

# CMA Dawn Raids

## Inspector at the door

In the absence of your own “Dawn Raid Procedure”, here is a practical checklist for what to do during a dawn raid by the CMA. Note that this is a general guide to help you and your team to prepare for this kind of situation. It should not be relied on as legal advice. If the CMA does investigate you at your premises, you should seek legal advice and support on your specific circumstances as soon as possible.

### Three golden rules

- Try to keep a copy of all documents copied or removed by the Inspectors.
- Each Inspector must be accompanied at all times.
- Keep a written record of all questions and answers.



### The Knock

- **Let the Inspectors in.** Do not refuse entry without first obtaining legal advice. If the Inspectors have a UK Court Warrant or a CMA Authorisation, there are criminal penalties for the company and individuals if you intentionally obstruct the inspectors. There are also fines for failure to comply with their requests.
- Do not let the Inspectors out of the reception area until they have produced their personal identification documents and the documents authorising the investigation.
- **Alert legal advisers** and send them copies of the Inspectors’ documents. The Inspectors do not have to wait until your legal advisers arrive, but you are entitled to take legal advice, by telephone if necessary.

### Check Inspectors’ documents

- Which legislation do they suspect has been breached?
- The Inspectors will usually have a warrant. Take a copy and send to your legal adviser.
- The warrant will summarise the scope of the investigation: what companies, products, time period, alleged offence?

### Conduct of investigation

- Establish a key team (ideally a senior executive and deputy, executives (or lawyers) to shadow each Inspector, secretaries and legal advisers).
- Nowadays inspections are very focussed on a company’s IT systems. Inform your IT that assistance will be required for CMA to conduct its search, and that document destruction and deletion should be suspended immediately.
- Inform all staff that an investigation is taking place. Reassure them. Instruct them to be cooperative but not speak to officials without a lawyer or senior executive present, not do delete or destroy documents, and not to talk about the investigation to third parties or staff in other offices.

- Each Inspector must be accompanied at all times by at least one person and a written note made of what they ask for and where they go.
- Do not sign anything produced by the Inspectors without legal advice.
- If the Inspectors seal any rooms, filing cabinets or computer equipment, do not break the seals.
- The Inspectors have a right of access to all parts of the business premises.
- Do not allow the Inspectors to roam randomly around the offices: they must specify what they want to inspect - unless they have a UK warrant from the High Court or CAT, in which case they have the power to search for documents.

## Questions from the inspectors

- Inspectors are only allowed to ask questions related to the subject matter of the investigation.
- The Inspectors can ask for:
  - Information relating to facts, such as whether a given employee attended a particular meeting.
  - Explanations about or the production of any documents already in existence.
- The Inspectors cannot force you to provide answers that would require an admission that you have infringed the law (self-incrimination).
- If you are questioned by the Inspectors:
  - Keep your answers short, factual and accurate. Do not volunteer additional information or views.
  - If you do not understand the question or do not know the answer, say so clearly. Do not guess or speculate. Supplementary information can always be given in writing to the Inspectors at a later date.
  - Keep a written record of all questions asked and answers given.
  - If the question is vague, unclear or complex, ask the Inspectors to send you a written request. If the Inspectors insist on an immediate reply, ask them to write down the question and give a short written answer but reserve the right to supplement the answer later.
- Designate a senior executive to be the main person answering the Inspector's questions. However, the Inspector can ask questions of any person.



## Copying/removing documents

- Do not hand over legally privileged documents.
- Check if the document is within the scope of the Inspectors' authority. Take legal advice before finally refusing to allow them to have a document.
- If the Inspectors have served notice under section 52 of the Crime Justice and Police Act and it is not practical for the Inspectors to decide what is relevant on the premises, they may use their Crime Justice and Police Act seize and sift powers to take material that includes documents that are relevant or that may be relevant. (This may include imaging the contents of computers or removing computers.)
- If the Inspectors have a UK warrant from the High Court or CAT they can take copies of documents or originals. Always try to persuade them just to take copies.
- Ensure that you keep copies of all documents taken or copied by the Inspectors.
- If possible stamp all documents "CONFIDENTIAL" before handing them over.
- Do not replace files until after debriefing meetings with your legal advisers.



## Before the inspectors leave

- State that you are claiming confidentiality for all information in the copies or documents the Inspectors have taken.
- Ask for copies of the Inspectors' lists of the documents that have been copied or removed.
- Ask for a copy of any notes the Inspectors have taken, in particular of questions and answers.
- Make a written record of any areas of disagreement with the Inspectors.
- Reserve the right to challenge the Inspectors' authority to have taken certain copies or documents on the grounds of either legal privilege or the scope of their authority.

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