Competing for talent

What businesses need to know when recruiting workers and setting pay and other working conditions

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Introduction

This guide has been created to help anyone involved in recruiting and retaining workers understand how competition law applies to their work.

Competition law in the UK

The Competition Act 1998 (CA98) is the main law covering competition in the UK.

The CA98 among other things contains a prohibition of anti-competitive agreements (called the Chapter I prohibition) covering various types of arrangements involving two or more businesses, including formal and informal agreements and practices such as sharing information between themselves. If those arrangements limit competition, they could be illegal, with potentially severe consequences for the businesses and individuals involved.

HR professionals, recruiters and employers of workers may be in touch with each other as part of their professional networks and industry forums. Many of these interactions will not be problematic from a competition law perspective.

But if firms collude rather than compete when hiring workers or setting pay and other working conditions, this can lead to harmful consequences including:

- reducing employees' pay packets
- reducing employee mobility and choice
- limiting a business' ability to expand

This guide outlines what businesses can do to avoid breaking the law when working to recruit and retain workers.

***Myth*: 'Competition law doesn't apply to agreements between employers about wages or working conditions — that's an HR issue, not a business one'**

This is false.

Competition law applies when businesses agree or coordinate on things like salaries or benefits packages.

Just as businesses compete for customers, they also compete for talent. This includes competing by offering better salaries, perks, and job terms.

***Myth*: 'I'm not competing with that other company for customers, so it's fine to agree with them how much we will pay to our staff'**

This is false**.**

Businesses may compete to hire or retain workers even if they don't compete for customers. That makes them competitors in the labour market**.**

What does this look like in practice?

Take the example of a manufacturing company and a software company headquartered in the same locality. They don't compete when selling products. But if both want to hire software engineers, they might be competing for the same workers.

If the two companies agree not to hire each other's engineers, or agree to cap how much they'll pay the engineers, that could break competition law.

Anti-competitive behaviours in labour markets

There are three main types of anti-competitive behaviour in labour markets (all of which are forms of business cartels):

- no-poaching
- wage-fixing
- exchange of competitively sensitive information

These agreements or practices can relate to freelancers and contracted workers as well as permanent salaried employees.

Not all illegal agreements or practices are in writing; they may also take the form of informal understandings – sometimes referred to as ‘gentleman’s agreements’ – and arise in the context of social contacts or informal interactions between competitors.

No-poaching

No-poaching is when a business agrees not to hire or poach another business’s employees.

This could include a no-hire agreement, or an agreement not to solicit another business’s employees by approaching them with a job opportunity (also known as ‘no-cold calling’ agreements) or not to approach or hire another business’s employees without the other business’s consent.

Such arrangements do not have to be mutual to be caught by the prohibition.

No-poaching agreements for these purposes are different from the no-solicitation clauses that might be included in certain types of commercial agreements, such as secondment or consultancy agreements or other agreements between service providers and their customers. Under these, the client typically agrees not to hire or solicit the service provider’s employees for the duration of the contract or for a period after it has ended. Such no-solicitation clauses might not break competition law if they are necessary to enable the agreement to be carried out and are proportionate to the overall objectives of the agreement, and provided that the clause’s duration, subject matter and geographical scope do not go beyond what is reasonably required.

***Hypothetical example:* no-poaching agreement**

Three businesses agree not to recruit or hire each other's workers.

This no-poaching agreement is likely to violate competition law. It restricts competition among the companies for labour. For workers, this could result in reduced job mobility, diminished ability to negotiate higher salaries and fewer opportunities for career development.

Wage-fixing

Wage-fixing is when businesses that compete for the same type of employees agree to fix pay, benefits or other terms and conditions of employment. This includes for example agreeing the same wage increase rates or setting caps on pay.

***Hypothetical example:* wage-fixing through an industry forum**

Six competing companies participate in an industry forum where they regularly discuss matters such as new regulations, standards and other industry developments.

Near the end of the financial year, one member emails the others asking whether they are also experiencing pressure from employees to increase wages for specific roles.

