The Leveson Report

The IPI Principal's Commentary

The Professional Investigator

Winter 2012

FULL SCREEN

The Institute of Professional Investigators

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

Contents

Institute News

Chair of Education & Training

Following his exciting work in respect of the IQ Agreement for provision of accredited training through the IPI, the Principal asked **Simon Smith MIPI** (above) if he would take over as Chair of Education and Training, and he has kindly agreed to do so.

Simon has extensive experience through other professional bodies in this area and has spent an inordinate amount of time on the IQ project, so it was felt that he should be awarded the responsibility that his efforts deserved!

We would like to wish all members a very Merry Christmas and a prosperous New Year.

Thank you for all your support

AGM Report

The Institute held its Annual General Meeting at its now usual location of the Civil Service Club, Great Scotland Yard on the 16th of November

We hoping to be in a position to cover the Leveson Report (see later about its non-impact on PIs), but as it wasn't ready that wasn't the draw we hoped and we barely made a quorum. My gratitude to those who were able to attend, all of whom made a contribution in one way or another to proceedings. The near lack of a quorum mattered not as we had no non-routine issues to vote upon, and the AGM 'part' was over relatively quickly.

As last year, a major input came from our guest Dave Humphries of the SIA, but we were further honoured by a second, unexpected guest – retired MP and supporter of the security industry, Bruce George.

Dave Humphries

Dave spoke at length on the immediate future of legislation, subject to Leveson, discussing the legislative obstacles and assistance, the timetable for future licensing, and other issues. As last year, the suggestion that businesses be registered as well as individuals being licensed was raised, and we made the observation that the ACS model for business registration would not be suitable for and acceptable to most of the investigators in business in the UK (while the big players would love it). Business registration, if implemented, would cost an estimated 3245 per 3 years and be possible with no legislative changes. Prior to the imposition of any registration regime a consultation would take place – this was due to start on the 20th of November 2012.

Go to http://www.sia.homeoffice.gov.uk/Pages/home-office-consultation.aspx to participate – **this is VERY important!**

Closing date is the 15th of January 2013.

Dave suggested that, owing in no small part to current affairs the replacement for the SIA has been kicked into the long grass, at least for the immediate future.

Obstacles to Licensing

It was suggested that the following obnstacles still remain in terms of a short-term implementation of PI licensing. They are:

- SIA's other commitments
- The Small Business Moratorium – which requires an exemption if registration is to be permitted
- Consideration of the Home Affairs Select Committee Report – its interpretation and application
- The scope of the licensing – still looking at whether consultants, process servers, anti-bugging, credit checks etc will be included or exempt.
- Exclusions under the current PSI Act – will they be altered post-Leveson?

There was also a question about whether the current Act, which *excludes* enquiries made with the knowledge OR consent of a subject, should be altered to read knowledge *AND* consent. This would have an impact on licensable activity

continued>>

– to use an example, if an insured party signs a pre-policy consent to be investigated, they allow an investigation WITHOUT a licence at the moment. But if they change the exemption to AND, said party will have to be TOLD they're under investigation *if the exclusion to a need for a licence* is to apply. This would increase the chances that a licence will be needed to investigate insurance fraud – and if in-house investigators get brought in this will expand the industry, potential membership of professional organisations – and increase HMG's income, to boot. Everybody wins.

Another consideration was – if we were to have licensing soon, would it be on the basis of the 'fit and proper' test until the availability competency qualifications caught up? We argued that qualifications and professional/trade body recognition already exist, so the requirement should remain.

The Timetable

In a nutshell, Dave described the latest timetable as:

- Oct 13 2013 – any new legislation should be placed on the books.
- April 2014 – licensing starts, and you can apply for and get your licence issued.
- April 2015 – the offence date comes in, by which time you have a license or you're committing an offence.

We're getting there – slowly.

April 2014 – licensing starts, and you can apply for and get your licence issued.

April 2015 – the offence date comes in, by which time you have a license or you're committing an offence.

Bruce George

Bruce was sat to my left, so I introduced him accordingly. "To my left…" I began, at which he spluttered "No, I was never to the Left!" So I stepped to paces to his and my own left, and started again. "To my right….." Cue more spluttering and laughter.

Bruce spoke for a while on his own experience of working for years to get the PSI Act on the statute books, including comments about inter-departmental jiggery-pokery that resulted in the PSI Act coming in despite his misgivings. (Charter House Rules and an absolute fear of libel laws prevent more detail.)

