

Short guide to cartels and leniency for businesses

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1. Introduction

- 1.1 Cartels involve two or more businesses agreeing to act together rather than compete independently. The agreement can take various different forms – for example it may be formal or informal, verbal or in writing. This kind of arrangement is a form of cheating designed to benefit cartel members while maintaining the illusion of competition – meaning that customers can lose out, with higher prices, poorer quality goods or services and/or less choice. Fair dealing businesses also lose out if they are denied a fair, level playing field to compete.
- 1.2 There are serious consequences for businesses and individuals who are found to have engaged in cartel activity, including big fines for businesses (up to 10% of annual global turnover), possible debarment from public sector contracts (up to five years), director disqualification (up to 15 years) and, in the most serious criminal cases, imprisonment (up to five years).
- 1.3 Under the CMA leniency policy, businesses and individuals can avoid or reduce these consequences if they come forward to the CMA to report their own involvement in cartel activity.
- 1.4 This guide provides a short overview of the CMA's leniency policy for businesses who are considering whether to apply for leniency. A similar guide is available for individuals, *Short guide to cartels and leniency for individuals*.
- 1.5 These short guides are intended as an initial reference point when considering leniency. For more information, you may wish to:
 - seek legal advice,
 - contact the CMA to ask for confidential guidance, and
 - refer to the CMA's detailed guidance, *Applications for leniency and no-action letters in cartel cases* CMA210.

2. Cartels and legal consequences

What is a cartel?

2.1 Examples of cartels include:

- Price fixing – when rival businesses agree what price they're going to charge or pay.
- Resale price maintenance – when a supplier and retailer agree what price the retailer will charge.
- Bid rigging – when rival businesses communicate before lodging their bids and agree amongst themselves who will win a contract.
- Cover pricing – a form of bid rigging where businesses agree to lodge bids that are deliberately intended to lose, so as to make another bid look more competitive.
- Market sharing – when rival businesses agree to divide a market (for example which geographic regions or customers each business will sell to) so that the businesses are sheltered from competition.
- Wage fixing – when businesses that compete for the same types of workers fix salaries or rates of pay.
- Agreeing output restrictions or quotas – when rival businesses agree to limit how much they will produce so that they can increase prices.
- Information sharing – when rival businesses reduce competitive uncertainty between them by sharing confidential information (such as the prices they plan to charge in future).

2.2 Cartels deprive customers and fair dealing businesses of the benefits of fair competition. They undermine competitiveness in the wider economy, hindering innovation, productivity and growth. For this reason, cartel activities are amongst the most serious infringements of competition law.

What are the consequences of engaging in cartel activity?

- **Fines:** a business that is involved in an illegal cartel can be fined up to 10% of its worldwide turnover.

- **Director disqualification:** a director of a company that has been involved in an illegal cartel may be disqualified from acting as a director for up to 15 years.
- **Criminal conviction:** in some cases, an individual who is involved in an illegal cartel can be found guilty of a criminal offence, resulting in up to five years in prison and/or an unlimited fine.
- **Public procurement:** a business that is involved in an illegal cartel may be excluded from participating in individual tenders for (or being awarded) public contracts. The business may also be added to a central debarment list, which would prevent it from participating in any procurement for public contracts for up to five years.
- There may also be other consequences such as **reputational damage**, **regulatory implications** and **being sued for damages** by those who have suffered from the cartel.

Who investigates cartels?

- The CMA can investigate businesses suspected of cartel activity and impose fines if it finds evidence.
- The CMA can apply to the courts to disqualify directors of businesses that are found to have been involved in illegal cartels.
- In some sectors, a sectoral regulator (such as the Financial Conduct Authority in the financial services sector) may also investigate businesses, impose fines and apply for directors to be disqualified.
- The CMA can conduct criminal investigations and prosecute individuals. This power is shared with the Serious Fraud Office and (in Scotland) the Crown Office and Procurator Fiscal Service.
- Businesses found to have taken part in illegal cartel activity may be investigated by a Minister of the Crown for the purpose of considering whether they should be added to the central debarment list.

3. Cartels and the CMA leniency policy

What is leniency?

