STEPHENSON HARWOOD

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COMPETING FOR TALENT: WHAT EMPLOYERS NEED TO KNOW TO AVOID BREAKING COMPETITION LAW

The UK's Competition and Markets Authority ("**CMA**") has issued new guidance on what businesses need to know when recruiting workers and setting working conditions ("**Guidance**"). The Guidance is aimed at those who work in human resources ("**HR**") or are involved in the recruitment and retention of workers.

Employers need to take note, as it is clear that anti-competitive conduct in the labour market will be treated as seriously as in product or service markets, with substantial penalties for breaches. Businesses that compete to hire or retain workers in labour markets will be considered competitors (even though they do not compete for customers).

Below, we explore the three main types of anti-competitive behaviour in labour markets addressed by the CMA Guidance: no-poaching agreements; wage-fixing; and the exchange of competitively sensitive information and analyse what this means for employers in practice.

1. NO-POACHING AGREEMENTS

The CMA's Guidance makes it unequivocal that agreements between employers not to hire, poach or solicit each other's employees are unlawful. This prohibition applies to both formal written contracts and informal "gentleman's agreements," and covers all types of workers, including permanent employees, freelancers, and contractors.

No-poaching arrangements can restrict employee mobility, suppress wages, and limit opportunities for career development. The CMA is clear that such conduct constitutes cartel behaviour and will be subject to enforcement action. Even casual understandings or social conversations can be caught by the law.

Employers should therefore avoid any agreement or understanding with other businesses that restricts the hiring or solicitation of staff. This includes "no cold calling" arrangements or requirements to seek consent before hiring from another employer. Certain non-solicitation clauses in commercial contracts (such as consultancy or outsourcing agreements) may be permissible, if they are necessary to enable the agreement to be carried out and are proportionate to the overall objectives of the agreement, and provided that the clause's duration, subject matter and geographical scope do not go beyond what is reasonably required.

2. WAGE-FIXING

Wage-fixing refers to agreements between employers to fix, cap, or align pay rates, benefits, or other employment terms. This can occur directly between businesses, or indirectly through trade associations, industry forums, or email exchanges about "recommended pay rates."

The CMA Guidance highlights that wage-fixing undermines competition for talent and can result in lower pay and reduced choice for workers.

Employers must not agree with competitors on pay rates, annual increases, or benefits, whether in formal meetings or informal discussions. Sharing intentions to align pay or avoid a “bidding war” can be unlawful.

Employers should be particularly cautious when participating in industry groups or trade associations. Any discussion or sharing of information about current or future pay rates, benefits, or recruitment strategies with competitors is high risk and should be avoided.

3. EXCHANGE OF COMPETITIVELY SENSITIVE INFORMATION

The third anti-competitive behaviour addressed by the CMA in its Guidance is the exchange of competitively sensitive information between employers. This means information that:

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

This includes sharing non-public, current, or future pay rates, day rates, planned increases, benefits, or recruitment strategies. Such exchanges can restrict competition and breach competition law, even if they occur in social settings or through third parties. Even unilateral disclosures of competitively sensitive information to competing businesses can break competition law.

The Guidance sets out high-level principles providing a steer on when information exchanges are likely to raise competition law concerns:

- use only genuinely public sources (such as ONS data or advertised salaries). Genuinely public information is generally less likely to be competitively sensitive;
- rely on anonymised, aggregated data from independent third parties, ensuring individual employers cannot be identified; and
- avoid sharing current or forward-looking information. Historic data is less likely to be competitively sensitive, but the key test is whether the information reduces uncertainty or influences strategy.

Benchmarking exercises must be carefully managed. Small group benchmarking, where participants can infer each other’s pay data, is particularly risky. Employers should ensure robust third-party methodologies and sufficient participant pools to maintain anonymity.

The CMA has already taken enforcement action in relation to the exchange of competitively sensitive information in labour markets. In March 2025, the CMA announced it had made a finding of infringement and imposed a fine of £4.2 million against companies active in the production and broadcasting of sports content in the UK for the exchange of competitively sensitive information and wage-fixing arrangements. For further details, see our previous briefings here and here. In terms of ongoing investigations, the CMA is currently investigating reciprocal arrangements relating to the hiring or recruitment of certain staff involved in the supply of fragrances and/or fragrance ingredients.

COLLECTIVE BARGAINING

The CMA's Guidance also refers to collective negotiations between workers and employers. The CMA Guidance recognises the important role of genuine collective bargaining between employers (or employer bodies) and workers’ organisations, such as trade unions or associations of self-employed workers. Where negotiations are conducted in good faith to determine working conditions, pay, or benefits, and result in a collective agreement, competition law will not be enforced against this activity.

