

COMPETITION COMMISSION COUNCIL: TERMS OF REFERENCE¹

Membership

1. The membership of the Council consists of the Chairman and Deputy Chairmen of the Competition Commission (CC), the Member or Members appointed by the Secretary of State to serve on the Council, such other Members of the CC as the Secretary of State may appoint, and the Chief Executive.
2. The CC's Chief Legal Advisor, Senior Inquiry Director and Director of Corporate Services will also normally attend the Council's meetings. Other executive staff will be asked to attend as required.

Appointments

3. Members are appointed by the Secretary of State for the Department of Business Innovation and Skills (BIS).

Reporting

4. The Chairman of the CC reports to the responsible minister on behalf of the Council on all relevant issues contained in the CC's Framework Document.

Meetings

5. The Council will meet at least six times a year and at such other times as necessary.
6. Dates of meetings will be agreed annually in advance by the Members of the Council.
7. In addition, a minimum of five days notice must be given to all Members of any ad hoc meeting of the Council, provided that this requirement may be waived by the Chairman.

The Council's responsibilities

8. The Council is the CC's strategic board and is responsible for ensuring the efficient discharge of the CC's statutory functions and ensuring that the CC complies with any statutory or administrative requirements for the use of public funds.

¹ These terms of reference set out in one place the role of the Council. The statutory provisions establishing the Council are contained in schedule 7 to the Competition Act 1998 ("the Act"). The statutory functions of the Council are set out in paragraphs 5(3) and (3A) of the Act.

9. The Secretary of State for BIS has agreed that, consistent with its strategic aim of being one of the world's best competition authorities, one of the principal aims of the CC must be to carry out its statutory duties independently, impartially and fairly. The Council must also ensure that the CC:
- (a) Observes the highest standards of propriety involving impartiality, integrity and objectivity in relation to the stewardship of public money.
 - (b) Maximises value for money through ensuring that services are delivered in the most economical, efficient and effective way, within available resources.
 - (c) Is accountable to Parliament, users of services, individual citizens and staff for the activities of the CC, its stewardship of public funds and the extent to which key performance targets and objectives have been met.
 - (d) Complies with Government policies on openness and responsiveness.

The Council ensures that the principles above are adhered to by:

- i. Maintaining the independence of the CC; and
 - ii. Ensuring compliance with the Framework Document and Financial Memorandum between the CC and BIS.
10. The Council must ensure that appropriate arrangements are in place in relation to risk management, governance and internal control to enable the Council to assure itself of the effectiveness of the internal control and risk management systems within the CC.
11. The Council must be satisfied that the Chairman has set up an Audit Committee and a Remuneration Committee with appropriate terms of reference, which are chaired by independent non-executive Members and are able to provide independent advice to the Council and the Chief Executive as appropriate.
12. Under the CC's Framework Document the Council is responsible specifically for establishing and taking forward the strategic aims and objectives of the CC consistent with its enabling legislation, overall strategic direction and within the policy and resources framework determined by the Secretary of State and with that in mind:
- ensures that the responsible minister is kept informed of any changes which are likely to impact on the strategic direction of the CC or on the attainability of its targets, and determining the steps needed to deal with such changes;
 - ensures that any statutory or administrative requirements for the use of public funds are complied with; that the Council operates within the limits of its statutory authority and any delegated authority agreed with BIS, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Council takes into account guidance issued by BIS;
 - has oversight of the production of the business plan;

- ensures that the Council receives and reviews regular financial information concerning the management of the CC; is informed in a timely manner of any concerns about the activities of the CC; and provides positive assurance to BIS that appropriate action has been taken on such concerns;
- demonstrates high standards of corporate governance at all times, including by using the independent Audit Committee to help the Council to address key financial and other risks;
- ensures that section 9 (Competition Commission Staff) of this framework is implemented;
- formulates a strategy for ensuring full compliance with the Freedom of Information Act, and
- ensures that the CC formulates a strategy to ensure it manages its estate sustainably and in line with the Government's Framework for Sustainable Development on the Government Estate.

The Council's statutory duties

13. The Council's statutory duties are to:
- (a) oversee the preparation and production of the CC's Annual Report and Accounts as a single document to the Secretary of State and to Parliament on behalf of the CC by 30 June each year. The Council must ensure that the CC follows the guidance outlined in 5.5 to 5.6 of the CC's Framework Document;
 - (b) approve the CC's overall staffing complement and to ensure that the CC obtains BIS approval in terms of overall numbers and any non statutory changes to the terms and conditions offered to staff;
 - (c) publish general advice and information about the consideration by the CC of merger and market references and in relation to any matter connected with the exercise of its functions; and
 - (d) prepare and publish a statement of policy on penalties for non-provision of information.

