

Home Affairs Committee: Written evidence

Private Investigators

This volume contains the written evidence accepted by the Home Affairs Committee for the Private Investigators inquiry.

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As at 13 March 2012

Written evidence submitted by the Home Office and the Security Industry Authority [PI01]

Executive Summary

Home Office Ministers have recently considered the introduction of compulsory regulation of individuals undertaking private investigations activity by bringing into force existing provisions in the Private Security Industry Act 2001 (PSIA). However the current definition of private investigations in the PSIA specifically excludes activities carried out for the purpose of obtaining information exclusively for journalistic purposes. Given the wider implications and the immediate relevance of this issue to those being considered by the Leveson Inquiry into the culture, practice and ethics of the press, Home Office Ministers have decided that any final decision on whether to regulate private investigations should await the outcome and findings of that Inquiry. This is considered the best way to ensure that any future licensing regime is as effective as possible.

Background

This evidence has been prepared by the Home Office in conjunction with the Security Industry Authority (SIA), and reflects comments from officials in the Scottish and Northern Ireland devolved administrations.

The Committee's announcement of the inquiry said that it would consider issues such as:

- Why regulation has not already been introduced, 10 years after the Security Industry Act established a statutory framework for it.
- Whether the case for statutory regulation has been made, including the potential for harm to both clients and subjects of investigations in the unregulated industry.
- Whether compulsory licensing should be part of the regulation and, if so, whether it should include competency criteria.
- The likely cost of regulation to Government and the industry.

These and other issues are covered in the body of the evidence

Currently, anyone can undertake private investigative activity regardless of skills, experience or criminality as there is no direct regulation of private investigations, although the Private Security Industry Act 2001 (PSIA) (Schedule 2(4)) contains provisions for licensing of the activity by the Security Industry Authority.

The previous Government consulted on the introduction of a mandatory licensing regime for private investigators. Formal consultation commenced in August 2007¹. The responses to the consultation were published in May 2008². An interim impact assessment was published in July 2008³.

The Secretary of State for the Home Department (SSHD) is responsible for the development of central Government policy regarding the private security industry. The SIA advises and

¹ http://www.sia.homeoffice.gov.uk/Documents/impact-assessments/sia_pi_pa_ria.pdf

² http://www.sia.homeoffice.gov.uk/Documents/impact-assessments/pi_pa_response.pdf

³ http://www.sia.homeoffice.gov.uk/Documents/impact-assessments/pi_pa_options.pdf

assists the SSHD in the development of such policy as requested and in accordance with its functions.

The SIA is a statutory body established by the Private Security Industry Act (PSIA) 2001, as amended. The SIA is the organisation responsible for regulating the private security industry. It is an independent body reporting to the SSHD, under the terms of the PSIA. Its mission is to regulate the private security industry effectively, to reduce criminality, to raise standards and recognise quality service. Its remit covers the United Kingdom.

The SIA has two main duties. One is the compulsory licensing of individuals undertaking designated activities within the private security industry; the other is to manage the voluntary Approved Contractor Scheme, which measures private security suppliers against independently assessed criteria.

Licensing ensures that private security operatives are ‘fit and proper’ persons who are properly trained and qualified to do their job.

The Approved Contractor Scheme introduced a set of operational and performance standards for suppliers of private security services. Those organisations that meet these standards are awarded Approved Contractor status. This voluntary accreditation provides purchasers of private security services with independent proof of a contractor's commitment to quality. As at 20 December 2011 there are 726 security companies with approved contractor status across the United Kingdom.

Manned guarding (which comprises security guarding, door supervision, close protection, cash and valuables in transit, and public space surveillance using CCTV), key holding and vehicle immobilising are currently designated as “designated activities” under the Private Security Industry Act 2001 (Designated Activities) Order 2006 (as amended). This means that a licence is required to carry out these activities. From January 2012 the cost of an SIA licence (which lasts for three years) is £220 (it was previously £245). As at 20 December 2011 there are 368,763 valid licences.

The PSIA provides for other activities that are currently not “designated activities” to be brought into regulation by way of an order made by the SSHD. This includes the activity of private investigations although, as set out above, the definition of private investigations within the PSIA excludes investigations carried out for journalistic purposes. An amendment to the PSIA would be required in order to alter this definition.

Home Office Ministers have recently considered the introduction of regulation of private investigations. However, given the remit of the Leveson Inquiry it has been decided that any final decision on whether to designate private investigations as a “designated activity” and whether any amendment is needed to the definition of private investigations should await the outcome and findings of that Inquiry. In regard to Northern Ireland, the issue is being considered as part of a wider consultation on the future regulation of the private security industry. As part of this consultation, Northern Ireland officials will gather views as to whether private investigations should be subject to a compulsory regulation regime in Northern Ireland.

The SIA's mission is to be an effective, fair and efficient regulator of the private security industry. It is committed to the principles set out in the Legislative and Regulatory Reform Act 2006 and to the Regulators' Compliance Code, a statutory code of practice for regulators.

This means the SIA's regulatory activities are targeted only where action is needed and they carry these out in a way that is transparent, accountable, proportional and consistent.

- **Targeted** – the SIA uses the National Intelligence Model to identify non-compliance and target their resources appropriately.
- **Transparent** – the SIA follows government best practice in the development of any policies or services. Where it is appropriate to do so, it works with the Home Office to conduct Regulatory Impact Assessments.
- **Accountable** – the SIA consults with their stakeholders to ensure that they have the opportunity to be involved in decision making.
- **Proportional** – the SIA operates an enforcement process that is proportionate to the degree of non-compliance encountered.
- **Consistent** – the SIA checks every licence application against the same set of published criteria, ensuring that their licensing decisions are fair and consistent.

The Committee should be aware that the SIA has already submitted a witness statement in the name of its Chief Executive regarding the statutory regulation of private investigators to the Leveson Inquiry. Much of the information that addresses the Committee's main lines of enquiry are contained in that witness statement as indicated below.

Why regulation has not already been introduced, ten years after the Security Industry Act established a statutory framework for it.

Paragraphs 23 - 42 of the witness statement of the Chief Executive of the SIA, referred to in paragraph 16 above, sets out the history of this matter. These paragraphs are provided in the attached Annex to this statement. For convenience of reference the paragraph numbers as they appeared in the witness statement have been included in the Annex. We have been provided with the express permission of the Inquiry Chairman to disclose this evidence, as required by the restriction order made under s 19 of the Inquiries Act 2005 on 7 December 2011. It is the government's view that, given the remit of Leveson Inquiry, it would be appropriate to await its report before considering this issue more fully.

Whether the case for statutory regulation has been made, including the potential for harm to both clients and subjects of investigations in the unregulated industry.

The Impact Assessment published by the Home Office in September 2008 set out the issues to consider in relation to regulation. This Impact Assessment and the Consultation document that preceded it (published in August 2007) included consideration of the harms to both clients and subjects of investigations in the unregulated industry.

[Links to these documents are provided in paragraph 5 of the background section above]

Whether compulsory licensing should be part of the regulation and, if so, whether it should include competency criteria.

The September 2008 Impact Assessment recommended that regulation should take the form of compulsory licensing of private investigation activity based on a fit and proper test and including competency criteria. This was the option that generated the largest consensus in the responses to the consultation.

The likely cost of regulation to Government and the industry.

The September 2008 Impact Assessment estimated costs of regulation to the industry (based on the licensing model at the time) as follows:

- Transition costs include the initial (three year) licence fee: £2.3m;
- Training costs: £8.3m;
- Average annual costs consist of a licence renewal fee: £2.3m;
- Refresher training: £4.6m (not all renewals will require full training).
- These costs cover a three year period. Present Value of cost is calculated over 6 years – one full licence and renewal cycle.

