

# Office for the Internal Market

OIM Code of Conduct

Office for the Internal Market

Part of the Competition and Markets Authority

# **Code of Conduct for the OIM Panel Chair and OIM Panel Members**

## **Objectives of this code**

1. The activities of the Competition and Markets Authority ('CMA') have important implications for society and can have considerable financial and reputational implications for particular parties. These activities include those performed by the new Office for the Internal Market ('OIM') which sits within the CMA.<sup>1</sup>
2. The purpose of this Code of Conduct ('the Code') is to enable the OIM Panel Chair and OIM Panel members to help the OIM to:
  - establish and maintain a reputation for fairness, independence, integrity, rigorous analysis, careful handling of sensitive information, and efficient use of public money; and
  - fulfil its duty to act even-handedly in relation to the relevant national authorities, as required under section 31(4) of the United Kingdom Internal Market Act 2020 ('the Act').
3. This Code applies to the OIM Panel Chair and any member of the OIM Panel.

## **Background**

4. The CMA is an independent non-ministerial government department<sup>2</sup> 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; considering appeals and references from other public bodies under various economic regulatory statutes; and undertaking those functions conferred on the CMA under Part 4 of the Act.
5. The CMA consists of the CMA Board, the CMA Panel and the OIM Panel, the members of which are appointed by the Secretary of State. The CMA Board

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<sup>1</sup> For the remainder of this document, we use the term OIM when referring to the functions conferred on the CMA by the United Kingdom Internal Market Act 2020 and any amending legislation.

<sup>2</sup> The CMA is established under the Enterprise and Regulatory Reform Act 2013 ('ERRA 2013').

comprises the CMA Chair, the Chief Executive, executive and non-executive directors, at least one CMA Panel Member and the OIM Panel Chair. The Chief Executive acts as the CMA's Principal Accounting Officer and is responsible for the economy and efficiency of its handling of public monies.<sup>3</sup>

6. The Act provides that the CMA may authorise an OIM Task Group to perform any of the CMA's functions under Part 4 of the Act.<sup>4</sup> Therefore, the CMA has established the OIM, in order to assist relevant national authorities across the UK, through technical advice, in managing the potential evolution of different regulatory approaches in a way which protects the effective operation of the internal market.
7. The OIM Panel Chair (hereafter, the 'Chair') is appointed by the Secretary of State to chair the OIM Panel and to membership of the CMA Board. Other individuals are appointed by the Secretary of State to membership of the OIM Panel (hereafter, the 'Members'). The Chair and Members are appointed on the basis of ensuring:
  - (a) a variety of skills, knowledge and experience among the Chair and Members; and
  - (b) an appropriate balance among the Chair and Members of persons who have skills, knowledge and experience relating to the operation of the UK internal market in different parts of the UK.<sup>5</sup>

## General

8. As holders of public office, the Chair and Members must, in carrying out their responsibilities, have regard to the principles of public life:<sup>6</sup> selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and act at all times in the best interests of the CMA and the OIM. In particular:
  - it is the responsibility of the Chair and Members to review periodically the work of the OIM to ensure the OIM is working effectively in respect of the provisions of the Code; and
  - the Chair and Members must:

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<sup>3</sup> For example, the CMA's Principal Accounting Officer is responsible for ensuring that the CMA and OIM as a whole is run on the basis of the standards of governance, decision-making and financial management that are set out in CMA governance documents.

<sup>4</sup> Section 32(1) of the Act.

<sup>5</sup> Paragraph 1(2A) of Schedule 4 to ERRA13.

<sup>6</sup> Committee on Standards in Public Life (May 1995), [The 7 principles of public life](#).

- receive appropriate training on financial management and reporting requirements and on any differences that may exist between private and public sector practice;
  - comply at all times with rules relating to the use of public funds and to conflicts of interest; and
  - act in good faith and in the best interests of the CMA and the OIM.
9. In addition to the principles set out in paragraph 8, ERRA 2013 requires that OIM Task Groups ('Task Groups')<sup>7</sup> must, in exercising their functions, act independently of the CMA Board.<sup>8</sup> These principles underpin this Code and each Member's behaviour, and actions must be governed by them.
  10. It is the responsibility of the Chair and each Member to ensure familiarity and compliance with the Code. Compliance with the Code forms part of the Chair and Members' terms of appointment. The Chair is responsible for ensuring that each Member is aware of, and complies with, the provisions of this Code.
  11. The Chair and Members are expected to endorse and exemplify the CMA values of ambition, excellence, commitment, fairness and teamwork.<sup>9</sup>
  12. The Chair and 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 OIM's work, the Chair and Members should not make political speeches or engage in other political activities.
  13. The Chair and 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.
  14. The Chair and Members must comply with the CMA's policy on acceptance of gifts and hospitality and rules in respect of claiming travel and subsistence expenses.

