

Innocent decision-makers cannot be personally liable for the detriment of dismissing a whistleblower

In *Henderson v GCRM Ltd & Ors*, the Employment Appeal Tribunal has considered whether it is possible to hold an “innocent” decision-maker liable for the detriment of dismissing a whistleblower, in circumstances where another individual has manipulated or tainted the process motivated by the whistleblower’s actions.

Background

Under the Employment Rights Act 1996 (ERA), whistleblowers are protected in the following key ways:

- It is automatically unfair to dismiss them if the reason or principal reason is that they made a protected disclosure (Section 103A).
- It is unlawful for their employer to subject them to any detriment through any act (or deliberate failure to act) on the ground that they made a protected disclosure

(Section 47B(1)). This claim is not available against the employer where the detriment is dismissal, as the remedy is an automatic unfair dismissal complaint under Section 103A (Section 47B(2)). Nevertheless, the employee may have a claim for detriment for any other actions taken by their employer leading up to the dismissal.

- It is unlawful for any co-worker or agent to subject them, in the course of that co-worker's employment (or agency), to any detriment through any act (or deliberate failure to act) on the ground that they made a protected disclosure (Section 47B(1A)). Under *Timis v Osipov* [2018] EWCA Civ 2321, this claim is available against an individual even where the detriment is dismissal, and the employer can become vicariously liable for the actions of that individual. The employer may have a defence if they took all reasonable steps to prevent the co-worker's actions. For further information, please see our briefing on *Osipov* [here](#).

Under the previous case of *Royal Mail Ltd v Jhuti*, the Supreme Court found that a protected disclosure can still be the principal reason for an employee's dismissal even if the disclosure was hidden from the dismissing officer, and therefore a claim under Section 103A can succeed on that basis. Unlike in earlier cases where only the motivations of the decision-maker were said to be relevant, the Supreme Court in *Jhuti* confirmed that if the decision-maker is given false

reasons to dismiss by someone who is themselves motivated by the fact that the employee has blown the whistle, the Tribunal can look past those false reasons to establish the underlying motivation. In effect, if the underlying motivation to dismiss the employee is the protected disclosure, employers cannot evade liability by hiding that fact from a good faith disciplinary decision-maker.

For further information on the *Jhuti* case, please see our prior briefing [here](#).

What happened in this case?

Ms Henderson was employed as an embryologist by GCRM Limited, a regulated clinic based in Glasgow providing fertility services and care, following a transfer under TUPE from Nuffield Hospital in Glasgow in September 2018.

Following the transfer, in March 2019 Ms Henderson began to raise concerns on several occasions regarding issues impacting the standard of patient care at GCRM. In particular, she was concerned regarding the low levels of available staff and inadequacy of training, which she felt was leading to excessive pressure for both nurses and the laboratory staff. Ms Henderson considered that patients were experiencing poor success rates and that there was a likelihood of errors and reportable incidents, and that patients were being misled about the standard of service. She continued to express concerns into August 2021 and raised a grievance in September 2021 on the basis that she felt singled out and unfairly treated. The grievance was not upheld, and an appeal submitted by Ms Henderson was not heard.

In October 2021, Ms Henderson was informed of disciplinary allegations relating to a reportable regulatory incident and an alleged failure to follow reasonable management requests. She was told that such concerns could amount to “*serious negligence/gross misconduct and/or lead to a loss of trust and confidence in your ability to perform your role*” and was suspended from her role.

The original disciplinary manager was set to be Mr Tomnay, who was Ms Henderson’s line manager and who was therefore aware of her complaints. It was later changed to Ms Tracey, the Managing Director – UK, who had recently joined the group by the time of the disciplinary hearing in January 2022 and was employed by a separate entity. Ms Henderson was ultimately dismissed by Ms Tracey in February 2022 for “*numerous and collective examples of poor performance and leadership in fulfilling the duties of [her] role*”, and received payment in lieu of notice. An appeal against the decision was unsuccessful.

