Board Rules of Procedure

1. The Competition and Markets Authority (CMA) is a body corporate established under section 25 of the Enterprise and Regulatory Reform Act 2013. It performs its functions on behalf of the Crown and must seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers. The CMA will carry out its functions independently, impartially and fairly.

2. The CMA Rules of Procedure (the Rules), which are set out below, have been made by the Board. These Rules shall, where applicable, be read and interpreted together with the CMA’s statutory powers and functions. The meaning of certain words and phrases contained within these Rules are set out in the interpretation section below.

Interpretation

‘the Act’ means the Enterprise and Regulatory Reform Act 2013;

‘the Board’ means the Chair and Members appointed under paragraph 1, Schedule 4 of the Act;

‘clear days’ in relation to a period of notice means a period excluding the day on which the notice is given and the day for which it is given or on which it is to take effect;

‘Board Secretary’ means the employee of the CMA who is appointed from time to time to act as secretary to the Board;

‘Board Executive’ means an employee of the CMA who is appointed from time to time to act as an executive officer to the Board;

‘Chair’ means a person appointed to hold the office of Chair by the Secretary of State under paragraph 1(1)(a), Schedule 4 of the Act;

1 Section 25 and paragraph 8, Schedule 4 of the Act.
2 These Rules of Procedure were made by the Board on 1 October 2013 under the power in paragraph 31(1) of Schedule 4 of the Act.
‘Chief Executive’ means the person appointed to hold the office of Chief Executive by the Secretary of State under paragraph 9(1), Schedule 4 of the Act;

‘the CMA’ means the Competition and Markets Authority;

‘Executive Member’ means a Member of the CMA who is also an employee of the CMA;

‘Member’ means a member of the CMA appointed by the Secretary of State under paragraph 1(1)(b)(i) or (iii), Schedule 4 of the Act;

‘Non-executive Member’ means a Member of the CMA other than Executive Members;

‘ordinary resolution’ means a resolution that is passed by a simple majority of such Members and the Chair in attendance as are entitled to vote on that resolution.

The Board

3. The Board consists of the Chair and at least five Members, at least one of whom must be appointed under paragraph 1(1)(b)(iii), Schedule 4 of the Act. One of the members appointed under paragraph 1(1)(b)(iii), Schedule 4 of the Act shall be the designated chair of the Panel constituted under Part 3, Schedule 4 of the Act.

4. The Board will ensure that the principles of good corporate governance are observed at all times, will establish the overall strategic direction of the CMA within the policy framework laid down under the Act and shall ensure that the CMA as a statutory body fulfils its statutory duties and functions and makes appropriate use of public funds, having regard to any opinions and reports of the CMA Accounting Officer.

5. The Board will be responsible for:

- proposals for the annual plan and consultation on these proposals made under paragraph 13, Schedule 4 of the Act;

- the annual plan made under paragraph 12, Schedule 4 of the Act;

- the performance report made under paragraph 14, Schedule 4 of the Act;

- the concurrency report made under paragraph 16, Schedule 4 of the Act;

- making rules of procedure for merger reference groups, market reference groups, and special reference groups, as defined in paragraph 51, Schedule 4 of the Act.
6. The Board will annually review its performance and that of its committees and will report accordingly. The Board will review these Rules after two years from the date of their adoption and thereafter every two years.

**Matters reserved for Board involvement**

7. The matters listed in Annexe A are reserved for the involvement of the Board.

8. The list of matters reserved for Board involvement does not preclude other matters or decisions being reserved by the Board or, in the case of matters that have been delegated by the Board, being referred to the Board.

**Board meetings**

**Arranging meetings**

9. The Board shall meet at least 6 times a year and at such other times as necessary.

10. Subject to paragraphs 11 to 13 below, a meeting may exceptionally be called by the Chair, the Chief Executive, or any two Non-executive Members.

11. Subject to paragraphs 12 to 14, not less than fourteen clear days' notice will be provided to Members and the Chair of a meeting.

12. A meeting may, if necessary, be called on less than fourteen clear days' notice. Such shorter notice will be effective only if ratified by the Chair.

13. Notice of a meeting shall be communicated in writing, including by facsimile or e-mail. Such notice shall contain details of the meeting and of business to be conducted at the meeting.

14. Failure of a Member or the Chair to receive notice of a meeting shall not invalidate that meeting or any business conducted at it.

15. Meetings may take place at the CMA's administrative offices or at any other convenient location. Any employee of the CMA or any other person may be invited to attend all or part of a Board meeting, subject to relevant legal or other restrictions on the disclosure of information held by the CMA to any person.

**Procedure at meetings**

16. The quorum for a meeting of the Board shall be: four Non-executive Members (which may include Members appointed under paragraph 1(1)(b)(iii).
Schedule 4 of the Act); two Executive Members; and must include either the Chair or the Chief Executive.

