

Supporting local areas to prioritise and meet the needs of children and young people with SEND

Ofsted visits in the autumn

Ofsted and Care Quality Commission (CQC) have been commissioned by the Department for Education (DfE) and Department for Health and Social Care (DHSC) to visit local areas to help improve their SEND systems following the COVID-19 disruption.

Ofsted and CQC will work collaboratively with local areas to understand the experiences of children and young people with SEND and their families during the pandemic, and to support local areas to prioritise and meet their needs.

The visits are not inspections, nor will they replace the current area SEND inspection cycle. They will give insights into how the SEND system is working from the autumn term, while the area SEND inspection cycle remains on hold. We will not give a formal judgement for a local area nor publish individual reports. We will share learning from these visits, alongside good practice and case studies, in national reports. This will help to strengthen the whole SEND system in a positive way.

Ofsted and CQC will return to complete the current inspection cycle when it is right to do so, and these visits will help us to determine when local areas will be ready for this.

A new framework

We are committed to promoting ongoing improvement in the SEND system beyond the current crisis, because we know that many of the problems we see now precede the pandemic. DfE, with the support of DHSC, has therefore formally commissioned Ofsted and CQC to develop a new area SEND inspection framework, with inspections beginning once the existing cycle finishes. This will be a regular cycle that will form a part of Ofsted and CQC's core inspection activity, continuing to hold areas to account for their SEND arrangements and promoting improvement.

[Ofsted has published a report that evaluates what has gone well](#) and what the new inspection framework could improve on.

Her Majesty's Chief Inspector, Amanda Spielman said:

There is no doubt that children and young people with SEND and their families have been affected significantly by the COVID-19 pandemic. Although many hard-working professionals and organisations have responded admirably by finding innovative ways

to support children and families, we must not lose sight of the wide-ranging disruption to essential support and services still faced by many.

Our joint visits to local areas with CQC will be collaborative and supportive, designed to support the whole SEND system. I am also very pleased that Ofsted and CQC have been commissioned by the Parliamentary Under-Secretary of State for Children and Families to develop a new, ongoing area SEND inspection framework. This will continue to drive lasting and vital improvement in the whole SEND system.

[HMCI commentary: the future of area special educational needs and disabilities inspections](#)

The pandemic's impact on children and young people with special educational needs and/or disabilities and their families

There is no doubt that children and people with special educational needs and/or disabilities (SEND) have been affected significantly by the COVID-19 (coronavirus) pandemic.

A recent report '[Left in lockdown](#)', published by the Disabled Children's Partnership, indicated that children and young people's friendships, learning, and mental and physical health have been negatively impacted. It highlighted concerns that disruption to essential education, health and care services, combined with increasing financial pressures, has left many families feeling exhausted and anxious – some even saying that they feel 'abandoned by society'. It showed that three quarters of families were no longer able to access the vital care and support that they rely on during the pandemic. Half of parents whose children receive therapies or extra support have seen this stop and many families have seen delays in statutory processes, such as annual reviews of education, health and care (EHC) plans.

The number of children and young people with EHC plans attending their school has increased steadily in recent weeks with about a quarter attending at the end of June. However, many parents have chosen not to take up the offer of a school place, due to concerns about their children's health or because they are not confident that the right provision is available at school.

Understandably, parents want the return of all education, health and care services to be well planned and carefully managed, including their children's return to school.

We must thank the hard-working professionals who have helped and supported children and young people with SEND during the pandemic – many organisations and individuals have responded admirably to a vast challenge. And yet, we cannot lose sight of the significant and wide-ranging disruption to essential support and services many families still face.

The SEND system was struggling before the pandemic hit

It is also clear that, despite the expertise and commitment of those working in SEND in England, many of the problems we now see in the SEND system precede the COVID-19 pandemic.

Before lockdown, Ofsted and Care Quality Commission (CQC) area SEND inspections identified a number of recurring weaknesses across local areas in England. These included:

- flaws, inconsistencies and delays in the identification of children and young people's needs
- not enough of a system-wide focus on providing high-quality universal education, health and care services
- a lack of clarity about who is responsible for what between organisations, resulting in fractures in the way professionals in these services work together

Area arrangements for identifying, assessing and meeting children and young people's education, health and care needs were frequently slow. They felt like a 'battle' for families as their concerns escalated. Too often, families were left feeling dissatisfied with their experience of area SEND arrangements because the quality of services and support failed to live up to what was envisaged in their children's EHC plans.

