

Corporate Crime: The Last Word on First Interviews

UPDATE

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In responding to a corporate crime investigation your options at first interview are principally to say nothing, answer questions, or come with a pre-drafted statement. What are the risks and benefits of these options and how do you choose?

There are principally three options available on responding to questions concerning allegations of corporate crime in Guernsey:

1. To remain silent;
2. To answer questions in whole or in part; or
3. To provide a pre-drafted statement.

Which approach is most beneficial will turn upon the facts of the case. When first questioned, a person will be unaware of the full strength of the evidence which may be brought against them should the matter proceed to trial. It is therefore important that suspects consider carefully with their advocates how to respond to questioning to give them the best prospects of successfully dispensing with any charges.

Disclosure

At first interview, the approach taken will generally be led by the pre-interview disclosure received from the authorities.

There is no obligation on the authorities to provide pre-interview disclosure, but corporate crime cases in which no such disclosure is given are rare. If the aim of the authorities at interview is to obtain as much information as possible which may be put into evidence a no comment interview is not helpful to anyone. In corporate crime matters, where the facts are complex and usually historic, it is all the more likely that a subject will be unable to take advice, and therefore unwilling to answer questions, without some disclosure.

In view of this, the authorities' approach is generally to provide enough disclosure to allow the nature of the charge/s to be understood. This may not necessarily amount to disclosing the basis of a case, but it should be possible to discern the nature of the corporate crime allegation/s contemplated.

On the basis of the disclosure obtained, subjects and their advocates need to quickly determine how they intend to proceed.

Remaining Silent

In Guernsey criminal matters there is an absolute right to silence. This is encapsulated by the wording of the caution as administered in Guernsey:

"You do not have to say anything unless you wish to do so, but anything you do say may be given in evidence."

By contrast to other jurisdictions (such as England and Wales) silence is an absolute right because no negative inferences can be drawn against a person for not providing an answer to some or all of the questions put to them in the course of a criminal investigation.

This absolute right to silence extends from first interview through to the conclusion of the trial. The onus in criminal matters is on the prosecution to prove its case beyond reasonable doubt. At trial, after the prosecution presents its case, it is open to the accused to stay silent and call no evidence. This is an approach which may well be taken where the accused does not think that the prosecution has brought sufficient evidence to prove its case.

In the context of a first interview, exercising the right to silence is more desirable where there has been little or no disclosure. It does not automatically follow that no disclosure will mean a no-comment interview, but it is a factor weighing in favour of exercising that right.

Answering Questions

If pre-interview disclosure is sufficient to understand the offences alleged and bolstered by supporting evidence (witness statements and/ or documents) there is a greater incentive to respond to questions at first interview. An understanding of the case provides an opportunity for a person to put forward information which helps to clarify their position.

Whether or not it is beneficial to respond to questions will very much depend upon the allegations and what the subject has to say in response to them. Should the subject wish to make full admissions to the allegations, to do so at the earliest opportunity will weigh in their favour on sentencing. If the allegations are readily defensible in full, putting that defence forward as soon as possible to dispense with the matter will be similarly beneficial.

However corporate crime matters, where allegations are seldom simple and the case against a subject tends to evolve over time are rarely black and white. An off the cuff response to questions on one allegation may lead to a different strand of the investigation developing.

It is also worth noting that in Guernsey the right to silence is such that even where a person considers that they have a defence, they may prefer to withhold certain details until trial to limit challenges.

Pre-Drafted Statement

Corporate crime cases typically involve complex facts spanning considerable periods of time. They are charges of a fundamentally different character to, say, a recent assault where the facts ought to be relatively discrete and events fresh in the memory. The complexity and timescale applicable to corporate crime matters makes it all the more reasonable for a subject to give a response more considered than they may be able to provide on merely responding to questions in interview.

That more considered response will often take the form of a carefully drafted statement to be read at interview, with a copy then provided to the investigating authorities.

The greater degree of control provided by pre-drafted statements makes them a useful tool in the hands of the experienced Advocate. However no response to a corporate crime investigation is without risk. If a detailed statement is given and the prosecution is able to show that the account is false on any point this will, as in any criminal matter, be quite damning. Similarly if a defendant on being cross examined at trial provides a different account, the inconsistency in position will call the earlier written statement into question.

Conclusions

There is no single response to questioning suitable for every circumstance. As noted at the outset of this article, the response most appropriate in first interview will typically be driven by the pre-interview disclosure. Any one or combination of the approaches above might be adopted, and the approach may change should the investigation proceed beyond a first interview.

No response is risk free. For that reason we recommend that detailed legal advice is taken if a person suspects they may face a corporate crime allegation, or is invited to attend for an interview under caution, and in particular on receipt of pre-interview disclosure.

First interview tactics are important. They set the groundwork and include aspects from which a subject cannot turn back. If comments are made in response to questions, while silence may be adopted thereafter those first comments cannot be removed. Similarly, the credit which may be given to a subject on sentencing for early admissions diminishes the longer that position is left open. An ill-considered pre-drafted statement produced without specialist corporate crime advice risks doing more harm than good to a person's defence.

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