

## **107<sup>th</sup> UPDATE – PRACTICE DIRECTION AMENDMENTS**

The amendments to the Practice Directions, supplementing the Civil Procedure Rules 1998, are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lucy Frazer QC MP, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

The amendments to the Practice Directions come into force on at the same time as the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/521).

The Right Honourable Sir Terence Etherton  
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

Lucy Frazer QC MP

Parliamentary Under-Secretary of State for Justice

Ministry of Justice

Date: 29<sup>th</sup> March 2019

### **TRANSITIONAL PROVISION**

- 1) This transitional provision relates to the amendments made by this Update to Practice Directions 34A, 52D, 63A and Practice Direction – Competition Law – Claims relating to the application of Articles 81 and 82 of the EC Treaty and Chapters I and II of Part I of the Competition Act 1998.
- 2) In this transitional provision, “exit day” means the coming into force of the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/521).
- 3) **PRACTICE DIRECTION 34A – DEPOSITIONS AND COURT ATTENDANCE BY WITNESSES**
  - (a) Where regulation 13 of the Service of Documents and Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provision) (EU Exit) Regulations 2018 applies, paragraphs 8.3 to 9.3 and 11.1 to 11.8 of Practice Direction 34A and the Annexes to that Practice Direction continue to apply on and after exit day as if the amendments to that Practice Direction made by this Update had not been made.

4) PRACTICE DIRECTION 52D – STATUTORY APPEALS AND APPEALS SUBJECT TO SPECIAL PROVISIONS

- (a) The amendments made by this Update to paragraph 7.1(3) of Practice Direction 52D do not apply in relation to proceedings relating to competition described in paragraph 14(2) of Schedule 4 to the Competition (Amendment etc.) (EU Exit) Regulations 2019.

5) PRACTICE DIRECTION 63A – INTELLECTUAL PROPERTY CLAIMS

- (a) Paragraphs 15.1 and 21.1 continue to apply on and after exit day, notwithstanding their revocation by this Update, for the purposes of claims relating to European Community designs or to European Community trade marks which were started but not determined before exit day.

6) PRACTICE DIRECTION – COMPETITION LAW – CLAIMS RELATING TO THE APPLICATION OF ARTICLES 81 AND 82 OF THE EC TREATY AND CHAPTERS I AND II OF PART I OF THE COMPETITION ACT 1998

- (a) The amendments made by this Update to paragraph 2 of Practice Direction – Competition Law – Claims Relating to the Application of Articles 81 and 82 of the EC Treaty and Chapters I and II of Part I of the Competition Act 1998 do not apply in relation to proceedings relating to competition described in paragraph 14(2) of Schedule 4 to the Competition (Amendment etc.) (EU Exit) Regulations 2019.

**PRACTICE DIRECTION 6A – SERVICE WITHIN THE UNITED KINGDOM**

- 1) Omit the second Annex (The European Communities (Services of Lawyers) Order 1978) to Practice Direction 6A.

**PRACTICE DIRECTION 6B – SERVICE OUT OF THE JURISDICTION**

- 1) In paragraph 3.1(20)—  
a) at the end of sub-paragraph (a), omit “; or”; and  
b) omit sub-paragraph (b).
- 2) Omit the Annex (Service Regulation) to Practice Direction 6A.

**PRACTICE DIRECTION 12 – DEFAULT JUDGMENTS**

- 1) In paragraph 4.3—

- a) in sub-paragraph (1), for “the Civil Jurisdiction and Judgments Act 1982, the 2005 Hague Convention, the Lugano Convention or the Judgments Regulation” substitute “the Civil Jurisdiction and Judgments Act 1982 or the 2005 Hague Convention”;
- b) in sub-paragraph (2)—
  - i) omit “or in any other Convention territory or Member State”;
  - ii) in sub-sub-paragraph (b), for “the Act, the 2005 Hague Convention, the Lugano Convention or Judgments Regulation” substitute “the Act or the 2005 Hague Convention”; and
  - iii) in sub-sub-paragraph (c), for the words from “Article 20” to the end substitute “Article 9(c) of the 2005 Hague Convention or paragraph 15 of Schedule 4 to the Act”.

