

Private healthcare provider fixed prices with consultants

What happened

In July 2020, the Competition and Markets Authority (CMA) found that a hospital belonging to a large healthcare provider, Spire Healthcare Ltd. (a member of the Spire Healthcare Group), and 7 private, consultant eye specialists, called ophthalmologists, had entered into an illegal agreement. The agreement was to fix the price of initial consultations for private self-pay patients at that hospital. It started in August 2017 and continued for at least two years until the CMA opened its investigation.

Price-fixing agreements can have negative impacts on patients. When the hospital and the consultants decided not to compete fairly by not setting their own prices, this deprived patients of the opportunity to shop around and get the best possible price for their consultation.

This is the CMA's second case that has involved private ophthalmology services in recent years. Read more about our [investigation into anti-competitive information exchange and pricing agreements](#).

What Spire and the consultants did

Spire manages private hospitals and clinics all over the UK and provides medical practitioners with access to their hospital facilities, such as consulting rooms and administrative support to carry out their initial consultations. In this case, the consultants were independent and self-employed, and set their own prices for self-pay initial consultations at the hospital.

The topic of fees for initial consultations was raised at a hospital dinner attended by the consultants. Afterwards, a Spire employee at the hospital emailed all the consultant ophthalmologists suggesting that the fee for their self-paying patients should be fixed at £200. One reason given was to simplify the pricing so that it was less confusing for patients. All but two responded in agreement.

The responses included statements such as "£200 fine with me" and "OK with me too". Spire thanked them for their responses saying "self-pay patients are led by price and how many of them select the lower end of the pricing scale for their initial consultation. By aligning the price we ensure that all consultants within the speciality have the same opportunity for new self-pay patients." Spire then informed its customer services team of the new pricing. Three of the consultants were already charging £200 and continued to do so, whilst four raised their prices from £180 to £200.

One consultant ophthalmologist did not agree to fix his prices and raised

competition concerns, saying in an email to Spire and all the other ophthalmologists “is there an issue of collusion not to be careful with here?”. He then let Spire know that he would not be changing his prices stating “for the now intend to keep my fees isq [in status quo] if I may[.] collusion is one issue; competition the other – I may see more? either way I don’t think it will help get more pts thru [sic] the door overall.” He did not share this information about his future prices with the other consultants. An employee of Spire responded to him on the same day thanking the consultant. There is no evidence that his warnings were heeded by Spire.

How this broke the law

Competition law exists to ensure businesses compete fairly and customers are protected from getting ripped off. Price-fixing agreements are among the most serious kinds of anti-competitive behaviour as they can cheat customers by forcing up prices or keeping them higher than they would otherwise be, and/or reducing quality and choice.

What action was taken

Spire was fined £1.2 million for instigating and facilitating the price-fixing agreement. 6 consultants were fined a total of £13,170 with individual fines ranging from £642 to £3,859.

A 20% reduction in fines was given to Spire and the 6 consultants because they admitted what they had done and co-operated with the CMA. One consultant was granted full immunity from fines, benefiting from the CMA’s ‘[leniency programme](#)’, as they were the first to report the illegal agreement to the CMA.

Lessons learnt

- never agree to fix prices or share future pricing information with competitors; it can be illegal to agree on pricing even if you don’t have to change your prices as a consequence
- never suggest or try to facilitate an arrangement where competitors fix or coordinate prices or share future pricing information
- you can find out what prices are charged by your competitors where this information is publicly available, but you must not discuss with rivals their future prices or pricing intentions
- if 2 or more competitors participate in an anti-competitive arrangement, whether written or verbal, it is illegal – it doesn’t matter if not all competitors in the market participate
- if you are approached to join an illegal pricing arrangement – reject the approach immediately and unequivocally, and report the incident to the CMA
- regardless of whether you are a medical practitioner in private practice, a small business or a sole trader – competition law equally applies to you

What you can do

- ignorance of the law is no excuse, make sure you, your employees and associates are clear on competition rules and how they apply to you – consider training to increase understanding of competition law
- ensure that staff know it is illegal for them to facilitate a meeting with other businesses where they make an illegal agreement, or even simply discuss their future prices
- if you are an independent medical practitioner in private practice but not an ophthalmologist, the issues arising from this case are still relevant to you
- you can find out key issues based on relevant past competition cases from the [CMA's guidance for medical practitioners](#)
- if in doubt about the legality of a business practice always seek independent legal advice

Benefits of co-operating with an investigation

- if a company is the first to report being part of a cartel and fully co-operates with an investigation, it can benefit from immunity from fines and its co-operating directors can avoid director disqualification
- even after an investigation has started, it can still benefit from reduced fines through our [leniency programme](#)
- individuals may also be eligible for immunity from prosecution and director disqualification if they come forward independently and cooperate with the investigation
- if you think you may have broken the law, we always recommend that you seek independent legal advice
- if you have information on other companies in your industry that may have been involved in an anti-competitive arrangement, report it to us; [you may qualify for a reward](#)