Ms Henderson pursued a claim of: (i) automatic unfair dismissal against GCRM; and (ii) for the detriment of dismissal against GCRM and each of Mr Tomnay and Ms Tracey individually.

Employment Tribunal’s decision

In the [first instance decision](#), the Employment Tribunal determined that the disclosures made by Ms Henderson relating to staffing levels were protected under Sections 43A and 43B ERA, as she had genuinely believed that they tended to show breaches of legal obligation that were in the public interest (and that belief was objectively reasonable).

The Tribunal concluded that Mr Tomnay and the HR representative, Ms Young, had been motivated to initiate and conduct a disciplinary investigation against Ms Henderson because of her protected disclosures. Further, they found that Ms Tracey was extensively informed and guided in the disciplinary process by Mr Tomnay and Ms Young; the decision to instigate disciplinary proceedings had been Mr Tomnay's, and the process had only been handed over to Ms Tracey as he was no longer available to manage it. Ms Tracey admitted having little to no knowledge of the disciplinary allegations, which had been decided by Mr Tomnay and the HR representative, admitted that she had relied on them for shaping the process and providing information, and confirmed that she had spoken to Mr Tomnay during adjournment of the disciplinary hearing.

Having made the above findings of fact, the Tribunal's judgment was that:

- Under *Jhuti*, Ms Tracey could be 'imputed' with the knowledge of Mr Tomnay and Ms Young, as they had influenced her to a significant degree. The protected disclosures had therefore had a material influence on Ms Henderson's dismissal, and the claim against Ms Tracey for detriment based on Ms Henderson's dismissal therefore succeeded (Section 47B(1A)). As she was an agent of GCRM, GCRM were also liable for her actions (Section 47B(1B)).

- It was not possible to claim directly against GCRM for detriment based on protected disclosures where the detriment alleged was dismissal.

- Whilst the protected disclosures had been a material influence, they had not been the sole or principal reason for the dismissal and therefore the dismissal was not automatically unfair under Section 103A. It was nevertheless unfair under ordinary unfair dismissal principles, as there had been significant procedural failings and substantive issues with the findings and sanction.

- Mr Tomnay did not subject Ms Henderson to the detriment of dismissal, as he had only had an indirect influence, therefore the claim against him could not succeed.

EAT's decision

Both Ms Henderson and GCRM appealed against the Tribunal's findings.

Ms Henderson's Appeal

Ms Henderson alleged that the Tribunal had failed to properly consider the reason for the dismissal for her automatic unfair dismissal claim (Section 103A).

The EAT agreed with this, and confirmed that once *Jhuti* had been raised by Ms Henderson, the Tribunal should have made clear findings about whether or not Mr Tomnay had improperly manipulated Ms Tracey or created a false pretext which he induced Ms Tracey to adopt. If it was found that he did manipulate or intervene in the process, the Tribunal should then have considered what part that ultimately played in Ms Tracey's decision to dismiss. Ms Henderson's automatic unfair dismissal claim was therefore remitted to the same Tribunal to consider those questions, as it was not an inevitable conclusion that the dismissal would have been automatically unfair.

Ms Henderson also attempted to argue that Mr Tomnay could be held responsible for her dismissal as a result of his involvement, on the basis that the term "dismissed" should include actions causing or contributing to dismissal. The EAT did not agree with this, as this would blur the line between pre-dismissal detriment and the detriment of dismissal itself. No pre-dismissal detriment by Mr Tomnay had been alleged, and he had not dismissed Ms Henderson, therefore the complaint could not succeed.

GCRM's Appeal

GCRM argued that the Tribunal had erred in concluding that *Osipov* and *Jhuti* meant that Ms Tracey, an "innocent" dismissing manager, could be found personally liable under Section 47B(1A) and therefore make the employer also liable

under Section 47B(1B).