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<sup>7</sup> References to Task Groups should be read as covering both project-specific Task Groups and the Standing Task Group.

<sup>8</sup> Paragraph 58K(1) of Schedule 4 to ERRA 2013

<sup>9</sup> Competition and Markets Authority (January 2014), [Vision, values and strategy for the CMA \(CMA13\)](#).

## Responsibilities as a Member

15. The Chair and Members will perform a variety of roles on behalf of the OIM including acting as a member of:
  - (a) the CMA Board (in the case of the OIM Panel Chair; see paragraph 7 above); and
  - (b) a Task Group.
16. The Chair and Members formally serve as the Standing Task Group that will meet periodically. These meetings will give the Chair and Members oversight of the OIM portfolio, promoting consistency and even-handedness with respect to any work the OIM might undertake, provided that there is no conflict of interest preventing them from being involved on a certain project.
17. In addition to the Standing Task Group, project-specific Task Groups may be constituted to offer more detailed advice and stakeholder engagement for any particularly complex work the OIM undertakes.
18. In each case, the Chair and Members must ensure that they:
  - (a) perform any functions they are authorised to undertake by the CMA;
  - (b) exercise the powers of the CMA, where they are so authorised, in accordance with relevant legislation and any applicable CMA rules;<sup>10</sup> and
  - (c) have regard to the CMA's Board Guidance on OIM Task Groups, the [Statement of Policy on the Enforcement of the OIM's Information Gathering Powers](#), and any additional CMA and/or OIM guidance and policies relevant to the performance of the functions of the OIM.
19. The Chair and Members must have regard to the performance objectives of the OIM set out in the CMA's annual plan, and must help to ensure the OIM makes proper, economical, effective and efficient use of its resources. In this regard, the Chair and Members should ensure that they are familiar with the OIM's prioritisation principles,<sup>11</sup> which are designed to help the OIM act in a timely manner and they should have regard to them where relevant during the performance of their functions.

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<sup>10</sup> The main statutes relevant to the Chair and Members are likely to be the Act and ERRAs 2013. However, in addition, other laws may be applicable in particular situations, including trade law and constitutional law.

<sup>11</sup> Chapter 4 of the [Guidance on the operation of the CMA's UK Internal Market functions](#) sets out prioritisation principles which the OIM will use to decide what requests to accept and what monitoring work to undertake.

20. The CMA is committed to being transparent about and enhancing the visibility of its work. The Chair and Members should comply with any Transparency Statement the OIM may publish and should endeavour to conduct projects in an open fashion, providing information at appropriate stages and reasons for their reports and advice.

## **Independence of Task Groups**

21. When establishing the OIM, Parliament considered it important that the Chair and Members should act independently of the CMA Board when taking decisions as members of Task Groups. The purpose of this requirement is to ensure that decisions taken by Task Groups are based on their own judgement, reached after analysis of the evidence before them. This requirement does not prevent information passing between Task Groups and the CMA Board.<sup>12</sup>

## **Conflicts of interest**

22. The OIM must be, and be seen to be, impartial. Specifically, it must also be able to demonstrate independence from the CMA Board and even-handed treatment of the relevant national authorities (i.e. the UK Government and the three devolved governments). This is essential in order to maintain public confidence in the advice and reports produced by the OIM. The outside interests of the Chair and Members and those arising from their close personal relationships (including financial interests, as well as 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, in their decision-making.<sup>13</sup>
23. The Chair and Members must therefore comply with the CMA's policy for dealing with conflicts of interest set out in Annex F to the [Board Rules of Procedure](#). The Chair and 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 matters coming before the OIM will be sought from the Chair and Members as necessary. The Chair and Members may also raise any concerns they have from time to time, as a piece

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<sup>12</sup> Paragraph 58K(2) of Schedule 4 to ERRA 2013.