Helping to strengthen the SEND system before we re-start inspections

We know that area SEND inspections are important to children, young people and families because they provide valuable insights into how the SEND system is working for them.

However, we are not doing these inspections at the moment. The current levels of disruption to education, health and care services, as well as changing expectations of local areas during the pandemic, would make it impossible for us and CQC to make fair, valid and consistent inspection judgements.

We therefore think it is right that we do not return to area SEND inspections in the autumn, but instead focus on other ways we can help and support local areas to strengthen the SEND system in future.

Understanding the impact of the pandemic and supporting local areas to respond effectively

So, in the interim period before area SEND inspections restart, Ofsted and CQC will work collaboratively with local areas through a series of visits to:

- understand children and young people's experience and learn from what has worked well for them in this time
- support local areas to prioritise and meet the needs of children and young people with SEND in the context of the pandemic
- enable learning for all local areas, government and stakeholders on how best to strengthen the SEND system in future through a series of national reports

The visits will give us an insight into how well the system is working and allow us to see the point at which local areas will be ready for us to restart full inspections. We will use the expertise of our inspectors to help local areas get to that point in a strategic, supportive and evidence-based way.

These visits are not inspections, nor will they replace the current area SEND inspection cycle. They will start in the autumn term, while the inspection cycle remains suspended. We will not give a formal judgement or publish reports on individual local areas.

We will publish insights from these visits, alongside good practice and case studies, in national reports. This will help to strengthen the whole SEND system in a positive way.

Returning to area SEND inspection at the right time

Ofsted and CQC began inspecting area SEND arrangements in May 2016, and we have inspected 117 local areas to date. We plan to return to full area SEND inspections to complete the current cycle as soon as it is right to do so.

The inspections so far have been valuable, as our recent [evaluation of the programme](#) has shown.

Positive aspects of area SEND inspections from our evaluation

Area leaders and frontline professionals told us that the inspections have raised the profile of SEND in their local areas. They said that SEND was given a higher priority following inspection, which had helped with strategic decision-making and planning. They considered themselves to be more accountable for SEND provision across health, education, care and social care services than they had felt previously.

Frontline professionals said that the quality and coordination of EHC plans had improved because of the increased focus on SEND. Area professionals described having clearer direction from leaders and an improved structure for enabling change.

Area leaders and frontline staff also thought that receiving a joint inspection from both Ofsted and CQC reinforced their collective responsibilities. We heard that inspections have had a pronounced impact, especially in areas in which the partnership between education, health and social care had previously not been strong.

Inspection has also been a catalyst for access to some support and funding from external agencies, including the Department for Education and NHS England.

Limitations of current area SEND inspections from our evaluation

Our evaluation also showed some limitations of the current area SEND approach.

The one-off nature of the inspection cycle can encourage providers and areas to go for a short-term approach to improvement that fails to address the underlying issues in enough depth.

We have focused too much on the implementation of the government's 2014 SEND reforms and too little on the quality and impact of provision on children and young people's lives.

Area leaders and inspectors commented on the lack of focus on children's social care during area SEND inspections. Area leaders pointed out that this meant that one of the main partners in an area was neither able to articulate their contribution nor be held to account.

Developing a new ongoing area SEND inspection programme and framework

I am pleased to say that the Parliamentary Under-Secretary of State for Children and Families has commissioned Ofsted and CQC to develop a new area SEND inspection framework, to launch after the existing cycle has been completed. In doing so, we will work with the Department for Education and Department of Health and Social Care, alongside the many other partners involved, to develop the future framework.

We have agreed that the new framework will improve the current arrangements by:

- introducing a continuous cycle of inspections
- focusing inspection more sharply on the experience of children and young people with SEND and their families
- featuring more prominently in inspection the quality, integration and commissioning of education, health and care services for children and young people with SEND.

