Applications for leniency and no-action in cartel cases (CMA210)

Summary of consultation responses

28 October 2025

Contents

1. Introduction

Background

1.1 The purpose of the Competition and Markets Authority (**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.

1.2 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.

1.3 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. 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 criminal prosecution and/or protection from director disqualification proceedings. Businesses that obtain immunity from financial penalties will also be exempt from exclusion and/or debarment on the basis of the competition law infringements exclusion grounds under the Procurement Act 2023.

1.4 The CMA is keen to ensure that its leniency guidance is accessible and provides clarity, predictability and transparency for applicants and their legal advisers about the leniency policy and processes. 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, open engagement with leniency applicants.

The consultation

1.5 The CMA ran a consultation from 29 April 2025 to 9 June 2025 on proposed changes to its leniency guidance, OFT1495: *Applications for leniency and no-action in cartel cases* (July 2013) (referred to in this consultation response as the **Previous Guidance**).[1] The CMA proposed a number of updates to reflect changes in relevant legislation and developments in CMA policy, experience and processes. The CMA also proposed some changes to the policy to ensure that the incentives offered by the leniency regime are in the right place to support the CMA's enforcement objectives.

1.6 As part of the consultation, the CMA published:[2]

- draft revised text of the leniency guidance (the **Draft Revised Guidance**),
- two draft 'short guides' to leniency (the **Draft Short Guides**) designed to provide a shorter overview of the policy for individuals and businesses, and
- a consultation document (the **Consultation Document**) which explained the scope of the consultation and the CMA commentary on the proposed changes, as well as questions on which respondents' views were sought.

1.7 The CMA received eight responses to the consultation. A list of respondents can be found in section 3 of this consultation response. Non-confidential versions of all responses to the consultation are available on the consultation website.[3]

1.8 The CMA would like to thank all those who responded to the consultation.

[1] Leniency and no-action applications in cartel cases.
[2] Leniency and no-action in cartel cases.
[3] Leniency and no-action in cartel cases.

Purpose of this document

1.9 This document summarises the CMA's response to the feedback received in response to the consultation and explains the key changes that the CMA has made as a result.[4]

1.10 This document is not intended to be a comprehensive record of all views expressed in response to the consultation, nor to be a comprehensive response to all individual views. However, it summarises the general feedback received and highlights the most significant points. Furthermore, some respondents suggested minor corrections and technical drafting improvements, many of which have been reflected in the final version of the guidance, but which are not recorded in this document.

1.11 The CMA has published the final version of the guidance (referred to in this document as the **Final Revised Guidance**) and the short guides (the **Final Short Guides**) alongside this document. They take effect immediately and will apply to all leniency applications made on or after 28 October 2025. The Previous Guidance will continue to apply to all applications made before 28 October 2025.[5] However, applicants under the Previous Guidance may find it useful to refer to the Final Revised Guidance for up-to-date details of the relevant legal provisions and further information on the CMA's processes.

[4] This document should be read in conjunction with the Consultation Document, which provides further background information.

[5] For this purpose, the applicable date will be the point at which the applicant first leaves a voicemail or speaks to a CMA officer on the CMA leniency enquiry line to make an enquiry about the availability of leniency (provided that the application proceeds after the CMA has responded to the enquiry).

2. Summary of responses to the consultation

Introduction

2.1 The CMA has reviewed the consultation responses and reflected on what, if any, further revisions should be made to the guidance.

2.2 Overall, respondents welcomed the CMA's changes to the Previous Guidance, in particular those that bring the guidance up to date and provide additional detail on the CMA's practice. However, respondents also expressed some reservations about some the CMA's proposed policy changes.

2.3 Further details on the respondents' views and the CMA's response are set out below.

The definition of cartel activity

Summary of responses

2.4 Respondents generally welcomed the proposed updates to the definition of cartel activity, noting that this improved predictability as to whether a leniency application was likely to be accepted.

2.5 Several respondents suggested additions and clarifications that the CMA could make to the definition of cartel activity, in order to provide greater certainty for prospective applicants. These included additions to reflect types of cartel activity that have been the subject of previous CMA infringement decisions, as well as further detail or examples regarding the circumstances in which exchanges of information can amount to cartel activity.

2.6 One respondent suggested that paragraph 2.2 of the Draft Revised Guidance should clarify that the consideration of whether particular conduct amounts to a 'by object' restriction should encompass the legal and economic context in which the conduct takes place. In a similar vein, two respondents suggested that the Final Revised Guidance should recognise that there may be arrangements falling within the updated definition that would not be presumed to be unlawful, and that the legal assessment of these will depend on the particular facts of the case.

2.7 Connected to this, two respondents commented that the CMA should be open to giving confidential guidance as to whether a particular arrangement would be considered to fall within the definition of cartel activity, although one of the respondents noted that it was difficult to envisage how a constructive discussion on this point could take place on a 'no-names' basis and without a briefing paper. One of the respondents also suggested that the CMA should make clear that it will not withdraw leniency based on the definition of cartel activity if it has previously given the applicant confidential guidance on this point.

2.8 Two respondents suggested that the CMA should extend leniency to vertical restraints that amount to hardcore restrictions of competition under Article 8(2) of the Vertical Agreements Block Exemption Order. One of these respondents commented specifically on the statement in the Draft Revised Guidance that the CMA's leniency policy does not cover standalone vertical restrictions of competition other than resale price maintenance (**RPM**) as these tend to be (at least to an extent) visible on the market and therefore over time self-detecting. The respondent contended that (i) wide retail parity obligations are not necessarily more likely to be detected than RPM, and (ii) vertical by object customer and territorial restrictions are not more easily detected than such horizontal restrictions. Conversely, one respondent considered that the Draft Revised Guidance, as currently drafted, may inadvertently suggest that vertical restraints will be treated as cartel activity by the CMA, and qualify for leniency, and that a clearer distinction should be made between horizontal cartel conduct and anti-competitive conduct in vertical relationships.

2.9 Two respondents sought further clarity in the Final Revised Guidance on examples of information exchange that may be considered to amount to cartel activity for the purposes of the leniency policy, with one respondent highlighting in particular the exchange of non-pricing information, and noting that it would be helpful to provide guidance on the factors which the CMA will consider when determining whether information is capable of being competitively sensitive.

2.10 One respondent suggested that the CMA include a specific statement in the Final Revised Guidance that types of cartel activity other than those listed at paragraph 2.4 may qualify for leniency.

The CMA's views

2.11 The CMA agrees that the Final Revised Guidance should recognise that the consideration of whether particular conduct amounts to a 'by object' restriction should encompass the legal and economic context in which the conduct takes place. This is now addressed in the Final Revised Guidance at footnote 15, which refers readers to the part of CMA184 (the CMA's *Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements*, August 2023) that deals more broadly with what amounts to a restriction of competition by object. The CMA does not, however, consider that further changes are necessary to address the connected concern raised that arrangements which fall within the updated definition of cartel activity (including the illustrative list set out at paragraph 2.4 of the Draft Revised Guidance) should not be presumed to be unlawful. As the introduction to paragraph 2.4 makes clear, the list includes non-exhaustive examples of cartel activities for which leniency is 'likely' to be available.

2.12 In relation to the representations on confidential guidance, the CMA does accept, and will continue to accept, requests for confidential guidance where there is genuine uncertainty as to whether a particular arrangement falls within the definition of 'cartel activity' for the purpose of the leniency policy.[6] To make this position clearer, the CMA has adopted the suggestion made by one of the respondents of specifying, in paragraph 4.2 of the Final Revised Guidance, that confidential guidance is available on whether an arrangement may amount to cartel activity in cases where there is genuine uncertainty due to the particular factual circumstances.

2.13 The CMA has further confirmed, in footnote 86 of the Final Revised Guidance, that it will consider itself bound to accept a leniency application in respect of an arrangement where it has provided confidential guidance that that arrangement falls within the definition of cartel activity. However, the CMA does not consider that it would be appropriate to commit not to withdraw leniency if it subsequently determines that the arrangement does not amount to cartel activity, given that at the point of giving confidential guidance the CMA would not have had the opportunity to conduct or complete a formal investigation and legal analysis. This is explained in footnote 86 of the Final Revised Guidance.[7] The CMA is not aware of this situation arising previously, and would expect such a situation to be extremely rare. Further, consistent with its general approach when applying the leniency regime, the CMA would err in favour of the applicant where this is genuinely a 'close call'.

