

# **Guidance on applications for leniency in cartel cases**

## **Consultation document**

29 April 2025

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# 1. Introduction and background

## Introduction

- 1.1 The Competition and Markets Authority ('CMA')<sup>1</sup> is consulting on proposed changes to its leniency guidance: OFT1495: Applications for leniency and no-action in cartel cases (referred to in this consultation document as the **Current Guidance**).<sup>2</sup>
- 1.2 The purpose of the CMA is to promote competition and protect consumers. The CMA helps people, businesses, and the UK economy by promoting competitive markets and tackling unfair behaviour. Effective competition leads to lower prices, as well as more innovation, choice, quality, security of supply, productivity, investment, and economic dynamism. The CMA is committed to tackling and deterring anti-competitive activity so that competitive, fair-dealing businesses can innovate and thrive, boosting the economy, whilst individuals can be confident that they are getting great choices and fair deals.
- 1.3 Cartels are a particularly damaging form of anti-competitive activity. Cartels can lead to higher prices and deprive consumers of genuine choice and fair deals, as well as reducing incentives for business efficiency, investment and innovation. Cartel detection and enforcement are therefore important tools for removing barriers to growth and promoting a level playing field where innovative and efficient businesses can compete fairly for the benefit of consumers and the economy.
- 1.4 The CMA's leniency policy plays an important role in the CMA's strategy to deter anti-competitive conduct by supporting and facilitating the effective detection and enforcement of cartel activity.<sup>3</sup> In addition to helping to uncover cartels that might otherwise go undetected (given that, by their very nature, cartels are generally conducted in secret), the policy encourages firms that have been involved in wrongdoing to provide first-hand direct evidence and to cooperate proactively with the CMA. This enables the CMA to take action against anti-competitive activity more efficiently, thereby deterring anti-competitive conduct, in the public interest. In return, businesses that are granted leniency may benefit from immunity from, or a reduction in, financial penalties. Similarly, cooperating individuals may receive immunity from

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<sup>1</sup> The CMA is the UK's economy-wide competition and consumer authority and works to promote competition for the benefit of consumers, both within and outside the UK. Its aim is to make markets work well for consumers, businesses and the economy as a whole.

<sup>2</sup> <https://www.gov.uk/government/publications/leniency-and-no-action-applications-in-cartel-cases>.

<sup>3</sup> The CMA also has a programme of activities aimed at the proactive detection of cartels.

criminal prosecution and/or protection from director disqualification proceedings.

- 1.5 The Current Guidance provides detailed guidance on the application of the CMA's leniency policy.<sup>4</sup> The Current Guidance is accompanied by two 'quick guides' which provide a shorter overview of the CMA's leniency policy.<sup>5</sup> This consultation relates to proposed changes to the Current Guidance and the 'quick guides' (the latter of which have been renamed 'short guides').

## Background

- 1.6 The Competition Act 1998 (the '**CA98**') prohibits agreements and concerted practices between 'undertakings' (ie businesses) and decisions by associations of undertakings (eg trade associations) which have as their object or effect the prevention, restriction or distortion of competition within the UK<sup>6</sup> (the '**Chapter I prohibition**'). The CMA may impose penalties on companies found to have been in breach of the Chapter I prohibition of up to 10% of their global turnover.
- 1.7 Section 188 of the Enterprise Act 2002 (the '**EA02**')<sup>7</sup> makes it a criminal offence for an individual to agree with one or more other persons that two or more undertakings will engage in certain prohibited cartel arrangements, namely price fixing, market sharing, bid-rigging, or limiting output.<sup>8</sup>
- 1.8 The CMA has statutory powers to apply to the court for a Competition Disqualification Order ('**CDO**') which the court must make against any current or former director of a company that has committed a breach of competition law, where the court considers that that person's conduct as a director makes him or her unfit to be concerned in the management of a company. The CMA may also accept a Competition Disqualification Undertaking ('**CDU**') from a

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<sup>4</sup> The leniency policy is also applied by the full members of the UK Competition Network, which have concurrent competition powers (that is the Office of Communications, the Gas and Electricity Markets Authority, the Utility Regulator (Northern Ireland), Water Services Regulation Authority, the Office of Rail and Road, the Civil Aviation Authority, the Financial Conduct Authority and the Payment Systems Regulator).

<sup>5</sup> See OFT1591i: [Quick Guide to Cartels and Leniency for Individuals](#), July 2013 and OFT1495b: [Quick Guide to Cartels and Leniency for Businesses](#), July 2013.

<sup>6</sup> Section 2 CA98.

<sup>7</sup> As amended by section 47 of the Enterprise and Regulatory Reform Act 2013.