17. In the absence of the Chair at any meeting, the Senior Independent Member appointed under paragraph 35 below shall be the chair for that meeting. In the absence of both the Chair and the Senior Independent Member at any meeting, those Non-executive Members present will appoint a Non-executive Member as chair for that meeting but such appointment cannot be of a Member appointed to the Board under paragraph 1(1)(b)(iii), Schedule 4 of the Act.

18. Decisions made by the Board shall be made by ordinary resolution. In the case of equal votes the Chair, or in his absence the chair of the meeting appointed pursuant to paragraph 17 above, shall have a second or casting vote.

19. The Board will take collective responsibility for any decision made by it and will seek to achieve unanimity in decisions. Where Members have concerns that cannot be resolved in relation to a particular matter or a proposed action, they should ensure that these concerns are recorded in the minutes of Board meetings.

20. Only Members present at a meeting may vote. Participation will usually be in person but, in exceptional circumstances or as agreed by the Chair, Members may participate by telephone, video or web conferencing facility and be deemed to be present and constitute part of the Board for that meeting. Any Member who leaves a meeting prior to the conclusion of a meeting shall be taken to be a non-participating Member for the purpose of any decision taken by the Board during that person's absence.

21. Any resolution capable of being passed by the Board at a meeting may instead be passed by written resolution. A signature transmitted by facsimile or authorisation received by e-mail will be effective. Any such written resolution shall be deemed passed when it has been authorised by the last of the Members approving the resolution, provided that a simple majority of Members entitled to vote on the resolution authorises it and provided that those Members entitled to vote on the resolution satisfy the quorum requirement in paragraph 16.

Minutes of meetings

22. Minutes of Board meetings shall be published on the CMA website, subject to the exclusion of confidential information. Examples of such material include information the disclosure of which is prohibited or restricted by a provision of
any enactment; information that is otherwise subject to a duty of confidentiality; market-sensitive information; information the publication of which could hinder the performance of the functions of the CMA; and information about individuals such as employees of the CMA.

**Delegation of functions**

**CMA Panel chair**

23. The Board may consent to the performance of those functions of the Chair listed in paragraph 48(4), Schedule 4 of the Act by a person appointed as a Member under paragraph 1(1)(b)(iii), Schedule 4 of the Act or a member of the CMA panel appointed under 1(1)(b)(ii) and designated for this purpose by the Secretary of State.

**CMA committees and sub-committees**

24. Save in respect of functions of the CMA which are to be carried out on behalf of the CMA by a group constituted under paragraphs 36 and 37, Schedule 4 of the Act, the Board may pursuant to paragraph 29 but subject to paragraph 30, Schedule 4 of the Act authorise any committee or sub-committee to perform anything authorised or required to be done by the CMA. The Board shall receive regular reports from committees or sub-committees it has established as it shall direct.

25. The members of a committee or sub-committee of the CMA may include persons who are not Members provided that, if it is authorised to perform functions of the CMA, they are employees of the CMA or are appointed to membership of the CMA panel under paragraph 35 (1), Schedule 4 of the Act. A sub-committee may include persons who are not members of the committee which established it.

26. There shall be an Audit and Risk Assurance Committee established by the Board. Membership of the Audit and Risk Assurance Committee and its terms of reference are set out in Annexe B to these rules of procedure.

27. There shall be a Remuneration Committee established by the Board. Membership of the Remuneration Committee and its terms of reference are set out in Annexe C to these rules of procedure.

**Authorisation of individual Members and staff of the CMA**

28. Save in respect of functions which the Board has reserved to itself or which it has authorised committees or sub-committees to exercise, the Board may
authorise at any time any Member of the CMA or group of Members or employee to perform the functions of the CMA, pursuant to Part paragraph 29 but subject to paragraph 30, Schedule 4 of the Act.

**Obligations of Board and Committee members**

29. The Chair, Members and members of committees and sub-committees must, in carrying out their respective responsibilities, comply with the Civil Service Code\(^3\), have regard to the principles of public life\(^4\): selflessness, integrity, objectivity, accountability, openness, honesty and leadership and act at all times in the best interests of the CMA.

30. Board and committee members shall have access to a Board Executive which is responsible for providing advice to the Board and committee members to ensure compliance with and adherence to these Rules of Procedure, the Civil Service Code, the principles of public life and good corporate governance.

**Conflicts of interest**

31. Members shall be subject to the procedures and guidelines for dealing with conflicts of interest set out in Annexe D to these Rules of Procedure.

**Transparency**

32. The CMA is publicly committed to openness and transparency in relation to the conduct of its affairs and is subject to the provisions of the Freedom of Information Act 2000. Members shall act in accordance with the guidelines and policies relating to these matters issued or adopted by the CMA from time to time.

**Confidentiality**

33. Members shall be subject to a general duty of confidentiality in relation to the conduct of the affairs of the CMA and information they obtain in the course of their work for it and will comply with the relevant statutory restrictions on disclosure.\(^5\) This duty is personal and shall be without prejudice to the commitment of the Board and the CMA as a whole to transparency and compliance with the Freedom of Information Act 2000.