Because of the full cost recovery model operated by the Security Industry Authority (both currently and at the time) the cost of regulation to Government would effectively be nil.

Conclusion

The Home Office is very aware of the issues that concern the public about the activities of private investigators. However, given the remit of the Leveson Inquiry into these activities, it has been decided to await the outcome of that Inquiry before Ministers make a decision on the regulation of private investigations.

Annex – Extract from SIA witness statement to the Leveson Inquiry

Current position in relation to the licensing and/or regulation of private investigations

Paragraph 4 of Schedule 2 of the PSIA defines the activity of Private Investigations that fall within the scope of SIA regulatory powers.

It is perhaps useful at this stage to highlight sub-paragraph 4(6) of Schedule 2 which states:-

- 6) This paragraph does not apply to activities carried out for the purpose of obtaining information exclusively with a view to its use, or the use of information to which it relates, for the purposes of or in connection with the publication to the public or to a section of the public of any journalistic, literary or artistic material or of any work of reference.

Paragraph 25 of the Explanatory Notes to the PSIA explains that the effect of sub-paragraph 4(6) is that “the professional activities of journalists and broadcasters” are excluded from the scope of private investigations for these purposes. Therefore the SIA’s understanding is that even if private investigations under paragraph 4 of Schedule 2 PSIA were to become “designated activities” for the purposes of the PSIA and subject to regulation, the general activities of journalists would still not be regulated by the SIA.

Private Investigations Regulation Chronology

The SSHD has not yet designated private investigations a “designated activity” for the purpose of the PSIA and private investigations are not therefore regulated by the SIA. However, the SSHD has asked the SIA to assist in developing policy in this regard over the past few years as the SSHD has considered so designating private investigations. It is worth noting (and this will be elaborated on below) that although there was an intention to regulate private investigations, this did not happen for practical reasons and has latterly been superseded by the review of private security industry regulation as a whole.

In line with the approach taken for other industry sectors, informal consultation activity was undertaken by the SIA during 2005 and 2006 with individuals and representatives working within the private investigations sector to ascertain views on the designation of private investigations under the PSIA. Although the responses gathered during this process are not formally documented, the views and perspectives captured were reflected in the formal consultation document that followed.

On 1 August 2007 a formal consultation document was published by the Home Office, presenting the options for licensing the private investigations sector. Responses were invited from existing stakeholders, organisations and individuals with an interest and the wider public over a 12 week period between 1 August and 24 October 2007.

Following the conclusion of the consultation, an analysis of the responses was published by the Home Office in May 2008 which indicated a consensus in favour of the preferred option for competency based licensing of the sector.

In line with better regulation principles and procedures, the publication of responses was followed by more detailed consideration of the costs, benefits and impacts of competency based licensing (the preferred option) This was approved by Ministers and published by the Home Office as an Interim Impact Assessment in September 2008.

In March 2009, following the publication of the Interim Impact Assessment, the Home Office and SIA agreed that licensing private investigations would be a priority (alongside business licensing and regulation of enforcement agents).

In September 2009, following a comprehensive consideration of options and timescales the SIA did not consider that it would be feasible to introduce regulation in 2010 for the following reasons; the SIA informed the Home Office of the same:

- there would not be sufficient training availability and capacity to allow individuals to obtain the required qualification for licensing;
- the Home Office required a revised Impact Assessment; and
- it would coincide with the proposed re-tender of the SIA Managed Service Provider Contract for its licensing services and the SIA would not have sufficient resources to handle the introduction of additional licensed sectors.

On 22 October, 2009, the SIA Chair and I [SIA Chief Executive] met with the then Minister and the need to address regulation of the Private Investigation sector was raised. Consequently licensing of the private investigations sector was provisionally re-scheduled for 2011 or 2012. This was endorsed by the Home Office following its inclusion in the SIA's Corporate and Business Plan.

The project was re-launched by the SIA in February 2010 with a planned Open for Business (i.e. able to accept applications from individuals) date of April 2011 and an Enforcement date of October 2011.

Independent research was also commissioned in March 2010 to ascertain a more up to date estimate of the licensable population for the sector and the SIA began to make practical preparations in anticipation of private investigations becoming subject to regulation.

Following the announcement of the May 2010 General Election, there was a general instruction from the Cabinet Office not to make any public announcements regarding new policy developments because of pre-election Purdah. This included the future regulation of private investigations.

The moratorium on public announcements was maintained following the formation of a new government to allow time for discussions with new Ministers on policy priorities.

This situation remained unchanged until September 2010 when, with future progress on the project becoming impossible without further Home Office involvement, the decision was made by the SIA to suspend all SIA activity related to the licensing of private investigations.

Following the Arms Length Bodies Review, published in October 2010, the Government announced its intention that regulation of the private security industry would no longer lie with an NDPB and that there would be a “phased transition to a new regulatory regime”.

At the request of Ministers, the SIA has since led work to develop a framework for the new regime, working closely with the industry through a Strategic Consultation Group, conferences and forums and with other stakeholders and officials in the Home Office and the devolved governments of Scotland and Northern Ireland.

The Government accepted the framework for a new regulatory regime proposed by the SIA in early 2011 and announced that new legislation will be introduced at the earliest opportunity to abolish the SIA in its current form and introduce a new regulatory regime for the private security industry.

The new regime’s primary focus will remain the protection of the public through regulating to support the existence of a fit and proper industry. Regulation will focus on business licensing, but a register of individuals approved to work in the industry will be maintained. The intention is that the new regime should recognise developments in the industry since the introduction of the current regime, including the increasing maturity of the industry, and build on the considerable investments already made”.

January 2012

Written evidence submitted by G4S [PI02]

Introduction

G4S welcomes the opportunity to respond to the Home Affairs Select Committee's inquiry into the regulation of private investigators

G4S is the world's leading security solutions group, which specialises in outsourcing of business processes in sectors where security and safety risks are considered a strategic threat. G4S has operations in more than 120 countries and more than 625,000 employees.

The Cotswold Group, which is owned by G4S and will be renamed G4S Investigation Services in April 2012, is the largest provider of surveillance and investigative services to insurance clients within the UK, with a strong emphasis on personal injury fraud. It provides a range of surveillance and investigation services in property, motor and personal injury insurance claims, employers and public liability, employee screening, housing benefit fraud and corporate investigations. The business, which has been operating for over 20 years and currently employs over 350 investigators, works for 30 major UK insurer companies.

This inquiry is very timely and provides an important opportunity to fundamentally rethink of how the private investigation industry is delivered and regulated. We have been strongly supportive of a self-regulatory framework for twenty years and believe the time is right for a new and more robust initiative.

We believe any regulation, however it is managed, needs to cover off the following key areas:

- Standards of behaviour for companies and individuals operating in the industry;
- Screening and vetting of personnel and sub-contractors to ensure disreputable individuals are deterred from joining the industry;
- Training and accreditation of personnel, which needs to be sufficient to ensure their standards of behaviour and performance are reasonable and easily assessable;
- Incident reporting and management are sufficient to allow investigation by independent organisations, whether Government or industry appointed;
- Grievance procedures, to ensure those who have issues with individuals or providers have the ability to pursue reasonable grievances;
- Compliance and enforcement mechanisms to ensure the areas above are followed by those operating within the industry.

