A PRACTICAL GUIDE
FOR BUSINESSES AND INDIVIDUALS
WHEN THE REGULATOR CALLS

INTERVIEW UNDER CAUTION

WHAT EVERY BUSINESS, DIRECTOR
AND INDIVIDUAL MUST KNOW
BEFORE THEY SAY A WORD

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Before you read anything else

If you have received a notice requiring you to attend an interview under caution with one of His Majesty's inspectors, the decisions you make in the next few days will matter more than almost anything else in this process.

This guide will not tell you how to conduct the interview. That is what specialist preparation is for. What it will do is explain what an interview under caution actually is, why it is different from any other conversation you have had with the inspector and what the most experienced businesses get wrong when they face one.

> One thing to be clear on: **An interview under caution is a formal process. Everything you say is recorded, can be used as evidence and will be scrutinised if the inspector decides to prosecute. This is not the moment to improvise.**

1 What an Interview Under Caution actually is

An interview under caution is a pivotal step in a criminal investigation. It is conducted under the Police and Criminal Evidence Act 1984 (PACE) and the relevant PACE Codes of Practice. Before the interview begins, you will be cautioned in the following terms:

> The caution: **"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."**

The caution reflects the legal reality of your position. You are being investigated for potential criminal offences under UK legislation, which can include offences under:

- Health and Safety at Work etc Act 1974
- Personal liability as a director or senior manager under s.37 of the 1974 Act
- Regulatory Reform (Fire Safety) Order 2005
- Economic Crime and Corporate Transparency Act 2023
- Companies Act 2006
- Bribery Act 2010
- Fraud Act 2006
- Environmental Protection Act 1990
- Data Protection Act 2018

The inspector will have prepared for this interview. They will have assessed your workplace, your documentation and your systems. They will have decided in advance what they are trying to establish. You need to be equally prepared.

> Important: **The inspector does not need to tell you in advance what specific questions they will ask. Attending unprepared will put you at a serious disadvantage from the moment the recorder is switched on.**

2 What an Interview Under Caution is not

An interview under caution is not an opportunity to clear your name. Your interactions with the inspector up to this point may have been informal and you may have been told the inspector is simply trying to understand what happened. It is not however a process that is designed to give you a fair hearing before a decision is made and it is not something you can manage on the day by being straightforward and cooperative.

Many business owners attend believing they have nothing to hide and that if they explain themselves clearly and honestly, the matter will be resolved. That instinct is understandable. It is also one of the most consistently damaging assumptions in the regulatory cases that I defend.

The inspector sitting across the table from you is not there to be persuaded. They are there to gather evidence. Every answer you give is being evaluated against the elements of a potential criminal offence. Cooperation is not the same as compliance and being open is not the same as being protected.

3 The decision no one tells you about: Should you even attend?

Most business owners assume they have no choice. You have received a notice, so you go. But that assumption has led to prosecutions that might never have happened.

Whether you are required to attend and what the legal consequences of attending or not attending are, depends entirely on the basis on which the interview has been requested. The answer is not obvious. It requires legal analysis. And it is one of the most consequential decisions in the entire process, made, in many cases, without an appropriate strategy and advice.

> **The question to ask first: What type of interview has been requested, under what power and what does attending or not attending mean for this business and for me personally as a director?**

Assuming the answer to that question or not considering or asking the question at all, is a common mistake many businesses make. Attending when you did not have to or failing to understand what an individual or company representative was walking into, can have grave consequences, both for the business and individuals involved.

Get it wrong and you may have walked into an interview you did not have to attend, answered questions that damaged your position and advanced the inspector's case without ever intending to. There is no undoing that.

Get it right, and the position looks entirely different. You arrive knowing your attendance is in your best interests. You have a strategy that was settled before you walked into the room, not worked out under pressure during it. You know what you are going to say, what you are not going to say and more importantly, the implications of providing the information you have decided upon and that clarity is not accidental. It is the product of proper preparation, carried out with someone who has been in that room many times before and understands exactly what is at stake.

4 What happens before the interview that determines the outcome

By the time many businesses call a solicitor, they have already made decisions that cannot be reversed. They have spoken informally to the inspector. They have started an internal review. They have written things down. In some cases, they have attended meetings unprepared and said things they cannot take back.

The work that determines the outcome of an interview happens before you walk into that room. It is legal, strategic and highly specific to the facts of your case. It should not be pieced together, delegated to an inexperienced member of the team or treated as an afterthought before the interview takes place.

The businesses that come through this process in a defensible position are the ones that took specialist advice early before anything was said, before any documents were created and before a strategy was needed in a hurry.

A business that takes specialist advice after speaking to an inspector, after starting an internal review, or after attending an unprepared interview is no longer choosing the best strategy, it is managing the consequences of decisions already made. Early advice does not just save time. It preserves options that, once gone, cannot be recreated.

