



Guernsey Financial
Services Commission

**STATEMENT ON INTERVIEWS
CONDUCTED UNDER SECTION 11 OF THE
FINANCIAL SERVICES BUSINESS (ENFORCEMENT POWERS)
(BAILIWICK OF GUERNSEY) LAW, 2020 (“the Law”)**

June 2022

1. Purpose and objective¹

- a. The purpose of this statement is to set out the Guernsey Financial Services Commission's ("the Commission") policy on the conduct of interviews, held in accordance with section 11 of the Law, i.e., those carried out on behalf of a requesting authority².
- b. This statement applies when officers of the Commission conduct an interview or when the Commission has appointed, or is considering appointing, inspectors, or other competent persons to exercise a relevant power on the Commission's behalf.

2. The Commission's approach to exercising its powers under section 11 of the Law to assist requesting authorities

- a. Provisions with the Law, the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 and the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 provide the Commission with powers to obtain information and documents, and to interview relevant persons.
- b. Where the Commission considers it appropriate to conduct an interview in response to a request from the requesting authority it may, at its discretion, permit a representative of the requesting authority to attend, and take part in, the interview. The Commission will only permit a representative of the requesting authority to attend the interview if it is satisfied that any information obtained by the requesting authority, as a result of the interview, will be subject to obligations of confidentiality equivalent to those set out in section 21 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.
- c. Under section 11 of the Law, in deciding whether to exercise any power by virtue of section 11, the Commission will consider –
 - i. whether, except where the requesting authority is a self-regulatory organisation, in the jurisdiction of the requesting

¹ The Commission is required to prepare and publish this statement under sections 11(6) and 11(7) of the Law.

² In this statement "requesting authority" refers to any authority which appears, to the Commission, to exercise functions corresponding to those of the Commission in a place outside the Bailiwick.

authority, corresponding assistance would be given to the Commission;

- ii. whether the case concerns the breach of a law or other requirement which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick;
 - iii. the seriousness of the case and its importance to persons in the Bailiwick;
 - iv. whether the disclosure of information to, or co-operation with, the requesting authority would, in the Commission's view, leads to disproportionate injury, loss, or damage to the persons subject to the exercise of the powers in question; and
 - v. whether it is otherwise necessary or desirable, in the interests of the public or the reputation of the Bailiwick as a finance centre, to give the assistance sought.
- d. Section 11 of the Law provides that the Commission can make the decision not to exercise its powers, under this section, unless the requesting authority undertakes to contribute towards the cost of the exercise (at a level determined appropriate by the Commission).
- e. In considering whether to provide assistance to a requesting authority the Commission will consider whether it will appoint an inspector or other competent person to exercise a relevant power on its behalf.
- f. Before exercising a power, under section 11 of the Law, the Commission will discuss and determine with the requesting authority how this statement will apply to the conduct of the interview, considering all the circumstances of the case. The Commission will determine the extent to which the representative of the requesting authority will be able to participate in the interview and notify the requesting authority of its decision.
- g. Under section 11 of the Law, an inspector or other competent person, appointed by the Commission, may be directed by the Commission to permit a representative of the requesting authority to attend, and take

part in, any interview conducted during the exercise of the powers under section 11.

- h. Where a representative of the requesting authority is permitted to attend any interview, the interviewee will be advised of their identity and role (i.e., whether they are attending as an observer or are taking part in the interview).
- i. During an enquiry, on behalf of a requesting authority, the Commission may interview more than one individual and each person may be interviewed more than once.
- j. The Commission may not always decide to use its powers to require individuals to be interviewed. If appropriate the Commission may, initially, look to conduct interviews on a voluntary basis.

Voluntary Interview – An officer of the Commission or, if appointed, an inspector or other competent person will make a record of the interview. The Commission will give a copy, of that record, to the interviewee (whether or not they are the subject of the enquiry). At the Commission's discretion the record may be an electronic copy. Subject to the agreement of the interviewee, a representative of the requesting authority may be present at the interview.

Statutory Interview – Where the Commission requires a person to answer questions in an interview, using its statutory powers, it will –

- give the interviewee written warning, in advance, including an explanation of the use that can be made of their answers in criminal proceedings, or in the proceedings for the offence of market abuse under section 61 of the Law;
- give a copy of the record of the interview to the interviewee (this may be in the form of an electronic copy).

When the Commission has exercised statutory interview powers, it will require the person attending the interview to answer questions. Where appropriate, questions may also be posed by the representative of the requesting authority. The interviewee will also be required to answer these questions. An officer of the Commission or, if appointed, an inspector or other competent person may intervene at any stage during questioning by the representative of the requesting authority.

