

Fuel Finder

Guidance on the CMA's enforcement functions

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Enforcement guidance

The CMA's statutory role

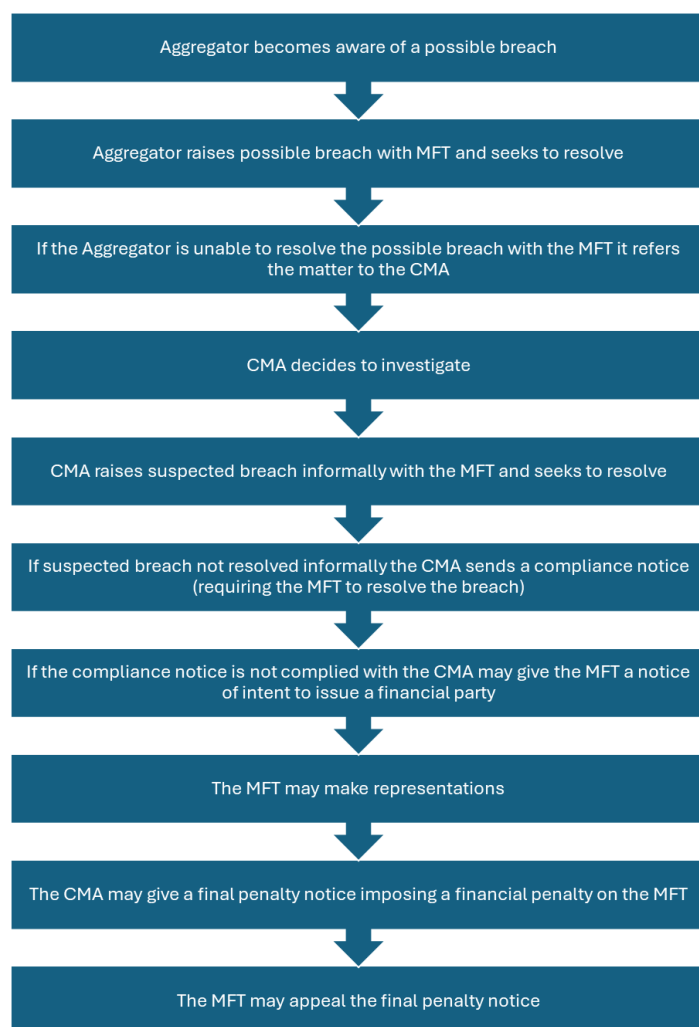
1. Fuel price transparency is a key priority for the government. Price transparency can be described by reference to the cost, time, and difficulty with which consumers can access retail pricing information. Where these factors are lower, a market will have greater price transparency.
2. In general, increased price transparency benefits consumers. For competition to exist and function effectively, a certain level of price transparency needs to exist. There would be little incentive for Motor Fuel Traders (**MFTs**) to compete if consumers could not reasonably and easily compare prices.
3. To address the information asymmetry between petrol filling stations (**PFSs**) and consumers, the government has introduced an Open Data scheme for fuel prices (**Fuel Finder**) under the Motor Fuel Price (Open Data) Regulations 2025 (**Regulations**).
4. The Regulations require a person who offers motor fuel for sale in the course of a retail business (ie MFTs) to comply with certain legal obligations – including to register with, and report retail price changes to, an aggregator appointed by the government. The government has procured an ‘aggregator’ to deliver Fuel Finder, which has its own responsibilities under the Regulations.
5. Compliance with the Regulations will be key to the success of Fuel Finder. In most cases, the aggregator will take steps to resolve potential breaches without the need to involve the CMA. However, effective monitoring and enforcement by the CMA also acts as a deterrent against non-compliance. Without targeted, proportionate and efficient enforcement in place, Fuel Finder is unlikely to meet its objectives.
6. The CMA has the statutory role of enforcing compliance by MFTs with their obligations under the Regulations. Where potential breaches are referred to the CMA by the aggregator, the CMA has powers to investigate and take enforcement action in relation to non-compliance. This may include imposing financial penalties on MFTs who do not comply with the Regulations.
7. This guidance should be read alongside CMA Prioritisation Principles (CMA188), which outlines the basis on which the CMA decides which cases to investigate.

8. Under regulation 25 of the Regulations, the CMA is required to prepare and publish guidance in relation to the exercise of its enforcement powers, including being clear as to how it proposes to exercise its discretion to determine the amount of any financial penalty. This guidance serves to satisfy that requirement.

Monitoring compliance

9. This guidance sets out the CMA's procedures and explains how the CMA generally carries out its functions under the Regulations. The CMA will apply this guidance flexibly. This means that the CMA will have regard to the guidance when dealing with suspected non-compliance but that, when the facts of an individual case reasonably justify it, the CMA may adopt a different approach.
10. Figure 1, below, provides an overview of the typical process the CMA expects to follow to address compliance issues.

