

**Dawn Raids**

A practical guide

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**What is a dawn raid?**

**Increased regulation and the introduction of failure to prevent offences places an increasing burden on a company’s compliance obligations and with it, the risk of internal wrongdoing. While measures should always be in place to prevent the commission of an offence within a company, what happens when it all goes wrong?**

In circumstances where an authority (for example, the Police, HM Revenue & Customs, Serious Fraud Office, National Crime Agency) suspects that a regulatory or criminal offence has taken place, the investigating authority may conduct a ‘dawn raid’ — an impromptu, unexpected and often disruptive

search of the suspect’s business premises which may extend to their home and other properties associated with the suspect and their business.

Although described as a ‘dawn raid’, in reality a raid can be conducted at any time of day.



**Circumstances that may lead to a dawn raid**

**Many scenarios could prompt a dawn raid and there are a number of ways in which an authority might investigate suspected criminality, including compelled or voluntary interviews. However — given the nature of a dawn raid and the focus on evidence preservation — these are normally conducted where there is suspicion of serious criminality and concern that evidence will be lost or destroyed, or where there is some urgency to conduct the investigation.**

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| By way of example, officers may conduct a dawn raid where there is suspicion that:  1. A senior manager has committed a fraud (for example furlough fraud) that benefits your business and HMRC believes that your company is retaining the benefit of the offence (Section 327-329 Proceeds of Crime Act 2002). | 1. Your business has obtained a commercial advantage — such as securing a contract — as a result of providing a bribe (Section 1 Bribery Act 2010). 2. Your company has engaged in a cartel offence —     such as a ‘bid rigging’ arrangement — to secure a contract (Section 188 Enterprise Act 2002). |
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**Authority**

**Powers to conduct such searches are generally (though not strictly) granted by warrant and geared towards the preservation of evidence. Although there are other mechanisms to allow both compelled and voluntary surrender of evidence, by conducting a dawn raid without notice, they are the favoured instrument in the investigatory tool kit where there is concern of serious internal regulatory breaches or criminal activity. It should be noted that law enforcement have other powers of search, seizure and the obtaining of evidence (for example, after an arrest or upon obtaining a production order). However, this guide deals specifically with searches conducted under warrant.**

A warrant may be obtained on application on the grounds of ‘reasonable suspicion’ that an offence has been committed. Such applications are usually made ex-parte, in the absence of the suspect and without their knowledge.

There is no one authority with the power to conduct a dawn raid. Such powers are granted by the issue of a warrant to the Police in addition to His Majesties Revenue & Customs, National Crime Agency, Serious Fraud Office, Health and Safety Executive, Competition and Markets Authority, Information Commissioner and the Financial Conduct Authority among others.

**Practical steps to take during a dawn raid**

**Companies should have dawn raid procedures in place to ensure that all employees know what to do in the event of a raid.**

A policy should include (among other things) the procedural and responsive steps that should be taken in the event that an officer executes a dawn raid warrant at your premises.

1. **Brief reception staff.** Receptionists are likely to

be the first to greet investigators and while they may ultimately not form part of the internal raid response team, their immediate actions in this scenario are key. It is important that reception staff deal with officers in a professional and cooperative manner. However, they should not attempt to engage with the officers by offering information, signing any documents or alerting anyone other than the appropriate dawn raid contact as identified in the dawn raid policy.

1. **Alert senior staff (raid response team).** Staff who are sufficiently senior to respond in the event of a dawn raid should be identified within the company’s dawn raid policy. These individuals should have received guidance on how to respond in such a situation.
2. **Direct officers to a private area to await the arrival of senior staff.** Officers who are amenable to such a request should be directed to a private area to ensure that employees and members of the public are not alerted to their presence.
3. **Contact your legal representative.** Those responsible for dealing with investigators should also immediately notify the company’s legal representative. However, they may decline to do so in circumstances where the corporate’s in-house counsel is present.



