Penalty notice under section 40A of the Competition Act 1998

Suspected anti-competitive conduct in relation to the supply of roofing and other construction services

Addressed to: M&J Group (Construction & Roofing) Ltd

Case: 51446

17 September 2026

Competition & Markets Authority

Website: www.gov.uk/cma

The CMA has excluded from this published version of the notice information which the CMA considers should be excluded having regard to the considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The excisions are indicated by [✂].

Case 51446

Suspected anti-competitive conduct in relation to the supply of roofing and other construction services

Decision to impose a penalty on M&J Group (Construction & Roofing) Ltd under section 40A(1) of the Competition Act 1998 (as it applied in December 2024)

Decision to impose a penalty

1. Pursuant to section 40A(9) of the Competition Act 1998 ('**CA98**') and section 112 of the Enterprise Act 2002 ('**EA02**'),[1] the Competition and Markets Authority (the '**CMA**') hereby gives notice to M&J Group (Construction & Roofing) Ltd ('**M&J**') that it has decided to impose a penalty on M&J under section 40A(1) of the CA98 (as it applied in December 2024). That is because the CMA considers that M&J has, without reasonable excuse, failed to comply with investigatory requirements imposed on it by CMA officers on 10 December 2024 during the CMA's execution of a warrant (the '**Inspection**') issued by the Competition Appeal Tribunal under section 28(1)(b) of the CA98 to search the business premises of M&J, located at Hammond Road, Elms Farm Industrial Estate in Bedford (the '**M&J Premises**') (the '**Warrant**').[2]

2. The total penalty in respect of all the failures to comply identified in this Decision is a fixed amount of £25,000.

Procedural history and M&J's submissions

3. On 7 July 2026, the CMA issued to M&J a provisional notice to impose a penalty under section 40A(1) of the CA98 (the '**Provisional Penalty Decision**') and gave M&J the opportunity to provide written representations. M&J provided written representations on the Provisional Penalty Decision on 29 July 2026 (the '**Provisional Decision Response**') in which it did not dispute the non-compliance or imposition of a penalty but submitted that the proposed penalty of £25,000 in the Provisional Penalty Decision was excessively high and not reasonable, appropriate or proportionate.[3]

4. In arriving at this final decision, the CMA has carefully considered the evidence available to it and M&J's representations. M&J's representations are addressed below.

Structure of this document

5. This decision is structured as follows:

    (a) **Section A** sets out an executive summary.

    (b) **Section B** sets out the legal framework.

    (c) **Section C** sets out the factual background.

    (d) **Section D** summarises the key events on the day of the Inspection.

[1] Section 112 EA02 applies by virtue of section 40A(9) CA98.
[2] Warrant issued by the Competition Appeal Tribunal on 4 December 2024 under section 28(1)(b) CA98 to search the business premises of M&J [M&J Bundle, Tab 1].
[3] Letter from Mayer Brown International LLP to the CMA on behalf of M&J Group dated 29 July 2026 with written representations on the Provisional Penalty Decision, paragraph.2.3.

(e) **Section E** sets out the CMA's assessment of the failures to comply without reasonable excuse.

(f) **Section F** sets out the CMA's assessment of the appropriateness of imposing a penalty and the level of penalty imposed.

(g) **Section G** sets out the next steps including M&J's right to appeal this decision.

A. Executive summary

Failure to comply with investigatory requirements

6. Pursuant to section 40A(1) CA98, the CMA may impose a penalty where it 'considers that a person has, without reasonable excuse, failed to comply with a requirement under section … 28'.

7. The Warrant was granted under section 28 CA98 and authorised the CMA officers named in Schedule B to take the various steps set out in paragraph 4 of the Warrant. Those steps included, in particular: (a) under paragraph 4(d), 'to take any other steps which appear to be necessary for preserving any documents of the relevant kind or preventing interference with them'; and (b) under paragraph 4(e), 'to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his or her knowledge and belief, where it may be found'.

8. The relevant steps taken by CMA officers included:

(a) stating to M&J that its employees should make available to them any documents relevant to the Investigation (as defined at paragraph 23 below) (for the CMA officers to take possession or copies of the documents, or extracts from them), and should not conceal or destroy any evidence, or obstruct the officers or provide false or misleading information; and

(b) requiring Barry Pirrie, M&J's Estimating Director, the head of one of its departments,[4] to inform them whether he used a work mobile phone.

(collectively the '**Requirements**').[5]

9. It is clear that M&J understood the Requirements set out at paragraph 8(a) and (b) above, as they were conveyed to members of M&J's senior management team, including its CEO, in conversations with CMA officers and its senior management relayed the requirement in paragraph 8(a) in an email to all its staff.[6]

10. The Requirements were not complied with. In particular:

(a) Mr Pirrie instructed another M&J employee, Tracey Woods, M&J's Office Manager, to remove a mobile phone and paperwork (the '**Relevant Materials**') from the M&J Premises, which Ms Woods subsequently did.[7]

(b) On two occasions, Mr Pirrie told CMA officers that he did not have a work mobile phone, when in fact he did, thereby providing false and misleading information.[8]

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[4] M&J Bundle, Tab 8, paragraph 3.2.
[5] See paragraph 28 below.
[6] See paragraph 28 (f) below.
[7] See paragraphs 30-32 below.
[8] See paragraphs 28 (c) and (h) and 32 below.

Failures (a) and (b) are referred to as the '**Individual Failures**'. The Individual Failures are admitted by M&J (as well as by Mr Pirrie, and Ms Woods has not disputed that she took the Relevant Materials off-site).

(c) M&J as a company failed to comply with the Requirements, as it failed to take adequate steps to ensure that the Requirements were complied with. Failure (c) is referred to as the '**Corporate Failure**'.

The Individual Failures and the Corporate Failure are collectively referred to as the '**M&J Failures to Comply**'.

