

# Consumer protection: enforcement guidance

## CMA58

### Summary of responses to the consultation

4 April 2025

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# 1. Introduction

## Overview

- 1.1 On 11 December 2024, the Competition and Markets Authority ('CMA') published draft guidance on the CMA's role and powers in relation to consumer protection.
- 1.2 The draft guidance provides a summary of CMA consumer investigatory and enforcement powers and functions. It describes:
  - (a) the principal consumer legislation under which the CMA has enforcement powers,
  - (b) the way it cooperates with partners domestically and internationally to gain compliance,
  - (c) how it decides whether to take enforcement action and what prioritisation principles it applies,
  - (d) the use of civil consumer enforcement powers by the CMA and other enforcers,
  - (e) the use of criminal consumer enforcement powers by the CMA, and
  - (f) the powers available to the CMA and other enforcers to investigate civil and criminal breaches of consumer law.
- 1.3 The consultation was open for six weeks and closed on 22 January 2025. The CMA received 9 responses to its consultation, which were from a range of stakeholders: legal firms, trade bodies, academia, private individuals and a consumer organisation. The CMA thanks all those who responded to the consultation on the draft guidance.
- 1.4 This document summarises the key feedback received from respondents to the draft guidance, the CMA's views on this feedback and the changes the CMA has made to the draft guidance as a result. This document is not intended to be a comprehensive record of all views expressed, nor to be a comprehensive response to all individual views. However, it does set out the general views received and the most significant. Non-confidential responses to the consultation are available on the consultation webpage.
- 1.5 This document should be read together with the final guidance which is published alongside this document.

## 2. Comments on the draft guidance

### General comments

- 2.1 Alongside specific comments on particular topics which will be outlined further below, respondents to the consultation made general comments about the draft guidance as a whole.

#### *Summary of responses*

- 2.2 Most respondents found the structure and clarity of the draft guidance helpful. However, one respondent indicated that Chapters 5 and 6, which set out civil and criminal enforcement powers, could be structured more clearly. Another respondent requested more information on the CMA's other powers within the competition and digital markets regimes to be provided in this guidance.
- 2.3 One respondent said that the CMA should remove language that expresses the likelihood of the CMA taking action, for example using the term 'may' instead of 'likely'. One respondent emphasised the importance of keeping the guidance under review to ensure it keeps pace with market changes. Another respondent expressed the view that the guidance sufficiently emphasised transparency.

#### *CMA's views*

- 2.4 In drafting the guidance, the CMA has considered the most appropriate structure to convey the range of CMA powers and relevant legal provisions. The majority of stakeholders were satisfied with the structure of the guidance, and the CMA has chosen to retain this structure and keep it focused on the consumer protection regime. The CMA has added a subsection describing the CMA's responsibilities regarding super-complaints, however, as this sits within the scope of the guidance.
- 2.5 The CMA has chosen to retain the use of the term 'likely' instead of 'may' to communicate clearly and provide certainty on the instances where the CMA is more likely than not to act. As has been the case with this guidance and other CMA-issued guidance, the CMA expects to review and update this guidance from time to time.

## **Approach to guidance**

### *Summary of responses*

- 2.6 One respondent sought clarification regarding the circumstances in which the CMA may depart from the relevant guidance when dealing with a breach of consumer law. Another respondent requested that the CMA expand on how it will make a decision to publish guidance and its relative status to other guidance produced by other bodies.

### *CMA's views*

- 2.7 The CMA wishes to provide predictability for businesses through its guidance. The CMA expects to follow the guidance, departing from it by exception where the particular facts of the case justify it and it is appropriate to do so. It is not possible to predict in advance what these facts might be.
- 2.8 When the CMA issues guidance, it will usually make clear the purpose and status of the guidance, as well as how stakeholders should regard the guidance, and any other resources that may be relevant to consider in conjunction with the guidance. The CMA does not consider that further changes are required to this guidance to address these points.

## **Approach to enforcement**

### *Summary of responses*

- 2.9 One stakeholder requested the guidance provide further detail on how, in practice, the CMA will apply its criteria in deciding when to take enforcement action. The stakeholder also expressed the view that when deciding on the appropriateness of enforcement action, the CMA should make an assessment of market dynamics and the likelihood of driving change. The stakeholder also requested practical examples to explain when the need to secure compensation for consumers will be an important driver for enforcement action.
- 2.10 Other stakeholders sought clarification on the circumstances in which the CMA is more likely to use its criminal powers, as well as the issues the CMA takes into account when considering the proportionality of interventions.