What we will focus on

We are using our knowledge of what has and has not worked well to help us to think about how we will inspect area SEND arrangements. We are thinking of

looking at:

- whether all leaders in an area have an ambitious, realistic and shared vision for children and young people with SEND
- how well leaders and practitioners, children, young people and families work together to co-produce decisions about planning and commissioning or delivering services and support
- the quality of universal and targeted education, health, care and social care services, including preventative services and the effectiveness of the graduated approach
- whether education, health and social care leaders in an area collaborate effectively to commission and plan high-quality, child-centred services that provide 'the right help at the right time'
- how well children and young people with SEND are prepared for their adult lives

We are also looking carefully at the things we have learned from our different inspection remits, as well as the joint area SEND inspections. We are considering:

- what children and young people with SEND and their families have told us about what is working and what could be better for them
- what other stakeholders, including those we inspect and regulate, have told us about how the SEND system is working
- the things we have learned from our inspection and regulation work in social care, early years, schools, and further education and skills, as well our work with CQC and other inspectorates in area SEND inspections and joint targeted area inspections (JTAIs), and how we can better align our approaches and connect everything we know about an area

Putting children and families at the heart of our plans

We want all our visits and inspection activities to improve the lives of children and young people with SEND, so that they are well prepared for education, employment, independent living and participation in society and well prepared to have as healthy a life as possible.

We will take time to listen to all our stakeholders to ensure that we understand children, young people and families' experiences and that we focus on the things that will make the biggest difference to them.

[Director's statement on the](#)

publication of the Labour Market Enforcement Annual Report 2018/19

This speech launches my [annual report](#) as Interim Director of Labour Market Enforcement (DLME) but it also an opportunity for me to comment on how compliance and enforcement strategy might respond to COVID-19 and its aftermath, including issues which have been highlighted by public and political concern about the treatment of workers in the Leicester garment trade.

In March 2018 my predecessor, Sir David Metcalf, submitted his first full [annual Labour Market Enforcement \(LME\) Strategy](#) to government. Today I am pleased to publish my annual report, assessing progress made in taking forward the recommendations from that Strategy. This annual report was submitted to ministers in February 2020 and assesses progress in taking forward those recommendations up to last October. I should like to pay tribute to the work of Sir David, as well as the excellent support I have received from the Office of the Director of Labour Market Enforcement team and the positive engagement I have had with our sponsor departments (Home Office and Department for Business, Energy and Industrial Strategy) and the enforcement bodies.

Government fully accepted 29 of 37 recommendations from the 2018/19 LME Strategy. Of the remainder, it partially accepted 2, committed to consult on 3 and rejected 3 others. Up to October 2019, 14 recommendations had been fully implemented or significantly progressed, while some progress had been made on another 14.

As well as being one of my statutory duties, the DLME annual report plays an important role benchmarking progress in labour market compliance and enforcement. Sometimes incremental change is difficult to see and of course bad news is always more newsworthy. So, I am pleased today to report on important, albeit sometimes gradual changes to improve the enforcement system. There have been welcome changes in the regulations themselves including the end of the Swedish derogation, new rules to improve access to and clarity of payslips for workers and a new day one statement of rights for all workers.

I have also been pleased to see real progress in the bodies that I oversee: working better together with each other and wider agencies with a stake in compliance and enforcement, becoming more outward looking and making better use of information. It is also good to see that Labour Market Enforcement Undertakings (LMEUs) and Orders (LMEOs) are increasingly being used by the enforcement bodies.

Less positively, I believe prosecutions are still being underused as a deterrence tool and penalties for non-compliance remain too low. Given concerns about supply chains – for example, highlighted by the Independent Anti-Slavery Commissioner in her recent report on Operation Fort – I am

disappointed that following the public consultation, there has yet to be any forward momentum on recommendations around joint responsibility in supply chains and hot goods. Also, there continue to be major gaps in information, particularly concerning the underlying incidence of non-compliance, which I hope my Office will be able to address through an innovative research project.

Of course, since the 2018/19 LME Strategy and follow-up annual report were delivered, the labour market and economy more generally are looking a lot different. While the recommendations made across all 3 full LME strategies since 2018 still stand, I want to use the opportunity of the publication of this annual report to reflect on how the COVID-19 pandemic and its economic fallout could and should change the debate about enforcement and compliance.

