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: Barry Pirrie

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 Barry Pirrie, Estimating Director of 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 Barry Pirrie, Estimating Director[2] of M&J Group (Construction & Roofing) Ltd ('**M&J**'), that it has decided to impose a penalty on Mr Pirrie under section 40A(1) of the CA98 (as it applied in December 2024). That is because the CMA considers that Mr Pirrie has, without reasonable excuse, failed to comply with investigatory requirements imposed on him 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**').[3]

2. The total penalty in respect of all the failures to comply identified in this Decision is a fixed amount of £20,000.

Procedural history and Mr Pirrie's submissions

3. On 7 July 2026, the CMA issued to Mr Pirrie a notice of its provisional decision to impose a penalty under section 40A(1) of the CA98 (the '**Provisional Penalty Decision**') and gave Mr Pirrie the opportunity to provide written representations. On 29 July 2026, Mr Pirrie's legal representatives, Peters & Peters, confirmed that Mr Pirrie did not wish to make any representations on the Provisional Penalty Decision.[4]

Structure of this document

4. 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.

   (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.

[1] Section 112 EA02 applies by virtue of section 40A(9) CA98.
[2] Pirrie Bundle 2, Tab 8, paragraph 3.2.
[3] 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 [Pirrie Bundle, Tab 1].
[4] Email from Peters & Peters to the CMA on behalf of Mr Pirrie dated 29 July 2026.

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

A. Executive summary

Failure to comply with investigatory requirements

5. 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'.

6. 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'.

7. 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 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 Mr Pirrie, M&J's Estimating Director, the head of one of its departments, to inform them whether he used a work mobile phone.

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

8. It is clear that Mr Pirrie understood the Requirements, as they were both conveyed to him in conversations with CMA officers and the requirement in 7(a) was also relayed in the email sent to all M&J staff on behalf of M&J's senior management, a copy of which was printed out and given to him.[6]

9. Those 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]

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

No reasonable excuse

10. Having considered the evidence available to it and noting that Mr Pirrie did not make any written representations in response to the Provisional Penalty Decision, the CMA concludes that Mr Pirrie had no reasonable excuse for failing to comply with the Requirements.

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[5] See paragraph 24 below.
[6] See paragraph 24 (c), (e), and (f) below.
[7] See paragraphs 26 to 27 below.
[8] See paragraphs 24 (c) and (h) and 28 below.

Specifically, the Pirrie 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 Mr Pirrie.

Decision to impose a penalty

11. 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 Pirrie Failures to Comply in the amount identified at paragraph 2.

B. Legal Framework

12. 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.[9] 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.

13. 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.[10] Mr Pirrie is a 'person' for these purposes. 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.[11] Only a fixed penalty would be relevant in these circumstances as there is no ongoing non-compliance.

14. 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.**

15. 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**");

[9] 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.
[10] The power to impose a penalty under section 40A relates also to sections 26, 26A, 27, 28A and 40ZD CA98.
[11] S 40A(1) CA98 (as in force December 2024).

> (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;
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> and to retain possession of any documents so taken for a maximum period of 3 months;
>
> (d) to take any other steps which appear to be necessary for preserving any documents of the relevant kind or preventing interference with them;
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> (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;
>
> (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—
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> (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.

16. 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.

17. 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'.

18. 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

19. 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.

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

21. 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.

22. [✂[12]].

23. [✂].

D. The Inspection

24. 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 14 to 18 above, was served on M&J's CEO, and shown to Ms Woods. The terms of the Warrant were also explained to the CEO.[13]

    (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.[14]

    (c) Mr Pirrie was also at the M&J Premises when the CMA arrived.[15] 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.[16] The CMA named officer on the Warrant (the CMA Site Team Leader) further 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.[17]

[12] [✂].
[13] Pirrie Bundle, Tab 2, page 20.
[14] Pirrie Bundle, Tab 3, paragraph 43; Pirrie Bundle, Tab 5, paragraphs 8-9; and Pirrie Bundle, Tab 6, paragraphs 9-10.
[15] Pirrie Bundle Tab 2, page 20; CCTV from M&J's Premises.
[16] Pirrie Bundle, Tab 2, page 20; Pirrie Bundle Tab 4, paragraph 5; Pirrie Bundle, Tab 5, paragraph 11; and Pirrie Bundle, Tab 3, paragraph 15.
[17] Pirrie Bundle, Tab 3, paragraphs 16 and 18; Pirrie Bundle, Tab 2, page 21; and Pirrie Bundle, Tab 7.

(d) At around 8.35am, Ms Woods left the M&J Premises and drove out of the car park.[18]

(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:
>
> - **<u>Do not attempt to conceal, delete or destroy of [sic] any documents (whether hard copy or electronic).</u>**
> - **<u>Do not obstruct the inspectors in the conduct of their investigation</u>**. 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.
> - **<u>Do not provide any false of [sic] misleading information to the inspectors</u>**.
> - 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 **<u>(emphasis added)</u>**.[19]

(f) A physical copy of the email was printed and provided to Mr Pirrie (whose laptop and personal mobile phone had been seized).[20]

(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.[21]

(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.[22]

(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.[23]

(j) At around 2pm, Ms Woods exited the building again 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, [✂].[24]

(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.[25]

25. 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.