11. M&J is a 'person' for the purpose of section 40A CA98, as under section 59 CA98 'person' includes (a) a body of persons corporate and (b) an undertaking. M&J is liable for the Individual Failures, given that companies and undertakings can act only through their employees and agents. M&J is liable for the Corporate Failure including because the Warrant was addressed to M&J.[9]

No reasonable excuse

12. Having carefully considered the evidence available to the CMA and M&J's representations, the CMA concludes that M&J had no reasonable excuse for failing to comply with the Requirements. Specifically, the M&J Failures to Comply were not caused by a significant and genuinely unforeseeable or unusual event. Nor were they caused by events beyond the control of M&J.

Decision to impose a penalty

13. The CMA has decided, having had regard to its statutory duties and the guidance set out in the CMA4 Administrative penalties: Statement of Policy on the CMA's Approach (2014-2024) ('**CMA4 Penalties Guidance 2014**'), and to all the relevant circumstances of this case, that it is appropriate, reasonable and proportionate to impose a penalty in connection with the M&J Failures to Comply in the amount identified at paragraph 2 above.

B. Legal Framework

14. The applicable penalty regime is that under section 40A of the CA98, which was the provision in force on 10 December 2024, the day of the Inspection.[10] The applicable version of the CMA's guidance is the CMA4 Penalties Guidance 2014, which was also in force on the day of the Inspection.

15. Under section 40A CA98, the CMA may impose a penalty where it considers that a person has, without reasonable excuse, failed to comply with a requirement imposed under section 28 CA98.[11] M&J is a person for these purposes, because under section 59 CA98 'person' includes (a) a body of persons corporate[12] and (b) an undertaking.[13]

16. Under section 40A, companies can be liable for their employees' failures to comply with requirements. That is the case, in particular, because companies can only act through their

[9] Warrant [M&J Bundle, Tab 1].
[10] The Digital Markets, Competition and Consumers Act 2024 introduced new and amended provisions into the CA98 relevant to the CMA's power to impose administrative penalties. However, those new provisions only came into force on 1 January 2025, after the date of the Inspection.
[11] The power to impose a penalty under section 40A relates also to sections 26, 26A, 27, 28A and 40ZD CA98.
[12] Section 59 CA98 refers to the definition in the Interpretation Act 1978, Schedule 1, which states that 'person' includes a body of persons corporate or unincorporate.
[13] Section 59(1) CA98, as confirmed in the CMA4 Penalties Guidance, paragraph 1.1.

employees and agents, and as it is well established that undertakings can be liable for the actions of their employees, who are typically part of the undertaking itself.[14]

17. The CMA may impose a penalty of such amount as it considers appropriate, subject to the statutory maximum of £30,000 for a fixed penalty and £15,000 per day for a daily penalty, or a combination of both.[15] Only a fixed penalty would be relevant in these circumstances as there is no ongoing non-compliance.

18. The front page of the Warrant served on M&J on the day of the Inspection stated (**emphasis added**):

> You should read the terms of this Warrant and the accompanying Explanatory Note very carefully. You are advised to consult a solicitor as soon as possible. If you intentionally obstruct an officer or fail to comply with any requirement of the officers exercising their powers under the Warrant, you may be committing a criminal offence under sections 42 to 44 of the Competition Act 1998, the relevant terms of which are set out in Schedule C to this Warrant. **In addition, failure to comply with a requirement imposed upon you under this Warrant may result in the Competition and Markets Authority imposing a financial penalty on you under section 40A of the Competition Act 1998, the relevant terms of which are set out in Schedule D to this Warrant.**

19. Paragraph 4 of the Warrant authorised the relevant CMA officers upon producing the warrant:

> (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
>
> (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application referred to in this Warrant was granted as further described in paragraph 5 below ("**the relevant kind**");
>
> (c) to take possession of any documents appearing to be of the relevant kind if—
>
> > (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
> >
> > (ii) it is not reasonably practicable to take copies of the documents on the premises;
>
> and to retain possession of any documents so taken for a maximum period of 3 months;
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> (d) to take any other steps which appear to be necessary for preserving any documents of the relevant kind or preventing interference with them;
>
> (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;

[14] *AH Willis v OFT* [2011] CAT 13.
[15] S 40A(1) CA98 (as in force December 2024).

(f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form;

and the power to require such information to be produced includes the power to require any document to be produced which the named officer believes may contain that information.

20. Paragraph 5 of the Warrant stated:

> …documents which are the subject of the Warrant are those which appear to be of relevance to the investigation of the suspected anti-competitive conduct referred to above. For these purposes, documents include information recorded in any form (section 59(1) of the Act). Such documents may be, or may be held in, hard copy documents, electronic devices (including but not limited to computers, laptops, smartphones, mobile telephones or other electronic media, such as USB sticks or other portable media), or in any other form.

21. Schedule C to the Warrant stated that sections 42 to 44 CA98 create various offences, including offences where a person: (a) 'intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 28 or 28A'; (b) 'intentionally or recklessly destroys or otherwise disposes of [a document], falsifies it or conceals it'; and (c) 'provides false or misleading information to the CMA, knowing that it is false or misleading or being reckless as to that'.

22. Schedule D to the Warrant reproduced the parts of section 40A of the CA98 which relate to civil financial penalties in connection with a requirement imposed under section 28 of the CA98.

C. Factual background

23. On 24 November 2024, the CMA made a without notice application to the Tribunal for a warrant to search the M&J Premises in relation to suspected anti-competitive conduct, in the form of bid rigging in connection with the supply of roofing and other construction services to schools eligible to apply for funding from the Department for Education's Condition Improvement Fund ('**CIF**'), which has, or had, as its object or effect the prevention, restriction or distortion of competition in relation to the supply of roofing and construction services, contrary to the Chapter I prohibition in section 2(1) of the CA98 (the '**Investigation**'). The Warrant was granted by the Tribunal on 4 December 2024, and was executed on 10 December 2024, the day of the Inspection.

