

## Precautions that have to be taken if someone fears a raid

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3 Sep 2015

**With regular, dramatic arrests regarding forex and fraud, we take the first of a two-part look at precautions that have to be taken if someone fears a raid. Here we consider the importance of procedures.**



Talk of ponzi schemes, forex fraud and Libor rate rigging have sparked a number of arrests, not to mention speculation about the next company or premises to be raided. Arguably the highest profile incident, was the raid on City forex trader Capital World Markets (CWM), which saw 13 staff who work at its prestigious base in Heron Tower arrested over suspected fraud and money laundering.

The CWM raid saw a team of 15 police plus police dogs arriving suddenly at the company's City of London base to carry out arrests, seize computers and take away large amounts of documents.

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Raids are rarely subtle events. It does not matter which authority carries it out, a raid has the same purpose: to find evidence that can help further their enquiries. The authorities have many powers in such raids. But they are not all-powerful and, with the right help and advice, a company can minimise the effect a raid has and the damage it causes. Those raided can also, if they take the right approach, ensure that the authorities do not exceed their powers, thus allowing those raided the best possible chance to contest allegations against them.

## **Challenge**

The challenge is to make sure that a company is prepared if and when a raid is to be carried out. In this article and one in next month's newsletter, we will examine what can be done to manage a raid on your company as effectively as possible. This article will concern itself with how to be prepared for a raid while next month's will look at what challenges can be made to the raiders.

Taking the time to devise procedures may not seem much fun but it can be effective. Having the people likely to come into contact with raiders well advised and briefed can prevent the authorities overstepping the mark when it comes to what material they can seize raiders. If management, IT staff, accountants, receptionists and security staff know their roles in a raid they can make it less likely that the raiders will be able to take everything. This will mean that the business will be in a stronger position to defend itself and keep functioning during the investigation period.

By checking matters such as whether the search warrant was issued properly, if the raiders have permission to raid that particular premises and whether the raiders are exactly the people named on the mandate can reduce the scope for investigators going beyond their legal remit. In *R (Cook) V Serious Organised Crime Agency 2011*, the seizure of computers and documents was deemed unlawful because raiders did not leave schedules to the warrant at the premises, as they should have done by law. Requesting that a company's legal representative be present during the raid is a commonsense request. But such things do not always occur to those being raided in the heat of the moment.

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## **Proactive**

It is for precisely these reasons that companies should be proactive and prepare for the likelihood of a raid rather than simply react meekly if and when it happens. If you are being raided and told you are facing major allegations such as ponzi fraud, money laundering, forex offences or Libor rigging, it will be virtually impossible to devise a strategy on the spot to retain all relevant materials, – including those that are legally privileged- ensure you have comprehensive notes of all questions asked and answers given and keep overzealous raiders in check.

This is why drawing up a strategy in advance is essential. Having a procedure established so that the aforementioned issues are covered will make life easier as the investigation proceeds. It is less stressful and time consuming to limit the potential excesses of a raid from the moment it happens than it is to have to chase to gain back what is rightfully yours – and, therefore, wrongly seized – after it has been taken

Such a procedure can be the difference between a raided company continuing to function effectively and failing to keep doing business because they lack materials and computer equipment.

## **Advice**

Companies that have the knowledge and legal expertise to draw up such a raid procedure are few and far between. But expert legal advice is available to create such a procedure. Bigger, wealthier companies can afford to engage in prolonged legal disputes after a raid. They can certainly cause problems for authorities who carry out raids without following the letter of the law. But such marathon efforts can be unnecessary if a company has done its homework and devised a procedure before, rather than after, a raid.

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to limit the effects of a raid will always be more effective if used in conjunction with a well thought-out raid procedure.

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