### **PRACTICE DIRECTION 31C – DISCLOSURE AND INSPECTION IN RELATION TO COMPETITION CLAIMS**

- 1) After paragraph 1.1(b) insert—

“(The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), Schedule 4 (‘saving and transitional provision’), Part 6 (‘court and tribunal proceedings relating to competition’) makes transitional provision relating to pre-exit day competition infringements. Modifications to paragraph 2(2) of Schedule 8A to the 1998 Act by Part 2 of those Regulations are disapplied in relation to claims described in paragraph 14(2) by paragraph 15 (in conjunction with paragraph 7(3)-(8)) of Schedule 4 to those Regulations.)”.

- 2) Omit paragraph 1.1(c).
- 3) For paragraph 1.6 substitute—

**“1.6** In order to determine proportionality, the court must in particular consider—

(a) the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence;

(b) the scope and cost of disclosure, especially for any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure;

(c) whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.”

4) For paragraph 2.7 substitute—

“**2.7** In order to determine the proportionality of disclosure or inspection, in addition to the requirements of paragraph 1.6 the court must consider—

(a) whether the request has been formulated specifically with regard to the nature, subject matter or contents of documents submitted to a competition authority or held in the file of that authority, rather than by a non-specific application concerning documents submitted to a competition authority;

(b) whether the party requesting disclosure is doing so in relation to an action for damages before a court;

(c) in a case where—

(i) a competition authority has closed the investigation to which the request for its investigation materials relates; and

(ii) the court is satisfied that no-one other than the competition authority is reasonably able to provide the documents or information,

the need to safeguard the effectiveness of the public enforcement of competition law;

(d) in a case where a competition authority submits written or oral representations to the court, the need to safeguard the effectiveness of the public enforcement of competition law.”

## **PRACTICE DIRECTION 34A – DEPOSITIONS AND COURT ATTENDANCE BY WITNESSES**

1) In the table of contents—

a) in the entry for paragraph 5.1, omit “(where the Taking of Evidence Regulation does not apply)”;

- b) in the entry for paragraph 6.1, omit “(where the Taking of Evidence Regulation does not apply)”;
  - c) omit the reference for the cross-heading “TAKING OF EVIDENCE BEWTEEN EU MEMBER STATES”;
  - d) omit the entries for paragraph 7.1, paragraph 8.1, paragraph 9.1, paragraph 10.1 and paragraph 11.1; and
  - e) omit the entries for Annex B and Annex C.
- 2) In the heading to paragraph 5.1, . omit “(where the Taking of Evidence Regulation does not apply)”.
  - 3) In the heading to paragraph 5.1, . omit “(where the Taking of Evidence Regulation does not apply)”.
  - 4) Omit the cross-heading “TAKING OF EVIDENCE BEWTEEN EU MEMBER STATES”.
  - 5) Omit paragraphs 7.1 to 11.8.
  - 6) In the heading to Annex A, omit “(where the Taking of Evidence Regulation does not apply)”.
  - 7) Omit Annex B and Annex C.

**PRACTICE DIRECTION 49A – APPLICATIONS UNDER THE COMPANIES ACTS AND RELATED LEGISLATION**

- 1) In the Table of Contents, omit the entries for paragraphs 19 to 25.
- 2) In paragraph 1, omit the definitions of—
  - a) “the EC Regulation”; and
  - b) “the Cross-Border Mergers Regulations”.
- 3) In paragraph 2, omit—
  - a) sub-paragraph (d);
  - b) “; and” at the end of sub-paragraph (e); and
  - c) Sub-paragraph (f).
- 4) In paragraph 4(1), omit—
  - a) “, the EC Regulation or the Cross-Border Mergers Regulations”; and
  - b) “, Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) or the Companies (Cross-Border Merger) Regulations 2007”.
- 5) Omit paragraphs 19 to 25.

## **PRACTICE DIRECTION 51U – DISCLOSURE PILOT FOR THE BUSINESS AND PROPERTY COURTS**

- 1) In Section II, in the text of rules 31.16 and 31.17 set out there, omit the words in parentheses at the end of each of those rules.

