

Code of Conduct for CMA Panel Members

Objectives of this code

1. The Competition and Markets Authority's ('CMA') activities have important implications for society and can have considerable financial and reputational implications for particular parties. The purpose of this Code of Conduct ('the Code') is to enable CMA Panel Members to help the CMA to maintain its reputation for fairness, independence, integrity, rigorous analysis, careful handling of sensitive information, and efficient use of public money.

Background

2. The CMA is a public body whose primary responsibility is to seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers. The functions of the CMA include giving advice to government and other public bodies, studying and investigating competition issues in markets, investigating and enforcing civil and criminal prohibitions in competition and consumer law, and considering appeals and references from other public bodies under various economic regulatory statutes.
3. The CMA is a non-ministerial government department, funded by the taxpayer, reporting to parliament through its annual plan and report. Its staff are civil servants.
4. The CMA is a corporate body, established under the Enterprise and Regulatory Reform Act 2013 (ERRA 2013). It consists of a Chair, the CMA Board and the CMA panel, all appointed by the Secretary of State. The CMA Board comprises the Chair, the Chief Executive, executive and non-executive directors, and a number of members of the CMA panel. The Chief Executive acts as the CMA's accounting officer, responsible for the economy and efficiency of its handling of public monies.
5. Some functions of the CMA must be performed by members of the CMA panel (referred to in this Code as 'Members'), some by the CMA Board, and some by specifically authorised persons. Other functions are performed by or on behalf of the CMA Board, with many delegated to staff or committees or sub-committees. Members help perform a variety of these roles and often act as representatives of the CMA in dealing with third parties.

6. Members are appointed on the basis of their specialist skills and knowledge, such that they can be expected to be robust and weighty contributors able to take their own decisions on issues. The CMA will provide support and training to help them perform their functions at the CMA.

General

7. As holders of public office, Members' behaviour and actions must be governed by the principles set out in this Code. It is each Member's responsibility to ensure familiarity and compliance the Code. Compliance with the Code forms part of Members' terms of appointment. The Panel Chair is responsible for compliance of Members with this Code.
8. Members must, in carrying out their responsibilities, have regard to the principles of public life:¹ selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and act at all times in the best interests of the CMA.
9. Members are expected to endorse and exemplify the CMA values of ambition, excellence, commitment, fairness and teamwork.²
10. Members must not occupy paid political posts or hold particularly sensitive or high profile unpaid roles in a political party. On matters directly affecting the CMA's work, Members should not make political speeches or engage in other political activities.
11. Members must not use information obtained in the course of their functions for personal gain, nor seek to use the opportunity presented by public service to promote their private interests.
12. Members must comply with the CMA's policy on acceptance of gifts and hospitality and rules in respect of claiming travel and subsistence expenses.
13. Members are expected to participate in the CMA's appraisal arrangements for review of the performance of members.

¹ Committee on Standards in Public Life (May 1995), [The 7 principles of public life](#).

² Competition and Markets Authority (January 2014), [Vision, values and strategy for the CMA \(CMA13\)](#).

Responsibilities as a Member

14. Members may perform a variety of roles on behalf of the CMA including acting as a member of:
 - (a) the CMA Board;
 - (b) a merger reference group;
 - (c) a market reference group;
 - (d) a remedies review group;
 - (e) a special reference group (to decide a regulatory redetermination or appeal);
 - (f) a Case Decision Group (following the issue of a Statement of Objections in a Competition Act 1998 case);
 - (g) a Case Management Panel (in criminal cartel cases);
 - (h) the CMA's Case and Policy Committee; andassisting with other internal governance roles.
15. In each case, Members must ensure that they:
 - (a) perform the duties imposed on the CMA by any relevant legislation;³
 - (b) exercise the powers of the CMA in accordance with the legislation and any CMA rules made to enable them to do so;⁴ and
 - (c) have regard to any CMA guidance and policies relevant to the performance of the relevant functions of the CMA.
16. Members must have regard to the performance objectives of the CMA set out in its annual plan, and must help to ensure the CMA makes proper, economical, effective and efficient use of its resources. The plan takes account of the obligation of the CMA to perform many of its functions to tight statutory and administrative timetables. In this regard, Members should

³ The main statutes relevant to Members are likely to be the Competition Act 1998 and Parts 3 (mergers), 4 (market investigations), 7 (cartel offence) and 9 (restrictions on disclosure and use of information) of the Enterprise Act 2002. Regulatory references and appeals are made under specific regulatory statutes, including the Communications Act 2003. However in addition, other laws may be applicable in particular situations, including human rights law and EU law.

⁴ For example, members of mergers and markets reference groups must have regards to the [Rules of procedure for merger, market and special reference groups \(CMA17\)](#); members of Case Decisions Groups must have regard to the [Guidance on the CMA's investigation procedures in Competition Act 1998 cases \(CMA8\)](#).

ensure that they are familiar with the CMA's project management guidance and prioritisation principles⁵, which are designed to help the CMA act in a timely way, and have regard to them where relevant during the performance of their functions.

17. The CMA is committed to being transparent about and enhancing the visibility of its work. Members should have regard to the CMA's Transparency Statement⁶ and endeavour to conduct inquiries and cases in an open fashion, providing information at appropriate stages and reasons for their decisions.