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\(^4\) [www.hm-treasury.gov.uk/psr_governance_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)

Concerns about propriety

34. Members should raise any concerns that they have about the propriety of the Board, any Member or the Chief Executive confidentially with the Chair. Members should raise any concerns that they have about the propriety of the Chair with the Senior Independent Member appointed under paragraph 35 below.

Non-executive Members

35. Non-executive Members should appoint a Senior Independent Member, who may be only a Non-executive Member appointed to the Board under paragraph 1(1)(b)(i), Schedule 4 of the Act.

36. Non-executive Members, other than the Chair, should meet by themselves at least once a year and in addition at least once a year with the Chair.

Chair and Member feedback process

37. An appraisal of the performance of the Chair and Non-executive Members will be conducted annually, using an appropriate feedback process, and reports made to an appropriate official at the Department for Business, Innovation and Skills.
ANNEXE A

Matters reserved for Board involvement

The functions of deciding:

(a) whether the duty to publish a market study notice under section 130A of the Enterprise Act 2002 applies;

(b) whether to propose to make, or to make, a reference under section 131 of that act;

(c) for the purposes of the requirement imposed by section 131A(2)(b) of that Act, whether the CMA is proposing to make a decision as to whether to make a reference under section 131 of that Act in a way that is likely to have a substantial impact on the interests of any person;

(d) whether section 140A of that Act applies in respect of a particular case;

(e) whether to accept an undertaking under section 154 of that Act, or to vary or supersede or release an undertaking under that section;

(f) for the purposes of the requirement imposed by section 169(2) of that Act, whether the CMA is proposing to make a decision to make a reference under section 131 of that Act in a way that is likely to have a substantial impact on the interests of any person.

Approval of the CMA's conflicts of interest policy for staff and members of the CMA Panel appointed under paragraph 1(1)(b)(ii), Schedule 4 of the Act.

Any decisions in relation to property that have a significant long term impact on the CMA's costs or the space available for the CMA to carry out its work.
Audit and Risk Assurance Committee

Terms of Reference

Purpose

1. The purpose of the Audit and Risk Assurance Committee is to advise the Accounting Officer (the Chief Executive) and the Board on the adequacy of audit arrangements (internal and external) and on the implications of assurances provided in respect of risk and control, with a view to enabling the Board to assure itself of the effectiveness of the CMA's risk management system and procedures and its internal controls including business continuity and information technology.

Status

2. The Audit and Risk Assurance Committee acts only in an advisory capacity and has no executive powers.

3. The Audit and Risk Assurance Committee is authorised to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any Member or employee of the CMA and all Members and employees of the CMA are directed to co-operate with any reasonable request made by the Committee.

4. The Audit and Risk Assurance Committee is authorised to obtain independent professional advice (including legal advice) and to arrange for the attendance of persons who are not CMA employees with relevant experience and expertise if it considers this necessary.

Terms of reference

5. The Audit and Risk Assurance Committee's remit encompasses all aspects of corporate governance, risk management and internal control within the CMA. In particular, the Committee shall review, advise, and prepare a report, as appropriate, in relation to the following:

- the effectiveness of mechanisms employed for the identification, assessment and management of risk;
• the robustness of internal control systems, including the statements to be included in the annual report concerning internal controls and risk management;

• compliance with the Government's policies on Corporate Governance, together with such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the CMA;

• the suitability of the whistle-blowing arrangements, whereby employees can raise concerns in confidence about possible wrong doing in financial reporting or other matters, including the proportionate and independent investigation of such matters and the appropriateness of any follow-up action;

• the effectiveness of the procedures for detecting fraud;

• the Annual Account and Trust Statement, focussing particularly on:
  – the quality of financial reporting and ensure that such reporting presents a balanced and understandable assessment of the position and performance of the CMA
  – critical accounting policies and practices, including the consistency of accounting policies on a year to year basis
  – major financial reporting issues and judgmental areas
  – the extent to which the financial statements are affected by any unusual transactions in the year and how they are disclosed
  – the propriety of major adjustments processed at year end
  – significant adjustments resulting from the audit;

• external audit reports, including:
  – meeting with external auditors at least twice a year, once at the planning stage, where the scope of the audit will be considered, and once at the reporting stage
  – discussing problems and reservations arising from the audit, and any matters the auditor may wish to discuss (where requested by the Committee, in the absence of Executive Members and any other person who is not a member of the Committee)
  – reviewing the external auditors’ proposed audit opinion
- reviewing the external auditors management letter and management's response
- facilitating the resolution of any difference between management and the auditor regarding financial reporting;

- the effectiveness of the internal audit function in the context of the overall risk management system, including:
  - the internal audit strategy and plan
  - its remit and resourcing
  - its standing and freedom from management and other restrictions
  - reviewing all internal audit reports promptly
  - the adequacy of management responses to audit reports
  - the performance of the internal auditor; and
  - the Accounting Officer's CMA governance statement.