First, it is important to acknowledge the fast and comprehensive economic response of the government. The raft of measures introduced, including the job retention scheme, business grants and loans and the self-employment support scheme, have been decisive interventions which have helped protect businesses and individuals through what we all hope is the worst of the pandemic, and given both employers and workers a breathing space before the long haul to get our economy back on to an even keel.

The 3 enforcement bodies whose work I oversee are also deserving of praise for their response given the scale and unexpectedness of this crisis. The bodies moved their processes to remote working remarkably quickly and have continued to undertake enforcement visits where there is a risk to welfare of workers. The Gangmasters and Labour Abuse Authority (GLAA) put in place a temporary licensing scheme and has communicated well about how it is dealing with the crisis. The Employment Agency Standards Inspectorate (EAS) was very proactive in getting information out to agencies and alerting them to new risks. HM Revenue & Customs (HMRC) and National Minimum Wage (NMW) enforcement work has been impacted partly by temporary redeployment of staff to the furlough scheme, but also by so many businesses being effectively closed and hence unable to respond to requests for access to payroll records. Again, though, I have been encouraged that HMRC-NMW has, nevertheless, continued with their investigations, especially in relation to more severe non-compliance. I know each body will be reviewing how it has adapted to COVID-19 and I will look forward to reading and assessing these reflections.

One important issue from the crisis will be to understand more widely where workers turned to report concerns and seek help and advice. The enforcement agencies initially had fewer complaints and received less intelligence at the beginning of lockdown, although this is now recovering to expected levels, however the Advisory, Conciliation and Arbitration Service (ACAS) saw a big spike in calls at this time. I am also aware that third sector organisations, who are often the first port of call for vulnerable workers, have also worked hard to adapt their services to the situation, supporting their clients as best they could within the lockdown restrictions and dealing with the impact on their own resources.

One of the wider consequences of the lock down in society has been innovation in the use of digital channels and services. With both the medium-term issues

of safety and longer-term questions of effectiveness in mind, I am encouraging the agencies to consider how they could use technology more effectively. Looking further forward, my own view is that there is significant scope to explore how IT solutions could enable more accurate real-time remote record checking and hence boost compliance. Digital apps and platforms may also have the potential to provide better and safer routes for workers and the public to report concerns including, for example, whistleblowing to employers higher up labour supply chains.

As I reflect on the recent progress made by the enforcement bodies, I believe now is also a real opportunity to think about how the COVID-19 crisis has impacted the wider context for compliance and enforcement.

It is clear the crisis has exposed challenges facing casual workers and some groups among the self-employed. Research from the Standard Life Foundation based on a survey of households suggests that many people have fallen between the cracks of government schemes and that many more believe their situation will deteriorate in the coming months as the furlough scheme and Self-employment Income Support Scheme are wound down. As the Resolution Foundation has shown, lower earners are 3 times as likely to have lost their job or been furloughed as high earners and are more than twice as likely to do jobs exposing them to health risks. There are also important geographical and demographic, including racial, dimensions to the economic impact of the virus. These demand a range of policy interventions if we are to have a fair and sustainable recovery.

It is important to recognise that this is not simply about financial challenges for those affected directly. If people are pressured into working, or feel they have no choice, they may take health risks which not only put them at risk individually but also undermine the efforts to maintain a downward trajectory in cases.

A marked development as the crisis has developed is the greater public concern about poor working conditions and exploitation of those key workers on whose efforts we have so much relied. It has brought long standing issues to the forefront of attention. This is particularly true for care workers. My annual strategy for this year (2020/21) – delivered to government in March but hopefully soon to be published – highlights the many problems affecting the social care workforce, ranging from non-payment of the minimum wage to risks of severe labour exploitation. Public awareness around delivery drivers and food couriers has also become more acute, with many of the couriers who have come to our front doors lacking protections and entitlements because they are questionably designated as self-employed.

A concern for my Office, the enforcement agencies and wider law enforcement is what has happened or may be happening to workers in high risk sectors such as hand car washes and nail bars. With these businesses closed down there is a blind spot about what is happening to vulnerable workers in these sectors. Have they moved to other industries and employers? Is there an opportunity to reach them in more compliant sectors or are they being driven into greater exploitation, further out of the reach of the support from compliance and enforcement efforts?

