

CMA'S CONSUMER FINING POWERS HIT THE ROAD

FIRST PENALTY SIGNALS BIGGER FINES AHEAD

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In the first application of its consumer penalty framework under the consumer enforcement regime of the Digital Markets, Competition and Consumers Act 2024 (the "DMCCA"), the UK Competition and Markets Authority (the "CMA") ordered the AA Driving School and BSM Driving School to refund more than 80,000 learner drivers and pay a £4.2 million penalty for unlawful "drip pricing." The decision offers the first insight into how the CMA will calculate penalties under the Consumer Enforcement Guidance, CMA200 (the "Consumer Enforcement Guidance"), an approach distinct from Competition Act 1998 fining under CMA73 (the "CA98 Penalty Guidance"). Businesses should take note: those on the wrong side of consumer law could face significant fines, likely to grow as the regime matures. Under the new consumer law regime, turnover for penalty purposes can be traced up through corporate structures, meaning portfolio companies caught by consumer law breaches could expose parent holding companies and PE sponsors to liability calculated by reference to the wider group's consolidated UK turnover.

The CMA found that mandatory £3 booking fees were not included in headline prices on the AA and BSM websites between April and December 2025, but were added only at checkout after customers had selected lessons, chosen times, and entered personal details. This amounted to drip pricing expressly prohibited under sections 225(4)(b) and 230 of the consumer enforcement provisions of the DMCCA.



1. Penalty Calculation Framework

The CMA exercised its power to impose a monetary penalty under section 182(4) (b) of the DMCCA, having regard to Chapter 7 of the Consumer Enforcement Guidance. The penalty was calculated using a five-step framework.

Step 1: Starting Point (£217.5 million): The starting point is a percentage of UK turnover. The relevant turnover was that of AA Limited (the parent company), with consolidated turnover for FY2025 of £1.45 billion. The percentage is fixed by reference to (a) Harm (Category 3—"moderate": approximately 80,000 consumers affected, total dripped fees of £800,000, infringement lasting less than one year), and (b) Culpability (high: CMA guidance on drip pricing had been published before the Relevant Period). These findings produced a starting point code of B (15%–22.5%). The CMA applied 15%, yielding £217.5 million.

Step 2: Deterrence Adjustment (no change): The CMA concluded no increase was necessary, given the penalty already exceeded any benefit from the infringing conduct.

Step 3: Aggravating/Mitigating Factors (5% reduction →

£206,625,000): The CMA applied a 5% reduction for co-operation: the Respondent volunteered information and answered questions quickly, materially reducing investigation time.

Step 4: Proportionality Adjustment (≈97% reduction → £7 million):

This was the most significant step. The CMA found the Step 3 penalty disproportionate, considering: the Respondent being a large multi-line business with only a small proportion of turnover related to the affected products; infringement lasting less than one year; total consumer harm of approximately £800,000; the penalty vastly exceeding any gain; redress being paid; and the Respondent's co-operation. The CMA acknowledged that penalties are likely to be lower initially, and expressly noted that the same considerations may not apply in future cases.

Step 5: Settlement Discount (40% → £4.2 million): The CMA applied a 40% settlement discount for the Respondent's admissions, agreement to an expedited process, and compliance with settlement conditions. The discount is conditional; non-compliance triggers the full £7 million penalty.

Although the refund (more than £760,000) echoes the CMA's recent approach in competition cases, where money has been paid to businesses impacted by competition law breaches (see our Legal Updates on Vifor and Housebuilders), the two fining regimes are very different.



2. Key Differences Between Consumer and Competition Penalty Calculations

(a) Starting Point: Turnover Base

The most striking structural difference is the turnover base used to calculate the starting point. Under the Consumer Enforcement Guidance, the base is up to 30% of total UK turnover of the party (including controlled entities), with no separate duration multiplier. Under the CA98 Penalty Guidance, the base is up to 30% of relevant turnover in the affected market (i.e., turnover derived from products or services in the market to which the infringement relates), multiplied by the number of years of infringement. The practical effect: under the Consumer Enforcement Guidance, the mechanistic calculation can produce very large figures even for narrow infringements. Here, a £3 drip fee, leading to £800,000 consumer harm, generated a £217.5 million starting point for fining, whereas under the CA98 Penalty Guidance, the starting point is inherently calibrated to the affected market.

