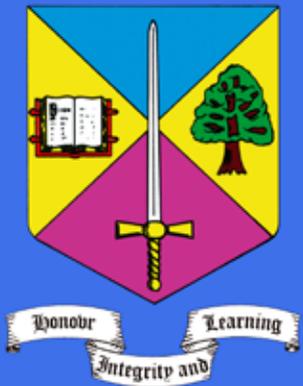




# Self Defence

What should we consider?  
by Richard Cumming MIPI



## The Professional Investigator

IPI  
Claremont House  
70-72 Alma Road  
Windsor  
Berkshire  
SL4 3EZ

Tel: 0870 330 8622  
Fax: 0870 3308612  
Email: admin@ipi.org.uk

David Palmer FIPI  
Editor



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## Principal-Elect – James Harrison-Griffiths FIPI



At the last Board Meeting, the Board unanimously decided that the next Principal of the Institute will be James Harrison-Griffiths FIPI of Aitch-Gee Investigations in Essex.

Jim is a former DCI in the Metropolitan Police who had a healthy attitude towards the fluffy diplomacy of what we in the Police now call public relations – in other words, unlike today where we consider the customer is always right, Jim told it like it is and ‘where there ain’t no evidence, there ain’t nothing for us to do.’ Hopefully this no-nonsense approach will be valuable in the near future.

# NEW Institute Registered Address and Contact Details

Members are asked to note that with effect from the 1st of July 2014 the Registered Office for the Institute will be:

The Institute of Professional Investigators,  
Jubilee House,  
3 the Drive,  
Warley,  
Brentwood,  
CM 13 3 FR.

The Institute's email addresses remain the same.

The Institute will also be non-VAT registered from July this year. The cost savings of this whole project will hopefully be reflected in the Institute's balance sheet and in future subscription charges.

The new Secretary General will be

**Simon Smith MIPI, MSyl,(Dip), AMIFM, MIPSAs.**

"Following the impending retirement of Pelican Management Ltd as our Secretariat wef 30th June 2014, the Board have appointed Simon Smith, one of our Governors, as the new Secretary General and Company Secretary of IPI. Simon has been an IPI member since 1995.



**Simon Smith, MIPI**

Additional to the IPI Board, Simon is on the International Council of the IPSA where he speaks on Investigation and Maritime Security. He served on the Skills for Security Working Party on Port Security. He represents Investigators on the Security Alliance. Simon is a TSI Member, holding the Certificate and Diploma in Security Management and a Diploma in Crime Prevention. He has qualifications also in Law, Health and Safety and Fire Safety. He is an Associate Member of the Institute of Fisheries Management."

# From the (new) Secretary General

I'm writing to you to share some thoughts on taking over as your Secretary General. It is fair to acknowledge, at the outset, that these are challenging times for the Institute. All these challenges must be faced but, the good news, some favour us. You will see why, overall, I am optimistic.

1. The biggest challenge we face is financial and this has had to be addressed. As you will see from the Accounts, we have had to dip slightly into the reserves and this cannot go on. So, we are having to save money. Now the good news, and it is good. We have now a full Board that it is a pleasure and honour for me to serve. This has given support to radical cost cutting. Our front line services, including our Computer Expert, are unaffected, indeed his role is expanded exponentially. A cheaper deal on phones, offices, storage and other back office functions has been done without damaging the essential elements of dealing with people or queries. A more positive stance for the Institute has been developed and will bear fruit. The Board now has the diversity and talent to deliver all this.
2. SIA Licensing and examinations are on track. Already we have held an examination and we hope to have the next sittings in July and September. It is fair to record that, in the exams, our Candidates seriously impressed the external examiners. The Course, at the new price of £375, is selling and we expect that to increase. (Remember, IPI members get a 20% reduction on that fee!). This is a source of income for us, it is going to be necessary for all working Investigators to do the course and exam to get a Licence and, through our links to the wider security industry, we are trying to position ourselves to deliver both to those (such as "Store Detectives") who need this qualification. We are pushing this hard to sustain and expand this income stream in the wider "Security Sector" as well as the more traditional PIs.
3. IPI has indicated a willingness to assist other organisations with their own specialist qualifications. The Board have approved a course which is being taught by a Commercial organisation. This validation serves two purposes. It, firstly, pays us a small sum for use of our validation. Secondly, it gets our name recognised by a wider audience. I am deeply grateful to the Board members who worked on this project, and I'm sure the members will be when benefits occur. Indeed, I am hopeful that further validations will follow on other Courses.
4. We have also volunteered our services to train some NHS staff in Investigative techniques, and await feedback on Course development. Obviously, with non IPI members, we will look to receive a sensible level of remuneration, both for Trainers and as Income for IPI.
5. Membership remains a big challenge. In the medium term, this has declined. With the Licensing regime fast approaching, of course, especially with our discount, common sense ought to dictate that membership is attractive. However, what we found in the Security sector was that, once the Blue Badges flowed, people didn't need, they thought, the validation of a membership card as well. They were wrong, of course, but in the interim organisations like ours suffered a decline. This took years to reverse, and we can't

