

SCHEDULES

SCHEDULE 5

Section 79

PROCEDURE FOR APPEALS TO THE CMA

Functions of CMA to be discharged by group

- 1 Except where specified otherwise in this Schedule, the functions of the CMA with respect to an appeal are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- 2 (1) Schedule 4 to the Enterprise and Regulatory Reform Act 2013 is amended as follows.
 - (2) In paragraph 35(1) (membership of CMA panel), after paragraph (c) insert—
 - “(ca) at least one person (a “payment systems panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of a group constituted to carry out functions on behalf of the CMA with respect to an appeal made in accordance with section 79 of the Financial Services (Banking Reform) Act 2013 (a “specialist payment systems group”);”.
 - (3) In paragraph 38 (membership of CMA groups), after sub-paragraph (5) insert—
 - “(5A) In the case of a specialist payment systems group, the group must include at least one payment systems member.”
 - (4) In paragraph 48 (performance of functions of chair with respect to constitution etc of CMA group), in sub-paragraph (4)(c), at the end insert—
 - “(v) Schedule 5 to the Financial Services (Banking Reform) Act 2013.”

Application for permission to bring appeal

- 3 (1) An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.
 - (2) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.
 - (3) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.
 - (4) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.
 - (5) The appellant must send the Payment Systems Regulator—
 - (a) a copy of the application for permission to appeal at the same time as it is sent to the CMA, and

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- (b) such other information as may be required by appeal rules.
- (6) The CMA's decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.
- (7) Before the authorised member decides whether to grant permission under this paragraph, the Payment Systems Regulator must be given an opportunity of making representations or observations, in accordance with paragraph 5(2).
- (8) The CMA's decision on an application for permission must be made—
 - (a) where the Payment Systems Regulator makes representations or observations in accordance with paragraph 5(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
 - (b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission was received.
- (9) The grant of permission may be made subject to conditions, which may include—
 - (a) conditions which limit the matters that are to be considered on the appeal in question;
 - (b) conditions for the purpose of expediting the determination of the appeal;
 - (c) conditions requiring the appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (10) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons, to the following persons—
 - (a) the appellant, and
 - (b) the Payment Systems Regulator.
- (11) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.
- (12) The CMA may exclude from publication under sub-paragraph (11) any information which it is satisfied is—
 - (a) commercial information, the disclosure of which would, or might in the CMA's opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA's opinion, significantly harm the individual's interests.

Suspension of decision

- 4 (1) The CMA may direct that, pending the determination of an appeal against a decision of the Payment Systems Regulator—
 - (a) the decision is not to have effect, or
 - (b) the decision is not to have effect to such extent as may be specified in the direction.

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- (2) The power to give a direction under this paragraph is exercisable only where—
 - (a) an application for its exercise has been made by the appellant at the same time as the appellant made an application in accordance with paragraph 3 for permission to bring an appeal against a decision of the Payment Systems Regulator,
 - (b) the Payment Systems Regulator has been given an opportunity of making representations or observations, in accordance with paragraph 5(2), and
 - (c) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (3) The CMA's decision on an application for a direction under this paragraph must be made—
 - (a) where the Payment Systems Regulator makes representations or observations in accordance with paragraph 5(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
 - (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (2)(a) is received.
- (4) The appellant must send the Payment Systems Regulator a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.
- (5) The CMA's decision whether to give a direction is to be taken by an authorised member of the CMA.
- (6) A direction under this paragraph must be—
 - (a) given by an authorised member of the CMA, and
 - (b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.
- (7) Sub-paragraph (12) of paragraph 3 applies to the publication of a direction under sub-paragraph (6) of this paragraph as it applies to the publication of a decision under sub-paragraph (11) of that paragraph.

Time limit for representations and observations by the Regulator

- 5 (1) Sub-paragraph (2) applies where the Payment Systems Regulator wishes to make representations or observations to the CMA in relation to—
 - (a) an application for permission to bring an appeal under paragraph 3;
 - (b) an application for a direction under paragraph 4.
- (2) The Payment Systems Regulator must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 3(5) or 4(4) (as the case may be).
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Payment Systems Regulator wishes to make representations or observations to the CMA in relation to—
 - (a) the Payment Systems Regulator's reasons for the decision in relation to which the appeal is being brought;
 - (b) any grounds on which that appeal is being brought against that decision.

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- (4) The Payment Systems Regulator must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.
- (5) The Payment Systems Regulator must send a copy of the representations and observations it makes under this paragraph to the appellant.

Consideration and determination of appeal by group

- 6 (1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal must consist of three members of the CMA panel.
- (2) A decision of the group is effective if, and only if—
 - (a) all the members of the group are present when it is made, and
 - (b) at least two members of the group are in favour of the decision.

Time limits for determining appeal

- 7 (1) The CMA must determine an appeal within the period of 6 months beginning with the permission date.
- (2) If—
 - (a) the CMA has received representations on the timing of the determination from a party to the appeal, and
 - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in sub-paragraph (1),
 the CMA must determine the appeal within the period specified by it, which must not be longer than the period of 7 months beginning with the permission date.
- (3) In a case where sub-paragraph (2) applies, the CMA must also—
 - (a) inform the parties to the appeal of the time limit for determining the appeal, and
 - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (4) In this paragraph the “permission date” is the date on which the CMA gave permission to bring the appeal in accordance with section 76(8).

Matters to be considered on appeal

- 8 (1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by paragraph 7, may disregard—
 - (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application, and
 - (b) any or all matters raised by the Payment Systems Regulator that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 5.
- (2) In this paragraph “relevant application” means an application under paragraph 3 or 4.

