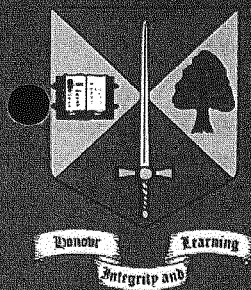


Fellowship of the Institute  
Shouldn't you be moving on up?



# The Professional Investigator

Summer 2010



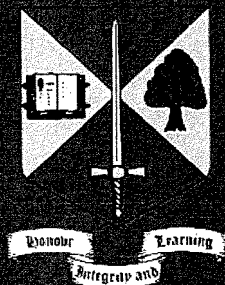
FULL SCREEN

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  
Editor



## Contents

- The James D Cole Award ▶
- Education and Training ▶
- Board Matters ▶
- Fellowship of the Institute ▶
- Harassment, or Justified Surveillance? ▶
- The IPI Distance Learning Course ▶
- The Information Commissioner – Fit for Purpose? ▶

First of all, an apology. It has not gone unnoticed that the Institute has not published a journal for the membership for quite some time – certainly not this year, to date.

In order to cut costs – which were causing severe financial difficulties for the Institute until the beginning of this fiscal year and as a result we had to withdraw the Journal with the aim to go to an electronic Newsletter but owing to the work commitments of the five – yes, we are down to five – Board members, the e-Newsletter simply never happened.

Naturally, we have had a few letters making peoples' disappointment known to us.

The fact is – despite having over 300 participants in the Institute, communication from the membership is, shall I say, infrequent. It is very hard to update people with news when no-one is providing us with the news to spread. Of course, our attendance at various events can be reported upon, and whenever possible we have endeavoured to update the membership with news 'as it happens', but the social element of the journal has disappeared over the years. Nobody wants to talk to us or for that matter anyone, individuals simply do not have the time these days and that we appreciate.

So consider this editorial to be a plea from us to you, the membership, to let us know what you want *and what you are doing!* In writing, most renewals are now in but there are a few outstanding, if you are one of them perhaps you could submit your payment without delay, it helps to keep your Institute on that 'even keel'.

continued>>

Elder statesmen will recall how we used to publicise the promotion to Fellowship of those members seeking that level of participation. I can't remember the last time that a member submitted a thesis for examination by the thesis panel. Have you all forgotten that growth is a self-serving and satisfying process?

We also used to promote seminars – but the last ones we promoted were ignored, so seminars passed into history. Fortunately, the distance learning course still produces some considerable interest from the 'outside', so we're still acting in keeping with our objectives as an Institute.

Let me be frank – this is a plea for all members to start taking a more active role in their professional Institute. Talk to us, inform us, chase us – help the Board to provide you with what you need. And if I receive three responses to this plea, I'll be surprised.

But very, **very** pleased.

**David Palmer**

## The James D Cole Award

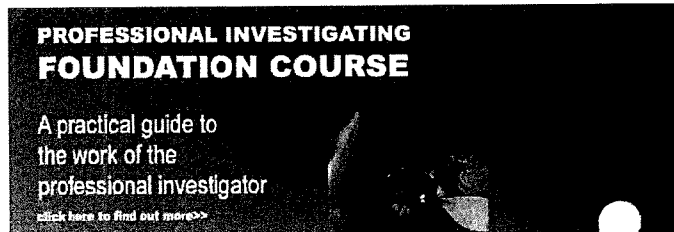
Four nominations have been received within the time frame permitted under the relevant Institute legislation. The final decision as to the honoured recipient will be announced at the forthcoming Annual General Meeting.

This will be the final presentation of the prestigious Award, previous recipients being Paul Carratu, Gerd Hoffmann, Iain Black and David Palmer.



# Education and Training Update

In terms of the Distance Learning Course we now have passed the 70 learners mark, although we still have a less than 10% completion rate.



A new Education Qualification System is due to be announced by the government, in which students can obtain credits in a multitude of different areas with a view to adding them up to gain more relevant qualifications. As a result, awarding bodies are working towards mapping old qualifications on to the new system. This means we should not do any of our own work in this area because it will be easier to teach other people's courses than fund creation of our own – i.e. train rather than develop qualifications.

### Skills for Security - Sector Competency Group

The Institute still chairs this group, which is made up of representatives of the various bodies within the investigations sector. At a meeting on 11/2/10 the attendance was small but included WIN/ABI, and 2 IPI members. While this is a small number, the access this provides to the SIA via Skills for Security remains valuable.

E&T is a core objective with SfS and they (with SCG help) oversee the National Occupational Standards (NOS) for many security sectors, including our own. The NOS underpin the education and training courses provided by the

awarding bodies. Our influence here cannot, therefore, be understated. We intend to continue attending on your behalf.

A recent NOS consultation was responded to by only 22 people, which resulted in a re-circulation on the 12th of Feb of the IPI's notice to get responses. In that respect and early this year, the inclusion of Process Serving in the NOS was active conflict point. We made the point that our concerns were that a minority of respondents may sway the results of the consultation.. The final meeting of the NOS committee took place on the 2nd of March 2010, at which it was agreed that Process Serving should be included in the NOS suite of standards. The rationale was that while process serving was not an investigative activity under the PSI Act, the NOS were not specifically tied to licensing. Furthermore, absence of process serving under the NOS for Investigations may have allowed another sector to create them instead, thus denying our members the influence they, as practitioners of that black art, should have had!