And, of course, the crisis has also highlighted the issue of workplace health and safety seen rightly now as essential to safeguarding people's wellbeing and managing risk so that businesses can operate safely. We sometimes think of health and safety through a primarily industrial lens of hazardous substances or dangerous equipment but challenges such as social distancing or attending to the physical and mental wellbeing of staff working from home or having to use public transport come on top of the growing recognition pre-pandemic of mental health as a major workplace issue. Systematic non-compliance feeds more non-compliance. In the garment industry in Leicester and other cities, long standing issues about factory and building safety, non-payment of the minimum wage and the risk of exploitation have now been added to by concerns about social distancing and protective equipment.

Getting health and safety right, especially when it is more broadly defined, is an issue which underlines the importance of proper staff engagement. It has been good to see the cooperative spirit of working between the government and the trade unions during the crisis. I commend again the new much lower threshold – introduced on the first of April – for workers to mandate the right to representation, information, and consultation. I also welcome the recent increase in trade union membership and what appears to be a greater recognition among some employers of the role unions can play in sustaining effective employee relations.

Another issue highlighted by the crisis, but which has ramifications beyond it, is the emergence of labour shortages in sectors reliant on migrant workers, particularly agriculture. The anecdotal reports that many UK workers expressing an interest in Pick for Britain have not gone through to taking up a job, or not stuck it out for long highlights the conditions and risks in this sector, on which I also reflect in greater depth in my 2020/21 Strategy. It should also alert us to some of the issues which will surface under the planned – more restrictive – immigration regime following our exit from the EU.

Overarching all this, an extended period of economic recovery is bound to see more people desperate for work and more employers desperate to stay in business. This is an environment in which the temptation of non-compliance will be greater, while the resistance of those at risk to being exploited may be further reduced, something which threatens to undermine the competitiveness of those who stick by the rules.

In summary, the crisis and its aftermath have surfaced new dangers and vulnerabilities, deepened public understanding and concern, and started to shine light on a set of new policy and operational challenges.

Fortunately, the government has the opportunity to respond to these factors quickly through the Employment Bill – which will, I hope, address some of the issues still outstanding from my Good Work report of 2017 – and lead to the creation of a Single Enforcement Body (SEB).

We are still awaiting the results of the SEB consultation but, as this is a manifesto commitment, I expect government to go ahead with the establishment of the body. My Office made a substantive response to that consultation last

year, and the recent crisis has only strengthened my views further. I believe there is now a strong case to re-examine the scope for the SEB being much more ambitious than simply folding the EAS, GLAA and HMRC-NMW into 1 body.

A broader, better funded SEB would have several advantages:

- enhanced intelligence, sophisticated use of data and strategic capacity – building on links within HMRC, the National Crime Agency (NCA) and police to be able to develop a holistic approach to deep rooted problems of serious criminality, while also tackling the less severe end of the spectrum effectively
- the scope to create a joined up local compliance and enforcement service staffed by field officers. These officers would have effective but proportionate powers (perhaps building on the existing LAPO model) and be able to cover the range of compliance and enforcement issues, possibly including some capacity to identify health and safety issues. For example, in regard to concerns about garment factories in Leicester part of the solution is the long-term development of relationships with, and profile and trust among, employers and employees. A local SEB team could build strong collaborations with other local agencies, most obviously the police and local authorities.
- clearer route for complaints and support for workers, developing a 'brand' and reputation for the organisation that engenders trust and clarity over its role, its contact routes, and its enforcement response. In this, I believe we also need to look again at the role and management of an Employment Tribunal System which, despite the hard work of those within it, is under increasing strain
- the scale to engage employers and sectors in a joined-up way to develop collaborative and targeted approaches. There has been some speculation that the government has become interested in strengthening sectoral institutions as part of its industrial and recovery strategy. The GLAA has worked hard to develop protocols with groups employers in certain at risk industries, including the apparel protocol with the fashion trade, but a SEB could be more ambitious, developing comprehensive sector-wide compliance and enforcement strategies, starting with high risk areas like construction and social care

As well as re-examining the ambition and the remit of the SEB, I repeat the point I made in my response to the government consultation: that the process for shaping and designing the SEB should seek to engage stakeholders much more actively and openly. This is partly because they have a lot to offer, but also because the success of the SEB depends critically on its capacity to be a catalysing force in wider society. My Office stands ready to play a significant role in hosting and shaping this engagement.

