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**GUERNSEY
FINANCIAL
SERVICES
COMMISSION**

**STATEMENT ON INTERVIEWS
CONDUCTED UNDER SECTION 21B(1)
OF THE
FINANCIAL SERVICES COMMISSION
(BAILIWICK OF GUERNSEY) LAW,
1987, AS AMENDED**

1. Purpose and objective

1. The purpose of this statement is to set out the *Commission's* policy on the conduct of interviews when, under section 21B(1) of the *Law*, the *Commission* exercises any relevant power conferred on it by an enactment for the purpose of enabling or assisting, in the interests of the public or otherwise, a *requesting authority* to carry out any of its functions. The *Commission* is required to prepare and publish this statement pursuant to sections 21B(6) and (7) of the *Law*.
2. 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 21B of the *Law* in order to assist requesting authorities

3. Provisions within the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended; the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended; the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended; the Insurance Business (Bailiwick of Guernsey) Law, 2002; and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 provide the *Commission* with powers to obtain information and documents, and to interview relevant persons.
4. 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 sections 21(1) and (2) of the *Law*. A transcript of these sections of the *Law* is included in the Appendix.
5. Under section 21B(2) of the *Law*, in deciding whether or not to exercise any power by virtue of section 21B(1), the *Commission* shall take into account in particular –
 - (1) whether, in the country or territory of the *requesting authority*, corresponding assistance would be given to the *Commission*;
 - (2) 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;
 - (3) the seriousness of the case and its importance to persons in the Bailiwick;
 - (4) whether the disclosure of information to or co-operation with the *requesting authority* would, in the *Commission's* view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question; and
 - (5) whether it is otherwise appropriate in the public interest to give the assistance sought.

6.	Section 21B(3) of the <i>Law</i> provides that the <i>Commission</i> may decide that it will not exercise any power by virtue of section 21B(1) unless the <i>requesting authority</i> undertakes to make a contribution towards the cost of its exercise as the <i>Commission</i> considers appropriate.
7.	In considering whether or not to provide assistance to a <i>requesting authority</i> under section 21B(1) of the <i>Law</i> , the <i>Commission</i> will consider whether it will appoint an inspector or other competent person to exercise a relevant power on its behalf.
8.	Before exercising a power under section 21B(1) of the <i>Law</i> , the <i>Commission</i> will discuss and determine with the <i>requesting authority</i> how this statement will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the <i>Commission</i> will determine the extent to which the representative of the <i>requesting authority</i> will be able to participate in the interview. The <i>requesting authority</i> will be notified of this determination. Under section 21B(4) of the <i>Law</i> , an inspector or other competent person appointed by the <i>Commission</i> may be directed by the <i>Commission</i> to permit a representative of the <i>requesting authority</i> to attend, and take part in, any interview conducted in the course of the exercise of the powers under section 21B(1).
9.	Where a representative of the <i>requesting authority</i> is permitted to attend any interview, the person to be interviewed will be advised of his identity and role (ie whether he will attend the interview as an observer or take part in the interview).
10.	During the course of an enquiry on behalf of the <i>requesting authority</i> , the <i>Commission</i> may interview more than one individual and each individual may be interviewed more than once.
11.	The <i>Commission</i> may not always decide to use its statutory powers to require individuals to be interviewed. If appropriate, and at its discretion, the <i>Commission</i> may first seek to conduct interviews on a voluntary basis.
(1)	<i>Voluntary interviews</i> An officer of the <i>Commission</i> or, if appointed, an inspector or other competent person will make a record of the interview. The <i>Commission</i> will give a copy of the record to the interviewee (whether or not he is the subject of the enquiry). At the <i>Commission's</i> discretion the record may be an audio tape recording. Subject to the agreement of the interviewee, a representative of the <i>requesting authority</i> may be present at the interview.
(2)	<i>Statutory interviews</i> Where the <i>Commission</i> requires a person to answer questions in an interview, using statutory powers, it will –
(i)	give the interviewee written warning in advance and an explanation of the use that can be made of his answers in criminal proceedings against him, or in proceedings for the offence of market abuse under section 41F of the <i>Protection of Investors Law</i>; and

- (ii) give a copy of the record of the interview to the interviewee. At the *Commission's* discretion the record may be an audio tape recording.

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*.

12. The method of recording will be decided on and arranged by the *Commission*. If the interview is taped, the *Commission* will normally provide the *requesting authority* with a transcript. The interviewee will be provided with a copy of any tapes of the interview and with any transcripts of the tapes or translations of any transcripts.
13. 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 his answers to be translated into English. 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*.
14. The interviewee may be accompanied at any interview by a legal adviser or other third party, if he wishes. 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 for the interview 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 at a suitable venue.

3. Control of section 21B(1) interviews

15. 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.
16. An inspector or other competent person appointed by the *Commission* will act on behalf of the *Commission* and under its control. He may be instructed to permit the representative of the *requesting authority* to assist in preparation of the interview. Where the *Commission* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the written notice referred to in paragraph 18 below.