Incidentally, the IPI has been invited to provide

representation on the SIA's consultation with the Investigations' Sector on the Approved Contractor Scheme – positive indication that licensing *is* coming soon!



## Board Matters

At this time, the Board of the Institute consists of 5 members. This is barely adequate, so at the next AGM it may be considered that Members start putting themselves forward for election to the Board!

The process for nominations is held within the Articles of the Institute, but just in case you have all forgotten, they are reproduced here:

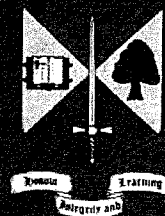
**Article 53.** *Proposals for election to membership of the Board of Governors shall be made not less than eight weeks before the Annual General Meeting in writing to the Secretary signed by a proposer and seconder. All such nominees shall have been a member of the Institute for a period of not less 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.*

Get nominating – we are looking for dynamic, hard working, dedicated ideas people who can take this Institute forward.

## New Members

The Institute would like to welcome the following new members:

Graham Walford  
Tara Shelton  
Alberto Biancofiore  
David Baker  
Roert McKernan  
John Morrison



## Fellowship of the Institute

At the last AGM in London, Peter Heims FIPI, officially the oldest working private investigator on the planet, asked how many Members had sought Fellowship of the Institute recently, and regrettably the answer was that while one application is in the process of being agreed, there have been no new 'proper' Fellowships awarded for (I would guess) 4 years.

A comment was made that it is too much to do when you are working as well. Well, when I did mine I was a front line PC, working shifts and all the overtime that ensued. Doesn't make me special, but it does prove that if you want to do it, you can find the time.

It costs no money! We don't charge for assessment or certificate. There is no increase in the membership fee, unlike other organisations. The only consequence is improved professional status in the industry, the pride in your achievement, and an even better understanding of your own practices and procedures.

Peter also made the comment that he believed

the main point in becoming a Member **was** to progress towards Fellowship, and I can see his point. Don't 'just' join for the M, join for the F.

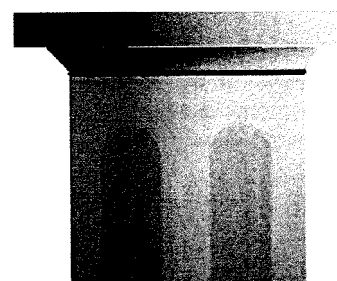
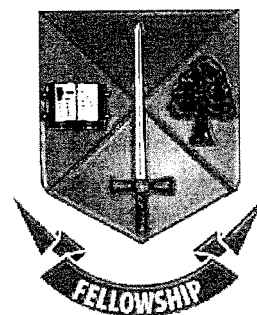
Anyone seeking advice on what needs to be done should first look at Article 8 and the Bye Law 10 on 'Submission of a Thesis'. If those documents don't answer all your questions, then please contact Roger Bunting or David Palmer and ask all the questions you want.

**It costs no money! We don't charge for assessment or certificate. There is no increase in the membership fee, unlike other organisations**

But the main advice I have, here, is to write about something you know, but something that you have explored more deeply. I wrote about Tracing, which I was actively doing with 'bail jumpers' at the time, but I went into the law, practices (kicking in doors after making sure that chummy was in and hiding – great fun), and alternative perspectives.

And then I extended it into the book now available from the Institute (and made some money, too!). Incidentally, a the Academy of Private Investigation (arguably a competitor) recommends this book to its students!

But, speaking of Peter Heims – PETER, WILL YOU WRITE YOUR VERSION, PLEASE – IT WILL BE BETTER THAN MINE!!



# Harassment or Justified Surveillance?

A recent enquiry by a Member of the Institute raised, again, the spectre of the potential for investigators to lay themselves open to charges of harassment during their normal day to day activities.

An investigator had been prosecuted under the Protection from Harassment Act 1998, and while the full facts of the case were not made clear to me, the questioner was rightly concerned about the result. In this particular instance, I gather that a PI had conducted surveillance on an errant spouse who took offence.

## The Offence

Section 1 of the Act states

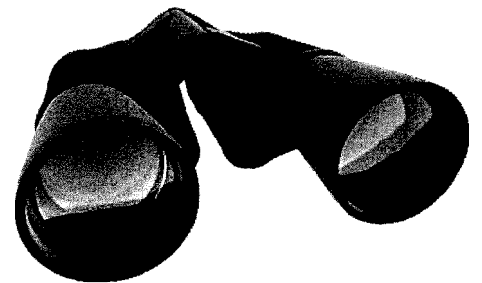
*"A person must not pursue a course of conduct (a) which amounts to harassment of another, AND (b) which he knows or ought to know amounts to harassment of the other."*

To do so is an offence under Section 2. It is an arrestable offence, and was ever so, even despite the changes in PACE from later years under the Serious and Organised Crime and Police Act. There is a racially aggravated version but I shall not detail those provisions. Harassment is defined under S.7 of the Act as conduct likely to cause 'alarm AND distress', but both need not be present following a court decision (*DPP v Ramsdale 2001*).

