



**Consultation by the Competition and Markets Authority on the Office for the Internal Market's
Draft Guidance and Enforcement Policy Statement**

Response by the Council for Licensed Conveyancers

22 July 2021

About the Council for Licensed Conveyancers

1. The CLC was established by the Administration of Justice Act 1985 and is an Approved Regulator under the Legal Services Act 2007, subject to the oversight regulation of the Legal Services Board.
2. It licenses and regulates licensed conveyancers and practices in England and Wales in the provision of reserved legal activities, currently conveyancing and probate services, and other non-reserved legal activities, including will writing. It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function having always been an independent regulator.
3. The CLC's role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
4. This document includes our responses to both consultations closing on 22 July 2021, those being the consultations on the:
 - a. Draft Guidance on the Operation of the CMA's UK Internal Market functions, and
 - b. Draft Statement of Policy on the enforcement of the OIM of its information-gathering powers.

A. Draft Guidance on the Operation of the CMA's UK Internal Market Function

5. The CLC supports the aims and purpose of the guidance and believes that it is clearly expressed, however would request clarification on two aspects.

Definition of Public Authority

6. First, we would like to request clarification of the definition of 'public authority' as it is used in the consultation document and the guidance. The consultation document notes that a purpose of the guidance is to "Guide...public authorities...on how and in what circumstances they can access advice and technical reports from the CMA..." (p.4). The UK Internal Market Act 2020 states in various locations that a "Public authority" means a person who exercises functions of a public nature. Under this interpretation it is not clear whether the CLC and, for example, other legal sector regulators like the Solicitors' Regulation Authority are public authorities for the purposes of the Act, and therefore able to request advice and technical reports from the OIM.

7. Indeed, the parts of the guidance on requesting advice and reports (e.g. chapters 2 and 5) then refer specifically and only to 'national authorities', excluding public authorities. As such, clarification that enables the CLC and other regulators etc. to more easily determine which parts of the guidance apply to them would be appreciated.

Process for national authority making request on behalf of regulatory making person or body

8. There is a reference at footnote 19 of the guidance that "only the relevant national authority can make a request but they may do so on behalf of an appropriate regulatory making person or body" (p.12). However, there does not appear to be any additional guidance or process for how this would work in practice. Does the CMA intend to provide additional guidance for regulators and other stakeholders wishing to make applications through national authorities, or is it expected that this will be determined as between the national authority and other regulatory making person or body?

B. Draft Statement of Policy on the Enforcement by the OIM of its Information-gathering Powers

9. The CLC appreciates the opportunity to comment on the CMA's draft Statement of Policy. We note that BEIS has also asked for feedback on maximum fining thresholds by 11 August 2021 and will respond to that request separately.
10. We support the approach set out which will see the OIM take decisions on whether to impose a penalties on a case-by-case basis that are "...reasonable, appropriate and thus proportionate in the circumstances." We also agree with the factors listed as influencing the type and extent of penalty imposed.
11. We would suggest that the OIM makes records of its decision-making and disciplinary process public, for example by publishing them on its website. If this is not set out elsewhere, the requirement to publish enforcement decisions should be included in the statement. This would have a positive impact on the transparency and accountability of the OIM, and also increase public confidence in the organisation and its ability to make fair and consistent decisions.
12. One aspect of the statement that should be clarified relates to the appeals process set out in paragraphs 4.20 – 4.21. It is not clear from these paragraphs what will happen if an appeal is lodged against a penalty that is applied as a daily rate. For example, does the penalty continue to increase at the daily rate while the application for appeal or appeal is determined, or will the amount of the penalty be frozen as at the date of the appeal being lodged? Clarifying this aspect of the statement will be important for all those who the OIM may seek to use its information gathering powers against.