Bruce was, and remains concerned that the way things developed present the 'big boys' in the industry with a little too much influence in the way things have been going although, for my part, I'd still like to think that we little guys have been and remain able to influence policy on licensing.
There followed a pleasant meal, the taking of wine, and some very pleasant conversation.
At least this year I remembered my suit….

MINUTES OF THE 34TH ANNUAL GENERAL MEETING OF THE INSTITUTE OF PROFESSIONAL INVESTIGATORS ON FRIDAY, 16TH NOVEMBER 2012

The Principal opened the meeting at 11.00 a.m. and welcomed the guests, Dave Humphries, Director of Compliance, Intelligence and Communication at the Security Industry Authority, and Bruce George, President of the International Professional Security Association Limited.

ATTENDEES – From the Board

David Palmer	Principal
Ian Hopkins	Deputy Principal
Brian Walker	Treasurer
James Harrison-Griffiths	
Simon Smith	
David Pryke	Secretary General
Lynda King	Asst. Sec. General

Members

Dan Aharon, Richard Cumming, Ruth Hoffmann, Richard Lee, Malcolm Maycock, Michael Pettit and Michael Welply.

Angela Packwood from Northampton University was also invited as a guest with a view to establishing a working relationship between the Institute and the University in the future.

Apologies

Nicola Amsel, Peter Bartlett, Edward Bliss, Jim Cole, Keith Coventry, Brian Fenwick, Peter Frost, Alf Goldberg, Paul Hawkes, Alan Marr, Dick Smith, John Talbot, Susan Ward, David Wardle and Stewart Wong.

Minutes of the 33rd Annual General Meerting

The Minutes of the previous AGM, held at the Civil Service Club, London, on Friday, 21st October, 2011, having been circulated to the members, were approved and signed by the Principal. Proposed by Ian Hopkins, seconded by Simon Smith. Carried unanimously.

Principal's and Committee Reports

The Principal advised that the reports had been circulated to all members prior to the AGM and asked for comments. Michael Welply asked the current state of play with the IPI/ABI possible merger talks and the Principal advised that, owing to a number of differences, it has been agreed that the talks would no longer continue.
On a proposal by Simon Smith, seconded by Ian Hopkins, the reports were unanimously confirmed.

Income and Expenditure Account for the period 1/4/11 to 31/3/12

The Treasurer advised that he had nothing further to add to his report and asked if there were any questions from the floor. None were forthcoming.
On a proposal by James Harrison-Griffiths, seconded by Simon Smith, the report was unanimously approved.

Election of members of the Board

The Principal advised that there were two vacancies on the Board. The membership had been circulated to this effect but no nominations had been received. The Principal asked if there were any volunteers from the floor but none were forthcoming. It was also reported that the Principal would continue in his role for a further two year period and that the current Board would remain in place.

There being no further business the meeting closed at 12.30 p.m.

The Leveson Report

This article is based solely on a reading of the Report's Executive Summary and Recommendations. Thousands of pages' reading would have delayed this article, somewhat

The press is still lying. After the report was published publicly on the 29th of November, the media started screaming that Lord Leveson was demanding state regulation and interferences in the press. Now, I spent two hours reading the Executive Summary and principle Recommendations made by Lord Leveson – and he has suggested no such thing in any way whatsoever. Interestingly, it took me 2 hours to read it but no time at all for the media to assume what they expected it to read. So much for accuracy.

Lord Justice Leveson

What he suggested was an independent body with teeth set up *by and with* the press/media, with powers to do what any regulator would do, including big fines for non-compliance with their own Code of Practice. Only if the press declined to do so does LL suggest a statutorily regulated body be set up under statute BUT with NO influence whatsoever from government except to the degree that they create that enabling legislation.

Since then, there has been a rush of interested parties to Downing Street and talks continue about what will be set up, how quickly – and then whether or not it will change things.

LEVESON – PRINCIPAL'S COMMENTARY

Well, what a damp squib – at least in terms of our industry. We waited for this report for nearly a year only to open the documents, search for 'investigators', 'private', 'private invest' and 'Institute' – to find that no reference whatsoever was given to our sector. Grossly disappointing, given his comments about immediate licensing! I even searched with 'SIA', 'Security' and '(Bill) Butler' – not a sausage.

Unfortunately, this means that only the Home Affairs Select Committee Report is likely to influence licensing in the immediate future. Readers will be aware that the Institute wrote to Keith Vaz MP and invited him to address our concerns about a purdah on our employment, post-policing, in the investigation industry. His reply is pictured right.