What good preparation looks like: **A thorough review of the investigation to date. A clear decision on strategy. A structured pre-interview briefing so you understand the process, your rights, and the approach you will take. And a solicitor present in the room with you when it matters.**

5 The five mistakes that turn investigations into prosecutions

In over 25 years representing clients in some of the most significant regulatory cases in the UK the same mistakes appear repeatedly. All of these are avoidable. Each one is set out below in full: what it is, why it matters, what it costs businesses that get it wrong and what to do instead.

MISTAKE 1 Treating it like an informal conversation

By the time an invitation to an interview under caution is received, the inspector is often at the final stages of the investigation. Now is not therefore the time to attempt to build rapport with the inspector.

It is important to understand that the entire legal architecture of the interview is built around the assumption that what you say will be relied upon. Everything said in interview is recorded. Everything recorded can be used in evidence, either for or against you. Business owners who approach the interview as a conversation they can manage on their feet consistently underestimate the formality of what they are walking into.

Informal, off-the-cuff answers given under the mistaken belief of "transparency" and that this will be appreciated by the inspector often become the very evidence that supports a prosecution. There is no opportunity to rephrase or soften a comment once it has been given under caution.

THE TIP **Treat every word as evidence**

Prepare for the interview as you would for a formal legal procedure because that is precisely what it is. Getting specialist advice in advance will help you understand not only what will support but also what will hinder your position so that you have a strategy settled before you arrive and not trying to work it out in the room.

IN PRACTICE

A site manager, trying to be cooperative during an inspection, explained to the HSE inspector how a particular task was normally carried out. He was not under caution and was simply being helpful. That informal explanation became one of the central pieces of evidence in the prosecution that followed, what he described as normal practice was precisely what the HSE alleged was the breach. He could not unsay it and the company could not distance itself from it.

MISTAKE 2 Attending without specialist legal representation

Some businesses instruct their usual solicitor. Some attend with an HR adviser. Some attend alone because they believe they have nothing to hide and see no reason for a lawyer.

Regulatory defence is a specialist area. The regulatory framework, the evidential consequences of what is said and the tactics that protect your position are not the same as those that apply in commercial disputes, property or employment matters. A solicitor without specific experience of regulatory investigations may be technically qualified but practically unprepared for the specific risks this process presents.

The cost of this mistake is rarely visible at the time. It shows up later in a prosecution that a specialist might have prevented, in a statement that could have been mitigated or in a director facing personal liability that proper early advice could have avoided.

THE TIP Match the specialism to the risk

Before you attend an interview under caution, confirm that whoever is advising you has direct, recent experience of workplace investigations and prosecutions specifically, not general criminal or commercial experience.

IN PRACTICE

A business under HMRC investigation for suspected tax fraud initially instructed its accountants to manage the process, on the basis they knew the company's finances better than anyone. It quickly became clear that understanding a company's accounts and understanding how HMRC conducts a criminal investigation are two entirely different things. Bringing in specialist regulatory representation allowed the right strategy to be identified before an interview under caution took place with the company's finance director.

MISTAKE 3 Conducting an internal investigation without legal input

After an incident, the natural instinct is to find out what happened. It feels responsible and proactive.

The difficulty is that internal investigations conducted without legal advice routinely create documents that become disclosable in subsequent proceedings. Witness accounts taken informally, emails seeking explanations and reports prepared without legal privilege in mind can all end up in the hands of the inspector and handing the regulator material it would otherwise have had to obtain through formal channels, if at all.

The consequence is that a business trying to do the right thing by investigating its own incident can inadvertently build the case against itself, long before any formal investigation has even started.

THE TIP Bring legal advice in before the internal review starts, not after

Any internal review following an incident should be structured under legal privilege from the outset. This is a decision made in the first hours after an incident, not weeks later when documents already exist.

IN PRACTICE

Following an environmental incident involving the discharge of waste into a nearby watercourse, a business commissioned an internal environmental audit to demonstrate to the regulator that it was taking the matter seriously. The subsequent audit report, prepared without legal advice and outside the protection of legal privilege, was later evidence in proceedings brought by the Environment Agency. It contained findings that the Agency used to support its case. Had legal advice been sought before the audit was commissioned, the same exercise could have been structured in a way that protected the company's position entirely.

MISTAKE 4 Waiting until enforcement action starts

The time between a workplace inspection and a formal interview under caution is often the most influential period in the entire process. Many businesses treat this as a quiet period. It is not.

It is when evidence can still be secured, when strategy can be properly developed and when the investigation can be understood before positions harden. Businesses that

wait until they receive a formal notice before taking advice have already lost weeks or months of preparation time that cannot be recovered.

The consequence of delay compounds. Evidence degrades or disappears. Recollections fade. Documents are created without legal oversight. By the time advice is finally sought, the available options have narrowed considerably.

THE TIP **Treat the period after an inspection as the most urgent, not the calmest**
If an inspector has visited your workplace, assume the investigation has already begun because in most cases, it has. Securing evidence and taking advice immediately after an inspection, rather than waiting for further contact, is the single most effective way to protect your position.

