



BSI 102000

Provision of Investigative Services



**The Professional
Investigator**

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Editorial

The Institute remains at the forefront of activity revolving around the professionalisation of the investigation sector through attendance at Skills for Security, the British Standards Institution (see page 6), and through briefings to and from the SIA.

Despite the apparent urgency late last year with the reports from Lord Leveson and the Home Affairs Select Committee (or the 'Keith Vaz look at Me Show') there seems to now be a bit of a hiatus in the licensing process. Simon Smith MIPI, Education and Training Chair for the IPI, is of the opinion that internal wrangling at the SIA and HMG is partly to blame for this – when all is said and done, the PI sector has always been in the TDB (Too Difficult Box) because of the wide range of activities that it covers.

I personally find this disappointing because of the monumental effort the sector has put into helping the authorities narrow down the focus to a sensible, trainable level – although we still feel that the expected levels of competence are too low – and administration allowing, we could really be licensed tomorrow if the motive was there. Qualifications exist, but even if they imposed a 12-month competence-free pre-licensing period the qualifications exist that people



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could obtain in that period that would permit competence-based licensing to be properly imposed by 2014.

Our biggest fear is that just as we get close again, the pre-election purdah will put the mockers on licensing in the short term, and that HMG will then prevaricate over unimportant matters like the economy and wars and punt us into the long grass once again. Why that is I don't know, because the SIA has no responsibility for either of those two influences.

It is now 1/7th of the average lifetime expectancy, or just over a quarter of a policing career since the Act came in. Just thought I'd add that.

David Palmer FIPI
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Invitation to Contribute to the Journal

Truth be told, the Journal is written by very few people. Inevitably this narrows down the scope of available material and this is of concern to the Board because as a professional journal it should cover as wide a range of subjects as we could possibly and realistically manage. Over the years we have borrowed articles from all over the world (a trend apparently now followed by others) but with 350+ members we have an expectation that YOU have things you want to say, or that you know about that we do not, that might be of use, of interest, or just plain annoying to other members.

Please take the time to email the IPI at admin@ipi.org.uk if you discover anything about which we should be aware – consultations, legal decisions, advice from clients on service provision and so on. Or just write us a letter or article with an opinion.

Please.



Updating Directory

Members are asked to let IPI Administration know when they change address or communication details on their web directory entries.

Thank you
admin@ipi.org.uk

Leveson Finally Making the News

On the 18th of March 2013 the brinkmanship over if and how the Press were to be 'Levesoned' finally made the headlines after a last minute deal was brokered by the three main parties, all of whom are subject to the adulation and vilification of the press at varying moments in time.

The decision at which they arrived was to create a Royal Charter to which the press could choose or decline to align themselves.

We were told by the varying political interests that it was – or was not – underpinned by legislation. Clegg and Milliband said it was, Cameron said it wasn't. That's clear then.

The consequences of any failure to sign up to the Charter would be increased penalties – exemplary damages – payable *when sued* (my italics). In other words....

Nothing. If you are a McCann or a Dowler or me, and you have limited funds, you only get to sue if your lawyer will do it *pro bono* or on a conditional fee basis. So that's not likely to happen. If you are rich they may be a bit more careful, but then for many 'celebrities' all news is good news (as a rule – ask the Kardashians).

Another Charter element would be the inability to change the Charter without a 2/3 majority in Parliament. Given that the House has been almost 50/50 for a

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Lord Justice Leveson

TRACING

An Investigators Guide To Finding Wanted and Missing Persons

By David C Palmer FIPI F.Inst.L.Ex

Investigations into tracing missing persons are taking place constantly - at professional and amateur levels, within and outside the legal sphere. They are done for a number of reasons, but the methodology is principally the same.

This book is intended to aid those whose work, or interest, lies in finding people. It is a guide to the methods and the legalities surrounding what can be very interesting work, the resolution of a puzzle which is not overly affected in its solving by evidential restrictions. It is also intended to address investigations into those persons who are lost either through time, or through a decision to go missing as a result of excessive pressures, legal, sociological and psychological.

It is not intended to find kidnapped people, or genuine 'missing' persons who have gone missing as a result of mental illness. In its pages, investigators will be provided with advice on how to solve the riddle of a missing or wanted person enquiry: the definitions which apply, and which may direct their enquiries; the techniques of asking questions and developing information from documentary evidence; details of resources that they need to utilise in order to solve their riddles; and much more besides. Such guidance is rare. The majority of books on this subject are published in the United States, with a bias towards their methods and availability of information - methods and information that simply aren't available to British investigators.

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long time, now, this is hardly likely to ever happen. Any party would NEED a 2/3 majority before it had even the faintest hope of challenging the Charter, so this is merely a sop to the uninformed and politically naïve. (Like me..)