6. The Audit and Risk Assurance Committee shall recommend to the Board, Executive Committee and Accounting Officer, as appropriate, such changes to existing practices and systems as is necessary.

**Membership**

7. The Audit and Risk Assurance Committee shall be comprised, so far as possible, of Non-executive Members of the Board and one independent member. In circumstances where this is not possible, the Committee shall be comprised of at least two Non-executive Members and at least one co-opted member who is not an employee of the CMA. The Committee shall have the power to co-opt a person or persons with appropriate specialist qualifications and/or experience subject to the approval of the appointment by the Board.

8. The Chair of the CMA Board, the Chief Executive (in his role as Accounting Officer), the Executive Director for Corporate Services, the Director of Finance and Procurement and the Head of Internal Audit may also attend at the discretion of the Committee.

9. A Non-executive Member or other independent co-opted member shall chair the Audit and Risk Assurance Committee.
10. The Chair of the Audit and Risk Assurance Committee shall be rotated on an appropriate cycle to provide for objectivity in the long term and to avoid over or under representation of particular aspects of the CMA's business and administrative interests.

11. A quorum shall be a minimum of three members.

Meetings

12. The Audit and Risk Assurance Committee shall meet as required, at least four times each year.

Reporting

13. The Corporate Services Directorate supports the work of the Audit and Risk Assurance Committee.

14. The Audit and Risk Assurance Committee is a sub-committee of the Board and its minutes shall be circulated to the Board.

15. The Chair of the Audit and Risk Assurance Committee shall report once a year to the Accounting Officer, and inform the Board, on the findings and conclusions of the Committee for the past year.

Access Rights

16. The Head of Internal Audit and the representation of the External Audit team have the right of access to the Audit and Risk Assurance Committee and/or the Committee Chairman and shall normally be present at meetings (as attendees rather than members).

Conflicts of Interest

17. Members of the audit committee will:

- Have regard to the policy of the CMA on conflicts of interest, which can be found on the CMA website;

- Review before each meeting whether there are any interests which may conflict with their duties as members of the Audit Committee and, if so, disclose them to the secretary of the Audit Committee and, where appropriate, the CMA Compliance Officer;
• Be asked by the Chair of the Audit Committee at each meeting to confirm they have carried out such a review and made such disclosure;

• Not participate in any activity of the Audit Committee in relation to which they believe they have a conflict or possible conflict of interest without the consent of the Chair of the Audit Committee.

**Review**

18. These Terms of Reference will be reviewed by the Committee on a regular basis and be updated as considered necessary.
Remuneration Committee

Terms of Reference

Purpose

1. The purpose of the Remuneration Committee is to make final recommendations to the Board on all aspects of remuneration decisions for the CMA's senior civil servants in accordance with the guidance in the Pay Strategy and with particular regard to equal opportunities. It will also provide a strategic steer on pay issues relating to the CMA's non-senior civil servants.

Authority

2. The Remuneration Committee is a sub-committee of the Board it acts on delegated authority from the Board.

Terms of reference

3. The Remuneration Committee's terms of reference are:
   
   • to ensure that the CMA's senior civil servants are rewarded fairly and differentially according to their contribution to the CMA, both in achieving their objectives and in developing their competencies, skills and knowledge
   
   • to keep under review the criteria for allocating the CMA's senior civil servants to performance tranches and awarding bonuses
   
   • to determine the performance tranche and, where applicable, bonus distribution for the CMA's senior civil servants, taking account of the CMA's overall performance and recommendations of line managers;
   
   • to monitor the operation of the system and provide a report of recommendations on pay decisions; and
   
   • to provide a strategic steer on pay issues relating to the CMA's non-senior civil servants.
Membership

4. The Remuneration Committee shall be Chaired by a Non-executive Member of the Board, and its members will include at least two other Non-executive Members of the Board.

5. The Chief Executive and the Executive Director for Corporate Services may also attend.

6. A quorum shall be a minimum of two members.

Meetings

7. The Remuneration Committee shall meet as required, at least once a year.

Reporting

8. Meetings of the Remuneration Committee will be minuted by Human Resources.

9. The Remuneration Committee is a sub-committee of the Board and its minutes shall be circulated to the Board.

10. The Chair of the Remuneration Committee will report once a year to the Board, on the findings, conclusions and recommendations of the Committee for the past year.
Conflicts of Interest Policy (revised March 2016)

Introduction

1. A conflict of interest may arise where a public official has a financial or other interest arising from their outside activities which influences, or might reasonably be perceived to influence, their impartiality or independence in performing their duties.

2. This document explains how the Competition and Markets Authority (CMA) handles actual or potential conflicts of interest arising from the outside interests of its Board, Panel members or staff members and external consultants.