continued>>

afford it! However, as with much else, the Board is on top of this, and one blow already struck concerns VAT. We have few VAT-able transactions, our turnover is way below the VAT limit, but every year our subscriptions have had VAT added. This year there's £34 of it. Of course, those whose Company pays or those individuals who reclaim Professional Subs against PAYE (as all earners can – IPI will happily help any member struggling with this!) may not suffer it. But many do, and the Board feels this may be the “last straw” to some. We are therefore de Registering for VAT. As I say, we've not been big VAT payers, and VAT costs to IPI are declining. Whilst I don't know if a single member has been “put off” by the Invoice with VAT on it, there would not have to be many totally to “contra” any VAT reclaimed by us from 3rd Parties. So, the VAT benefits no one (but the Government) and may just be the final straw for equivocating members. Its removal was essential!

From the above you will see that the Board, led so excellently by our Principal, Vice Principal and Treasurer, and unanimously striving to improve the Institute, to the benefit of its Members and for the good of all, are committed and are moving forward. To this, and with Pride in IPI but humility for the honour of serving, I subscribe my name.

**Simon Smith**

MIPI MSyl(Dip) MIPSAMIFM



## Polite Reminder

Any member who has not paid his fees by the end of June will be in default and will not be included in further communication regarding industry matters.

**NOR WILL THEY** be in a position to take advantage of the Institute's ability as an IQ Centre to take into account their qualifications and prior experience when seeking a licence-based qualification if and when that regime finally starts. As an IPI member we can present documentation to IQ that may result in your NOT having to attend a course of instruction, the precursor requirement to the examination. The Institute can certify your exemption based on what it already knows about you; and what's more, it can provide the examination and any 'gap' training at a reasonable cost and based around your own needs. The aim of the IPI is the creation of qualified, trained, licensed professionals – not a pile of slightly informed people who have done a course written by accountants at a cost which benefits the latter rather than the former.

# Annual General Meeting and Elections

The Institutes AGM will take place on the 17th of October 2014 at the Civil Service Club, Great Scotland Yard, London. Dave Humphries of the SIA, a regular and effective speaker will be in attendance, and we also hope Ray Clarke of our education partners IQ Limited will attend as well. Further details will follow.

## Elections to the Board.

In accordance with the Mems and Arts, and ByeLaws of the IPI, resignations, renominations and new nominations for Board membership will take place. The relevant provisions state:

### 'BOARD OF GOVERNORS'

49. The Officers of the Board shall consist of the Principal, Deputy Principal and Treasurer. These Office Bearers shall be elected by the Board of Governors. (That means they are elected directly and not by the membership. However, they shall have been Board members at the time of, or prior to elections. Ed)
50. The Principal shall be a Fellow of the Institute, and shall have previously been a Member of the Board of Governors. He shall hold office for a period of TWO years and thereafter shall be eligible for re election to that office by the Board of Governors, provided no such elected person shall hold the office of Principal for longer than a further consecutive term. A period of office

**Nominations must be made and  
seconded at least 8 weeks before the  
AGM if they are to be valid.**

shall commence on appointment and shall continue until the second Annual General Meeting following that appointment.

51. The Deputy Principal who shall also be known as Second Principal, shall be a Fellow of the Institute and shall have previously been a member of the Board of Governors. He shall hold office for three years and shall be eligible for nomination for the post of Principal.
53. Proposals for election to membership of the Board of Governors shall be made not less than eight weeks before the Annual General Meeting in writing to the Secretary signed by a proposer and seconder. All such nominees shall have been a member of the Institute for a period of not less than twenty-four months. In the event of the nominations for election exceeding the available places an election shall take place at the Annual General Meeting.

Nominations **must** be made and seconded at least 8 weeks before the AGM if they are to be valid.