24. On the same day, 10 December 2024, the CMA formally launched an investigation under section 25 CA98.

25. On 27 January 2026, the CMA updated the scope of its investigation and expanded it to include additional parties. The CMA is now investigating suspected anti-competitive conduct in the form of bid-rigging in connection with the supply of roofing and other construction services to schools, including those eligible to apply for funding from the CIF, and to other public and private sector bodies.

26. [✂]

27. [✄]

D. The Inspection

28. On 10 December 2024, the CMA executed the Warrant at the M&J Premises. The CMA's understanding of the events on the day of the Inspection is based on the accounts of CMA search officers, records of the Inspection including of conversations between CMA officers and M&J's legal representatives, Mayer Brown, and the CMA's review of CCTV footage from M&J's premises. Those events included, in particular:

   (a) Shortly after 8am, the CMA executed the Warrant. The Warrant, which included the provisions set out at paragraphs 18 to 22 above, was served on M&J's CEO, and shown to Ms Woods. The terms of the Warrant were also explained to the CEO.[16]

   (b) In the following minutes, CMA officers told several M&J employees, including Ms Woods, that they must not obstruct the CMA in exercising their powers under the Warrant. Ms Woods was separately told that M&J staff should not attempt to delete material and requested to communicate this to other staff.[17]

   (c) Mr Pirrie was also at the M&J Premises when the CMA arrived.[18] At around 8.30am, Mr Pirrie was asked various questions by CMA officers, including whether he had a work mobile phone. He stated that he did not.[19] The CMA named officer on the Warrant (the CMA Site Team Leader) conveyed to M&J's legal representatives, Mayer Brown, its CEO and Mr Pirrie that they must not, among other things, obstruct the Inspection, falsify or destroy evidence or provide false or misleading information. The CMA Site Team Leader suggested that M&J consider sending an email to all staff with appropriate advice.[20]

   (d) At around 8:35am, Ms Woods left the M&J Premises and drove out of the car park.[21]

   (e) Shortly before 9am, an email was sent to all M&J staff informing them of the Inspection and setting out relevant instructions. In particular, the email stated that:

      > The following additional instructions must be followed throughout the inspection:
      >
      > - **Do not attempt to conceal, delete or destroy of [sic] any documents (whether hard copy or electronic).**
      > - **Do not obstruct the inspectors in the conduct of their investigation**. Asking them to pause while you seek assistance from a senior manager or Mayer Brown is not obstruction, just explain clearly what you are doing.
      > - **Do not provide any false of [sic] misleading information to the inspectors**.
      > - Do not volunteer information that is not specifically asked for by the inspectors.
      > - Please do comply with all instructions from the senior management team and the Mayer Brown lawyers who are on site today **(emphasis added)**.[22]

   (f) A physical copy of the email was printed and provided to Mr Pirrie (whose laptop and personal mobile phone had been seized).[23]

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[16] M&J Bundle, Tab 2, page 20.
[17] M&J Bundle, Tab 3, paragraph 43; M&J Bundle, Tab 5, paragraphs 8-9; and M&J Bundle, Tab 6, paragraphs 9-10.
[18] M&J Bundle Tab 2, page 20; CCTV from M&J's Premises.
[19] M&J Bundle, Tab 2, page 20; M&J Bundle Tab 4, paragraph 5; M&J Bundle, Tab 5, paragraph 11; and M&J Bundle, Tab 3, paragraph 15.
[20] M&J Bundle, Tab 3, paragraphs 16 and 18; M&J Bundle, Tab 2, page 21; and M&J Bundle, Tab 7.
[21] CCTV from M&J's premises.
[22] M&J Bundle, Tab 9.
[23] M&J Bundle, Tab 8, paragraph 1.2.

(g) Shortly after 9am, Ms Woods returned and parked at the rear of the car park. She got out of the vehicle carrying a white carrier bag, walked to the perimeter gates and made a phone call.[24]

(h) Shortly after 10am, two CMA officers asked Mr Pirrie further questions about his electronic devices. Mr Pirrie stated again that he did not have a work mobile phone.[25]

(i) At around 10.15am, the CMA Site Team Leader asked the CEO to inform him if any member of the senior team, and specifically including Mr Pirrie, was leaving the M&J Premises.[26]

(j) At around 2pm, Ms Woods exited the building via the warehouse entrance holding a carrier bag and walked across the M&J Premises car park. She placed the bag in a vehicle, then drove out of the car park. At around 3pm, she re-entered the car park and drove down the side parking area of the building, [✂].[27]

(k) At around 4pm, Mayer Brown (M&J's legal representatives) told the CMA site leader that shortly after the Inspection had started staff had panicked and taken the Relevant Materials off site. The Relevant Materials were produced to the CMA, and Mayer Brown stated that they understood the mobile phone taken off site to be Mr Pirrie's work mobile phone.[28]

29. The CMA finds that after the CMA had executed the Warrant and the Requirements had been made clear (including to senior M&J officers, Mr Pirrie and Ms Woods), the conduct described below occurred.

30. First, the CMA finds that Mr Pirrie instructed Ms Woods to remove the Relevant Materials from the M&J Premises. The Relevant Materials were handed over to the CMA at around 4pm on the same day, which included a mobile phone which Mr Pirrie used for work (see paragraphs 49 and 66-67 below for the CMA's additional findings regarding the Relevant Materials).[29]

31. The CMA considers that Mr Pirrie and Ms Woods – both of whom were aware of the Requirements – deliberately intended to conceal the Relevant Materials from the CMA. There is no evidence that the Relevant Materials were removed from the M&J Premises by accident or for any reason other than to prevent them being found by the CMA officers looking for evidence of anti-competitive practices.

