and it may

¹⁷⁸ Other examples of overly general keywords are 'lawyer', 'in-house / external counsel', 'legal adviser', 'law firm', 'legal team', 'legal review' or 'legal advice', which are all commonly used in non-privileged communications.

¹⁷⁹ See Sections 54 and 62 Criminal Justice and Police Act 2001.

¹⁸⁰ The privilege against self-incrimination is an aspect of the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights. This is given effect in the United Kingdom by the Human Rights Act 1998.

¹⁸¹ If the grounds for suspicion are the result of questioning, the person will be cautioned under PACE before any further questions are put to them.

harm their defence if they do not mention when questioned something which they later rely on in court.¹⁸²

- 7.57 In addition, paragraph 17 of Schedule 5 to the CRA, places certain limitations on the use in criminal proceedings of information provided by a person in response to a notice under paragraph 14 of Schedule 5, the power to require the provision of information. In particular, the information provided (including any documents created in response to the notice) may not be adduced, and no questions relating to the information may be asked, by or on behalf of the prosecution, in any criminal proceedings against that person (other than for certain offences, such as obstruction, perjury, or false statements or declarations). These limitations will not apply if evidence relating to the information is adduced by or on behalf of the person providing it, or a question relating to the information is asked by or on behalf of that person.
- 7.58 The CMA is not able to advise on the circumstances in which a person can claim the privilege against self-incrimination. Anyone under investigation or who is required to provide the CMA with information should seek independent legal advice if they are in any doubt about the privilege or how it may apply to their situation. The CMA would expect a party who considers that a response to an information request would be self-incriminatory to indicate this as early as possible together with a detailed justification.

Handling confidential information

- 7.59 During the course of an investigation the CMA acquires a large volume of confidential information relating to both businesses and individuals.
- 7.60 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.
- 7.61 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 considers are likely 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 provision of confidentiality representations reflecting the extent of the material provided. Any request for

¹⁸² See Code C of the Codes of Practice issued to accompany the Police and Criminal Evidence Act 1984 (PACE).

an extension to the deadline, along with reasons for such a request, should be discussed well in advance of the deadline with the case team.

- 7.62 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.
- 7.63 In the event that the CMA does not receive any confidentiality representations (and has not been notified that any will be provided) within the deadline stated the CMA will assume that no confidentiality is being claimed in respect of the information when deciding whether it should be disclosed.
- 7.64 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.
- 7.65 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.
- 7.66 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.
- 7.67 Further information on the CMA's approach to the treatment and disclosure of information, including its approach to identifying confidential information, is available in [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#) and the [Direct Consumer Enforcement Guidance \(CMA200\)](#).

Overseas investigative assistance

- 7.68 Section 319 of the DMCC Act sets out arrangements for the provision of investigative assistance to overseas regulators. These arrangements enable

UK enforcers who have investigatory powers for consumer protection purposes under Schedule 5 to the CRA¹⁸³ to assist overseas regulators in connection with infringements of overseas consumer protection laws or requirements similar to domestic ones (as listed in Schedule 15 to the DMCC Act).

- 7.69 The CMA has published guidance on the provision of investigative assistance to overseas regulators. See Chapter 7 of Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)) for more details, including in relation to the factors that enforcers will have regard to in considering whether to provide overseas investigative assistance.

¹⁸³ See paragraph 2, Schedule 5, CRA.

Glossary of acronyms

Acronyms	
ASA	Advertising Standards Authority
BPRs	Business Protection from Misleading Marketing Regulations 2008
CCG	Consumer Concurrency Group
CCP	OECD Committee on Consumer Policy
CMA	Competition and Markets Authority
CMA6	Transparency and Disclosure: Statement of the CMA's Policy and Approach (issued by the CMA)
CMA37	Unfair Contract Terms Guidance (issued by the CMA)
CMA200	Direct Consumer Enforcement Guidance (issued by the CMA)
CMA207	Unfair Commercial Practices Guidance (issued by the CMA)
CMA208	Fake Reviews Guidance (issued by the CMA)
CoSLA	Convention of Scottish Local Authorities
CPP	Consumer Protection Partnership
CRA	Consumer Rights Act 2015
CTSI	Chartered Trading Standards Institute
DMCC Act	Digital Markets, Competition and Consumers Act 2024
EA02	Enterprise Act 2002
ECM	Enhanced Consumer Measures
FDG	Final Decision Group
ICPEN	International Consumer Enforcement Protection Network
IGE	Intergovernmental Group of Experts
NTG	National Tasking Group
NTSB	National Trading Standards Board
NTS	National Trading Standards
OECD	Organisation for Economic Cooperation and Development
OIO	Online Interface Order
PCA	Procedural Complaints Adjudicator
SRO	Senior Responsible Officer
UK	United Kingdom
UNCTAD	United Nations Trade and Development