Figure 1: Overview of the process for addressing compliance issues



Reporting of suspected breaches by the aggregator

11. The aggregator is responsible for establishing the Fuel Finder system, collecting, and aggregating the data, and sharing it freely and openly with third parties who register for the service, such as fuel price comparison and navigational apps and websites which would make this information available to consumers.
12. The aggregator is required to monitor MFTs' compliance with their obligations under the Regulations. If the aggregator reasonably believes that an MFT has breached its obligations, it must notify and provide details to the CMA.¹
13. The CMA expects to find out about most suspected breaches of the Regulations through notifications from the aggregator.
14. In most cases, the aggregator will take steps informally to resolve suspected breaches directly with an MFT and notify a matter to the CMA only where this is not possible. However, where there are persistent suspected breaches by the same MFT, the aggregator may also refer an MFT to the CMA, even if the MFT has ultimately brought itself into compliance prior to that referral.
15. While the exact details the CMA will need to know about a suspected breach will depend on the individual circumstances, the CMA would expect to receive the following information with all reports from the aggregator (subject to the availability of the information to the aggregator):
 - information which MFTs are required to provide to the aggregator at registration under Schedule 1 of the Regulations ("registration information in relation to a petrol filling station")
 - a description of the relevant provision(s) of the Regulations to which the suspected breach relates
 - a full description of the suspected breach itself
 - how the suspected breach occurred and how and when it was discovered
 - steps taken by the aggregator to informally resolve the suspected breach
 - the duration of the suspected breach and whether it is ongoing
 - the size and significance of the suspected breach and harm caused

¹ Paragraph 14(5) of the Regulations.

- details of whether any third parties are involved, including suppliers, systems providers and other contracted parties
 - details of any previous breaches
16. The CMA may also request additional information from the aggregator in connection with a potential breach.

Investigation of suspected breaches by the CMA

17. The CMA's approach to investigating suspected breaches will be targeted and proportionate and will depend on the nature and severity of those breaches.
18. The CMA may request information informally or formally from the MFT concerned, depending on the circumstances. The CMA often relies upon the co-operation of businesses and routinely requests information on an informal basis (i.e. not using formal investigatory powers). This informal approach may be sufficient in many cases. Additionally, the CMA has formal information gathering powers. The CMA notes that failing, without reasonable excuse, to comply with the CMA's formal information gathering powers may lead to the imposition of a financial penalty.
19. Further information about the CMA's formal information gathering powers is set out in Annex A.

Enforcement against breaches

Decision making by the Senior Responsible Officer

20. A Senior Responsible Officer (SRO) will be appointed by the CMA in relation to the investigation of potential breaches by an MFT. This will be a senior member of CMA staff.
21. The SRO will be the decision maker in relation to an investigation. They may seek internal advice from CMA staff, including specialist advisers, on the legal, economic and policy issues that arise throughout the investigation. In some instances, the CMA may also seek advice from external sources, such as external counsel and other external advisors appointed by the CMA.
22. The General Counsel and, where appropriate, the Chief Economic Adviser (or their representatives) will review the legal and economic analysis prior to the CMA issuing a compliance notice or imposing a financial penalty.

Approach to enforcement

23. In relation to some identified breaches, the CMA may decide, as part of its statutory role explained in paragraph 7 above, that it is appropriate to take further action.
24. The CMA will take a case-by-case approach, but expects that many cases may be suitable for informal action.
25. However, although the CMA will pursue informal action where appropriate, it will consider formal enforcement action where needed, for example where MFTs indicate they will not engage with the CMA to remedy breaches, persistently fail to comply with the law or where breaches are likely to have significant adverse effects on consumers or competitors.

Informal action

26. Informal action describes a response to a breach where the CMA is not engaging its formal enforcement powers (such as issuing compliance notices). This can include the CMA agreeing actions with MFTs to end a breach and to improve practices and processes in the future. Where MFTs agree to take such steps, the CMA may decide to publish details on its website about the nature of the breach and any action taken by the MFT to put things right. This is so that customers and any interested stakeholders are made aware of the action taken.
27. While the CMA will take a case-by-case approach, informal action is more likely for breaches where:
 - this is the first occasion that the MFT has breached the Regulations;
 - the breach has limited detrimental effect on consumers and competitors (for example it affects a limited number of forecourts or consumers);
 - the breach has been brought to an end by the MFT concerned taking steps on a voluntary basis, considered as sufficient by the CMA, to resolve the root cause of the breach and prevent future breaches; and
 - the MFT has committed, on a voluntary basis, to take all steps, considered as sufficient and appropriate by the CMA, to prevent future breaches.
28. The process for informal enforcement action involves the CMA engaging with the MFT concerned as follows:

- Having understood the nature and extent of the suspected breach, if the CMA reaches a provisional view that a breach has occurred and certain informal action would be appropriate, the CMA will write to the MFT concerned to explain this.
- The CMA shall explain the action it proposes to take and attach any draft public letter where appropriate. The MFT will then typically be given two weeks to provide any representations it wishes to make to the CMA on both the principle and the substance of the action the CMA is proposing.
- The CMA will consider the representations received on both the principle and the substance before reaching a final view on the appropriate action. The CMA will then communicate this to the MFT concerned and will continue to liaise with the MFT over the timing of any public announcements where applicable.

Formal enforcement action

29. The CMA has formal enforcement powers to ensure MFTs comply with their obligations under the Regulations. The CMA anticipates that these powers will be used:
- where informal action has failed to resolve the breach.
 - where there are issues of repeated or ongoing compliance problems.
 - where the CMA has concerns that the MFT is not capable of, or willing to, take all the necessary steps voluntarily to prevent further breaches.
 - where the breach may have a significant impact on consumers and competitors and requires swift resolution (for example because it affects a large number of forecourts or consumers).
30. Under regulation 15, the CMA may issue a compliance notice where it believes that the Regulations are not being, or have not been, complied with.²
31. A compliance notice will:
- explain the reasons why the CMA believes that the MFT has breached the Regulations;

² Paragraph 15(1) of the Regulations.