The EAT agreed with this, noting that *Jhuti* had only been concerned with an employer's liability for automatic unfair dismissal under Section 103A and the state of mind that can be attributed to the **employer**. The EAT considered that there was no reason to extend this analysis of a "composite approach" to liability to personal liability under Section 47B(1A), in particular because it could not have been the intention of Parliament to impose unlimited liability on **individuals** who have not been personally motivated by the making of protected disclosures. Both *Jhuti* and *Osipov* had taken a purposive approach to legislation in order to provide the claimant with an effective remedy, but without liability being imposed on an innocent party.

The EAT therefore set aside the judgment against Ms Tracey for detriment consequently the judgment against GCRM for detriment.

What does this mean for employers?

The judgment in *Henderson* has offered some helpful clarification as to the circumstances in which decision-makers can be imputed with the knowledge or motivations of others in the context of whistleblowing. In particular:

- For an automatic unfair dismissal claim under Section 103A, it is possible for the Tribunal to look at whether

or not the decision-maker may have been manipulated or influenced in a way that means that, even if they were not personally aware of the protected disclosures, it was still the sole or principal reason for dismissal.

- For detriment claims against individuals under Section 47B(1A) (and consequent liability for employers under Section 47B(1B)), the Tribunal should not impute knowledge to otherwise 'innocent' decision-makers in a way that makes them personally liable (and their employer vicariously liable) for whistleblowing detriment.

[Henderson v GCRM Ltd & Ors \[2025\] EAT 13](#)

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Not on the clock but still on

the hook? EAT considers employer's liability for sexual harassment.

The EAT's recent decision in *AB v Grafters Group Ltd* reminds HR teams that employer responsibility for harassment may extend beyond the workplace.

What happened in this case?

The Claimant worked for a hospitality recruitment agency. On 1 November 2021, the Claimant mistakenly believed that she was due to work at an event taking place at Hereford Racecourse. She arrived late to her employer's office and thought she had missed the transport to Hereford. A colleague who had just finished work (CD) offered to give her a lift. She agreed.

CD had previously sent sexually suggestive messages to the Claimant, including in the early hours of 1 November 2021 when he was at work. During the journey, the Claimant learnt that she was not, in fact, required to work that day and she asked CD to take her home. However, CD drove her to a golf course, where he subjected her to sexual harassment.

The Claimant claimed that her employer was vicariously liable for the sexual harassment. The Employment Tribunal found that CD *had* sexually harassed the Claimant. However, it held that the employer was not vicariously liable because CD was not acting "in the course of his employment" at the time of the incident. The Tribunal determined that CD was not working at

the time, the incident did not occur in the workplace, nor was the transport arrangement part of his work duties or otherwise approved by the employer. It also concluded that CD's motive in offering the lift was not linked to his employment.

The Claimant appealed to the EAT.

What was decided?

The appeal focused on whether CD's actions were "in the course of employment". The EAT found that the Tribunal was entitled to conclude that the harassment occurred outside of CD's working hours and not while he was performing his work duties. However, it had failed to consider whether a sufficient nexus or connection with work was present, such that the lift and subsequent conduct could be deemed an extension of his employment. The EAT held that this step was required by case law, and the Tribunal had failed to carry out the necessary "second question" analysis.

The EAT also considered whether the Tribunal had failed to consider three *relevant* factors, namely:

- the sexual messages that CD had been sent during his working hours;

- whether the harassment in the car was part of a continuous course of conduct starting when CD was at work; and

- the connection between CD's job, previous arrangements for lifts between colleagues, and the reason why the Claimant was in his car.

The EAT concluded that the Tribunal's failure to address these factors made its legal reasoning incomplete, because they were all directly relevant to the analysis of whether a sufficient nexus or connection with work existed.

The EAT also considered whether the Tribunal had given weight to two *irrelevant* factors, namely:

- CD's "motive" for giving the lift, asking if it was because of a requirement linked to his employment; and

- whether the employer had knowledge of, or sanctioned, CD giving a lift to the Claimant.