32. Second, Mr Pirrie was asked on two occasions (at around 8.30am and 10am) what devices he had (see paragraphs 28 (c) and (h) above). On both occasions Mr Pirrie stated that he did not have a work mobile phone. When the Relevant Materials were returned to the M&J Premises, it became apparent that those statements had been false and misleading. Further, the CMA considers that Mr Pirrie intentionally provided that false and misleading information, in an attempt to prevent the CMA officers from gaining access to his work mobile phone and the information contained on it.

33. Together, the removal of the Relevant Materials from the M&J Premises and Mr Pirrie's false statements that he did not have a mobile phone that he used for work are referred to as the '**Relevant Conduct**'.

[24] CCTV from M&J's premises.
[25] M&J Bundle, Tab 5, paragraph 18; and M&J Bundle, Tab 4, paragraph 11.
[26] M&J Bundle, Tab 2, page 22.
[27] CCTV from M&J's premises.
[28] M&J Bundle, Tab 2, pages 23-24.
[29] M&J Bundle, Tab 2, page 24.

E. Assessment of the M&J Failures to Comply

34. Having considered the evidence available to it, together with M&J's representations in response to the Provisional Penalty Decision, the CMA's assessment is as follows.

Requirements under the Warrant

35. Under section 40A (1) CA98, the CMA may impose a penalty, in particular, where it 'considers that a person has, without reasonable excuse, failed to comply with a requirement under section … 28'.

36. M&J is a 'person' upon which a penalty can be imposed under section 40A (1) CA98, for the reasons given in paragraphs 11 and 16 above.

37. The Warrant was issued under section 28 CA98 and authorised the CMA officers named in Schedule B to take the various steps set out in paragraph 4 of the Warrant. Those steps included, in particular: (a) under paragraph 4(d), 'to take any other steps which appear to be necessary for preserving any documents of the relevant kind or preventing interference with them'; and (b) under paragraph 4(e), 'to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his or her knowledge and belief, where it may be found'.

38. The relevant steps taken by CMA officers included communicating the Requirements to M&J (including to Mr Pirrie and Ms Woods). In particular, it was made clear that M&J employees should make available to the CMA officers any documents relevant to the Investigation (for them to take possession or copies of the documents, or extracts from them), and should not conceal or destroy any evidence, or obstruct the officers or provide false or misleading information.[30] The Relevant Materials were relevant to the Investigation for the reasons summarised at paragraphs 47 to 49 below.

39. The CMA considers it plain that the Requirements were communicated to M&J taking into account, in particular, the various communications that took place on the day of the Inspection summarised at paragraph 28 above. The CMA also considers it to be clear that M&J understood the Requirements, as they were conveyed to members of the senior management team in conversations with CMA officers and in regard to the requirements in paragraph 8(a), reiterated in an all M&J staff email referred to at paragraph 28(e) sent on behalf of M&J's senior management shortly before 9am on the day of the Inspection.

Failure to comply with Requirements

40. The Relevant Conduct breached the Requirements, thereby constituting the Individual Failures. The Individual Failures are admitted by M&J (as well as by Mr Pirrie, and Ms Woods has not disputed that she took the Relevant Materials off-site).

41. M&J is liable for the Individual Failures for the reasons given in paragraphs 11 and 16 above. In particular: (a) companies and undertakings can act only through their employees and agents; (b) it is well established that undertakings can be liable for the actions of their employees (who are typically part of the undertaking); and (c) the Warrant was addressed to M&J, which forms part of the M&J undertaking.

42. Further, M&J as a company failed to comply with the Requirements, as it failed to take adequate steps to ensure that the Requirements were complied with (i.e. the 'Corporate Failure').

[30] M&J Bundle, Tab 2, page 20; M&J Budndle, Tab 3, paragraphs 12-13, and 43; M&J Bundle, Tab 4, paragraph 4; M&J Bundle Tab 5, paragraphs 8-9; and M&J Bundle, Tab 6, paragraphs 9-10.

43. M&J instructed legal representatives, Mayer Brown, promptly after the arrival of CMA officers.

44. The CMA accepts that M&J also made some efforts to communicate the Requirements to its employees, and these are taken into account at paragraph 83(a) below.

45. However, the steps taken by M&J were insufficient to ensure that the Requirements were complied with, given that two employees acting together removed the Relevant Materials. M&J failed to exercise sufficient oversight over the M&J Premises so as to ensure that its employees could not remove relevant materials. One of those employees also provided false and misleading information to the CMA's officers.

46. Further, M&J's senior management team failed to secure Mr Pirrie's files (which they must or ought to have known were likely to be relevant given Mr Pirrie's job role) or sufficiently supervise Mr Pirrie's actions on the day of the Inspection.

Relevant Materials

47. The CMA considers the Relevant Materials are *prima facie* relevant to the subject matter of the Investigation and potentially incriminating. The hard copy documents consisted predominantly of internal M&J documents relating to CIF projects.[31] The documents included notes of internal meetings relating to the CIF, notes of presentations (relating to CIF and printed out email chains involving Barry Pirrie.

48. The CMA considers it is likely these documents mostly or at least in part belonged to Mr Pirrie. The documents include the initials 'BP' which the CMA infers are references to Barry Pirrie.

49. The CMA has also reviewed the material on the mobile phone that was removed from the M&J Premises, being the mobile that Mr Pirrie used for work, and identified a significant amount of evidence of relevance to the suspected anti-competitive conduct that is the subject of the Investigation. This includes evidence of Mr Pirrie's direct involvement in such conduct.