## **PRACTICE DIRECTION 52D – STATUTORY APPEALS AND APPEALS SUBJECT TO SPECIAL PROVISIONS**

- 1) In the table of contents—
  - a) in the entry for paragraph 7.1, omit “Articles 101 and 102 of the Treaty on the Functioning of the European Union and”; and
  - b) omit the entry for paragraph 20.1.
- 2) In paragraph 5.1, omit sub-paragraph (2).
- 3) In the Table after paragraph 5.1—
  - a) in the entry for “Competition: Articles 101 and 102 of the Treaty on the Functioning of the European Union and Chapters I and II of Part I of the Competition Act 1998”, omit “Articles 101 and 102 of the Treaty on the Functioning of the European Union and”.; and
  - b) omit the entry for “European Public Limited-Liability Company Regulations 2004, reg. 74”.
- 4) In paragraph 7.1—
  - a) in the heading, omit “Articles 101 and 102 of the Treaty on the Functioning of the European Union and”;
  - b) in sub-paragraph (1), for “of—” and sub-sub-paragraphs (a) and (b), substitute “Chapter I or Chapter II of Part I of the Competition Act 1998.”;
  - c) in sub-paragraph (2)—
    - i) omit sub-sub-paragraphs (b) and (c);
    - ii) for sub-sub-paragraph (d) substitute—

“(d) “competition “authority” means —

(i) the Competition and Markets Authority; or

(ii) a regulator as defined in section 54 of the Act;”
    - iii) omit sub-sub-paragraph (e);
  - d) in sub-paragraph (3)—

- i) omit “Article 101 or 102 of the Treaty, or”; and
  - ii) for “the Office of Fair Trading” substitute “the Competition and Markets Authority”, and for “(addressed to the Director of Competition Policy Co-ordination, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX)” substitute “(addressed to the General Counsel, the Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD)”.
  - e) omit sub-paragraph (4);
  - f) in sub-paragraph (5), omit “national” and “also”;
  - g) in sub-paragraphs (6) to (10), for the words “national competition authority or the Commission” in each place where they appear substitute “competition authority”; and
  - h) omit sub-paragraphs (12) to (14).
- 5) Omit paragraph 20.1.
- 6) In paragraph 27.1(1), at the end, for “2007” substitute “2015”.

### **PRACTICE DIRECTION 63A – INTELLECTUAL PROPERTY CLAIMS**

- 1) In the Table of Contents, omit the entries for paragraph 15.1 and paragraph 21.1.
- 2) Omit paragraphs 15.1 to 15.5
- 3) In paragraph 16.1—
  - a) in sub-paragraph (4), after “design right” insert “conferred under Part III of the 1988 Act”;
  - b) in sub-paragraph (5), before “Community design right” insert “unregistered”;
  - c) after sub-paragraph (5) insert—
 

“(5A) supplementary unregistered design right”;
  - d) omit “and” at the end of sub-paragraph (14); and
  - e) omit sub-paragraph (15).
- 4) In paragraph 16.3, omit “and Community trade marks”.
- 5) In paragraph 17.2, omit “and Community trade marks”.
- 6) Omit paragraphs 21.1 to 21.5.

### **PRACTICE DIRECTION 68 – REFERENCES TO THE EUROPEAN COURT**

- 1) Practice Direction 68 is revoked.

## **PRACTICE DIRECTION 74A – ENFORCEMENT OF JUDGMENTS IN DIFFERENT JURISDICTIONS**

- 1) In the table of contents—
  - a) omit the entries for paragraph 6.1 and paragraph 6A.1;
  - b) omit the entry for paragraph 9.1.
- 2) In paragraph 3—
  - a) in sub-paragraph (1)—
    - i) in sub-sub-paragraph (c), for “sections 4 and 4B” substitute “section 4B”;
    - ii) omit sub-sub-paragraph (e);
  - b) in sub-paragraph (2), omit the words after “Hague Convention” to the end;
  - c) at the end of sub-paragraph (5), omit “, and”; and
  - d) omit sub-paragraph (6).
- 3) For the heading to paragraph 4.1, substitute “Registration of judgments for enforcement”;
- 4) In paragraph 4.1—
  - a) for the opening words above sub-paragraph (1), substitute “Applications for—”;
  - b) at the end of sub-paragraph (2), omit “and”; and
  - c) omit sub-paragraph (3)..
- 5) In paragraph 4.4—
  - a) omit sub-paragraphs (2A) to (2D); and
  - b) omit sub-paragraphs (5) to (7).
- 6) Omit paragraphs 6.1 to 6D.2.
- 7) Omit paragraphs 7.4 and 7.5.
- 8) Omit paragraphs 9.1 to 9.4.

## **PRACTICE DIRECTION 74B – EUROPEAN ENFORCEMENT ORDERS**

- 1) Practice Direction 74B is revoked.

## **PRACTICE DIRECTION 78 – EUROPEAN PROCEDURES**

- 1) Practice Direction 78 is revoked.



