



SFO

serious
fraud
office

Serious Fraud Office | 2-4 Cockspur Street | London | SW1Y 5BS

PRESENCE OF INTERVIEWEE'S LEGAL ADVISER AT A SECTION 2 INTERVIEW – GUIDANCE FOR LAWYERS

1. This guidance is enclosed with a Notice issued under Section 2 of the Criminal Justice Act 1987, requiring your client to attend the offices of the SFO for interview. The purpose of the interview is to obtain facts concerning matters set out in the Notice.
2. Your client will be interviewed as an interviewee, not a suspect, and the Police and Criminal Evidence Act 1984 does not apply. In other words, this will not be an interview under caution.
3. Section 2(2) of the Criminal Justice Act 1987 provides the SFO with the power to require interviewees to answer questions or otherwise furnish information to its investigation teams. It is a crime under Section 2(13) to fail without reasonable excuse to provide answers; and it is a criminal offence under Section 2(14) knowingly or recklessly to provide an answer which is false or misleading in a material particular.
4. A statement made by an interviewee in response to a requirement imposed by virtue of this section may only be used in evidence against him:
 - a) On a prosecution for an offence under Section 2(14) as above; or
 - b) On a prosecution for some other offence where in giving evidence he makes a statement inconsistent with his interview
5. An interviewee may seek advice from a lawyer of his or her choice, in respect of the interview, before and/or after it is carried out.
6. An interviewee may request the presence of a named lawyer in advance of the interview. The request will be determined in accordance with SFO guidance on the presence of lawyers in Section 2 interviews.
7. A particular lawyer will be allowed to attend the interview if the SFO believes it likely they will assist the purpose of the interview and/or investigation, or that they will provide essential assistance to the interviewee by way of legal advice or pastoral support.
8. If you believe that the presence of a particular lawyer in the interview will assist the purpose of the interview and/or investigation, or that the lawyer concerned will provide essential assistance to the interviewee by way of legal advice or pastoral support, and the interviewee wishes to have a lawyer present, you must serve on the SFO within 7 days prior to the date of the interview, or 3 days after the date of this letter, whichever is the later:
 - a) The name of the particular lawyer and the reasons why their presence in the interview will assist the purpose of the interview and/or investigation, or that they will provide essential assistance to the interviewee by way of legal advice or pastoral support.
 - b) Written undertakings in the name of your firm that:
 1. (Name of firm) does not represent any individual or legal person who is a suspect in the investigation;
 2. All pre-disclosure documents and documents provided during the interview ('relevant documents') retained by (name of firm) will be kept confidential to (name of firm) and (name of client / Section 2 interviewee);
 3. No relevant documents will be provided to or discussed with anyone other than (name of client), without the written authority of the SFO;
 4. Relevant documents will not be copied;

5. All relevant documents will be kept securely in (name of firm) offices at all times until they are returned to the SFO;
6. All relevant documents will be returned to the SFO after the Section 2 interview;
7. Whilst a note may be taken of the Section 2 interview (name of firm) will not transcribe or otherwise record the interview; and
8. (Name of firm) will not disclose the content of the interview to, or discuss it with, anyone other than (name of client / Section 2 interviewee), without the written authority of the SFO.

On the agreed basis that:

- (Name of firm) will be bound by these undertakings until notified by the SFO of the conclusion of the investigation or prosecution.
- (name of firm) will ensure that systems are deployed to ensure the compliance, monitoring and enforcement of the undertakings
- The undertakings are made in accordance with the meaning of solicitors' undertakings as set out in SRA Code of Conduct 2011 or such future amendment of the SRA Code of Conduct.

c) Written acknowledgement of the parameters of the role of the lawyer in the interview, and that any breach of the parameters is likely to lead to the exclusion of the lawyer, without notice.

The parameters are that:

- The lawyer may provide legal advice or essential assistance. Otherwise, they must not do anything to undermine the free flow of full and truthful information which the interviewee, by law, is required to give.
- The legal representative of the interviewee may bring one additional lawyer who also represents the interviewee solely for the purpose of taking a note. That lawyer must also be covered by the appropriate undertakings. As interviewees and their legal representatives may not use digital devices within the interview room, lawyers should plan to take any note by hand.

It is the duty of the interviewer to ensure that these parameters are observed. In the event of any perceived infraction, or obstruction, the lawyer may be excluded from the interview.

9. If it appears at any point there is a need to caution the interviewee, whether or not a lawyer is present, the interview will be stopped and the interviewee will be notified that PACE now applies, including the right to independent legal advice and assistance.