Without reasonable excuse

50. The CMA may impose a penalty under section 40A(1) CA98 (as it applied on 10 December 2024) where the failure to comply is 'without reasonable excuse'. In this respect, the CMA4 Penalties Guidance 2014 states that:

> …the CMA will consider whether a significant and genuinely unforeseeable or unusual event and/or an event beyond [the individual/company's] control has caused the failure and the failure would not otherwise have taken place. For example, a significant and demonstrable IT failure (which could not reasonably have been foreseen or avoided) which prevented [the individual/company] from meeting a deadline might, depending on the circumstances, amount to a reasonable excuse.[32]

51. The CMA will apply an objective test to whether an excuse put forward by a company is reasonable. The CMA expects those subject to a warrant, as a starting point, to comply with requirements imposed by CMA officers duly authorised under a warrant granted by the Competition Appeal Tribunal under section 28 CA98.

52. In relation to the Individual Failures, the CMA finds that Mr Pirrie and Ms Woods intended to conceal the Relevant Materials from CMA officers, and that Mr Pirrie intentionally provided false and misleading information: see paragraphs 31 to 32 above. This was characterised by

[31] Electronic copies of the relevant hard copy documents taken off site (variously dated) [M&J Bundle, Tab 12].
[32] CMA4 Penalties Guidance 2014, paragraph 4.4.

M&J's lawyer, [✂] of Mayer Brown, as a 'rash error of judgment in a moment of panic', which the CMA finds is not a reasonable excuse.[33]

53. In relation to the Corporate Failure, M&J's senior management team was aware of the Requirements and must, or at least ought to, have been aware of the fact that Mr Pirrie was likely to be in possession of relevant documents given his job role, yet failed to take adequate steps to prevent the Relevant Conduct taking place (including as detailed at paragraphs 45 to 46 above).

M&J's submissions

54. In its Provisional Decision Response, M&J did not dispute the Relevant Conduct or offer an excuse for the M&J Failures to Comply. However, it submitted that the Relevant Conduct was a result of 'a collective failure on the part of management and a failure of company processes and procedures, rather than a fault attributable to any one senior manager'.[34]

Conclusion

55. The M&J Failures to Comply were not caused by a significant and genuinely unforeseeable or unusual event, nor were they caused by events beyond the control of M&J.

56. The CMA has considered and taken into account M&J's acknowledgement in its representations in regard to the collective failure by its management.

57. The CMA concludes that M&J had no reasonable excuse for the M&J Failures to Comply. The statutory requirements for imposing a penalty are met.

F. The appropriateness of imposing a penalty and the level of the penalty imposed

The imposition of a penalty

58. The CMA will consider whether to impose an administrative penalty on a case-by-case basis, taking into account all relevant circumstances.[35]

59. The CMA4 Penalties Guidance 2014 explains that penalties should achieve the CMA's policy objectives of incentivising compliance with its investigatory powers and deterring future non-compliance with relevant CMA powers by those on whom penalties have been imposed and other persons who may be considering future non-compliance, while being proportionate in all the circumstances of the case.[36]

60. In this context, the CMA considers that it is of utmost importance to the UK's CA98 enforcement regime generally,[37] and in particular its ability to gather information from businesses or individuals suspected of participating in suspected anti-competitive arrangements by way of execution of a warrant, that requirements imposed by CMA officers executing a warrant are complied with and that CMA officers are not obstructed in executing that warrant. Further, the CMA considers that the efficient and timely execution of a warrant is in both the CMA's interests in terms of the resources required to execute the warrant, and also the business' interests in minimising disruption and uncertainty.

61. The CMA considers that the imposition of a monetary penalty on M&J is critical for deterrence; to impress both on M&J in this specific case, and more widely on those undertakings who are subject to CMA warrants in the future, the seriousness of a failure to comply with requirements

[33] M&J Bundle, Tab 2, page 23.
[34] M&J's Provisional Decision Response, paragraph 3.13.
[35] CMA4 Penalties Guidance 2014, paragraph 4.2.
[36] CMA4 Penalties Guidance 2014, paragraphs 3.1-3.3 and 4.10.
[37] Under sections 26, 26A, 27, 28, 28A or 40ZD of the CA98.

imposed under a warrant. Specifically, parties should approach cooperation with CMA officers executing a warrant with the understanding that the CMA will take failures to comply very seriously and will not hesitate to impose a penalty where the CMA considers it is appropriate and proportionate in all the circumstances.[38]

62. In this case, the CMA considers that imposing a penalty on M&J will signal that the CMA is prepared to hold companies accountable for the conduct of officers and employees who fail to comply with investigatory requirements.

63. The above is reflected in the policy objectives set out in the CMA4 Penalties Guidance 2014:[39]

> Use of the CMA's investigatory and interim measures powers is therefore intended to:
>
> • ensure that the CMA can expediently gather information to carry out its functions with the best available evidence in compliance with relevant investigation timetables (in particular but not limited to statutory timetables in mergers and markets cases)
>
> (…)
>
> • ensure that the threat of penalties will deter future non-compliance with relevant CMA powers, by those on whom penalties have been imposed and other persons who may be considering future non-compliance.

64. As set out in the CMA4 Penalties Guidance 2014,[40] the CMA may be more likely to impose a penalty where it considers one or more of the following factors are present:

> - the failure to comply is likely to have an adverse impact on the CMA's investigation, in particular the ability to obtain evidence relevant to the determination of issues being investigated and the ability to meet statutory or administrative timetables
> - the failure to comply is significant and/or flagrant (whether committed intentionally or negligently)
>
>   (...)
>
> - [the individual/company] sought to obtain an advantage or derive benefit from the failure.

65. The CMA considers that the above factors apply in this case.

66. In particular, while the CMA recognises that the Relevant Materials were returned later in the day of the Inspection (which is taken into account in respect of the level of the penalty), their removal from the M&J Premises was carried out with the specific intention of adversely impacting the CMA's Investigation – by preventing those relevant (and potentially incriminating) materials from coming into the CMA's hands before any opportunity to conceal, destroy or tamper with the contents. Mr Pirrie instructed Ms Woods to remove the Relevant Materials from the premises despite them both being aware of the Requirements, and Mr Pirrie twice misled the CMA officers as to whether he had a work mobile phone. The CMA considers that these failures, which it considers were intentional, constituted significant and flagrant failures to comply with the Requirements (and M&J's senior management, as well as Mr Pirrie and Ms Woods, were aware of those Requirements). Moreover, as it is likely the Relevant

[38] CMA4 Penalties Guidance 2014, paragraph 3.3.
[39] CMA4 Penalties Guidance 2014, paragraph 3.1.
[40] CMA4 Penalties Guidance 2014, paragraph 4.2.