Not what I wanted to hear, I'll confess. I have identified several IPI and ABI participants for whom such a rule would have impacted upon their ability to earn post-policing, and all were less than impressed with the idea of stacking shelves while awaiting the opportunity to start investigating again, after retirement. I have to admit I was also deeply unimpressed with the lack of a response from the ABI about their thoughts on such a condition, and the (National) Police Federation, who evidently don't give a stuff about their colleagues' reputation once they retire.

The good news, however, is that informed opinion is that there is no way that this condition will be imposed, as (the opinion suggests) it will be clearly unlawful. Countering that, Lord Leveson has paralleled the concept of a post-career purdah by suggesting that retiring (ACPO, mainly) police officers can't have jobs with the press for 12 months, either. So anyone thinking of becoming a journalist – think about that, too!

11/09 2012 11:21 FAX 01753830855 RECEPTION 001/001

The Chairman

Home Affairs Committee

Committee Office House of Commons 7 Millbank London SW1P 3JA
Tel 020 7219 3276 Email homeaffairscom@parliament.uk
Website www.parliament.uk/homeaffairscom

David C Palmer
Institute of Professional Investigators
Claremont House
70–72 Alma Road
Windsor SL3 3EZ

4 September 2012

Dear Mr Palmer

Thank you very much for your letter and for welcoming my Committee's Report on Private Investigators. It is helpful to hear feedback on our work from experts in the field.

With regard to your concern about a proposed cool-off period, let me first say that the Committee is unanimous in its belief that most police officers are honest and that corruption is the exception.

However, while we do not go into details of the Committee's private deliberations, I can tell you that the Committee felt that a cooling-off period would be a fair precaution and help to guard against inappropriate informal contacts between officers and investigators as well as more deliberate collusion. Although you mention that such a policy is unusual for police officers, the principle that public servants may be obliged to forgo certain kinds of employment at the end of their service is well established.

We will certainly return to this issue in future and to wider questions about police ethics and standards, so I hope you will consider submitting written evidence to contribute to our work.

In the meantime, thank you very much once again for your sharing your thoughts and experience.

Yours ever
Keith

Rt Hon Keith Vaz MP
Chairman

The Famed Soca Report On The Rogue Element Of The Pi Industry

The report appears to conclude that some PIs were committing criminal offences relating to personal data, interception and hacking

It was have been mentioned in the last issue that when the HASC interviewed Lynne Featherstone MP on PI licensing Keith Vaz, Chair, had a (non-partisan, I'm sure) dig at her for not having read the above report, and I said I couldn't find it. After extensive searching I finally got my copy of the 6 page, double-spaced, first-two-pages-being-the-cover-and-frontispiece-so-they-don't-really-count Report on the Internet The report listed its sources as being 5 UK law enforcement operations and the ICO (plagiarism)?

Anyway, the conclusions were that 'Certain' PIs were committing criminal offences relating to personal data, interception and hacking. They use corrupt employees in local government and other organisations to obtain information, and that the absence of regulation assists them in their illegal activities.

The Report described how, in Operation Riverside, they concluded that all those companies / individuals under investigation were acting illegally. (Good, because one assumes that they were targeting people based on intelligence and not just picking them out of a hat.)

And from that they extrapolated that anyone who was a police officer (or other trained investigator in the public sector) has access to colleagues that they could use to obtain data illegally. In essence, the message appeared to be that we are all potentially corrupt because we *could* be, and some (5 cases, remember) *had* been.

I question whether exaggerated intelligence should be used to get it. The term 'sexed up' comes to mind

So, by that token, ALL police officers, ALL bank employees, ALL solicitors, ALL communications workers and ALL Prison Service employees could be corrupt, too. But the funny thing is – the vast majority aren't.

Okay, I am being a little facetious, but while we welcome licensing in its current intended format sooner rather than later, I question whether exaggerated intelligence should be used to get it. The term 'sexed up' comes to mind!

Have a read –it's at http://www.soca.gov.uk/search?q=private+investigators&option=com_googlemini

Let us know what you think.