Annex A: Consumer protection landscape

There are a number of enforcers in the UK consumer protection landscape. This Annex briefly outlines their roles, responsibilities and powers.

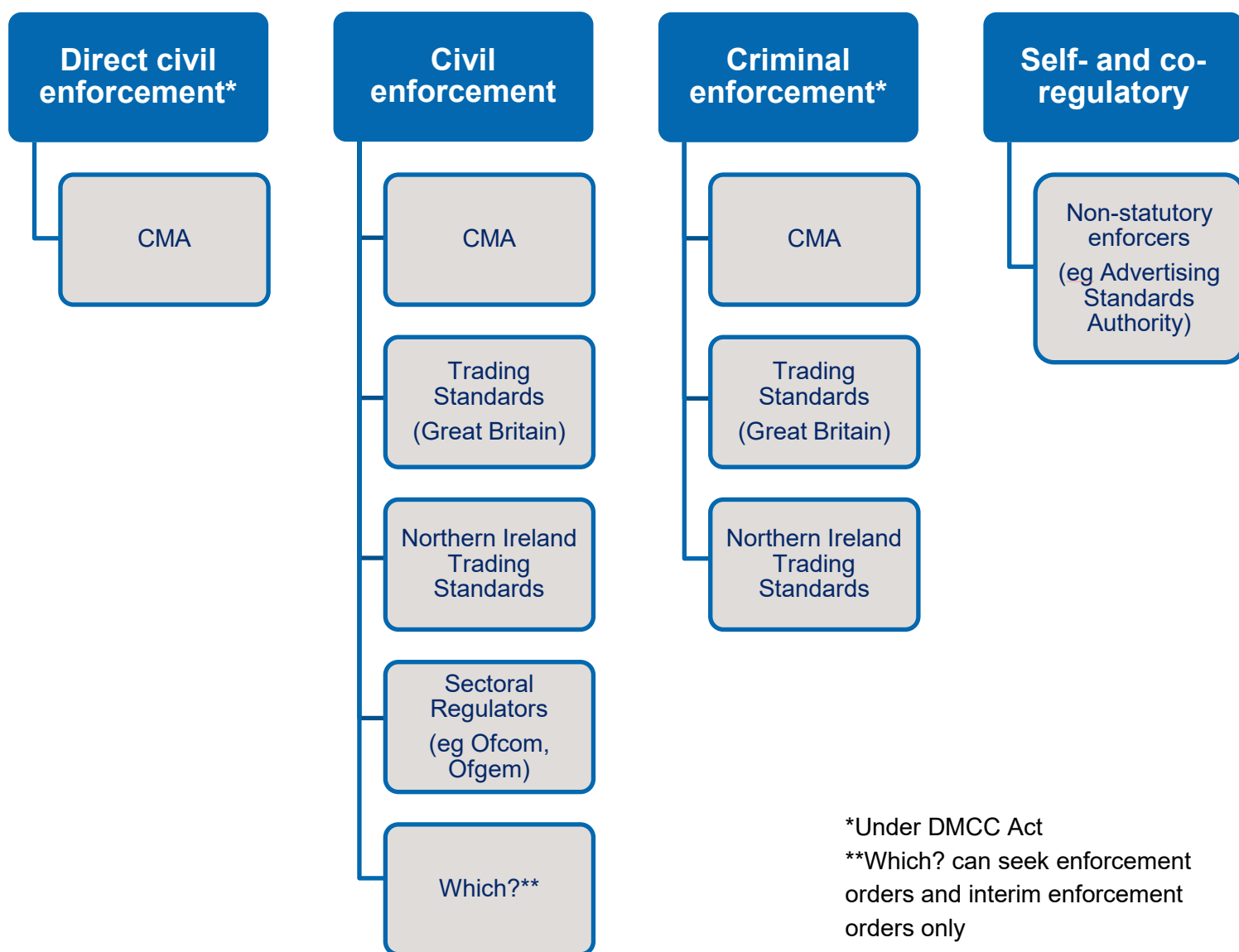


Figure 2: Consumer protection enforcers and their respective powers

Trading Standards Services

1. Trading Standards has responsibility for most consumer law enforcement, including cases at national level under the control of NTS in England and Wales, and Trading Standards Scotland in Scotland and across local authority boundaries. The CMA shares court-based powers with Trading Standards (and other enforcers) and works closely with them to promote the interests of

consumers and fair-dealing businesses, particularly via the CPP as mentioned in paragraph 4.9 above.

2. Trading Standards in England, Wales and Scotland are funded by, and accountable to, government and independent local authorities. They are required to work to national priorities set by government departments, as well as local priorities set by elected councillors which focus on the particular needs of the local community. In Northern Ireland Trading Standards is funded by and accountable to the Department for the Economy. Trading Standards also enforce a far broader range of legislation than the CMA and often have responsibility for animal health, food safety and underage sales of tobacco, alcohol, knives and fireworks.
3. Both Trading Standards and the CMA can take cases of national scope, and partnership working between the CMA and Trading Standards is accordingly important to ensure that they complement each other in taking enforcement action to protect UK consumers. The focus of the CMA is on systemic market-wide issues, while Trading Standards tackles consumer detriment more generally. An example of work that falls clearly into the remit of Trading Standards is addressing local, regional and national detriment caused by rogue traders, including doorstep crime and scams, using effective partnerships with local agencies and in-depth knowledge of local markets and businesses. Another example would be a case that involves a single large business – again whether at local, regional or national level – unless there are additional factors which make it suitable for the CMA in terms of (for instance) changing the working of a market as a whole or setting a legal precedent.