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[18] CCTV from M&J's premises.
[19] Pirrie Bundle, Tab 9.
[20] Pirie Bundle, Tab 8, paragraph 1.2.
[21] CCTV from M&J's premises.
[22] Pirrie Bundle, Tab 5, paragraph 18; and Pirrie Bundle, Tab 4, paragraph 11.
[23] Pirrie Bundle, Tab 2, page 22.
[24] CCTV from M&J's premises.
[25] Pirrie Bundle, Tab 2, pages 23-24.

26. 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 37-38 and 52-53 below for the CMA's additional findings regarding the Relevant Materials).

27. 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.

28. Second, Mr Pirrie was asked on two occasions (at around 8.30am and 10am) what devices he had (see paragraphs 24 (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.

29. 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**'.

E. Assessment of the Pirrie Failures to Comply

30. Having considered the evidence available to it, and noting that Mr Pirrie did not make any written representations in response to the Provisional Penalty Decision, the CMA's assessment is as follows.

Requirements under the Warrant

31. 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'. Mr Pirrie is a 'person' upon which a penalty can be imposed under section 40A (1) CA98.

32. 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'.

33. 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.[26] The Relevant Materials were relevant to the Investigation for the reasons summarised at paragraphs 36 to 38 below.

34. The CMA considers it plain that the Requirements were communicated to Mr Pirrie taking into account, in particular, the various communications that took place on the day of the Inspection summarised at paragraph 24 above. The CMA also considers it to be clear that Mr Pirrie

[26] Pirrie Bundle, Tab 2, page 20; Pirrie Bundle, Tab 3, paragraphs 12-13, and 43; Pirrie Bundle, Tab 4, paragraph 4; Pirrie Bundle Tab 5, paragraphs 8-9; and Pirrie Bundle, Tab 6, paragraphs 9-10.

understood the Requirements as they were conveyed to him in conversations with CMA officers and he was provided with a hardcopy of the all-staff email sent on behalf of M&J's senior management shortly before 9am on the day of the Inspection which reinforced this, as noted at paragraphs 24(c)-(f) above.

Failure to comply with Requirements

35. The Relevant Conduct breached the Requirements, thereby constituting the Pirrie Failures to Comply. The Pirrie Failures to Comply are admitted by Mr Pirrie.

Relevant Materials

36. 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.[27] 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.

37. 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.

38. 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

39. 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.[28]

40. The CMA will apply an objective test to whether an excuse put forward by an individual 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.

41. The CMA finds that Mr Pirrie intended to conceal the Relevant Materials from CMA officers, and that Mr Pirrie intentionally provided false and misleading information: see paragraphs 27 and 28 above.[29] Indeed, Mr Pirrie stated in paragraph 6 of his written statement of 13 December 2024 that '[w]hat occurred on 10 December 2024, was a brief lapse of judgment on my part...'.[30] The CMA finds that this is not a reasonable excuse.

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[27] Electronic copies of the relevant hard copy documents taken off site (variously dated) [Pirrie Bundle, Tab 12].
[28] CMA4 Penalties Guidance 2014, paragraph 4.4.
[29] The CMA notes that it is not necessary to make a finding of intent; as the CMA4 Penalties Guidance 2014 states, the failure to comply with investigatory requirements may be either intentional or without a reasonable excuse (CMA4 Penalties Guidance 2014, paragraph 2.2).
[30] Barry Pirrie's Written Statement dated 13 December 2024, at paragraph 6 [Pirrie Bundle, Tab 13].

42. As noted above, Mr Pirrie has not made any representations in response to the Provisional Penalty Decision to dispute the Relevant Conduct or put forward any excuse. The Pirrie 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 Mr Pirrie. The CMA therefore considers that Mr Pirrie had no reasonable excuse for failing to comply with the Requirements of CMA officers under the Warrant.

43. The CMA concludes that 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

44. The CMA will consider whether to impose an administrative penalty on a case-by-case basis, taking into account all relevant circumstances.[31]

45. 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.[32]

46. In this context, the CMA considers that it is of utmost importance to the UK's CA98 enforcement regime generally,[33] 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.

47. The CMA considers that the imposition of a monetary penalty on Mr Pirrie is critical for deterrence; to impress both on Mr Pirrie in this specific case, and more widely on those individuals and undertakings who are subject to CMA warrants in the future, the seriousness of a failure to comply with requirements 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.[34]

48. In this case, the CMA considers that imposing a penalty on Mr Pirrie will signal that the CMA is prepared to hold individuals accountable for their conduct where they fail to comply with investigatory requirements.