17. If a representative of the *requesting authority* is permitted to attend the interview and ask the interviewee questions, the *Commission* will retain control of the interview throughout. Control of the interview means the following will apply –
- (1) An officer of the *Commission* or, if appointed, an inspector or other competent person commences and concludes the interview, introduces everyone present and explains the procedure of the interview. He warns the interviewee of any possible consequences (for example, action which might be taken by the *Commission* under relevant regulatory legislation) of refusing to answer questions and the uses to which any answers which are given can and cannot be put. An officer of the *Commission* or, if appointed, an inspector or other competent person will always ask preliminary questions, such as those establishing the identity of the interviewee.
 - (2) An officer of the *Commission* or, if appointed, an inspector or other competent person determines the duration and structure of the interview. Interviews (voluntary or statutory) will not exceed periods of 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 of the interview and the officer of the *Commission* or, if appointed, an inspector or other competent person shall not unreasonably withhold agreement to such a request.
 - (3) An officer of the *Commission* or, if appointed, an inspector or other competent person 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 either present or not present.
 - (4) Where an officer of the *Commission* or, if appointed, an inspector or other competent person considers it appropriate, he 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 he 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

18. The *Commission* will provide notice in writing, in advance of the interview, to the interviewee. Whether or not the interviewee is the subject of the enquiry, the *Commission* will provide the interviewee with a copy of this statement and inform the interviewee of the provisions under which it is assisting the *requesting authority*, the identity of the *requesting authority*, the general nature of the matter under enquiry and the identity of any inspectors or other competent persons appointed by the *Commission* to exercise 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, whether the representative will be an observer or taking part in the interview, and provided with a copy of any direction by the *Commission* to any inspector or competent person appointed by the *Commission* whereby the inspector or competent person is required to permit a representative of the *requesting authority* to attend, and take part in, the interview. 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.
19. The *Commission* will determine the venue and timing of the interview. The interviewee will be notified of the venue and timing of the interview in writing.
 20. 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 11(2)(i). The warning, amongst other things, will state that the interviewee is obliged to answer all questions put to him during the interview, including any put by the representative of the *requesting authority*. It will also state that:
 - (1) 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;
 - (2) the *Commission* may in the performance of its functions under any of the regulatory laws and subject to their provisions, make use of information and documents obtained using statutory powers during the interview.

5. Publication of this statement

21. In accordance with section 21B(7) of the *Law*, this statement shall be published on the *Commission's* website. The interviewee or any other person attending the interview may request that he be allowed to read the statement if he has not already done so before the interview commences.

6. Information and documents referred to in section 21B(1) interviews

22. An officer of the *Commission* or, if appointed, an inspector or other competent person shall decide which information and documents may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the information and documents before the interview takes place. Where the representative of the *requesting authority* wishes to ask questions about the information and documents during the interview and an officer of the *Commission* or, if appointed, an inspector or other competent person wishes to inspect the information and documents before the interview, he will be given the opportunity to do so. If an officer of the *Commission* or, if appointed, an inspector or other competent person wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.

7. Definitions

23. In this statement –

‘the *Commission*’ means the Guernsey Financial Services Commission;

‘the *Law*’ means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended;

‘the *Protection of Investors Law*’ means the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended; and

‘*requesting authority*’ means any authority which appears to the *Commission* to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the *Commission*.

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Appendix

The following text is an extract from the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended.

Section 21: Confidentiality.

- (1) Any information from which an individual or body can be identified which is acquired by the Commission in the course of carrying out its functions shall be regarded as confidential by the Commission and by its members, officers and servants.
- (2) No such information as is referred to in subsection (1) shall be disclosed, without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure is expressly authorised or required by or under any enactment relating to the Commission's statutory functions, or appears to the Commission to be necessary –
 - (a) to enable the Commission to carry out any of its functions; or
 - (b) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings; or
 - (c) in connection with the discharge of any international obligation to which the Bailiwick is subject; or
 - (d) to assist, in the interests of the public or otherwise, any authority which appears to the Commission to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the Commission; or
 - (e) to enable:
 - (i) the Public Trustee (the office of which was established by Section 1 of the Public Trustee (Bailiwick of Guernsey) Law, 2002)*; and
 - (ii) any authority which appears to the Commission to exercise, in a place outside the Bailiwick, functions corresponding to any one of those of the Public Trustee;
 to carry out their functions or to investigate matters of relevance to their functions; or
 - (f) to comply with the directions of any division of the Royal Court; or
 - (g) to enable any body established to control or supervise gambling or gaming in the Bailiwick or any part thereof to carry out its functions or to investigate matters of relevance to its functions.

* The Commission expects a commencement Ordinance for the Public Trustee (Bailiwick of Guernsey) Law, 2002 to be placed before the States of Guernsey for consideration in May 2004. Section 21(2)(e) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended will come into force on the date specified in the commencement Ordinance for the commencement of the Public Trustee (Bailiwick of Guernsey) Law, 2002.