**PRACTICE DIRECTION – COMPETITION LAW – CLAIMS RELATING TO THE APPLICATION OF ARTICLES 81 AND 82 OF THE EC TREATY AND CHAPTERS I AND II OF PART I OF THE COMPETITION ACT 1998**

- 1) In the title of the Practice Direction, omit “ARTICLES 81 AND 82 OF THE EC TREATY AND”.
- 2) In the Table of Contents, omit the reference for paragraph 5.1
- 3) Omit paragraph 1.1(a).
- 4) In paragraph 1.2—
  - a) omit sub-paragraphs (b) and (c);
  - b) for sub-paragraph (d) substitute—

“(d) “competition authority” means—

    - (i) the Competition and Markets Authority; or
    - (ii) a regulator as defined in section 54 of the Act;”;

and

    - c) omit sub-paragraph (e).
- 5) In paragraph 2.2, omit “Article 81 or 82 of the Treaty, or”.
- 6) In paragraph 2.3, omit “Article 81 or 82, or”.
- 7) In paragraph 2.4(a) and (b), omit “Article 81 or 82, or”.
- 8) In paragraph 3—
  - a) omit “Article 81 or 82, or”; and
  - b) for “the Office of Fair Trading” substitute “the Competition and Markets Authority”, and for “(addressed to the Director of Competition Policy Co-ordination, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX)” substitute “(addressed to the General Counsel,, the Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD)”.
- 9) Omit paragraph 4.1.
- 10) In paragraph 4.1A, omit “national” and “also”;
- 11) In paragraphs 4.2, 4.3, 4.4, 4.5 and 4.6, for the words “national competition authority or the Commission”, substitute “competition authority”.
- 12) Omit paragraphs 5.1 to 5.3 and paragraph 6.

## **PRACTICE DIRECTION – APPLICATION FOR A WARRANT UNDER THE COMPETITION ACT 1998**

- 1) In the title, after “1998” insert “OR THE STATE AID (EU EXIT) REGULATIONS 2019”.
- 2) In paragraph 1.1—
  - a) omit sub-paragraphs (2) and (3);
  - b) for sub-paragraph (4) substitute—

“(4) “the CMA” means the Competition and Markets Authority;”;

- c) in sub-paragraph (5), for “OFT” substitute “CMA”;
- d) in sub-paragraph (6), omit “”, and includes a named authorised officer under section 63 of the Act” and “and” at the end;
- e) after sub-paragraph (6) insert—

“(6A) “the Regulations” means the State Aid (EU Exit) Regulations 2019; and”; and

- f) in sub-paragraph (7)—
  - i) for “28, 28A, 62, 62A, 63, 65G or 65H” substitute “28 or 28A”; and
  - ii) after “the Act” insert “or under paragraph 6 of Schedule 4 to the Regulations”..
- 3) In paragraphs 1.2, 2.1, 3.4 and 4.1(1), for “OFT” substitute “CMA”.
- 4) In paragraph 4.1—
  - a) for “section” substitute “provision”; and
  - b) after “Act” insert “or the Regulations”.
- 5) In paragraph 4.3—
  - a) For “The” substitute “In an application under the Act, the”;
  - b) for “OFT” substitute “CMA”;
  - c) in sub-paragraph (1), omit “, or of Articles 81 or 82 of the Treaty establishing the European Community”; and
  - d) in sub-paragraph (7), omit “or a Commission official”.
- 6) After paragraph 4.3 insert—

**4.3A** In an application under the Regulations, the evidence must set out all the matters on which the CMA relies in support of the application, including all material facts of which the court should be made aware.