5. **Scrutinise the warrant.**

* Request a copy of the warrant.
* This will identify the premises that the officers are authorised to search. It is important that the scope of the warrant is identified and that the officers search is limited to the premises identified in the warrant.
* The warrant will identify the scope of the material sought by officers conducting the search but will often be drafted in very wide terms. Your legal advisors will advise on these issues.
* The warrant will also be time-limited, often necessitating officers to work at pace. Senior staff supervising the raid should check the date upon which the warrant was issued and the date it expires to ensure the validity of the warrant.
* Identify who is authorised to conduct the search. The warrant will identify the officers who are authorised to conduct the search. Care should be taken to identify the officers attending the premises, which may require requesting proof of appropriate identification.
* Legal professional privilege (LPP) attaches to communications between lawyers and their clients and protects those documents from disclosure to another party, including the Police, HMRC, Serious Fraud Office and so on. It is important to alert the officers to the existence of material that may be subject to legal professional privilege and — **if it is their intention to seize the material** — to invite them to deal the documents in what is known as a ‘blue bag’ for further review by an independent lawyer or barrister. See more on the issue of LPP later in this note.

6. **Ensure document retention.** All staff should

be alerted to ensure that any routine document destruction is ceased.

1. **Remove employees from the premises.** Any employees who are not identified as being part of the raid response team should be asked to leave the premises, unless there is a specific reason to require their attendance (such as having unique knowledge of the subject of the enquiry or holding passwords/security details.
2. **Make a record of the search.** During the course of the raid, a contemporaneous note documenting the activity of the investigators should be maintained. This should include the areas of the premises that have been searched, the questions that have been asked (and to whom) and an itemised list of any documents/ items seized.
3. **Do not obstruct the investigators.** To do so may amount to a criminal offence.
4. **At the conclusion of the raid do request a copy of the search records which should identify the documents seized and from where.** If this is refused, make a note of the request and to whom the request was made.

During the course of the raid, subject to the authority provided by the warrant, the investigator will typically have the power to:

1. Search the premises identified within the warrant.
2. Inspect documents and electronic material.
3. Seize original documents.
4. Obtain copies of documents.
5. Preserve or prevent the destruction or interference with documents.
6. Ask fact finding questions to identify the location of material or facilitate access to material (such as through the provision of passwords).



Legal professional privilege

**Importantly, investigating officers do not have the power to seize or make copies of documents to which Legal professional privilege applies. Exchanges or documents created in the course of obtaining professional legal advice from a legal representative will ordinarily attract such status. Such documents may not always be obvious — and therefore where there is disagreement as to the status of a document, it should be preserved so that independent expert opinion can be obtained.**

Where there is disagreement, it is practice for documents to be seized in a restricted folder (known as ‘blue bagging’), where a later claim for privilege can be made. Officers will then be obliged to instruct independent counsel to assist in identifying the status of documents.



It should also be borne in mind that when conducting a raid, officers are doing so with the intent to gather evidence in the course of investigating suspected criminal activity. It is possible that evidence gathering during the course of the search identifies evidence that provides reasonable grounds to identify a person who is reasonably suspected of having committed an offence, **leading to their arrest.**

Failing to cooperate — consequences

**While a dawn raid is not an interview, to facilitate the primary purpose of the search — which is to identify and preserve evidence — investigators are likely to ask questions.**

It is important that all employees act with integrity and honesty during the course of a raid and provide accurate and correct information. In this regard, caution should be exercised to ensure that officers are directed to the appropriate employee to obtain relevant information so as to ensure that qualified and informed responses are provided.

This also extends to the provision of documents (that are not subject to LPP). Any attempt to provide incorrect or misleading information or to destroy, hide or disguise information could amount to an

offence of perverting the course of justice — a criminal offence committed by the individual concerned, punishable by a period of imprisonment.

Failing to comply with the requirements of or attempting to obstruct the search will also amount to a separate criminal offence. Sanctions for such conduct will be dictated by the legislative powers under which the investigating authority is acting and will typically include a fine, imprisonment or both.