The offence is committed when someone pursues a course of conduct; the course of conduct amounted to harassment as defined under S.7; and the defendant knew, or ought to have known that his conduct amounted to harassment. This is an objective assessment, not a subjective one. That means if a reasonable person (defendant's idiosyncrasies irrelevant) *in possession of the same information* as the defendant would think it was harassment. (Which raises the question as to the truer facts of the case arising in this article – what jury can convict a reasonable, justified surveillant?)

You cannot harass a corporate body or organisation, only people. However, a company's employees can commit the offence. (*Daiichi UK Ltd v (1) Stop Huntingdon Cruelty and (2) The Animal Liberation Front (2003)*), and a company's employees can, together, be victims, e.g. targeted by competitors or eco-terrorists. (*DDP v Dziurzynski (2002)*).

A course of conduct must be at least two occasions, and can include speech. It is argued, therefore, that while an investigator cannot commit this offence on the first time they may be



discovered on a surveillance, the discovery of a second surveillant by the same victim can amount to the commission of an offence by that surveillant if the two surveillants work for the same company, given the above court decision.

Courts have also said that the course of conduct must be directed towards the same person or group – if I threaten you, then later threaten your friend, then I have not committed this offence even if you are present when your friend is threatened. (*Lau v DPP 2000*)

However, it is still not that straightforward. The course of conduct has a 'time' element. If the two instances are so far apart so as to make them distant in objective, method or other distinction, the chain may be broken – but even that is never set in stone, as the courts have included incidents months apart as harassment. Normally, the fewer

continued>>



the instances and the further apart they occurred, the less likely that this offence would be made out. The incidents need not be similar in nature – it is ‘conduct’ and not specific types of conduct that amounts to creation of a ‘course’. Any incident can count.

Other considerations would be when an incident occurred that was on the face of it unthreatening, later occurrences that seemed so could result in the first incident being reconsidered in context: for example, sending a girl flowers and chocolates would be okay, unless I later started going through her rubbish and watching her through a telescope. Suddenly, the original contact appears more sinister and could come under the umbrella of the offence.

**Defences**

It is a defence to this charge if you can show that the course of conduct was pursued for the prevention and detection of crime; under any enactment or law, or to comply with any such enactment or law; or for the reasonable protection of a person or their property. (Not necessarily matrimonial assets, I suspect.)

**Commentary**

This law was originally declared The Stalker’s Law, because it was designed to stop occurrences of, well, stalking. Unfortunately, in drafting it the lawyers and politicians made it too easy for

**It is a defence to this charge if you can show that the course of conduct was pursued for the prevention and detection of crime**

others to commit, with obvious consequences in our case. Two incidents do not seem a lot, but sometimes they are one too many.

The consequences to surveillance should, I would argue, be minimal. Once a surveilled party becomes aware of a surveillance, that singular incident should stop the offence being committed - unless a person aware of a surveillance should still be felt daft enough to continue misbehaving having been put on notice. ‘We use a different team’ I hear you say, but – really? That’s a matter for surveillance professionals, in fairness, and I am not one.

However, in the event that further surveillance is felt necessary, the best defence against a charge must be a properly prepared surveillance strategy and policy document that covers the motivation, rationale and justification of the surveillance. We police use the Human Rights-compliant **PLAN** mnemonic. Is the surveillance Proportionate in the circumstances, or is it a sledgehammer to crack a nut? Is it Lawful and is there a legal justification that amounts to a defence in itself? Is the surveillance team Accountable in some way, either to specific court, authority or in law? And

is the surveillance Necessary – is there another way to find the same evidence, a less intrusive method?

I find myself, in my day to day duties, actively encouraging colleagues to use **Policy Books** on any case that is even remotely complicated and certainly those destined for the Crown Court. This book chronicles your decisions, rationales and activities in an investigation in as much detail as is possible. (For more detail, do the Distance Learning Course.) I know from experience that maintenance of such a document can keep you safe from allegation, innuendo and implication of malicious motives in an enquiry. It is also a magnificent way to remind you what you are doing!

So make decisions about the whys and wherefores of a surveillance, write them down, use common sense and be prepared to back off. That way, you don’t become a stated case.

**David Palmer FIPI F.Inst.L.Ex  
Education and Training**



## IPI Distance Learning

Since nobody has asked, I just thought we could provide you, the membership, with a copy of the first module from the course so you could see what it contained. For more details of the subject matter go to [www.ipitraining.org.uk](http://www.ipitraining.org.uk), but for now, just have a read. It'll remind you what we are all about.