The other members of the forum express similar concerns. After that, they all agree to limit salary increases for those roles at 2% for the year.

This is likely to be considered an illegal wage-fixing agreement.

***Hypothetical example:* wage-fixing through a trade association's pay rate recommendations**

At the beginning of each year, a trade association representing businesses in a sector circulates a list with recommended pay rates for various technical roles within that sector.

This practice is likely to be considered an illegal wage-fixing arrangement involving at least the trade association, and likely also its members.

Exchanging competitively sensitive information and benchmarking

Information exchange between businesses is a common feature of many competitive markets and can often be beneficial. For example, it may allow businesses to become more efficient through benchmarking against each other's best practices.

Benchmarking can be a helpful tool for those involved in HR management to make informed decisions about things such as pay, benefits, and recruitment strategies.

But when competing businesses (including businesses that compete for talent) exchange competitively sensitive information, this can restrict competition and break competition law.

The law on information exchange

Exchanging information between competing businesses is only problematic from a competition law perspective when it involves information that is 'competitively sensitive'. This means information that:

- reduces uncertainty as to the operation of the market in question, and/or
- could influence the competitive strategy of other businesses. This includes, for example, decisions relating to hiring workers or setting pay or benefits.

Whether an exchange of information between businesses breaks competition law will depend on the nature of the information, how the information is exchanged and market characteristics.

The following high-level principles provide a helpful steer on when exchanges of information are likely to raise competition law concerns.

Public / confidential

Genuinely public information (that is, information that is already readily available to the public) is generally unlikely to be competitively sensitive.

Aggregated / individualised

The more easily information is attributable to a particular business, the more competitively sensitive that information is likely to be. However, exchanging information that is appropriately anonymised and aggregated, such that the individual inputs can't be reverse engineered and the outputs do not give an insight into another business' strategy, is less likely to raise competition law concerns.

Past / current / future

Older information (or statements concerning events in the past) is less likely to be competitively sensitive than current information (or statements concerning current events). Statements concerning future events are more likely to be competitively sensitive.

But it is the capacity of the information in question to reduce uncertainty in a market and/or influence the strategic decision-making of the recipient which is relevant to assessing how competitively sensitive the information is, rather than simply the age of the data or period to which it relates.

Even unilateral disclosures of competitively sensitive information to competing businesses can break competition law.

The recipient of competitively sensitive information will be presumed to have taken such information into account and to have adapted its conduct accordingly, unless:

- it publicly distances itself (for example, by responding with a clear statement that it does not wish to receive such information); or
- reports the contact to the appropriate authorities (see below for how to do this).

You can find more information about the law on information exchange in Chapter 8 of the CMA's guidance on horizontal agreements.

Real-life case study: **exchange of competitively sensitive information between employers**

In March 2025, the CMA issued an infringement decision to five businesses involved in the production and broadcasting of sports content and imposed fines on four of them totalling over £4 million.

The five companies investigated by the CMA often engaged freelancers to assist with the production and broadcasting of sports content such as major football games and rugby tournaments. The CMA found 15 instances where a pair of companies unlawfully shared sensitive information about pay with each other, including on day rates and pay rises.

In most of these instances, the explicit aim was to coordinate how much to pay freelancers. For example, on one occasion a business told another they had 'no intention of getting into a bidding war' but 'want[ed] to be aligned and benchmark the rates'. In a separate instance, a company said they wanted to 'present a united front' with its competitor.

One of the businesses involved alerted the CMA to its participation in the unlawful activity and benefitted from immunity from fines, under the CMA's leniency policy. For further information see the investigation case page and our case study.

Examples of information exchange between competitors in the purchase of labour that are *more* likely to be problematic

Bilateral exchange of future pay intentions

Company A asks Company B how much it intends to pay its staff in the following financial year, explaining that it is in the process of deciding its own future rates of pay and would like their rates to be aligned with each other. Company B replies by providing the information requested.