We believe there are a number of a good models for the development of this framework:

- **Industry self-regulation:** This is the model being backed by the Foreign & Commonwealth Office for the regulation of the private security companies operating in complex environments. In this model an industry led organisation, A|D|S's Security in Complex Environments Group, provides the focus for industry self-regulation with FCO support and guidance. For the private investigation industry the proposed Chartered Institute of Investigators or Association of British Investigators might provide an obvious focal point for this model, with support from the Home Office.
- **Statutory regulation.** Encouraging the restructured Security Industry Authority (SIA), as the Government-backed organisation responsible for regulating the private security industry in the UK, to increase its scope to cover all companies involved in clearly agreed private investigation services, and through them all individuals. As such the Government would be able to benefit from the SIA's existing regulatory regime as well as an extensive compliance and enforcement structure. However, the SIA is currently transitioning to a new structure and widening its scope of responsibility would require primary legislation.

We believe that due to the structure of the industry any future regulatory and compliance framework needs to be focused on the individual, rather than companies. This focus would ensure undesirables have no ability to operate anywhere within the market while ensuring the qualified have ease of movement between companies.

We believe regulation, in whatever form it takes, is essential to the future of the industry, those operating within it and those who come into contact with it as customers or investigated. We also believe that for regulation to be credible, within and without the industry, it needs to have a Government-backed or independent partner which has robust compliance and enforcement powers to ensure that those who do not abide by regulation are not able to operate. This will ensure that companies and individuals which abide by the rules are able to highlight the fact to existing and potential customers.

We also believe it is critical that any future regulatory or licensing framework has customer backing, as with the UK security industry, so the framework creates a legitimate commercial advantage for those who undertake the accreditation required. This accreditation process should not be so onerous it is impossible for Small and Medium Sized Enterprises (SMEs) or individuals to satisfy without significant investments of money, time or people but should be robust enough to properly deter the unethical or corrupt.

We have replied to the specific questions raised by the Committee where G4S's experience is most relevant.

Market summary

Issues

Fraud is a huge issue for all members of society, with insurance fraud estimated to be a £1.9 billion problem by the Insurance Fraud Bureau while the Department of Work & Pensions estimates illegitimate benefit payments cost the taxpayer around £5.2bn a year, almost 3% of the total welfare bill.

Range of providers

FSA regulations in 2005 placed an emphasis on insurers to investigate fraud and which lead to the setting up of the Insurance Fraud Bureau (IFB), which is paid for by Insurers to assist intelligence delivery. This development, along with insurers' desire to focus on their core business, has led to the growing trend for insurers to outsource claims process and handling to trusted businesses.

However, insurance work only covers a proportion of the potential market which can range from matrimonial investigation services to employee screening and company due diligence. Little of this is registered or monitored by any authority, beyond a variety of different organisations, none of which uses the same criteria as each other, such as: from the Association of British Investigators (ABI), which is a fee paying organisation where a short exam is required prior to joining; the Institute of Professional Investigators (IPI), which is also a fee paying organisation but with no exam required; to The Institute of Professional Investigators. Therefore there now countless companies and individuals offering a range of services, loosely covered by the term "private investigation".

Personnel issues

In our experience private investigators (PIs) come from a number of backgrounds:

- Former police officers;
- Former military personnel;
- Anywhere else.

It is this last community which causes the issue: essentially someone can be a butcher today and a private investigator tomorrow without any proper checks: and sadly a number of those will be looking to take advantage of vulnerable people, often in a state of distress and who are prepared to hand over large sums of money to obtain information which they believe will provide them with the evidence they require for a release from uncertainty.

We believe the industry is currently in an “iceberg” stage with a small percentage of self regulated and reputable businesses providing public assurance to a large number of others, both companies and individuals, who are operating without any proper regulation: this introduces the significant risk of people entering the industry for the wrong reasons and with few safeguards to stop them from doing so. Essentially this makes the PI industry very similar to that of the security industry prior to the introduction of the Private Security Industry Act (PSIA) in July 2001, which made it a criminal offence to work in the security industry without an SIA licence or contract with a company which does not employ licensed officers.

There is currently no statutory or industry-led procedures to ensure that only those with the right skills, standards of behaviour and ethical standards may operate individually or set up companies offering the types of services identified above.

Lack of integrity amongst some customers

The other key issue is driven by customers, from large corporate to private individuals, who request information which is not readily or legally available but for which they are prepared to pay large sums of money, often in cash. This has created widespread bad practice amongst those PIs, whether corporate or individual, for whom basic business ethics are anathema. The issues raised by this behaviour have become clear over the last few months but does not need to be revisited in this response.

Private investigators are often seen as the ‘go to’ people if a person or organisation wants information which is not in the public domain, including:

- bank account details
- telephone history
- banking or tax information
- previous convictions
- medical history (incl doctors’ records)
- covert cameras

Clearly these are offences under the law but yet are provided on a daily basis by unscrupulous individuals who perceive it as a way to make money: indeed, some investigators still advertise these as services or are at least willing to partake in them without too much persuasion.

It is also estimated by the ABI that 90% of PIs turnovers less than £50,000 in revenue each year which, if this market data is correct, suggests the majority operate in the “black” economy. Irrespective of regulation and licensing this issue will likely

continue exist, however they will make those engaged in these practices think twice before they do so.

Why regulation not already introduced

G4S believes the previous round of regulation and licensing discussions ran out of steam for a number of reasons:

- Funding – there was a lack of clarity about who would pay for the regulatory body and whether companies or individuals would be charged. There was also confusion about which companies would have to pay and which wouldn't: so investigations specialist were expected to pay but lawyers and loss adjusters, who might be investigating the same cases, would have hidden behind their professional qualifications and not had to pay anything.
- Lack of leadership of those leading the discussions, which meant those discussion they lacked direction.
- Lack of proper interaction between Government and industry so the industry's leading companies were not consulted on what would or would not look achievable or rational.
- Lack of understanding of grass roots investigation activities which meant there was little detailed discussion of the specific issues or the nuances amongst those leading the consultation.

Response on the case for regulation

We believe no effective case has, as yet, been made for regulation and so earlier attempts at its implementation have been at best 'half hearted'. We have been told by clients that our model of fully employing our investigators, using robust screening and vetting procedures, sets us apart in the marketplace: this is obviously positive for our business but cannot be healthy for the wider industry in terms of perception or performance.

We believe regulation, in whatever form it takes, is essential to the future of the industry, those operating within it and those who come into contact with it as customers or investigated. We also believe that for regulation to be credible, within and without the industry, it needs to have a Government-backed or independent partner which has robust compliance and enforcement powers to ensure that those who do not abide by regulation are not able to operate. This will ensure that companies which abide by the rules are able to highlight the fact to existing and potential customers, but that those who do not are disadvantaged.

Response on compulsory licensing

It is important licensing takes place as part of regulation and we believe that it should be delivered on an individual basis to deter the disreputable from joining the industry.

We believe it will be up to the chosen regulatory body to determine the fees applicable to licensing and the training required to establish competency criteria. However, the training and associated licensing costs should not be such that they deter new joiners to the industry or prove financially insurmountable for those with an existing workforce which needs to be registered.

On the training issue we believe there needs to be a Government/industry approved training programme which new joiners to the industry would have to undergo. This training should be a mix of theory and practical based training and should be long enough to provide stakeholders with comfort that participants have reached a minimum level of performance. This training should conclude with robust testing before accreditation or licensing is approved.

We believe using a “grandfathering” approach for those individuals with a proven track record could be a useful way to counter the latter issue – essentially allowing those with more than a certain time served in the profession to take an exam or practical test, rather than carry out specific training, to achieve their accreditation.