The EAT considered that CD's motive in offering the lift was immaterial to whether the acts were "in the course of employment." However, the question of whether the employer knew or approved of the general arrangement could be relevant to the analysis of whether an act was in the course of employment.

The appeal was upheld, and the case was remitted to the same Tribunal for reconsideration.

What does this mean for employers?

Employers may be held liable for harassment committed by workers in the course of their employment. However, as previous caselaw has made clear, the meaning of "in the course of employment" is wider than just those actions occurring during working hours in the workplace. It is possible that conduct off the premises and out of normal working hours may be considered an "extension of employment", for example, at a colleague's leaving party, or during work-related travel. However, in all cases the decision is for the Tribunal to reach on the particular facts. This decision reminds us of this nuanced approach needed, although it remains to be seen whether the harassment which took place in this case will meet the threshold.

The decision also underlines the need for employers to give careful consideration to the reasonable steps it can take to prevent sexual harassment. If the actions are held to be within the course of employment, the employer may still avoid liability if it can show that it took *all* reasonable steps to

prevent sexual harassment occurring. This will include things like having an appropriate policy in place and providing training to staff. In this case, it could potentially include steps like empowering staff to call a taxi at the employer's expense to reach the workplace or return home where they have missed the arranged transport and feel vulnerable.

The taking of reasonable steps is also necessary to discharge the statutory duty on employers to prevent sexual harassment at work. At present, the duty requires employers to take some, but not all, reasonable steps. From October 2026, the duty will be upgraded to require all reasonable steps to be taken (aligning it with the reasonable steps defence). A failure to discharge the duty gives rise to an uplift to compensation in relevant claims of up to 25% and could provoke an investigation by the Equality and Human Rights Commission.

[AB v Grafters Group Ltd t/a CSI Catering Services International](#)

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Pre-prepared disciplinary scripts and evidential disputes: when will a dismissal no longer be fair?

In Alom v Financial Conduct Authority, the Employment Appeal Tribunal considered the extent to which a script prepared by HR can demonstrate a pre-judged disciplinary outcome, and the level of evidence which must be provided to an employee in a fair process. In addition, the EAT considered the circumstances in which delays in issuing a Tribunal judgment and errors within that judgment can be grounds to overturn a decision.

What happened in this case?

Mr Alom was employed by the Financial Conduct Authority (FCA) and was dismissed in relation to his conduct towards his colleague, Ms Shaukat. Mr Alom and Ms Shaukat had formerly maintained a friendship, however following an altercation in January 2020 at work, Ms Shaukat accused Mr Alom of stalking her. Later that day, Ms Shaukat received an anonymous email which contained, among other matters, specific comments regarding her having made allegations of stalking against the sender and about a course that she had recently commenced (on which Mr Alom had previously congratulated her). Ms Shaukat raised the matter with HR, as well as other concerns regarding Mr Alom's conduct towards her, and Mr Alom also made a complaint about Ms Shaukat. Upon receiving the results of the investigation into his complaint against her, Mr Alom emailed Ms Shaukat's manager referencing the recommendations made.

Following a disciplinary investigation, it was determined that Mr Alom was likely to have been the sender of the anonymous email (which he denied) and that the email sent to Ms Shaukat's manager had been a breach of confidentiality. As a result, Mr Alom was dismissed for gross misconduct, and this outcome was upheld on appeal.

Mr Alom brought a number of claims in the Employment Tribunal against Ms Shaukat and the FCA, however following several applications and rounds of case management, Ms Shaukat was removed as a respondent and the claims were narrowed to direct sex discrimination, direct race discrimination, harassment based on race and/or sex, victimisation and unfair dismissal.

Under a [reserved judgment](#) issued on 16 February 2024, the Tribunal concluded that none of Mr Alom's claims should succeed. In summary, it determined that none of the FCA's actions had been motivated by Mr Alom's race or his sex, and the dismissal had been for the potentially fair reason of conduct, was within the range of reasonable responses and had followed a fair procedure.

