

# Compliance Sector Terms and Definitions

October 2010

**Absolute liability** refers to a type of offence where, in relation to statute, the element of 'intent' (mens rea) is not required to establish the offence, and where a defence of total absence of fault does not apply.

**Achieve compliance** or variant refers to a compliance subject becoming compliant and/or compliance being maintained by a compliance subject, through voluntary compliance and/or in response to intervention by a compliance organisation or organisations.

**Administrative action** is a restraining action, pursuant to statutory provision, which may or may not have a punitive effect. Examples are removal, suspension, or modification of a licence or other official permission, which may include a specific punitive measure.

**Administrative settlement** refers to resolving a compliance case by agreement between the compliance organisation and the compliance subject.

**Admissible** refers to evidence which is probative and relevant and which is not excluded by any rule of law as determined by a judge in a judicial hearing.

**Appeal** (noun) refers to a request to a superior authority to overrule the decision, penalty, or award of a lower court, tribunal, or other statutory authority or compliance organisation.

**Appreciation** (or 'an appreciation') is the act of logically considering a given problem by assessing relevant factors and limitations and coming up with a workable plan by choosing among or between the courses open.

**Authority to enter** refers to the legal right to enter, as determined by permission, warrant, or statutory authority.

**Authority to inspect and examine** refers to the legal right to inspect and examine, as determined by statutory authority.

**Authority to search** refers to the legal right to search where it is believed an offence has been committed, and as determined by statutory authority.

**Breach** - See 'non-compliance'.

**Case** refers to a problem or situation involving non-compliance, alleged non-compliance, or possible non-compliance requiring a regulatory response.

**Case management system** is the system that is established to plan, manage, record, and review a case.

**Civil appeal** refers to a request by a compliance subject to a superior authority to overrule the decision, penalty, or award of a compliance organisation.

**Civil proceeding** refers to a court based proceeding for a breach of rights or other non-criminal matter, for the purpose of seeking a remedy by way of damages, injunction, or other court order.

**Complainant** refers to a person who makes a complaint alleging non-compliance.

**Compliance** (role of) refers to the role, in a public sector organisation, of assessing compliance subjects' levels of adherence with regulatory requirements and carrying out any appropriate intervention.

**Compliance auditing** refers to planned and systematic examination of compliance subject processes and practices in terms of how they demonstrate and/or support compliance.

**Compliance environment** refers to the physical, social, economic, political, and geographical environment that a public sector organisation's compliance role is carried out in.

**Compliance investigation** refers to the process of gathering and assessing information to determine facts and, thereby, to determine degree of compliance or otherwise.

**Compliance notice** is an administrative notice, made under statute, requiring that some action be taken or ceased to achieve compliance. Examples are an abatement notice, an improvement notice, a seizure notice, a production order.

**Compliance organisation**, for the purpose of this Guide, refers to a public sector organisation that carries out a compliance role or roles.

**Compliance subject** refers to a natural person or an entity subject, in a particular compliance context, to being regulated.

**Conversation management** refers to structured techniques used to interview a person who may not freely reveal, or be able to freely reveal, information.

**Covert human intelligence source** (CHIS) refers to someone who does not want their identity to be revealed and who has an ongoing relationship with a compliance organisation for the purpose of providing information or intelligence. A CHIS is also referred to as a 'human source' or 'source'. CHIS may refer to a source or sources (i.e. singular or plural).

**Crime** refers to an offence for which the alleged offender may be proceeded against by indictment.

**Criminal proceeding** refers to a court based proceeding for a breach of law for which a sanction is sought.

**Elements** (of offences) are the underlying factors which are common or rudimentary to any offence. They are:

1. A physical element, called 'the act', referred to as *actus reus*.
2. A mental element or state of mind, called 'the intent', referred to as *mens rea*.

It is noted that it is not uncommon for compliance practitioners to use the terms 'elements' and 'ingredients' interchangeably.

**Enforcement** refers to processes and actions taken to compel statutory compliance.

**Evidence** refers to information given personally, or drawn from a document or exhibit, which tends to prove or disprove a fact.

**Exhibit** refers to material evidence secured in the course of an investigation.

**Field phase** (of an investigation) refers to the active or operational phase of an investigation, and does not preclude an entirely office based investigation.

**Forensic** refers to the use of scientific methods in investigations.

**Informant** has the same meaning as in s64 of the Evidence Act 2006.

**Informant** refers to a person who lays a charge (or 'an information').

**Informant**, other than a person who lays an information, may refer to a person who provides a compliance organisation with information material to alleged non-compliance or other compliance related situation, or meaning an informer in terms of s64 of the Evidence Act 2006.