Delegation

14. To the extent permitted by the originating legislation or other provisions under which the CC is established or to which it is subject, responsibility for day-to-day management matters must be delegated to staff so far as is practicable, within a clearly understood control framework. The Council must ensure that internal guidance identifies those matters delegated to staff and those reserved for decision by the Council. The latter include issues of corporate strategy; key strategic objectives and targets; major decisions involving the use of financial and other resources; and some personnel issues including key appointments and standards of conduct. A list of reserved functions is attached at Annex A.

15. The Council may decide to delegate responsibility for specified matters, where it has power to do so, to individual Members or committees of the Council. Decisions taken by individual Members or committees of the Council under delegated powers must be recorded in written minutes available to the Council as a whole. Where the Council has delegated its decision making authority on a specific matter to two or more committees and those committees do not agree on the best way to proceed, decision making authority will revert to Council.

Procedures

16. The Council has power to reach decisions by agreement in writing of a majority of the Members, or at meetings of the Council, by a majority of those Members present. Paragraph 5(5) of Schedule 7 to the Competition Act 1998 provides that the Chairman is to have a casting vote on any question being decided by the Council.
17. The quorum for meetings of the Council must be four including at least one non executive Member.
18. The Chairman may invite one or more Members of the CC to attend and speak at any meeting of the Council, but such Member will not be entitled to vote.
19. The Chairman may invite any other person, including CC staff, to attend and speak, but such a person will not be entitled to vote.
20. Before each meeting and upon receipt of the agenda and papers, Members of the Council are required to consider whether there is any potential for a conflict of interest. Detailed guidance on conflicts of interest can be found in Annex B.

The Competition Commission's Code of Practice for Council Members

21. The CC's Code of Practice for Council Members is attached as Annex C to these terms of reference. All Council Members must comply with this code at all times.

Reserved Functions

The Council has delegated specific functions to the Audit Committee and the Remuneration Committee. Additionally the Remedies Standing Group has a specific statutory role.

The Council does however reserve to itself the power of decision, approval or agreement, as the case may be, over certain matters which are summarised below.

1. Statutory duties

The Council's statutory duties are to:

- (e) oversee the preparation and production of the CC's Annual Report and Accounts as a single document to the Secretary of State and to Parliament on behalf of the CC within prescribed timescales each year. The Council must ensure that the CC follows the guidance outlined in 5.5 to 5.6 of the CC's Framework Document;
- (f) approve the CC's overall staffing complement and to ensure that the CC obtains BIS approval in relation to overall numbers and any non statutory changes to the terms and conditions offered to staff;
- (g) publish general advice and information about the consideration by the CC of merger and market references and in relation to any matter connected with the exercise of its functions; and
- (h) prepare and publish a statement of policy on penalties for non-provision of information.

2. Financial and strategic matters

Approval of the:

- Annual Budget;
- Annual Business Plan including setting the CC's strategic direction for the year and identifying key objectives; and
- Annual Report and Accounts.

3. Property

Any decisions in relation to property that have a significant long term impact on our costs or the space available for the CC to carry out its work.

4. Policy

The Council will discuss and agree the CC's response to any significant proposed changes in policy that may potentially affect the future (or future work) of the CC.

5. Delegation of authority

Approval of terms of reference for committees or groups with delegated authority from the Council at least every two years.

6. Governance

Approval of the framework document, financial memorandum and code of conduct for Council Members.

Ensuring that effective arrangements are in place in relation to risk management, governance and internal control.

Approval of the CC's conflicts of interest policy for Members and staff.

Conflicts of interest

1. Council Members will:
 - have regard to the policy of the CC on conflicts of interest, which can be found in the guidance on outside interests (*CC Guidance on outside interests*) on the CC website;
 - review before each meeting whether there are any interests which may conflict with their duties as Council Members and if so disclose them to the secretary of Council and, where appropriate, the CC planning team;
 - be asked by the Chairman at each meeting to confirm they have carried out such a review and made such disclosure;
 - not participate in any activity of the Council in relation to which they believe they have a conflict or possible conflict of interest without the consent of the Chairman.