

Tribunal quashes fine for breaking a seal affixed during dawn raid

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Companies should inform security as well as cleaning staff of any seals that have been affixed during a dawn raid. The Trade and Industry Appeals Tribunal recently ruled that the ACM had been wrong to impose a fine on the Dutch National Association of General Practitioners (LHV) for breaking a seal affixed by ACM officials during a dawn raid. The legal provision for penalising the breaking of affixed seals is directed at the person who commits the breach. According to the Tribunal, the breaking of the seal could not be attributed to LHV.

The Tribunal [found](#) that LHV could not be held responsible for the seal break because a security guard at LHV's shared office building broke the seal during his rounds. The guard was not directly employed by LHV and the seal break was not carried out in LHV's ordinary course of business. In addition, LHV had taken all the necessary steps to inform the persons who could possibly enter the room of the affixed seal. It informed the cleaning staff as well as the facilities manager of the shared office building and had affixed yellow tape across the door as an extra precaution. The Tribunal did not consider it necessary for LHV to have instructed the security guard directly, since any contact with the security staff usually ran through the facilities manager. It therefore quashed the fine imposed on LHV for the seal break in its entirety.

The Tribunal's reasoning only applies to seals affixed by the ACM. If the European Commission affixes a seal during a dawn raid, Article 23 of [Regulation 1/2003](#) applies. In that case, a fine can be imposed on the company where affixed seals, either intentionally or negligently, have been broken. Recent EU [case law](#) shows that this can lead to substantial fines. Either way, it is wise for companies to inform not only their own staff, but also all persons who may have access to the rooms where seals have been affixed to the doors in order to prevent fines being imposed.