All meaty stuff! Under such a Charter any hack can carry on harassing behaviour, invading privacy, setting up uncontrolled 'sting' operations, disclosing otherwise personal data, etc. – while professional investigators continue jumping through hoops to comply with the statutes that 'investigative journalists' can happily ignore 'in the public interest'.

I did note, as I read the Telegraph the following day, that Lord Leveson had not commented on the claim that the Leveson Principles (as HMG called them) had been complied with 'in the main'. I wonder why?

Let's face it, the only medium through which we can obtain information about this Charter is through (wait for it) The PRESS, that unbiased, non-profit bastion of truth-enhanced-by-the-odd-uncalled-for-adjective. (I've lost count of the time the newsreader on TV has told me I am outraged about something I don't know about, yet.)

If it wasn't so important to our profession I'd be demanding that licensing be completely reversed, as it imposes a statutory control and heavy restrictions over people doing the same thing as reporters – obtaining information - but without the ability to do so for a mammoth profit! In fact I find it rather telling that our allegedly grubby industry is seeking licensing while the media is frightened of it! The press is being asked, in essence, to sign up to a 'decree' that they will act with propriety, conscience and some ethical standards – and has concluded that it should not.

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What are their concerns?

1. "That expenses scandal MPs might sit on the regulatory body". Hey, they sit on the Home Affairs Select Committee and one is the shadow Home Secretary! Go figure.
2. "This might threaten press freedom". How, exactly? Do tell.
3. "You get punished for not signing up". No, you get punished if you don't sign up AND are found guilty/liable for some other wrongdoing.
4. "HMG would have a say in how the press is regulated." They already do – D Notices – and all HMG needs to do is stop holding press conferences and the press will have to work for a living. Like us!

I'm not saying all is well in the regulated world, but the bleating of the 'free press' – also known as the 'press who take liberties' – is really quite amusing. It is a powerful medium, and it needs a little bit of reining in – not regulation as they describe it, but 'regularising' as an American might describe it. Some rules, ethics and codes of practice that make it clear (a) what they can and can't do, and (b) what'll happen if they don't comply.

The Charter implies this, even if it arguably doesn't go far enough.

Ultimately, there is one test it passes, as reported. The victims' representatives seemed happy. And that's what matters.

The British Standards Institute

The Institute is formally represented on the BSI Committee looking at the new British Standard 102000 for 'Provision of Investigative Services'.

The process appears to mirror that which took place for the National Occupational Standards, but is less detailed. This means that the Committee looks at what has been suggested and alters and amends the text in keeping with our better understanding of the field.

A couple of meetings have taken place over the past few months. Representatives included Tony Imossi (ABI), Dean Hyde (Association of Incident Fraud and Claims Investigators), Ian Sanderson of the Security Inspectorate, Lynn Watts-Plumpkin (SSAIB), EPIC, the Credit Services Association and the SIA, as well as ourselves.

As soon as we receive the DRAFT BSI 102000 document we will forward it to all members. We ask that, on receipt, you review it and make any observations you think valid and important so that the BSI can give it more consideration before it is published as a final Standard.

I would ask that readers be mindful of the fact that minor alterations in wording are not sought, only larger issues, e.g. does the legislation section include all the relevant laws an investigator should be aware of (not know in depth, necessarily)? Are there any activities that we have plain missed?



If there are any serious omissions then we need to know as soon as possible.

Consider this – if you want to advertise as being compliant with BSI 102000, you really need to be aware of its content (and loopholes!), and if there are any serious omissions then we need to know as soon as possible.

Skills for Security Update

As you are aware from previous issues of the journal, Skills for Security are the current direct consultation route between the sector and HMG because we are still considered by HMG to be part of the Security Sector.

At a recent meeting it became plain that while Skills for Justice has made contact with SfS regarding the National Occupational Standards, as proposed by the ABI, there has been little progress in terms of any transfer of responsibilities. In fact, I think it would be fair to say they've had a chat. So for the short term at least we remain connected to Skills for Security rather than Skills for Justice – who haven't contacted us at all, and therefore can't be that enthusiastic at the moment.

On the worrying side, SfS has been bought out and is now owned by the British Security Industry Association (BSIA), the security industry trade association. What effect this will have on our sector of the industry remains to be seen because we have never had to consult with the BSIA before, and their focus is on the already licensed sectors where they are already expert. In truth,



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we don't know if they have any investigation-sector members at all, or, if they do, what level of influence that group may have in the larger scheme of things.

What I can say is that the IPI's relationship with SfS is such that if there is anything we need to know, we will be told.