2.14 As set out at paragraph 4.1 of the Final Revised Guidance, confidential guidance would usually involve a discussion on a no-names basis about a given factual matrix. However, the CMA does not rule out that in some circumstances it may be more helpful to proceed on a different basis, for example including disclosure of the identity of the potential applicant. Where this may be the case, potential applicants are encouraged to discuss this with the CMA. The CMA has not amended the Final Revised Guidance on this

[6] The exception to this is if the CMA considers that the caller is seeking general comfort on the CMA's assessment of conduct rather than genuinely with a view to making a leniency application. In such cases, the CMA may decline to give guidance.
[7] However, as footnote 86 makes clear, in such cases the party would have the status of a failed bona fide applicant and would benefit from the protections associated with having that status.

point, as the existing statement that confidential guidance would ‘usually’ take place on a no-names basis already provides flexibility to take a different approach where appropriate.

2.15 The CMA does not consider it appropriate to include further illustrative examples of problematic information exchange, including in relation to non-pricing information. Respondents will note that, at paragraph 2.2 (see in particular footnote 17) and at paragraph 2.4(b) of the Draft Revised Guidance, which specifically address information exchange as an example of cartel activity for which leniency is likely to be available, readers are referred to CMA184, which provides guidance on when information exchange may be considered a cartel, including where the exchange involves non-pricing information. Further, as the Final Revised Guidance now makes even clearer, potential applicants can apply for confidential guidance from the CMA, should they continue to have genuine uncertainties on the issue.

2.16 The CMA does not consider it appropriate to extend leniency beyond RPM to cover other vertical restraints amounting to hardcore restrictions of competition under Article 8(2) of the Vertical Agreements Block Exemption Order. The inclusion within the CMA’s leniency policy of RPM cases, which by their nature are different from horizontal cartel cases,[8] is an exception to the regime’s main focus on horizontal conduct. The CMA does not consider that it would be appropriate to widen this concession so as to include other vertical restraints, such as wide retail parity obligations or vertical by object customer or territorial restrictions.

2.17 The CMA has not included a specific statement in the Final Revised Guidance that types of cartel activity other than those listed at paragraph 2.4 may qualify for leniency. This is on the basis that the opening sentence of paragraph 2.4 already covers the point adequately. It specifically states that the cartel activities listed in the paragraph are ‘non-exhaustive examples’. As such, no repetition of the point is considered necessary.

2.18 The CMA has not included, as was suggested by one party, significantly more granular detail on examples of conduct deemed to amount to cartel activity, by reference to specific past CMA investigations. This is on the basis that the majority of the examples of conduct suggested for inclusion are already included within the broader examples of cartel activities specifically set out in the Final Revised Guidance and that the definition of cartel activity in the Final Revised Guidance has been drafted so as to capture cartel conduct in

[8] See, for example, the CMA’s Summary of responses and outcome to its consultation on Type B leniency in RPM cases.

accordance with the CMA's decisional practice, leaving scope for this to continue to evolve.

The admission requirement

Summary of responses

2.19 Respondents strongly welcomed the proposed updates to the timing of admission to participation in cartel activity, noting that this will encourage early engagement with the CMA.

2.20 Three respondents suggested that the CMA could make further changes in this area to reduce disincentives to apply for leniency: two queried the necessity of requiring applicants to have a 'genuine intention to admit' to cartel activity, and one questioned whether it is necessary to require applicants to admit to an infringement (as opposed to admitting to the underlying conduct) at the point of signing a leniency agreement.

2.21 One respondent noted that the requirement for leniency applicants not to act in a way which would be inconsistent with an admission of cartel activity was unclear, and had not been included in Chapter 8 of the Draft Revised Guidance, which sets out the cooperation expected of leniency applicants.

The CMA's views

2.22 The CMA welcomes feedback that the proposed updates to the admission requirement reduce disincentives to apply for leniency. Given the positive response overall, the CMA considers that the proposed change strikes the right balance of addressing a possible disincentive to apply for leniency without risking undermining the benefits of the leniency regime. Accordingly, the CMA is not minded to make further changes to the admission requirement at this time.

2.23 In relation to the requirement that applicants have a 'genuine intention to admit' to cartel activity, the CMA considers that it would not be appropriate to allow applicants to conduct themselves in a way that would be inconsistent with an admission of cartel activity (for example by disputing that the conduct, if proven, would constitute cartel activity). This would risk undermining any CMA investigation into the reported conduct, and would therefore be inconsistent with the public interest in accepting leniency applications.

2.24 For the same reason, the CMA considers that it is appropriate for applicants to admit to an infringement at the point of entering into a leniency agreement. The CMA signs leniency agreements with applicants shortly before issuing a

Statement of Objections. If an investigation reaches this stage, it means that the CMA has provisionally decided that it has sufficient evidence to prove (i) that the suspected conduct took place, (ii) that the applicant was involved in the conduct, and (iii) that it amounted to cartel activity within the CMA's leniency policy. At that stage, the CMA considers that it would be inappropriate for a leniency applicant to dispute that there has been an infringement.

2.25 The CMA has provided an example at paragraph 2.8 of the Final Revised Guidance to illustrate what is meant by the requirement on leniency applicants not to act in a way which would be inconsistent with an admission of cartel activity. The CMA has also added a cross-reference to these paragraphs in Chapter 8 of the Final Revised Guidance (paragraph 8.29).

Type B and Type C discounts

Summary of responses

2.26 Respondents welcomed the additional clarity about likely discount levels for Type B and Type C applicants. However, they raised a number of concerns with the CMA's proposed approach to Type B and Type C discounts. The key points made were as follows.

- In regard to the CMA's proposal to remove the possibility of upfront Type B immunity, one respondent supported the CMA's proposal on the basis that any protection from financial penalties should be based on added value, which is not obvious at the start of an application. However, respondents generally considered that the changes would deter Type B applicants without incentivising Type A applications. Some respondents suggested that the CMA could retain the possibility of upfront Type B immunity even if it would only be available in very specific circumstances.

- Regarding the proposed updates to the guidance on the level of Type B and Type C discounts,[9] respondents acknowledged that the additional clarity on potential discount levels was helpful. However, several respondents noted that discounts from financial penalties were an important incentive to apply, and therefore that the clarifications that discounts may be lower than the maximum would risk disincentivising applications. One respondent also suggested that the CMA should reverse

[9] As set out in further detail in the Consultation Document, the CMA proposed clarifying in the Draft Revised Guidance that Type B discounts are unlikely to be above 75%, and that both Type B and Type C discounts may be significantly lower than the maximum.

its existing policy that it would not expect to grant discounts of more than 50% to Type B applicants in RPM cases so as to avoid disincentivising applications.

- Two respondents considered that removing the possibility of a ‘leniency plus’ discount for Type B or Type C applicants who obtain a Type B marker in a second market would weaken incentives – either to apply for leniency in the first place, or to conduct further internal investigations with a view to making additional leniency applications in relation to other cartel activity. A third respondent, referring to footnote 144 of the Draft Revised Guidance, commented that a 5% ‘leniency plus’ discount would be unlikely to encourage additional applications. The same respondent noted that the Office of Fair Trading (**OFT**) (a predecessor of the CMA) had awarded higher ‘leniency plus’ discounts in the past, and suggested that it would be helpful to provide further guidance on the factors considered when deciding on the level of a ‘leniency plus’ discount.

- Several respondents suggested areas where the CMA could provide further guidance in relation to Type B and Type C discounts:

  — examples illustrating ways in which past applicants had added practical value;

  — clarification on circumstances that would be likely to result in higher leniency discounts, including the type of ‘exceptional circumstances’ that might lead to a Type B applicant receiving immunity from financial penalties (ie a 100% discount, such that no financial penalty is imposed);

  — clarification that where the ‘but for’ test applies to a Type B or Type C leniency applicant, in effect no penalty will be payable by the applicant in respect of the conduct in question;

  — clarification that applicants may add value to a CMA investigation in other ways than providing new evidential material;

  — a statement that the overall level of discount will reflect the value of the evidence added; and

  — a statement that Type B discounts will typically be between 20% and 70%, but that the CMA may confer discounts above 70% where this reflects the value of the evidence provided by the applicant.