Unilateral disclosure of future pay intentions

The HR directors from Company A and Company B, Mary and John, used to work together and have kept in contact socially. Company A and Company B are in competition with each other for talent. One day, over drinks at a pub, Mary disclosed to John that Company A is resisting pressure from workers to increase wages in the new financial year and that it will limit any wage increases to 2%, to be implemented at the beginning of April.

Unilateral disclosure of current pay

Company A discloses to Company B detailed information about how much it currently pays to its freelance staff in specific roles. This information is not publicly available and gives Company B useful insight into how much it needs to offer to attract freelance staff it is currently hiring for an important upcoming project.

Multilateral exchange of information about pay

HR managers from a number of businesses in a specific sector have an email group through which they regularly exchange information about the fees they intend to pay to freelance staff, normally around the time when one of the group members is recruiting freelancers.

Legitimate discussions that stray into the exchange of competitively sensitive information

HR managers from a number of businesses in a specific sector regularly get together to discuss issues relevant to the industry, such as liaising with government on regulation of the sector. However, following the arrival of a new member, meetings now also include informal chats about pay and recruitment strategies.

Multilateral exchange of information through a third party

In a region of the UK where there are three main employers of workers with particular skills (for example IT engineers), those three companies hire a HR consultancy to collate information about salaries and other terms and conditions of employment (such as bonuses and other benefits) each of them offers. They refer to this as ‘benchmarking’.

Even though the resulting report only discloses average salaries, because of the small number of employers involved it gives the three employers a good insight into what the others are offering to their highly skilled staff, which they all consider to be useful information when setting salaries and benefits packages.

Examples of information exchange between competitors in the purchase of labour that are *l*ess likely to be problematic

Benchmarking using a third party that ensures information is anonymised and sufficiently aggregated

An independent HR consultancy publishes a report showing average 2024 salaries for data scientists in England, based on input from 200 companies. No individual firm can be identified, and the underlying company-specific information is not disclosed by the HR consultancy to any other party.

Benchmarking using public data

Company A benchmarks the salaries it pays to its staff against publicly available salary information published by the ONS and in job advertisement forums.

Benchmarking on HR matters that are not competitively sensitive (and limiting the exchange of information to what is strictly necessary for legitimate purposes)

HR managers from a number of businesses in a specific sector regularly get together to discuss issues relevant to the industry, such as partnering with universities to build skills for future graduate talent to address skills gaps in the sector. They are aware of the competition law risks involved in extending the discussion to competitively sensitive matters such as salaries and are careful to stick to the agenda. Any new members are properly briefed.

***Real-life case study*: unilateral disclosure of competitively sensitive information in a social context**

While not involving collusion in labour markets, the following case study illustrates how the unilateral disclosure of commercially sensitive information to a competitor, even in a social context, can break competition law.

Individuals in RBS's Professional Practices Coverage Team disclosed generic as well as specific confidential and commercially sensitive future pricing information to their counterparts at Barclays. The disclosures by RBS took place through a number of informal contacts, for example in the context of social, client or industry events or through telephone conversations.

RBS was fined almost £30 million. Barclays had reported the matter under the leniency policy and was not fined.

Find out more about this investigation.

Collective negotiations between workers and employers

Employers and employees' representatives, such as trade unions, will often collectively bargain about things like minimum pay rates and other minimum working conditions (for example, rest breaks, safety standards, or basic benefits).

In recent years, there has been a shift in labour markets and the nature of employment, with a rise in the prevalence of self-employed people, especially in the so-called 'gig economy'.

Although competition law might apply in some situations such as to the relationship between self-employed workers and a business hiring them, the CMA will not seek to enforce competition law whenever workers and companies buying their labour come together to reach a genuine collective bargain. This applies irrespective of whether the workers are employed or self-employed.

What is collective bargaining?

Collective bargaining between employers and workers – whether employed or self-employed – is a form of negotiation that promotes good working relationships and fair outcomes.

It takes place between:

- an employer, a group of employers or one or more employers' organisations (such as a trade association or industry body) and
- one or more workers' organisations (such as a trade union)

for the purpose of determining working conditions or regulating relations between employers and workers.

Collective bargaining typically takes place where both sides 'recognise' each other for the purposes of labour relations.