The COVID-19 crisis has been tragic and far reaching. We have a profound responsibility to those who have suffered and those at risk of further suffering. Acting on what we have learned, committing to more comprehensive action on compliance and enforcement and seeking to develop a single enforcement body fully primed for the challenges ahead would be an important and fitting way for this country to live up to that responsibility.

Permanent protection from higher tax for military personnel in Scotland

More than 7,000 troops left out of pocket by higher taxes in Scotland will again be protected in the next financial year.

An annual payment will continue to be provided to serving personnel earning £28,443 or more a year to make sure that all British troops, regardless of where they are deployed or where their families are based, will pay the same income tax. The average payment made will be £850.

It follows a 2018 promise by defence that Scottish government tax hikes would not adversely affect serving personnel, amid concerns they could create low morale and result in Scotland becoming a less attractive place for military personnel to be posted.

The renewed measures, which will now apply indefinitely rather than being renewed annually, will protect nearly two thirds of all armed forces personnel liable for Scottish Income Tax and required to pay more in tax. They will also help with recruitment and retention, particularly as many of those affected are personnel with specialist skills, such as aircraft and submarine engineers.

By guaranteeing a permanent Scottish Income Tax Mitigation, the Ministry of Defence (MOD) is providing ongoing certainty to our armed forces. The minimum amount of mitigation that will be paid will remain at £12 and the maximum cap will be reviewed annually following the Scottish Government's announcement on tax rates and thresholds.

The financial compensation cap for armed forces personnel liable for Scottish Income Tax in Tax Year 2020/21 will remain at £2,200 following the last Scottish Government budget in March 2020. The estimated cost to the MOD is expected to be £6.8-million in financial year 2021/22.

Minister of State for Defence, Baroness Goldie said:

Our Armed Forces serve the whole of the UK, so it is only right that they are treated equally and fairly wherever they are based.

We want to reassure our brave troops that they won't be penalised for simply doing their duty by having to pay higher taxes in a certain part of the UK and they will be properly compensated in their pay slips each year.

The financial mitigation measures will:

- be payable to all regular personnel who pay Scottish Income Tax, regardless of where in the world they are serving. Mitigation of between £12 and £2,200 will be paid, with payments grossed up to take account of income tax and national insurance applied when they are made
- cover personnel for tax year 2020/21, with a single payment made retrospectively in June 2021

Scotland Secretary Alister Jack said:

The UK's Armed Forces make a huge contribution to Scottish communities and our economy. I welcome the UK Government decision to permanently protect them from the Scottish Government's decision to make Scotland the highest taxed part of the UK.

The professionalism, dedication and bravery of our servicemen and women can be seen throughout Scotland, the whole of the UK and across the globe, not least through their tireless work to support the UK-wide effort to combat the coronavirus pandemic.

Scotland is home to some of the most important UK Defence capabilities including HM Naval Base Clyde, home to Britain's nuclear deterrent and hunter-killer submarines: Stirling-based 51st Infantry Brigade and HQ Scotland, one of the Army's Adaptive Force Brigades, and other British Army units; RAF Lossiemouth, home to half of the UK's Typhoon force and submarine hunting maritime patrol aircraft.

The MOD spent nearly £1.76-billion with Scottish businesses in 2018/19 and an average of £320 expenditure per person each year. Its equipment plan is supporting Scottish business, jobs and skills far into the future; helping to make Scotland one of the most competitive places in the world to innovate, build business and deliver security. Scotland plays an important role in UK Defence supporting over 10,200 industry jobs and is renowned for building the world's finest warships including the UK's new aircraft carriers and the Royal Navy's state-of-art Type-26 frigates.

Korg fined £1.5 million for illegally preventing online price discounts

Background

When online resellers have the freedom to price items independently this leads to healthy competition – rivals strive to offer the best deal for customers and people can shop around for a better deal.