49. The above is reflected in the policy objectives set out in the CMA4 Penalties Guidance 2014:[35]

> Use of the CMA's investigatory and interim measures powers is therefore intended to:
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> • ensure that the CMA can expediently gather information to carry out its functions with the best available evidence in compliance with relevant

[31] CMA4 Penalties Guidance 2014, paragraph 4.2.
[32] CMA4 Penalties Guidance 2014, paragraphs 3.1-3.3 and 4.10.
[33] Under sections 26, 26A, 27, 28, 28A or 40ZD of the CA98.
[34] CMA4 Penalties Guidance 2014, paragraph 3.3.
[35] CMA4 Penalties Guidance 2014, paragraph 3.1.

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.

50. As set out in the CMA4 Penalties Guidance 2014,[36] 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.

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

52. 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 Mr Pirrie, as well as Ms Woods and M&J's senior management were aware of those Requirements). Moreover, as 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 finds that Mr Pirrie sought to obtain a personal advantage from its concealment.

53. 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.

54. Further, 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.[37] Further time and investigative resource was also expended subsequently on steps taken in an effort to establish whether any evidence was concealed, deleted or destroyed, to

[36] CMA4 Penalties Guidance 2014, paragraph 4.2.
[37] Pirrie Bundle, Tab 2, pages 24-26; Pirrie Bundle, Tab 3, paragraphs 32-46; Pirrie Bundle, Tab 4, paragraphs 27-39.

the extent this was possible, including, for example, conducting a search of Ms Woods' vehicle and interviewing the individuals suspected to have been involved.

55. For the reasons above, the CMA concludes that the imposition of a fixed penalty on Mr Pirrie is appropriate.

The level of the proposed penalty

56. 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.[38]

57. The CMA is likely to set penalties towards the upper end of the relevant statutory maximum for the most serious failures to comply. 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 Pirrie Failures to Comply and therefore weigh in favour of issuing a higher penalty on Mr Pirrie: [39]

(a) The likely adverse impact that the Pirrie Failures to Comply had on the CMA's Investigation, as explained at paragraphs 53 and 54 above.

(b) The significant and flagrant nature of the Pirrie Failures to Comply, as explained at paragraph 52 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) As explained at paragraphs 36 to 38 above, the CMA considers it is likely the hard copy documents in the Relevant Materials mostly or at least in part belonged to Mr Pirrie and that the mobile phone that Mr Pirrie used for work contained a significant amount of evidence of relevance to the suspected anti-competitive conduct that is the subject of the Investigation, including evidence of Mr Pirrie's direct involvement in such conduct. On this basis, the CMA considers that Mr Pirrie sought to obtain an advantage by concealing the Relevant Materials.

(d) The Relevant Conduct was intentional, as explained at paragraph 27-28 and 52 above.

(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.[40] The CMA 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.[41]

(f) In addition to the penalty for Mr Pirrie, the CMA has also decided to impose a penalty on Ms Woods but considers Mr Pirrie's conduct, as a member of M&J's senior management, to be more egregious than Ms Woods' conduct – who removed the Relevant Materials from the site under instruction from Mr Pirrie. The documents did not implicate Ms Woods in the conduct that is the subject matter of the Investigation,

[38] CMA4 Penalties Guidance 2014, at paragraph 4.11.
[39] CMA4 Penalties Guidance 2014, paragraph 4.11.
[40] Pirrie Bundle, Tab 8, paragraph 3.2.
[41] CMA4 Penalties Guidance 2014, at paragraph 4.11.

and it was only Mr Pirrie and M&J who stood to obtain an advantage from them being concealed.

(g) Further, Ms Woods was not involved in Mr Pirrie's provision of false and misleading information, as set out in paragraph 28 above. The CMA considers that in these circumstances it is reasonable and proportionate to impose a larger penalty on Mr Pirrie than on Ms Woods.

58. The CMA finds, however, that imposing a penalty on Mr Pirrie at the maximum level possible (£30,000) would not be appropriate considering all of the circumstances as discussed above and the CMA4 Penalties Guidance 2014 which reserves the upper end of the statutory maximum for the most serious failures to comply, for example, repeat non-compliance (which is not applicable here).[42]

59. Having considered the above factors in the round, the CMA finds that the imposition of a penalty of £20,000 for the Pirrie Failures to Comply is reasonable, appropriate and proportionate in this case.

G. Mr Pirrie's rights and the next steps

60. Mr Pirrie 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 him.

61. Mr Pirrie may pay the penalty or different portions of it earlier than the date by which it is required to be paid.

62. Mr Pirrie has the following rights in relation to the final penalty which the CMA has imposed:

(a) Pursuant to section 112(3) EA02, he has the right to apply to the CMA within 14 days of the date on which this penalty notice is served on him 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, he 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 him.

(c) Pursuant to section 114 EA02, he 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 him in relation to:

i. the imposition or nature of the penalty;

ii. the amount of the penalty; or

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 he applies 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 he 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

[42] CMA4 Penalties Guidance 2014, paragraph 4.11.

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