# Thanks and Goodbye – ish

It's been about 10 years since David Pryke, Lynda King and Duncan Place took on responsibility for running the administration of the Institute and in that time we have taken advantage of their facilities to create the Distance Learning Course, which has now reached the 180 student mark, with some 30 students completing the 4-part course, three taking our exam and now 5 preparing to take the IQ exam.

David Pryke and Lynda King have been great friends and servants to the Institute since (I recall) about 2003, when they took over management of Institute affairs after the sad and unexpected passing of Peter Wigginton. Notwithstanding their excellent service and passionate interest in the Institute, the Principal has been a guest in their homes and considers both to be friends.

Hopefully we will keep in touch but in the interim we wish them both a long and happy retirement. Duncan, on the other hand, is to remain an integral part of IPI management in the sense he will be remain in charge of the Institute's IT needs, in particular the distance learning and journal projects.



David Pryke



Lynda King



Duncan Place

**David Pryke and Lynda King have been great friends and servants to the Institute since 2003 when they took over management of Institute affairs**

# Self-defence – what should we consider?

By Richard Cumming MIPI

At a time when we are focussing on Continuing Professional Development and revisiting notes on legislation and good practice in our industry to overcome the hurdle of SIA licencing I thought I would submit some food for thought on a different aspect of self-preservation - that of self-defence.

Having found myself in a few situations since retiring from the Police where physical confrontation became a real possibility, without the benefit of a personal radio and the knowledge that backup wasn't far away, it's something that we should all be prepared for. It can arise in totally unexpected circumstances, for example (as I found) in the "straightforward" service of papers.

I have attended numerous self-defence courses in the Police, Foreign Office, with Spanish Police and other martial arts instructors, and Lesson 1 is - always to be aware of your surroundings and avoid putting yourself in harm's way. However in our line of business this is sometimes not possible. For example (again as I have found) in trying to trace someone, following a trail which leads you to a pub in East London which you wouldn't choose as your "local".

Lesson 2 is usually to avoid confrontation by being reasonable and non-aggressive in both verbal and non-verbal communication with the other person or people. If the situation looks as if it could escalate then make sure you have an escape route and don't be afraid to leave before it does so and "live to fight another day".

**"Supreme excellence consists in breaking the enemy's resistance without fighting"**

SUN TZU – The Art of War



This is all common sense really and references can be found in SUN TZU – The Art of War written by the famous Military Strategist in the 6th Century BC:

"Supreme excellence consists in breaking the enemy's resistance without fighting"

But what action should we take if all the above fails and we are confronted by someone who clearly doesn't like us and is threatening to cause us serious harm?

What does the law say about self-defence?

The CPS guidelines reproduced below state that it is a subjective test as to what the "defender" honestly believed was reasonable force to defend him or herself. (Since 25 April 2013 such action by a householder can be "disproportionate" but not "grossly disproportionate.") Also, it is not necessary to wait to be struck first before defending oneself:

*The law on self defence arises both under the common law defence of self-defence and the defences provided by section 3(1) of the Criminal*

continued>>

*Law Act 1967 (use of force in the prevention of crime or making arrest). It has recently been clarified by section 76 of the Criminal Justice and Immigration Act 2008.*

*Section 76 of the Criminal Justice and Immigration Act 2008 provides clarification of the operation of the existing common law and statutory defences. Section 76, section 76(9) in particular, neither abolishes the common law and statutory defences nor does it change the current test that allows the use of reasonable force.*

*Section 76(3) confirms the question whether the degree of force used by the defendant was reasonable in the circumstances is to be decided by reference to the circumstances as the defendant believed them to be.*

*Section 76(4) provides that where the defendant claims to have a particular belief as regards the existence of any circumstances, the reasonableness or otherwise of that belief is relevant to the question whether the defendant genuinely held it. However, if it is established that the defendant did genuinely hold the belief he may rely on that belief to establish the force used was reasonable whether or not it was a mistaken belief and if it was mistaken, whether or not the mistake was a reasonable one to have made, i.e. the crucial test at this stage is whether the belief was an honest one, not whether it was a reasonable one. However, the more unreasonable the belief, the less likely it is that the court will accept it was honestly held.*

continued>>

## **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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*Subsection (5A) allows householders to use disproportionate force when defending themselves against intruders into the home. The provision came into force on 25 April 2013 and applies to cases where the alleged force was used after that date. The provision does not apply retrospectively. It provides that where the case is one involving a householder (please see the section below for further details) the degree of force used by the householder is not to be regarded as having been reasonable in the circumstances as the householder believed them to be if it was grossly disproportionate. A householder will therefore be able to use force which is disproportionate but not grossly disproportionate.*