BOOK REVIEW

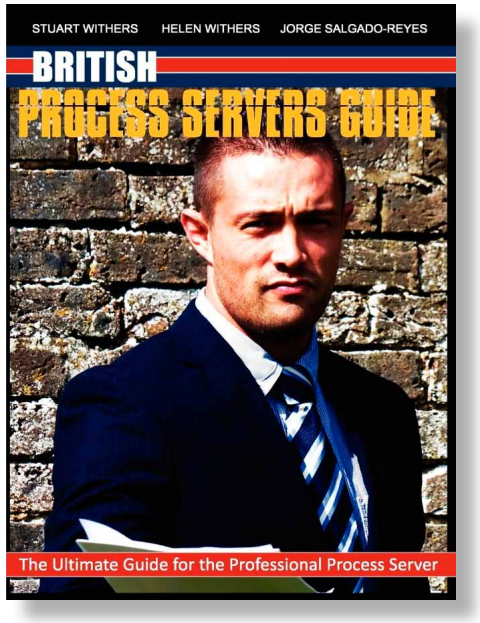
The British Process Servers Guide

The World Association of Professional Investigators, in the guise of Stuart Withers, Heather Withers and Jorge Salgado-Reyes have very kindly donated a copy of their British Process Servers Guide to the Institute, and you will all have received an e-mail identifying that it is available for purchase through Amazon.

Investigators in private practice will all probably be aware that Alan Drake of the ABI collated all the law pertaining to Process Serving and started his own Guide decades ago, and George Rivers took on that responsibility when Alan died, but it's not a publication I've seen touted for quite a while.

The new version provided to us is a handsomely covered hardback edition, and the quality of the tome in respect of the way it is built cannot be faulted. Inside, investigators will find over 300 pages of information vital to their business, if process serving is among the services they provide. The book is separated into several areas: Background information including the National Occupational Standard(s) for Process Serving (from the Investigations Suite by Skills for Security), the Civil Procedure Rules Part 6; Claim Forms, witnesses and depositions, family,

Investigators will find over 300 pages of information vital to their business, if process serving is among the services they provide



Magistrates – and so on. It includes Scottish Process law in its pages.

To be absolutely accurate in assessing this manual, I'd say that it is very much an abstraction of all the statutes and practice directions pertinent to serving process, and there is little apparently provided by the authors themselves. That said, the fact that it *is* all in one place and properly organised in a professional way makes it a highly valuable piece of work and for that the researchers should be complimented for their efforts.

Fraud Conference Bristol

On the 29th of November 2012 I attended a Fraud Conference/Seminar at University of West England, Bristol formerly – *Bristol Polytechnic but information is intelligence whatever the academic quality of the building*

The day was a 'freebie' from work and in fairness it was a very informative event, even if only from an intellectual perspective. Speakers from various UK fraud and legal educational establishments were present, as was a QC from London who specialises in this field.

My main focus for this article, however, is an academic, Professor Sandeep Gopalan from Ireland whose subject matter was – is there any point in sending white collar fraudsters to prison? (Several people near and including us said, "Yes, move on" but there was more.)

What he came up with was a mathematical formula that demonstrated why, in his opinion, there was NO point in sending fraudsters away. He suggested that there were three factors to be considered when addressing the '***disutility***' (pointlessness) of sending people to jail:

The variables were

Probability of conviction/getting caught = ***P***
Length of imprisonment currently imposed = ***L***
The threat to reputation of a conviction = ***C***
Total disutility (result) to be = ***U***

The professor's formula was that the Total Disutility **U = P x [(L x i) + C].**

Analysed (without going to deeply) he suggested that for someone with a high sense of reputation, the effect of imprisonment is minimised because if they took a 10 year sentence and doubled it the disutility effect was negligible. The argument appeared to be that the only affected factor was the impact upon the reputation of the fraudster. Going further with his examples, he suggested that where the fraudster doesn't care, no matter how long the sentence, the disutility was 0. So the argument appeared to be – don't imprison the fraudsters who care less about their reputation.

Maybe I heard it wrong. The professor went on to demonstrate how the reputational effect on some example fraudsters was 'sobering' and more effective that jail. He did so by (i) using civil FSA cases rather than crimes – so no imprisonment was even an option; and (ii) using examples of elderly fraudsters who 'would never work again' because of the reputational damage – and presumably NOT because of their age? In the cases he used the implication was that the offender was desperately trying

to serve their clients and made professional errors that resulted in FSA penalties. No Madoff, Maxwell, Ponzi types, then? These examples were people who made mistakes and were not necessarily motivated by greed – probably more by embarrassment.