IN PRACTICE
A business that experienced an unannounced workplace inspection assumed that having heard nothing further for several weeks, the matter had been resolved informally. By the time a formal interview notice arrived months later, key CCTV footage had been overwritten and a witness had left the company. Early advice from a specialist lawyer, taken immediately after the inspection, would have identified what evidence should be preserved and how best to do so.

MISTAKE 5 Assuming the company and individuals are in the same position

Directors and senior managers can face personal criminal liability, independent of any liability the company itself faces.

This matters because what is in the best interests of the company and what is in the best interests of an individual director are not always the same thing. A defence strategy designed to protect the business may not adequately protect the individual and in some cases may expose them further. This is one of the most important tensions in regulatory cases and one of the least understood by business owners until it is too late.

The consequence of overlooking this distinction is personal: directors who assumed they were covered by the company's legal representation have found themselves facing individual prosecution, having made statements in interview that were appropriate for the company's position but damaging to their own.

THE TIP **Establish separate advice for individuals at risk, as early as possible**

Where a director or senior manager may face personal liability, independent advice that is distinct from the company's representation should be considered from the outset and kept under constant review to ensure both the company and its people are protected.

IN PRACTICE

A director was invited to attend an interview under caution alongside the company, which had instructed its usual commercial solicitors. The director attended on the basis that the company's solicitor was advising both of them. He was not. By the time that distinction was properly understood, decisions had already been made in the interview that could not be walked back and the director subsequently faced personal charges that earlier, independent advice might have avoided.

6 Knowing the mistakes is not the same as being protected from them

Reading about these common pitfalls will make you alert to them. It will not, on its own, tell you which of them already applies to your situation, or what to do about it.

That is because every one of these mistakes plays out differently depending on the specific facts: what has already been said, what stage your investigation has reached, what documents already exist and what your personal exposure as a director looks like. The right response to Mistake 3, for example, looks completely different for a business that has already conducted an internal review than for one that has not yet started.

This is the gap between knowing what can go wrong and knowing what to do about it in your specific case. Closing that gap requires a conversation with someone who has handled these situations many times before.

7 What specialist preparation looks like

Businesses that emerge from an interview under caution in a strong position share one thing in common: they took specialist advice before anything was said, not after. Nothing was left to chance.

What that preparation involves is specific to your case. It is not a checklist. It requires someone who understands how the specific regulator investigates, what it is looking for and where businesses and individuals in your position are most exposed.

Why experience matters: **Specialist regulatory defence is not simply about knowing the law. It is about understanding how regulators investigate, how they build a case and where businesses consistently expose themselves to avoidable risk. That experience shapes every piece of advice.**

8 Your Next Step

If you have received a notice requiring you to attend an interview under caution or if you are aware that an investigation into your business is underway and you want to understand your position before it progresses further, the most important thing you can do right now is to speak to a specialist regulatory defence solicitor who understands what is at stake.

Has an HM Inspector contacted you about an interview under caution?

Book your free, confidential 30 minute Strategy Call:

Email enquiries@haroldandmccormacklaw.com
Call 0203 745 2456

During the Strategy Call, we will:

- ✓ Assess where you are in the process
- ✓ Identify your immediate risks
- ✓ Give you a clear picture of what happens next

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About the Author

Ashleigh Harold **Founding Solicitor | Harold & McCormack Law**

Ashleigh Harold founded Harold & McCormack Law as a boutique regulatory defence practice, established to provide the kind of focused, direct access to senior-level representation that businesses and individuals need in a crisis.

With over 25 years' experience representing corporate clients, directors and individuals in critical incident management and regulatory defence, Ashleigh has been involved in some of the UK's leading cases in the field of regulatory law, including cases involving corporate manslaughter, public inquiries and industry specific precedent cases.

Her expertise has been recognised by independent publications seeing her awarded Best Regulatory Health and Safety Lawyer UK and recognised for Excellence in Regulatory Defence Law.

Prior to founding Harold & McCormack Law, Ashleigh worked exclusively within top 50 law firms before running her own consultancy practice. It was this experience that shaped her vision for a firm built around senior expertise, direct access and personal attention to detail.

Ashleigh acts for all sizes of business, together with all level of directors and senior managers facing regulatory investigations and enforcement action, professional disciplinary tribunals and prosecution, providing representation from the first point of contact with the regulator through to interview and beyond.

What clients say

> *"Could I personally thank you for all of your efforts on our behalf and express our appreciation of your success. There is no doubt that your perception of the HSE's approach to this investigation was accurate. The decision to hold back from the interview was clearly right and limited the opportunity for the HSE to secure further evidence."*

> *"A special thank you to Ashleigh who stood out with her kindness, professionalism and patience. She took the time to explain every step of the process in a way that was easy to understand and helped me make sense of complex legal language that would have otherwise been overwhelming. Her guidance gave us both clarity and peace of mind when we needed it most."*

> *"The entire team at Harold & McCormack Law are supportive, approachable and truly outstanding. Ashleigh is exceptional at what she does and an expert in her field. It's rare to find such a professional yet compassionate group."*