Legal Update

In the case of R (On the application of Prudential plc and another) Vs Special Commissioner of Income Tax (2013) the question of legal privilege was addressed, in the sense that it had been suggested that anyone (e.g. accountants, will-writers, insurers and, by extrapolation I would suggest, investigators) who provided legal advice could claim legal professional privilege (LPP) over the provision of such advice.

As a fraud investigator I have often been told by lawyers that I can't have something because of LPP, only for me to tell them I'd read up and been trained on the subject and "no, client accounts and mortgage files are NOT subject to LPP so hand them over."

In the above case the Supreme Court decided on a 5-2 majority that ONLY barristers, solicitors and Chartered legal Executives can claim LPP. The minority disagreed on the grounds that it was the nature of the advice that counted, not the status of the advisor. However, as the majority ruled, members should be under no illusion that any unqualified legal advice they provide is protected by LPP. It is NOT.

Ministry of Justice the Legal Profession



The Ministry of Justice has published its survey of solicitors including the questions

- What services are most commonly provided by solicitors' firms and for whom?
- What are the problems faced by solicitors' firms and by which type of firms?
- How flexible are solicitors firms in changing the services that they provide?
- How many solicitors' firms are undertaking legal aid work and how much?
- How many current legal aid firms are planning to withdraw/ have withdrawn from legal aid?

Obtain the report at:

<http://www.lawsociety.org.uk/representation/research-trends/research-publications/Baseline-survey-of-solicitor-firms-2012>

It is worth keeping an eye on HMG consultations because, quite frankly, they don't exactly over-publicise them, and then the consultation period is over before we find out there is one! For example, a consultation on surveillance opened in Feb, closes in March and we only found out by going to them, not the other way around. Sobering.

Data Protection Act

At the ABI Wales and West Regional AGM in Exeter recently, Chris Brogan gave an interesting and informative presentation on the good ol' DPA. And it wasn't just interesting because of what he told us, but also because of his debates with the OIC about who should, and who need not, be a Data Controller with a requirement to register as such.

There has been a lot of debate in investigator circles on who should be registered. As I understand it, the ABI requires that its members be so registered as one of its membership conditions (subject, I assume, to the employment status of the applicant).

Chris has a Masters Degree in business from Leeds Business School and a Masters-in-Law from Northumbria University. His dissertation is titled "The Private Security Industry and the Privacy Laws: Can they Co-Exist?" (If you make a donation to "Help For Heroes" www.helpforheroes.org.uk then he will send you a copy.) He is a fellow of The Security Institute, a member of The Fraud Advisory Panel, ASIS International, Association of Advanced Legal Studies and past chairman of The Council of International Investigators.

He knows his stuff.

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IPI 'Manual for Investigators'

A comprehensive guide to conducting investigations of many kinds

By David C Palmer FIPI F.Inst.L.Ex

Taking the reader from basic ethics through generic investigation methodology and finally to specific types of investigation, the Manual will show how to exercise basic administrative and operational practices so as to be able to mount and complete a high quality investigation for a client, or for the public.

Written by a practising and professional investigator, and starting with a 'template' methodology that causes the reader to think like a professional, the reader will find that the basic practices described in this book can be applied to any kind of enquiry. There is no other book like it! Many books describe 'investigations' but none are as thorough in describing the thought processes and operational needs behind an investigation. Its contents include instruction on

- dealing with clients
- preparing interviews of all kinds
- taking statements
- assembling and managing evidence
- writing reports
- tracing
- corporate enquiries
- criminal investigation from the prosecution *and* defence perspectives
- process serving
- traffic collision investigation

... and more.

Learn to be an investigator the right way – by using the knowledge, experience and standards of the members of the Institute of Professional Investigators!

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Data Protection Act 1998

In a nutshell, he argues that unless you are responsible for determining the manner AND purpose of the data collection process in an investigation, then you do NOT need to be registered. He has argued with the OIC about this, and as he says, his argument is 'researched, referenced and peer-reviewed' and therefore has weight, while the OIC just keeps coming back, effectively, with "Cos I say so", which may not have quite as much gravitas.

However, Chris also observed how clients, particularly solicitors, ask (demand?) that their contracted investigators make any applications under DPA for data – and when such an application is made by the investigator then almost by definition that investigator takes on the Data Controller 'mantle' in the application. In other words, Chris would advise that you get your solicitor client to make their own applications!

All that said, registration costs little, the procedure can be found at http://www.ico.gov.uk/for_organisations/data_protection/notification/notify.aspx together with the ICO's

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template for registration, so it may just be 'safe' to register, although this results in you obtaining new responsibilities on storage, retention and disclosure.

In a couple of asides, Chris also reminded us that Article 8 of the European Convention on Human Rights requires only respect for privacy – it does not, and never has, bestowed an absolute right of privacy. Someone else apparently sneaked that re-interpretation into law somewhere, and as such that interpretation may still be questionable.



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