### Chapter One

#### ATTRIBUTES OF A PROFESSIONAL INVESTIGATOR

##### *What is an Investigator?*

What is an investigator? An investigator is an agent of his client (complainant, supervisor or employer) who uses his professional skill and knowledge to assist that client in matters which, if left unresolved, will have some effect on the way that the client operates, either as an individual or as an organisation. He is therefore, in actuality, more than a 'worker'; he is the equivalent of a manager in a commercial concern insofar as the decisions he makes have an influence over the way his client conducts his life or business.

An Investigator could therefore fit the definition of an executive, as proposed by Peter Drucker in his book 'The Effective Executive'. Compare his definition to what an investigator does. An

executive is a 'knowledge worker, manager or individual professional who is expected, by virtue of his position or knowledge, to make decisions in the normal course of his work that have a significant impact on the performance and results' of the organisation or individual for whom he works.

Read that again; an investigator is a professional who makes decisions that affect people, and his own organisation. An investigator is therefore an executive. There is and always has been a public and legal perception that investigators are not worthy of status and professional respect. This is a mistaken perception, and one which it is hoped will, in time and through publications of volumes such as this, gradually diminish in light of the increased professionalism that investigators should seek to attain.

It is worth repeating; an Investigator is an executive, an agent of another - and worthy of the respect that any other executive demands and receives.

Furthermore, an investigator is involved in a service industry, in that the task is provision of professional help to clients unable or unwilling to do what is being asked of the investigator. Investigators do not supply a product in the accepted sense, but they do supply and interpret information, and put forward supportable hypotheses or conclusions as a result.

##### *General Characteristics of the Investigator*

An Investigator is an individual who is involved in the discovery of facts, often hidden or merely difficult to discover. Like any scientist, the Investigator often starts an enquiry with a hypothesis that needs to be proved or disproved - a criminal case; an accident; a disappearance; what happened, how did it happen, is anyone responsible and, if so, how can that responsibility be proved in a manner complying with legal rules surrounding the incident under investigation?

In order to carry out that work, an Investigator must possess certain skills and personal characteristics, some of which must be learned and some which

continued>>



must simply be there, whether by accident or through diligent hard work.

Steven R Covey, author of *The Seven Habits of Highly Effective People*, maintains that trustworthiness is the result of two such characteristics - character and competence. Competence is the result of learning and application, and personal character can be similarly attained. It can be attained most easily when high standards are manifest. In order to attain high standards, an investigator could do no better than comply with the following attribute statements.

- An Investigator is **honest, objective**, and has **integrity**. Honesty needs no explanation. Integrity is easily explained as the ability to walk one's professional talk. To be what one is seen to be, and to be seen to be what one is. It is the absolute antithesis of duplicity. This means that even when the information being discovered no longer supports a previously held hypothesis it is accepted for what it is, and disclosed in accordance with the legal rules governing the subject at hand. It is not the investigator's responsibility to decide what is done with information and with evidence. The truth, as Churchill once said, just 'is'. There is no alternative.

- An Investigator is a **listener**. Listening to the client demonstrates that the professional investigator cares about the client, the client's problem, and the client's requirements as far as the solution is concerned. Listening skills in respect of other individuals assists the investigator in discerning truth from lies, honesty from duplicity. A listening investigator is a learning investigator, and learning is not confined to education.
- An Investigator is also a **communicator**. Keeping clients up to date with developments, ensuring that interviewees understand processes and objectives of a conversation, ensuring that other professionals understand and should assist with enquiries - all are reliant upon the investigator's ability to communicate. Verbal and writing skills should be learned and exercised at all times. An ability to express oneself in writing is particularly important because that is the way in which most communications between investigators, clients, lawyers and the courts take place. That said, the ability to make others listen, or more importantly *want* to listen, can make the difference between success and failure in any investigation. In court, the ability to

project and present evidence well is also extremely important.

- An Investigator is a **worker**. As a full study of this volume will show, a diligent and professional investigator is not carried out in a fashion popularly described in fiction, where the investigator asks a few questions and then finalises the process by publicly hypothesising until the offender, equally publicly, confesses. The sheer volume of documentary recording, reporting and travelling requires that the Investigator be physically and mentally prepared to work long hours, keeping a firm mental grip upon, and a deep understanding of, the entire matter under investigation. There are no short cuts, practically or legally. When the investigator is faced with a mountain of documents, or with preparing a report file of huge proportions, remembering that this is a challenge to one's character and overcoming that challenge, is evidence that the investigator is doing what should be done. Short-cut produce shoddy results.

continued>>

- An Investigator is an **analyst**. Detailed observation skills, not only with regard to what is seen by the eye but also what is heard, smelled, touched and even smelled, are essential. The Investigator must be open to discovery of the unusual in any situation, since anything out of place is worthy of further enquiry and double-checking. In the same vein, the ability to conduct analyses of documentary information to a very high degree is an important professional trait in an investigator. Eye for detail, the ability to identify significant factors in an investigation, and the skills required to make connections between pieces of data so that a true picture of what is happening or has happened, are all essential investigatory skills.
- The Investigator works in a **systematic** fashion. Corners are not cut. An investigation can only be planned and conducted properly if the steps are followed in the correct order. If circumstances require that a step be temporarily bypassed, it is still essential that the step be retaken as soon as possible.
- An Investigator is **thorough**. In keeping with the other attributes mentioned *ante*, the professional investigator follows all lines of enquiry diligently, albeit

with practicality present in the mind. Every line of enquiry is addressed. This does not mean that every potential line of enquiry is or even can be followed to the nth degree. But thoroughness requires that the investigator does at least consider all investigatory options available in any given situation, dismissing certain lines of enquiry only *after* consideration of the strength of that lead and of the consequences of both following and ignoring that lead. This is demonstrated by the diligent completion of a full record of the decisions made and the reasons for those decisions in a policy document or notebook (*see Note-books, post*).