<sup>8</sup> The offence is subject to certain exclusions and defences. The maximum penalty on conviction on indictment is five years imprisonment and/or an unlimited fine. More details on the criminal cartel offence, including the circumstances in which proceedings for the offence are likely to be instituted, can be found in CMA9: [Cartel Offence Prosecution Guidance](#), March 2014.

director either instead of applying for a CDO or, where a CDO has already been applied for, instead of continuing with the application.<sup>9</sup>

- 1.9 The Office of Fair Trading ('OFT')<sup>10</sup> published the Current Guidance in July 2013.<sup>11</sup> Since then, the Current Guidance has been supplemented by an information note, published in November 2017, on arrangements for the handling of leniency applications in the regulated sectors (the '**2017 Regulated Sectors Information Note**'),<sup>12</sup> and by an addendum, published in September 2020, addressing Type B applications in resale price maintenance ('RPM') cases (the '**2020 RPM Addendum**').<sup>13</sup>
- 1.10 The CMA has had the benefit of over ten years' experience of applying the Current Guidance. During this time, it has also seen significant developments in the cartel enforcement landscape, including:
- (a) an increase in the number of cartel investigations conducted in parallel with overseas agencies, particularly since the exit of the UK from the European Union;
  - (b) the increased application of the competition director disqualification regime by the CMA;
  - (c) the UK Government's implementation of Directive 2014/104/EU (the '**Damages Directive**'); and
  - (d) most recently, the introduction of a new debarment regime governed by the Procurement Act 2023 (the '**PA23**').
- 1.11 As set out more fully below, the CMA is now proposing a number of amendments to the Current Guidance to ensure that the revised guidance reflects changes in relevant legislation, as well as developments in the CMA's policy, experience and processes. Additionally, we have considered how the revised guidance could best ensure that the incentives offered by the CMA's leniency regime are in the right place to support the CMA's enforcement objectives. The CMA is, in particular, concerned to ensure that leniency continues to play an important part in both (i) bringing matters for potential enforcement action to the CMA's attention (Type A applications) and (ii)

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<sup>9</sup> The CMA's powers are contained in sections 9A to 9E of the Company Directors Disqualification Act 1986 in respect of England, Wales and Scotland, and Articles 13A to 13E of the Company Directors Disqualification (Northern Ireland) Order 2002 (SI 2002/3150) in respect of Northern Ireland.

<sup>10</sup> The OFT was one of the two predecessor organisations (alongside the Competition Commission) which combined in 2014 to become the CMA.

<sup>11</sup> The Current Guidance was subsequently adopted by the CMA Board at the CMA's inception in 2014.

<sup>12</sup> [Information note: Arrangements for the handling of leniency applications in the regulated sectors](#)

<sup>13</sup> [Addendum to OFT1495](#). This sets out the way in which the CMA exercises its discretion in relation to the grant of Type B leniency in RPM cases.

ensuring investigations are progressed effectively and efficiently (all applications, including Types B and C).

- 1.12 The CMA is keen to ensure that its leniency policy is accessible to all businesses and individuals to whom it may be of relevance. To that end, the CMA has taken the opportunity to make the revised guidance more user-friendly, for example by updating the structure of Current Guidance to follow the natural chronology of a leniency application and any subsequent investigation and enforcement action, and by simplifying the content where possible. For example, we have streamlined and simplified the overview flowcharts for immunity and leniency applications so that they better assist applicants and potential applicants to see, at a glance, the main stages of the leniency process and what to expect at each of these. Additionally, the CMA has updated the quick guides to cartels and leniency for both businesses and individuals (renamed 'short guides'), with the aim of providing a shorter overview of the CMA's leniency policy for individuals and businesses who are considering whether to apply for leniency.
- 1.13 In updating the Current Guidance, the CMA aims to provide clarity, predictability and transparency for applicants and their legal advisers about the CMA's leniency policy and process. Furthermore, as is noted at various points throughout the revised guidance, applicants are welcome to engage with the CMA during the leniency process if they require further clarity on specific points relating to the CMA's leniency regime. This is part of the CMA's commitment to accessibility, approachability, and constructive and open engagement with leniency applicants.
- 1.14 The draft revised text of the Current Guidance, issued alongside this consultation document, is referred to in this consultation document as the **Draft Revised Guidance**. This consultation document explains the nature of, and the reasons for, the amendments to the Current Guidance that are proposed in the Draft Revised Guidance. When finalised, the Draft Revised Guidance is intended to replace the Current Guidance.
- 1.15 The CMA is keen to engage with stakeholders and is inviting comments on the Draft Revised Guidance and the short guides by Monday 9 June 2025. Specific questions for consideration are included at the end of this document but general observations are also welcomed.

## 2. Scope of the consultation

- 2.1 This consultation seeks the views of interested parties on the Draft Revised Guidance and the short guides, which are published separately on the consultation page.
- 2.2 After the consultation, the CMA will prepare the final version of the Draft Revised Guidance (the '**Final Revised Guidance**'), taking into account the feedback received as part of this consultation.
- 2.3 The CMA proposes that the Final Revised Guidance will take effect from the date of its publication and as such, will apply to any applications received on or after its date of publication. However, the CMA proposes that, subject to paragraph 2.5 below, the Current Guidance will continue to apply, even after the date of publication of the Final Revised Guidance, to all applications made prior to this date, for the entire duration of the application. For the avoidance of doubt, during the consultation period and until the date of publication of the Final Revised Guidance, the CMA will continue to apply the Current Guidance to all existing applications and to all applications made during that time.
- 2.4 Applicants who apply for leniency/immunity prior to the date of publication of the Final Revised Guidance (or have already applied) may nonetheless find it helpful to refer to certain aspects of the Final Revised Guidance, as many changes proposed here are intended to clarify or give additional detail regarding the CMA's existing policy and practices rather than representing substantive changes to policy, and some changes reflect new legislation which is already in force, such as the Damages Directive or the debarment regime under the PA23 (which came into force in February 2025). However, it should be noted that the CMA proposes that there will be no changes to the levels of protection available to Type B and Type C leniency applicants who apply for leniency/immunity before the date of publication of the Final Revised Guidance. Similarly, the CMA proposes that the changes to the process for admission of participation in cartel activity that are proposed in the Draft Revised Guidance (and outlined below) will not be applicable to applications made before the date of publication of the Final Revised Guidance.
- 2.5 The CMA proposes that the pro-forma agreements in the Draft Revised Guidance will be used for leniency agreements signed on or after the date of publication of the Final Revised Guidance, notwithstanding that the relevant application might have been made before the date of publication of the Draft Revised Guidance.