*The provision does not give householders free rein to use disproportionate force in every case they are confronted by an intruder. The provision must be read in conjunction with the other elements of section 76 of the 2008 Act. The level of force used must still be reasonable in the circumstances as the householder believed them to be (section 76(3)).*

*In deciding whether the force might be regarded as 'disproportionate' or 'grossly disproportionate' the court will need to consider the individual facts of each case, including the personal circumstances of the householder and the threat (real or perceived) posed by the offender.*

**The provision does not give householders free rein to use disproportionate force in every case they are confronted by an intruder**

*Section 76(7) sets out two considerations that should be taken into account when deciding whether the force used was reasonable. Both are adopted from existing case law. They are:*

- that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action;*
- that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.*

*There is no rule in law to say that a person must wait to be struck first before they may defend themselves, (see R v Deana, 2 Cr App R 75).*

*Failure to retreat when attacked and when it is possible and safe to do so, is not conclusive evidence that a person was not acting in self-defence. It is simply a factor to be taken into account rather than as giving rise to a duty to retreat when deciding whether the degree of force was reasonable in the circumstances (section 76(6) Criminal Justice and Immigration Act 2008). It is not necessary that the defendant demonstrates by walking away that he does not want to engage in physical violence: (R v Bird 81 Cr App R 110).*

continued>>

So what action should we take if cornered as above?

My advice would not be to try and execute a badly remembered wrist lock from somewhere in the recesses of your brain! Most of the courses I have attended recommend some variation of the “kick and dash” tactic

**They recommend some variation of the “kick and dash” tactic of disabling the opponent as effectively as possible and getting out – don’t wait for others to wade in**

of disabling the opponent as effectively as possible and getting out – don’t wait for others to wade in. One person against multiple attackers is very bad odds. There are a number of strikes that could achieve this and having been through the previously described “de-escalation” phases one would expect any CCTV images of the evolving situation to support the action taken.

Or, to coin another quote from SUN TSU:

“Therefore the good fighter will be terrible in his onset and prompt in his decision. Energy may be likened to the bending of a crossbow; decision to the releasing of a trigger.”

It would be interesting to hear others’ views...

[The author has also been a practitioner of Wado Ryu karate for 25 years]

# Board Meeting Minutes April 2014 - Summary

## PRESENT

|                          |                    |
|--------------------------|--------------------|
| David Palmer             | Principal          |
| James Harrison-Griffiths | Deputy Principal   |
| Richard Bradshaw         | Co-opted member    |
| Richard Cumming          | Co-opted member    |
| Richard Lee              | Co-opted member    |
| Richard Newman           |                    |
| Simon Smith              |                    |
| Brendan Tolan            | Co-opted member    |
| David Pryke              | Secretary General  |
| Lynda King               | Asst. Sec. General |
| Duncan Place             | I.T.               |

Apologies were received from Brian Walker.

## VAT

Simon Smith proposed that the Institute should de-register for VAT w.e.f. 31st March, 2014.

As a result of a discussion of the immediate implications of doing so, the Secretary proposed that the Institute apply for partial VAT exemption from 2015 which would mean VAT not being charged on membership subscriptions. This was felt to be an excellent idea which should be adopted before next year's fees fall due. (Editor's Note: This remains subject to confirmation of the effect this would have on all parties concerned.)

## Foundation Course Costs

The DL course price increase agreed at the

previous meeting was felt too high as there had been no enrolments and the Principal asked for the views of those present. Following discussion it was unanimously agreed that the cost be reduced to £375 + VAT with immediate effect. This newly agreed charge would include the cost of the exam but exclude the CD. It was further agreed that IPI and IPSA members would receive a £75 discount. (Editor's Note: Enrolment has now restarted.)

## Data Protection

The Principal had canvassed opinion as to how best to amend the wording of the IPI Data Protection Registration and it was agreed to proceed with Mr Newman's suggestion, namely to register as a training provider and tack on "membership organisation". Registration falls due for renewal on 16th May 2014.