- The Investigator is **diligent** with regard to record keeping. Details of evidence gathered, people interviewed, things seen, etc, all are recorded properly so that their importance can be judged at a later time.
- An Investigator is **knowledgeable**. A sound understanding of the law, practices and procedures pertinent to the area in which the investigator works is essential, and marks out the amateur from the professional. Staying up to date with methodology and legal rules governing one's activities is extremely important, and membership

of a professional organisation assists the investigator in this activity. But that is not all. Being knowledgeable also requires keeping up to date with developments in other areas, because the investigator does not know what work he or she will be called upon to carry out in the future. Current affairs and local knowledge from local press are important examples of areas to consider.

- The Investigator provides **quality of service**. High standards are the benchmark. Perfection may not be possible, but only the best possible will do. Clients expect it, employers expect it, and once demonstrated it raises the professional standing of the individual producing it. Correct grammar, quality presentation, high quality communication skills, even the physical appearance of an investigator, are all manifestations of a high quality product that the client can expect. Psychologists say: people who look good, and who feel good, *do* good. Raise your standards from the inside out. Raise your personal standards first and a rise in your professional standards will follow.

continued>>

- An Investigator demonstrates **high moral standards**. Irrespective of circumstances, the professional investigator is a person who is clean, polite and generous-yet-business-like in attitude and presentation. People who have low moral standards disclose that fact in the way they are. What we are, we do.
- An Investigator is an **organiser**. The ability to organise one's time and one's work and the product that results from that work, is important because wasted time is lost time; lost evidence is inadmissible evidence; missed appointments are bad practice; and disorganised work is not thorough, diligent, or successful work.

It is fervently hoped that investigator's studying this manual with a view to raising their professional standing do not see this section of the chapter only as one to be read and dismissed. It is suggested that this, above all, is the **foundation element** of professionalism, and, one would suggest, the section that should be read most often. Reminding oneself of the standards that professionalism requires is not wasted time. It is a reminder of what we want to be.

**Professional and Ethical Standards**

Professional: *conforming to the ethical or technical standards of a profession.*

Whatever the professional investigator's area of specialism, there are certain standards that apply. Standards that the investigator should always seek to maintain regardless of circumstances, influence or pressure. Adherence to a code of professional conduct is the benchmark of any professional, yet investigators have hitherto failed to fully identify their own Code.

The main industry organisations have developed their own generalised Codes of Ethics, and work is always being carried out with a view to creating the Best Practice model. This chapter is intended to assist the professional by identifying those ethical and professional standards that can best represent the kind of work they do.

The Institute of Professional Investigators, an organisation that represents investigators from both private and public practice, feels that their own Code should be based on those created for the legal sector, taking into account the service that investigators provide. However, it could be said that the diverse nature of 'investigations' creates difficulty in identifying a generic code.

But Professional Investigation, which involves

compliance with all legal and ethical principles applicable to the criminal and civil justice systems, does in fact lend itself to the creation of a Code of Ethics, Best Practice or Professional Standards Model. Most, if not all professional and trade organisations create a Code with which their membership should comply. Generally speaking, all such Codes are noted for their brevity, yet they support standards of behaviour that clients and colleagues alike expect will be maintained.

For example, the Institute of Professional Investigators' Code of Ethics reads:

*I promise:*

1. *To conduct myself with Honesty and Integrity, and to uphold the highest Moral Principles, and to avoid conduct detrimental to my profession.*
2. *To conduct all investigations within the bounds of Legality, Morality and Professional Ethics.*
3. *To guard my own Professional reputation and that of my Professional Associates.*
4. *To uphold the Objects of the Institute and abide by the Memorandum and Articles of Association of the Institute of Professional Investigators.*

continued>>

Of course, the last paragraph of that Code reflects compliance with the individual organisation, but the compliance with the general meaning of the whole document requires that the investigator conduct him- or herself with the highest standards in mind, and adherence to the advice given in the first part of this chapter ensures compliance with the Code, without question. In this Code, rather than go into intricate detail, the IPI has elected to set a foundation upon which a professional can build a Code pertinent to their own situation.

Another Code of Ethics, from a book written in 1984 by John D. McCann, demonstrates how the Professional Code of Ethics can identify the desirable characteristics of any professional, and relate them to the profession of investigation. This Code goes into slightly more detail.

McCann's Code reads:

1. As a (private) investigator, I regard myself as a member of a vital and honourable profession.
2. As a (private) investigator, I will strive to keep myself available to at least listen to the problems of any individual who may seek my counsel. I will, at all times, attempt to either serve a client to the best of my abilities or I will refer the client to someone known to me to be more capable than myself.