### *CMA's views*

- 2.11 The CMA considers the level of detail provided regarding its approach to enforcement in the guidance is appropriate. 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 will also take account of other relevant factors, such as those listed in the guidance at paragraph 3.3. The CMA will take enforcement action to secure compensation for consumers where it considers it reasonable, just and proportionate. The CMA has also committed to publishing an approach document which will include more detail on its enforcement priorities for the 12 months from 6 April 2025 when the consumer protection provisions in the DMCC Act will enter into force.

- 2.12 To increase clarity and predictability for stakeholders, the CMA has amended the wording on when it is more likely to use its criminal enforcement powers.<sup>1</sup>

## **Working with domestic enforcers**

### *Summary of responses*

- 2.13 A few respondents called for more detail on how the CMA would consult with, share data and allocate cases with other consumer protection enforcers, in particular Trading Standards.
- 2.14 One respondent requested that the guidance include a description of the role and functions of the Consumers' Association (Which?).

### *CMA's views*

- 2.15 The CMA has strong working relationships with other consumer protection enforcers and compliance partners. The guidance has been updated to reflect this by providing additional information on these relationships, as well as additional details on the consultation and data sharing mechanisms the CMA uses currently (for example concurrent regulator forums and bilateral meetings).<sup>2</sup> The CMA has also inserted a diagram to show the overlap and separation of enforcement powers across the consumer protection landscape.<sup>3</sup>
- 2.16 Separately, the guidance now includes a description of the role and functions of the Consumers' Association (Which?).<sup>4</sup>

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<sup>1</sup> Paragraph 3.3 of the Guidance.

<sup>2</sup> Paragraph 4.4 of the Guidance.

<sup>3</sup> Annex A of the Guidance.

<sup>4</sup> Annex A of the Guidance.

## Working with international enforcers

### *Summary of responses*

2.17 One respondent called for more detail on how the CMA works with other enforcers internationally, including when dealing with cross-border issues or with businesses that are based in another jurisdiction. The respondent also asked for more detail on how the CMA will take a proactive role in the intergovernmental bodies it is a member of (for example ICPEN, UNCTAD and the OECD), and provide examples of issues it may take a leadership role on.

### *CMA's views*

- 2.18 The CMA's ability to deliver value for UK consumers and businesses is enhanced by effective international cooperation where markets have cross-border or global dynamics or where unfair treatment of consumers extends across borders. The CMA has amended the guidance to include the mechanisms it uses to cooperate with enforcers internationally (for example, through cooperation agreements and overseas investigative assistance powers).<sup>5</sup> It also states that if action by an overseas enforcer will effectively address issues arising for UK consumers and businesses, the CMA will aim to avoid duplicating the activities of overseas enforcers.<sup>6</sup>
- 2.19 The CMA does not propose to change how the guidance describes the CMA's role in intergovernmental bodies, as the CMA's role within each intergovernmental body may change from time to time. Similarly, the issues it takes a leadership role on may change over time.

## Civil enforcement powers

### *Summary of responses*

2.20 One respondent suggested the guidance specify the circumstances in which an enforcer would not consult with the parties under investigation before applying to the court. Another respondent requested further clarification on the factors that would prompt an urgent application for an enforcement order. A further respondent noted it would be helpful to clarify what options needed to be exhausted before an enforcer could apply to a court for an online interface

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<sup>5</sup> Paragraph 4.16 of the Guidance.

<sup>6</sup> Paragraph 4.17 of the Guidance.



order. The respondent also asked for clarity regarding whether the CMA would seek an online interface order before taking other enforcement action if the collective interests of consumers were at risk of serious harm. Further, the respondent sought clarity on how serious harm will be measured.

- 2.21 One respondent stated it would be useful for the guidance to provide different scenarios and practical examples of when an enhanced consumer measure may be warranted.
- 2.22 One respondent asked that the guidance make explicit that when an undertaking from the respondent is accepted by the CMA and there is 'no admission' of infringement, the CMA's public communications on the matter will state this.
- 2.23 One respondent made comments about the CMA's approach to handling procedural complaints under the direct enforcement regime through a procedural complaints adjudicator. The CMA has addressed these comments in its Direct consumer enforcement guidance ([CMA200](#)), which outlines the procedural complaints process.

#### *CMA's views*

- 2.24 The CMA has provided further clarification on the circumstances in which an enforcer may not consult with the parties under investigation.<sup>7</sup> Similarly, the CMA has added an example to clarify the factors that could prompt an urgent application for an enforcement order (*'For example, where ongoing serious or irreversible harm to a number of consumers is suspected.'*)<sup>8</sup>
- 2.25 The CMA considers the level of detail in the guidance on online interface orders is appropriate. In the CMA's view, no options, including enforcement action, need to be exhausted before an enforcer can apply for an online interface order. The test for granting an online interface order must be satisfied on a case-by-case basis. The CMA will consider adding to the guidance in future to reflect decisional practice.
- 2.26 The CMA considers the level of detail in the guidance on enhanced consumer measures is appropriate but will consider adding more detail on this once it has further decisional practice to draw on for future versions of the guidance.