- require the MFT to comply with the relevant requirement in the Regulations and specify the period of time within which they must do so: and
 - warn the MFT about the consequences of not complying with the notice.³
32. When the CMA issues a compliance notice, it may publish a public statement summarising the matters which the notice relates to and naming the MFT as permitted by Regulation 15.⁴
33. If an MFT fails to comply with a compliance notice, the CMA may impose a financial penalty.⁵ The CMA may also seek a court injunction requiring compliance.⁶
34. The CMA may also impose a penalty for a failure to comply with the Regulations without issuing a compliance notice.⁷ The CMA generally only expects to consider a financial penalty without issuing a compliance notice in circumstances where there has been persistent non-compliance or a significant historic breach of the Regulations has come to light, but the breaches have already been remedied (therefore making the issuance of a compliance notice unnecessary).⁸
35. Further information on the CMA's approach to financial penalties is set out in Annex B. The CMA's approach draws on the CMA's existing guidance and experience in relation to the use of its other powers, in particular 'Administrative Penalties: Statement of Policy on the CMA's Approach (CMA4)'.

Complaints

36. Where a dispute arises in relation to the conduct of an investigation by the CMA under the Regulations, the procedures in chapter 5 of CMA6 will apply. Parties to an investigation should raise any complaints about the conduct of an ongoing CMA case with the most senior CMA contact responsible for that

³ Paragraph 15(2) of the Regulations.

⁴ Paragraph 15(4) of the Regulations.

⁵ Paragraph 19(1)(c) of the Regulations.

⁶ Paragraph 15(3) of the Regulations.

⁷ Paragraphs 19(1)(b) and 19(2)(a) of the Regulations.

⁸ Paragraph 19(2)(a) and 19(2)(b) of the Regulations which provide that the CMA can impose a financial penalty without issuing a compliance notice and where a breach has already been rectified.

case, who will review the case team's actions and aim to either put things right, or give an explanation for the course of action taken by the case team.

37. If a party is not satisfied with the senior CMA contact's response, they may request a review of the handling of their complaint by the General Counsel.
38. The CMA's [complaints procedure](#) sets out how the CMA deals with complaints by members of the public (as opposed to parties to a CMA case) about its conduct.

Annex A: Formal Information Gathering Powers

1. Where appropriate to gather information about a potential breach of the requirements in the Regulations, the CMA may use its formal information-gathering powers to obtain information from MFTs.
2. Under regulation 16, for purposes of investigating compliance with the Regulations, the CMA can:
 - Interview an MFT under formal powers; and
 - Make a formal written notice to an MFT for the production of documents and information.
3. Where an MFT fails, without reasonable excuse, to comply with a request to attend an interview or provide the documents and information the CMA may impose a financial penalty.
4. Further information on financial penalties is set out in Annex B.

How the CMA will obtain information from MFTs

5. The CMA will aim to be fair and reasonable in its requests for information. It will adopt a flexible approach – the form of its engagement with MFTs may differ depending on the individual circumstances.
6. The CMA may request documents and information from an MFT in writing. A written notice to an MFT for documents and information will:
 - specify the purpose for which the MFT is required to provide information and documents;
 - specify the information or documents which the MFT is required to provide;
 - specify when and how the information and documents must be provided to the CMA; and
 - include information about the consequences of not complying with the notice.
7. The CMA will seek to set a deadline that it considers reasonable for compliance with requests for information. The deadlines specified will depend on the nature and the amount of information that the CMA has requested.

8. MFTs should make known any potential difficulties in responding (such as administrative, resourcing, financial, logistical and practical issues) as early as possible within the timeframe set out in the notice, or as soon as they become aware that they may not meet the stipulated deadline. They should also raise with the CMA any matters they do not understand as soon as possible after receiving a request.
9. The CMA will take into careful consideration any concerns raised by MFTs about their ability to provide the information required – including the nature and type of the information requested and the resources available to the MFT.
10. The CMA may request information from the same MFT on more than one occasion during its consideration of the issues. For example, the CMA may ask for additional information after considering material submitted in response to an earlier request.
11. MFTs providing information have an obligation to provide truthful, complete and accurate information. Under Regulation 19, the CMA may impose a financial penalty if an MFT fails to do so without reasonable excuse. It is also an offence under regulation 26 to provide information to the CMA that is false or misleading or to take steps to prevent the CMA from obtaining information or documents.
12. The CMA expects to primarily use its written information gathering powers to investigate potential breaches. However, the CMA notes that it also has powers to require representatives of an MFT to attend an interview⁹. In such cases, the CMA will send an MFT a written notice which will:
 - specify which representatives of an MFT are required to attend and the purpose for which they are required to do so;
 - specify the time and place for the interview (which may be remote/virtual); and
 - include information about the consequences of not complying with the notice.

⁹ See paragraph 16(2) of the Regulations, which provides that the CMA can require an MFT to provide information at a specified time or place and in a specified manner. This could be, for example, through certain individuals attending the CMA's office to give evidence.