3. As a (private) investigator, I shall attempt to keep myself knowledgeable of all the laws pertaining to my profession and to all other phases of public and private law enforcement agencies, and to abide by those laws explicitly at all times.

4. As a (private) investigator, I will maintain constant mindfulness that when I am on a case I am essentially a direct representative, an external and specialist agent of my client. My conduct will always be honourable and professional so as not to reflect in a negative way upon that client.

5. As a (private) investigator, my reports of progress will always be made to my client at the time and place and with the content and regularity that has previously been agreed upon.

6. As a (private) investigator, I shall attempt, at all times, to establish and maintain proper dialogue between myself and my client.

7. As a (private) investigator, I will always respect the wishes of my client, except in serious criminal findings, the nature of which I am legally bound to disclose to the appropriate law enforcement agency.

8. As a (private) investigator, I will diligently pursue each and every assignment that I accept

with interest and enthusiasm until a final and acceptable conclusion can be drawn to the mutual satisfaction of my client and myself.

9. As a (private) investigator, I know that no one is more professionally important to me than my client. I will serve my client with honesty, integrity, loyalty and dispatch with legally proper and thoroughly dedicated, proficient and professional demeanour.

The word private has been placed in parentheses because although this Code was written with private investigators in mind, there is no paragraph within it that cannot be considered by an employed or public investigator to be equally applicable to his or her own situation. Careful study of the Code will show the reader that the characteristics identified in the first part of this chapter are repeated or otherwise identifiable in its content.

From a Code of Ethics, of whatever content and level of detail, a set of Standing Operating Procedures (SOPs) can be developed. When such SOPs are being considered, the writer should be expected to consider the Code and develop an SOP that complies with it. For example, when considering standard letters for dissemination to clients of a large investigation

continued>>



company, reference to a Code that requires regular and personal contact would preclude the compilation of an abrupt and impersonal template letter, and would require the investigator to write a more personally directed communication to the client. If an SOP is being developed that addresses the action to be taken if and when a crime is discovered, the Code will indicate whether the practice will be client confidentiality or disclosure to the police, and so on.

Compliance with such a Code also enables an employed investigator to act in a manner that a line manager may not consider compliant with the organisation's (or at least the line manager's) wishes. If the Code is in conflict with the organisation's desires, the question arises - which takes precedence? It is argued that there could be no justification for an organisation to act in conflict with a Code of the standards shown *ante*. Therefore compliance with the Code could be justified by the employed investigator without fear of sanction from that employer.

Notwithstanding the organisation's compliance, or otherwise, with a Code of this detail, the professional investigator will always seek to comply with it. The rule is simple: If the situation requires non-compliance, get out of the situation.

**Responsibilities of an Investigator**

Having set the standards expected of an investigator, it is time to identify the investigatory task. Using the role of a detective constable in the police service as a template, and amending those responsibilities to include those of a privately retained investigator, the identified tasks of investigation are:

- a. The investigation of allocated offences/incidents/circumstances
- b. Incident scene preservation
- c. Client/victim/witness care
- d. Interviewing of clients, witnesses and suspect persons
- e. Searching of persons, premises, land and vehicles
- f. Utilising and developing information, intelligence
- g. Identifying, recording and handling evidential material
- h. Identification of sources of information
- i. Reporting of investigation results
- j. Presenting evidence at court, including oral evidence
- k. Planning, managing and otherwise becoming involved in intensive investigations
- l. Complying with the legal requirements of investigation
- m. Maintaining Continuing Professional Development (CPD)

- n. Conducting risk assessments
- o. Administration of the investigation product
- p. Utilising technology for investigative ends
- q. Maintaining client accounts
- r. Self management (personal and professional standards)

This Manual for Professional Investigators includes the information that an investigator will require in order to undertake the majority of the aforementioned investigatory tasks.

**The Attributes of the Senior Investigator**

*(A précis from 'Crime Investigation - Art or Science?', The Scottish Academic Press, 1984.)*

The following attributes were those which senior police officers required of their senior investigating officers but they are desirable in investigators at all levels, and while the article and its sentiment are aimed at police investigators, they are equally applicable to investigators from other sectors.

**The senior investigator must have the ability to identify objectives and evaluate them.** A sensible approach, and a reminder that knowing where you are going is the first step towards actually getting there, and towards keeping the eye on the proverbial ball.

continued>>

**The senior investigator should be able to plan ahead, in the operational sense.** A strategy designed to achieve the stated objective but which allows for any change in circumstances, demonstrates the effectiveness and importance of time- and project management skills.

**The senior investigator needs to have the sense of purpose to carry out the objectives.** Turning up for work is not enough. Having the desire to do the work is essential.

**The senior investigator must be able to communicate the strategy to others.** Communication is a two way process. If someone doesn't understand the instructions given, there are two solutions - change the delegate, or rephrase the instruction in a way understood by that delegate. It is easier, and quicker, to try the latter. Once the delegate is chosen, it is the investigator's responsibility to instruct that delegate correctly.