- 3.1 Leniency involves a business or individual coming forward to tell the CMA about their involvement in a cartel and cooperating with any investigation by the CMA. The business or individual must comply with certain conditions. In return, they will receive immunity or a reduction in penalty (depending on which type of leniency they receive).

Types of leniency

- 3.2 There are three different types of leniency (Type A immunity, Type B leniency and Type C leniency) that are explained more fully below. The type of leniency that may be available depends on:
- whether the CMA is already investigating the cartel, and
 - whether any other members of the cartel (either businesses or individuals) have already applied for leniency.
- 3.3 It is important to remember that businesses will not know whether another member of the cartel has already applied for leniency. Similarly, in some cases a business may not be aware that the CMA is already investigating the cartel. For this reason, businesses should not make assumptions about which type of leniency may be available.

Type A immunity

- 3.4 Type A immunity is guaranteed to be available if the CMA (or another public body) has not already begun an investigation, and no other members of the cartel have already applied for leniency.
- 3.5 Type A immunity offers:
- guaranteed immunity from financial penalties;
 - guaranteed immunity from criminal prosecution for all its current and former employees (provided that they cooperate with the CMA's investigation);
 - guaranteed immunity from disqualification for all its current and former directors (provided that they cooperate with the CMA's investigation); and

- exemption from debarment and exclusion from public procurement on competition law grounds.

Type B leniency

- 3.6 Type B leniency may be available if the CMA (or another public body) has already started an investigation but no other members of the cartel have applied for leniency (either before or after the investigation was opened).
- 3.7 Type B is not guaranteed to be available - in some cases, the CMA may decide that it would not be in the public interest to grant leniency.
- 3.8 Type B leniency offers:
- a reduction in the level of penalty of up to 100% (although the reduction is unlikely to be more than 75% and may be significantly lower);
 - discretionary immunity from disqualification for some or all of its current and former directors (provided that they cooperate with the CMA's investigation); and
 - in exceptional cases, discretionary immunity from criminal prosecution for some or all of its current and former employees (provided that they cooperate with the CMA's investigation).
- 3.9 Any immunity from disqualification or criminal prosecution is discretionary in the sense that the CMA will decide, on a case-by-case basis, whether it would be appropriate to grant immunity from criminal prosecution and/or director disqualification to individual employees and directors of the business.
- 3.10 If a business receives a 100% reduction in penalties as a Type B applicant, it will also be exempt from debarment and exclusion on competition law grounds.

Type C leniency

- 3.11 Type C leniency may be available if another member of the cartel has already applied for leniency. Type C is not guaranteed to be available - in some cases, the CMA may decide that it would not be in the public interest to grant leniency.
- 3.12 Type C leniency offers:
- a reduction in the level of penalty of up to 50% (although the reduction may be significantly lower);

- discretionary immunity from disqualification for some or all of its current and former directors (provided that they cooperate with the CMA's investigation); and
- in exceptional cases, discretionary immunity from criminal prosecution for some or all of its current and former employees (provided that they cooperate with the CMA's investigation).

3.13 As with Type B leniency, any immunity from disqualification or criminal prosecution is discretionary in the sense that the CMA will decide, on a case-by-case basis, whether it would be appropriate to grant immunity from criminal prosecution and/or director disqualification to individual employees and directors of the business.

Summary of different types of leniency

	Type A	Type B	Type C
Financial penalties	Guaranteed immunity	Up to 100% reduction (unlikely to be more than 75%)	Up to 50% reduction
Director disqualification	Guaranteed immunity for all cooperating current and former directors	Discretionary immunity may be available for some or all cooperating current and former directors	Discretionary immunity may be available for some or all cooperating current and former directors
Criminal prosecution	Guaranteed immunity for all cooperating current and former employees	Discretionary immunity may be available in exceptional circumstances for some or all cooperating current and former employees	Discretionary immunity may be available in exceptional circumstances for some or all cooperating current and former employees
Debarment	Exempt from debarment and exclusion	Exempt from debarment and exclusion if the business receives a 100% leniency discount from penalties Otherwise, being granted leniency may be relevant evidence to demonstrate that the supplier should not be excluded	No exemption, but being granted leniency may be relevant evidence to demonstrate that the supplier should not be excluded

