

Competition and Markets Authority
Consultation on Draft Guidance on Consumer Protection Enforcement
Response from Propertymark
January 2025

Background

1. Propertymark is the UK's leading professional body of property agents, with over 18,500 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Consultation – summary

2. The Competition and Markets Authority (CMA) are looking for views on the implementation of new draft guidance on how they enforce their consumer protection powers, including its approach to compliance and enforcement. This follows the enactment of the Digital Markets, Competition and Consumers (DMCC) Act 2024 which introduces wide reaching changes to consumer protections, updating the Consumer Protection from Unfair Trading Regulations (2008) commonly referred to as the Consumer Protection Regulations (CPRs).

Propertymark response

3. Propertymark welcomes the opportunity to respond to the CMA's consultation on its Consumer Protection Enforcement draft guidance. Propertymark has also submitted a response to the CMA's consultation on its draft guidance on unfair commercial practices. Within that response, we covered areas related to enforcement that were directly related to the issues covered by the guidance. Our response to this consultation covers our broader response related to enforcement and the subjects covered in the draft guidance on Consumer Protection Enforcement.
4. Upon review of the guidance, Propertymark largely finds the guidance easy to understand but there are a few aspects that would benefit from expanding upon. Our response can be summarised by the following three points:

- **Without a framework determining what specifically constitutes unfair practices within the property sector, we fear that enforcement will be inconsistent** - Estate agents across the UK and letting agents in England and Northern Ireland are not regulated, with no Code of Practice or clear regulations that set out what unfair or fair practices are.
 - **Greater clarity on “systemic market problems” is required** – it is not particularly clear where the CMA will intervene in the market. Wording around “changing the working of a market as a whole” is vague and would benefit from examples.
 - **The guidance would benefit from practical examples of when the CMA has the power to enforce regulations but has no duty to do so** – it is not clear in the guidance in which circumstances the CMA would consider enforcing the unfair commercial practices provisions contained in Chapter 1 of Part 4 of the DMCC Act and the offence contained in Regulation 6 of the Business Protection from Misleading Marketing Regulations 2008, despite having no duty to do so.
5. For clarity, our response relates only to property agents, including residential and commercial sales, lettings, auctions, inventory management and valuation.

Questions

Question 1: Do you have any comments on the structure or clarity of the Draft Guidance?

6. We have no comments on the structure or clarity of the Draft Guidance.

Question 2: Does the guidance offer sufficient clarity about how the CMA proposes to carry out its enforcement functions?

7. There are two areas where the guidance would benefit from additional clarity, which would further clarify how the CMA proposes to carry out its enforcement functions. The first is how the CMA identifies what systemic failures are. Under existing guidance, the difference between when the CMA and National Trading Standards (NTS) will intervene is as follows: *“The focus of the CMA is on systemic market-wide issues, while Trading Standards tackles consumer detriment more*

*generally*¹. “General” and “market-wide” could be considered similar adjectives, confusing where the CMA will act over NTS. Examples of cases where a single or multiple business failures present a potential or actual systemic failure within the market would provide additional clarity for businesses and consumers. This would ideally include situations where the breach of regulations from a smaller number of firms would be considered a systemic failure, such as differences in geographic location, or how any research into business practices across the UK will be conducted. Secondly, within the draft guidance, the CMA makes it clear that it has powers to enforce regulation, including Chapter 1 of Part 4 of the DMCC Act 2024 and Regulation 6 of the Business Protection from Misleading Marketing Regulations 2008, but has no duty to do so. It is not clear however when the CMA will consider enforcing these regulations, despite implying through the guidance that it may do so. Guidance that clarifies.

Question 3: Do you have any other comments on topics not covered by the specific questions above? If so, the CMA requests that respondents structure their responses to separate out their views in relation to each of the Draft Guidance’s chapters.

8. As with our consultation response on the CMA’s unfair commercial practice guidance, the ability for the CMA to carry out its duties consistently is undermined by the lack of a Code of Conduct or written professional business practices for estate agents in the UK and letting agents in England and Northern Ireland. When it comes to identifying if there are systemic problems across a market, it is vital to establish what best practice looks like, in which to compare problems to. However, with the exception of letting agents in Scotland and Wales, the property sector is unregulated. This will make it difficult for the CMA to take consistent enforcement action against property agents. Propertymark therefore reiterates sector calls for the introduction of the regulation of Property agents as recommended by Lord Best and the Regulation of Property Agents Working Group². Alternatively, Propertymark would welcome the opportunity to work with the CMA to clarify best practice within the property sector.

¹ https://assets.publishing.service.gov.uk/media/675955f751df3604e0a29289/Draft_guidance.pdf

² [Regulation of Property Agents: working group report - GOV.UK](#)