**The senior investigator must appreciate and be able to manage and make best use of resources.** A standard management expectation.

**The senior investigator's personality must be such that he or she can motivate others, lift them when they are down and weary, and inspire them with enthusiasm and confidence.** And that means putting his or

her own stresses to one side. It illustrates that resource management skills apply not only to others, but also to us.

**The senior investigator must at least know his key personnel, and their particular skills and expertise.** If all the facts are not known, a reasoned decision cannot be made. If the individual is not known, they cannot be properly utilised.

**The senior investigator must be able to delegate, yet still keep a finger on the pulse.** Delegation is not abdication of responsibility. Just because someone else is doing something does not absolve the senior investigator from ensuring it is done, and done properly.

**The senior investigator must be able to detach his or her thoughts from the immediate, and be able to take an overall view.** To use a topical example, this must be hard for investigators involved in child abuse/abduction/murder cases. But it is essential if the proper methods and processes are to ensure the integrity of the result.

**The senior investigator must be mindful of the welfare of the personnel and be able to recognise signs of stress.** This is particularly important in planning specific operations within the investigation. Too many organisations spout their 'human resource

policies' as people-friendly, then apply that policy very sparingly. An over-stressed or under-stretched individual is ineffective. Look for the signs and act accordingly.

**On the practical side, the senior investigator must have the ability to assimilate facts.** An essential characteristic needing no further comment.

**The senior investigator must be able to make a decision in respect of immediate action required from an assessment of those facts.** It must be the right decision, and the responsibility is to ensure that ALL information needed to make that decision is available beforehand.

**The senior investigator must have sufficient technical knowledge to be able to control and direct action at the incident scene.** Hence the need to keep up to date with developments in investigatory science.

**The senior investigator must be sufficiently optimistic and farsighted to be considering and planning well into the future, up to and including any trial.**

**The senior investigator's technical knowledge must be sufficient to allow**

continued>>

**proper consultation at expert level.** The importance of compliance with a planned Continuous Professional Development process cannot be understated, and it is even more relevant that it is seen to be undertaken by a senior investigator.

**The senior investigator must be willing to listen to, and make best use of the advice of other experts.** Too many investigators have dismissive attitudes to experts with whom they work, forgetting that the experts often feel the same way about us.

**The senior investigator must have knowledge of technical developments, and know how to make the best use of them.**

**The senior investigator needs to have a thorough working knowledge of the incident room (or centre of operations).** But the incident room manager should be permitted to actually run things.

**The senior investigator's knowledge of law and procedures must be such that as well as identifying the offender, the investigation is also building to a prosecution.**

It is hoped that investigators at all levels will read the advice contained in this chapter with an open mind, and that they will do so regularly as a reminder of the professional standards that this industry seeks to maintain.

#### ***Licensing and the Investigator***

The passing of the Private Security Industry Act 2001 began the process of licensing for the private investigator. It is currently anticipated that in-house investigators will be brought under that Act in due course. As it stands, the Act will require that investigators providing investigatory services on a contractual basis will have to hold a licence.

This licence will be needed so that the investigator can carry out 'licensable activity'. For investigators, this means compliance with Schedule 2, Section 4(1) of the Act, which defines licensable activity of an investigator as

*Any surveillance, inquiries or investigations that are carried out for the purposes of:-*

- (a) obtaining any information about a particular person or about the activities or whereabouts of a particular person;*
- or*
- (b) obtaining information about the circumstances in which or means by which property has been lost or damaged.*

The Act excludes market research, and activities undertaken by certain legally qualified persons, accountants, and their respective employees. It also excludes those who investigate only

by means of research of publicly accessible records.

Investigators who are in the private sector will need to be familiar with this Act, although the most important part is detailed above.

*Hope that piques your curiosity...*





## The Information Commissioner – Fit for Purpose?

On the evening of Tuesday the 17th of November 2009 I was happily sat at home having spent the day at Skills for Security in Worcester, accompanied by representatives of WAPI, CII, IAATI and the ABI. We had finalised the first pre-consultation draft of the revised national occupational Standards for Investigations, the source document for qualifications in the future (but not THE qualification). Professionals being consulted about their industry, its professionalism and the breadth of its activities.

So I thought I'd contributed to the future of a profession. But that evening, I watched the Channel 4 News. The main item was the sale by a T-Mobile employee of his employer's customer database to other telecom providers. The Information Commissioner, newly-appointed Chris Graham was asked to comment. It opened fairly innocuously, but suddenly there was a reference to private investigators. No mention of their involvement in this story, but there they were – apparently involved in wholesale data sales. The first reference wasn't too bad.

But then there was reference to a "sleazy business", where "private investigators" were actively involved in "jury nobbling and witness threatening" among other things.

Where did that come from – no PI was accused in this case?

What enraged me – and enraged was how I felt – was the fact that there was no qualification on the comment. No 'occasionally', or 'have been known' or 'have been prosecuted' or 'once in a while'. No, Mr Graham, presumably picked for his knowledge, experience and people skills, simply implied that private investigators, as a whole, nobbled juries and threatened witnesses.