The likely cost of regulation

We believe the cost of regulation, licensing and any associated accreditation and training has got to be in line with the current economic conditions. If costing is prohibitive then only the larger companies, who will have already invested significantly in their systems and procedures, will bother to pay. It will also ensure that the SME community will be unlikely to be able to pay for of licensing, but that the less reputable companies will not bother.

January 2012

Written evidence submitted by Association of British Investigators [PI03]

The ABI began life in 1913 to provide and maintain an organisation for Private Investigators. In 1970 it became incorporated; Limited by Guarantee. The finances of the ABI are carefully managed so as to ensure a comfortable surplus of funds over requirements.

Private Investigators were gathering evidence to put before the Courts in the U.K. long before the first police force was established in London in 1829. Notwithstanding the integrity and professionalism of true private investigators the industry continues to be viewed negatively.

A 2011 snapshot of the industry reveals a loose, un-quantified network of (unregulated), self-employed individuals. In addition, franchises, partnerships, investigation agencies, some incorporated, also exist. To deal with the volume and range of matters the industry is called upon to deal with, larger investigation agencies sub-contract case-work to the self-employed majority of honest, professional private investigators.

Unfortunately the terms “Private Investigator” and “Private Investigation” are collectives into which a miscellany of individuals and activities which, don’t fit comfortably with other labels are also placed. A topical example of this point are those individuals who have come to prominence in recent past over phone and computer hacking, telephone and electronic interception and unlawful bugging allegations. Their names and alleged criminal activities were unknown to the majority of honest practising private investigators. None has applied to become a member of the ABI. Few are known to practice as private investigators. Their activities principally fall under the heading of “Information Broking” and if the allegations against them are true, they could be described as white collar criminals who have seized an opportunity to make money through the invasion of individual and organisational privacy.

The exact number of practising, self-employed investigators in the UK is unknown. At a guess there could be between 2000 and 4000. Add to this in-house, employed investigative personnel, loss adjusters, bailiffs, debt collectors, investigative journalists etc. who also carry out ancillary investigative functions and the number would clearly increase.

Some of these investigators have questionable antecedents. It is possible for anyone even criminals, to advertise and operate as a private investigator. No background checks or competency tests exist. In consequence some lack integrity; many lack knowledge of the controlling legislation, training, an understanding of customer care or possess basic business acumen. This causes significant concern in that in many cases, evidence adduced by private investigators is submitted to the courts.

There is an ever-increasing demand for information and intelligence from all sections of society. Developments in communication and information technology mean that this information is now available from a multitude of sources – most lawful, some not and hitherto unheard of. These developments raise significant privacy issues recently evidenced by the actions of the press and those acting on their behalf.

Owing to finite resources, the investigation of business crime appears not to be a priority for the police service. Unless allegations are of robbery, burglary, very high value fraud, or a particular business sector (insurance & finance) is prepared to privately fund dedicated units, the police will not investigate. Victims are advised to instruct private investigators as they do in civil matters, to gather sufficient evidence to assist the police. Spending cuts will create a

greater demand for the services of private investigators to assist corporate clients in their endeavours to pursue private prosecutions without the involvement of the police service.

The arrival of the Internet in the 1990's revolutionised private investigation in the UK. As more private investigators and members of the public became familiar with e-mail and explored the World Wide Web, access to information on private investigation, investigators, investigative products, lawful and unlawful techniques, became available and inexpensive to advertise worldwide.

A number of private investigator related e-mail fora, free and open to all with an internet connection sprang up. Instead of posting sub-contracted instructions to a trusted fellow member, it was possible to outsource work instantly to a worldwide network of individuals purporting to be private investigators. A considerable number of these were and still are inexperienced, part-time amateurs, many of whom have a poor standard of literacy, with little or no technical or legal knowledge, who see this as easy money and are not afraid to bend the rules. A significant number are not notified under the Data Protection Act and have turned to hacking, blagging or bribery as a means of obtaining information unlawfully from public servants or the employees of financial institutions, utility and telecommunication companies.

In consequence, the attrition rate amongst those who carry out proper and lawful investigation and surveillance activities in the private sector has increased significantly.

The net effect of this technological development has been to add a further layer of difficulty in assessing the number of practising private investigators in this country as that number can change daily. Additionally, the use of global e-mail addresses (such as Hotmail.com), make it almost impossible to determine where an "investigator" is actually based. By virtue of the increase of those wishing to experiment with private investigations the diminution of integrity, quality, financial probity and professionalism has increased over the past 15 - 20 years.

Private Investigators no longer need to belong to an association. The fact that membership of the ABI has not fallen and is growing is encouraging. Research has revealed that membership of the ABI is viewed internally and externally as evidence of personal achievement and an endorsement of their business. The overriding reason is that ABI membership is seen by the industry, the public and prospective clients as bestowing an integrity and professional standard upon its members.

The ABI has always been in the vanguard of improving and raising standards in the industry and those who are willing to undergo a rigorous process to become and remain ABI members, together with other professional investigators who care for the future of this industry, their personal and business reputations do so because mandatory licensing has been deferred. Professional investigators fear further deterioration of standards, integrity and financial probity. There exists a feeling of certainty that the lack of regulation represents a potential harm to the general public, corporate clients, local and central government.

Private Investigators were added to the Private Security Industry Act 2001 (PSIA) at the eleventh hour. The ABI provided momentum and chairmanship of the Investigators' Sector Group, during meetings and negotiations with the Home Office and later the SIA after the PSIA was introduced.

The success and effectiveness of the regulatory regime exercised by the ABI and the professionalism of its membership has been recognised by the Drivers and Vehicle Licensing Agency (DVLA) which alone accredits the ABI for access to the on-line vehicle keeper database in certain defined circumstances. Supported, for similar reasons, by the Information Commissioner's Office and the DVLA, the ABI received the unique endorsement of The Law Society of England and Wales and exclusively included in The Law Society of Scotland scheme for the use of ABI members by their solicitor members for investigative assignments.

To take the professionalism, technical knowledge and ability of the industry to an even higher level, the ABI will shortly be launching the ABI Academy. The rationale is for the Academy to provide training and assessment, leading to a level 3 QCF nationally recognised qualification in Professional Investigation for its members and newcomers to the profession. The qualification is based on the National Operating Standards for Private Investigators. Following satisfactory assessment, the Security Industry Authority (SIA) endorsed the qualification. Level 3 QCF will be the entry level; a pathway leading to QCF Level 7 will be available. A regime of Continual Professional Development will follow, as will training leading to accredited qualifications in specialist subjects such as surveillance, money laundering, insurance fraud investigation etc.

Despite the best efforts of the ABI, the IPI and the determination of some dedicated, honest, professional, unaffiliated private investigators to raise the level of integrity, professionalism, technical knowledge and ability of the sector to protect the public, the fact remains that some have no wish to do so. The reasons for this attitude are speculative and are believed to reflect the cost and effort required, a desire to remain low profile, unaccountable and the fact that effective due diligence and vetting is likely to disqualify a number from consideration.

The activity of investigation in the private sector is well defined in the PSIA; however, the exemptions dilute its effectiveness. For example, had the PSIA been implemented for investigation it is unlikely to have prevented the issues that have surfaced in the "Phone Hacking" Inquiry.

The PSIA introduced the concept of mandatory licensing for private investigators but having suffered from an apparent lack of political will and the off/on abolition of the proposed regulatory authority – the SIA – it appears that it is time for an alternative, such as an enforceable form of **self-regulation** for all investigators in the private sector, to be considered.