### 3. CMA commentary on proposed changes

3.1 These are the principal changes proposed to the Current Guidance.

- (a) Updates to the definition of cartel activity to include further examples of conduct not expressly listed in the Current Guidance, in order to align it with CMA practice, latest case law and other recently published CMA guidance, whilst also retaining flexibility to grant leniency covering conduct which is not expressly listed but that may be considered to fall within the policy in the future.
- (b) Changes to the requirement for admission of participation in cartel activity by a leniency applicant, with such admission not being required unless and until a leniency agreement is signed, thus reducing the extent of up-front leniency obligations for applicants.
- (c) Updates to the levels of protection available to Type B and Type C leniency applicants, including:
  - (i) removal of the availability of upfront immunity from financial penalties for corporate Type B applicants and clarification that, while corporate Type B leniency discounts of up to 100% are available, in practice they are unlikely to exceed 75% (and may be significantly lower);
  - (ii) removal of automatic CDO immunity for directors of corporate Type B and Type C leniency applicants, and replacing this with discretionary immunity; and
  - (iii) updates and clarifications in relation to the provision of criminal immunity for individuals.
- (d) Provision for the use of an online process as an alternative to the oral application process outlined in the Current Guidance.
- (e) Incorporation of the arrangements set out in the CMA's 2017 Regulated Sectors Information Note, as well as the 2020 RPM Addendum, which covers the exercise of the CMA's discretion in relation to the grant of Type B leniency in RPM cases.
- (f) Other updates arising from, amongst others:
  - (i) the removal of dishonesty from the criminal cartel offence (set out at section 188(1) of the EA02, as amended by section 47(2) of the Enterprise and Regulatory Reform Act 2013 ('**ERRA**'));

- (ii) the transfer of certain functions from the OFT to the CMA, pursuant to ERRA;
- (iii) the UK's implementation of the Damages Directive;<sup>14</sup>
- (iv) the UK's exit from the European Union;
- (v) the introduction of the Digital Markets, Competition and Consumers Act 2024 ('**DMCCA**'); and
- (vi) the introduction of a new debarment regime governed by the PA23.

## Updates to definition of cartel activity

3.2 The Draft Revised Guidance introduces a number of proposed amendments to the definition of cartel activity (set out at paragraphs 2.2 to 2.5 of the Draft Revised Guidance). These are aimed at providing further clarity and predictability to prospective applicants on the type of conduct that falls within the scope of the CMA's leniency policy, and reflect:

- (a) the CMA's decisional practice in terms of types conduct that have been treated as within the scope of the policy;
- (b) the latest case law, including in relation to relevant 'by object' infringements involving cartel activity;<sup>15</sup> and
- (c) CMA guidance relating to cartels, including recent CMA guidance on horizontal agreements<sup>16</sup> and on green agreements.<sup>17</sup>

3.3 The CMA proposes to retain (at paragraph 2.2 of the Draft Revised Guidance) the core definition of cartel activity set out at paragraph 2.2 in the Current Guidance, but we have added some proposed wording, including a specific reference to the fixing or coordination of purchase prices.

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<sup>14</sup> The CMA recognises that possible exposure to private damages actions may be an important consideration for prospective leniency applicants. As set out in more detail below, the Draft Revised Guidance reflects the changes introduced to the private damages regime by the Damages Directive as these relate to the disclosure protection for leniency statements. In this regard, any further changes to the private damages regime would require legislative change. The potential for further changes is not covered as part of this consultation.

<sup>15</sup> Including, for example, *Lexon v CMA* [2021] CAT 5; *Infineon Technologies v Commission*, T-758/14 RENV, EU:T:2020:307.

<sup>16</sup> CMA184: *Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements*, August 2023 ('**CMA184**').

<sup>17</sup> CMA185: *Green Agreements Guidance: Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements*, October 2023.

3.4 Additionally, the CMA proposes to expand the non-exhaustive list of examples of cartel activities set out at paragraph 2.4 of the Draft Revised Guidance, specifically to include the following conduct (including conduct in respect of which the CMA has previously granted leniency):

- (a) agreements between competitors to fix or coordinate prices for the purchase, as well as the supply, of goods and services, including agreements to fix or coordinate wages or other trading conditions (including in relation to intellectual property rights);
- (b) the anti-competitive exchange or sharing of information regarding current, as well as future, pricing intentions, as well as communication that takes place indirectly via a third party (including a platform operator / optimisation tool provider / other person enabling the use of a shared algorithm), a common agency (for instance a trade organisation), or a supplier or customer, or in certain circumstances, communication via public announcements; and
- (c) arrangements to restrict the commercial activities of competing undertakings, including:
  - (i) arrangements between undertakings to refrain from approaching or hiring each other's employees (ie no-poach arrangements);
  - (ii) paying a competitor to delay the launch of competing products (ie pay-for-delay); and
  - (iii) arrangements restricting competing undertakings' abilities or incentives to innovate in order to meet or exceed sustainability goals or to achieve that goal more quickly.