- k. The method of recording will be decided on and arranged by the Commission. If the interview is recorded, the Commission will normally provide the requesting authority with a transcript. The interviewee will be provided with a copy of any recording of the interview and with any transcripts of the recording or translations of any transcripts.
- l. Interviews will be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee, arrangements will be made for the questions to be translated into the interviewee's first language and for their answers to be translated into English.
- m. If a translator is employed at the request of the representative of the requesting authority, then the translation costs will normally be met by the requesting authority. In any event, the meeting of costs will always be agreed, in advance, with the requesting authority.
- n. The interviewee may be accompanied, at any interview, by a legal advisor or other third party, if so required. The costs of any representation will not be met by the Commission or by the requesting authority. The presence, at the interview, of a representative of the requesting authority, may mean that the interviewee wishes to be represented, or accompanied, by a person either from, or familiar with, that authority's jurisdiction. As far as practical, the arrangements will accommodate this wish. However, the Commission reserves the right to proceed with the interview if it is not possible to find such a person within a reasonable time, or no such person is able to attend, either in person or by video link.

3. Control of section 11 interviews

- a. In circumstances where an interview is to be conducted, an officer of the Commission will have conduct of the interview but, in appropriate cases, the Commission may appoint inspectors, or other competent persons, to conduct interviews. In those cases, the Commission may choose to require that an officer of the Commission is present at the interview.

- b. An inspector, or other competent person, appointed by the Commission will act on behalf of the Commission and under its control. They may be instructed to permit the representative of the requesting authority to assist in the preparation of the interview. Where the Commission considers it appropriate, it may permit the representative to attend and ask questions, of the interviewee, during the interview. The interview will be conducted according to the terms of the written notice referred to in paragraph 4a.

- c. If a representative of the requesting authority is permitted to attend the interview, and ask questions, the Commission will retain control of the interview throughout. Control of the interview means that the following will apply –
 - i. an officer of the Commission, or any appointed inspector or competent person (“the controller”), commences and concludes the interview, introduces everyone present, and explains the procedure. They will warn the interviewee of any possible consequences (i.e., action which might be taken, by the Commission, under relevant regulatory legislation) of refusing to answer questions and the uses to which the answers can, and cannot, be put. The controller will always ask preliminary questions (i.e., those establishing the identity of the interviewee);

 - ii. the controller determines the duration and structure of the interview. Interviews (voluntary or statutory) will not exceed 90 minutes. Where more time is needed, at the minimum, a 15 minute break will be taken before the interview recommences. An interviewee may, at any stage, request a suspension and the controller shall not unreasonably withhold agreement to such a request;

 - iii. the controller has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the requesting authority was present;

 - iv. where the controller considers it appropriate, they may either suspend the interview, ask the representative of the requesting authority to leave the interview, or terminate the interview and

reschedule it for another occasion. In making that decision they will bear in mind the terms of pertinent communication with the person being interviewed and any agreement made with the requesting authority as to the conduct of the interview and the contents of this statement.

4. Information for the interviewee

- a. The Commission will provide notice, in writing and in advance of the interview, to the interviewee. Whether the interviewee is the subject of the enquiry or not, the Commission will provide them with a copy of this statement and inform them of the provisions under which it is assisting the requesting authority, the general nature of the matter under enquiry, and the identity of any inspectors, or competent persons, appointed to exercise the relevant powers on behalf of the Commission. The interviewee will also, normally, be informed if a representative of the requesting authority is to attend the interview. They will also be provided with any direction, of the Commission, to any inspector or competent person, that a representative of the requesting authority is required to be permitted to attend, and take part in, the interview.
- b. Notification of any of these matters may not be provided in advance of the interview if the Commission believes that the circumstances are such that notification would be likely to result in the enquiry being frustrated.
- c. The Commission will determine the venue and timing of the interview. The interviewee will be notified of the venue, and timing, in writing.
- d. When the Commission has exercised statutory interview powers, at the outset of the interview the interviewee will be given an appropriate warning as stated in paragraph 2j. The warning, amongst other things, will state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the requesting authority. It will also state that –
 - i. in criminal proceedings, or proceedings for market abuse, the Commission will not use as evidence against the interviewee any statements obtained, using statutory powers, during the interview;

- ii. the Commission may, in the performance of its functions under any of the regulatory laws, make use of information and documents obtained using statutory powers during the interview.

5. Publication of this statement

- a. In accordance with section 11(7) of the Law, this statement will be published on the Commission's website.
- b. The interviewee, or any other person attending the interview, may request that they be allowed to read the statement before the interview commences.

6. Information and documents referred to in section 11 interviews

- a. The controller shall decide which information and documents may be put to the interviewee and whether it is appropriate to give them sight of this information prior to the interview. The representative of the requesting authority may also request sight of the information and documents and, where the controller has not been able to inspect them prior to the interview, they may suspend the interview until they have had an opportunity to do so.