

Consumer protection: Draft guidance on the CMA's consumer powers

Consultation document

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1. About the consultation

Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on the draft guidance on the CMA's consumer powers (the 'new' guidance). The CMA is a non-ministerial department formed on 1 April 2014. It is a primary competition and consumer authority which took over a number of functions formerly performed by the Office of Fair Trading (OFT) and those of the Competition Commission.
- 1.2 The CMA works to promote competition for the benefit of consumers, both within and outside the UK, to make markets work well for consumers, businesses and the economy.
- 1.3 The purpose of the draft guidance is three-fold:
 - (a) To set out how the CMA uses its consumer powers to address problems in markets, including its approach to compliance and enforcement of consumer law. It will replace the [Guidance on the CMA's approach to use of its consumer powers](#) (CMA7) issued on 12 March 2014.
 - (b) To explain the consumer protection provisions in Part 8 of the Enterprise Act (EA02) and to indicate how these provisions operate. It will replace *Enforcement of consumer protection legislation*, [Guidance on Part 8 of the Enterprise Act](#) (OFT512) which was originally published by the OFT and adopted by the CMA.
 - (c) To explain certain investigatory powers provisions in Schedule 5 to the Consumer Rights Act 2015 (CRA), and to indicate how these provisions operate.

Background

- 1.4 The CMA is required under statute to prepare and publish advice and information to explain the provisions of Part 8 of the EA02 to persons who are likely to be affected by them and to indicate how the CMA expects such provisions to operate. Part 8 of the EA02 gives the CMA and other bodies powers to enforce certain consumer protections laws. The statutory requirement has to date been fulfilled by OFT512. The draft guidance replaces OFT512 and brings the guidance up to date.
- 1.5 The CMA has a new statutory requirement under the CRA to explain certain provisions of Schedule 5 to the CRA so far as they relate to investigatory

powers to persons who are likely to be affected by them, and to indicate how the CMA expects such provisions to operate. Schedule 5 of the CRA contains a generic set of investigatory powers which consolidate and modernise the enforcement powers of a range of enforcers, including the CMA. The draft guidance fulfils that statutory requirement.

- 1.6 The CMA issued guidance on its approach to the use of its consumer powers in March 2014 at the time of changes to the consumer landscape and the refocusing of consumer powers by several bodies. Now that these changes have become more established, it is opportune to update this guidance and to consolidate it into single guidance which incorporates guidance on Part 8 and Schedule 5 investigatory powers.

Consultation process

- 1.7 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments. We would welcome your comments on the content of the draft guidance and, in particular, to the questions raised in Chapter 2 of this document. We want to ensure that the guidance is clear, comprehensive and useful for its intended users.

How to respond

- 1.8 We are seeking the views of interested parties. Please respond to as many of the questions as you are able to and, where relevant, please support your answers with any evidence or examples you may have. We encourage you to respond to the consultation in writing (by email or alternatively by letter) using the contact details provided at paragraph 1.11.
- 1.9 When responding to this consultation please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 1.10 In pursuance of its policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, it would be helpful if you could also provide a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive at the same time.

Duration

- 1.11 The consultation will run for eight weeks, from 26 May 2016 to 21 July 2016. Responses should be submitted by post or email, by no later than 21 July 2016, and should be sent to:

Gordana Cumming
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

Email: gordana.cumming@cma.gsi.gov.uk

Compliance with government consultation principles

- 1.12 In consulting, the CMA has taken into account the government consultation principles, which set out the principles that government departments and other public bodies should adopt when consultation with stakeholders. Full details can be found on GOV.UK

Data use statement for responses

- 1.13 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.
- 1.14 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.

- 1.15 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

After the consultation

- 1.16 After the consultation, we will publish a final version of the guidance and a summary of the responses received that fall within the scope of the consultation. As noted above, we propose to publish non-confidential versions of the responses received. These documents will be available on our webpages and respondents will be notified when they are available.

2. Questions for consideration

- Q1. Is it helpful to have a single set of guidance which consolidates previous guidance and serves the three purposes identified above?
- Q2. Is the content, format and presentation of the draft guidance sufficiently clear? If there are particular parts of the guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- Q3. Is the draft guidance sufficiently comprehensive? Does it have any significant omissions? Do you have any suggestions for additional or revised content that you would find helpful?
- Q4. Is the level of detail helpful? Are there any parts of the draft guidance which you feel would be improved by being either more, or less, detailed?
- Q5. Do you have any other comments about the draft guidance?