

Dealing with dawn raids

Jack Prytherch explains what you should do if your business is raided by HMRC, and how you should react to it afterwards

As part of their criminal investigatory powers (generally set out under PACE 1984), HMRC can carry out searches of home and business premises under a search warrant. These searches are often referred to as 'dawn raids' because they generally take place in the early hours of the morning.

As well as being disruptive and intimidating for those present, a dawn raid will often raise complex legal issues and can signal the start of a protracted investigation that could ultimately result in criminal prosecution. In the event of a search, therefore, it is critical that the affected persons and their advisors seek appropriate legal advice as soon as possible.

However, HMRC are not obliged to wait for legal representatives to be present before conducting searches. This article therefore sets out some of the simple steps that all individuals and businesses can take to ensure that they are best protected until legal help arrives.

Before the search begins

Preparation is key

It is usually helpful for businesses to have in place standard protocols that are shared with staff in advance so that they are prepared in case HMRC officers ever burst through the door (and these may form a useful part of any existing business continuity plans).

We normally recommend designating responsibility for coordinating the response to a search to at least one employee (with contingency protocols in case they are not present). This will usually be a senior individual within the business but other employees will also need to be part of the protocols put in place. For example, any reception/security staff will usually be the first point of contact for the HMRC search party and they are likely to be very alarmed unless sufficiently prepared. Their primary responsibilities are likely to include identifying the HMRC officers in attendance and (where available) asking them to wait in a conference room (out of sight) while the designated employee is quickly called to take over.

Immediately seek appropriate legal advice

Clearly, most clients deal with their general tax advisors on a day-to-day basis and will not have need to instruct specialist legal advice until it is specifically required. To ensure that clients can get the help they need as quickly as possible, tax advisors should therefore consider establishing an informal arrangement with a firm of solicitors that has expertise in this area.

Clients should (politely) request that HMRC do not begin their search until their legal team is present and give a timescale for their arrival. Alternatively, they can ask the lead officer to speak to their solicitor on the telephone. However, it is important to bear in mind that the search warrant will generally restrict the amount of time for the search to take place and so HMRC will be reluctant to delay the start of their search. HMRC officers are not obliged to wait and it is critical that they are not physically obstructed.

In the case of a residential search, it is not always possible to have the same kind of protocols and preparation in place. Contact details of an appointed legal team is a sensible addition to the kitchen drawer of any director/senior manager and their immediate family.

Establish the scope of the search

HMRC will require a warrant to conduct their search. If a copy is not presented by an officer one should be requested (and forwarded to the legal team, hopefully en route or in communication with HMRC by that point) as soon as possible.

The search warrant will contain important information including, in particular, the precise scope of the search (for example, the location, the permitted timing, what types of items may be removed, etc.). It is therefore important to check this document very carefully before the search begins in order to know under what parameters HMRC have been authorised to operate. The legal team will advise on the scope of the warrant in due course, so common sense should be applied at this stage.

Checking the details of the warrant has become even more important since the Covid-19 pandemic began, as social distancing requirements may mean that search warrants will be more restricted than usual and will contain further conditions (for example, that HMRC officers must have a temperature test before entering premises, that social distancing measures are taken, and that protective equipment such as masks and gloves are worn at all times).

In general, it is advisable to try to understand from the HMRC officers exactly how they intend to conduct the search and what they are looking for. It is fine to ask questions and it may help to provide useful information.

During the search

Don't obstruct

HMRC officers must not be obstructed in any way and no attempt should be made to destroy or conceal documents/data – either of these actions is a criminal offence and can lead to arrest.

Note everything

Although HMRC officers may not be obstructed, it is important that they are accompanied while on the premises where possible. If the legal team has not yet arrived, businesses should allocate a member of staff to 'shadow' each HMRC officer. Legal teams will often request a very detailed brief of the search once HMRC have left so each 'shadow' should note as many details as possible (including any questions/responses and all documents examined, copied or removed). The 'shadow' team should be given a copy of the warrant so that they can flag where the search appears to be going beyond the permitted scope.

In a home setting, most of the above may not be possible and the focus will be largely on family welfare (including dealing with any arrests or the loss of personal property).

IT know-how

Subject to the terms of the warrant, HMRC officers have authority to examine, copy or remove documents, including information stored electronically. Servers and mobile devices (including personal devices that receive business communications) can normally be seized and may not be seen again for several months. It is therefore important to have a member of IT staff present to understand exactly what HMRC officers are doing.

Is it privileged?

HMRC officers are not permitted to examine or seize any material that is subject to legal professional privilege (LPP). Clearly, whether a particular document is subject to LPP is a complex legal question and one of the key reasons that legal advisors should be called to attend as soon as possible. It may, however, be helpful for clients to know the following basics:

There are two types of LPP:

- Legal advice privilege applies to confidential communications between a legal adviser and their client which has come into existence for the dominant purpose of obtaining/giving legal advice (even where no legal proceedings are contemplated); and
- Litigation privilege applies to any confidential communication between a legal adviser and their client, or the legal adviser or client and a third party, provided that it has come into existence for the dominant purpose of litigation.

Communications between clients and non-legal advisers (such as accountants) will not be privileged.

Where there is a dispute over whether LPP applies to a document, it should be bagged and sealed separately for later adjudication.

Staff and family

The HMRC officers conducting the search are there to examine, copy and/or remove documents – not to interview members of staff/family. Members of staff/family should be instructed not to answer any questions put to them that extend beyond issues immediately relating to the search (for example, asking how to find or access a particular document).

HMRC officers are permitted to carry out a (same-sex only) physical search of any person on the premises but only if they have reasonable cause to believe that the person is in possession of material likely to be of substantial value to the investigation of an alleged offence. It is therefore important to ask them to explain their rationale in case of any physical search for the record.

If arrests are carried out, arrangements should be put in place immediately for appropriate legal representation as HMRC will want to conduct interviews under caution as soon as possible.

After the search

Once a search has ended, the immediate focus should be on the legal issues surrounding the search itself. People often take too long to appoint legal teams following a search, missing out on urgent advice that could protect their position.

HMRC's review of any seized material, together with any further formal information requests and interviews forming part of their investigations may take several months – often years – to complete. There is no limitation period for HMRC to conduct their work, although there may be potential human rights considerations in certain circumstances.

Individuals or businesses under investigation would be well-advised to use any time after a search wisely to prepare their defence cases with their legal advisors – by the time a charging decision is made, many 'defendants' are well behind the start line in respect of their defence.

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