What to do after a dawn raid

**Notwithstanding the anxiety surrounding the possibility of prosecution, the occurrence of a dawn raid is likely to be incredibly disruptive and potentially commercially sensitive for you and your company.**

Immediately after a dawn raid, there are a multitude of urgent and important matters that a business should address with their lawyers, who should already be on notice of the raid.

These issues include:

1. **Seeking legal advice in respect of any disputed legal privileged documents.** Where there has been a dispute as to the status of a document, advice should be sought from a third party to establish whether legal professional privilege applies and consequently whether the document is disclosable.
2. **Consider any voluntary disclosures.** While the company may not have had any knowledge of the allegations brought to light by the occurrence of a dawn raid, upon reflection the company should take legal advice and consider whether there is material within its possession — outside the scope of the warrant — that may assist the investigation. Careful consideration should be given to any further voluntary disclosures. Guidance suggests that the timing of a disclosure is a public interest factor against prosecution.
3. **Consider the basis of the investigators’ suspicion/allegation and identify whether any individuals may be implicated.** This view may be formed easily — for example, if an individual has been arrested as a result of the raid. In such circumstances, consideration must be given to whether individuals should be suspended or dismissed, subject to legal advice.
4. **Manage any negative media/commercial concerns.** News travels fast and depending on the seriousness of the allegations levied, a dawn raid may result in a press release or gossip in the industry that could be damaging for both you and your business. Employees should be alert to the fact that a raid is very much the beginning of an investigation and what is said in response to speculation and media attention could be damaging in future proceedings. A standard form of wording should be agreed and circulated to ensure a uniform and consistent position is maintained.
5. **Consider any reporting obligations.** While it is likely that a regulatory authority or law enforcement agency will have been consulted or even had conduct of the raid, a company should consider whether any reporting obligations arise. Specialist legal advice should be obtained to assist.
6. **Consider if a litigation hold is necessary.** While the dawn raid may have concluded, it is feasible that a further warrant is obtained to enable officers to conduct a broader search. Evidence that is deliberately destroyed in the knowledge of an ongoing criminal enquiry could amount to an attempt to pervert the course of justice. A litigation hold means formally notifying all employees to ensure that all data and documentation is preserved pending the conclusion of the enquiry.



How to prepare for a dawn raid

**Although a company may, on the face of it, appear to operate entirely ethically, the increasing number of corporate criminal offences that seek to attribute liability for the criminal actions of its associated persons — together with changes to the way in which companies can be held criminally responsible for the actions of their senior managers — means that corporates should prepare for every eventuality.**

The very nature of a dawn raid means that you are likely to be faced with a perplexing situation and unaware of the correct course of action. The consequences of not handling the situation appropriately can be detrimental to you and your company and so an appropriate policy should be in place to ensure that there is an action plan that you and your staff can implement should the situation ever arise.

Corporates should have dawn raid policies and procedures in place with which employees are familiar. This will ensure a reactive response should an investigator arrive.

Such an action plan should include:

* Appointing lawyers with expertise in regulatory and criminal investigations — who are able to attend the search and ensure that the search is conducted lawfully — to document the raid and the gathering of evidence and identify evidence that is beyond the scope of the warrant or

documents that are subject to legal professional privilege.

* Identifying staff who are to be responsible in a raid. It is important that during the course of a raid, appropriately senior and qualified staff are available to respond to and provide documents to officers. This will include identifying employees to shadow investigators during the raid — documenting activity and compiling a list of seized items.
* Ensuring that all staff members are aware of the procedure and policy. The first alert that a company has to the arrival of officers to conduct a dawn raid will likely be when they enter the front door of your business. Here, they may be greeted by a receptionist or junior staff, who should be trained and informed of how to deal with a situation. This will include ensuring that officers are asked to wait while senior management are informed and managing any visitors who are expected to attend the premises.



**Talk to us**

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**Our** [**business crime and compliance team**](https://www.brabners.com/services/business-crime-compliance) **has a wealth of experience in representing clients subject to dawn raids.**

**Our multidisciplinary regulatory approach means that we have the resources to assist you with any resulting action, whether that be regulatory or criminal proceedings.**

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