In particular the evidence must state—

- (1) the subject matter (i.e. the nature of the suspected misuse of aid) and purpose of the preliminary examination to which the application relates;
  - (2) the identity of the undertaking or undertakings suspected to have misused the aid;
  - (3) the grounds for applying for the issue of the warrant and the facts relied upon in support;
  - (4) details of the premises to be subject to the warrant and of the possible occupier or occupiers of those premises;
  - (5) the connection between the premises and the undertaking or undertakings suspected to have misused the aid;
  - (6) the name and position of the officer who it is intended will be the named officer;
  - (7) if it is intended that the warrant may, pursuant to paragraph 8 of Schedule 4 to the Regulations, authorise any person to accompany the named officer in executing the warrant, the name and job title of each such person and the reason why it is intended that he may accompany the named officer.”
- 7) In paragraph 4.4—
    - a) in sub-paragraph (1), for “OFT” substitute “CMA” and “omit” “; and” at the end; and
    - b) omit sub-paragraph (2).
  - 8) In paragraph 4.5, in the words in parentheses at the end of the paragraph—
    - a) for “sections 28 and 62” substitute “section 28”; and
    - b) after “of the Act” the first time it occurs insert “or under the Regulations”..
  - 9) In paragraph 7.1—
    - a) in sub-paragraph (1)—
      - i) omit “, 64(1) or 65(1)”; and
      - ii) after “the Act” insert “or paragraph 9 of Schedule 4 to the Regulations”;
    - b) in sub-paragraph (3)(b), omit “, Commission officials”; and
    - c) in sub-paragraph (4)—
      - i) for “section” substitute “provision”; and
      - ii) after “Act” insert “or the Regulations”.
  - 10) In paragraph 7.3, for “OFT” substitute “CMA”.
  - 11) In paragraph 10.1, after “the Act” insert “and paragraph 8 of Schedule 4 to the Regulations”.

- 12) In the Explanatory Note to Warrant under Sections 28 and 29 of the Competition Act 1998—
- a) in the first paragraph of text beneath the heading “Subject matter and powers”, for “Office of Fair Trading (“the OFT”)” substitute “Competition and Markets Authority (“the CMA”)”;
  - b) in the final paragraph of text beneath the heading “Confidentiality”—
    - i) for “OFT” substitute “CMA”; and
    - ii) omit “and any applicable obligation or power to disclose information pursuant to Council Regulation (EC) No. 1/2003”.
- 13) After the Explanatory Note to Warrant under Sections 28 and 29 of the Competition Act 1998, insert—

**“Explanatory Note to Warrant under paragraph 6 of Schedule 4 to the State Aid (EU Exit) Regulations 2019 (“the Regulations”)**

This Explanatory Note is provided for information only. It is not a detailed note of the powers under the Regulations which are subject to interpretation by the courts.

**Subject matter and powers**

Officers of the Competition and Markets Authority (‘the CMA’) [[if the Judge so orders pursuant to paragraph 8(2), insert the following here and elsewhere as indicated] and other persons] have been authorised under Warrant to enter premises identified in the Warrant in connection with an examination of alleged misuse of aid under the Regulations.

The subject matter of this examination is set out in paragraph 2 of the Warrant. The officers [and other persons] will not elaborate on this.

Paragraph 4 of the Warrant sets out the powers of the named officer [footnote] and other officers [and other persons] under paragraph 8 of Schedule 4 to the Regulations for the purposes of the present examination. On entering the premises, in addition to producing evidence of their own identity as required by the Regulations, the named officer will, as a matter of practice, produce evidence of the identity of the other officers [and other persons] when producing the Warrant.

Unless the Court has ordered otherwise, the initial production of the Warrant and entry to the premises must take place between 9.30 a.m. and 5.30 p.m. Monday to Friday and,

once officers [and other persons] have entered premises under the authority of the Warrant, they may outside those times and whilst the Warrant remains in force, remain on the premises or re-enter the premises to continue executing the Warrant.

### **Access to legal advice**

You are advised to seek legal advice. If the named officer and other officers consider it reasonable in the circumstances to do so and if they are satisfied that you are complying with, or will comply with, such conditions as they consider it appropriate to impose, the named officer and the other officers will grant a request to allow a reasonable time for your legal adviser to arrive at the premises before the proposed entry continues.

If you decide to seek legal advice you should do so promptly and this must not unduly delay or impede the proposed entry. Any delay must be kept to a strict minimum.

If you have an in-house legal adviser on the premises, or if you have received prior notice of the proposed entry, the named officer and other officers [and other persons] will not wait for your external legal adviser to arrive.

### **Self-incrimination**

The named officer and the other officers have powers, among other matters, to search and take copies of, or extracts from, documents covered by the Warrant, to require you to produce relevant information which is stored in any electronic form and to require you to provide an explanation of any such documents (which the Regulations define as information recorded in any form).

You should note that, any statement made by a person in response to a requirement imposed by the named officer or other officer may only be used in evidence against that person for the prosecution of an offence under the Regulations; or on prosecution for any other offence where –

1. in giving evidence, that person makes a statement inconsistent with it; and
2. evidence relating to it is adduced, or a question relating to it is asked, by them or on their behalf.