## Mike Welply

The Principal advised that Mike Welply had resigned from the Institute membership owing to ill-health. In view of the supportive work Mr Welply had undertaken over many years, the Principal proposed that he be awarded Life Membership with immediate effect. (This was unanimously agreed, and Mike later sent us a lovely letter expressing his appreciation for the award, and his continued support for his colleagues.)

Change of Secretariat - Duncan Place, the current



Mike Welply

continued>>

IT provider, had been invited to attend the meeting in order to discuss what he could provide for the Institute. Following debate, it was agreed that he would be offered a two year contract for his services.

After discussion of other tenders, Simon Smith submitted a proposal whereby he would undertake the duties required at a cost of £700 per month + £119 for a Regus virtual office and it was unanimously agreed to accept Mr Smith's proposal. The Principal requested that a contract be drawn up to protect both parties.

The Secretariat confirmed that the CSC had been booked for Friday 17th October for 40 attendees and 24 for lunch (final numbers to be advised nearer the time). It was agreed that two guests should be invited to the AGM, namely Dave Humphries from the SIA and Ray Clarke from IQ.

Principal 2014-2016 - On a proposal by David Palmer, seconded by Richard Bradshaw, it was unanimously agreed that James Harrison-Griffiths would take over the role of Principal at the forthcoming AGM.

Any other business - David Palmer expressed disappointment with the examination questions set by IQ and it was agreed that Simon Smith would pass on these concerns on behalf of the IPI and report any response.

## Guest column - Frank China

We don't seem to have heard that word 'Leverson' lately, is it because someone has lifted the carpet and done a bit of sweeping! Maybe not, but on the 14th November 2011, **yes 2011**, Lord Justice Leverson opened the hearings, saying: "*The press provides an essential check on all aspects of public life. That is why any failure within the media affects all of us. At the heart of this Inquiry, therefore, may be one simple question: who guards the guardians?*" That really is the question, isn't it. Did Part 1 of this Inquiry get any answers, **did it alleviate the public's concerns**. I expect not. A bit like the expenses scandal earlier; a lot of 'Huffing and Puffing' then all quiet for a few weeks, a number of people have their knuckles wrapped and back to square one, more skeletons come out of the cupboard – revolution is always needed to create real change!

All these type of events are simply to provide 'jobs for the boys': Leverson, to generate a few 'pence' for some already high paid person who has few hours to spare and, most important, to show the public 'we are doing something'. Parliamentary expenses, we needed to have a clean out, what better an opportunity. But at the end of the day Inquiries do very little, the real value is the 'voice of the people', but even then politicians can effectively turn a deaf ear to the problem and continue to live in the own little bubble.

This last few weeks have been quite dramatic, the country has been on the brink of another revolution. Another event has caught the people's imagination and it is almost a real revolution, by the people, for the people and certainly one that is a cause for alarm from the major political parties. Who would ever have thought that UKIP could provide more than a protest vote; but it has been real power to the

people! And not one political party can appreciate that UKIP is indeed the people speaking!

What should the leaders of the three main parties do? Quite simply, use UKIP as their promotional weapon, don't write off UKIP, don't treat them as inconsequential, but ask yourselves, why are they where they are? And if you come up with the correct answer use that fact to promote yourselves.

Look at the facts: the Liberals are blindly pinning their flag to the European mast, Labour is saying 'no referendum' and the Conservatives, more as an apology to public feeling, having promised and not delivered at the last General Election, will give a referendum if they are elected at the next, but with a sort of veiled proviso, after they have attempted to change and reform the EU from within; can that happen, will it happen? The chances of the Conservatives reforming the EU from within are about as slim as ... *England winning the World Cup, and if we do, the Germans, the French and the Italians, not to mention the Spanish wouldn't like it so the chance to reform the EU are even slimmer*, and truly I hope I am wrong on both counts. But without strong positive statements as to what we hope to seek from any re-negotiation, all three main parties will flounder in the face of UKIP, so the revolution is sustained!

Of course many readers will say that I have got it wrong, at the General Election voters are more thinking, more discerning, it will be the economy, it will be



continued>>

do we like the views of this or that leader, do we like their manifesto! We can no longer say can we believe them since it will almost be 'lies, dam lies', and business as usual. Don't kid yourself, unless UKIP is tackled now, way before the build-up to the General Election, it will be more of the same.

So I address this observation to the three main parties, Liberal, Labour and Conservative and ask their supporters, think, how and why did all this happen and use it to your best advantage, don't simply say it will all work out next year... sure it will, but do we need another hung parliament? And at least three more Inquiries after! Committees are OK, but the best Committee is a Committee of one ... be tough, be Brit ....