<sup>13</sup> The appearance of bias may materialise if the fair-minded and informed observer would conclude that there was a real possibility of bias in the decision-making (even without any evidence of actual bias).

of work develops or as personal circumstances change, with the Compliance Officer and, in the case of Members, with the Chair.<sup>14</sup>

24. It is the responsibility of the Chair and each Member, if in any doubt as to whether their outside interests might pose a risk to the impartiality of the OIM, to seek advice from the Compliance Officer and/or, in the case of Members, the Chair. In relation to any conflict risk, the Chair, having consulted the Compliance Officer and, where they consider it necessary the General Counsel, will decide whether a particular interest may influence or appear to influence the Member's role in relation to the matter giving rise to the conflict risk.
25. If the Chair is satisfied that it is appropriate, they may permit the Member to participate fully or in a limited capacity in a Task Group discussion. If the Chair is not satisfied, the Member shall withdraw from further participation in the Task Group in question. In limited cases, the OIM may contact the RNAs to disclose an outside interest ahead of appointing a Member or Chair to a project specific Task Group even if the OIM believes that the conflict risk would not affect, nor be seen to affect, the project specific Task Group's impartiality. Where appropriate, particular interests may also be disclosed on the relevant OIM web page. The Member or Chair will be consulted before these steps are taken.
26. The Chair is ultimately responsible for ensuring that Members are not conflicted at any time and may remove a Member from the Standing Task Group or a project-specific Task Group if, because of a particular interest, it is inappropriate for that person to remain a member of the group.<sup>15</sup>
27. The Compliance Officer is responsible day-to-day for ensuring that the CMA's [Conflicts of Interest Policy](#) is applied and enforced. If the Chair or 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 Chair as appropriate.<sup>16</sup>
28. When the Chair or a Member receives the agenda for a Task Group meeting (or, in the case of the Chair, a CMA Board meeting), the Chair or Member

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<sup>14</sup> While the Chair and 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 OIM and the CMA. See paragraph 27 for details on what is expected of the Chair or a Member in terms of consulting with the Compliance Officer.

<sup>15</sup> Paragraph 58F(1)(b) of Schedule 4 to ERRA 2013.

<sup>16</sup> In circumstances where a conflict risk arises for the OIM Panel Chair, the Compliance Officer will consult the General Counsel before deciding whether, or in what capacity, the OIM Panel Chair may participate in a particular matter.

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.

29. When taking on any outside appointments or acquiring financial interests, the Chair and Members should be aware that those interests may restrict the scope of work they may be able to perform for the OIM (and, in the case of the Chair, for the CMA more generally). The Chair and Members must comply with the terms of the CMA's [Conflict of Interest Policy](#) in this regard, as well as in relation to the terms concerning post-appointment restrictions.
30. A brief biography of the Chair and each Member with some details of their outside interests will be maintained on the OIM website. In addition, where the Chair or Members' outside interests may be of relevance to any role they may play for the OIM, these may be disclosed to the relevant national authorities and affected stakeholders, either prior to the appointment of the Chair or Member to perform that role, or subsequently as preparation of a report or advice progresses.

## **Use of information**

31. The Chair and Members are subject to a general duty of confidentiality in relation to the conduct of the affairs of the OIM 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 information subject to Part 9 of the Enterprise Act 2002 and personal data subject to UK General Data Protection Regulation ('UK GDPR') and the Data Protection Act 2018. These obligations are personal and must be respected while complying with the transparency commitments of the OIM.
32. When handling information either provided or created in the course of the OIM's work, the Chair and 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. This includes complying with any relevant CMA guidance in relation to information handling and, while working away from the CMA's offices, the Chair and Members must access information securely and communicate confidential information using specified systems for the secure transmission of information.
33. The Chair and Members should take care not to discuss or comment on potential or ongoing projects in public, including via social media, without the prior agreement of the OIM's Senior Director, or the Senior Director for Strategy, Communications and Advocacy, as necessary.

34. The Chair and Members must not misuse information gained in the course of their public service for personal gain or for political purposes.<sup>17</sup>

## **Insider dealing**

35. The Chair and Members may, on occasion, hold market sensitive information by virtue of their position. Misuse of market sensitive information (by engaging in insider dealing or unlawfully disclosing the market sensitive information) may result in criminal and/or civil sanctions for the individual, under Part V of the Criminal Justice Act 1993, and a civil offence under the UK Market Abuse Regulation. The Chair and Members should have regard to any CMA guidance concerning market sensitive information and should consult the CMA's Compliance Officer where they have any concerns.

## **Contact with the media/general public**

36. All enquiries from the media should be directed to CMA's Press Office. The Chair and Members should not engage directly with the media, other than via the CMA's press office.
37. All enquiries from the general public should be directed to the CMA's general enquiries team.

## **Responsibilities towards employees**

38. The Chair and Members must treat each other and any staff or contractors employed by the CMA with courtesy and respect. The Chair and 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.
39. The Chair and Members should be willing to give feedback when sought on CMA employees and each other when they are well placed to assess that person's performance.