Materials contained evidence of the suspected anti-competitive conduct that is the subject of the Investigation, the CMA finds that M&J might reasonably be expected to derive an advantage from its concealment.

67. Further, and irrespective of whether relevant evidence has in fact been lost, the CMA considers that the removal of the Relevant Materials from the M&J Premises was likely to have an adverse impact on the CMA's investigation given the risk that the CMA might have lost access to relevant evidence.

M&J's submissions

68. M&J did not challenge the appropriateness of imposing a penalty in its Provisional Decision Response.

Conclusion

69. For the reasons above, the CMA concludes that the imposition of a fixed penalty on M&J is appropriate.

The level of the penalty

70. When assessing the appropriate level of penalty, the CMA will consider all the relevant circumstances of the case in the round in order to determine a penalty that is reasonable, appropriate and thus proportionate in the circumstances.[41]

71. The CMA is likely to set penalties towards the upper end of the relevant statutory maximum for the most serious failures to comply.

M&J's submissions on level of penalty

72. In its Provisional Decision Response, M&J submitted that the proposed penalty identified in the Provisional Decision of £25,000 was excessively high and not reasonable, appropriate or proportionate.[42]

73. First, M&J submitted that the Relevant Conduct had no adverse effect on the CMA case because 'any risk that the CMA might be deprived of access to relevant evidence was entirely mitigated as a result of the remedial action taken by M&J' in 'restoring the Relevant Materials to the CMA within the space of hours'.[43] It asserted that M&J's remedial actions 'ultimately prevented any material prejudice to the CMA investigation'.[44]

74. Second, M&J submitted that the failure was not significant and/or flagrant in so far as it goes to the level of the penalty.[45] M&J stated that while it did not dispute that M&J can, in principle, be held liable for the Individual Failures committed by its employees, the Provisional Penalty Decision appeared to 'incorrectly impute the intentions of individual employees, acting rashly and contrary to express company instruction, to M&J'.[46]

75. M&J also disputed the CMA's provisional finding that it might reasonably be expected to derive an advantage form the concealment of the Relevant Materials, submitting that it is 'irrational to impute any actual or potential advantage to M&J' in circumstances where it acted

[41] CMA4 Penalties Guidance 2014, paragraph 4.11.
[42] M&J's Provisional Decision Response, paragraph 2.3.
[43] M&J's Provisional Decision Response, paragraph 2.4.6.2.
[44] M&J's Provisional Decision Response, paragraph 2.5.
[45] M&J's Provisional Decision Response, paragraphs 2.1 and 2.4.6.4.B.
[46] M&J's Provisional Decision Response, paragraphs 2.1 and 2.4.6.4.B.

'decisively, promptly and on a voluntary basis' to disclose the Relevant Conduct to the CMA and derived no advantage from it.[47]

76. As regards steps taken in mitigation to avoid the failures, M&J further stated that the proposed penalty did not take adequate account of M&J's 'rapid' and 'unprompted' action to report the conduct to the CMA and return the material, and that this should be given more weight in the calculation of the penalty reduction.[48] It submitted that the remedial actions included:

(a) promptly issuing 'clear and unambiguous' written instructions to all staff to comply with the Inspection, expressly prohibiting staff from concealing, deleting or destroying any documents, obstructing the investigation, or providing false or misleading information;

(b) providing Mr Pirrie with a hardcopy of those instructions following the confiscation of his laptop and personal mobile phone, which it submitted demonstrated 'oversight of his conduct'; and

(c) reporting the Individual Failures to the CMA upon detention on an unprompted basis 'on the same day, within hours of discovery' and 'on its own initiative'.[49]

77. Moreover, M&J submitted that the proposed penalty identified in the Provisional Penalty Decision was not consistent with the CMA's past decisional practice.[50] Specifically, it noted that Fender,[51] where a penalty of £25,000 was previously imposed, related to circumstances which are 'directly analogous' but asserted that there are 'stark and significant differences' between the conduct of the companies concerned.[52] These differences included: (i) Fender took four months to fully disclose the misconduct whereas here M&J had promptly reported it within hours and fully co-operated with the CMA; (ii) Fender took three weeks to provide the evidence in issue whereas here M&J had provided it on the same day; (iii) Fender's breach had adverse effects on the investigation due to the delay whereas M&J asserted that the M&J Failures to Comply in this case had no adverse impact on the CMA's Investigation; and (iv) M&J took active steps to secure compliance, including sending an all-staff email and providing a hardcopy of the requirements to Pirrie.[53] In this regard, M&J submitted that treating M&J identically to Fender in the level of penalty would be contrary to the intended deterrent effect and have the 'perverse effect of disincentivising companies from promptly self-reporting misconduct to the CMA'.[54]

Conclusion on the level of penalty

78. The CMA does not accept the above submissions.

79. The CMA considers that the removal of the Relevant Materials from the site of the Inspection was likely to have an adverse impact on the Investigation given the risk of loss of evidence from the Relevant Materials being put out of the CMA's hands. In addition, the non-compliance also detracted time and resources from CMA officers during the Inspection who paused searching for other relevant information under the Warrant in order to deal with officers and employees of M&J coming and going from the site and establishing the circumstances of the removal and return of the Relevant Materials, including viewing CCTV footage.[55] Further time and investigative resource was also expended subsequently on steps taken in an effort to