## **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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## Potential Fraud Avenue

Those of us involved in fraud will be familiar with the use by scammers of London based post office boxes and bogus addresses, supported by the kind service of telecoms providers who will let you have a London geographical telephone number even if you live in the Cameroons or Belize, and/or the inability of vulnerable investors to spot the difference between a Skype (0203) number and a genuine London number. Now, the fraudsters have been assisted by the introduction of the .London domain name. From the authorities:

1. A Dot London (or .London) top level domain (TLD) has recently been introduced. Domain names are the web address you type into a browser in order to visit a website, and the TLD is the last part of the web address such as



.com or co.uk. Organisations and individuals can now purchase domain names that include the TLD of Dot London e.g. www.name of company.london

2. Dot London is one of many newly released TLDs (e.g. Dot Finance or Dot Photography) but Dot London has been widely publicised. Purchasing of domains featuring Dot London has initially been prioritised to those that are London-based, with trademark or business names relating to the domain, but this restriction is due to be lifted on 9 September 2014. A list of accredited registrars from which Dot London domain names can be purchased can be found here

<http://www.dotlondondomains.london/participating-registrars/>

3. Organisations may wish to consider the potential threat of a third party purchasing Dot London (or other new TLD) domain names that includes the name of your organisation, and that could be used to impersonate your company to facilitate fraud (e.g. in phishing attacks) or for other malicious purposes.

However, we should also be aware that .London will now be utilised by any fraudster who wants to give the impression that they legitimately have a London address.

(From the Editor: I have always promoted the idea that someone could sit at the foot of the One Canada Square building at Canary Wharf, wait until an OAP appears in the reception area to be met by a man in a suit who says, "Let's not go up to my office, let's have a coffee instead." Then intrude, ask the OAP (a.k.a. 'victim' who they think they are talking to, and then search the suit. Bingo, free arrest and crime solved.)

continued>>

## Legal Updates

### Debtor Process Serving – FCA Update

There was recently some furore over the FCA's arguably extraordinary decision to require investigators who are involved in process serving for debt cases to possess a CCA licence even though they didn't specifically get involved in the debt collection process. Thanks to representations from the ABI, the following statement has been made by the FCA.

*“Following representation by the Association of British investigators (ABI) the Financial Conduct Authority (FCA) has reviewed the licensing requirement under the Consumer Credit Act for the activity of ‘Pure Process Serving’ and issued the following guidelines:*

*‘Pure Process Serving’ is meant that:*

*The firm (a process server) is instructed by a law firm, or in-house solicitor, to serve legal documents on the recipient as part of the wider judicial process.*

*The firm will serve a variety of different types of documents (e.g. County Court or High Court Claim Forms, Bankruptcy Petitions, Statutory Demands, Court Orders and Applications), some of which may relate to debts due under credit agreements, but many of which may not.*

*The firm will be aware of the legal nature of the document, but will not be told about or investigate the cause of action or the underlying circumstances. For example, the firm may not be aware whether the claim is for a consumer credit debt or a different type of debt.*

*The firm will take steps to ensure that the recipient understands the legal nature of the document and the fact that it is part of a legal process (e.g. that it is a Claim Form), but will not engage in any discussion or negotiation with the recipient about the contents of the document or the substance of the action.*

*If the recipient initiates discussion, the firm will direct the recipient to the law firm or in-house solicitor, which instructed the firm. ‘Pure Process Servers’ will not serve other documents such as CCA default notices*

*The FCA agrees that where in England a firm is instructed to undertake ‘Pure Process Serving’, the firm should not be regarded as being engaged in ‘debt collecting’ i.e. taking steps to procure the payment of a debt due under a credit agreement (or a relevant A36H agreement) or a consumer hire agreement. Thus the FCA is of the view that firms engaged in this (and not doing any other activity which might constitute debt collecting or debt administration) do not need authorisation*

*and the FCA intends to operate on that basis pending amendment to the Perimeter Guidance (PERG) in the FCA Handbook, following consultation.*

*However, the FCA stresses that this is a question of interpretation of legislation, which ultimately is for the courts to decide, and the FCA cannot rule out the possibility that a court might decide on the facts that a ‘Pure Process Server’ is in fact engaged in regulated activity.”*

Given that the FCA or another relevant authority would have to authorise any such court case, we hope that common sense has been applied to this situation and that this will be the last we hear of it.

continued>>

## Changes to the PACE Codes of Practice

Change to Code C – Interview-related are available at <https://www.gov.uk/government/publications/pace-code-c-2013>

While the Code probably won't affect PIs directly, any PIs involved in defence work may find them to be of value, and PIs involved in fraud and other investigations which MAY result in court proceedings would also be well advised to consult the Code. It has always been the Institute's position that compliance with PACE is desirable even when it does not strictly apply because it underpins the validity of any evidence obtained and is compliant with Human Rights Principles.