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<sup>7</sup> Paragraph 5.9 of the Guidance.

<sup>8</sup> Paragraph 5.12 of the Guidance.

2.27 In relation to the publicity of undertakings by the CMA, the guidance now reflects the CMA's usual practice under the current law of making clear that no admission of infringement has occurred in its publicity on the matter.<sup>9</sup>

## **Powers of investigation**

### ***Information requests***

#### *Summary of responses*

2.28 One respondent sought clarification on what constitutes 'material' in relation to the provision of materially false or misleading information, without a reasonable excuse. A few respondents raised the impact on larger businesses of responding to information requests and that timeframes for responding to such requests are too short.

#### *CMA's views*

2.29 The CMA considers the level of detail provided on written information requests is appropriate, as what constitutes 'materially' false or misleading information is determined on a case-by-case basis.

2.30 The CMA recognises the impact on businesses of all sizes in responding to information requests. The CMA aims to strike the right balance between the safeguards for respondents and the need to progress cases in the public interest. The CMA will always endeavour to act reasonably in dealing with businesses of all sizes, including when setting deadlines for responses to information requests. The guidance specifies that in appropriate cases, the CMA may seek to give the recipient 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.

### ***Power to enter premises***

#### *Summary of responses*

2.31 One respondent raised several concerns about the power to enter business premises without a warrant, which is a power available to the CMA and other domestic enforcers under the Consumer Rights Act 2015 (CRA). The

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<sup>9</sup> Paragraph 5.13 of the Guidance.

respondent highlighted that the warrant process acts as an important check and balance on a power and considered that the power to enter business premises without a warrant should only be used where there is a reasonable suspicion of non-compliance or infringement. The respondent also raised concern about the timeframe of the notice period (minimum two working days) that the enforcer must give the occupier of the premises before carrying out a routine inspection.

### *CMA's views*

- 2.32 The CMA has amended the guidance to provide more clarity on the circumstances in which the CMA may use its power to enter premises without a warrant.<sup>10</sup> The grounds on which the CMA may enter premises (with or without a warrant, and with or without notice) are set out in the CRA. The CMA notes that the CRA contains a generic set of powers which apply to multiple different enforcers, including those that routinely engage with businesses at a local level. Whilst the CMA shares the same generic set of investigatory powers, it may be less likely to visit business premises as a matter of routine than local enforcers (who often have on-going relationships with local businesses and engage with them at their premises on a regular basis).
- 2.33 The CMA anticipates that it will typically use its powers to enter premises without a warrant where the circumstances mean it is more efficient to carry out a pre-arranged 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 for the CMA to review records at a business' premises rather than engaging in lengthy written correspondence as to their contents. Where the CMA is entering premises to carry out a 'routine inspection,' the CMA will act in accordance with the legislation including by giving advance notice (unless the occupier waives this requirement).
- 2.34 The two working days' notice period is a minimum timeframe for providing notice. 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

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<sup>10</sup> Paragraphs 7.26 to 7.35 of the Guidance.

appropriately managed. These clarifications have been added to the guidance.<sup>11</sup>

## ***Handling confidential information***

### *Summary of responses*

- 2.35 One respondent considered that the provisions concerning the handling of confidential information in instances where the CMA proposes to disclose the information were insufficient. The respondent suggested that the guidance should more closely mirror information handling procedures under the competition regime.

### *CMA's views*

- 2.36 The CMA considers that the procedures set out in the guidance do align with competition regime information handling procedures, as well as the strict rules under Part 9 of the Enterprise Act 2002 and data protection law governing the use and disclosure of information obtained by the CMA during the course of an investigation. These legal frameworks apply across the CMA's tools.
- 2.37 One key difference between how the regimes are likely to work in practice, however, is that in the consumer protection regime, the CMA is more likely to receive complaints from a large number of consumers or small business complainants, than in the competition regime. Such complaints are unlikely to contain confidential information, and so taking this into account, it may not generally be necessary or practicable for the CMA to contact complainants individually seeking confidentiality representations.

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<sup>11</sup> Paragraph 7.33 of the Guidance.

### **3. List of respondents**

- 3.1 Anonymous
- 3.2 Centre for Competition Policy, University of East Anglia
- 3.3 CMS Cameron McKenna Nabarro Olswang LLP
- 3.4 Euclid Law
- 3.5 Freshfields LLP
- 3.6 Propertymark
- 3.7 techUK
- 3.8 Trust Alliance Group
- 3.9 Which?