(b) Harm and Culpability Matrix

Under the Consumer Enforcement Guidance, the CMA uses a formalised matrix combining harm categories (major, significant, moderate, or other) with culpability levels (high, medium, low) to produce a “starting point code” (A (22.5%–30%), B (15%–22.5%), C (7.5%–15%), or D (up to 7.5%)), each with a defined percentage range. This is a more structured approach than under the CA98 Penalty Guidance, where the seriousness percentage (Step 1) is determined on a more holistic basis by reference to the nature and seriousness of the infringement.

(c) The Role of Proportionality

Under the CA98 Penalty Guidance, the proportionality check at Step 5 is a backstop; the starting point (based on relevant turnover × duration) is usually in the right territory before it is applied. Under the Consumer Enforcement Guidance, the proportionality step (Step 4) does much heavier lifting. Here, it produced a 97% downward adjustment, considering factors including the relevant products accounting for only a small proportion of total turnover,

modest consumer harm, and redress being paid. The proportionality step in consumer cases therefore functions less as a safety net, and more as the primary mechanism for arriving at the actual penalty.

(d) Settlement Discount

The maximum settlement discount under the Consumer Enforcement Guidance is 40% (compared to 20% for cartel conduct and 40% in relation to non-cartel conduct under Guidance on the CMA's investigation procedures in CA98 cases, CMA8). Under the Consumer Enforcement Guidance, the discount is tied to admission of infringement, an expedited process, and ongoing compliance with settlement conditions; breach can result in the discount being withdrawn. Similarly, under the CA98 Penalty Guidance, the discount requires admission and agreement to a streamlined procedure. Although the maximum percentages may align in non-cartel cases, the Consumer Enforcement Guidance's explicit link between discount and ongoing compliance reflects a different enforcement philosophy—one focused more on restorative outcomes than punitive deterrence. Perhaps more significant the CMA appears to be utilising settlements in consumer cases to deliver decisions quickly, much faster than in CA98 cases.

(e) Duration

Under the CA98 Penalty Guidance, duration is a separate multiplier: the Step 1 percentage is multiplied by the number of years of infringement. Under the Consumer Enforcement Guidance, there is no standalone duration multiplier; duration is instead one of many factors considered at the proportionality step.

(f) Statutory Maximum

Under the CA98 Penalty Guidance, the maximum penalty is 10% of worldwide turnover. Under the Consumer Enforcement Guidance, the cap is £300,000 or 10% of worldwide turnover, whichever is higher; meaning smaller businesses could hypothetically face penalties that represent a larger proportion of their turnover than would apply under the CA98 regime.

3. Practical Takeaways

The CMA's action follows the strengthening of its consumer enforcement powers in April 2025, and signals its determination to make use of these, imposing significant remedies and penalties itself, without seeking a court order. The CMA is also reaching final decisions much more quickly than in CA98 cases. On 19 August 2026, the

CMA announced it had opened further drip pricing investigations into three additional companies in the travel and driving tuition sectors. These additional investigations reinforce the view that the AA/BSM decision was not an isolated action but the start of a broader enforcement programme targeting hidden fees across consumer facing markets.

Sponsors at risk of fines for portfolio company conduct:

Under section 204(1) of the DMCCA, “turnover” includes the turnover of any person who controls, or is controlled by, the party under investigation. “Control” is defined broadly, potentially capturing many PE structures, similarly to the CA98 regime. A consumer law breach by a single portfolio company could trigger a penalty calculated by reference to the fund's consolidated turnover. PE sponsors should ensure robust consumer law compliance features in pre-acquisition due diligence and portfolio governance.

Very high potential exposures

leading to uncertainty: The CA98 Penalty Guidance methodology front-loads proportionality by using relevant turnover as the base. The Consumer Enforcement Guidance back-loads proportionality by starting with a broad turnover base and relying heavily on Step 4 to right-size the penalty. This gives the CMA significant discretion at Step 4, making it harder for businesses estimating exposure.

Signalling effect: The CMA's statement that the proportionality considerations applied in this case “may not all apply in future cases” suggests the Step 4 reduction was treated as exceptional for an early case. As the regime matures and infringements span longer periods, the gap between the mechanistic calculation and the final penalty may narrow considerably. High penalties will likely be challenged in the courts in future, but until then uncertainty reigns.

Co-operation incentives: The 40% settlement discount under the Consumer Enforcement Guidance is double the CA98 Penalty Guidance maximum for cartel conduct. Combined with redress directions, this creates a strong incentive for businesses to settle quickly and make consumers whole, a different enforcement philosophy from CA98 Penalty Guidance's primarily punitive orientation. Businesses under investigation should consider whether early engagement could provide a more efficient resolution.