Annex B: Penalties

General statement

13. The Regulations empower the CMA to impose financial penalties where an MFT fails to comply with requirements imposed on a person in respect of the CMA's exercise of its investigative powers (including the provision of false or misleading information) or contained in a compliance notice¹⁰ (together referred to as **Requirements**). Regulation 25(2) requires the CMA to publish guidance on how it proposes to exercise its discretion to determine the amount of a financial penalty.
14. The CMA's approach draws on the CMA's existing guidance and experience in relation to the use of its other powers.

Maximum penalties for breaches of Requirements

15. Under regulation 19 of the Regulations, the CMA may impose such administrative penalties as it considers appropriate subject to the statutory maxima specified in the Fuel Finder Regulations.
16. The potential financial penalties under the Regulations are:
 - a fixed amount up to 1% of worldwide turnover;
 - a daily rate up to 5% of daily worldwide turnover; or
17. in the case of a combination of a fixed amount and a daily rate, up to 1% of worldwide turnover and 5% of daily worldwide turnover respectively.¹¹

Factors influencing the CMA's decision whether to impose a penalty

18. The CMA will consider whether to impose an administrative penalty on a case-by-case basis, taking into account the relevant circumstances.
19. However, the CMA may be more likely to impose a penalty where it considers one or more of the following factors are present:

¹⁰ The Regulations also provide the CMA with a general power to impose a financial penalty for failing to comply with a requirement in the Regulations.

¹¹ Paragraph 19(5) of the Regulations. Please note that these are the maximum amounts, so the level of any penalty may be lower.

- the breach (whether committed intentionally or negligently) had or risked having an adverse impact on:
 - a CMA investigation or on the fulfilment of a CMA function; or
 - consumers (either in terms of the number actually or potentially affected or in terms of its impact on individual consumers) or competition;
- the MFT has previously failed to comply with a Requirement;
- the breach is ongoing and imposition of a penalty is required to encourage (swift) compliance by the MFT in question with a Requirement;
- the MFT obtained, or sought to obtain, an advantage or derive benefit from the failure to comply with a Requirement.

Reasonable excuse

20. Under regulation 19(1) of the Fuel Finder Regulations, the CMA will only impose a penalty if a failure to comply is 'without reasonable excuse'. The circumstances that constitute a reasonable excuse are not defined or fixed and the CMA will consider whether any reasons for failure to comply amount to a reasonable excuse on a case-by-case basis. The CMA will apply an objective test as to whether an excuse put forward by the Relevant Person is reasonable.
21. The CMA will expect MFTs to be responsible for ensuring their legal obligations are fully understood and that the CMA's powers are complied with, even when, for example, using external advisers to assist them with their response or, when relying upon an electronic point of sale provider to use an Application Programming Interface (API) to automatically notify any price changes.
22. Depending on the circumstances, the following may amount to a reasonable excuse:
 - A significant and demonstrable IT failure (which could not reasonably have been foreseen or avoided) which prevented the party from complying with a requirement or meeting a deadline.
 - For small businesses or sole traders, the death or incapacity of a key official.

- Obvious typographical errors in a response to a request for information.
- Staff error where the mistake is promptly brought to the aggregator's or CMA's attention before the aggregator or CMA relies on the information.

23. The following examples are unlikely to constitute a reasonable excuse:

- Failing to make reasonable efforts to meet a deadline, including, for example because it was forgotten or overlooked.
- Failing to obtain appropriate senior approval in good time.
- The absence of officials or other advisers acting for the party due to annual leave or another planned reason.
- For larger companies, the unplanned absence of specific personnel, as it would be reasonable to make contingency plans in order to meet deadlines.
- A party considers there are good commercial reasons for non-compliance.

Determination of turnover

24. Turnover will be determined in accordance with regulation 20 and schedule 2 of the Regulations.

The definition of turnover

25. Turnover is defined as the sum of all amounts derived by the MFT¹² from the supply of products, after the deduction of sales rebates, value added tax and any other taxes directly attributable to turnover.¹³ Turnover is not limited solely to amounts derived from the sale of motor fuel.¹⁴ Turnover also includes subsidies received from public authorities.¹⁵
26. Where an MFT consists of multiple entities that each prepare accounts, turnover is calculated by adding together the turnover of the different entities.

¹² For the purposes of calculating financial penalties, the Regulations use the term "undertakings", which covers any natural or legal person engaged in economic activity, regardless of its legal status and the way in which it is financed. However, for the purposes of this document we use the term "MFT" throughout.

¹³ Paragraph 2(1) of schedule 2 to the Regulations.

¹⁴ See the definition of "product" in paragraph 1(1) of schedule 2 to the Regulations.

¹⁵ Paragraph 3(1) of schedule 2 to the Regulations.

However, to avoid double counting, the turnover calculation does not include turnover resulting from the supply of products between the different entities.¹⁶

27. In determining turnover, the CMA can take account of acquisitions, divestments or other transactions or events which have occurred since the end of the accounting year and which may have a significant impact on the turnover of an MFT, which may increase or reduce the turnover calculated.¹⁷

Geographic scope

28. For the purpose of calculating the applicable statutory caps on a financial penalty, worldwide turnover (i.e. turnover both inside and outside the UK) is taken into account.¹⁸

The period over which turnover is calculated

29. The relevant period to be used when calculating the turnover of an MFT is the last accounting period to end before the relevant date¹⁹ or, if the MFT has no accounting period that ends before the relevant date, the period beginning with the day on which the activities of the MFT began to be carried on and ending with the last day of the month preceding the month in which the relevant date falls.
30. If the CMA estimates on the relevant date that the turnover of the MFT in the accounting period preceding the relevant accounting period was higher than the turnover in the relevant accounting period, then the MFT's turnover in the preceding accounting period will be considered its turnover.²⁰
31. If the figures necessary to calculate the turnover in the relevant account period are not available to the CMA on the relevant date, turnover is determined by reference to:
- the preceding accounting period; or
 - if the MFT has no preceding accounting period, the period beginning with the day on which the activities of the undertaking began to be

¹⁶ Paragraph 4(1) of schedule 2 to the Regulations.