Continual delays in implementing licensing and fear that the proposed statutory regulation would be an insufficient probe into the suitability for such a position of trust, which would be granted to licence holders, led the ABI to improve its own criteria. This has resulted in the current self regulation of its 500 plus members who adhere to the voluntary, strictly disciplined, regime set out in its Code of Ethics & Professional Standards and robustly enforced Bye-Laws.

The strategic objective of the ABI is to transform the industry into a properly recognised, respected, self regulating profession through the award of a Royal Charter. The ABI has invited other representative bodies, to meet to propose that they join the ABI in forming this wider, inclusive body. The self-regulation of private investigators in the private sector would be at no cost to the public purse, initially funded (in part) by the ABI whose objective of

Chartered status, will become feasible when membership increases as this proposal finds favour and support.

The ABI's current form of self-regulation is twofold. In the first instance it is performed in its membership criteria, all of which is stringently checked prior to granting membership. The criteria requirements are as follows:

- i. A credit check to ensure any applicant and applicant's business or businesses is clear of any monetary judgment or insolvency.
- ii. Any applicant is obliged to produce a Criminal Conviction Certificate (Basic Disclosure) conforming to the ABI's policy (based on the SIA's criteria), which certificate throughout membership must be no older than three years.
- iii. Any applicant or applicant's business must be Notified as a Data Controller with the Information Commissioner's Office.
- iv. Any applicant must provide two professional referees from whom the ABI takes up references.
- v. Any applicant is interviewed by an ABI selection panel and assessed as to membership suitability.
- vi. Production of proof of identity and residence is mandatory at any interview.
- vii. All applicants are required to sit an examination based on the ABI's Best Practice Guide which deals with pertinent laws on investigative activities, principally the Data Protection Act 1998.
- viii. Any applicant and (where applicable) the applicant's business must hold a policy of Professional Indemnity Insurance at the minimum level of cover (currently £250,000)
- ix. Applicant details are circulated among the membership to afford existing members the opportunity to advise the panel beforehand of any reason, supported by evidence, why any applicant may be considered unsuitable for membership. Any such representations received are fully investigated by the Membership Selection Committee.

The second part of the self-regulation process is the enforcement, compliance and disciplinary procedures, which include:

- i. Rolling audits to ensure members meet all the above on-going requirements.
- ii. Random checks of members marketing material (principally their web sites), to ensure services offered are within the restraints of law, morally inoffensive, not misleading or displaying any unauthorised trade marks or suggestion of an affiliation with DVLA, The Law Societies, Information Commissioner's Office or any other institution with whom the ABI enjoys endorsement or good relations.
- iii. A disciplinary process to deal with non-compliance or breaches of the Bye-Laws.
- iv. A disciplinary process to fully investigate any complaint received about a member.

There is no requirement in the UK for the registration or licensing of private investigators. Recent enquiry reveals there are currently 2,000 agencies notified with the Information Commissioner listing "Private Investigation" as a Purpose. This does not include in-house, employed investigative personnel, loss adjusters, bailiffs, debt collectors, investigative journalists etc. In its pursuit of Royal Charter Status the ABI will need to recruit into its self-regulated body, worthy private investigators currently in this unregulated and unquantified reservoir.

It is likely central funding, predicted to be in the low six figure bracket to assist set-up, may be required. A suggestion to consider would be a loan, repayable on agreed terms after a five year period. The ABI would underwrite 25% of any agreed initial funding.

Evidence of the success of the ABI's steps to protect the general public is the fact that since compulsory CRB checks were introduced, not a single ABI member has been arrested, summoned or convicted of any criminal offence. It is a fact that the only effectively vetted, regulated and accountable private investigators in the UK today are the members of the ABI.

The ABI submits that currently there is an even greater need for a form of regulation of the private investigation industry in the UK. The system of self-regulation the ABI exercises over its individual members is more robust than that proposed in the PSIA and envisaged by the SIA. The ABI recommends its self-regulation model be adopted for the wider regulation of the industry.

EXECUTIVE SUMMARY

- i. The ABI has existed for 99 years.
- ii. It is generally accepted that regulation is necessary. The principal strand of the ABI's strategy is to bring about self-regulation of investigators in the private sector (including in-house) and for that self-regulation to eventually come under the aegis of the Chartered Institute of Investigators. The essence of the proposal is as follows:
 - a. **Training**, leading to:
 - b. **Competency Assessment:**
 - c. **Entry Level Qualification:** IQ (Industry Qualifications) QCF Level 3 in Professional Investigation. Pathway to Level 7.
 - d. **Vetting:** To include checking references, CRB and financial probity.
 - e. **PII Insurance:** Mandatory.
 - f. **Acceptance into membership:** Entry onto public register.
 - g. **Regulation:** Work to Codes of Ethics & Professional Standards and Bye-Laws. Under the supervision of an independent Disciplinary Chairman, continual periodic checks of financial probity, exposure to complaint investigation, disciplinary procedure and range of penalties from caution to expulsion. Annual membership renewal subject to current PII certificate, financial probity and CRB checks [at Standard level].
 - h. **Continual Professional Development:**
- iii. The ABI cares about this with a passion as it seeks to improve sections in order to better protect society and further enhance Private Investigation to a wholly acknowledged profession. There are two significant hurdles to achieving this:
 - a. That the ABI can show it represents a significant number of those who should be regulated.
 - b. The ABI can not achieve this without the aforementioned number being known.

- iv. There are in effect two types of what the ABI would refer to as private investigators. The differences between the two groups can be summarised as follows:
 - a. A group of ethical, private investigators who, wishing to evidence their ethical status, competence and desire for longevity in this industry, have chosen to subject themselves to the rigours of vetting, competency testing and a robust yet fair system of complaints and discipline, through membership of a respectable professional body, in order to satisfy the public that they are to be trusted. It is believed that the total number of private investigators in this category number less than 1,000.
 - b. An unknown and constantly changing number of transient individuals who try their hand at investigation, surveillance and/or information broking, on a temporary basis on their journey through their working life. Added to this are those practicing, notwithstanding their criminal past, lack of financial probity and/or ethical practices. Although, to their credit some of these individuals have succeeded, for reasons which remain speculative, they have been unwilling or unable to provide any tangible evidence of, ethics, competence, permanence, or in an endeavour to protect their customers, to be accountable to a respectable professional body for their actions.
- v. Statutory regulation through the SIA is an option but the ABI submits that for a position of such trust the activity of professional investigators requires closer scrutiny and accountability in order to protect the public and commerce.
- vi. The ABI recommendation is envisaged to be at no cost to the public purse.

January 2012

Written evidence submitted by Threshold Security [PI04]

Executive summary

There is clearly a perceived threat to personal data, from private investigators, in the minds of the general populace. Recent revelations, in particular those at the Levenson enquiry have highlighted the fact that the general perception has an element of truth about it. The ICO and SOCA, either publically or in confidential reports, are convinced there is a threat to the public if private investigators remain unlicensed.

The SIA, or its successor in title, stands ready to licence. There is sufficient capability in the training and qualifications sector to enable this to be undertaken. The sooner this takes place the better in my view.

Richard J Newman B.A. Open
Past President of The Association of British Investigators
Fellow of The Institute of Professional Investigators
Member International Professional Security Association
Affiliate Institute for Learning
A.B.I. Investigator of the Year 2008

NB The views expressed in this submission are those of the author and do not, or may not, represent the position of any association or body of which he is a member, or has held a position of authority within.