Those of you involved in fraud or with a fraud background will probably have had my experience. Firstly, the fraudsters rarely give a monkey's about their reputation as long as they get the money, and believe themselves uncatchable. And secondly, given that 'reputation' for a conman is based on how convincing he can be, even a conviction is no bar to continued 'respect' in their field and is usually explained away as a misunderstanding. My fraud office

continued>>

has had an amusing tendency over the past 6 years to have done all their defendants twice – arresting and prosecuting them for a second fraud committed whilst on bail for their first. So much for 'reputational damage'!

I don't pretend to have understood everything that the professor said, but the expression 'Guardian Reader' came to mind while he suggested that people who steal vast amounts of OPM (other people's money) should not be jailed 'because they will never work again' – how naïve.

Another speaker, Professor Peter Cartwright of Nottingham University, made a similar observation with his own formula – less complicated – which suggested that where

P = perceived likelihood of being caught and sentenced
D = perceived detriment from the consequences of being caught and
U = the perceived benefit from the contravention (offence)

Then compliance (with the regulatory provisions designed to prevent offending) improves when

PD>U

That is, you won't do it if getting caught and suffering the consequences outweigh the profits.

The rule is then bent a little more, and more, until rule bending is considered routine and even promoted

I'm tempted to say 'Well, DUH!' but perhaps he was stating the obvious to make the point that the only way to ensure compliance when current methods are failing is to increase P, increase D, refocus or rethink D or remove U. As in POCA, perhaps? *Here endeth the maths lesson.*

Dr Robert Stokes from the Liverpool Law School addressed the sociological and psychological environments pertinent to fraud, in the sense that he looked at WHY scandals such as those affecting the banks happen – their culture. If someone bends a rule and gets away with it, that rule-bending is legitimised, particularly in an adrenaline and testosterone infused environment such as popularly portrayed in films set in trading floors. The rule is then bent a little more, and more, until rule bending is considered routine and even promoted – 'Let's see what we can get away with' - and is not so much seen as dishonest as it is daring and creative.

In the middle of all this was a beacon of hope (for we fraud investigators present) provided by Jonathan Fisher QC. He addressed the question that perhaps applies to Dr Stokes' analysis, which was "When does risk become recklessness – and dishonest?" The argument sometimes made by financial analysts and apologists is that you have to take risks to make money, so occasional loss is inevitable. Therefore proving a criminal responsibility (i.e. dishonesty) on the part of traders is problematical – they are *expected* to gamble, that's their role. In essence the 'defence' used by lawyers in such cases is that their client was not dishonest because he was just doing his job (following orders?).

Mr Fisher looked at it slightly differently, agreeing that risk is acceptable in stock trading but arguing that *unacceptable* risk is not.

He quoted a case – Welham v DPP (1961) where to defraud or act fraudulently is 'dishonestly (and intentionally) to prejudice *or take the risk* of prejudicing another's right, knowing you have no right to do so'. Mr Fisher opined that the Judges in that case considered reckless risk-taking to be dishonest and therefore to pass the famed Ghosh Test – would a normal person consider it dishonest, and if so, did the fraudster also know that what he was doing was wrong?

For reasons that are *sub judice*, my colleague and I took that one back to the office……

Evidence From The Telephone Providers

The IPI was recently asked how a private investigator could obtain site cell records from a telephone service provider, given that such data can point to where a particular telephone was at a given moment in time

Police organisations regularly use this information in serious crime cases, but for PIs there seemed to be an issue of how to use available legislation to get that material.

Firstly, use of the Data Protection Act to obtain data.

Section 29 of the DP Act states

29 Crime and taxation.

(1) Personal data processed for any of the following purposes—
  (a) the prevention or detection of crime,
  (b) the apprehension or prosecution of offenders, (etc)

are exempt from the first data protection principle and section 7 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.