3. This document sets out general guidance to Board, Panel members and staff members on how they can ensure that actual or potential conflicts of interest do not:
   - enable decisions of the CMA to be impugned; or
   - damage the reputation of the CMA for independence and impartiality.

4. However, the handling of particular conflict risks in relation to particular projects or inquiries will be considered by the CMA on a case-by-case basis, having regard to the approach the courts apply to assessing whether there is actual or apparent bias. This asks whether a fair minded observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased (see Porter v Magill (2002), 2 AC 357).

The general approach of the CMA to handling conflicts of interest

5. The CMA expects its Board and Panel members to behave in accordance with the Principles of Public Life and its staff to follow the Civil Service Code, both of which include the following values: integrity, honesty, objectivity and impartiality.

6. The CMA must be, and be seen to be, impartial. This is an essential ingredient of the public confidence enjoyed by the CMA. The outside interests of Board, Panel members or staff members and external consultants can threaten that impartiality because they create the possibility of bias, of

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6 See The 7 principles of public life and Civil Service: values and standards of behaviour.
apparent bias, or of insufficient independence in the CMA and its decision-making. The consequences for the CMA and its work could be extremely serious.

7. Some outside interests will create a clear conflict of interests. Others will not do so but may, nonetheless, prompt the CMA to take some action on a prudential basis.

8. Board, Panel members or staff members and consultants must be alert to the risk of conflicts arising at all times and review the position from time-to-time during all projects, cases or inquiries. Some potential conflicts can be identified in advance; others may only become apparent as the matter develops, or circumstances change (eg because of the involvement of a new party, or a change in the personal circumstances of a Board, Panel member or staff member).

9. Board, Panel members or staff members should, therefore, always disclose any relevant facts to the CMA if they are in any doubt as to the compatibility of an outside interest with their work for the CMA. While they may be in the best position to identify whether they have an outside interest of potential concern, they are not in the best position to judge any consequences for the CMA.

The Compliance Officer

10. A Compliance Officer within the CMA is responsible for ensuring that the CMA’s policies on conflicts of interest are applied and enforced on a day-to-day basis. If a Board, Panel member or staff member is in any doubt about the significance of an outside interest at any time, he or she may consult the Compliance Officer, who will advise on appropriate action.

Financial interests

11. Financial interests held by Board members, Panel members and staff which may be of potential concern include:

- shares, stocks, debentures or bonds (including options or rights in or over any such securities); and

- investment trusts, insurance policies, collective investment schemes (such as unit trusts) and dealing through intermediaries or with lending institutions (eg building society mortgages or bank loans), subject to paragraph 17 below.
12. They may also include:

- the financial interests of others to whom they give investment advice; and
- those of anyone with whom they may have a close family, domestic or other relationship and over whose decisions on investment matters they may reasonably be thought to exert an influence and where knowledge of such matters can reasonably be attributed to them. A close family member would include any co-habiting spouse/partners, any co-habiting children or any co-habiting dependant family members.

13. They may include not only financial interests relating to a company which is the subject of a project, case or inquiry but also those which relate to other companies which are likely to take a significant part in proceedings before the CMA, such as main competitors, customers or suppliers, or whose value is likely to be significantly affected by a CMA decision.

14. Where a financial interest belongs to a person with whom a Board, Panel member or staff member has a personal relationship, the CMA has regard to the nature of the personal association or relationship in deciding what, if any, action must be taken. Where the interest belongs to a close family member, it will normally treat the interest as if it was an interest of the Board, Panel member or staff member for the purpose of assessing conflicts.

15. Where assets are held by discretionary managers or in a trust, the CMA will adopt a prudent approach in deciding whether they raise concern. Relevant matters may include the duties to which a trustee or manager is subject and the degree of knowledge a person has or may acquire of the particular assets held by a trust or manager.

16. Where assets are held by a Board, Panel member or staff member as trustee for or otherwise on behalf of another person, the CMA will normally treat them for conflicts purposes as if they were assets of the Board, Panel member or staff member.

**Financial interests which are unlikely to cause concern**

17. The CMA will not usually consider financial interests of potential concern where:

- the value of assets is too low to be material; the CMA may from time-to-time set a general benchmark of value below which it will generally consider an interest of no concern – currently the *de minimis* level is set at £5000; and/or
assets comprise goods and/or services bought on the open market on normal commercial terms available to other buyers (eg banking or insurance services, such as the mortgages and loans referred to in paragraph 11 above, telephone services, travel and tangible assets purchased on normal terms on the open market).

**Other interests**

18. A conflict of interest may also arise out of connections which are non-financial.

**Personal relationships**

19. A conflict of interest may arise where the outcome of a project, case or inquiry could have real consequences for a person a Board, Panel member or staff member has a close personal association or relationship with. Such persons could include not only any co-habiting spouse or partners, any co-habiting children or any co-habiting dependent family members but also other associates, eg a close friend or close business associate who is working for or advising a company the CMA is investigating.