Conditions of leniency

- 3.14 To apply for leniency, a business must have a concrete basis to suspect cartel activity – for example documentary and/or witness evidence that suggests that the business has engaged in cartel activity.
- 3.15 Once a business has applied for leniency, it must also meet the following conditions.
- **Information** – the business must provide the CMA with all the information, documents and evidence it has regarding the cartel activity.
 - **Cooperation** – the business must cooperate with the CMA throughout the application process, which includes keeping confidential the fact that the business has applied for leniency. If the CMA launches a formal investigation, the requirement to cooperate continues until any infringement decisions, prosecutions and appeals have concluded.
 - **Termination** – the business must not participate further in the cartel activity. The CMA will discuss with the business how it should go about terminating its involvement so as to avoid alerting the other cartel members that the CMA is aware of the cartel. In some rare cases, the CMA may direct the business not to cease participation in the cartel immediately, for example to avoid ‘tipping off’ other cartel members that the CMA is aware of the cartel activity.
 - **Admission** – if the CMA investigates and reaches a provisional finding of cartel activity, the business must admit that it has engaged in cartel activity. In the meantime, the business must not behave in a way that would be inconsistent with such an admission – for example by denying that it has done anything wrong.
 - **Coercer test** – to qualify for Type A or Type B, the business must not have coerced another business to take part in the cartel activity. If it has, only Type C will be available.
- 3.16 For Type B and Type C leniency, the business must also add significant value to the CMA’s investigation – for example by providing documentary evidence, and/or making witnesses available. It must also cooperate proactively with the CMA. The level of discount the business receives from any financial penalty will depend on how much value the business adds.

Is leniency available if another public body is investigating?

- 3.17 Yes, if another public body is investigating, leniency is still available (subject to the conditions described in this chapter). The CMA works closely with the other public bodies that have powers to investigate cartels.

4. Applying for leniency

- 4.1 This chapter sets out an overview of the process of a leniency application. This process is summarised in two charts (one covering Type A immunity, the other covering Type B and Type C leniency) at the end of the chapter.

Before applying for leniency

- 4.2 Businesses should consider seeking legal advice if they suspect that they may have engaged in cartel activity.
- 4.3 Before deciding whether to apply for leniency, the business will usually need to make internal enquiries – for example to check whether there is evidence of cartel activity. During this process, it is important that the business keeps the matter confidential (other than for the purpose of seeking legal advice), so as to avoid the risk that others become aware that the business is considering a leniency application. The business should also take steps to secure any evidence of the cartel activity so that it cannot be tampered with.
- 4.4 In addition to seeking legal advice, if a business or its legal advisers have any questions about leniency, they can seek confidential guidance from the CMA by calling the CMA's leniency enquiry line on 020 3738 6833. It is not necessary to disclose the identity of the business when seeking confidential guidance.

Step 1: applying for leniency

- 4.5 The CMA is keen to ensure that the process for applying for leniency is as straightforward and proportionate as possible for businesses. Full details of the application process are set out in the CMA's leniency guidance. In brief, it generally involves the following three key steps:
- **Applicant makes initial call to the CMA leniency line** - the business or its legal representative will make an initial enquiry to the CMA's leniency enquiry line (on 020 3738 6833) to ask whether leniency is available. The CMA will ask for certain details, such as the industry and the type of cartel activity, but will not usually need to know the identity of the business at this stage. The CMA will need to check certain points, including that the business intends to apply for leniency if it is available.
 - **CMA carries out checks** - the CMA will check whether leniency is available, and if so which type. This usually takes up to two working days.