4. Part 3 of the DMCCA,¹⁸⁴ Schedule 3 to the CRA and Regulations 14 and 19 of the BPRs place a duty on Trading Standards and other enforcers to notify the CMA in relation to enforcement action, particularly before seeking and after obtaining an enforcement order. Enforcers are deemed to have notified the CMA when they have updated the Sanctions Intelligence Database administered by the National Anti-Fraud Network on behalf of NTS with details of the case.

England and Wales

5. The NTG, a sub-group of NTS with its own decision-making role, brings together representatives from across English and Welsh Trading Standards, and tasks intelligence development, assigns investigations and enforcement

¹⁸⁴ Sections 169, 170, 171 and 172 DMCC Act.

work to be undertaken nationally and regionally. The CMA attend both NTG and Board meetings in a liaison capacity.

Scotland and Northern Ireland

6. Convention of Scottish Local Authorities (CoSLA) provides political oversight and leadership to Trading Standards in Scotland through Trading Standards Scotland and is responsible for allocation of the funding provided by the Department for Business and Trade for national and regional enforcement by Trading Standards Scotland. For Northern Ireland, all Trading Standards activity takes place within the Department for the Economy, rather than as part of a local authority's remit.

The Chartered Trading Standards Institute (CTSI)

7. The [CTSI](#) is a not-for-profit membership organisation whose primary purpose is to support and represent Trading Standards professionals. The CTSI is the main source of advice for business on consumer law, although the CMA plays a lead role in issuing guidance relating to unfair contract terms and notices.¹⁸⁵ It also operates a scheme under which codes of practice are approved and monitored for consumer protection purposes in general.

Concurrent consumer enforcers

8. As well as the court-based consumer enforcement powers shared with Trading Standards, the CMA shares consumer functions with a range of other agencies. The majority of these are public authorities discharging regulatory responsibilities for particular economic sectors. Others (the ASA and the Phone-paid Services Authority) are self-regulatory agencies or (in the case of Which?) enjoy charitable status and is a private designated enforcer with more limited enforcement powers. The CMA views working closely with all these concurrent enforcers as important to avoid duplication in effort and instead to maximise the impact of interventions for consumers.
9. Through the Consumer Concurrence Group (CCG), the CMA and other regulators aim to improve clarity and share best practice on overlapping areas of responsibility, such as unfair terms legislation, especially in relation to enforcement.