3.5 The Draft Revised Guidance clarifies, at paragraph 2.4(b), that the exchange or sharing of information may be considered to amount to cartel activity, and thus be covered by the CMA's leniency policy, where it has as its object the prevention, restriction or distortion of competition. The CMA has not set out further detail in the Draft Revised Guidance on specific cases where the exchange or sharing of information has been considered to fall within the CMA's leniency policy, as this has typically depended on the context of the particular exchanges in each case. However, the Draft Revised Guidance signposts readers to guidance on anti-competitive information exchanges which is set out in the CMA's Horizontal Agreements Guidance (CMA184).

3.6 The Draft Revised Guidance does not include all types of cartel activity that may be covered by the CMA's leniency regime. Indeed, the interplay between paragraphs 2.2 and 2.4 of the Draft Revised Guidance means that the CMA

retains flexibility to grant leniency in future cases in respect of conduct that does not appear in the list of examples at paragraph 2.4 of the Draft Revised Guidance but which it considers would constitute cartel activity for the purposes of the leniency policy.

- 3.7 To the extent that prospective applicants are uncertain about whether specific conduct falls within the leniency policy, they and their legal representatives will continue to be able to seek confidential guidance from the CMA prior to making an application (see chapter 4 of the Draft Revised Guidance), and are encouraged to do so.

### **Changes to the process for the admission of participation in cartel activity**

- 3.8 The Current Guidance includes a requirement for leniency applicants to confirm that they have a 'genuine intention to confess' at the outset of a leniency application (see paragraph 4.2(c)), which is often understood by potential applicants as being a requirement to admit to having participated in cartel activity. Under the Draft Revised Guidance, the CMA proposes that such an admission will not be required unless and until a leniency agreement is signed (see paragraph 2.6(d)).<sup>18</sup> Nevertheless, the Draft Revised Guidance provides that the requirement to maintain continuous and complete co-operation means that applicants must not act in a way which would be inconsistent with such an admission (that is, they must continuously have a genuine intention to admit to cartel activity should the CMA conclude that the reported conduct amounts to an infringement).<sup>19</sup>
- 3.9 This proposed change aims to address specific concerns from a number of legal practitioners who have indicated that early admission can be a significant disincentive to apply for leniency, in particular Type A immunity, given that, at the point of making a leniency application, the precise scope of the conduct at issue may not yet be clear. The proposed change is therefore considered to be a more proportionate approach to the admission of participation in cartel activity.
- 3.10 The requirement not to behave in a way that is inconsistent with an admission is necessary as the CMA is also conscious of the need to deter potential applicants from making speculative or 'just in case' applications.

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<sup>18</sup> This is usually just before the issue of a Statement of Objections, by which point the scope and character of the reported conduct will be clearer and may well be narrower than at the outset.

<sup>19</sup> See paragraphs 2.8 and 5.2(c) in the Draft Revised Guidance. An example of such inconsistent behaviour would be an applicant attempting to suggest that their conduct may not have amounted to cartel activity.

## Updates to levels of protection for Type B/C applicants

### ***Removal of availability of upfront immunity for Type B applicants and clarification of Type B and Type C leniency discounts for corporate applicants***

- 3.11 The Draft Revised Guidance proposes the following changes to the levels of protection for corporate Type B and Type C applicants:
- (a) to remove the availability of the grant of immunity from financial penalties for corporate Type B applicants at the time of an application (ie upfront Type B corporate immunity);
  - (b) to clarify that, for corporate Type B applicants, while a maximum discount from financial penalties of 100% may be available, in practice discounts are unlikely to be above 75%, and may indeed be significantly lower; and
  - (c) to clarify that corporate Type C applicants may be given discounts from financial penalties that are significantly lower than the maximum discount of 50%.
- 3.12 In relation to corporate Type B applicants, the proposed changes are intended to reflect the CMA's approach under the Current Guidance, namely that upfront immunity from financial penalties has never been granted to Type B applicants, and that discounts awarded to corporate Type B applicants under the Current Guidance have ranged from 20% to 70%. The aim of these changes is to provide greater certainty and predictability to applicants about what they can expect to receive if they apply for leniency.
- 3.13 The CMA's practice under the Current Guidance reflects the fact that leniency discounts are calculated primarily based on the value added by the leniency applicant to the CMA's investigation. It is unrealistic to expect that it would be sufficiently clear at the outset that an application made in relation to a pre-existing investigation<sup>20</sup> would be capable of adding sufficient value to merit the grant of upfront Type B immunity (ie at the time an application is made). Nevertheless, retaining the possibility of granting a 100% reduction in penalties for corporate Type B applicants (later in the process, once the investigation is further progressed and to reflect the CMA's assessment of the value added by the applicant) ensures that the CMA will be able to grant such a reduction where an applicant is considered to have added sufficient value to

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<sup>20</sup> By definition, such an investigation means that the CMA already has reasonable grounds to suspect the cartel activity in question.

the investigation. We expect that this is only likely to arise in exceptional circumstances.