What was decided?

Mr Alom appealed to the Employment Appeal Tribunal on several grounds, each of which was addressed by the EAT as follows:

- Mr Alom asserted that the Tribunal's judgment had erred in relation to whether or not a witness had flown back to the UK to give evidence. The EAT did not agree that this was an error, and considered it clear from the judgment that the witness had planned to fly to the UK but, following the withdrawal by Mr Alom of all but one of the claims which concerned her conduct, it had been recorded by the Tribunal that she would no longer do so. The consequences of her not attending (with regard to cross-examination) had been explained to Mr Alom and he had withdrawn the only remaining complaint against her. This ground of appeal therefore failed.

- Mr Alom alleged that the Tribunal had erred in making a factual finding that he had been notified by the FCA of the intention to search his computer, and as a result his case that the search had been an infringement of his Article 8 rights (the right to respect for private and family life) rendering the dismissal unfair had been impacted. The EAT noted that it could not consider the Article 8 infringement as a standalone issue but only with relevance to the fairness of the dismissal. They determined that the decision to dismiss had not relied on the report which was produced from the computer search, and noted that Mr Alom had actually sought to rely on the report as evidence in support of his case. Even if the search had been a disproportionate interference in Mr Alom's rights, there was therefore no proper basis to conclude that this made the dismissal unfair. As a result, this ground of appeal also failed.

- Mr Alom asserted that the delay in issuing judgment until February 2024 (following the hearing in May 2023) had led to a real risk that he did not receive a fair trial. He believed that this was compounded by factual inaccuracies in the judgment, including those noted above and a discrepancy as to whether a witness had attended via video link. The EAT acknowledged that the delay had been unacceptably long, but noted that this had been expressly explained in the judgment and that the Tribunal had convened the day after the hearing to deliberate and reach a decision when it was fresh in their minds. The inaccuracies were insubstantial in what was otherwise what they deemed a "*meticulous, thorough, and closely-reasoned decision*". This ground of appeal therefore also failed.

- Mr Alom stated that he had not been provided with transcripts of the interviews conducted with Ms Shaukat, which he believed made his dismissal unfair as he did not know the case he was required to answer (with reference to the ACAS Code of Practice on Disciplinary and Grievance Procedures). The EAT concluded that he had still been provided with sufficient information to respond to the charges, which had stemmed solely from the two emails rather than any witness evidence from Ms Shaukat. Whilst it would have been best practice for the Tribunal to address the submission made by Mr Alom that this had made his dismissal unfair, the fact that they had failed to do so did not affect the result given the narrow nature of the disciplinary charges. This ground of appeal therefore also failed.

- Mr Alom claimed that the script prepared by HR for the disciplinary meeting echoed the conclusions drawn by the disciplinary decision-maker, and that this showed the outcome having been pre-judged and therefore unfair. In particular, Mr Alom took issue with the assertion in the script that the anonymous email had been *“one of the most unpleasant emails I’ve read,”* and considered that the guidance from HR had gone beyond the permitted remit of law and procedure. The EAT considered that the Tribunal, having heard evidence from the disciplinary decision-maker, had been satisfied that he had come to his own view and had done so only after hearing from Mr Alom. This ground of appeal therefore also did not succeed.

The appeal was therefore dismissed by the EAT. A representative for Mr Alom has [reportedly confirmed](#) that he intends to appeal this outcome further.

What does this mean for employers?

For employers, the most pertinent takeaway from the *Alom* case is likely to be the commentary made by the EAT regarding the level of input from HR into the disciplinary script.

Whilst they did not uphold the ground of appeal, the EAT made some notable observations that they could *“see the force in the submission that the framing of these particular parts of the script was inappropriate, because they suggested what view Mr McLean should put forward”*. This appeared to be

particularly relevant to the part of the script that referred to the speaker having read the anonymous email, considered that it was *"one of the most unpleasant emails"* they had read, that they concurred with the investigation report's findings that *"its tone and language are aggressive and threatening and create an intimidating and hostile environment, that is clearly unwanted"*, and that his response to an email querying his involvement had been *"evasive"*.