## **Responsibilities on ceasing to be a Member**

40. After ceasing to be either the Chair or a Member, the Chair and Members, respectively, will remain bound by the statutory restrictions in relation to the handling of information mentioned in paragraph 29 above. The Chair and

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<sup>17</sup> In accordance with [The 7 principles of public life](#).

Members will also be bound by the terms of the CMA's Conflicts of Interest policy concerning taking up appointments after respectively ceasing to be the Chair or a Member (as described at paragraph 29 above). Certain appointments and activities in relation to parties they have dealt with as the Chair or as a Member will require the consent of the CMA for a period after they cease to be the Chair or a Member.

## **Complaints handling and escalation procedures**

41. This section explains the different types of complaints that the OIM might receive and how each will be handled. The OIM identifies four different types of complaints, each with its own handling procedure. The first category listed below, general complaints, covers all complaints received from members of the public. The remaining three categories cover complaints received from RNAs and directly affected stakeholders. The four categories are:
  - General complaints
  - Complaints about OIM Panel Members' or Chair's conflicts of interest or breaches of the Code
  - Complaints about the OIM Panel Members or Chair's handling of confidential information
  - Other complaints by a relevant national authority or affected stakeholder
42. In addition, if a complaint is about a decision of the OIM then parties with a sufficient interest may have the right to seek judicial review.
43. The Chair and Members must ensure that they deal with complaints fairly and properly. Where there is reason to believe that the Chair, Members or staff have not handled a complaint fairly and properly, the OIM will endeavour to resolve any issues and learn from what happened.

### ***General complaints***

44. General complaints or expressions of dissatisfaction from members of the public will be dealt with in accordance with the CMA's published [Complaints Policy](#).
45. These types of complaints might include complaints about:
  - How someone feels they or others have been treated by the OIM
  - The OIM's actions or lack of action in performing its legal functions

- The behaviour of staff
46. General complaints are handled by the CMA's General Enquiries Unit. In the first instance a complaint will normally be passed to an appropriate person who is in a position to consider it in the light of relevant experience. If a complainant considers that the response they receive is not fair and appropriate, then they may request a review of their complaint by a more senior official.
  47. The Chair and Members must familiarise themselves with the CMA's published Complaints Policy that sets out how this type of complaint is managed.<sup>18</sup>
  48. Certain types of complaint may fall outside the scope of the general complaints policy and are subject to special procedures. These are set out below.

***Complaints about OIM Panel Members or Chair's conflicts of interest or breaches of the Code***

49. In the event that a relevant national authority or affected stakeholder wishes to make a complaint to the OIM about a conflict of interest of an OIM Panel Member or the Chair, the following procedures have been established.
50. If the complaint is about alleged conflicts or breaches of the Code by a Panel Member, it will be referred to the OIM Chair to consider the matter, with advice from the CMA's Compliance Officer. If the complaint relates to the OIM Chair, it will be referred to the CMA Board with advice from the CMA's Compliance Officer.

***Complaints about the OIM Panel Members or Chair's handling of confidential information***

51. In the event that a relevant national authority or affected stakeholder wishes to make a complaint to the OIM about the OIM Panel Members' or Chair's handling of information, the following procedures have been established.
52. If the complaint is about the publication (or proposed publication) of confidential information in an OIM report, in the first instance it should be raised with the most senior CMA contact. If not resolved, it will be escalated to

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<sup>18</sup> <https://www.gov.uk/government/publications/competition-and-markets-authority-cma-complaints-policy/cma-complaints-policy>

the CMA's Procedural Officer who will consider the complainant's representations. In respect of decisions taken by the OIM Panel, the Procedural Officer will provide advice to the OIM Panel as to how to resolve the complaint. The OIM Panel will have all due regard to that advice, but the final decision will remain with the OIM Panel.<sup>19</sup>

***Other Complaints by a relevant national authority or affected stakeholder***

53. A complaint by a relevant national authority or affected stakeholder which does not fall within the categories above in the first instance should be raised with the most senior OIM official handling the matter in question. If not resolved, it will be escalated to the CMA's General Counsel, who will have the option to involve a CMA Board member or the CMA Board if they consider it appropriate.

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<sup>19</sup> The role of the Procedural Officer is the same if the decision that is the subject of the complaint was taken by the OIM staff team. The Procedural Officer will provide advice to the OIM staff team as to how to resolve the complaint, to which the staff team will have due regard in making their final decision.