¹⁷ Paragraph 4(3) of schedule 2 to the Regulations.

¹⁸ Paragraph 19(5) of the Regulations.

¹⁹ The "relevant date" means the date on which the notice of intent is issued under regulation 21(1) of the Regulations.

²⁰ Paragraph 20(2) of the Regulations.

carried on and ending with the day immediately preceding the date on which its relevant account period began.²¹

32. If these figures are not available to the CMA on the relevant date, the turnover of the MFT is its turnover in the period beginning on the day after the last day of its relevant accounting period and ending on the last day of the month preceding the month in which the relevant date falls.²²
33. Where the period by reference to which turnover is calculated does not amount to 12 months, the turnover is the turnover in that period divided by the number of days in that period and multiplied by 365 or, if the period includes 29th February, 366.²³
34. The daily turnover is therefore the turnover divided by 365, or if the period to which turnover is calculated includes 29th February, 366.²⁴

Calculating monetary penalties

35. A financial penalty imposed by the CMA for breaches of Requirements will be calculated following a four-step approach:
 - Step 1: Calculation of the starting point, having regard to the seriousness of the breach and the relevant turnover.
 - Step 2: Adjustment for aggravating or mitigating factors.
 - Step 3: Adjustment for deterrence and to take account of the size of the party.
 - Step 4: Adjustment to ensure that the penalty is proportionate and any applicable statutory cap is not exceeded.

Step 1 – starting point

36. The starting point for determining the level of financial penalty is calculated having regard to:
 - the extent and nature of the breach;

²¹ Paragraph 20(3) of the Regulations.

²² Paragraph 20(4) of the Regulations.

²³ Paragraph 20(5) of the Regulations.

²⁴ Paragraph 20(6) of the Regulations.

- the seriousness of the breach;
 - the relevant turnover of the MFT.
37. The CMA will consider the nature of the breach, such as the Requirement to which the breach relates, whether it is likely to materially undermine the purpose of the Regulations or impact the CMA's ability to progress an investigation and the total duration of the breach.
 38. The CMA will determine the seriousness of a breach by reference to the harm actually or potentially caused by the breach and the culpability of the MFT (although it should be noted that, for the purposes of ascertaining compliance, the CMA is not required to demonstrate that a breach has caused harm or was intentionally committed). This is a case specific assessment.
 39. When assessing the level of harm, factors the CMA may take into account include the duration of the breach, the number of filling stations affected, the number of consumers purchasing fuel at prices which had not been updated to the aggregator, the difference between the pricing information provided to the aggregator and actual prices, and the associated revenue generated over the duration of the infringement.
 40. Having considered the harm, the CMA will then look at the culpability of the party (to the extent the party has a 'reasonable excuse' for the failure to comply, the CMA cannot apply a monetary penalty). Factors that the CMA may consider include (but are not limited to) whether the breaches were the result of deliberate action or negligence by the party or were a genuine and unforeseeable mistake, and whether staff have been instructed or trained to act in ways which would breach a Requirement.
 41. Notwithstanding the statutory cap, the CMA will generally determine a starting point of up to 30% of the MFT's UK turnover (in the last accounting period to end before the date on which the notice of intent is issued), which will generally be the amount derived in connection with the direct or indirect sale or provision of products to customers (businesses or consumers) in the UK. This is because the CMA's concerns will generally be focused on harm to the UK market and customers within that market.
 42. There is no pre-set 'tariff' of starting points for different types of breach given that the determination of the level of financial penalty is assessed on a case-by-case basis. However, in making its assessment, the CMA will have regard to the following principles:

- The CMA will generally use a starting point between 21 and 30% of UK turnover for the most serious types of breach, that is, those which cause significant harm and involve a high level of culpability.
- In relation to breaches which have caused moderate harm or involve a medium level of culpability, a starting point between 10 and 20% is more likely to be appropriate.
- For breaches which cause a low level of harm or involve a low level of culpability, the starting point is likely to be below 10%.

Deciding between fixed rate, daily penalty or a combination

43. The CMA will decide between fixed rates and daily penalties on a case-by-case basis, taking into consideration the factors set out below.
44. Where the CMA has a choice as to whether to impose a fixed or daily penalty, or both, it will consider a number of factors, on a case-by-case basis. These may include the following non-exhaustive factors:
 - The factual circumstances in which a penalty is being considered, including the degree of urgency that the breach comes to an end. The assessment of whether to impose a fixed or daily penalty, or a combination of the two, will involve consideration of the need to incentivise timely compliance. Daily penalties, for example, may be particularly appropriate in situations where timely compliance is likely to be of utmost importance, for example where there is an ongoing breach of a Requirement.
 - The deterrent effect of the penalty. The CMA will consider the level of penalty that is likely to have the requisite deterrent effect, both on the MFT and more generally on others, having regard to the need for the penalty to be proportionate in all the circumstances. This assessment may affect the level of fixed, daily or combined penalty that is set.
 - Whether the failure to comply has been remedied. In some cases where an initial failure has been remedied, it may still be appropriate to impose a penalty to reflect the nature and gravity of the failure and/or to achieve deterrence. In those circumstances, only a fixed penalty would be available as daily penalties can only be used for continuing periods of non-compliance.
 - In cases of an extended and unremedied failure to comply with a Requirement, the CMA may be more likely to impose a daily penalty for the duration of the failure, together with an additional fixed penalty to

underline the seriousness of the failure and/or achieve deterrence, while still ensuring that the penalty is proportionate in all the circumstances.

