

Short guide to cartels and leniency for individuals

28 October 2025

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Contents

	<i>Page</i>
1. Introduction	3
2. Cartels and legal consequences	5
3. Cartel investigations and the CMA leniency policy.....	8
4. Applying for individual immunity.....	11
5. Further information.....	17

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 for 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 individuals who are considering whether to apply. A similar guide is available for businesses, *Short guide to cartels and leniency for businesses*. Employees or directors of a business that has applied for leniency may find it helpful to review the guide for businesses to understand how they might be affected by the application.
- 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/or
 - refer to the CMA's detailed guidance, *Applications for leniency and no-action letters in cartel cases* (CMA210).

Key messages for individuals

- Depending on the circumstances, individuals who are involved (or whose company is involved) in illegal cartels risk:
 - being disqualified from being a company director, and/or
 - being convicted of a criminal offence.
- Under the CMA leniency policy, you can come forward to tell the CMA about your involvement in a cartel and cooperate with any investigation by the CMA. Provided you meet certain conditions, you may receive immunity from director disqualification and/or criminal prosecution.
- Immunity from both director disqualification and criminal prosecution is only guaranteed if you apply:
 - before any other member of the cartel (either businesses or individuals), and
 - before the CMA starts investigating the cartel.
- This means that, if you want to apply for immunity, you should come forward as soon as possible.
- If you have information about a cartel but you are not at risk of being disqualified from being a company director or of being convicted of a criminal offence, reporting the details to the CMA could get you a reward of up to £250,000.

2. Cartels and legal consequences

What is a cartel?

2.1 Examples of cartels include:

- Price fixing – when rival businesses agree what prices 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 legal consequences of engaging in cartel activity?

- **Businesses:** a business that is involved in an illegal cartel can be fined up to 10% of its worldwide turnover. The business may also be at risk of being excluded from participating in public procurement.

- **Individuals:** 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. In some cases, an individual can also be found guilty of a criminal offence, resulting in up to five years in prison and/or an unlimited fine. The consequences for individuals are explained further below.

Director disqualification

- 2.3 If the CMA finds that a business has been involved in an illegal cartel, it can apply for competition disqualification orders against any current or former UK directors of that business whose conduct as a director makes them unfit to be a director.
- 2.4 A director's conduct could make them unfit to be a company director because:
- their conduct contributed to the cartel,
 - they had reason to suspect that their company was involved in illegal cartel conduct but took no steps to prevent it, or
 - they did not know but ought to have known about the illegal cartel conduct.
- 2.5 If you receive a competition disqualification order, you will be disqualified from being a director of a company (or involved in the management of a company) for a specified period of time (up to 15 years).
- 2.6 In certain industries, the CMA's powers to investigate suspected cartels and apply for competition disqualification orders are shared with a sectoral regulator (for example, in the financial services industry the CMA shares powers with the Financial Conduct Authority). This means that either the CMA or the sectoral regulator may decide to investigate and take action.

Criminal prosecution

- 2.7 Engaging in the following specific types of cartel activity may also be a criminal offence:
- price fixing,
 - agreeing output restrictions or quotas,
 - market sharing, and
 - bid rigging.

- 2.8 If you are found guilty of the criminal cartel offence, you may be imprisoned for up to five years, and/or receive an unlimited fine. The criminal court may also make a director disqualification order against you.
- 2.9 In England, Wales and Northern Ireland, prosecutions may be brought by either the CMA or the Serious Fraud Office, or with the consent of the CMA. In Scotland, prosecutions are brought by the Crown Office and Procurator Fiscal Service.