Where negotiations are successful, collective bargaining typically results in a collective agreement – a document that sets out terms relating to the wages, working standards or conditions for the workers covered by the agreement, and the obligations of the employers who are party to it.

Preparing for collective bargaining

For collective bargaining to happen, the workers' organisation(s) on the one side, and employers on the other side, need to coordinate how their side will approach the negotiations.

This coordination may include agreeing on common goals such as better pay or conditions, and the strategy for negotiations.

The CMA will treat this coordination as an important part of the collective bargaining process and will not enforce competition law against it. It does not matter whether the workers involved are employed or self-employed, as long as the coordination will help the collective bargaining.

However, when gathering information to prepare for collective bargaining employers should not exchange competitively sensitive information among themselves unless it's absolutely necessary, and only if the purpose of such an exchange can't be achieved by other means (for example, by using an independent party to aggregate and anonymise the data as outlined above). The same is also true for self-employed workers and their organisation(s) on the worker side. When undertakings coordinate their behaviour on the market (including on labour markets) outside of collective bargaining, this can be an illegal cartel.

***Hypothetical example:* when collective bargaining crosses the line**

An association representing freelance workers in a particular sector is negotiating collectively with a large group of employers to set sector-wide minimum recommended rates of pay.

To inform their negotiating position, the employers share individually some historic pay information and their sense of the 'going rate' with a third-party consultant who is tasked with producing a common negotiating position. The consultant produces a recommendation for the employers that does not involve the distribution of any individual employer's competitively sensitive information.

This CMA would not seek to enforce competition law against this, if this was all that the employers had done.

However, when the consultant shares its recommendation, the employers email each other saying that they currently pay the recommended minimum rate and do not have plans to pay more in the near future. Some of the emails express a desire not to get into a pay war and that it would be beneficial for all concerned if the recommended minimum wage rate were treated as the norm across the sector. In other words, they collude not to offer more than the recommended minimum wage rate.

This behaviour goes beyond collective bargaining and may turn into a form of wage-fixing.

Under competition law, this behaviour is likely to be considered anti-competitive and unlawful, because it reduces pay competition, limits worker options, and may suppress wages unfairly.

What businesses can do to avoid breaking competition law

- Ensure an understanding of how competition law applies to labour markets.
- Don’t agree with other businesses to fix wages.
- Don’t agree with other businesses not to approach or hire each other’s employees.
- Don’t share competitively sensitive information about your business or employees with competing employers (either directly or indirectly eg through an independent third-party provider).
- Provide recruitment staff with training on competition law and how it applies in the recruitment context.
- Ensure solid internal reporting processes are in place, and that staff are aware of these and how they can use them.

Consequences of breaking the law

There can be significant professional and personal consequences for breaking the law.

Businesses that break competition law can be:

- fined up to 10% of their annual worldwide turnover and ordered to change their behaviour
- prevented from bidding for public contracts
- exposed to private damages actions

Individuals who engage in cartel activity can be prosecuted and sentenced to up to five years in prison and/or a fine.

Directors of companies that have broken competition law can be disqualified from managing a company for up to 15 years.

Reporting anti-competitive behaviour

If you've witnessed an illegal business cartel or been involved in one, do the right thing by reporting it to us.

If you've seen something

- Call us on 020 3738 6888
- Email: cartelshotline@cma.gov.uk
- Report it online: Report a cartel to the CMA

If the information you provide leads to an investigation, you may earn a reward.

If you've been involved

Tell us and you may get leniency.

Call us: 020 3738 6833

We can provide confidential guidance.

For more information on how to spot and report anti-competitive activity, visit the CMA's Cheating or Competing campaign page.

Further information

The CMA has published guidance on how to stay on the right side of competition law when collaborating with other businesses.

Detailed guidance on how the CMA applies the Chapter I prohibition in the Competition Act 1998 to agreements between actual or potential competitors can be found in our guidance on horizontal agreements.

In particular, this guidance includes further information on the CMA's approach to the sharing of competitively sensitive information (see Chapter 8).