- 3.14 The CMA's practice under the Current Guidance, as regards Type C applicants, has been to award discounts that have ranged from 15% to 50%. Therefore, the clarification that corporate Type C applicants' leniency discounts may be significantly lower than 50% is also in accordance with the CMA's current practice and aims to provide greater predictability to applicants.

### ***Removal of the potential availability of 'leniency plus' for Type B applicants***

- 3.15 The Current Guidance sets out, at paragraphs 9.1 to 9.4, provisions relating to the grant of 'leniency plus', ie an additional reduction granted in relation to penalties for cartel conduct in one market (the first market) because of a successful application in a second market. Under the Current Guidance, both Type A and Type B applicants in the second market are potentially able to benefit from leniency plus in the first market. However, in the Draft Revised Guidance, the CMA proposes to remove this possibility in respect of Type B applicants in the second market (see paragraph 9.17 in the Draft Revised Guidance). This reflects the fact that the CMA has not, in practice, granted leniency plus to Type B applicants in the second market under the Current Guidance. The reason for this is that the leniency plus reward is granted in recognition of an applicant bringing new conduct to the CMA's attention (which, by definition, the CMA would otherwise not have known about). Given the nature of Type B leniency/immunity (i.e. that it is granted where the CMA is conducting a pre-existing investigation into the reported cartel activity, so would already have an awareness of the activity in question), the CMA does not consider that it is in the public interest to grant a leniency plus discount in relation to a Type B application.

### ***Updates to the availability of immunity from Competition Disqualification Orders***

- 3.16 Since the Current Guidance was published in 2013, the CMA has gained significant experience of the competition disqualification regime. Following its first competition disqualification case in 2016, the CMA has pursued CDOs or CDUs in nine separate cases, resulting in 28 CDUs and one CDO. CDOs are now considered in every investigation launched by the CMA under the CA98.
- 3.17 In light of this experience of applying the competition disqualification regime, the CMA is keen to ensure that the right balance is struck between the CMA's public policy objectives of, on the one hand, maintaining incentives for potential immunity and leniency applicants to come forward by retaining appropriate CDO protections for cooperating current and former directors,

whilst, on the other hand, protecting the public by removing unfit directors and deterring anti-competitive conduct. In addition, the CMA considers that the provision of automatic CDO protection in respect of Type B and Type C leniency applicants may, in some cases, disincentivise Type A immunity applications by not maintaining a sufficiently wide gap between the protections available to Type A applicants and those available to Type B and C applicants.

3.18 The Draft Revised Guidance therefore proposes to update the CMA's position on the availability of immunity from CDOs such that:

- (a) for corporate applicants, CDO immunity remains automatic for all cooperating current and former directors (including shadow and de facto directors) of successful corporate Type A immunity applicants, but would only be available on a discretionary basis for directors of a successful corporate Type B or Type C leniency applicant; and
- (b) for individual applicants, CDO immunity is automatic for successful individual Type A immunity applicant directors, and discretionary for successful individual Type B and Type C applicant directors.

3.19 The CMA proposes to clarify the nature of the cooperation expected from directors in order to benefit from CDO immunity in order to provide greater predictability to individuals. This is set out at paragraphs 12.41 to 12.48 in the Draft Revised Guidance (which also address the cooperation expected from individuals in order to benefit from criminal immunity) and reflects the CMA's practice under the Current Guidance.

3.20 Finally, the CMA proposes to clarify the process for removing CDO immunity from non-cooperating directors and this is set out at paragraphs 12.63 to 12.66 in the Draft Revised Guidance.

3.21 The CMA wishes to maintain incentives for Type B and Type C applications (including from individuals), as well as for individual directors of corporate leniency applicants to cooperate with the CMA, as the CMA considers that this supports its ability to reach robust and efficient case outcomes. Therefore, in the Draft Revised Guidance, the CMA has proposed not to remove immunity entirely from Type B or Type C leniency applicants (including individual applicant directors).

3.22 As concerns individual applicants more generally, whilst the CMA recognises that the majority of leniency applications are likely to be made by corporate applicants, it is also keen to incentivise applications from individual applicants, not least because the CMA considers that the incentivisation of individual applications can, in turn, encourage corporate applications. The CMA has

therefore sought to set out more clearly the guidance that applies to individual applicants (as well as to cooperating current or former employees or officers of a corporate applicant) under the leniency process by explaining that process in a new, single chapter: Chapter 12 in the Draft Revised Guidance. Chapter 12 explains the interplay between cartel investigations, the CDO process and criminal proceedings from the perspective of individuals, and sets out more clearly than is the case in the Current Guidance the eligibility of individual applicants for Type A, Type B and Type C applications.