Introduction

I should preface this submission with the following comment. There is a whole world of difference between an ethical 'private investigator' and someone who obtains information from anywhere, for anyone, at a price. The former are there to assist their client to legally source information. The latter will source information how and where they can, often obtaining it illegally if all else fails. So if we can abandon the notion that all private investigators break the law to obtain information that would be a good start. Those others are nothing more than data thieves and should feel the full force of the various laws that can be used against them.

Potential for harm

In May 2007 Lord Falconer said in relation to Data Protection offences that "Following advice from the Information Commissioner, the government is looking for the first opportunity to legislate to allow for custodial sentences, because, put simply at the moment the fines that are currently applied are not enough of a disincentive. The public are entitled to legitimate protection and privacy. At the moment the balance is wrong. The public are not getting the protection they need"¹.

Nearly 5 years later the public are still not getting the protection they need. I said, in 2007, to Richard Thomas (then Information Commissioner) and Lord Falconer that if the Security Industry Authority licensed professional investigators

¹ Lord Falconer Speaking at the 'Media Law 07 Conference' on 17th May 2007.

anyone without a licence is a “bad guy” and the ICO, SOCA or any other government agency can target them.

Those of us who are then, properly licensed, professional investigators can get on with the good work we undertake in assisting the insurance and credit industries to investigate fraud and debt, to serve legal process, and in some cases to help protect vulnerable persons from abuse and violence.

Many surveys and enquiries have been undertaken by the Information Commissioner’s Office, The Serious Organised Crime Agency, Her Majesty’s Inspector of Constabulary and the Independent Police Complaints Commission into relationships between data controllers and investigators.

The Information Commissioner’s Office published “What Price Privacy” in May 2006. The document title continuing as “The unlawful trade in confidential personal information”² which highlighted the illegal nature of the practices involved. During the period 18th November 2002 to 12th January 2006 the ICO secured 23 convictions and of those few, if any, were of a private investigator.

The SOCA Strategic Threat Assessment entitled ‘The threat to UK law enforcement from corruption’ was published May 2010. It provides a clear description of the threats in order of their relative severity. It does not contain the full details of the intelligence supporting the findings, nor does it fully describe the methodologies and vulnerabilities exploited by corruption. (This sensitive information included in the full CONFIDENTIAL assessment is only fully available to Chief Officers and Anti-Corruption Units) What is provided in the publically available Executive Summary is a list of what SOCA refers to as “Corrupters”, amongst these are Private Investigators.

“Private Investigators (pis)

Whether seeking corrupt access to information to support investigations, or working to directly assist criminals pis are an increasing threat. They may include people with law enforcement or similar backgrounds, with knowledge of investigative tactics, and methodologies.”³

So, in the SOCA report there is a short paragraph relating to private investigators but no, publically available, hard evidence provided that they are any more of a risk than any other group of individuals in the public sector.

HMIC in its report ‘Without fear or favour: A review of police relationships’ (Dec 2011) primarily documents police relationships with the media but “has also considered inappropriate relationships and other abuses of power in police relationships with private investigators”⁴. They repeat the view held, and put forward, in the SOCA Strategic Threat Assessment that “the most significant threat nationally is information disclosure to those involved in criminality, to friends and family, and to private investigators”. (4)

² What price privacy? The unlawful trade in confidential personal information. Presented by the Information Commissioner to Parliament pursuant to Section 52(2) of the Data Protection Act 1998 and Ordered by the House of Commons to be printed 10 May 2006 Crown Copyright

³ ACCAG/SOCA (May 2010) The threat to UK law enforcement from corruption Crown Copyright

⁴ HMIC (December 2011) Without fear of favour: A review of police relationships Crown Copyright

Once again there is no publically available information that what I would call a 'private investigator' is in any way involved in the illegal traffic of information. The HMIC report continues by saying that "Studies into corruption in policing over the last decade have established that it is difficult to assess its extent, although it is apparent that information disclosure is the most common type of corrupt activity. This can include obtaining information for personal purposes, passing information to friends, associates, leaks to the media, and deliberate leaks to criminals." (4) I note that private investigators are not included in the section on "Information disclosure" yet that surely is the one area where they would have the greatest need.

"The IPCC reports that complaints (substantiated and unsubstantiated) in relation to improper disclosure of information have been made against every force in England and Wales in the financial year 2009/10, but these amounted to only 2% (1,189) of complaints against police"⁵. No information in relation to what, if any, information was obtained by any private investigator. "Further, data protection complaints in relation to policing and criminal records to the ICO in 2010/11 amounted to 5% of all complaints received by the ICO"⁶. During 2011 the ICO press releases do not refer to a single private investigator being prosecuted despite there being a number of reports of criminal proceedings, against others, having taken place.

The IPCC, in its report dated August 2011, makes reference to just one instance of abuse by a private investigator in 2007. "Misuse of police databases to assist private investigator

In 2007, South Wales Police were alerted to the possibility that an employee had misused computer systems to assist a retired police officer who was now operating a business as a private investigator. An investigation was conducted by South Wales Police's PSD and supervised by the IPCC. The operation identified links between a retired Detective Chief Superintendent who had established his own business and a retired Detective Constable who had rejoined the force as an administrator in a civilian capacity."⁷

Whilst recognising that there is a problem in relation to data disclosure from a variety of sources, including the police and other government departments, to several individuals who purport to be private investigators I would venture to suggest that the vast majority of professional private investigators would not be involved in such a trade.

Then we must consider all those who whilst not admitting they are private investigators nonetheless, access and obtain personal data. Often doing so often in

⁵ IPCC (2010) Police Complaints: Statistics for England Wales 2009/10. Available from www.ipcc.gov.uk

⁶ ICO (2011) Information Commissioner's Annual Report and Financial Statements 2010/11. Available from www.ico.uk

⁷ Corruption in the Police Service in England and Wales Part 1 August 2011 published by the IPCC following a request by the Home Secretary using powers under Section 11 (2) of the Police Reform Act 2002

an illegal manner. If investigators are licensed then these 'other' persons can be targeted.

Failure to regulate

The Security Industry Authority (SIA) would have licensed Private Investigators according to their minutes of a Board meeting held in July 2011. It is recorded that "The Chief Executive explained that The SIA would have liked to address the regulation of this earlier. The planned roll out for licensing Private Investigators would have meant an offence date of 1 October 2011. However, the Home Office had halted work and funding on this project in 2010 due to uncertainty as to the future of the SIA."⁸

So that is one reason, other reasons for the failure have been a difficulty in establishing exactly what an investigator does, and therefore to whom the licence should be applied. Having achieved that definition there was, until myself, and other colleagues within the private investigation sector paid for it, no suitable qualification for licence purposes. There are now two awarding bodies with an SIA endorsed licence linked qualification available for investigators to take. (I must declare a financial interest in the provision of the Educational Development International Level 3 Professional Investigators examination)

Compulsory licencing

There are estimated to be anywhere between 3,000 and 10,000 persons operating in the UK who could be considered as 'Private Investigators'. There are within the present Associations, Institutes and other voluntary investigative organisations approximately 1000 of those investigators. Some are members of more than one organisation.

The vast majority of investigators have not become members of organised groups that advocate licensing and regulation. In that case the only option that would require ALL investigators to be licensed would be compulsory regulation.

If there is no appropriate competency criterion then any person could purport to be an investigator. This would allow unqualified persons to operate and the public, thinking them competent because they hold a 'licence'. In my view a competency criteria has been applied to all other sectors licensed by the SIA and investigators should not be an exception. A view shared by Baroness Ruth Henig current Chair of the SIA. There is now adequate provision for training and qualification available if, as is proposed by the SIA, the offence date is set at an appropriate date. The time to qualify all those investigators needing to be licensed is estimated as 12 months, by the SIA.