Step 2 – adjustment for aggravating/mitigating factors

45. The amount of the financial penalty may be increased at step 3 where there are aggravating factors or decreased where there are mitigating factors. The CMA will consider whether any adjustments are appropriate in all cases for each MFT based on the specific circumstances of the breach. A non-exhaustive list of factors is provided in the following paragraphs.
46. Aggravating factors may include, among other things:
- Whether the MFT has previously failed to comply with a Requirement, the seriousness of any past failure(s), and the time that has elapsed since the failure(s) occurred.
 - Persistent and repeated unreasonable behaviour that delays the CMA's investigation.
 - Any attempt to conceal the breach from the aggregator or CMA.
47. Mitigating factors may include, among other things co-operation with the CMA which enables the enforcement process to be concluded more effectively and/or speedily.

Step 3 - adjustment for deterrence and to take account of the size of the party

48. Having determined an appropriate starting point, the CMA will consider whether it is likely to be sufficient to meet the objectives set out above, in particular, whether it is likely to deter future infringements by the MFT and others. Any penalty that is too low to deter an MFT from further breaches is also unlikely to deter others.
49. It may be necessary to impose a higher penalty on a larger MFT than a smaller one involved in similar conduct in order to have a sufficient deterrent effect.
50. The CMA considers that an increase at this step may be appropriate, for example, in situations in which a party has a significant proportion of its turnover outside of the UK, and therefore a starting point based just on UK turnover would be too low to achieve the objective of deterrence in view of the MFT's size and financial position.

51. An increase at this step will also be appropriate where the CMA has evidence that the MFT has made, or is likely to derive, an economic or financial benefit from the breach that is above the level of the penalty reached at the end of Step 1.
52. An important part of effective deterrence is that a party should not be in a position in which it is able to make a profit from breaching the Regulations, even after having paid any penalty levied in respect of that breach. Nor is it sufficient for any penalty only to neutralise a party's likely gains from an infringement. To constitute an effective deterrent in this context, any penalty imposed should also exceed a party's likely actual gains from an infringement by a material amount.

Step 4 – adjustment to check that the penalty is proportionate and prevent the maximum penalty being exceeded

53. At this step, the CMA will:
- assess whether, in its view, the overall penalty proposed is appropriate in the round; and
 - adjust the penalty, if necessary, to ensure that it does not exceed the maximum penalty allowed by statute.
54. The CMA will take a step back to check whether, in its view, the overall penalty reached after Steps 1 to 3 is proportionate in the circumstances. Where the CMA intends to impose both a fixed penalty and a daily penalty, this will include considering proportionality in relation to each individually as well as both in totality.
55. The assessment of proportionality is not a mechanistic assessment, but one of evaluation and judgement. The CMA is not restricted to imposing the lowest penalty that could reasonably be justified and it will select the figure which it considers is appropriate in the circumstances of the case.
56. Where necessary, the penalty may be decreased to ensure that the level of penalty is not disproportionate. A penalty may be appropriate even if it exceeds the statutory cap. However, if that is the case, a further adjustment will be needed as set out below.
57. In carrying out the overall assessment of whether a penalty is proportionate, the CMA will have regard to all the relevant circumstances, including the nature and duration of the breach, the conduct of the MFT, the impact of the

breach, and the MFT's size and financial position. The overall assessment should appropriately reflect the seriousness of the breach and the need sufficiently to deter both the MFT and others from similar breaches.

58. Following the proportionality assessment, the CMA will also adjust the penalty, if necessary, to ensure that it does not exceed the maximum penalty allowed by statute.
59. The statutory maxima specified in the Regulations are:
 - a fixed amount up to 1% of worldwide turnover;
 - a daily rate up to 5% of daily worldwide turnover; or
 - in the case of a combination of a fixed amount and a daily rate, up to 1% of worldwide turnover and 5% of daily worldwide turnover respectively.

Process

60. Before imposing a financial penalty on an MFT, the CMA must serve that MFT with a notice of intent.²⁵
61. The notice of intent must:
 - contain a draft of the final penalty notice;
 - invite the MFT to make representations in response to the draft final penalty notice; and
62. specify the means by which, and the time by which, such representations may be made.²⁶
63. The CMA will consider the representations received in response to a notice of intent and, as soon as practicable after the expiry of the time period for making such representations, decide whether to impose a financial penalty.²⁷
64. If the CMA decides to impose a financial penalty, the CMA will, as soon as practicable, serve the MFT with a final notice and publish a copy.²⁸
65. The final penalty notice must state:

²⁵ Paragraph 21 of the Regulations.

²⁶ Paragraph 21(2) of the Regulations.