The CMA's views

2.27 As set out in the Consultation Document, the changes proposed in relation to Type B and Type C discounts (including the availability of upfront Type B immunity) reflect the CMA's existing practice in relation to Type B and Type C leniency applications. In view of this, the CMA considers that the proposed changes improve predictability for applicants by setting a clearer expectation of the likely outcome of Type B and Type C applications. The CMA has therefore decided to proceed with these changes.

2.28 In relation to the policy of not expecting to grant discounts of above 50% to Type B applicants in RPM cases, the CMA conducted a consultation before implementing this change in 2020[10] and has not received new evidence to suggest that this approach is no longer appropriate. Accordingly, the CMA has not changed this position in the Final Revised Guidance.

2.29 In relation to the proposed change to 'leniency plus' discounts, the CMA considers that it would not be in the public interest to grant a 'leniency plus' discount in cases where a Type B or Type C applicant makes a successful application for Type B leniency in a second market. As explained in the Consultation Document, if only Type B leniency is available in the second market, this would be because the CMA already had a 'pre-existing investigation' into the activity in question. The CMA does not consider that there is a public interest in granting a 'leniency plus' discount if it already has an awareness of the cartel activity in the second market prior to the leniency application being made.

2.30 However, the CMA does not consider that this revision to 'leniency plus' discounts should disincentivise Type B or Type C applicants from conducting further internal investigations. Given that the threshold for applying for leniency is relatively low (a 'concrete basis to suspect' cartel activity), an applicant seeking to benefit from a 'leniency plus' discount could enquire about the availability of Type A at a relatively early stage of its internal investigation. There is no obligation to proceed with an application (or to disclose the identity of the would-be applicant) if Type A is not available.

2.31 Accordingly, the CMA has decided to proceed with removing the possibility of obtaining a 'leniency plus' discount for Type B or Type C applicants where a Type B marker is obtained in a second market.

[10] Type B leniency in RPM cases – Draft Addendum to OFT1495.

2.32 Regarding footnote 144 of the Draft Revised Guidance, in the CMA's experience 'leniency plus' discounts are not usually above 5%. However, the CMA has slightly amended the text (footnote 161 of the Final Revised Guidance) to say that leniency plus discounts are 'generally' unlikely to exceed 5%. The CMA does not rule out that in exceptional circumstances a higher discount may be appropriate. As set out at paragraph 9.21 of the Final Revised Guidance, however, the primary benefit to the applicant of obtaining an additional Type A marker is immunity from financial penalties, criminal prosecution, CDO proceedings and exclusion and/or debarment in respect of the reported cartel activity, rather than the 'leniency plus' discount.

2.33 In relation to the level of any 'leniency plus' discount, in the CMA's experience the discount is usually determined by analysis of the factors listed in paragraph 9.21 of the Final Revised Guidance. In view of this, the CMA does not consider that any further guidance is required.

2.34 The CMA has considered the suggestions respondents made for additional guidance in relation to leniency discounts for Type B and Type C applicants as follows.

- The CMA considers that the non-exhaustive list of examples given at paragraph 9.9 of the Draft Revised Guidance should give applicants a sufficiently clear idea of the types of information and cooperation that may add significant value to an investigation. Applicants also have the option of liaising with the case team to suggest and discuss ways in which they may be able to add value on a given case. Accordingly, the CMA has not added any further examples in the Final Revised Guidance.

- The circumstances in which higher leniency discounts are granted are necessarily case-specific. However, the CMA has added some general guidance on this point at paragraphs 9.10 and 9.11 of the Final Revised Guidance. The CMA is not able to provide an example of what type of value might lead to an exceptional award of immunity from financial penalties to a Type B applicant given that no discounts higher than 70% have been awarded in relation to applications made under the Previous Guidance.

- The CMA considers that the existing wording of paragraphs 9.17 and 9.18 of the Final Revised Guidance accurately reflects the CMA's approach to applying the 'but for' test. In particular, in circumstances where the finding of infringement would have been less serious 'but for' the evidence provided by the leniency applicant, it may be misleading to say that no penalty would be payable by the applicant in respect of that conduct. Rather, as set out in paragraph 9.17 of the Final Revised Guidance, the penalty for the applicant would be assessed against the lesser gravity that the CMA would otherwise have found.

- The CMA has added footnote 43 to the Final Revised Guidance to confirm that applicants may add value to an investigation in other ways than providing new evidential material.
- Paragraphs 9.8 to 9.12 of the Draft Revised Guidance already explain the basis on which Type B and Type C leniency discounts are calculated and the range of discounts that may be available, depending on the value of the material provided or other steps that have been taken by the applicant. Accordingly, the CMA has not made any further changes to the Final Revised Guidance on these points.

CDO immunity

Summary of responses

2.35 All respondents were opposed to making CDO protection for Type B and C applicants discretionary. Generally, it was considered that such a change could disincentivise Type B and Type C applications, as decision makers on whether to apply for leniency are frequently directors. Furthermore, respondents submitted that the potential uncertainty faced by individual directors may discourage their cooperation, thereby restricting the applicant's ability to add value. One respondent noted that the OFT had previously consulted on a similar change and decided not to implement it because it would create a conflict between individual and company interests.

2.36 Several respondents also highlighted concerns regarding the CMA's proposed approach to discretionary CDO immunity, particularly with respect to the timing of decisions and transparency around the criteria used to decide whether to grant immunity. One respondent noted that no explanation was given at paragraphs 12.10 or 12.13 of the Draft Revised Guidance as to when the CMA would exercise its discretion to grant CDO immunity.

2.37 In regard to the timing of decisions as to whether to grant discretionary CDO immunity, several respondents commented that the timing of the decision would be important - decisions made at later stages in the process might reduce directors' willingness to cooperate, given the uncertainty as to whether they would be granted CDO immunity.

The CMA's views

2.38 The OFT consulted in 2010 on whether to retain a discretion to apply for a CDO against a director of a Type C applicant, and decided against implementing such a change at that time. However, it was noted in the consultation response that the OFT might review the proposal at a later date in the light of further experience. The CMA considers that it is now well placed to reconsider the position in light of its increased application of the CDO regime in recent years.

2.39 The CMA acknowledges that the availability of CDO immunity for cooperating current and former directors is likely to be a factor in a company's decision on whether to apply for leniency. However, the CMA must weigh this against (i) the public policy objective of the CDO regime, which is to protect the public by removing unfit directors and deterring anticompetitive conduct, and (ii) the possibility that removing automatic CDO immunity from all cooperating current and former directors of successful Type B and Type C applicants may incentivise Type A immunity applications by widening the gap between the protections available to Type A applicants and those available to Type B and Type C applicants.

2.40 Having carefully weighed the comments made by respondents against the public policy objectives of the leniency and CDO regimes, the CMA has decided to proceed with the proposal to make CDO immunity discretionary for Type B and Type C applicants. This will allow the CMA to determine whether it is in the public interest to grant CDO immunity to each director on a case by case basis, enabling it better to achieve the public protection objective of the CDO regime by ensuring that those who are unfit to be directors are prevented from acting as company directors or being involved in the management of a company. The CMA considers that it will also promote the objectives of the leniency regime by further incentivising Type A immunity applications and thereby increasing the CMA's ability to uncover cartel infringements that would otherwise go undetected. It will remain possible for companies that have engaged in cartel activity to obtain guaranteed CDO immunity for their cooperating current and former directors by proactively applying for Type A immunity, rather than deciding only to apply for leniency if the CMA launches an investigation.

2.41 In response to comments on the timing of the decision as to whether to grant discretionary CDO immunity, the CMA proposes to retain the flexibility to make a decision later in the investigation where it is not in a position to make an informed decision at an early stage of the case as to where the public interest lies. However, the CMA has updated paragraphs 2.45 and 2.46 of the Final Revised Guidance to confirm that, where it is not possible to make an early decision, the CMA will aim to keep the applicant informed as to when it considers that it will be in a position to reach a decision.