### ***Updates and clarifications in relation to the provision of criminal immunity***

- 3.23 The CMA does not propose to make material changes to the provisions contained in the Current Guidance in respect of criminal immunity. However, in order to make these provisions (as well as the provisions relating to the cartel offence and criminal cartel investigations more generally) more accessible, the CMA proposes to bring these together into a single chapter: Chapter 13 in the Draft Revised Guidance.
- 3.24 Additionally, the CMA proposes to explicitly state in the Draft Revised Guidance, at paragraph 2.44 and at Chapter 13, that the CMA is unlikely to exercise its discretion to grant criminal immunity in relation to Type B and Type C leniency applications (including in relation to applications for individual Type B immunity). Consistent with the operation of the wider criminal justice system, the CMA considers that the public interest in pursuing offenders is unlikely to be outweighed by the level of assistance that any individual will be able to provide in a Type B or Type C situation, taking account of the preparation that the CMA will have undertaken prior to the launch of an investigation. This change aligns the Draft Revised Guidance with the experience of the CMA's practice to date, namely that the CMA has not granted discretionary criminal immunity following the launch of an investigation.
- 3.25 The Draft Revised Guidance also refers, at footnote 194, to the CMA's recent designation as a prosecutor for the purpose of section 73 of the Serious Organised Crime and Policing Act 2005 (as amended by the Sentencing Act 2020) ('**SOCPA**'). This designation will facilitate the cooperation of individuals who were engaged in the criminal cartel conduct under investigation but who have not been granted immunity from prosecution. Under the terms of what is referred to as a 'SOCPA agreement', in exchange for an individual's assistance, the CMA will ensure that the full details of such assistance are placed before the court at which the individual appears for sentencing, after they have entered a guilty plea to the offence. Such an individual is termed an



‘assisting offender’ and will often be expected to give evidence for the prosecution as part of the SOCPA agreement.<sup>21</sup>

- 3.26 For the avoidance of doubt, no amendments are proposed to the provisions relating to the grant of criminal immunity in relation to Type A immunity applications (including in relation to applications for individual Type A immunity).

## **Use of SharePoint Online tool for applications**

- 3.27 The CMA appreciates that some applicants may have legitimate concerns that their leniency statements may become subject to discovery in civil damages proceedings in other jurisdictions and as such prefer not to submit leniency applications in writing.
- 3.28 Under the Current Guidance, the entire application process can therefore be oral if requested and provided there is good reason for it (see paragraphs 4.31 to 4.32 of the Current Guidance).
- 3.29 The current oral process requires the applicant (or its legal adviser) to arrange a video call, or attend the CMA’s premises, and deliver the applicant’s leniency statement orally. This is then transcribed by an external transcription provider, checked for accuracy by the CMA, and then provided to the applicant (or its legal adviser) for further accuracy checks. As such, it can be time-consuming and resource-intensive for both the applicant and the CMA.
- 3.30 The CMA has therefore developed an online application procedure via SharePoint Online (referred to as an ‘online’ application in the Draft Revised Guidance - see paragraphs 7.22 to 7.23 of the Draft Revised Guidance). The SharePoint Online tool is intended to facilitate a more efficient and streamlined process for both the applicants and the CMA and is proposed as the default method of receiving applications that would otherwise be made orally.
- 3.31 Key features of the SharePoint Online tool are as follows.
- (a) The applicant<sup>22</sup> is temporarily granted access to a document or documents hosted on a SharePoint Online site created by the CMA. This site can only be accessed by a limited number of individuals

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<sup>21</sup> Note that, in Scotland, a similar, but not identical, statutory framework was established in relation to assistance by offenders, by sections 91-97 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. The Draft Revised Guidance sets out further details on this at paragraph 13.9.

<sup>22</sup> References to ‘the applicant’ in this paragraph also encompass the applicant’s legal advisers.

representing the applicant, who are specifically granted access by the CMA for a limited period of time.

- (b) Applicants can communicate the content of leniency statements to the CMA by transcribing them into the document(s) to which they have temporary access.
- (c) Applicants are able to use the copy and paste and download functions (as well as other standard formatting tools), should they wish to do so.
- (d) During the limited period of time in which applicants have access to the document(s) on SharePoint Online, the document(s) can be reviewed and edited online, without the applicant being required to download the document(s) to the applicant's own systems.
- (e) When the applicant notifies the CMA that it has finished typing the document on SharePoint Online, access to the document, and to the site more generally, is revoked, and the applicant no longer has access to them.

3.32 The CMA has been using the SharePoint Online tool in practice in a significant number of recent applications to receive leniency statements, and to give access to documents in the context of leniency applications.<sup>23</sup>

3.33 The CMA welcomes any further feedback from parties who have used the CMA's SharePoint Online site, either together with any response on the Draft Revised Guidance or separately.

## **Other updates bringing Current Guidance up to date**

### ***Incorporation of RPM Addendum and 2017 Regulated Sectors Information Note***

3.34 The Draft Revised Guidance incorporates the 2020 RPM Addendum at paragraph 2.21, as well as the arrangements set out in the 2017 Regulated Sectors Information Note.

### ***Changes resulting from the UK's exit from the European Union***

3.35 The Draft Revised Guidance reflects the fact that the UK has now left the European Union, and as a result the CMA is no longer a member of the

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<sup>23</sup> For leniency applications received in the 12-month period up to the end of March 2025, the majority of leniency statements which were not received in writing, were submitted by applicants using the SharePoint Online tool, as opposed to the oral procedure.