²⁷ Paragraph 21(3) of the Regulations.

²⁸ Paragraph 21(6) of the Regulations.

- that the CMA has imposed a financial penalty on the MFT;
 - whether the financial penalty is of a fixed amount, an amount calculated by reference to a daily rate, or both;
 - the amount or amounts concerned and in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate or days on which it might cease to accumulate;
 - the act or omission in question which the CMA considers gave it the power to impose the financial penalty;
 - any other facts which the CMA considers justify the imposition of a financial penalty and the amount(s) of the penalty;
 - the manner in which, and place at which, the financial penalty is required to be paid to the CMA;
 - the date or dates by which the financial penalty or different portions of it are required to be paid;
 - that the financial penalty or different portions of it may be paid earlier than the dates required for it to be paid; and
66. that the MFT has 14 days to apply to the CMA to vary the date or dates for payment, and 28 days to appeal to the Competition Appeal Tribunal in relation to the financial penalty.²⁹

Interest

67. If the whole or any portion of a financial penalty is not paid by the date which it is required, the unpaid balance carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.³⁰
68. Where an application has been made to the CMA to specify a different date for payment, payment is not required to be made until the application has been determined, withdrawn or otherwise dealt with.³¹
69. If a portion of the financial penalty has not been paid by the date required, the CMA may, where it considers it appropriate to do so, require so much of the

²⁹ Paragraph 21(5) of the Regulations.

³⁰ Paragraph 23(1) of the Regulations.

³¹ Paragraph 23(2) of the Regulations.

penalty as has not already been paid, and is capable of being paid immediately, to be paid immediately.³²

Appeals

70. An MFT may apply to the CMA to vary the date or dates for payment of a financial penalty. An application must be made within 14 days of the date of service of the final penalty notice.³³
71. An MFT may appeal to the Competition Appeal Tribunal (CAT) against a decision of the CMA not to specify a different date or dates for payment. Such an appeal must be made within 28 days of the MFT being notified of the CMA's decision.³⁴
72. An MFT on whom a financial penalty is imposed may also appeal to the Competition Appeal Tribunal (CAT) in relation to:
- the imposition or nature of the penalty;
 - the amount or amounts of the penalty; or
73. the date or dates by which the penalty, or portions of the penalty, are required to be paid.³⁵
74. An appeal must be made to the CAT within the period of 28 days starting with the day on which the final penalty notice was served on the MFT.³⁶
75. The CAT may:
- quash the financial penalty;
 - substitute a financial penalty of a different nature or of such lesser amount(s) as the CAT considers appropriate; or
 - substitute for the date or dates imposed by the CMA for the penalty to be paid, an alternative date or dates.³⁷

³² Paragraph 23(3) of the Regulations.

³³ Paragraph 21(6) of the Regulations.

³⁴ Paragraph 27(4) of the Regulations.

³⁵ Paragraph 27(1) of the Regulations.

³⁶ Paragraph 27(3) of the Regulations.

³⁷ Paragraph 27(5) of the Regulations.

76. The CAT must take into account this guidance when determining the outcome of an appeal.³⁸
77. The CAT may not substitute a financial penalty of a different nature unless it considers that the MFT will, or is likely to, pay less under the substituted penalty than the motor fuel trader would have paid under the original penalty.³⁹
78. Where an appeal has been made, the CMA may agree to reduce the amount or amounts of the financial penalty in settlement of the appeal.⁴⁰
79. Where the Competition Appeal Tribunal substitutes a financial penalty of a different nature or of lesser amounts, it may require the payment of interest on the substituted penalty at such a rate and from such date(s) as it considers appropriate.⁴¹
80. Where the CAT specifies as a date by which the financial penalty, or a portion of the penalty, is to be paid which is a date before the appeal was determined, it may require the payment of interest from that date at such rate as it considers appropriate.⁴²
81. The CAT's decision can be appealed to the appropriate court⁴³ in relation to:
- on a point of law; or
 - the amount or amounts of a financial penalty.

³⁸ Paragraph 27(6) of the Regulations.

³⁹ Paragraph 27(7) of the Regulations.

⁴⁰ Paragraph 27(8) of the Regulations.

⁴¹ Paragraph 27(9) of the Regulations.

⁴² Paragraph 27(10) of the Regulations.

⁴³ The "appropriate court" means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session.

Practical examples

To assist relevant stakeholders, below are some non-exhaustive illustrative examples of how the CMA powers described in this guidance might apply. They are without prejudice to the CMA's ability to determine its approach to the imposition of a penalty on a case-by-case basis.

Example 1

Scenario

A is a small business. The aggregator has received information that A has not provided updated pricing information. A has not responded to the aggregator's attempts to resolve the matter. The matter has been referred to the CMA, which is now investigating. The CMA sends a formal information request under Regulation 16 to A as part of its investigation. The information request is sent to A's Chief Executive, who accidentally misfiles the request and forgets about it. When contacted by the CMA the day after the deadline has passed, the Chief Executive apologises and offers to provide the majority of the requested information later that day, with the remainder to follow the next day. A has provided several complete and timely responses to CMA information requests in the past.

Analysis

The CMA would likely consider this a minor/mitigated failure committed without reasonable excuse. It is based on an administrative error, which:

- A has taken immediate and satisfactory steps to rectify –
- A has not sought to benefit in any way from the failure to comply, and
- given the limited delay in providing the information (provided the outstanding information is indeed received promptly), is unlikely to have a material adverse impact on the CMA's investigation.