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Production of documents etc

- 9 (1) For the purposes of this Schedule, the CMA may by notice—
- (a) require a person to produce to the CMA the documents specified or otherwise identified in the notice;
 - (b) require any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.
- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—
- (a) at the time and place specified in the notice, and
 - (b) in a legible form.
- (3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information which the person could not be compelled to produce in civil proceedings in the High Court or Court of Session.
- (4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied to it under this paragraph.
- (5) A notice for the purposes of this paragraph—
- (a) may be issued on the CMA's behalf by an authorised member of the CMA;
 - (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 13).

Oral hearings

- 10 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—
- (a) by a person considering an application for permission to bring an appeal under paragraph 3,
 - (b) by a person considering an application for a direction under paragraph 4, or
 - (c) by a group with the function of determining an appeal;
- and, for that purpose, such a person or group may administer oaths.
- (2) The CMA may by notice require a person—
- (a) to attend at a time and place specified in the notice, and
 - (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).
- (3) At any oral hearing the person or group conducting the hearing may—
- (a) require the appellant or the Payment Systems Regulator, if present at the hearing, to give evidence or to make representations or observations, or
 - (b) require a person attending the hearing as a representative of the appellant or of the Payment Systems Regulator to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.

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- (5) If the appellant, the Payment Systems Regulator, or the appellant’s or Payment Systems Regulator’s representative is not present at a hearing—
 - (a) there is no requirement to give notice to that person under sub-paragraph (2), and
 - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person’s evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which the person could not be compelled to give in civil proceedings in the High Court or Court of Session.
- (7) Where a person is required under this paragraph to attend at a place more than 10 miles from the person’s place of residence, an authorised member of the CMA must arrange for the person to be paid the necessary expenses of attendance.
- (8) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

Written statements

- 11 (1) The CMA may by notice require a person to produce a written statement with respect to a matter specified in the notice to—
 - (a) a person who is considering, or is to consider, an application for a direction under paragraph 4, or
 - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
 - (a) to specify the time and place at which it is to be produced, and
 - (b) to require it to be verified by a statement of truth;
 and a statement required to be so verified must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which the person could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.
- (4) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

Expert advice

- 12 Where permission to bring an appeal is granted under paragraph 3, the CMA may commission expert advice with respect to any matter raised by a party to the appeal.

Defaults in relation to evidence

- 13 (1) If a person (“the defaulter”)—
 - (a) fails to comply with a notice issued or other requirement imposed under paragraph 9, 10 or 11,
 - (b) in complying with a notice under paragraph 11, makes a statement that is false in any material particular, or

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- (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,
an authorised member of the CMA may certify that fact to the court.
 - (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the notice or other requirement, or made the false statement, or provided the false information, it may deal with the defaulter (and in the case of a body corporate, any director or other officer of the body) as if that person were in contempt.
 - (3) In sub-paragraph (2) “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.
 - (4) In this paragraph “court” means—
 - (a) the High Court, or
 - (b) in Scotland, the Court of Session.
- 14 (1) A person who wilfully alters, suppresses or destroys a document which the person has been required to produce under paragraph 9 is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable—
 - (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

Determination of appeal by CMA

- 15 (1) A determination by the CMA on an appeal—
 - (a) must be contained in an order made by the CMA;
 - (b) must set out the reasons for the determination;
 - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
 - (d) must be notified by the CMA to the parties to the appeal;
 - (e) must be published by the CMA—
 - (i) as soon as reasonably practicable after the determination is made;
 - (ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication under sub-paragraph (1)(e) any information which it is satisfied is—
 - (a) commercial information, the disclosure of which would, or might in the CMA’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or

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- (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA's opinion, significantly harm the individual's interests.
- (3) The Payment Systems Regulator must take such steps as it considers necessary for it to comply with an order of the CMA made by virtue of sub-paragraph (1)(a).
- (4) The steps must be taken—
 - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
 - (b) in any other case, within a reasonable time.

Appeal rules

- 16
- (1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals.
 - (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
 - (a) the taking of evidence at an oral hearing, or
 - (b) the making of representations or observations at such a hearing.
 - (3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
 - (4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.
 - (5) Rules under this paragraph may make different provision for different cases.

Costs

- 17
- (1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.
 - (2) An order under sub-paragraph (1) must require those costs to be paid—
 - (a) where the appeal is allowed in full, by the Payment Systems Regulator;
 - (b) where the appeal is dismissed in full, by the appellant;
 - (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.
 - (3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.
 - (4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
 - (5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) are to bear interest at such rate as may be determined in accordance with provision contained in the order.

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- (6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour the order is made.

Interpretation

18 (1) In this Schedule—

“appeal” means an appeal made in accordance with section 79;

“appeal rules” means rules of procedure under paragraph 16;

“appellant” has the meaning given by paragraph 3(4);

“authorised member of the CMA”—

- (a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;
- (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—
- (i) any member of the CMA Board who is also a member of the CMA panel, or
- (ii) any member of the CMA panel authorised by the Treasury (whether generally or specifically) to exercise the power in question;

“CMA” means the Competition and Markets Authority;

“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

“group” means a group selected in accordance with paragraph 6;

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

“working day” means any day other than—

- (a) Saturday or Sunday;
- (b) Christmas Day or Good Friday;
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

(2) References in this Schedule to a party to an appeal are references to—

- (a) the appellant, or
- (b) the Payment Systems Regulator.