- **CMA responds to the applicant** - the CMA will go back to the business or legal representative to tell them whether leniency is available. If it is, the CMA will need to know the identity of the business in order to grant a leniency marker. A leniency marker means that the business will be granted leniency provided that it meets all the conditions.
- 4.6 For Type B and Type C leniency, the CMA will not usually be able to tell the business at this point whether any of its employees or directors will be granted immunity from director disqualification or criminal prosecution. The CMA will update the business as soon as possible, but in most cases the CMA will need to consider the evidence carefully before deciding whether it would be in the public interest to grant this type of immunity.
- 4.7 If the cartel is currently being investigated by another public body, or if another public body might have powers to investigate, the business should still contact the CMA leniency enquiry line. The CMA will work with the other public body to handle the initial application for leniency and then hand the application over as needed. The public body will deal with the application in the same way as the CMA would.

Step 2: leniency application package

- 4.8 The next step will be for the business to submit an application package. This usually consists of all the documents the business has that relate to the cartel activity, along with a leniency statement. The leniency statement contains a detailed description of the cartel activity.
- 4.9 Once the CMA has reviewed the application package, it will advise the business on next steps. If it has not already done so, the CMA will decide whether or not to launch a formal investigation into the cartel activity.

Step 3: cooperating with a formal investigation

- 4.10 If the CMA conducts a formal investigation of the cartel activity, it will ask the business to sign a letter confirming that it understands the requirement to cooperate with the CMA as a condition of leniency.
- 4.11 During the investigation, the CMA is likely to ask the business to assist in various ways such as:
- answering questions,
 - searching for additional evidence, and/or

- making individual employees and directors available to be interviewed by the CMA.
- 4.12 The CMA expects businesses to take a constructive approach to assisting any investigation, in return for the immunity or reduction in penalties granted under the leniency policy.
- 4.13 For Type B and Type C leniency applicants, **the more a business can assist the CMA, the greater the discount it will receive from any financial penalty**. However, the CMA will ensure that any requests for assistance are proportionate, and will consider suggestions from businesses on the most efficient and cost-effective ways of providing assistance – for example by using IT tools to target evidence searches.

Criminal cartel investigations

- 4.14 The purpose of a criminal cartel investigation is to determine whether one or more individuals should be prosecuted for their involvement in illegal cartel activity. This means that the business itself is not under investigation. However, a business that has applied for leniency will need to cooperate with any criminal investigation as part of the conditions of leniency.
- 4.15 In cases when the CMA launches a criminal cartel investigation, it may also investigate whether to impose fines on the businesses involved. This means that businesses should not assume that they do not need to consider applying for leniency if the CMA is conducting a criminal cartel investigation.

Step 4: signing a leniency agreement

- 4.16 A leniency agreement is a formal agreement signed by both the business and the CMA. It confirms that the business has satisfied the conditions of leniency and will therefore be granted immunity (Type A) or a reduction in financial penalties (Type B and Type C). It also confirms that the business admits to engaging in cartel activity.
- 4.17 If the CMA investigates and finds evidence of an illegal cartel, it will sign a leniency agreement with the business towards the end of the investigation. If the business is a Type B or a Type C applicant, the CMA will also tell the business what level of leniency discount it will receive at this point.

Withdrawal of leniency

- 4.18 Occasionally the CMA may become concerned that a business is failing to meet the conditions of leniency. The CMA will usually address this by

discussing its concerns with the business and, where possible, giving the business an opportunity to put things right. In rare cases, if the business fails or is unable to address the CMA's concerns, the CMA will withdraw leniency.

- 4.19 If an employee or director of a business fails to cooperate with the CMA's investigation, the CMA will not withdraw leniency from the business provided that the business has used its best endeavours to persuade the employee or director to cooperate. However, the employee or director will lose any benefits they would otherwise have received (immunity from director disqualification and/or criminal prosecution).

5. Further information

Cartels

[Cheating or Competing](#)

[How to comply with competition law](#)

CMA investigations

[How the CMA investigates cartels](#)

Leniency

[Applications for leniency and no-action in cartel cases \(CMA210\)](#)

[Short guide to cartels and leniency for businesses](#)

Competition Disqualification Orders

[Avoiding disqualification: advice for company directors](#)

[Guidance on Competition Disqualification Orders \(CMA102\)](#)

Criminal prosecution

[Cartel offence prosecution \(CMA9\)](#)

Procurement

[New Procurement Act: exclusion and debarment on competition grounds - what suppliers and contractors need to know](#)