This is a helpful reminder of the dangers in relying on prepared scripts for disciplinary matters, and emphasises the need for scripted questions to remain open, impartial and not tailored towards any particular response or outcome. The disciplinary decision-maker must be confident both that they have heard the employee's input before arriving at a decision, and that the decision reflects their own personal judgment on the matter. The input from HR teams (or indeed from internal or external counsel) should be limited to matters of law and procedure, and employers should be mindful that communications between HR and the disciplinary manager may not always be covered by legal advice or litigation privilege.

In addition, employers should take note of the issue raised in this case regarding the consent obtained to search Mr Alom's computer. As the EAT had determined that any breach of Article 8 rights was not pertinent to the fairness of the dismissal, it was not necessary to make a factual finding in relation to whether the search had been permitted or wrongful in any sense. However, counsel for Mr Alom alleged that the FCA's policy highlighting the possibility of such searches was insufficient to justify this particular exercise, and counsel for the FCA only relied upon the existence of this policy as part of a broader picture of why the search was proportionate (rather than being decisive). Employers should therefore bear in mind that a policy permitting monitoring of company

property may not, of itself, mean that all surveillance of an employee's activity is automatically permissible.

Finally, it is worth noting the EAT's approach to the evidence that should be provided to employees ahead of a disciplinary meeting. In particular, they focused on the fact that both the decision-maker and Mr Alom had been provided with the same evidence, and that the evidence which Mr Alom claimed had been withheld from him had not led to either of the disciplinary charges. This is a useful reminder for employers that if the decision to dismiss relies on documents which were not provided to the employee, this could have a considerable impact on whether a fair procedure has been followed.

[Alom v Financial Conduct Authority \[2025\] EAT 138](#)

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Competing for talent: do your HR practices risk breaching competition law?

In September, the Competition and Markets Authority (the CMA) published guidance for employers on how competition law

impacts staff recruitment and the setting of pay and other working conditions. In this briefing, we digest the key messages and outline the “dos” and don’ts” for employers.

Does competition law apply in the workplace and what are the consequences of getting it wrong?

The Competition Act 1988 is the main piece of law governing competition in the UK. It prohibits anti-competitive arrangements between businesses, covering formal or informal agreements and practices such as information sharing. In the workplace context, where organisations collude on matters such as hiring workers or setting pay or benefits this can have harmful consequences for workers, for example, by reducing their job mobility and/or reducing their ability to negotiate pay. It may also limit a business’s ability to grow.

The consequences of breaching competition law in the workplace are severe:

- Businesses that break competition law can be fined up to 10% of their annual worldwide turnover and prevented from bidding for public contracts. They may also be exposed to civil claims for damages.

- Individuals can be prosecuted and sentenced to up to five years in prison and/or a fine. If the individual

is also a director of the company, they may also be disqualified from being a director for up to 15 years.

What are “anti-competitive practices” in the labour market?

The guidance states that there are three main forms of anti-competitive behaviour within the labour market (all of which amount to “business cartels”): non-poaching, wage-fixing and sharing “competitively sensitive” information.

Non-poaching

Non-poaching covers agreements, understandings or practices whereby two or more employers agree not to poach or hire the other’s staff. This covers agreements not to hire or solicit staff, or not to do so without the other business’s consent. Importantly, the guidance highlights that such arrangements do not necessarily have to be mutual to be anti-competitive.

The guidance is careful to draw the distinction between unlawful non-poaching agreements and lawful non-solicitation of employees clauses of the kind seen in secondment or consultancy agreements or other types of commercial agreement. Such non-solicitation provisions might not break competition law if they are necessary to enable the agreement to be carried out and are otherwise proportionate.