While the CMA does not consider that the circumstances of this failure to comply constitute a reasonable excuse, the CMA may decide not to impose a financial penalty. However, if A subsequently failed to comply with a different Requirement, this previous failure might be taken into account as an aggravating factor.

Example 2

Scenario

B is a major operator in the market. The CMA is investigating whether B has notified the aggregator of changes in the price of petrol at its filling stations and sends a formal information request under Regulation 16 to B as part of its investigation. Many questions are ignored completely or receive inadequate one-word responses that do not answer the questions properly. B's response, when asked to provide specific details of all price changes in the last six months, is to say that it "holds insufficient data to confirm whether there have been changes". However, further investigation reveals a presentation was given to B's Board shortly before the CMA's request containing detailed information about price changes, which was not provided to the CMA.

Analysis

The CMA would likely consider this a serious failure, committed without reasonable excuse, which would warrant a financial penalty. Inadequate and indeed inaccurate information has been provided to the CMA, in all likelihood in order to prejudice the CMA's investigation to B's benefit. The CMA would likely impose penalties for both non-compliance with the requirement to provide information and for the provision of materially false or misleading information to the CMA. In order to reflect the seriousness of the failure to comply and deter future failures of this sort, the CMA would be likely to consider both fixed penalties and daily penalties (where appropriate) until B provides complete, adequate and accurate responses to the information request.

Example 3

Scenario

Following complaints from consumers, the aggregator believes that C has failed to provide it with updated pricing information. The aggregator has been unable to resolve the issue with C and has therefore referred the matter to the CMA. The CMA has issued a compliance notice under Regulation 15, requiring C to provide updated pricing information to the aggregator. C updates the information by the required deadline. However, two days after the deadline, C identifies that a small number of price updates were incorrect due to a data-entry error, and this was not identified by C's quality assurance checks. The party immediately notifies the CMA and aggregator of this and the following day, provides complete and corrected information to the aggregator.

Analysis

The Regulations require accurate and complete information to be provided to the aggregator and the mistake does not constitute a reasonable excuse. Having regard to the timely self-reporting and corrective action by C, as well as the fact that the error related to a small amount of data and is therefore unlikely to have had a significant impact on consumers, and provided that this is C's only breach to date, the CMA may decide not to prioritise imposing a financial penalty.

Example 4

Scenario

D is a major operator in the market, with a large number of filling stations. For 6 months, D has been varying prices, but failing to provide updated information in relation of any of its filling stations to the aggregator, despite informal attempts by the aggregator and the CMA to address the issue. The CMA has issued a compliance notice under Regulation 15, requiring D to provide updated pricing information to the aggregator. D has failed to do so by the deadline in the notice and has provided no explanation to the CMA for its failure to comply with the notice.

Analysis

The CMA would likely consider this a very serious failure committed without reasonable excuse. Given the number of filling stations operated by D and the lengthy period of non-compliance, a large number of consumers may have been adversely affected, and D is likely to have derived an advantage by failing to comply. D has failed to engage with the aggregator or CMA and, despite being aware of the breaches, has made no attempts at mitigation. The CMA would likely impose significant fixed and daily penalties, in order to incentivise D to comply with the Regulations and to ensure that there is a broader deterrent effect.

Example 5

Scenario

E is a significant operator in the market. E initially implemented the requirements of the Regulations, but following updates to its systems and processes, it subsequently failed to provide the required information for any of its filling stations to the aggregator for a period of 9 months. Senior management at E were unaware that the relevant systems and processes in the business had been updated in this way. The members of staff making these changes were unaware of why E was providing this information to the aggregator and they were looking to save costs for the business by ceasing to provide such information. Once made aware of the breach by the aggregator, E restarted the provision of the relevant information to the aggregator.

However, given the lengthy period of non-compliance, the breach was reported to the CMA by the aggregator and the CMA investigated this with E.

Analysis

The CMA would likely regard this as a significant breach, particularly given the length of time for which the breach occurred.

The CMA would take into account the size of the business, the failure of its systems and controls and the decision made by staff to stop the provision of this information without understanding why it was being provided. It would also note that the breach was not detected by the firm or reported to the aggregator and that even though the correct information will be provided going forward, a significant number of customers are likely to have already been affected.

The CMA would therefore likely impose a fixed penalty, as the breach is not ongoing. However, the penalty would tend to be large given the exacerbating factors in relation to the conduct of the business concerned.

Example 6

Scenario

F operates twenty filling stations of various sizes. The aggregator believes that F has failed to provide it with updated pricing information for two of its smaller filling stations. The aggregator has been unable to resolve the issue with F and has therefore referred the matter to the CMA. The CMA has issued a compliance notice under Regulation 15, requiring F to provide updated pricing information to the aggregator. F failed to update the information within the deadline but has now done so.

Analysis

The CMA would take into account the fact that a breach which only affects two smaller filling stations is likely to cause less harm, and that the majority of F's other stations are compliant. However, F was given a number of opportunities to bring itself into compliance, and ultimately failed to do so until after the deadline in the compliance notice had passed.

The CMA would therefore likely impose a fixed penalty, as the breach is not ongoing, but it is important to incentivise F to comply with the Regulations in the future. The penalty would tend to be low given that the harm caused is likely to be relatively minor.