3. Cartel investigations and the CMA leniency policy

Investigations of suspected cartels

- 3.1 There are two different types of investigation of suspected cartels, both of which can have consequences for individuals:
- Civil investigations: the CMA (or, in some cases, a sectoral regulator such as the Financial Conduct Authority in the financial services sector) investigates whether businesses have been involved in an illegal cartel. If the CMA (or sectoral regulator) finds that there was an illegal cartel, as well as fining the companies involved it can also consider whether to apply for **competition disqualification orders** against current or former directors of those companies.
 - Criminal investigations: the CMA, the Serious Fraud Office or (in Scotland) the Crown Office and Procurator Fiscal Service investigate whether individuals have committed the criminal cartel offence. This may lead to **criminal prosecution** of the individuals.
- 3.2 In some cases, there may be both a criminal investigation into the individuals involved in an illegal cartel and a civil investigation of the businesses involved in the same cartel (which may in turn result in director disqualification).

What is the CMA leniency policy?

- 3.3 Leniency involves a business or an 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 protection from some or all of the legal consequences of being involved in a cartel (depending on which type of leniency they receive).
- 3.4 For individuals, the leniency policy gives an opportunity to obtain immunity from director disqualification and/or criminal prosecution.

Do I need immunity?

- 3.5 You may wish to apply for immunity under the CMA leniency policy if:
- you are at risk of being disqualified as a company director because you are the current or former director of a UK company that has engaged in cartel activity; and/or

- you have been involved in one of the criminal cartel activities (listed in paragraph 2.7) and may therefore be at risk of criminal prosecution.
- 3.6 If you think that you may be at risk of director disqualification or criminal prosecution, you should consider taking legal advice.

How can I obtain immunity?

- 3.7 There are two possible routes under the CMA leniency policy:
- by applying for immunity yourself (individual immunity), or
 - if you are a current or former employee or director of a business that applies and qualifies for leniency, by cooperating with the CMA's investigation.
- 3.8 The rest of this guidance focuses on the process for applying for individual immunity. If your employer has applied for leniency, you may find it helpful to read our *Short guide to cartels and leniency for businesses* for further information about what this involves and what it might mean for you.

If I apply for individual immunity, will this be kept confidential?

- 3.9 Wherever possible, the CMA keeps details of immunity applications strictly confidential.
- 3.10 If the CMA conducts a formal civil or criminal investigation, at a certain point it will usually need to tell the other parties under investigation that you have applied for immunity. This is so that they can understand the investigation fully and have a proper opportunity to exercise their rights of defence.
- 3.11 If you are considering applying for individual immunity but have serious concerns about businesses or other individuals finding out about this, you might find it helpful to:
- seek legal advice,
 - ask the CMA for confidential guidance before applying, and/or
 - tell the CMA at the same time as you apply.
- 3.12 In some cases, depending on the circumstances, the CMA may be able to keep the application confidential even if there is a formal investigation.

Can I tell the CMA about a cartel even if I don't need immunity?

3.13 Yes, if you have information about a cartel but you don't need immunity you can report the information to the CMA's cartels hotline:

- telephone: 0800 065 1664 or 020 3738 6888
- email: cartelshotline@cma.gov.uk

3.14 If the CMA uses your information to investigate and prove the existence of the cartel, you may be eligible for a reward of up to £250,000.

4. Applying for individual immunity

- 4.1 If you have been involved in illegal cartel activity, you may be able to apply to the CMA for immunity in your own right even if your employer hasn't applied.

Types of individual immunity

- 4.2 There are three different types of individual immunity (Type A, Type B and Type C). The type of immunity 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 or individual immunity.
- 4.3 It is important to remember that you will not know whether another business or individual involved in the cartel has already applied for leniency or individual immunity. Similarly, in some cases you may not be aware that the CMA is already investigating the cartel. For this reason, you should not make assumptions about which type of immunity may be available.

Type A

- 4.4 Type A is guaranteed to be available if the CMA (or another public body) has not already begun an investigation, and no other businesses or individuals involved in the cartel have already applied for leniency or individual immunity.
- 4.5 Type A offers guaranteed immunity from both director disqualification and criminal proceedings.

Type B

- 4.6 Type B may be available if the CMA (or another public body) has already started an investigation, but no other businesses or individuals involved in the cartel have already applied for leniency or individual immunity (either before or after the investigation was opened). 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 individual immunity.
- 4.7 Type B (where it is available) offers immunity from director disqualification. In exceptional circumstances, immunity from criminal proceedings may also be available.