**Outside activities**

20. Conflicts of interest may also arise from past, current or future outside activities of Board, Panel members or staff members, eg:

- directorships (CMA staff, including Executive members, are usually prevented from being Directors under the terms of their employment by the Civil Service);

- equivalent positions with high-level responsibility for governance and performance;

- elected positions in government at local or national level;

- senior paid or unpaid roles with charities and not-for-profit organisations; and

- consultancy or advisory roles, whether remunerated or not, particularly where they involve the provision of advisory or other services on competition and/or economic regulation issues, potentially relevant to activities of the CMA.
Outside activities unlikely to cause concern

21. The CMA will not usually consider ordinary membership of charities or not-for-profit organisations where no role in governance or management is undertaken to be a matter of concern (although some activities by Board, Panel members or staff members, such as lobbying on matters of national interest or debate relevant to an project, case or inquiry, may raise concerns).

22. The significance of such organisational relationships generally diminishes over time. In particular, in the absence of complicating factors, Board, Panel members or staff members who were formerly partners in firms providing professional services to any party to a CMA case, project or inquiry are not normally considered to have a disqualifying interest in relation to that matter if two years have elapsed since they left the firm, provided that they have no continuing financial interest in or relationship with the firm.

Prejudgement

23. It is important that Board, Panel members and staff members approach decision-taking on behalf of the CMA with an open mind. Their ability to work on or consider a particular case, project or inquiry might appear to be compromised, for example, if they were involved in a private legal dispute with a company, or had written an article or made a speech expressing strong views about a particular matter.

24. The important question in such cases will be not whether a Board, Panel member or staff member may have an initial view on a particular issue, but whether they will bring a closed mind to bear in their work for the CMA. The fact that a Board, Panel member or staff member may have taken part in a previous case, project or inquiry in the same sector or involving the same party will not normally be regarded as giving rise to a risk of prejudgement.

Procedures for handling conflicts of interest

Board and Panel members

Registration of interests

25. The CMA maintains registers of interests for Board members who must register the following interests of themselves and their families (ie any co-habiting spouse or partners, any co-habiting children or any co-habiting dependant family members):
26. Such interests may include:

(a) relevant Securities;

(b) remunerated employment, office or profession;

(c) other regular sources of income or remuneration from business, professional or public activities or interests;

(d) directorships, whether remunerated or not; and

(e) membership of public bodies (hospital trusts, governing bodies of universities, colleges and schools, and local authorities), trusteeships (of museums, galleries and similar bodies), and acting as an office holder or trustee for pressure groups, trade unions and voluntary or not-for-profit organisations.

Registration of (a) is only required for current interests. Registration of (b) to (e) must cover both current and recent (at least the last five years’) interests.

27. 'Relevant Securities’ means shares, stocks, debentures or bonds (including interests, options or rights in or over any such securities) held by the Board or Panel members or any co-habiting partner or co-habiting members of their family (including trust holdings) other than:

- units or interests in collective investment schemes or holdings in investment trusts or managed funds, bonds, policies or similar vehicles (including pension schemes, plans and policies) where investments are made and managed by professional managers in a significant number of enterprises without the Board or Panel member’s involvement in investment decisions; and

- securities held under arrangements where the investment decisions are made by a professional investment manager, such as a stockbroker or bank, who has absolute discretion as to the purchase, sale and management of the investments and where the Board or Panel member has no involvement in such decisions.

28. Board members’ interests will be disclosed in a public register which will be available on the CMA website for scrutiny by the public. Each Board member is responsible for keeping his or her entries in the register up-to-date. Panel members’ interests will be disclosed as part of the appointment process for the inquiries in which they are involved and only those interests of relevance to the particular inquiry will be publically disclosed.
Handling other interests of Board and Panel members

29. From time to time Board or Panel members may have or become aware of outside interests which do not require registration, but which in the context of a particular matter or issue before the CMA or the Board could nonetheless give rise, or be perceived as giving rise, to a conflict of interest.

30. A Board or Panel member must disclose to the Compliance Officer any such interest as soon as they become aware that it may cause a conflict, for example on receipt of an agenda for a meeting.

31. If in doubt as to whether or not there may be a conflict of interest, Board or Panel members are advised to inform the Compliance Officer in order to provide an opportunity for the CMA to determine an appropriate response.

32. In making decisions as to the possible conflicts of Board and Panel members the CMA will have regard to all the circumstances including the need to exercise an appropriate degree of caution to safeguard the CMA’s independence and integrity.

33. The Compliance Officer will consider all potential conflicts that are brought to their attention on a case-by-case basis before making recommendations to the Panel Chair, in cases involving Panel members, and to the CMA Chair in the case of Board members, on what, if any, action should be taken.

34. During the conduct of an inquiry by a CMA Group, the Chair of the Inquiry Group is responsible for ensuring that the outside interests of Panel members are monitored and that any new issues that may arise during an inquiry (for example, from a change in their situation or a change in the interests affected by an inquiry) are brought to the attention of the Compliance Officer and the Panel Chair to advise as necessary on what, if any, action should be taken.