2.42 Finally, in response to suggestions that the CMA could provide more explicit guidance on the factors that it will consider when deciding whether or not to grant discretionary CDO immunity, the CMA has added a high-level explanation to paragraph 2.44 of the Final Revised Guidance. The CMA has also added a cross-reference to this explanation as a footnote to paragraph 12.13 of the Final Revised Guidance.

2.43 The CMA will keep under review whether further guidance can be provided, either in practice when applying the policy or by way of an update to the Final Revised Guidance at a later date once the new policy has been implemented and we have further experience of it in practice.

Criminal immunity

Summary of responses

2.44 Respondents generally welcomed the additional guidance provided in Chapter 13 of the Draft Revised Guidance. However, three respondents raised concerns that the proposed clarification in the Draft Revised Guidance as to the availability of criminal immunity risked disincentivising Type B and Type C applications.[11] One respondent commented that the addition of the 'assisting offender' route set out at paragraph 13.8 of the Draft Revised Guidance did not compensate for the lack of availability of criminal immunity.[12]

2.45 One respondent also questioned why discretionary criminal immunity was available in principle for employees and directors of Type C undertaking applicants, but not for Type C individual immunity applicants.

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[11] As set out in more detail in the Consultation Document, the Draft Revised Guidance includes a provision that the CMA would only expect to exercise its discretion to grant criminal immunity to employees and directors of Type B and Type C applicants, or to Type B individual immunity applicants, in exceptional circumstances.

[12] As set out in more detail in paragraph 13.8 of the Final Revised Guidance, individuals can seek to enter into a written agreement with the CMA under which they commit to pleading guilty to the criminal cartel offence and assisting the CMA with its criminal investigation and prosecution of the criminal cartel conduct, including by giving evidence on behalf of the prosecution. The CMA would in turn ensure that the full details of such assistance are placed before the court at which the defendant then appears for sentencing following their guilty plea. The court may then take into account the extent and nature of the assistance given or offered in determining what sentence to pass on the defendant.

2.46 Several respondents suggested clarifications or adjustments that the CMA could make to the Draft Revised Guidance in relation to discretionary criminal immunity. In particular:

- two respondents requested additional guidance on the circumstances in which the CMA would exercise its discretion to grant criminal immunity;
- one respondent asked the CMA to clarify whether paragraphs 13.17 and 13.18 of the Draft Revised Guidance apply to individual applicants, cooperating individuals or both;
- one respondent asked for clarification as to the stage at which the CMA would be in a position to assess whether there were 'exceptional circumstances' to justify a grant of discretionary criminal immunity; and
- one respondent asked for further clarity on paragraph 12.18 of the Draft Revised Guidance,[13] regarding (i) whether this paragraph would only apply if there were an existing criminal cartel investigation, or if it would also apply if the CMA were only contemplating a criminal cartel investigation, and (ii) whether the paragraph applies to individual applicants, cooperating individuals or both.

2.47 Finally, one respondent noted that the CMA had removed references to 'comfort letters' from the Draft Revised Guidance and asked what the rationale was for this change.

The CMA's views

2.48 The CMA notes respondents' concerns about the proposed clarification that criminal immunity will only be available in exceptional circumstances for employees and directors of Type B and Type C undertaking applicants. However, as set out in the Consultation Document, this reflects the CMA's practice under the Previous Guidance in that the CMA has not previously granted discretionary criminal immunity for employees or directors of Type B or Type C undertaking applicants and considers that it is unlikely to be in the public interest to do so. For this reason, the CMA considers that the proposed clarification gives prospective applicants better predictability by making the CMA's approach clear. Accordingly, the CMA has decided to implement the proposed clarification in the Final Revised Guidance.

[13] Paragraph 12.18 of the Draft Revised Guidance states that it is unlikely that discretionary CDO immunity would be granted in a Type B or C application if the CMA had sufficient evidence of wrongdoing to actively contemplate a criminal cartel investigation of the reported cartel activity.

2.49 The CMA has considered the question raised as to the availability of discretionary criminal immunity for Type C individual immunity applicants. While very unlikely, the CMA has concluded that there may be exceptional circumstances in which it would exercise its discretion to grant criminal immunity to a Type C individual immunity applicant. Accordingly, the CMA has updated the relevant provisions of the Final Revised Guidance.

2.50 As regards the requests for additional guidance in relation to discretionary criminal immunity:

- the CMA considers that it would not be possible to provide meaningful guidance as to the circumstances in which the CMA would exercise its discretion to grant criminal immunity, because such decisions are likely to be both exceptional and specific to the circumstances of an investigation;

- the CMA has made additions to paragraphs 13.17 and 13.18 of the Final Revised Guidance to clarify that they apply to both individual and undertaking applications;

- the CMA has updated paragraphs 12.37 to 12.39 of the Final Revised Guidance to provide more detail as to the process of applying for criminal immunity after the launch of an investigation; and

- the CMA has updated paragraph 12.15 of the Final Revised Guidance to clarify the position in relation to the availability of discretionary CDO immunity in cases where the CMA has sufficient evidence of wrongdoing to contemplate a criminal cartel investigation.

2.51 Finally, the CMA confirms that it has decided to remove the references to 'comfort letters' that were included in the Previous Guidance because, in the CMA's experience, it has rarely been necessary to issue a comfort letter.[14] However, the CMA does not rule out the possibility that in certain circumstances it may be prepared to write to an applicant or individual to confirm that it does not propose to conduct a criminal cartel investigation.

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[14] As set out in the Previous Guidance, the purpose of a comfort letter was to confirm (i) that the CMA had decided not to undertake a criminal cartel investigation into the reported cartel activity (see for example paragraph 2.49 of the Previous Guidance), or (ii) that the CMA had concluded that there was insufficient evidence to implicate the addressee in the criminal cartel offence (see paragraph 8.15 of the Previous Guidance).

Online applications

Summary of responses

2.52 All respondents welcomed the use of online applications in leniency cases, noting that this benefited applicants by speeding up the leniency process. Some respondents suggested that the online tool should be available for other purposes during the leniency process, such as exchanging draft leniency agreements and witness statements.

2.53 There were differing opinions as to whether online applications should be the default, with the majority of respondents stating that the oral process should remain available under specific circumstances. One respondent suggested that the CMA could reduce the burden of oral applications by using speech-to-text software rather than transcription.

2.54 Some respondents made comments and suggestions about the functionality of SharePoint for online applications, including:

- availability of technical support for applicants;
- availability of formatting options such as subheading, integrated tables and switching between landscape and portrait views;
- disabling download and copy/paste functionality; and
- allowing applicants to self-access the tool, rather than needing the CMA to grant access.

2.55 Finally, some respondents asked some technical questions about the online application process:

- two respondents asked whether the CMA could provide an assurance that the online application process would provide the same level of protection as an oral application;
- one respondent noted that there did not appear to be a protocol for when documents are removed from SharePoint; and
- one respondent asked for confirmation that data submitted using the online application process would only be stored on CMA-controlled UK servers.

The CMA's views

2.56 The CMA welcomes feedback that the online application process (as an alternative to the oral application process) has been well received by applicants.

2.57 The CMA confirms that the oral application process will continue to be available for applicants where there is a good reason for it. As set out in footnote 122 of the Final Revised Guidance, if the CMA considers that the applicant's reasons for requesting an oral application are ones that could potentially be addressed by the online process, the CMA will explain this and ask the applicant to consider further. However, the CMA will not refuse to accept an oral application if it is satisfied that there are sufficient reasons for following the oral application process. The CMA has also accepted suggestions to clarify that the online tool could also be used to exchange other leniency documents during the leniency process. This is outlined at footnotes 123 and 124 of the Final Revised Guidance.

2.58 In the CMA's recent experience, a significant number of applicants have been willing to use the SharePoint online tool to provide leniency statements and exchange other leniency documents. As a result, the CMA receives significantly fewer oral statements than previously, resulting in significant efficiency savings for the CMA and for applicants. For this reason, the CMA does not propose to explore the use of speech-to-text software for oral statements at this time.