¹⁸⁵ See paragraphs 2.5 to 2.9 for the CMA's role in issuing guidance.

10. The CMA chairs the CCG, which includes the following bodies.

Body	Sector
Advertising Standards Authority	Cross-economy
Civil Aviation Authority	Aviation
Competition and Markets Authority	Cross-economy
Financial Conduct Authority	Finance
Office of Communications (Ofcom)	Communications
Office of Rail and Road	Railways and Roads
Office of Gas and Electricity Markets (Ofgem)	Energy
Water Services Regulation Authority (Ofwat)	Water
Phone-paid Services Authority	Premium rate (or phone-paid) telephone services in the UK
Trading Standards authorities in Great Britain	Cross-economy
Consumers' Association (Which?)	Cross-economy
The Department for the Economy in Northern Ireland	Cross-economy
The Northern Ireland Authority for Utility Regulation	Utilities
The Information Commissioner's Office	Cross-economy

Table 2: Consumer Concurrency Group members

Citizens Advice and other consumer bodies

11. The CMA makes use of a variety of intelligence sources in considering where it is appropriate to act, both in terms of enforcement action and in conducting market studies. Important to this is information passed on by other consumer bodies, in particular Citizens Advice which runs the national consumer advice service in England and Wales, Advice Direct Scotland and Trading Standards Service Northern Ireland which manages the Consumerline advice service. These bodies provide first tier advice to consumers on how to resolve their consumer complaints with traders and where appropriate, refer issues/complaints to enforcers for enforcement consideration.
12. In addition, the CMA maintains working relations with other consumer agencies with differing geographical scope, for example the Consumer Council for Northern Ireland¹⁸⁶ and Consumer Scotland, and those consumer

¹⁸⁶ The Consumer Council is a non-departmental public body, which was set up in 1984 to promote and safeguard the interests of consumers in Northern Ireland, with specific statutory duties in relation to energy, postal services, transport, water and sewerage.

bodies with a focus on special interest groups, for example charities with a focus on issues such as age, disability, etc.

Consumers' Association (Which?)

13. The Consumers' Association is a registered charity that works to advance education and understanding on consumer issues, including through research and testing of products, as well as to promote compliance with consumer laws and raise awareness of consumer rights. As noted above, the Consumers' Association is a private designated enforcer under the DMCC Act and can take action to obtain enforcement orders from the courts to restrain infringements that harm the collective interests of consumers. Which? (a wholly owned subsidiary of the Consumers' Association) is a member of the Consumer Concurrence Group.

Other compliance partnerships

14. Alongside its formal partnership working with co-enforcers of consumer protection legislation, the CMA where appropriate works with a wide range of other agencies and groups, including self-regulatory bodies. The CMA is committed to encouraging self-regulatory solutions where they add value to its consumer protection work, as a potential alternative to enforcement action or other potential remedies to address market problems identified in its investigations. To encourage control of unfair commercial practices, the CMA is required to consider compliance through 'other established means'.

ENFORCER	DIRECT ENFORCEMENT UNDER DMCC ACT¹⁸⁷	ENHANCED CIVIL ENFORCEMENT¹⁸⁸	CRIMINAL ENFORCEMENT OF UNFAIR COMMERCIAL PRACTICES PROVISIONS¹⁸⁹	OTHER
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 (for example, Ofcom, Ofgem, Financial Conduct Authority)	No	Yes	No	Licensing and other regulatory functions
Consumers' Association (Which?)	No	No (can seek enforcement orders and interim enforcement orders)	No	Private enforcer
Non-statutory enforcers (for example, Advertising Standards Authority)	No	No	No	Self- and co-regulatory systems

Table 3: Consumer protection enforcers and their respective enforcement powers

¹⁸⁷ 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 DMCC Act.

¹⁸⁸ 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 replaces, simplifies and enhances the regime provided by Part 8 of the EA02.

¹⁸⁹ 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).