This man is supposedly overseeing the proper legal investigation of offenders under the Data Protection Act, and he apparently assumes guilt by professions without qualification. The sort of person who says 'All ----- are thieves' because one of them stole something, once. By the same token presumably 'all policemen sell data', 'all bankers are thieves', 'all athletes use drugs', and so on.

I wrote the following letter to The Times, Bruce George MP and my own MP ( a Special Constable with British Transport Police).

Dear Sirs,

**I have just been watching Channel 4 news, and during its report into the sale of T-Mobile customer data the Information Commissioner Chris Graham twice referred to private investigators in a fashion which implied that they, and they alone, seemed to be responsible for wholesale data abuse. In fact, in his second reference, he referred to private investigators using stolen data for jury-nobbling (his words) among other offences. He did not use the qualifiers 'some', 'occasionally', or even 'in this case', which would have gone some way to providing any sense of objectivity or relevance to his responses. He simply implied that 'private investigators' commit wholesale data offences.**

**Sir, as a representative of the primary professional Institute for professional investigators, I find it astonishing that someone in such a position should generalise**

continued>>



in throwing wholesale accusations against an entire profession without proper foundation. There are more than three professional investigation bodies all actively assisting the Security Industry Authority with the proposed licensing regime for private investigators, having supported that licensing for some thirty years, and Mr Graham's comments quite frankly did nothing to convince me of his objectivity in dealing with our profession.

While some data thieves may profess to be investigators they are plainly nothing more than con men. But there are thousands of honourable, qualified, dedicated professional private investigators out there who I would anticipate would consider Mr Graham's comments to be so derisive and biased as to raise the question as to whether he should continue in his post.

Yours,

David Palmer FIPI F.Inst.L.Ex  
Fellow of the Institute of Professional Investigators

The e-mail was circulated to various bodies, and the response was generally that my professional peers were incensed.

Elisabeth France, when she was Information Commissioner, was very receptive to overtures from the industry about the document Tracing Debtors, and amended it with our counsel in mind. The next Commissioner was less than supportive in some ways, but was open to consultation and the OIC did assist the industry occasionally with advice.

But I find myself questioning the motive in Mr Graham's comments that night. Was he attacking us for a particular reason? PIs weren't amongst those accused in this case, so this must have been nothing more an opportune moment to slur an arguably innocent third party.

Should he be in a role where is bias is so openly stated? It wasn't even as if he was pushed by the interviewer. No, this was his comment and belief, and his alone. And I for one am seriously concerned.

**Sentencing**

Of course, the issue under debate was whether the current penalties for DP offending should be increased. On the one hand I have no problems in principle with there being a potential custodial sentence attached to selling of personal data. However, it would make me laugh (derisively) if

someone was imprisoned for selling a database of names and addresses to someone who used it for marketing purposes while I am still cautioning burglars, car thieves, robbers and the violent amongst our citizens.

Question – would you want the robber (threats or use of violence to steal from you) sent to an overcrowded prison - or the man whose actions resulted in your receiving an inconvenient telephone sales call?

Mr Comissioner – if the sale is for fraudulent or other criminal purposes, there are better offences to use for prosecutions. But get real – no one is going to a full prison these days for selling my name and address. So why waste everyone's time, and offend professionals with spurious attacks just to get some fantasy sentence passed into law?

Incidentally, here was the Information Commissioner's response to a letter from my MP, David Davies (Monmouth). Try not to laugh.....

continued>>





Information Commissioner's Office  
Promoting public access to official information  
and protecting your personal information

Reference: CO/09

David T C Davies MP  
Member for Monmouth  
16 Maryport Street  
Usk  
Monmouthshire  
NP15 1AB

10 December 2009

Dear Mr Davies

CORRESPONDENCE FROM YOUR CONSTITUENT

Your constituent has expressed a concern that during an interview on Channel 4 News I implied that only private investigators are involved in the unlawful trade in personal information. I should explain that my remarks were in the context of a serious breach of Section 55 of the Data Protection Act and the current Government consultation on the introduction of a custodial penalty for such offences. I enclose a copy of my response to the consultation.

I am afraid that your constituent has misunderstood my remarks. My criticism of Section 55 offences committed by certain individuals was not intended to suggest that all private investigators behave similarly. Your constituent says '... the majority of who are honourable, qualified and dedicated professionals', however, I fear there can be no copyright in the description PI.

The ICO is all too aware of abuses committed by people representing themselves as private investigators. I shall try in future to avoid confusion by making it clear that the problem is at the opposite end of the spectrum from those PIs who go about their business in full compliance with data protection law.

I will also make it clear that the ICO will investigate thoroughly and robustly all allegations of the unlawful obtaining of personal information.

*Christopher Graham*  
*Christopher Graham*

Christopher Graham  
Information Commissioner

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF  
t: 0845 630 6060 f: 01625 524510 e: mail@ico.nix.uk w: ico.nix.uk

# 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)

◀ Summer 2010

The Institute of Professional Investigators