2.59 In relation to the comments received on the functionality of SharePoint for online applications:

- the CMA does not propose to provide dedicated technical support for applicants, but case teams will be available as far as possible to work with applicants to try and address any issues;

- as set out in the Consultation Document, applicants using the tool are able to use standard formatting tools when transcribing statements;

- the CMA is not able to disable download or copy/paste functionality on SharePoint online documents, other than in cases where the CMA is sharing a document that is to be reviewed (but not edited) by the applicant, but it is within the applicant's control to ensure that it does not download, copy or paste from the site; and

- the CMA does not propose to allow applicants to self-access the SharePoint online system, as access is controlled by the CMA's IT service.

2.60 The CMA will update the guidance it provides to applicants who use the SharePoint online tool to address the technical questions on (i) the removal of documents from SharePoint,[15] and (ii) the storage of data submitted using the tool.[16]

2.61 The CMA is not in a position to provide assurances as to whether submissions made via either the online or oral application process would be protected from discovery in civil damages proceedings in other jurisdictions. However, the CMA has set up the online application process in such a way as to enable applicants to review documents and make submissions without needing to send or receive them electronically or to save a copy on their own systems.

Exclusion and debarment

Summary of responses

2.62 Three respondents commented on the text added to the Draft Revised Guidance to explain how leniency interacts with the new exclusion and debarment regime under the Procurement Act 2023. While welcoming the statement that the CMA is willing to engage with the relevant authority to explain the leniency process so as to assist with the relevant authority's determination of whether the applicant is an excluded or excludable supplier, they suggested additional guidance that the CMA could provide in relation to:

- the extent to which a successful leniency application that does not result in immunity from financial penalties will be treated as sufficient evidence of self-cleaning; and
- the process of the CMA engaging with an authority that is assessing whether a leniency applicant is an excluded or excludable supplier for the purpose of the Procurement Act 2023.

The CMA's views

2.63 In relation to self-cleaning, the CMA notes that the Cabinet Office has published extensive guidance on exclusions under the Procurement Act 2023,

[15] The CMA will remove documents from the external SharePoint site (and save them to the CMA's internal systems) once the applicant has confirmed that it has finished its submission. The CMA will confirm to the applicant once documents have been removed from the external site.
[16] Data uploaded to the CMA's SharePoint online site, and subsequently saved to the CMA's internal systems, is hosted within UK data centres operated by Microsoft, in accordance with the data residency commitments of the CMA's Microsoft 365 agreement. The underlying infrastructure remains under Microsoft's operational control.

including on self-cleaning.[17] As set out in that guidance, what constitutes sufficient self-cleaning in any particular situation will be specific to the circumstances giving rise to that exclusion ground and will be a matter for the relevant contracting authority (for exclusion) or Minister (for debarment) to determine based on a number of factors. However, the CMA has added a clarification to paragraph 2.73 of the Final Revised guidance that cooperation with the CMA under the leniency regime is expected to be considered as part of the self-cleaning assessment and that successful applicants may be able to rely on the grant of leniency to demonstrate that they have 'self-cleaned', in which case they would avoid being excluded or debarred.

2.64 The CMA has also updated footnote 64 and the second bullet of paragraph 2.73 in the Final Revised Guidance to provide greater transparency as to (i) the purpose of the CMA engaging with an authority that is assessing whether a supplier has adequately self-cleaned, and (ii) the process by which contracting authorities may contact the CMA to seek confirmation as to whether a particular supplier is an immunity recipient or has been granted leniency. The CMA will keep under review whether it may be able to provide more information about the process in future in light of further experience.

2.65 In addition to the above changes made to address comments made by respondents, the CMA has made some further changes to the provisions in the Final Revised Guidance in relation to exclusion and debarment. These are to mirror more closely the language of the legislation and related guidance and to make it clearer why a Type B applicant who exceptionally receives a leniency discount of 100% (meaning that no financial penalty is imposed) falls into the definition of an 'immunity recipient' for the purpose of paragraph 14 of Schedule 8A of the Competition Act 1998 (such that the competition law infringements exclusion grounds under the Procurement Act 2023 would not apply). Relatedly, the CMA has updated paragraph 9.23 of the Final Revised Guidance to make clear that the CMA would not calculate a penalty for a Type B applicant that receives immunity from financial penalties (ie a 100% discount, such that no financial penalty is imposed). This aligns with the approach taken with Type A immunity applicants.

[17] Cabinet Office guidance on exclusions, July 2025, paragraphs 53 to 66.

Information requirements

Summary of responses

2.66 Two respondents made comments relating to the requirement for leniency applicants to provide the CMA with all the non-legally privileged information, documents and evidence available to them regarding the existence and activities of the reported cartel activity (referred to as the ‘relevant information’). Both respondents raised concerns that the requirement was unrealistic, in particular because it can be difficult for applicants to be confident that they have identified all relevant information or to obtain the evidence of employees or directors who refuse to cooperate with the leniency application. One of the respondents also suggested that the requirement should be amended to refer to information that ‘becomes known or is identified by the applicant’, noting that although documents may be available to the applicant, they may not have been identified by the applicant at the time of making a leniency application.

2.67 Additionally, one respondent queried the provision in the pro-forma leniency agreement, individual immunity agreement and no-action letter (Appendices B, C and D of the Draft Revised Guidance) that the successful applicant must have brought to the CMA’s attention the existence of non-legally privileged information that had not been provided to the CMA but that had been identified as potentially relevant to the reported cartel activity. The respondent suggested that this was inconsistent with the expectation set out at footnote 29 of the Draft Revised Guidance that applicants should not provide the CMA with ‘non-relevant’ information on a ‘just in case’ basis.

2.68 One respondent suggested that the CMA should adjust the wording throughout the Draft Revised Guidance (and particularly at paragraphs 2.6(a), 2.10 and throughout Chapter 7) to ensure that all references to information to be provided by the applicant should be referred to as ‘relevant’ information.

2.69 Finally, one respondent queried the provisions in Chapter 7 of the Draft Revised Guidance on legal professional privilege (LPP). Specifically, the respondent considered that it would be disproportionate and impractical to require leniency applicants to maintain a record of any communications containing relevant information which have not been provided to the CMA because the applicant considered that they benefit from LPP. The same respondent also queried the process set out at paragraphs 7.14 and 7.15 of the Draft Revised Guidance for reviewing material to determine whether it is indeed protected by LPP, including whether there would be any right of appeal or challenge to the outcome of the review.

The CMA's views

2.70 The provision of relevant information is a key condition of leniency. By providing the CMA with all non-legally privileged information, documents and evidence relating to the reported cartel activity, leniency applicants enable the CMA to take robust enforcement action where appropriate. It is also generally in the interest of the applicant to do so, particularly in the case of Type B and Type C applications where the leniency discount granted to the applicant is primarily determined by the value added by the leniency application to the CMA's investigation.

2.71 Set against this, the CMA is keen to be proportionate in its dealings with leniency applicants. This is reflected in paragraph 8.2 of the Draft Revised Guidance and the Final Revised Guidance, which notes that the CMA is keen to take a reasonable and proportionate approach to what it expects from applicants, and to engage constructively and openly with applicants about how best they can satisfy the cooperation requirement. Having reflected on the respondents' comments, the CMA has amended paragraph 2.10 of the Final Revised Guidance to make clear that the expectation is that applicants will use their best endeavours to identify all relevant information available to them, and to provide the CMA with all such information.[18] Similarly, the CMA has updated paragraph 2.11 to require the applicant to use its best endeavours to procure the evidence of current and former employees and directors.

2.72 The CMA has not made any further changes to the Final Revised Guidance in response to the comment that some information may not have been identified by the applicant at the time of making a leniency application. The requirement to provide all 'relevant information' does not mean that all such information must be provided at the time of the initial application. This should be clear from the fact that the CMA only requires an applicant to have a 'concrete basis to suspect' cartel activity in order to apply.

2.73 In relation to the provision in Appendices B, C and D that applicants must bring material identified as 'potentially relevant' to the reported cartel activity to the CMA's attention, the CMA has replaced footnote 29 of the Draft Revised Guidance with a revised paragraph 2.13 in the Final Revised Guidance. The revised paragraph makes clearer that if applicants are unsure whether certain information would amount to 'relevant information' for the purpose of the leniency application, they should bring this to the CMA's

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[18] The CMA has also updated the provisions of Appendices B, C and D of the Final Revised Guidance to reflect this change.

attention and obtain guidance as to whether to provide the information to the CMA. This is the intention behind the provision in Appendices B, C and D regarding ‘potentially relevant’ material.