European Competition Network, and the status of EU law and the application of EU principles in the UK have changed.<sup>24</sup>

- 3.36 For example, the UK's departure from the EU has implications for a number of areas including information sharing with the European Commission and European Union Member States' national competition authorities. As a consequence of EU Exit, the CMA's commitment that leniency information will not be passed to an overseas agency without the consent of the provider now also extends to the European Commission and to EU national competition authorities. This is reflected in paragraph 10.24 of the Draft Revised Guidance.
- 3.37 The Draft Revised Guidance omits text which is included in the Current Guidance but which has been withdrawn in accordance with the CMA's *Guidance on the functions of the CMA after the end of the Transition Period*.<sup>25</sup> An example of this is the text at paragraphs 8.4 to 8.7 of the Current Guidance, which deals with the interplay between the CMA's criminal cartel investigation regime and the European Commission's leniency regime. Such text has not been included in the Draft Revised Guidance.

### ***Changes resulting from UK's implementation of Damages Directive***

- 3.38 The UK Government's implementation of the Damages Directive introduced rules which provide statutory protection for cartel leniency statements within the disclosure process for damages claims.<sup>26</sup> The Draft Revised Guidance explains the legal position at paragraph 10.10.

### ***Changes resulting from the PA23***

- 3.39 The Draft Revised Guidance sets out, at a high level, the interplay between the new procurement regime introduced by the PA23 and the CMA's leniency regime (see in particular paragraph 2.69 of the Draft Revised Guidance).
- 3.40 The PA23, which came into force on 24 February 2025, introduces a new procurement regime in the UK.<sup>27</sup> As a result of the changes introduced by the PA23, companies that have participated in cartels risk facing mandatory exclusion by a contracting authority which would prevent them from taking

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<sup>24</sup> See section 60A CA98 and *Guidance on the functions of the CMA after the end of the Transition Period* (CMA125) on the application of EU law following the UK's exit from the EU. Note, however, that section 4 of the Retained EU Law (Revocation and Reform) Act 2023 provides that with effect from 1 January 2024 general principles of EU law are no longer part of UK law.

<sup>25</sup> CMA125, published on 1 December 2020.

<sup>26</sup> Set out in Schedule 8A, CA98, and also included in court rules, including Competition Appeal Tribunal Rules.

<sup>27</sup> The PA23 extends to England and Wales, Scotland and Northern Ireland although different rules may apply as procurement is largely a devolved matter in Wales and Scotland and a transferred matter in Northern Ireland. For more information see [Cabinet Office Guidance: Devolved Contracting Authorities - \(HTML\) - GOV.UK](#).

part in a public procurement. They are also at risk of being included on the central debarment register by a Minister of the Crown which would result in them automatically being excluded from all public procurement contracts for up to 5 years.<sup>28 29</sup>

- 3.41 However, Type A immunity recipients (and any Type B leniency recipient that obtains a 100% reduction in penalties or discretionary criminal immunity) benefit from automatic protection from debarment or exclusion from public procurement on competition law grounds.<sup>30</sup>
- 3.42 While there is no automatic protection from debarment or exclusion for Type B<sup>31</sup> or Type C leniency recipients, suppliers who have engaged in cartel activity but who do not benefit from immunity may avoid exclusion or debarment on competition law grounds if they can demonstrate, to the satisfaction of a contracting authority (in respect of exclusion) or Minister (in respect of debarment), that they have ‘self-cleaned’ (i.e. that the circumstances giving rise to the application of the exclusion ground are not continuing nor likely to occur again). Applying for and being granted leniency may be relevant evidence of such ‘self-cleaning’ and the CMA will, where appropriate, engage with the relevant authority to explain the public interest role of leniency applications and confirm a supplier’s engagement with the leniency process.<sup>32</sup>
- 3.43 More detail on exclusion and debarment on competition grounds under the PA23 can be found in the CMA’s information note<sup>33</sup> and blog for suppliers and contractors.<sup>34</sup>

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<sup>28</sup> For more information on exclusions and debarment see Cabinet Office [Guidance: Exclusions \(HTML\) - GOV.UK](#) and Cabinet Office [Guidance: Debarment \(HTML\) – GOV.UK](#). This guidance forms part of a suite of guidance documents covering all aspects of the Procurement Act, see [Procurement Act 2023 - Guidance documents - GOV.UK](#).

<sup>29</sup> The PA23 establishes mandatory grounds for exclusion from public procurement where a supplier or a connected person has been (i) an addressee of a CA98 decision issued by the CMA (or a sectoral regulator with concurrent powers) that the Chapter I prohibition has been infringed by an agreement or concerted practice which was a cartel, or (ii) convicted of a cartel offence under section 188 EA02. The PA23 also establishes discretionary grounds for exclusion in relation to potential competition law infringements where the relevant decision-maker (i.e. Minister or a contracting authority) considers that a supplier or connected person has infringed the Chapter I prohibition or engaged in conduct constituting a criminal cartel offence under section 188 EA02 or a substantially similar prohibition applicable in a jurisdiction outside the UK - see Paragraphs 7 and 10, Schedule 7, PA23.

<sup>30</sup> See paragraphs 2.14, final bullet-point and 2.69 first bullet-point in the Draft Revised Guidance.