Wage-fixing

Wage-fixing is when businesses competing for the same type of worker agree to fix pay and/or benefits and/or other terms and conditions of employment.

This could capture informal agreements between employers to cap pay or pay increases for the year. It might also capture a trade body's circulation of a list of "recommended pay rates" for roles within their particular sector.

Sharing "competitively sensitive" information

Information exchange and benchmarking are common and often beneficial business practices. Such practices can help firms enhance efficiency and improve HR management through insights into market standards. However, when competitively sensitive information is exchanged between actual or potential competitors in the labour market this *may* breach competition law.

Information exchange becomes problematic when it is "competitively sensitive". This means information which reduces market uncertainty, or influences competitors' strategic decisions on pay, benefits, or hiring practices. The guidance says the following "high level principles" provide a steer on when information exchange is likely to raise competition law concerns:

- *Public vs confidential*: Publicly available data is rarely sensitive, whereas sharing confidential or

restricted information is more likely to raise concerns.

- *Aggregated vs individualised:* Anonymised, aggregated data that cannot be linked to a specific business strategy is generally permissible. In contrast, the more easily information can be attributed to a particular business the more competitively sensitive that information is likely to be.

- *Past vs current and future:* Historic data will usually be less competitively sensitive than current or forward-looking information.

Even unilateral disclosures of competitively sensitive information can breach competition law (i.e. where information only flows one way). And it will be presumed that recipients of information have acted on the information *unless* they have clearly distanced themselves or reported the matter to the CMA. In March 2025, the CMA fined four companies more than £4 million for unlawfully exchanging pay information in the sports broadcasting sector. The businesses coordinated freelance pay rates to avoid a bidding competition. However, a fifth company involved in the information exchange obtained immunity from a fine by reporting the matter to the CMA.

The guidance goes on to give some examples of risky and less risky information-sharing activities:

Risky	Less risky
<ul style="list-style-type: none">• Sharing current pay rates with competitors.• Bilateral or unilateral disclosure of future pay intentions between competing employers.• Multilateral exchange (directly or through third parties) that provide insight into competitors' pay structures.• Informal or social conversations where competitively sensitive information is disclosed.	<ul style="list-style-type: none">• Benchmarking via independent third parties using anonymised and aggregated data.• Relying on publicly available sources, such as ONS data or job advertisements.• Industry discussions limited to non-sensitive HR topics, such as workforce development or education partnerships.

Are collective bargaining negotiations between workers and employers covered?

Collective bargaining is a process through which employers and workers (usually represented by trade unions) negotiate terms such as pay, benefits and working conditions. Successful negotiations typically result in a collective agreement setting out agreed terms and obligations for both sides.

While competition law can, in principle, apply to such discussions and agreements, the CMA guidance confirms that it will **not** seek to enforce competition law where workers and employers reach a genuine collective agreement.

The CMA also recognises that coordination between different employers may be a legitimate and necessary part of preparing for the collective bargaining process. Nevertheless, employers must not exchange competitively sensitive information with each other unless strictly necessary. Further, any coordination among employers *outside* the collective bargaining process may still be unlawful.

What does this mean for employers?

There are some important “dos” and “don’ts” for employers to stay on the right side of the line:

- Do make sure that HR and line managers involved in recruitment and/or setting pay and benefits understand how competition law affects those areas.

- Don’t agree with other businesses not to approach or hire each other’s employees – and remember this covers informal agreements or practices as well.

- Don’t agree with other businesses to align salary, benefits or salary increases.

- Do treat all non-public pay, benefits, and recruitment data as competitively sensitive.

- Don't share or discuss competitively sensitive information about your business or employees with competing employers, either directly or through a third party.

- Do ensure solid internal reporting processes are in place, and that staff are aware of these and how they can use them.

- Do seek legal advice before sharing pay or employment information with competitors or where a competitor or industry contact discloses such information to you.

[Competing for talent – CMA guidance \(9 September 2025\)](#)

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