2.74 In relation to references to ‘relevant’ information, paragraph 2.6(a) of the Draft Revised Guidance explains that the ‘information’ condition of leniency requires the applicant to provide the CMA with ‘all the non-legally privileged information, documents and evidence available to it regarding the reported cartel activity’. The CMA considers that it is unnecessary to include the word ‘relevant’ in this context, as the paragraph makes clear that the requirement relates to material ‘regarding the reported cartel activity’. In any event, the Draft Revised Guidance goes on to refer to the material described in paragraph 2.6(a) as the ‘relevant information’ from paragraph 2.10 onwards, and to explain further in paragraphs 2.11 and 2.12 how the applicant should interpret this requirement. The CMA considers that it should be sufficiently clear from this that all subsequent references in the Draft Revised Guidance to the applicant providing information to the CMA should be read in the context of the definition of ‘relevant information’. Accordingly, the CMA has not made any changes on this point in the Final Revised Guidance.

2.75 Regarding the provisions on LPP in Chapter 7 of the Draft Revised Guidance, the CMA notes that applicants are under an obligation to provide all non-legally privileged material regarding the reported cartel activity. Given that this requires an assessment as to whether LPP applies, the CMA does not consider that it is unreasonable to require applicants to maintain and produce a record of any relevant material that has not been provided on the basis that it is protected by LPP. The CMA also notes that it would usually expect non-leniency case parties in a formal investigation to take a similar approach when responding to requests for information, so as to ensure that that the CMA has obtained all relevant non-legally privileged material (including material that might be relevant to other parties’ rights of defence). The CMA does not consider that it is disproportionate to ask a leniency applicant to adhere to the standards expected of a non-leniency case party. Accordingly, the CMA has retained these provisions in Chapter 7 of the Final Revised Guidance.

2.76 In respect of the process for determining whether material is protected by LPP, paragraph 7.14 of the Draft Revised Guidance aligns with the approach set out at paragraph 7.5 of the CMA’s *Guidance on the CMA’s investigation procedures in Competition Act 1998 cases* (CMA8, January 2025), which envisages a role for a lawyer not involved in the investigation typically a member of CMA staff. The CMA considers it appropriate for the leniency guidance to align with this position, and has therefore decided to retain this paragraph in the Final Revised Guidance.

2.77 The CMA has decided to remove the statement in paragraph 7.15 of the Draft Revised Guidance that the conclusions of the lawyer will ordinarily be regarded as determinative. In the CMA's experience of assessing logs of material that a party considers benefits from LPP,[19] it is not unusual for the CMA to have questions about entries in such a log (so as to be satisfied that the material does indeed benefit from LPP) but it is not ordinarily necessary for the CMA to require a review of the material in question. Given that the process described at paragraph 7.14 of the Final Revised Guidance is itself likely to be relatively rare, the precise nature of any review and next steps are likely to depend on the specific circumstances of the case. Accordingly, where this arises, the CMA will engage with the applicant on how best to resolve any concerns.

Disclosure requests

Summary of responses

2.78 Two respondents commented that the CMA should be more flexible in relation to applicants needing to make limited disclosures about their leniency status, for example to banks, auditors or regulators. In particular, respondents commented that the requirement at paragraph 3.33 of the Draft Revised Guidance (reflecting a similar provision in the Previous Guidance) to consult the CMA in advance of any such disclosure could be time-consuming and unnecessarily burdensome.

2.79 One respondent also commented that the provisions set out at paragraph 10.10 of the Draft Revised Guidance (regarding requests to the CMA for disclosure of information to support private civil proceedings) should be widened to cover guidance on how leniency applicants should respond to requests made to them for disclosure of leniency materials. The same respondent also suggested that the CMA should provide further clarity of its expectations in cases where an applicant received a request from a non-UK party (for example in non-UK litigation, or from non-UK courts or other non-UK government authorities) for disclosure of information that the applicant has provided to the CMA.

[19] For example, a party to a CMA investigation will be asked to provide a log of responsive material that it considers to benefit from LPP when responding to a request for information from the CMA.

The CMA's views

2.80 The CMA's approach to disclosures by leniency applicants is driven by a need to preserve the integrity of any investigation into the reported cartel activity. This is a particular concern in relation to Type A immunity applications up to the point at which the CMA either launches a formal investigation or makes a decision not to investigate, so as to avoid the risk of 'tipping off' any individuals or undertakings involved in the reported cartel activity as to the possibility of enforcement action. Depending on the circumstances of the case, it may be possible to take a more pragmatic approach in relation to requests to make limited disclosures after the CMA has launched a formal investigation. The CMA has reflected this position at paragraphs 3.31 to 3.36 of the Final Revised Guidance.

2.81 In relation to requests for disclosure made to leniency applicants, the CMA has added paragraph 10.14 to the Final Revised Guidance to state that the applicant should discuss any such requests with the CMA. The CMA does not consider that it would be useful to provide specific detail of how the request might be dealt with, as this would depend on the circumstances of the case.

The CMA's '4Ps' framework

Summary of responses

2.82 As part of the consultation, the CMA asked whether there were other changes that should be made to the current guidance, particularly with regard to the CMA's '4Ps' framework (pace, predictability, proportionality and process).

2.83 Respondents to this question made the following suggestions:

- including indicative timelines for when the CMA will respond to applicants at key points throughout the leniency process;
- allowing applicants to make reasonable and proportionate requests to interview witnesses as part of the internal investigation, or otherwise for the CMA to interview witnesses at an earlier stage of the investigation; and
- where the leniency application package includes foreign language documents, providing an option of staged translations (key passages first).

The CMA's views

2.84 The CMA considers that indicative timelines would have limited value as there can be considerable variability in timings (for example based on the nature and complexity of the reported conduct). However, the CMA has sought to address the underlying point by adding footnote 94 to the Final Revised Guidance. This states that to the extent possible the CMA will keep applicants informed about likely timings and next steps.

2.85 In relation to witness interviews, the CMA does not operate a blanket prohibition on applicants or prospective applicants from conducting any witness interviews. As set out at paragraphs 3.21 to 3.23 of the Draft Revised Guidance, however, witness interviews need to be managed carefully so as to avoid the risk of distorting evidence. For this reason, the CMA's position is that applicants should limit the scope and number of interviews to the minimum necessary to decide whether to make a leniency application. Once an application has been made, any proposals to interview witnesses should be discussed with the CMA in advance. Given the importance of managing witness interviews carefully, the CMA does not propose to change the provisions in the Final Revised Guidance. However, the CMA is open to discussing with applicants how best to manage witness interviews in the circumstances of a specific application.

2.86 The CMA has accepted the suggestion that it may be appropriate to allow applicants to take a staged approach to providing translations of foreign language documents. The CMA has set this out in paragraph 7.11 of the Final Revised Guidance.

Investigative steps

Summary of responses

2.87 Several respondents made comments about the CMA's approach to investigative steps – both those taken by the applicant as part of its internal investigation, and those taken by the CMA in a formal investigation.

2.88 In relation to paragraph 3.26 of the Draft Revised Guidance, which sets out the CMA's expectation of applicants being able to provide an account of their internal investigation, one respondent commented that the listed requirements were very prescriptive and should be presented as an example of what might be required rather than minimum requirements in every case. Another respondent raised a concern regarding the requirement to be able to provide an account of questions asked and answers given in interviews or meetings with potential witnesses. In particular, the respondent noted that early interviews often occur before the full facts are known (such that the interviewees' recollections and accounts would evolve as the investigation progressed) and that that if the applicant were asked to submit interview notes to the CMA, this might be treated by other jurisdictions as a waiver of privilege.