[47] M&J's Provisional Decision Response, paragraph 2.4.6.1.
[48] M&J's Provisional Decision Response, paragraphs 2.4 and 2.4.6.3.
[49] M&J's Provisional Decision Response, paragraphs 2.4.1 to 2.4.3.
[50] M&J's Provisional Decision Response, paragraph 2.7.
[51] Fender Musical Instruments Europe Ltd, Penalty notice under section 40A of the Competition Act, Musical instruments and equipment: suspected anti-competitive agreements, Case 50565-3, 20 March 2019 ('**Fender Penalty Notice**' or '**Fender**').
[52] M&J's Provisional Decision Response, paragraphs 2.8 and 2.9.
[53] M&J's Provisional Decision Response, paragraph 2.10.
[54] M&J's Provisional Decision Response, paragraph 2.14.
[55] M&J Bundle, Tab 2, pages 24-26; M&J Bundle, Tab 3, paragraphs 32-46; M&J Bundle, Tab 4, paragraphs 27-39.

establish whether any evidence was concealed, deleted or destroyed, to the extent this was possible, including, for example, conducting a search of Ms Woods' vehicle and interviewing the individuals suspected to have been involved.

80. Further, M&J's Failures to Comply were significant and flagrant, whether committed intentionally or negligently,[56] because they involved the removal of relevant evidence in the course of an inspection, and the provision of false or misleading information by M&J's employees in the direct contravention of instructions given by CMA officers. The CMA finds that the Individual Failures were intentional. The actions and state of mind of employees are also attributable to the undertaking employing them.[57] Further, M&J's senior management were aware of the Requirements and failed to take adequate steps to prevent the Relevant Conduct taking place.

81. Moreover, it is likely the Relevant Materials contained evidence of Mr Pirrie's involvement in the suspected anti-competitive conduct that is the subject of the Investigation. The CMA considers that by preventing these Relevant Materials from coming into the CMA's hands, at least Mr Pirrie likely sought to obtain an advantage or derive a benefit from its concealment – both for M&J and for himself personally. Given the CMA's finding that M&J is responsible for the actions of its employees and therefore bears liability for the Individual Failures, it follows that it is appropriate in applying the CMA4 Penalties Guidance 2014 to have regard to the advantage factor when considering whether to impose a penalty on M&J for the Individual Failures. However, the CMA does not consider that M&J sought to obtain an advantage (within the meaning of the CMA4 Penalties Guidance 2014) in respect of the Corporate Failure.

82. Accordingly, and following its consideration of M&J's submissions above, the CMA has had regard to the following factors from the non-exhaustive list of factors in the CMA4 Penalty Guidance 2014 which it considers go to the seriousness of the M&J Failures to Comply and therefore weigh in favour of issuing a higher penalty on M&J: [58]

(a) The likely adverse impact that the M&J Failures to Comply had on the CMA's Investigation, as explained at paragraphs 66 and 67 above.

(b) The significant and flagrant nature of the M&J Failures to Comply, as explained at paragraph 66 above. This is notwithstanding the fact that the Relevant Materials were returned within hours of having been removed from the M&J Premises and the CMA's Investigation was not materially delayed.

(c) The Relevant Conduct was intentional, as explained at paragraphs 31 and 66 above.

(d) As explained at paragraphs 47 to 49 above, the CMA considers it is likely that the Relevant Materials contained a significant amount of evidence of relevance to the suspected anti-competitive conduct that is the subject of the Investigation, including evidence of M&J's involvement in such conduct. On this basis, the CMA considers that M&J might reasonably be expected to derive an advantage from its concealment through Barry Pirrie's failure to comply.

(e) The nature of Mr Pirrie's involvement coupled with his seniority. Mr Pirrie instructed Ms Woods to conceal the Relevant Materials and misled the CMA as to their existence, in particular, by telling CMA officers that he did not have a work mobile phone. Mr Pirrie is the head of a department at M&J – specifically, the Estimating Director – who reports directly to the CEO and has between 10 and 15 employees who report to him.[59] The CMA

[56] The CMA notes that for the purposes of an administrative penalty, the CMA4 Penalties Guidance 2014 defines a failure as 'intentional' if 'P must have been aware, or could not have been unaware, that its conduct was of such nature as to lead to a failure to comply, and 'negligent' if 'P ought to have known that its conduct would result in a failure to comply with an Investigatory Requirement (…)' (fn.36).
[57] *Tesco Stores Limited and others v OFT [2012] CAT 31*, paragraphs 60 to 63.
[58] CMA4 Penalties Guidance 2014, paragraph 4.11.
[59] M&J Bundle, Tab 8, paragraph 3.2.

considers that senior officers within an undertaking have a responsibility to establish a culture of compliance with competition law and with lawful requirements imposed by the CMA in the exercise of its investigatory powers. Indeed, this is why the CMA4 Penalties Guidance 2014 notes that the involvement of senior officers is a relevant factor in assessing the seriousness of a breach.[60]

(f) The financial resources available to M&J based on its audited financial statements for the year ended 31 December 2024.[61] In 2024, M&J's turnover was £56,291,952; its operating profit was £8,873,299; its profit after tax was £7,746,629 and its net assets were £8,103,380. In this context, the CMA considers that M&J has sufficient financial resources to pay a fine of up to the statutory maximum of £30,000 – which would amount to only 0.05% of its 2024 turnover.[62]

(g) In addition to the penalty for M&J, the CMA has also decided to impose a penalty on Mr Pirrie and Ms Woods for carrying out the Relevant Conduct. The CMA considers that it is reasonable and proportionate to impose a larger penalty on M&J as the responsible employer with very considerable resources available to it to ensure compliance with the requirements of CMA officers under the Warrant, than on the individuals themselves.