Cost to government and the industry

I am not qualified to estimate the likely cost to Government but would premise that the SIA when making their original plans to licence this sector were confident that the fee they set for a licence would be sufficient to cover their costs.

⁸ Para 29 of minutes of the SIA Board Meeting dated 28th July 2011 available at <http://www.sia.homeoffice.gov.uk/Documents/board-minutes/2011/sia-board-110728.pdf>

For my own part I have already paid to take the qualification at a minimal cost of £150.00. The proposed licence fee of £220.00 for a 3 year licence is, in my view, not extortionate. Both are taxable expenses. This would not, in my opinion, be a considerable impact on any SME in terms of time, bureaucracy and cost to become a licensed individual.

January 2012

Written evidence submitted by The Surveillance Group [PI 05]

Executive Summary

The Surveillance Group is the largest provider of manned surveillance and surveillance training to both the corporate and public sector within the UK.

The company is unique in that all of our operational staff are required to obtain a Level 4 BTEC Diploma in Tactical Covert Surveillance before being allowed to work for the company. The qualification includes a module on the legal parameters that govern the use and application of surveillance within the UK. In addition all staff (including office based administrators) are CRB checked prior to employment.

The majority of the company's work is governed by contracted service level agreements with its major clients who are predominantly financial institutions, global brands and public sector departments. These agreements encompass the training provided to staff and the standard operating procedures that all staff work within.

The company's work has led to countless high profile convictions and numerous landmark judgements in court. Our work as both a training provider and major operational company means that we are seen as being the benchmark for surveillance standards within the UK.

The company has argued for better regulation within the industry for years and are keen to see a form of licensing being introduced. Clearly a further consultation needs to be undertaken and differentiation made between 'directed' and 'intrusive' surveillance as part of this process.

The company feels that a blanket licensing process for any type of 'private investigation' activity would potentially be flawed due to the dilution of subject matter and training within such a broad subject. The company is therefore strongly in favour of seeing investigative licensing being split into sub categories such as surveillance, desk top enquiries / data research and physical investigation and interviewing.

There are existing qualifications in place to cover the areas mentioned in section 6. In the case of surveillance this is the Level 3 BTEC 'Certificate' or above that includes a minimum of 120hrs of learning (as opposed to a Level 3 BTEC 'Award' that requires only 10 hours of learning). For all other investigative processes we feel that the Level 7 BTEC Advanced Professional Certificate in Investigative Practice would provide the correct level of essential training. Both awards are with Edexcel, with the latter currently being delivered through major Legal Training Providers such as Bond Solon.

It is our belief that the SIA relied too heavily on generic security organisations for consultation regarding the licensing of private investigators and as such the process seemed very much led by manned security rather than investigative organisations. We are also against the consultation being reliant on trade bodies such as the Association of British Investigators

who in our opinion exist predominantly as a networking medium and do not represent the true voice or interests of the industry as a whole. We also feel that there is a danger of the licensing being overseen solely by ex-police officers who only have experience of criminal investigations. The Regulation of Investigatory Powers Act would be difficult to adapt to civil litigation and to that end any future consultation group needs to have a members drawn from a diverse range of specialist areas.

We would hope that as a result of the Select Committee's work recommendations will be made to parliament to licence the use of electronic tracking devices and their use subject to 'RIPA' style intrusive surveillance applications. We also feel that sentencing needs to be introduced to police the illegal accessing of data from digital devices.

We think it is important to note that every aspect of the surveillance we undertake is linked to either civil or criminal litigation, where exaggeration, fraud or other types of crime are suspected. In all of these instances there is a good / legitimate case for the use of surveillance and we feel that the same basis should apply to any licensing proposals. Proportionality should therefore be one of the major considerations when deciding what operating parameters should be covered under a licence.

We would also question whether the provision of licenses should be a local authority led process or whether it should be controlled and administered via the MOJ or a body operating on its behalf. In our mind the licensing of Investigators is of sufficient gravity to warrant it being structured around suitable training rather than a series of mandatory checks.

The Surveillance Group respectfully request the opportunity to submit our opinions orally to the Committee.

Background of The Surveillance Group Ltd

The Surveillance Group Ltd is by far the largest provider of manned surveillance and surveillance training in the UK. What makes the company unique in terms of its specialist position within the industry is the fact that all of its employees are trained to a Level 4 BTEC Professional Diploma in Tactical Covert Surveillance (course code PF437) The company's operational staff are all ex Mod employees and our work has been responsible for high profile convictions in the fields of Brand Protection / Counterfeiting, and Anti Social Behaviour including drug related issues and violent crime.

The company is also the largest provider of surveillance to the Insurance Industry who, in 2011 suffered losses through fraud of in excess of 2 billion pounds. We undertake surveillance on over 500 personal injury claimants a month all of whom are claiming in excess of £150,000. In 2011 just over 81% of all claimants were filmed undertaking activities that directly contradicted major elements of their claim and 18% were filmed working whilst receiving unemployment related benefits.

The company's surveillance footage was responsible for the Landmark 'Contempt' judgement in the case of *Walton v Kirk* [2009] EWHC 703(QB) that changed the way fraudulent or exaggerated personal injury claimants could be prosecuted by Insurers. In 2011 our footage was responsible for the first ever personal injury claimant and their family receiving custodial sentences for fraud in the case of *Motor Insurers Bureau v Shikell* [2011] EWHC 527 (QB.)

Our footage has thereafter been used in numerous other high profile fraud cases including instances where the DWP have benefited through using our evidence, having been passed a file by our insurance clients. A good example would be the case of *Edward Nield, Acromas Insurance Company Ltd v Graham Jeffrey Loveday, Susan Loveday* [2011] EWHC 2324 (Admin). We work regularly with many police forces and other government law enforcement bodies and in December 2011 The City of London Police benefited from surveillance evidence acquired by us on behalf of Nike and Adidas in order to close down a major organised counterfeit ring and seize its assets under the Proceeds of Crime Act.

To our knowledge we are the only operational surveillance company to also have a dedicated Surveillance Training business and in 2010 we created the first Level 4 BTEC in this specialist subject that is accredited by Edexcel. We have subsequently trained government departments such as Ofsted and are an approved training provider to the MOD's Resettlement Service. Our level 4 BTEC includes modules on the various Acts that govern the use of surveillance in the UK and the various legal parameters that operatives have to work within. These include The Data Protection Act, Human Rights Act, Regulation of Investigatory Powers Act and the Home Office Covert Surveillance Code of Practice. As part of our contracts with major financial institutions such as RBSI & AXA we are required to have all staff CRB checked at the commencement of their employment.

We only undertake work for the corporate, financial services and public sector and are very much seen as being responsible for setting the bench mark in terms of integrity and training within our industry. The recent revelations about the News of the World's use of surveillance has been of great concern to our company since we play a vital role in assisting corporate and public sector entities in the detection and prosecution of fraud and organised crime. We are very much in favour of licensing.

Recommendations

Hopefully the information provided in the sections above goes some way to prove that the systems and training that we have developed are effective and fit for purpose. These internal systems not only insure that we play a vital role in the detection and prosecution of crime but in so doing we do not contravene an individual's right to privacy or breach the Data Protection Act.