2.89 Two respondents also queried the position at footnote 129 of the Draft Revised Guidance that it will generally be inappropriate for a legal adviser acting for the undertaking to be present when the CMA interviews an individual employee or director unless they are also the legal representative of the interviewee. One respondent stated that this can leave the interviewee feeling isolated and intimidated, as well as making it harder for the applicant to meet its duty to identify and correct inaccuracies. Another respondent suggested that this approach could undermine the individual's rights of defence, since the applicant's lawyers will be more familiar with the case than a separate lawyer appointed to represent the individual.

2.90 One respondent also commented that a corporate applicant's leniency cooperation should not be negatively affected by any inaccuracies or inconsistencies in the statements of its employees or former employees, where the applicant has otherwise fully cooperated with the CMA.

The CMA's views

2.91 In relation to records of internal investigations, paragraph 3.25 of the Draft Revised Guidance explains the CMA's reasons for requiring applicants to be able to provide an account of their internal investigation. In particular, the CMA may need the applicant to demonstrate a full audit trail of the enquiries that have been carried out in order to rebut arguments that an internal investigation has compromised the integrity of the CMA's own case. For this reason, the CMA does not propose to frame the list at paragraph 3.25 as an example rather than a minimum requirement. However, the CMA has added footnote 80 to the Final Revised Guidance to make clear that if applicants and prospective applicants anticipate difficulties in maintaining an account of their internal investigation they should discuss this with the CMA.

2.92 In relation to the requirement to be able to provide an account of questions asked and answers given in interviews or meetings with potential witnesses, the CMA acknowledges that initial interviews can occur before the full facts are known. However, the CMA remains of the view that it is important that an applicant must be able to provide an account of such interviews if required. As regards the reference to a potential risk of privilege waiver, the CMA notes that paragraph 3.26 of the Draft Revised Guidance explicitly states that the requirements are 'save to the extent that legal professional privilege applies'. The CMA further notes that it does not usually need to ask applicants to provide an account of their internal investigation, and where this is needed it would be open to applicants to raise any concerns and suggest other ways of meeting the CMA's requirements that would satisfy these concerns. Accordingly, the CMA has not made any further changes to this paragraph in the Final Revised Guidance.

2.93 The CMA's position regarding legal advisers attending interviews is set out at paragraph 6.22 of the CMA's *Guidance on the CMA's investigation procedures in Competition Act 1998 cases* (CMA8, January 2025). The CMA considers it appropriate for the leniency guidance to align with this position. The CMA acknowledges that leniency applicants are under a particular duty to inform the CMA of any inaccuracies in an account given by their witnesses. However, this is addressed at footnote 144 of the Final Revised Guidance, which explains that if the applicant's legal adviser is not present at the interview, the applicant's duty to inform the CMA of any concerns will only arise once the applicant becomes aware of any inaccuracies, which may not be until the undertaking has had an opportunity to review the interview transcript.

2.94 The CMA confirms that inaccuracies or inconsistencies in statements made by an employee or former employee will not negatively affect an undertaking's leniency application if the undertaking has otherwise fully cooperated with the CMA (including by having used its best endeavours to procure the ongoing cooperation of its current and former employees and directors). This is reflected in the Final Revised Guidance, for example at paragraphs 11.9 to 11.11, which set out the consequences for an undertaking of a failure to cooperate by a former or current employee or director. The exception is the position described at footnote 187 of the Final Revised Guidance; if inaccuracies or inconsistencies in the account of an employee or former employee are such that there is no credible basis for taking forward a credible investigation, the application as a whole will not meet the threshold for leniency.

Accessibility of the guidance

Summary of responses

2.95 Respondents generally welcomed the changes that the CMA proposed to the content, format and presentation of the Draft Revised Guidance and Draft Short Guides with a view to making them more accessible for users. They made some further suggestions to improve the accessibility of the guidance:

- adding hyperlinks to the contents page;
- inserting a table of abbreviations near the front of the Draft Revised Guidance;

- adding a list of contacts for sectoral regulators that have concurrent powers with the CMA to enforce the CA98 prohibitions in their respective sectors;

- in the Draft Short Guides, clarifying how the CMA will respond to an enquiry regarding the availability of leniency and what is meant by other public bodies dealing with an application in the same way as the CMA.

The CMA's views

2.96 The CMA does not propose to amend the format of the contents page, but notes that the PDF version of both the Draft Revised Guidance and the Final Revised Guidance do contain links to navigate to the relevant chapters. Similarly, the CMA does not propose to add an abbreviations table to the Final Revised Guidance because the glossary of terms at Chapter 18 already includes all abbreviations used.

2.97 The CMA does not consider that it is necessary to include a list of contacts for sectoral regulators in the leniency guidance. As set out at paragraph 2.64 of the Final Revised Guidance, the 'single queue system' for leniency applications within the regulated sectors means that applicants should always approach the CMA for leniency in the first instance.

2.98 The CMA has updated the Final Short Guides to explain how the CMA responds to enquiries regarding the availability of leniency and what is meant by public bodies dealing with an application in the same way as the CMA.

Cooperation

Summary of responses

2.99 Respondents made the following comments and suggestions in relation to the cooperation expected of leniency applicants.

- One respondent suggested that the CMA should clarify, in relation to paragraph 8.3(h) of the Draft Revised Guidance, the nature of cooperation that might be required from applicants in respect of any appeals, criminal investigations or criminal or CDO proceedings.

- One respondent stated that it would be helpful for the CMA to reiterate, in relation to the possibility of applicants disputing specific elements of the CMA's analysis of the reported cartel activity (paragraphs 8.32 and 8.33 of the Draft Revised Guidance), the principle at paragraph 7 of the foreword to the Draft Revised Guidance that the CMA will err on the side of the applicant where there is a genuinely close call.

- One respondent suggested that the CMA should include more practical detail on its expectations of applicants making parallel applications – including the interplay with leniency applications submitted to the European Commission, practicalities such as investigation timings, disclosure risks, status of the applicant in various jurisdictions and cross-authority interactions.

- Two respondents asked the CMA to provide some guidance on what the requirement for 'continuous and complete cooperation' would mean in practice for cooperating individuals and individual immunity applicants.

- In relation to the provisions for signing a cooperation letter set out at paragraph 8.7 of the Draft Revised Guidance, one respondent suggested that the CMA retain flexibility for the letter to be signed by a suitable senior individual from elsewhere in the applicant's corporate group.

- One respondent suggested that the CMA confirm whether withdrawal of immunity from an individual would be permanent, or whether the CMA would consider reinstating immunity if an individual resumed cooperating with the CMA.

- One respondent suggested that the CMA should confirm at paragraph 12.60 of the Draft Revised Guidance that, where a cooperating individual fails to satisfy the conditions of leniency such that the CMA decides to withdraw immunity from that individual, it is not automatic that immunity would similarly be withdrawn from the undertaking applicant to which that cooperating individual belongs.

CMA views

2.100 The CMA has updated paragraph 8.3(h) of the Final Revised Guidance to provide examples of the nature of cooperation that might be required as regards any appeals, criminal investigations, or criminal or CDO proceedings.

2.101 The CMA does not consider that it is necessary to reiterate the principle at paragraph 7 of the foreword in relation to the possibility of applicants disputing specific elements of the CMA's analysis of the reported cartel activity. It is clear from the wording of paragraph 7 that this principle applies to the leniency regime as a whole.

2.102 The CMA has added a new sentence to paragraph 8.9 of the Final Revised Guidance to explain that its main expectations of applicants making parallel applications are for the applicant to consider timings carefully and to provide waivers of confidentiality. The CMA does not consider that it would be helpful to provide further practical details on how parallel applications are managed, given that such applications can vary considerably depending on, for example, the nature of the case, the number of parallel applications and whether any or all of the authorities decide to investigate formally. However, applicants are welcome to seek guidance from the CMA on particular cases.

2.103 The CMA has added an additional sentence at paragraph 12.44 of the Final Revised Guidance to explain the main ways in which individuals are likely to be asked to cooperate with a CMA investigation.

2.104 The CMA has decided not to make any changes to the provisions of paragraph 8.7 of the Final Revised Guidance on signing a cooperation letter. The drafting of the paragraph refers to the CMA's general expectation as to who would sign the letter. This already provides flexibility where appropriate.