Type C

- 4.8 Type C may be available if another business or individual involved in the cartel has already applied for leniency or individual immunity. 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 individual immunity.
- 4.9 Type C (where it is available) offers immunity from director disqualification. In exceptional circumstances, immunity from criminal proceedings may also be available.

Summary of different types of individual immunity

	Type A	Type B	Type C
Immunity from director disqualification?	Yes	Yes (where available)	Yes (where available)
Immunity from criminal prosecution?	Yes	In exceptional circumstances	In exceptional circumstances

- 4.10 As set out in the table above, in Type B and Type C cases you may be able to obtain immunity from director disqualification but generally not from criminal prosecution. This means that if you want to be sure of obtaining immunity from criminal prosecution, you should consider coming forward as soon as possible to apply for Type A immunity, rather than waiting to see if the CMA launches an investigation. Type A is not available once the CMA has launched an investigation.
- 4.11 In a Type B or Type C case, you will usually be aware of whether the CMA is conducting a civil or a criminal investigation. If the CMA is conducting a civil investigation, you may be mainly concerned about obtaining immunity from director disqualification. However, if you are concerned about the risk of criminal prosecution, you may be able to ask for confidential guidance (as explained below) on whether the CMA is likely to start a criminal investigation.

Can I still apply for immunity if another public body is investigating?

- 4.12 As explained at paragraphs 2.6 and 2.9 of this guide, in certain cases sectoral regulators, the Serious Fraud Office or the Crown Office and Procurator Fiscal Service have powers to investigate cartels. If one of these bodies is investigating, you can still apply to the CMA for immunity (subject to the

conditions described in this chapter). The CMA works closely with other public bodies who have powers to conduct cartel investigations.

- 4.13 All initial enquiries about individual immunity should be made to the CMA, even if another public body is already investigating.

What are the conditions of individual immunity?

- 4.14 To apply for immunity, you must have at least a concrete basis to suspect that you have been involved in cartel activity. For example, you may have some documents connected with the cartel, or you may be able to tell the CMA about meetings or agreements between rival businesses. If you are applying for Type A immunity, you may still qualify even if you only have limited evidence.

- 4.15 Once you have applied for immunity, you must also meet the following conditions:

- **Information** – you must provide the CMA with all the information, documents and evidence you already have regarding the cartel activity. However, it is very important that you do not try to obtain further information, documents or evidence of the cartel without first discussing this with the CMA.
- **Cooperation** – you must cooperate with the CMA throughout the process of applying for immunity and during any investigation by the CMA. This includes keeping confidential the fact that you have applied for immunity. If the CMA launches a formal investigation, the requirement to cooperate continues until any infringement decisions, prosecutions and appeals have concluded.
- **Termination** – you must not participate further in the cartel activity. The CMA will discuss with you how you should go about terminating your involvement so as to avoid alerting the other individuals and businesses involved that the CMA is aware of the cartel. In rare cases, the CMA may ask you not to terminate your involvement immediately, for example to avoid alerting other cartel members that the CMA is aware of the cartel.
- **Admission** – if the CMA conducts a civil investigation and reaches the stage of issuing a statement of objections (a provisional decision that businesses have infringed the law), at that point you must admit that you have taken part in cartel activity. If the CMA conducts a criminal investigation, you will need to admit that you committed the criminal cartel offence in order to obtain criminal immunity. In the meantime, you should

not behave in a way that is inconsistent with such an admission (for example by saying that you did not do anything wrong).

- **Coercer** – to qualify for Type A or Type B, you must not have played an active role in coercing another parties to take part in the cartel. If you have, only Type C will be available.

- 4.16 For Type A immunity, the information you provide must give the CMA a sufficient basis for taking forward a credible investigation (however even if you only have limited evidence, this might be enough). For Type B and Type C immunity, the information you provide must add significant value to the CMA's investigation – for example by providing additional documentary evidence or telling the CMA about the cartel.

