

# HOW TO PREPARE FOR AND DEAL WITH A DAWN RAID OR SEARCH

## How to prepare for and deal with a Dawn Raid or Search conducted by the Police, Serious Fraud Office or Financial Conduct Authority in the UK

Amongst the evidence gathering powers available to law enforcement authorities are the powers to enter and search premises. Often referred to as "dawn raids" such searches are by their very nature intrusive and while these powers are not used as frequently as other powers available to investigators, for instance to compel the production of documents, they are a tool kept in reserve for situations where those other powers may not be considered appropriate.

### How are searches authorised?

Except in the case of a search after arrest of the premises where the arrest took place or the premises where the arrested person was immediately before their arrest, law enforcement officers will need to apply to the court for a search warrant. In making their application they must satisfy the court that there are reasonable grounds to believe that there is material on the premises that is relevant to the matters under investigation and that a search warrant is necessary to secure that material.

Where a warrant is obtained under the powers available to the Serious Fraud Office or the Financial Conduct Authority a police officer must execute the warrant on their behalf and must remain on the premises to supervise the search. If the police officers leave the premises before the search is completed the warrant is invalidated.

### Can you challenge a search warrant?

It may be possible to challenge the validity of a search warrant, for instance where there are material errors on the warrant itself or where it can be shown that the officers making the application did not disclose all relevant information to the court. In order to ascertain whether there are grounds for challenging the warrant a copy of the information supporting the application should be requested at the earliest opportunity after the search.

### When do searches take place?

As the term "dawn raid" suggests searches will normally, but not always, commence in the early morning with the unannounced arrival of law enforcement officers. In some cases there may be more than one premises being raided at the same time, for example a business premises and the homes of employees who are considered suspects. These searches are normally conducted simultaneously to reduce the risk of suspects tipping each other off. Where any conduct under investigation took place in another jurisdiction it is possible that arrangements will have been made for concurrent searches to be undertaken in those jurisdictions.

### What powers do officers have during a search?

The search warrant gives the law enforcement officers the power to enter the premises and seize and retain relevant material, which will usually be listed on the warrant itself or on a schedule to the warrant. Relevant material can include computers, mobile phones, other electronic storage devices (which may include a business' servers) and hard copy files. Except in specific circumstances the powers granted under the warrant do not include a right to examine or seize material which is subject to legal professional privilege.

Where there are items which are not covered by the warrant but which the seizing officer believe are evidence of a crime, they can be seized by a police officer under powers contained in the Police & Criminal Evidence Act 1986.

### How can businesses prepare?

Business should consider drawing up dawn raid/search guidance and providing staff with training on how to respond. Such training will be important to provide to front line staff such as security guards and receptionists who are likely to have first contact with any officers carrying out a raid, but should also include HR and IT staff, managers and of course the executives of the business.

It can often be helpful to conduct a regular review of the guidance and update it and any training as necessary.

### How to respond during a search

- Keep calm and be polite to the police/investigators.
- Upon arrival show them to a meeting room away from the main reception and other working areas and offer to make them tea or coffee.
- Obtain a copy of the warrant. If there isn't one ask the police/investigators to explain the legal basis for the proposed search.
- Contact in-house or external counsel and senior management of the business.
- Identify a senior person in the business to be the key contact for the police/investigators during the search.
- Where external counsel has been contacted inform the police that they are on their way and ask the officers to delay the start of the search until Counsel arrive. If they refuse arrange for the search teams to be shadowed by designated members of staff.
- Keep a note of what investigators say and make a list of items requested and/or seized, along with a record of where investigators look (e.g. whose desks they search) and what they look for.
- If there is material which is responsive to the warrant but is subject to legal professional privilege make sure that you inform the officers. They have a duty to ensure that it is kept separate from non-privileged material. This will usually involve sealing the privileged material in an opaque bag which is often blue.
- If investigators ask you questions, check whether you are obliged to answer them and clarify on what legal basis they are asking. During a search, questions should be logistical in nature, e.g. "which desk does x use?", "where are the company servers?", etc.).
- A suspect who is interviewed under caution has a right to have legal representation and to remain silent (i.e. "no comment") during the interview.
- If legal counsel has been instructed inform the officers that you/employees are represented and that you wish to speak to counsel.
- At the conclusion of a search the officers should provide you with a list of all the items seized. If they do not ensure that you ask for one.
- Ensure that you have the contact details for the officers before they leave the premises.
- Where the search is being carried out by the police on behalf of another law enforcement agency ensure that you obtain the contact details of the person in charge of the investigation at that agency.

### What not to do

- Do not obstruct the search.
- Do not destroy, delete or hide any documents or information.
- Do not tip off anyone about the search.
- Do not sign any consent to search or similar without speaking to counsel.

For more information, please contact the author(s) of this alert



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