

Chapter 4

Conduct of investigations

4.11 Approach to interviews and interview procedures

4.11.1 ■ Paragraph 4.7.1 explains the *FCA's* approach to the use of its statutory powers to require, amongst other matters, individuals to be interviewed. The type of interview is a decision for the *FCA*.

4.11.2 A *person* required to attend an interview by the use of statutory powers has no entitlement to insist that the interview takes place voluntarily. If someone does not attend an interview required under the *Act*, then he can be dealt with by the court as if he were in contempt (where the penalties can be a fine, imprisonment or both).

4.11.3 Similarly, a *person* asked to attend an interview on a purely voluntary basis is not entitled to insist that he be served with a requirement. A *person* is not obliged to attend a voluntary interview or to answer questions put to them at that time. But they should be aware that in an appropriate case, an adverse inference may be drawn from the failure to attend a voluntary interview, or a refusal to answer any questions at such an interview.

Interviews generally

4.11.4 Where the *FCA* interviews a *person*, it will allow the *person* to be accompanied by a legal adviser, if they wish. The *FCA* will also, where appropriate, explain what use can be made of the answers in proceedings against them. Where the interview is tape-recorded, the *person* will be given a copy of the audio tape of the interview and, where a transcript is made, a copy of the transcript.

Interviews under caution

4.11.5 Individuals suspected of a criminal offence may be interviewed under caution. These interviews will be subject to all the safeguards of the relevant Police and Criminal Evidence Act Codes and are voluntary on the part of the suspect. The *FCA* will warn the suspect at the start of the interview of their right to remain silent (and the consequences of remaining silent) and will inform the suspect that they are entitled to have a legal adviser present. The *FCA* will also give a cautionary warning in similar terms to interviewees who are the subject of *market abuse* investigations.

Subsequent interviews

4.11.6

If a suspect has been interviewed by the *FCA* using statutory powers, before they are re-interviewed on a voluntary basis (under caution or otherwise), the *FCA* will explain the difference between the two types of interview. The *FCA* will also tell the individual about the limited use that can be made of their previous answers in criminal proceedings or in proceedings in which the *FCA* seeks a penalty for *market abuse* under Part VIII of the *Act*.

4.11.7

Conversely, where a suspect has been interviewed under caution, and the *FCA* later wishes to conduct a compulsory interview with them, the *FCA* will explain the difference between the two types of interview, and will notify the individual of the limited use that can be made of his answers in the compulsory interview.

Interviews under arrest

4.11.8

On occasion, where the police have a power of arrest, the *FCA* may make a request to the police for assistance to arrest the individual for questioning by the *FCA* (*FCA* investigators do not have powers of arrest), for example:

- (1) where it appears likely that inviting an individual to attend on a voluntary basis would prejudice an ongoing investigation or risk the destruction of evidence or the dissipation of assets; or
- (2) where a suspect declines an invitation to attend a voluntary interview.

The procedure the *FCA* may follow on such occasions in seeking assistance from the police is set out in a Memorandum of Understanding with the Association of Chief Police Officers of England, Wales and Northern Ireland dated 3 August 2005.

Interviews in response to a request from an overseas regulator or EEA regulator

4.11.9

Where the *FCA* has appointed an investigator in response to a request from an *overseas regulator*, it may, under sections 169(7) or 131FA of the *Act*, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation. However, the *FCA* may only use this power if it is satisfied that any information obtained by an *overseas regulator* as a result of the interview will be subject to safeguards equivalent to those in Part XXIII of the *Act* (sections 169(8) and 131FA).

4.11.10

The factors that the *FCA* may take into account when deciding whether to make a direction under section 169(7) include the following:

- (1) the complexity of the case;
- (2) the nature and sensitivity of the information sought;
- (3) the *FCA*'s own interest in the case;
- (4) costs, and the availability of resources; and

- (5) the availability of similar assistance to UK authorities in similar circumstances.

4.11.11

Under sections 169(9) and 131FA respectively, the *FCA* is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators*. The statement is set out in ■ DEPP 7.