Section 35 states

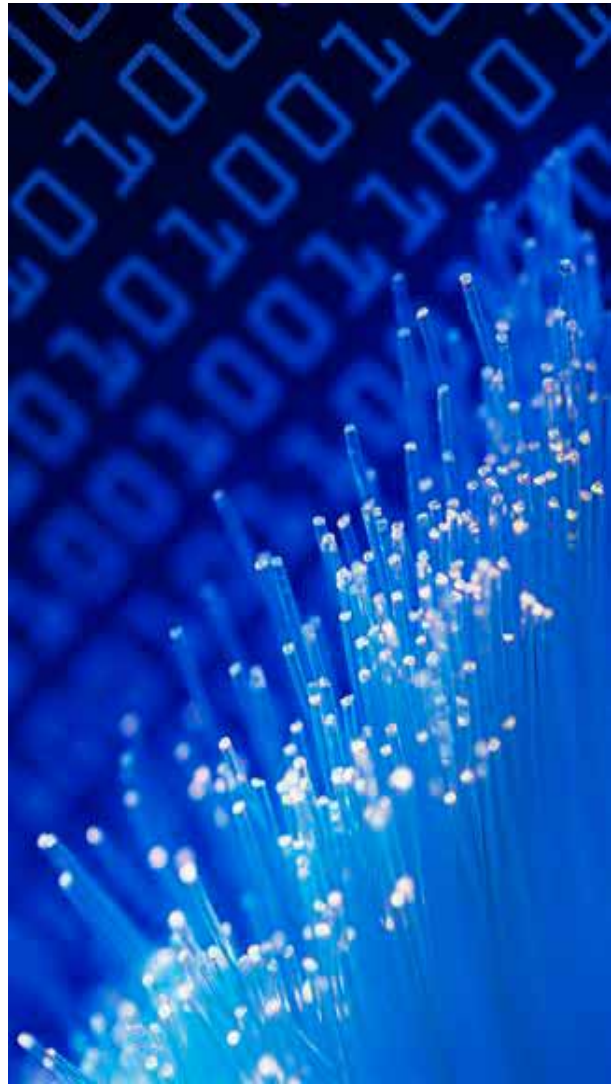
35 Disclosures required by law or made in connection with legal proceedings etc.

(1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.

(2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary—
  (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or
  (b) for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

These sections allow but do not require disclosure by a party holding data, insofar as disclosure in these circumstances is NOT contrary to S55 and the 8 Data Principles. In essence, when seeking data for whether criminal or civil investigation purposes, application is made directly to the data controller for access to the data but they are not obliged to produce it, only permitted to do so in law.

The only requirement in either case is that the intent behind the application is genuine – if you have no intention of using the data for the purposes stated then the applicant commits the



DPA offence (S55) AND, it has been suggested, a Fraud Act offence. Incidentally, S29 is as 'usable' by a member of the public as it is a law enforcement agency.

continued>>

Could you get the police to obtain it for you? On the face of it, asking the police to obtain the data may be considered questionable IF there is no intent to prosecute criminally, although the broad range of motives which include prevention/ detection, if stated in an application, would cover a case where future prevention is considered as valid an investigation objective as prosecution. However, if any proceedings are considered I would suggest use of the appropriate section of the DPA would be more ethical and preclude counter-claims.

In these cases, it is my experience (as a police officer) that the data controllers in such cases would be quite reasonable to ask that you, the applicant, pays for the recovery of data.

Civil Procedure Rules

Rule 31 of the CPRs states:

Orders for disclosure against a person not a party

31.17

(1) This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings 2.

(2) The application must be supported by evidence.

continued>>

(3) The court may make an order under this rule only where –

(a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and

(b) disclosure is necessary in order to dispose fairly of the claim or to save costs.

(4) An order under this rule must –

(a) specify the documents or the classes of documents which the respondent must disclose; and

(b) require the respondent, when making disclosure, to specify any of those documents –

(i) which are no longer in his control; or

(ii) in respect of which he claims a right or duty to withhold inspection.

(5) Such an order may –

(a) require the respondent to indicate what has happened to any documents which are no longer in his control; and

(b) specify the time and place for disclosure and inspection

This can ONLY be used in prospective or actual civil proceedings, and has been called a Norwich Pharmaceutical Order, where a company sought disclosure by a third party (i.e. someone not involved as witness/applicant/defendant) in legal proceedings. As I understand it, the third party knew it had relevant information to a case but declined to share it, so the Court ordered it. It has recently been used by a pornographer to obtain data from O2 to identify pirate downloaders, so its use for a serious fraud would be legitimate. One benefit of such an Order is that the data controller bears the cost – presumably the protocol is ask, and if declined get an Order, having advised the data controller of the (potential) costs.

It has recently been used by a pornographer to obtain data from O2 to identify pirate downloaders, so its use for a serious fraud would be legitimate

Of course, the conditions in S31 above must apply and you may have to consider other parts of Rule 31 in parallel. It would also involve a need to utilise lawyers, I would suggest.

PACE Orders can only be sought by a constable, so that route appears closed to PIs.

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