<sup>31</sup> With the exception of Type B leniency recipients that obtain a 100% reduction in penalties and discretionary criminal immunity (see paragraph 3.44 above).

<sup>32</sup> See paragraph 2.69, second bullet-point in the Draft Revised Guidance.

<sup>33</sup> [Exclusion and debarment on competition grounds – what suppliers and contractors need to know](#), 26 February 2025

<sup>34</sup> [New Procurement Act: exclusion and debarment on competition grounds – what suppliers and contractors need to know](#), 26 February 2025.

### ***Other updates***

- 3.44 Amendments arising from the formation of the CMA in 2014 (which involved the assumption by the CMA of powers formerly vested in the OFT) have been incorporated into the Draft Revised Guidance. The most obvious of these is to update references to the OFT in the Current Guidance to references to the CMA in the Draft Revised Guidance.
- 3.45 We have also updated cross-references in the Current Guidance to other CMA guidance and removed any references to obsolete CMA guidance.

## 4. Consultation process

### How to respond

- 4.1 The CMA is consulting for six weeks with a closing date of Monday 9 June 2025. We will also be drawing this consultation to the attention of a range of stakeholders to invite comments on the Draft Revised Guidance.
- 4.2 Responses should be submitted by email to [leniencyguidance@cma.gov.uk](mailto:leniencyguidance@cma.gov.uk). Please provide supporting evidence or examples for your views where possible.
- 4.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 4.4 In accordance with the CMA's policy of openness and transparency, the CMA may publish non-confidential versions of responses or a summary of those responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on the CMA's webpages which omits that material and which explains why you regard it as sensitive.

### Compliance with government consultation principles

- 4.5 In preparing this consultation, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

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

- 4.6 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 4.7 The CMA is processing this personal data for the purposes of our work. This processing is necessary for the performance of its functions and is carried out in the public interest, in order to take consultation responses into account.

- 4.8 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long the CMA retains personal data, see the CMA's [Privacy Notice](#).
- 4.9 The CMA's use of all information and personal data that it receives is also subject to Part 9 of the EA02. The CMA may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, the CMA will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 4.10 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, if you have made any representations about the confidentiality of any information contained in your response, the CMA will take such representations into consideration. The CMA will also be mindful of its responsibilities under the data protection legislation referred to above and under Part 9 of the EA02.
- 4.11 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

## **Next steps**

- 4.12 After the consultation, the CMA will publish the final version of the Draft Revised Guidance on its webpages at <http://www.gov.uk/cma>. The CMA will also publish non-confidential versions of the responses received during the consultation.

## 5. Consultation questions

Please give reasons for your response and provide any relevant supporting information or evidence.

### General questions

- Q1. Do you agree with the proposed changes to the Current Guidance?
- Q2. Is the Draft Revised Guidance sufficiently comprehensive to give predictability to leniency applicants? Does it have any significant omissions, in your opinion?
- Q3. Is the content, format and presentation of the Draft Revised Guidance and of the short guides sufficiently clear?
- If there are particular parts of the Draft Revised Guidance or of the short guides where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- Q4. Do you consider that the short guides and the flowcharts are proportionate in striking the right balance between capturing the salient aspects of the regime and presenting them in a form that is of use for businesses and individuals?
- Q5. Do you consider that, as a whole, the Draft Revised Guidance is effective in ensuring that the incentives offered to applicants by the CMA's leniency regime are correctly positioned in order to support and facilitate the effective detection and enforcement of cartel activity?
- Q6. Do you consider that there are any other changes that should be made to the Current Guidance, in particular with regard to the application of the CMA's '4Ps' framework – pace, predictability, proportionality and process?
- Q7. Do you have any other comments on the Draft Revised Guidance or on the short guides?

### Specific questions

- Q8. Do you have any comments about the proposed changes to the definition of cartel activity? In particular:
- Do you have any comments regarding the inclusion of specific further examples of cartel activity (including any comments on the examples now included)?



- Are there any other examples of cartel activity that you think should be included?
- Q9. Do you consider that the proposed changes to the process for a leniency applicant to admit to cartel activity address potential applicants' concerns regarding potential disincentives to apply for leniency?
- Q10. Do you have any comments regarding the CMA's proposed updates in respect of the levels of protection available to Type A immunity applicants, as compared to Type B and Type C leniency applicants, in particular:
- (a) the removal of the availability of upfront grants of immunity for Type B applicants and the clarifications as to likely leniency discounts for Type B and Type C applicants;
  - (b) the removal of automatic immunity from CDOs for cooperating directors of Type B and Type C leniency applicants (including individual applicant directors);
  - (c) the clarifications regarding the level of cooperation expected from directors in order to benefit from CDO immunity;
  - (d) the clarifications to the process for removing CDO immunity from non-cooperating directors; and/or
  - (e) the statement that the CMA is unlikely to exercise its discretion to grant criminal immunity in relation to Type B and Type C leniency applications?
- Q11. Do you have any comments regarding the proposed clarifications to the provision of criminal immunity?
- Q12. Do you have any comments on the external SharePoint Online site as the default method for the submission of leniency applications which would otherwise be submitted orally, including on its key features and based on your experience of using it in practice already?
- Q13. Do you consider it important that the CMA retains the availability of the oral application process? Please provide reasons for your reply.