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Industry Information

## Jersey and Guernsey Employment Law: Dawn Raids at Employee's Houses

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### Introduction

The rapid uptake of agile working over the past year and a half has contributed to the ever increasing blurring of lines between home and work, and the question of where the workplace starts and ends. It is worth remembering that for most scenarios an employee's workplace does not need to be an office or the business premises of the employer. It can, in appropriate circumstances, encompass anywhere the employee is working.

This blurring gives rise to a number of regulatory and legal risks, which we have previously discussed (on [Dealing with Requests for Flexible Working under Jersey and Guernsey Law](#), [The Covid-19 Balancing Act for Regulated Businesses in Jersey and Guernsey](#), and [Fit and Proper - How to Manage Employee Breaches if You Are a Regulated Business](#)). One of the potential issues arising from having staff working from home that has so far not seen any discussion in the Channel Islands is around dawn raids.

### Dawn Raids

The regulators in both Islands have the power to carry out a "dawn raid" in appropriate cases, where they are seeking to carry out investigatory or enforcement steps against regulated financial services businesses. The primary powers are contained in the Financial Services (Jersey) Law 1998 (FSJL 1998) and the Banking Business (Jersey) Law 1991 (BBJL 1991) in Jersey and The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 in Guernsey.

In general terms a regulator can apply to the Royal Court for a warrant authorising a police officer and any other named person (in practice someone from the regulator's enforcement team) to enter any specified premises to search those premises and obtain information or take possession of any documents appearing to be information or documents relevant to a breach of the relevant legislation. Normally these warrants are issued where the regulator has been obstructed by the regulated entity or the regulator suspects that the regulated entity has withheld or may destroy relevant documents.

It is clear from the relevant laws in both Islands that the power to order a dawn raid extends over private premises. The warrant can direct entry into "any premises" which is not limited by reference to the employer's place of business or workplace. We are not aware of any cases in the Channel Islands where a dawn raid has taken place at an employee's home. Whilst regulators in a number of European jurisdictions have the power to raid domestic premises, so far there are few reported cases of them doing so.

Whilst the regulators in both Islands took a more relaxed approach to work from home during the mandatory lock-downs, this is unlikely to be the case going forwards and increasingly they will want to ensure that agile working does not compromise regulatory standards and safeguards. When most employees were working almost exclusively in the office it was unlikely that they would have any relevant documents at home, and so there was a limited risk of a dawn raid at an employee's home.

With significant numbers of businesses embracing agile working, the risk to businesses and employees has increased, as employees are more likely to work from home and print, take home or have hard copies of work documents as a result. Regulated financial services businesses in the Channel Islands need to consider this increased risk and ensure that they have appropriate policies and procedures to limit documents employees have at home



as well as a dawn raid policy so that they are prepared to deal with the execution of any warrants.

When faced with a dawn raid we recommend immediately engaging external lawyers to attend, in order to supervise the execution of the warrant, and to ensure that any documents seized meet the wording of the warrant. Ordinarily the police and the regulator will allow a short period of time for external lawyers to be appointed and arrive at the premises.

Individuals should also consider what documents they have, and where they are stored. There is a possibility that personal documents and information could be captured by a warrant or taken following a dawn raid if these personal items are mixed with work documents.

### Practical Steps

In order to limit the risk of employees having any relevant documents in their homes, businesses should review their agile working, data protection and IT policies to restrict or prevent employees from taking documents home, or sending them to their personal devices or emails. Businesses should also consider limiting the ability to print documents from outside the office, to try and restrict employees from printing and retaining documents at home.

Where exceptions are made and employees are allowed a limited number of documents to work on a specific project they should be given clear guidance to ensure those documents are stored separately from the employee's personal documents and information. Businesses should also ensure that the employee returns those documents when they are no longer required.

Regulated financial services businesses should have in place a dawn raid policy, which sets out what should happen if a dawn raid takes place, including who should be notified and how. Normally we would expect specified external counsel to be identified in that policy. Consideration should be given to having a specific policy for home dawn raids. Employees who do work from home and take documents with them should be provided the policy and given training on how to deal with a dawn raid.

Having policies in place is the start. Businesses need to ensure that staff are reminded of the policies, and their obligations under those policies. Businesses should also ensure that they are actually implementing the policies and enforcing any breaches.

Please contact the authors below or your usual Walkers contact if you wish to discuss this further, or if you wish to review your agile working and dawn raid policies.

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