Making an application

Before applying for immunity

- 4.17 Consider seeking legal advice if you think that you may have engaged in cartel activity. You may be eligible to obtain free legal advice via the [Competition Pro Bono Scheme](#).
- 4.18 In addition, if you or your legal adviser have any questions about leniency you can ask for confidential guidance from the CMA by calling the CMA's leniency enquiry line on 020 3738 6833. You do not need to disclose your name when seeking confidential guidance.

Step 1: Applying for immunity

- 4.19 The CMA is keen to ensure that the process of applying for individual immunity is as straightforward and proportionate as possible. 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 an initial call to the CMA:** you (or a legal representative on your behalf) call the CMA's leniency enquiry line (on 020 3738 6833) to ask whether individual immunity is available.

The CMA will ask for certain details, such as the industry and the type of cartel activity. The CMA will also ask for confirmation of certain points, including that you intend to apply for immunity if it is available. If you are enquiring in relation to an existing investigation, the CMA will also ask for your name, and the name of the business you work (or worked) for, so that the CMA can decide whether it would be in the public interest to grant

immunity to you based on what the CMA already knows about the cartel activity.

- **CMA carries out checks:** the CMA will check whether individual immunity is available, and if so which type. This may take up to two working days.
- **CMA responds:** the CMA will call you (or your legal representative) to confirm whether individual immunity is available and, if so, what type. If you go ahead, the CMA will grant an immunity marker, which means that you will be granted immunity provided that you meet all the conditions.

4.20 If there is an existing investigation by a sectoral regulator, or if a sectoral regulator might have powers to investigate, you should still contact the CMA leniency enquiry line to apply for immunity. The CMA will work with the sectoral regulator to handle the initial enquiry and then hand the application over to the sectoral regulator. The sectoral regulator will follow the CMA's leniency guidance, which means that it will deal with the application in the same way as the CMA would.

Step 2: provide evidence

- 4.21 Once an immunity marker has been granted, the next step is for you to provide an application package. This will vary according to the circumstances, but will usually involve producing any documentary evidence already in your possession relating to the cartel.
- 4.22 In some cases, the CMA may also ask you to attend an interview to answer questions about the cartel. If so, you can have a legal adviser with you at the interview to represent your interests. You must give complete and truthful answers at an interview.
- 4.23 Once the CMA has considered the application package, it will advise you on next steps. If you have applied for Type A immunity, the CMA will decide whether or not to launch a formal investigation into the cartel activity.

Step 3: assisting a formal investigation

- 4.24 During a formal investigation, the CMA is likely to ask you for further assistance, for example:
- answering questions,
 - attending additional interviews,
 - signing a witness statement, and/or

- appearing as a witness at any criminal, director disqualification or appeal proceedings.

Step 4: signing a formal agreement

- 4.25 If the CMA conducts a civil investigation and reaches the point of issuing a statement of objections, it will sign an individual immunity agreement with you shortly beforehand. An individual immunity agreement is a formal agreement that you and the CMA sign. It confirms that you have complied with the conditions of leniency (and will continue to comply) and will therefore be granted immunity from director disqualification.
- 4.26 If the CMA conducts a criminal investigation and you have been granted criminal immunity, towards the end of the investigation it will issue you with a no-action letter if you would otherwise be at risk of prosecution for the criminal cartel offence. A no-action letter is a formal letter that you and the CMA sign. It confirms that you have complied with the conditions of leniency (and will continue to comply) and will therefore be granted immunity from criminal prosecution.

Withdrawal of individual immunity

- 4.27 Occasionally, the CMA may be concerned that an individual is failing to comply with the conditions of leniency. If this happens, the CMA will usually address this by discussing its concerns with the individual and, where possible, giving the individual an opportunity to put things right.
- 4.28 In rare cases, if an individual fails or is unable to address the CMA's concerns, the CMA will withdraw individual immunity. If this happens after an individual immunity agreement or no-action letter has been issued, the immunity agreement or no-action letter will be revoked.

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 \(CMA9\)](#)

Reporting cartels to the CMA

[What to expect when you report a cartel](#)

[Rewards for information about cartels](#)