Independence of phase 2 inquiries

18. When establishing the CMA, parliament considered it important that Members should act independently of the CMA Board when taking decisions as members of CMA groups. The purpose of this requirement is to ensure that decision taking by groups is based on their own judgement reached after analysis of the evidence before them. This requirement does not prevent information passing between CMA groups and the CMA Board, or CMA groups seeking a variation of the terms of a merger or market investigation reference from the CMA Board.⁷
19. CMA Board Members involved in the decision to make a market investigation reference or a merger reference cannot be members of the resulting merger or markets group.⁸

Conflicts of interest

20. The CMA must be, and be seen to be, impartial. This is essential in order to maintain public confidence in the decisions made by the CMA. The outside interests of Members and their close family relatives (including financial interests, those arising from their outside activities such as directorships or consultancies, previous roles and publishing activities) can threaten that impartiality because they create the possibility of bias, or the appearance of bias. (The latter risk may materialise if the fair-minded and informed observer would conclude that there was a real possibility of bias (even without any evidence of actual bias)).

⁵ Competition and Markets Authority (April 2014), [Prioritisation principles for the CMA \(CMA16\)](#).

⁶ Competition and Markets Authority (January 2014), [Transparency and disclosure: Statement of the CMA's policy and approach \(CMA6\)](#).

⁷ ERRA 2013, Schedule 4, paragraph 49.

⁸ ERRA 2013, Schedule 4, paragraph 33.

21. Members must therefore comply with the CMA's policy for dealing with of interest set out in Annex D to the Board Rules of Procedure⁹. Members should note that this policy does not set out every circumstance in which a conflict of interest may arise. Details of any interests potentially relevant to particular appointments will be sought from Members before appointments are made. Members may also raise any concerns they have from time to time as cases develop or as personal circumstances change with the Compliance Officer or the Panel Chair. It is the responsibility of each Member, if in any doubt as to whether their external activities and other matters might pose a risk to the impartiality of the CMA, to seek advice from the Compliance Officer and/or Panel Chair. While Members may be in the best position to identify whether they have an outside interest of potential concern, they are not in the best position to judge any consequences for the CMA.
22. The Panel Chair is ultimately responsible for ensuring that Members appointed to inquiries and cases are not conflicted at any time and may remove a Member from a CMA group if, because of a particular interest of the Member, it is inappropriate for him or her to remain a member of the group.¹⁰
23. The Compliance Officer is responsible day to day for ensuring that the CMA's policy on conflicts of interest is applied and enforced. If a Member is in any doubt about the significance of an outside interest or activity, they should consult the Compliance Officer, who will advise on the appropriate action and make recommendations to the Panel Chair as appropriate.
24. Where a Member is a member of the CMA Board and/or a CMA committee or sub-committee (for example, the CMA's Case and Policy Committee, or a remedies review group) and receives the agenda for a meeting, that Member must ensure that they declare any potential and/or actual conflicts of interest in respect of specific matters which may be discussed at the meeting.
25. When taking on any outside appointments or acquiring financial interests, Members should be aware that those interests may restrict the scope of work the Member may be able to perform for the CMA.
26. A brief biography of Members with some details of their interests will be maintained on the CMA website. In addition, Members' interests of possible relevance to any role they may play for the CMA may be disclosed to particular parties or publically on its website, either prior to the appointment of the Member to perform that role, or subsequently as a case progresses.

⁹ Competition and Markets Authority (April 2014), [Board Rules of Procedure](#).

¹⁰ Members may also be removed from a group if the Panel Chair considers that they will be unable, for a substantial period, to perform their duties as a member of the group. See ERRRA 2013, Schedule 4, paragraph 41.

Use of information

27. Members are subject to a general duty of confidentiality in relation to the conduct of the affairs of the CMA and information they obtain in the course of their work. They must also comply with any relevant statutory restrictions in relation to the handling of such information, in particular those relating to commercial confidences and personal data under Part 9 of the Enterprise Act 2002 and the Data Protection Act 1998. These obligations are personal, and must be respected while complying with the transparency commitments of the CMA.
28. When handling information either provided or created in the course of the CMA's work, Members must comply with the CMA's information security policies, procedures and guidance and ensure that the confidentiality of the information is maintained and that it is protected from unauthorised disclosure or access. Specifically, Members must comply with the CMA's ICT Acceptable Usage Policy and whilst working away from the CMA's office they must access information securely, and communicate confidential information using specified systems for the secure transmission of information.
29. Members should take care not to discuss or comment on potential or ongoing inquiries or investigations in public, including via social media, without the prior agreement of the CMA, consulting CMA project teams or the central Communications team, as necessary.
30. Members must not misuse information gained in the course of their public service for personal gain or for political purposes.

Insider dealing

31. Members who misuse information gained by virtue of their position may be committing a criminal offence of insider dealing under Part V of the Criminal Justice Act 1993.

Contact with the media/general public

32. All enquiries from the media should be directed to CMA's Press Office. Members should not engage directly with the media, other than via the CMA's press office.
33. All other enquiries should be directed to the CMA's general enquiries team.

Responsibilities towards employees

34. Members must treat any staff or contractors employed by the CMA and other Members with courtesy and respect. Members should respect individual differences and act in accordance with the CMA's policies and procedures in respect of equality and diversity, bullying, harassment and discrimination.
35. Members should be willing to give feedback when sought on CMA employees and other Members whose performance they are well placed to assess.

Responsibilities on ceasing to be a member

36. After ceasing to be a Member, Members will remain bound by the statutory restrictions in relation to the handling of information mentioned in paragraph 27 above, and the restrictions that may be caused by conflicts of interests related to their activities when a Member; certain appointments and activities in relation to parties and advisers to parties they dealt with as Members require the consent of the Secretary of State for a period after they cease to be a Member.