35. There are a number of actions that can be taken where a potential conflict of interest is identified in relation to a particular inquiry and the handling of particular cases will be a matter of judgement. In some cases the CMA may decide that an outside interest must be disposed of or be severed if the Panel member is to participate in a particular inquiry. Where the outside interest is less significant, the CMA may simply decide to address it by disclosure; if so, it will normally make a declaration that it is satisfied that the outside interest will not actually affect the impartiality of the CMA. In such cases, the CMA will nevertheless consider any representations that are made to it subsequently about the appointment in the particular circumstances of the case. In some cases, where the CMA considers that it may be particularly desirable that a Panel member act, or continue to act, in an inquiry, despite having a degree
of concern, the CMA may seek to deal with the matter by disclosure and seeking to obtain acceptance of the appointment from parties to the inquiry.

36. In relation to any actual or potential conflict of interest, the CMA Chair, having consulted the Compliance Officer, and where they consider it necessary the General Counsel and other Board, Panel or staff members, will have the power to decide whether:

- the interest is one that is reasonably likely to influence the Board or Panel member’s performance of his/her function; and

- in the opinion of a fair-minded and informed observer, the interest would suggest a real possibility of bias on the part of the Board or Panel member.

37. If having considered both questions the CMA Chair is satisfied that it is appropriate, the Board or Panel member may be permitted to participate fully or in a limited capacity in a decision or discussion. If the CMA Chair is not satisfied, the Board or Panel member shall withdraw from further participation in the decision or discussion in question and, in the case of a Panel member, if necessary the Chair may remove the person in question from membership of a relevant CMA Group.

38. In the event of the CMA Chair having an actual or potential conflict of interest, whether arising from a registrable or disclosable interest, the Compliance Officer and General Counsel, in conjunction with the Senior Independent Member, will have the same powers as the CMA Chair in deciding whether, or in what capacity the CMA Chair may participate in a decision or discussion.

**Interests of staff**

39. The staff who are substantively involved in making a decision may include not only the decision-taker but also others who contribute to decisions, for example, staff who contribute research and advice. The potential effect of outside interests of staff on their participation in a particular case, project or inquiry will be assessed on a case by case basis having regard to their potential involvement or influence over the decision-making of the CMA.

40. As with Board and Panel members, staff should always consider whether they hold any financial interests or other interests which could result in a perception of bias in any decision made by the CMA. When thinking about such interests, staff are reminded to read paragraphs 11–22 above which provide guidance as to those interests the CMA considers potentially problematic.
41. In particular, staff are reminded to consider the interests of any close family member or dependant, and be aware that any financial interest held by a staff member as a trustee will be considered as a personal holding when assessing potential conflict.

42. If a staff member holds any memberships of public bodies (hospital trusts, governing bodies of universities, colleges and schools, and local authorities), trusteeships (of museums, galleries and similar bodies), or acts as an office holder or trustee for pressure groups, trade unions and voluntary or not-for-profit organisations, these too should be disclosed to their staff manager.

43. Staff should also disclose to their staff manager any of the above interests which were held in the previous two years.

44. Staff should also consider whether any close family member holds an interest such as those held in paragraph 42, as these should also be disclosed to the staff manager. The Compliance Officer should also be consulted if there are any concerns.

Previous employment in the private sector

45. If during the first two years of CMA employment, staff members are involved in a case, project or inquiry relating to firms, consultancies or companies for which they previously worked, or competitors to those organisations, they should inform their staff manager and project director.

46. It is for the staff manager and project director to decide, with advice from the Compliance Officer and the General Counsel as necessary, on the appropriateness of the staff member continuing to work on the matter. Staff may be prohibited from working on a matter, depending on circumstances, for a period of twelve months or longer.

Other business and employment interests

47. The following general principles must be observed by staff in respect of business interest and outside occupations:

- No staff members may take a remunerated position within a concurrent or sectoral regulator without the express consent of the CMA.

- No staff may at any time engage in private activities which would require their attendance during CMA hours or in any way impair their usefulness as civil servants.
• No staff may engage in occupations or other activities, which might in any way conflict with the interests of the CMA or be inconsistent with their positions as civil servants.

• No staff may engage in outside activities involving the use of official experience, or experience acquired in the course of official duties, or payment from a Government Department, without first obtaining the consent of their senior manager (at SCS level). In cases of doubt managers should consult HR.

• The criteria of the Business Appointment Rules\(^7\) also apply if staff wish to undertake outside employment whilst still employed by CMA.

• Staff must inform their senior staff manager if they have any private business interests which could possibly conflict with their position in the CMA. Staff must carry out any instructions from the CMA about the retention or disposal of those interests where it could be suggested that a conflict of interest may arise (see paragraph 1).