## **Legally privileged information**

The powers under paragraph 8 of Schedule 4 to the Regulations to search, take copies etc. (set out in paragraph 4(b) onwards in the Warrant) do not apply in respect of any 'privileged communication'. This is defined in paragraph 17 of Schedule 4 to the Regulations to mean a communication –

1. between a professional legal adviser and the adviser's client, or
2. made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which would be protected from disclosure in proceedings in the High Court on grounds of legal professional privilege.

For the purposes of paragraph 17 of Schedule 4 to the Regulations, a 'professional legal adviser' includes both an external and an in-house qualified legal adviser.

If you consider that a document or information is privileged, you should provide the named officer or the other officer with material of such a nature as to demonstrate to the officer's satisfaction that the document or information, or parts of it, for which privilege is claimed, fulfil the conditions for it being privileged.

If you fail to do so, you should gather together the items for which privilege is claimed. These items will not be examined or copied unless you reach agreement with the named officer that they may be examined or copied. If no agreement is reached whilst the warrant is being executed, the named officer will request that you make a copy of the items and place this in a sealed envelope or package in the named officer's presence. The named officer will then discuss with you the appropriate arrangements for the safe-keeping of these items pending resolution of the issue of privilege. For example, such arrangements may include a request that your legal adviser should give (or if no legal adviser is present, that you give), a written undertaking that the envelope or package will be retained safely and that its contents will not be concealed, removed, tampered with or destroyed until the issue of privilege is resolved.

## **Listing of items**

Unless it is impracticable in all the circumstances, no item may be removed from the premises by the named officer or other officers until they have prepared a list of all the

items to be removed, a copy of the list has been supplied to you, and you have been given a reasonable opportunity to check that the list relates to all the items concerned, and only to those items. This does not entitle you or your legal adviser to insist that the list or its contents should take any particular form.

### **Confidentiality**

You should note that, subject to the safeguards in relation to self-incrimination and legal privilege, you are not entitled to withhold a document or information claiming that it is confidential.

Where it is possible to do so, it is suggested that after the entry to the premise you should identify any part or parts of any information or document copied or taken that you consider to be confidential and provide a written explanation as to why it should be treated as such. For these purposes information is confidential if it is:

1. commercial information the disclosure of which the CMA thinks might significantly harm the legitimate business interests of the undertaking to which it relates;
2. information relating to the private affairs of an individual the disclosure of which the CMA thinks might significantly harm the individual's interests; or
3. information the disclosure of which the CMA thinks is contrary to the public interest.

A document will be treated as confidential to the extent that it contains confidential information.

It is for the CMA to determine whether or not the information is to be disclosed in accordance with Part 9 of the Enterprise Act 2002.

### **Application to vary or discharge the warrant**

You are entitled to apply to the Court to vary or discharge the Warrant. If you intend to make such an application, you must first inform the named officer. An application to stop the Warrant from being executed must be made immediately upon it being served.

The application must be made to the judge who issued the Warrant, or if that judge is not available, to another High Court judge.

If you are making an immediate application to stop the Warrant being executed, the named officer will delay starting or continuing a search of the premises for a reasonable period (not exceeding two hours) while you make your application, provided that you

1. permit the named officer and other officers [and other persons] to enter and remain on the premises;
2. keep the named officer informed of the steps you are taking in relation to the application; and
3. comply with any other conditions that the named officer imposes.

Examples of conditions that the named officer may impose pursuant to (3) above include: that you do not disturb or move any document or information that is the subject of the Warrant; and/or you do not tell anyone other than your legal adviser about the Warrant or the investigation.

#### **Application under section 59 Criminal Justice and Police Act 2001**

Your attention is drawn to section 59 of the Criminal Justice and Police Act 2001, which makes provision about applications relating to property seized in the exercise of the powers conferred by (among other provisions) paragraph 8 of Schedule 4 to the Regulations.

An application under section 59—

1. must be made by application notice in accordance with Part 23 of the Civil Procedure Rules; and
2. should be made to a judge of the Chancery Division at the Royal Courts of Justice (if available).

[Footnote: The named officer is the principal officer of the CMA who, together with the other officers [and other persons], is authorised by the Warrant to exercise powers under paragraph 8 of Schedule 4 to the Regulations. The officer's name and the names of the other officers [and other persons] are set out in [Schedule B to the Warrant.]”

- 14) Omit the Explanatory Note to Warrant under sections 62 and 64 of the Competition Act (“the Act”), and the warrant itself.