## Data Protection – Interpretation of Section 55

In the case of the **ICO v Adair, Roberts and Evans**, who were engaged (it is understood) in some capacity by the National Crime Agency (and in its former guise, SOCA) HHJ Lee, Recorder at St Albans Crown Court, was asked to consider an application to dismiss cases prosecuted under Section 55 of the DPA. The ICO sought to prosecute the defendants for S.55

offences which (on first reading) appear to revolve around their possessing data originally held on NCA(SOCA) computers, albeit in connection with their duties but arguably outside the protocols set by the Agency for data security.

Members are asked to read the judgement in full because it contains some meaningful interpretations of some of the terms in the Act, but, in a nutshell, it appears to the writer that when someone comes into possession of data lawfully, even if under a condition imposed by an employer (data controller) which is later breached, no offence is committed because even if the new 'holder' holds it too long or outside those conditions s/he cannot commit the offence of 'obtaining data' because s/he did not obtain it unlawfully – even if their retention is later held to be unlawful. The only further offence that can be committed is unlawful disclosure.

For the full decision, go to <http://www.ncoa.org.uk/news/2014/may/19/judge-quashes-charges-against-ncoa-members/>

This information may be useful in the event that a Member is accused of anything similar.

## ICO Prosecutes Blaggers

Reported in Professional Security Magazine, the ICO recently convicted Barry Spencer, who ran ICU Investigations in Feltham with Adrian Stanton. He was fined £20,000 after being convicted at Isleworth Crown Court in November 2013, and in January 2014 Stanton and 5 other employees fined £18,500 and told to pay £15,607 in costs, while Spencer was fined £12,000 and told to pay £8,000 costs. Furthermore, **a confiscation order under the Proceeds of Crime Act** was made, ordering payment off £69,327.32 or service of 20 months imprisonment if not paid. He was also banned from being a company director for 8 years. The company itself was fined £100.

**...the data unlawfully obtained through impersonation could have been lawfully obtained through legitimate means**

ICU clients included insurance companies, utility companies and others, who engaged ICU to trace debtors. The ICO found no evidence that the clients knew of ICU's methods.

What makes it more amazing was that the ICO believed that the data unlawfully obtained through impersonation of the person whose data was being stolen could have been lawfully obtained through legitimate means.

Don't do it.

continued>>

### **Legal Ombudsman complaints about claims management companies - consultation on the fees framework**

In August 2012 the Government announced its intention for customers' complaints about poor service provided by authorised claims management companies to be dealt with by the Legal Ombudsman. The Legal Ombudsman will provide a new avenue of redress for clients of claims management companies and will assist the Claims Management Regulator in driving out poor standards and practices in the market.

Once the Legal Ombudsman's jurisdiction is extended to cover the authorised claims management industry, all authorised claims management companies will automatically be covered by the scheme and will have certain obligations towards it.

This paper sets out for consultation proposals as to how the costs the Legal Ombudsman will incur in dealing with complaints about authorised claims management companies may be recovered from the authorised claims management industry.

The consultation is aimed at persons authorised to provide claims management services in England and Wales under the Compensation Act 2006 and those claims management companies and individuals considering making an application for authorisation.

All responses had to be received by 6 June 2014, but anyone having evidence should still submit it.

## SIA Updates



Security Industry Authority

The usual applies – still nothing at the date of publication. Ten months – TEN MONTHS, almost 1% of a lifetime - after the Home Secretary's announcement. Writing as a DC, if I wasted as much time in my role as the Home Office (and some ACPO types) do in theirs I'd be facing disciplinary proceedings. Do you think 13 years has been enough, yet? Ed.

## Skills for Security Updates

Skills for Security have just conducted a review of the National Occupational Standards for Investigations, a meeting having taken place on the 28th of May which, regrettably, the Principal was unable to attend having been at Court for the last guilty plea of his career.