**Directorships**

48. Staff may not in general hold directorships in, or undertake work in, public or private companies, firms or other organisations. However, directorships may be allowed where staff members have been nominated by the CMA or have the express permission of the Compliance Officer. (The holding of non-executive directorships in small, private 'family type' companies may be permitted, if no conflict of interest is caused.) Staff should consult their senior staff manager before undertaking any such commitment. Appointments to outside bodies, eg as a non executive director, for CMA purposes should be cleared with the Compliance Officer.

**Consultancy work**

49. Staff may not, without prior consent of the CMA, engage in consultancy work on behalf of any company:

• with which the CMA has a contractual relationship; or

• with which a staff member's group or area has some other close official relationship.

\(^7\) See: Business Appointment Rules
50. In any case of doubt regarding contractual relationships, staff should consult both their own senior management who can, if needs be, consult the Compliance Officer. In respect of other 'official' relationships, senior staff management should be consulted who should, in cases of doubt, then consult the Compliance Officer. Any consultancy work not of the prohibited type and undertaken by any staff member should be reported to their senior staff manager.

*Procedures for handling interests for staff*

51. Staff should first contact their staff manager, who should first make an assessment of the conflict in question, in conjunction with the work manager, where applicable. The staff manager may then feel able to come to a view on the point; if not, they should consult their own staff manager, the Compliance Officer and/or General Counsel. They will exercise their judgment, considering each case on its merits having regard to the particular circumstances.

*Acceptance of outside appointments for Civil Servants*

52. The Business Appointment Rules\(^8\) provide for the approval of appointments which certain former Civil Servants propose to take up in the first two years after they leave the service.

53. In summary, staff must obtain approval before accepting any new appointment or employment where an application under the Rules is required. For staff in SCS pay bands 2 and above, an application is required for any new appointment or employment that they wish to take up during the two year period after their last day of paid service. For staff in SCS pay band 1 and below, an application is only required if the individual's circumstances match one or more of the following criteria:

- They have been involved in developing policy affecting their prospective employer, or have had access to unannounced Government policy or other privileged information affecting their prospective employer, at any time in their last two years in the Civil Service.

- They have been responsible for regulatory or any other decisions affecting their prospective employer, at any time in their last two years in the Civil Service.

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\(^8\) Further information on the Business Appointment Rules can be found on the website of the independent Advisory Committee on Business Appointments. Human Resources and the General Counsel can advise on the application of these Rules.
• They have had any official dealings with their prospective employer at any time in their last two years in the Civil Service.

• They have had official dealings of a continued or repeated nature with their prospective employer at any time during their Civil Service career.

• They have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties.

• The proposed appointment or employment would involve making representations to, or lobbying, the Government on behalf of a new employer.

• The proposed appointment or employment is consultancy work, either self-employed or as a member of a firm, and they have had official dealings with outside bodies or organisations in their last two years in the Civil Service that are involved in their proposed area of consultancy work.

54. Any staff member must report to their Staff Manager any offer of an appointment or employment which would need to be approved under the Rules if they plan to follow up the offer. Staff engaged on the letting or management of contracts must report all offers of an appointment or employment to their Staff Manager whether or not they intend to follow it up.

55. Staff must also have regard to the risk of conflicts of interest arising when conducting procurement exercises on behalf of the CMA and, when considering external employment, appointments or consultancy work. The need to consider the risk of conflicts arising is one of the reasons why the CMA requires staff to obtain its prior consent to external employment, appointments or consultancy work.

**Interests of consultants**

56. During the course of an inquiry or project, the CMA may instruct consultants to assist with aspects of its investigation. The roles played by consultants may vary considerably and the appropriate approach to their outside interests will be determined according to their role in the inquiry. However, where consultants act as the equivalent to members of staff, their outside interests will be assessed as if they were members of staff for conflicts purposes.

57. Where the CMA is considering whether to instruct a consulting firm to advise it on a particular matter, the CMA will take account of the outside interests of both the staff of the consulting firm and of the firm itself. In considering the
interests of the firm, the CMA will take account of all relevant matters, which may include:

- the present and future clients of the firm (insofar as they can be ascertained), the nature of the work for those clients, and the extent to which the firm is independent of parties which may be affected by the inquiry;

- the degree to which the staff of the firm engaged on behalf of the CMA are protected from improper influence, for example, by being ring-fenced from other staff of the firm;

- any professional conduct rules which apply to the firm and its staff; and

- the record of the consulting firm in providing impartial advice to the CMA.

**General**

58. While this guidance addresses some actual or potential conflicts of interest that can be readily anticipated, it is not possible to provide a comprehensive list of all of the actual or potential conflicts of interest that might arise. Therefore:

- these guidelines must be interpreted and applied with regard to their spirit and purpose; and

- if a Board, Panel member or staff member has any doubt as to whether a conflict of interest may arise, the matter should be raised with the Compliance Officer.

**Audit**

59. The CMA carries out an annual audit of the conduct of the CMA’s conflicts of interest policies and a report is published in its Annual Report.