83. The CMA finds, however, that the following factors mean that imposing a penalty on M&J at the maximum level possible (£30,000) would not be appropriate:

(a) M&J took some steps to prevent non-compliance with the Warrant. Specifically, by 8.55am, M&J had sent an all-staff email which set out specific instructions on document preservation. The email included an express instruction not to 'conceal, delete or destroy … any documents (whether hard copy or electronic)'. In the circumstances where Mr Pirrie's laptop and personal mobile had been seized by the CMA, a physical copy of that email was also printed and provided to Mr Pirrie.[63]

(b) M&J proactively self-reported the Relevant Conduct to the CMA, without prompting by the CMA. By 4.03pm, the CMA was advised of the Relevant Conduct, and the Relevant Materials were returned to the CMA, ensuring the cessation of the breach. This meant that the Relevant Materials were returned within hours of having been removed from the M&J Premises. Further, it prevented further risk to the CMA's Investigation which may otherwise have gone undetected.

84. The CMA does not accept the submission that insufficient weight has been given to M&J's efforts to avoid the failures and remedial action. As set out above, this is a key factor which was taken into account when calculating the level of the provisional penalty in the Provisional Penalty Decision. M&J has not put forward any additional preventative or remedial steps beyond those already identified and taken into account by the CMA in the Provisional Penalty Decision. The steps taken to prevent non-compliance were clearly inadequate and M&J's remedial action did not eliminate the risk of evidence being put out of the CMA's hands.

85. As regards M&J's submission that the CMA's decision to impose a penalty on M&J is inconsistent with past decisional practice, in particular Fender, the CMA is not bound by its previous decisions, and what is an appropriate, reasonable and proportionate penalty must be determined in light of the particular facts and circumstances of each case.[64] As it is, the CMA

[60] CMA4 Penalties Guidance 2014, paragraph 4.11.
[61] Audited Consolidated Financial Statements for M&J for year ended 31 December 2024.
[62] After the Provisional Penalty Decision of 7 July 2026, M&J's Audited Consolidated Financial Statements for the year ended 31 December 2025 were filed with Companies House on 21 July 2026. While these more recent accounts were not referred to in M&J's Provisional Decision Response, the CMA has considered these accounts. In 2025, M&J's turnover was £40,761,383; its operating profit was £4,294,349; its profit after tax was £3,925,162 and its net assets were £9,028,542. A fine of up to the statutory maximum of £30,000 would amount to only 0.07% of its 2025 turnover. On the basis of either the 2024, or the most recent 2025 accounts, the penalty is clearly affordable.
[63] M&J Bundle, Tab 8, paragraph 1.2
[64] CMA4 Penalties Guidance 2014, paragraph 4.1 and 4.10.

considers that there are substantial similarities between the two cases, including the fact that they both involve the removal and concealment of relevant material during a CA98 inspection, the involvement of a senior officer and instruction of a junior employee in the concealment of the documents, the provision of false or misleading information by the senior officer, and the likely adverse impact on the CMA's investigation. The CMA does not consider that the timing facts alone (that the conduct was reported and the documents returned to the CMA more quickly than in *Fender*) would warrant the imposition of a lower penalty. The CMA has taken M&J's self-reporting into account as well as the warning email M&J sent to all staff, at paragraph 83 above.

86. In any event, the appropriate penalty in this case must be determined by reference to its own facts and the objective of achieving a deterrent effect for both M&J and others. As the CMA has previously stated, the concealment of relevant documents during an inspection is a particularly egregious form of non-compliance.[65] In addition, the fact that the CMA had previously imposed a penalty in similar circumstances in Fender means that undertakings were on notice of the seriousness which the CMA attaches to non-compliance, as well as the risk of receiving a financial penalty under the CMA's administrative penalty powers for failure to comply with investigatory requirements. Moreover, the fact that there has been a failure to comply in similar circumstances demonstrates the need to impose the level of penalty in this case with a view to meeting the objective of ensuring general deterrence, as set out in paragraph 61 above.

87. Having considered all of the above factors in the round, the CMA finds that the imposition of a penalty of £25,000 for the M&J Failures to Comply is reasonable, appropriate and proportionate in this case.

G. M&J's rights and the next steps

88. M&J is required to pay the fixed penalty in a single payment, by cheque or bank transfer to an account specified to M&J by the CMA, by close of banking business on the date which is 28 days from the date of service of this notice on M&J.

89. M&J may pay the penalty or different portions of it earlier than the date by which it is required to be paid.

90. M&J has the following rights in relation to the final penalty which the CMA has imposed:

(a) Pursuant to section 112(3) EA02, M&J has the right to apply to the CMA within 14 days of the date on which this penalty notice is served on M&J for the CMA to specify different dates by which the penalty or different portions of it, are to be paid.

(b) Pursuant to section 114 EA02, M&J has the right to apply to the Competition Appeal Tribunal against any decision the CMA reaches in response to an application under section 112(3) EA02, within the period of 28 days starting with the day on which this penalty notice is served on M&J.

(c) Pursuant to section 114 EA02, M&J has the right to apply to the Competition Appeal Tribunal within the period of 28 days starting with the day on which this penalty notice is served on M&J in relation to:

i. the imposition or nature of the penalty;

ii. the amount of the penalty; or

[65] Fender Penalty Notice, paragraph 38 (b).

iii. the date by which the penalty is required to be paid or, as the case may be, the different dates by which portions of the penalty are required to be paid.

(d) If M&J apply to the CMA pursuant to section 112(3) EA02 for the CMA to specify a different date by which the penalty is to be paid, then the period of 28 days referred to in relation to (c)iii. above shall start with the day on which it is notified of the CMA's decision on the section 112(3) application.

(e) Where a penalty has not been paid by the date on which it is required to be paid and there is no pending appeal under section 114 E02, the CMA may recover any of the penalty and any interest which has not been paid. In England and Wales such penalty and interest may be recovered as a civil debt due to the CMA.

Lourenco Ventura

Senior Director, Competition Enforcement (Senior Responsible Officer)

Competition and Markets Authority

17 September 2026