However, the Guidance draws a clear line: coordination among employers outside the context of collective bargaining (such as agreeing to treat minimum rates as the norm or not to exceed recommended minimums) may cross into unlawful wage-fixing. Employers preparing for collective bargaining should avoid exchanging competitively sensitive information among themselves unless strictly necessary and only if the purpose of such an exchange cannot be achieved by other means. It would be preferable to use an independent party using anonymised, aggregated data.

Employers may coordinate internally to prepare their bargaining position, but must not use the process as a cover for broader anti-competitive conduct such as sharing competitively sensitive information. The CMA's approach is to support fair negotiations with workers' organisations, while maintaining strict boundaries against collusion between employers.

IMPLICATIONS FOR EMPLOYERS

Employers may coordinate internally to prepare their bargaining position, but must not use the process as a cover for broader anti-competitive conduct such as sharing competitively sensitive information. The CMA's approach is to support fair negotiations with workers' organisations, while maintaining strict boundaries against collusion between employers. The CMA's Guidance makes it clear to HR, recruitment, and management teams that competition law must be complied with in relation to their hiring and HR practices. Day-to-day hiring discussions, salary planning, and networking carry real legal risk from a competition law perspective. Informal interactions, such as WhatsApp groups, LinkedIn messages, industry roundtables, and social catch-ups, can create unlawful understandings if they stray into sensitive topics.

Employers must also review existing commercial contracts and employment agreements to ensure compliance. Non-solicitation clauses should be narrowly drafted and justified by the commercial relationship. Restrictive covenants in individual employment contracts remain governed by employment law, but must not be used as a means of coordinating anti-competitive behaviour between employers.

PRACTICAL NEXT STEPS

To mitigate risk and ensure compliance, employers should:

- use only genuinely public sources (such as ONS data or advertised salaries). Genuinely public information is generally less likely to be competitively sensitive;
- Issue a clear compliance note from leadership, setting out zero tolerance for no-poaching, wage-fixing, and unlawful information exchange.
- Update competition law compliance and other ethics policies on these new labour risk areas.
- Train HR, recruitment, and management teams on competition law risks in the labour market.
- Provide training for employees attending trade associations to ensure they understand their competition law obligations.
- Audit contracts and communications for problematic clauses or practices.
- Suspend participation in any HR forums or surveys that share identifiable or forward-looking pay data.
- Establish internal escalation channels for competition queries and reporting concerns.
- Implement robust protocols for benchmarking and information sharing, using independent third parties and anonymised, aggregated data only.
- Ensure collective bargaining activities are conducted strictly within the scope of negotiations with recognised worker organisations, and avoid any employer-to-employer coordination that could restrict competition

CONCLUSION

The CMA's Guidance exemplifies the strong focus of competition law enforcement in labour markets. It builds on the CMA's previous guidance in relation to employers' advice on how to avoid anti-competitive behaviour published in 2023. The CMA's current annual plan refers to the benefits of well-functioning labour markets, widely recognised as an important driver of economic growth and productivity. Scrutiny of labour markets, therefore, is likely to continue to be an enforcement priority for the CMA.

The CMA is not alone in its focus on labour market issues. Other competition authorities around the globe have labour market practices firmly in their sights. For example, in June 2025, the European Commission announced it had fined Delivery Hero and Glovo a total of €329 million for their participation in a cartel in the online food delivery sector. The multi-layered anticompetitive coordination between the two companies included agreeing no-hire clauses as well as a general no poach agreement not to poach each other's employees. It is the first time the European Commission has reached an infringement finding in relation to a labour market cartel. The European Commission considered that the clauses by their very nature restricted competition in labour markets. The Commission's Competition Policy Brief on Antitrust in Labour Markets had set the scene, stating that wage-fixing and no poach agreements generally qualify as restrictions "by object". As a further example, in June 2025, the French competition authority announced it had fined four companies in the engineering, technology consulting and IT services sectors for no-poach practices.

Given the increased scrutiny from a competition law perspective, employers must take proactive steps to review their practices, train their teams, and ensure that recruitment and pay-setting activities are fully compliant with competition law. The risks are significant, but with the right approach, employers can compete for talent safely and lawfully. For tailored advice and support, please get in touch with our contacts below.

CONTACT US

PAUL REEVES

Head of Employment, London

+ 44 20 7809 2916
paul.reeves
@stephensonharwood.com

MARTA ISABEL GARCIA

Partner

+44 20 7809 2141 +33 1 4415 8273
marta.garcia
@stephensonharwood.com

LEANNE RAVEN

Senior Knowledge Lawyer

+ 44 20 7809 2560
leanne.raven
@stephensonharwood.com

BRYONY ROY

Of Counsel

+ 44 20 7809 2379
bryony.roy
@stephensonharwood.com

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