2.105 The CMA does not consider that it would be appropriate to include provisions in the Final Revised Guidance for the possibility of reinstating individual immunity that has previously been withdrawn. The CMA is not aware that this question has ever previously arisen; as set out at paragraph 11.3, withdrawal of leniency (either from an individual or an undertaking) is itself expected to be rare.

2.106 The CMA confirms that immunity is not automatically withdrawn from an undertaking in cases where a cooperating individual fails to satisfy the conditions of leniency such that the CMA decides to withdraw immunity from that individual. The CMA has added footnote 216 to the Final Revised Guidance to make this clear.

Miscellaneous

2.107 The CMA has also considered the following comments and suggestions made by respondents.

- In relation to paragraph 1.6 of the Draft Revised Guidance, a respondent commented that any evolution of or departure from the guidance should not be at the expense of applicants, and the value of certainty must be borne in mind. The CMA notes this point but does not consider that any change is required to the Final Revised Guidance. The CMA would always consider carefully the implications for the applicant and for the leniency regime more generally if it were to consider evolving or departing from the guidance.

- One respondent asked the CMA to reinstate the statement from paragraph 1.5 of the Previous Guidance that the guidance 'is not published pursuant to any statutory obligation and should not be read as if it were akin to a statutory enactment'. While this position has not changed, the CMA considers that it is not necessary (or consistent with other CMA guidance) to set this out explicitly. Accordingly, the CMA has not included this statement in the Final Revised Guidance.

- In relation the statement in paragraph 5.13 of the Draft Revised Guidance that the CMA may seek to revisit and refine the scope of the marker, one respondent asked if the CMA could provide further guidance as to the likely triggers for any adjustments to the scope of the marker. The CMA has addressed this with an additional sentence at the end of paragraph 5.14 of the Final Revised Guidance.

- One respondent said that the CMA should not name parties under investigation until a final infringement decision has been reached, noting that confidentiality throughout the investigation process can be a decisive factor for companies considering whether to make a leniency application. The CMA considers that this point is outside the scope of the current consultation; the CMA's policy on naming case parties is set out at paragraph 5.7 of the CMA's *Guidance on the CMA's investigation procedures in Competition Act 1998 cases* (CMA8, January 2025).[20] However, as set out at paragraph 10.2 of the Final Revised Guidance, when opening an investigation the CMA will not disclose (either publicly or to the other parties under investigation), the fact that an undertaking had applied for leniency.

- One respondent noted that paragraph 12.55 of the Draft Revised Guidance provides for prospective individual immunity applicants to seek confidential guidance as to whether they would be treated as a confidential source, and asked the CMA to add this to the list of topics on which confidential guidance may be available. The CMA agrees that this would be helpful and has updated the list in Chapter 4 of the Final Revised Guidance.

- One respondent suggested that the CMA should revisit the position at paragraph 2.26 of the Draft Revised Guidance, which states that Type B leniency will definitely cease to be available (i) when a prior leniency application regarding the reported cartel activity has been received, or (ii) where the CMA or a relevant sectoral regulator has sufficient information

[20] The CMA consulted on this policy in 2020 – see Revised CA98 procedures guidance.

to establish the existence of the reported cartel activity. The CMA considers that both of these conditions are appropriate; Type B is by definition unavailable if a prior leniency application has been received,[21] and it would not be in the public interest to accept a leniency application where the CMA or a relevant sectoral regulator has sufficient information to establish the existence of the reported cartel activity.

Additional changes

2.108 In addition to making changes in response to comments received in response to the consultation, the CMA has made a small number of other changes to the Final Revised Guidance. These primarily reflect areas where the CMA considers that additional guidance or clarity for applicants may be useful.

2.109 The CMA has decided to delete the word 'generally' from paragraph 2.36 of the Final Revised Guidance, regarding the possibility of accepting joint approaches for leniency. The CMA has never accepted a joint approach by two or more undertakings for leniency, and there are good reasons for not doing so as outlined in paragraph 2.36. In the event of any questions arising from this position, prospective applicants are encouraged to seek confidential guidance.

2.110 In paragraph 3.20 of the Final Revised Guidance (preserving and securing physical evidence), the CMA has added a new bullet point to draw attention to the possibility that physical evidence of the cartel activity may be held away from the leniency applicant's business premises, for example at the homes or in the vehicles of relevant individuals. As set out at footnote 77 of the Final Revised Guidance, where this may be the case an undertaking applicant must be particularly mindful of the risk of tipping off the relevant individual that a leniency application has been made, or is in contemplation, until it is in a position to secure the evidence is question.

2.111 The CMA has decided to move paragraphs 7.25 to 7.31 of the Draft Revised Guidance (on parallel applications) to Chapter 8 of the Final Revised Guidance.[22] This is because they relate primarily to cooperation rather than to the submission of application packages.

2.112 The CMA has added footnote 159 to the Final Revised Guidance to provide further clarity on the application of the 'but for' test when assessing the appropriate level of penalty for a Type B or Type C applicant. This is to make

[21] Except in the very specific circumstances described at footnote 37 of the Final Revised Guidance.
[22] See paragraphs 8.9 to 8.16 of the Final Revised Guidance.

clear that the 'but for' test would not apply if the applicant brings evidence to the CMA's attention that was already in the CMA's possession or that the CMA had already requested at the time of the applicant providing it.

2.113 The CMA has decided to incorporate the content of footnote 171 of the Draft Revised Guidance, regarding public announcements made by the CMA during a formal investigation, into the main body of Chapter 10 of the Final Revised Guidance. At the same time, the CMA has slightly updated the provisions regarding announcement of a Statement of Objections (covered at paragraph 10.10 of the Final Revised Guidance) to reflect recent practice in relation to such announcements. In particular, the CMA's practice is typically to disclose details of any undertakings that have entered into leniency agreements if the CMA and the parties under investigation have reached settlement under the CMA's settlement policy. Where this is not the case, the CMA would not usually disclose the fact that an undertaking has applied for leniency without that undertaking's consent (other than where the undertaking has already publicly disclosed its leniency status).

2.114 The CMA has also made the following changes to the Final Revised Guidance to make clearer the process for undertaking applicants who identify concerns about the level of cooperation provided by any current or former employees or directors:

- added paragraph 11.9 to cross-refer to the duty on undertaking applicants to inform the CMA of such concerns;
- clarified in paragraph 11.16 and footnote 191 that instances of non-cooperation and bad faith should be reported to the CMA without delay;
- added footnote 192 to clarify that where an applicant suspects, but is uncertain, that a current or former employee or direct may have shown bad faith, it may wish to inform the CMA on a precautionary basis.

2.115 The CMA has amended paragraphs 11.19, 12.67 and 13.39 of the Final Revised Guidance to state that decisions on the withdrawal of leniency or revocation of a no-action letter will be taken in consultation with a Senior Director for Competition Enforcement at the CMA, rather than the SRO for leniency as set out in the Draft Revised Guidance.

2.116 The CMA has expanded the explanation in paragraph 12.21 of the Final Revised Guidance, regarding admissions that an individual applicant will be required to make if the CMA reaches the point of entering into an individual immunity agreement. This is to reflect the fact that an individual may be at risk of CDO proceedings, and may therefore apply for individual immunity, not only where they have themselves participated in cartel activity but also in circumstances where they knew about, or ought to have known about, cartel activity taking place within their business. The admission required of the individual applicant will depend on which scenario applies. The CMA has also updated paragraph 3(a) of the pro forma individual immunity agreement (Appendix C) of the Final Revised Guidance to reflect this change.

2.117 In relation to the Final Short Guides, the CMA has made a small addition to paragraph 3.16 of the Final Short Guide for businesses to note that the information provided by a business must give the CMA a sufficient basis for taking forward a credible investigation. The CMA has also added paragraph 4.16 to the Final Short Guide for individuals to cover the same point. This is to align the Final Short Guides with paragraphs 2.16, 2.23 and 2.30 of the Final Revised Guidance.

3. List of respondents

3.1 Ashurst LLP

3.2 City of London Law Society Competition Law Committee

3.3 Cleary Gottlieb Steen & Hamilton LLP

3.4 Eversheds Sutherland (International) LLP

3.5 Freshfields LLP

3.6 Herbert Smith Freehills Kramer LLP

3.7 Linklaters LLP

3.8 Mills & Reeve LLP