However, if a supplier dictates to its resellers a specific minimum price that they cannot drop below, or tries to stop them from selling at a reduced price, rival resellers are blocked from competing on price and customers lose out. This practice is known as Resale Price Maintenance (RPM) and is illegal.

We recently fined Korg, a supplier of electronic music equipment, £1.5 million for breaking the law by manipulating online resale prices in this way.

What Korg did

Between June 2015 and April 2018, Korg set minimum prices for its electronic music equipment and told resellers not to sell below these prices.

It monitored its resellers to make sure they complied with its minimum pricing policy. In order to make sure that resellers kept to these prices, Korg threatened (and sometimes applied) sanctions against those who advertised and sold at lower prices. For example, Korg:

- considered closing certain resellers' accounts
- temporarily restricted a reseller's access to a popular product range
- considered withholding financial support it otherwise would have given

These sanctions were clearly seen as a real risk to resellers who may otherwise have decided to offer lower prices to customers. One reseller noted that Korg would:

be monitoring those that get in line by the 14th and those that don't will not get the first extra marketing discount.

And that Korg had:

suspended a lot of accounts.

Korg used price-monitoring software, to monitor online prices (sometimes in real time), tracking prices to make sure resellers were selling at or above the prices Korg specified. Korg's monitoring was also helped by resellers

themselves reporting on one another and letting Korg know when other resellers were dropping their price. In one internal email exchange a reseller told a colleague to:

look at [market prices, to identify] anyone undercutting we can report.

Price monitoring software, when used correctly, should benefit competition by encouraging firms to undercut rivals. In this instance the software was misused as a tool for Korg to help keep resellers' prices artificially high.

How Korg broke the law

RPM is illegal because it cheats people out of a fair deal. It involves a supplier enforcing a minimum price, and therefore restricting the possibility of discounts – rather than allowing resellers to compete for business.

In this case, Korg's senior employees knew competition law well enough to train staff internally and knew the practice of setting a minimum resale price was illegal. One Korg employee noted internally that Korg:

need to stop this before we find ourselves being fined 10% of [...] turnover for the past 10 years!

However, Korg continued to enforce RPM, and established a culture of hiding its wrongdoing. Staff used increasingly secure, encrypted communication platforms, and tried to 'stop using direct language' when writing about Korg's policy. Korg tried to delete all records of the WhatsApp group used to enforce its minimum pricing policy.

What action we took

We fined Korg £1.5 million for breaking the law. The fine was increased because senior management was involved, and because the illegal behaviour was considered to be intentional – staff even knew what they were doing was against the law and sought to hide it.

In this case, Korg admitted to breaking the law, and cooperated with the CMA's investigation, and its fine was reduced to reflect this.

What the lessons are

There are a number of lessons that businesses can learn from this case, including an understanding that:

- It is illegal for a supplier to interfere with a reseller's ability to independently set their own price.
- The consequences of breaking competition law can include fines of up to

10% of a business's global turnover.

- The CMA has sophisticated means of gathering evidence and uncovering evidence even where the companies have tried to hide their actions by deleting communications.
- If you are ever asked not to put something down in writing, you should be suspicious as it could relate to something illegal. If so, you should seek legal advice and seriously consider whether to report the matter to the CMA.
- Directors and senior staff have a special responsibility to be well informed on competition law and make sure their companies are behaving legally and ethically.
- Attending compliance training alone isn't sufficient to be compliant – you must actively comply with the law.
- As a reseller you can also be investigated for breaking the law if you are found to have co-operated with a minimum pricing policy. If a supplier tries to make you comply with a minimum pricing policy, you should refuse and point them to our guidance. We would also urge you to report them to us. Resellers may also face enforcement action such as fines if they have gone along with the supplier's resale price policy.

What you can do

This case shows that it's important for suppliers and resellers to review their pricing practices so they don't risk entering into illegal agreements. Some of the ways to do this are to:

- Create a culture of compliance – everyone in your business must understand what they need to do to stay on the right side of competition law.
- Read our [60-second summary on RPM](#) and watch our video – both give pointers to help businesses avoid breaking the law.

[Video](#)