**Information** (as in 'an information') is the physical document, sworn before a district court, used to commence proceedings.

**Infringement notice** is a written advice of alleged non-compliance. The notice sets out a fee that is to be paid by way of penalty with regard to the alleged non-compliance and the rights of the recipient to challenge the basis for the notice and/or the amount of the penalty imposed.

**Ingredients** refer to the details or components of an offence which are unique to the offence and which must be proven. It is noted that it is not uncommon for compliance practitioners to use the terms 'elements' and 'ingredients' interchangeably.

**Intelligence** is information to which an interpretation has been applied following analysis of that information.

**Intelligence** refers collectively to the functions, activities, people, or organisations that are involved in the process of planning, gathering, and analysing information that leads to the production of intelligence products which are of potential value to decision makers.

**Interpreter** refers to a person who is trained and qualified to carry out interpreting or 'spoken translation'.

**Intervention** refers to any action, or set of actions, taken by a compliance officer to encourage compliance or to hold a compliance subject accountable for non-compliance. These may include non-sanction interventions as well as sanctions.

**Judicial review** refers to the review by a court of a decision made or process carried out by a decision making body.

**Legal person** may be a natural person or an entity, such as a limited liability company, that is treated as a person for certain purposes.

**Non-compliance** refers to a breach of, or failure to comply with, regulatory requirements which may or may not amount to an offence. Regulatory requirements may include derivatives such as Rules, Bylaws, and licences.

**Non-sanction intervention** refers to an intervention which is intended to result in compliance, but without use of sanction. It can involve any of informing and assisting, deterring, or directing a compliance subject.

**Offence** is a violation or breach of a law or rule.

**Regulatory environment** refers to the social, political, and regulatory framework within which compliance organisations operate.

**Regulatory model** is the model used by an organisation to describe its compliance strategy.

**Regulatory theories** are theories describing approaches considered effective and efficient for achieving compliance.

**Rule** refers to any requirements established by, or derived from, statute. Examples of derived rules are Regulations, Bylaws, and licences and other permissions.

**Rules of evidence** are those rules relating to use, admissibility, and limitations of evidence in a judicial hearing.

**Sanction** (noun) is a penalty or other punishment imposed for a breach of the law.

**Sanction** (verb) means to impose or pursue a sanction or sanctions.

**Scene** refers to the physical place where an apparent offence is or has been committed and/or where any physical evidence leading to possible establishment of an offence is located.

**Security and evidential requirements** are the requirements adopted by a compliance organisation to keep information and exhibits secure against unauthorised access or loss, and to ensure admissibility and reliability in a judicial proceeding. Evidential requirements are a subset of these and relate to admissibility of evidence.

**Seize** refers to the appropriation, under legal authority, of property to a compliance organisation.

**SMEAC** stands for situation, mission, execution, administration including logistics, and commands. It is a planning framework used to develop and document operational plans.

**Strict liability** refers to a type of offence where, in relation to statute, the element of 'intent' (mens rea) is not required to establish the offence, but where a defence of absence of fault may apply.

**Surveillance** refers to maintaining either covert or overt observations on a location, activity, or person.

**Suspect** refers to a person suspected of breaching a rule or involved in breaching a rule. Other terms used for *suspect* may include but are not limited to – duty holder, potentially liable party (civil or criminal), person of interest, party who is the focus of investigation or compliance action, responsible person, respondent, alleged offender. A *person* may be a legal entity such as a company or partnership.

**Vicarious liability** is a term that relates to a person having liability through the actions or omissions of another person.

**Victim** refers to a person against whom an offence is committed and/or who suffers injury or loss. 'Victim' may include family members as set out in the Victims' Rights Act 2002.

**Voluntary compliance** is a reference to compliance achieved through information approaches and is encouraged by cases where enforcement action has been taken.

**Warning** is a formal advice to a person that their actions and/or omissions amount to non-compliance and which may or may not include mention of the possible consequences of continued or repeated non-compliance. It is associated with the decision by the regulator not to proceed with sanctioning for that particular non-compliance. The existence of a prior warning will influence future enforcement decision making.

*This resource was developed by the Compliance Industry Advisory Group and signed off by the Steering Group for the National Compliance Qualifications Project. The good work of the individuals and organisations that contributed to the development of this resource is gratefully acknowledged.*