Only one NOS was up for real debate, the other NOS having been looked at and found in the main to still be fit for purpose since the last review in 2010/11. An additional NOS DA5 on presentation of cases at court has been added, and was also up for discussion – our own assessment was that some alterations had to be made as on performance indicator supported liaising with BOTH sides in a dispute at court which most of us would consider ill advised. We suggested addition of the words ‘where appropriate’, but await confirmation of the agreed, final draft.

### Update 2nd June 2014

We have received the following from Sfs:

“Following our NOS workshop which took place on the 28th May 2014 at Skills for Security Worcester, please find attached the minutes along with the following supporting documents:

- **Summary of change document**
- **Updated NOS INV2 / INV4 / INV5 / INV8 / INV10 / INV12**

The NOS include all agreed amendments made during the workshop and can be found summarised within the minutes. For a more detailed summary of changes please see attached Summary of change document.

**We will shortly be releasing the Full suite of 14 Draft INV NOS for UK Wide Industry Consultation to take place during July / August.** During this time the Draft INV NOS will be made available on our Skills for Security Website, alongside a snap questionnaire. We will inform the Industry of their opportunity to view and comment on the Draft NOS through following media:

- Skills for Security E-Bulletin (with a membership of approx 4500 industry members (UK wide)
- A press releases to trade press, who have an online presence and cover the whole of the UK



- Relevant Sector Consultation Groups will be informed via the electronic consultation platform (including our Northern Ireland, Welsh and Scottish Country Groups)
- All gathered interested parties and the wider consultation contacts will be informed of the consultation phase

We shall keep you updated as the Draft NOS are released and throughout the consultation phase.“

The Institute suggests that you look to view these documents as a professional necessity and contact Skills for Security at [NOS@skillsforsecurity.org.uk](mailto:NOS@skillsforsecurity.org.uk) with any observations.

## Member Updates

### Principal Retires!

No, not from the Institute!

After having retired from the Police Force in 2011 and being immediately re-engaged under the 30+Plus scheme (the one intended to retain experience etc., which HMRC then spoiled because they didn't like officers earning too much money after retirement), the Principal has finally left the police service after completing 3 years of his 3 month extension (eh?)

Retired officers will be amused to learn that on his last day in 2011, Chief Constable Carmel Napier (of sacking by the Police and Crime Commissioner fame) met David to give him a hearty farewell and enquired if it was true, as she had heard, that he was being retained under that scheme. "Yes", he replied, adding that it was for 6 months. She was dismayed, having announced the forced retirement of sergeants and inspectors, "I have to save money and if you want to go, you go," she said. (In fairness she also emphasised he could withdraw his retirement and stay as long as he wanted.)

"Have you got it in writing?" she asked. "Oh, yes," said the Principal.

"Right," said she, "I'll have to look into this, and I'll get back to you tomorrow."

David, amused, just said, "I finish at 4". "Oh. I'll ring you this afternoon, then."



**7 further extensions  
and 3 years since Chief  
Constable Carmel  
Napier decided to  
sack him, he finally  
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did, and in less public  
circumstances**

So she rang later that day and said there'd been an admin error, he was extended for 3 months, not 6. (She could have made it just the one month, under the scheme, and nothing could have been said.)

Anyway, 7 further extensions and 3 years since she decided to sack him, he finally leaves long after she did, and in less public circumstances – David won't be asked to explain his demise to the Home Affairs Select Committee.

But how things have changed since he joined in 1986. Tunics and later NATO jumpers have now become paramilitary uniforms; radios have become mobiles and Blackberry telephones; you can't pursue a robber in a car chase unless you've been traffic trained; you have to consider umpteen rules before arresting a villain; your decisions are now changeable by several layers of management and outside authority who don't have to do the work they want you to do again; 'Uman Rights are used to bang you over the head; you now have a 'firearm' instead of a blunt stick; and since we can record everything on a computer, everything MUST be recorded on a computer, which now runs us instead of us running it.

Suffice to say, he does not envy the longevity of new colleagues because if you sneeze without filling out a form the IPCC will want to hang you.

And we won't bother you with war stories, mainly because your own are probably better!

# The Professional Investigator

Institute of Professional Investigators  
Claremont House  
70-72 Alma Road  
Windsor  
Berkshire  
SL4 3EZ

Tel: 0870 330 8622  
Fax: 0870 3308612  
Email: [admin@ipi.org.uk](mailto:admin@ipi.org.uk)