We are routinely subjected to major audits by many of our clients and we would willingly to submit ourselves to a similar activity if the Committee wish to assess the systems that we

have in place to insure that members of the public are protected from the disproportionate / incorrect use of surveillance or other investigative methods. The benefit to the committee of using us as one of its benchmarks or simply for research is that The Surveillance Group is unique in the fact that we work for both public and corporate entities. Both entities are governed differently. For public bodies we operate within any RIPA Surveillance Authority gained by them. When working for financial institutions our actions are governed by the individual contracts we have in place together with our clients' various operating parameters under the FSA and guidelines set out by other bodies such as the Association of British Insurers. Licensing based around a RIPA style of surveillance authority would not work for financial institutions since it would not be cost effective and would invariably lead to claimants and other subjects of surveillance being made aware of our presence before we could determine whether they were guilty of any form of fraud. We therefore feel that it is of paramount importance that any consultation is conducted by individuals with both criminal and civil investigatory experience.

As the largest surveillance company in the UK one would expect that our employees and managers would be in court a great deal giving evidence. In reality however this is rarely the case since we work to high enough standards and in an objective manner to insure that legal teams representing those we are placing under surveillance invariably accept the validity / integrity of our evidence gathering procedures and do not contest the submission of our footage as evidence. It is important to note that every aspect of the surveillance we undertake is linked to either civil or criminal litigation, where exaggeration, fraud or other types of crime are suspected. In all of these instances there is a good / legitimate case for the use of surveillance and we feel that the same basis should apply to any licensing proposals. Proportionality should therefore be one of the major considerations when deciding what operating parameters should be covered under a licence. The type of surveillance used by journalists in the case of Madeline McCann to simply 'mine sweep' for a story should be totally prohibited or lead to the suspension of a license.

Although we do not undertake any form of traditional private investigations such as those relating to divorce etc we are conscious of the fact that any individual with a computer can access a huge amount of open source data on anyone they choose or indeed simply purchase a video camera and follow whoever they choose. We do not like being included within the Private Investigator category but accept that this is necessary. To that end we would request that the legitimate activities of businesses are not subjected to unreasonable licensing criteria that mean that those businesses can no longer trade or undertake activities that private individuals or non categorised businesses can.

We have grave concerns regarding the illegal application of tracking and digital monitoring devices. Trackers are freely available on the internet for a couple of hundred pounds and transmit their data via a sim card that can be extracted from any 'pay as you go' phone. This means that it is very difficult to establish who deployed such a device if one is found. Not only does the deployment of such a device entail 'tampering' with another's property but in our mind it constitutes a breach of that person's right to privacy. As part of our courses we

teach government users of such devices how to apply for a specific Intrusive RIPA Surveillance Authority to deploy such a device. It is ridiculous that private investigators can utilise such devices without having to make a similar application and we would request that any use of these devices by private individuals or private organisations should be prohibited under the licensing criteria. As a training organisation we receive countless enquiries each month asking for our opinion on the use of such devices and we have been alarmed by the number of people using them on a daily basis.

We are conscious of the fact that our industry probably has more sole traders than it does major companies such as ours and we do not want to force these individuals out. What is important is that a specialist licence is mandatory to change the way companies and the media instruct private investigators. The majority of breaches and illegal acts seem to have been carried out by sole traders or small companies who feel they are perhaps below the radar of regulatory and law enforcement bodies. We wonder whether this was the reason they were instructed in the first place. With this in mind complete licensing of the industry is surely the only way to protect the privacy of the general public.

January 2012

Written evidence submitted by The Institute of Professional Investigators [PI06]

IPI Evidence

Since 1976 the Institute of Professional Investigators has sought to encourage and promote its members to achieve and maintain a high standard of professionalism whilst engaged in their investigative activities. Our organisation is the only “Institute” within the private investigation sector in the United Kingdom. We consider our membership to be truly representative of the investigation sector.

The Institute of Professional Investigators was formally created in 1976. Prior to that the primary organisation for private investigators (only) was the Association of British Investigators (ABI). ABI members sought to create an ‘academic’ arm to that trade association and this was catered for in an ABI vote circa 1975. However, a new Council came into being and the academic concept was shelved. As a result the members supporting the academic, professional ideal left the ABI and started the Institute.

Unlike the ABI, the IPI was opened up to professional investigators in other sectors, particularly the public sector – police forces, HM Forces, government departments, etc. There has never been a high uptake from the public sector, and their representation in the IPI remains small. Therefore the main body of our membership is made of investigators in private practice, with acceptable professional qualifications, and therefore eminently capable of assisting the Committee in its deliberations.

The Institute has been active from its inception in proposing the implementation of licensing for the UK private investigation industry, and in 1976 supported then MP Brian Walden in the introduction of a private members bill to that end.

Why regulation has not already been introduced, ten years after the Security Industry Act established a statutory framework for it.

Following the introduction of the Private Security Industry Act the Institute and partner associations including the ABI entered into voluntary consultation with the SIA with a view to assisting it in its work. The Investigations Sector group was formed, and was highly representative of the sector.

The primary issue raised was simply identifying what ‘private investigation’ encompassed, and an initial list of some 169 activities was created. This must in some way have affected the timeliness of the introduction of licensing for our sector, and it was later narrowed down to a more manageable level. Suggestions were also made at that time (2002) about removal from the PSI Act with a view to the investigation sector coming under the legal regulatory regime, e.g. the SRA or similar. (That has now been adapted to a suggestion that the sector be overseen by the Ministry of Justice.)

The IPI attended all of the consultation events held by Kevern Oliver and Skills for Security, a process over almost 5 years that resulted in identifying 5 ‘core competency, areas that were felt by most (but not all) to address the main activities of investigation, namely ;

1. Conduct investigations – a generic title covering the client interview and management of enquiries.
2. Conduct interviews (witnesses and ‘suspects’).

3. Search for information and preserve evidence – including open source (public and internet) intelligence.
4. Conduct Surveillance – initially its conduct, then later reduced to understanding of surveillance law and method.
5. Understanding and working to relevant Laws and practices – the legal background to our activities, with some focus of prevention of harassment, data protections, human rights law and freedom of information.

These were detailed in a document dated August 2007. The content was made available to Awarding Bodies, at least one of whom (EDI) drafted a qualification and course to deliver it.

(In 2009 the main associations also assisted Skills for Security in reviewing the National Occupational Standards for Investigations which, although they were not the licence qualification in themselves, would have been a foundational document when developing qualifications for a licence. This was done routinely, and not prior to or specifically for the licence process.)

However, after these competencies were tentatively agreed to cover what was needed, the SIA then suggested that competence could be provided for through 60 hours training (30 for Precognition Agents in Scotland), a gross oversimplification of the work needed to become competent in this field. It seemed odd that ‘simple’ statement taking in Scotland needed 30 hours training, while additional training in surveillance, information gathering, interviewing, law and practice, tracing, etc. could be catered for in the same time period.

All that said, it was at this point that all consultation seemed to stop – I would state that this seemed to occur after a meeting at Skills for Security in September 2008, when the SIA heard what turned out to be final representations by the main associations and other interested parties.

The various consultation documents had been circulated up to this time including the PI/PA consultation, in essence based on or at least influenced by what had been ‘agreed’ at Skills for Security/SIA consultations, but at the point of an expected confirmation that licensing would be brought in by March 2011, election purdah was implemented. This has resulted in further delays because the whole process appears, on the face of it, to be starting again despite the levels of agreement and acceptance identified up until 2008.

In our opinion, the main factor in the delay (taking into consideration that licensing of the larger sectors took precedence) was a gross under-estimation of what private investigators do, and just how professional they wish to be at performing those functions.

This under-estimation could have resulted from a number of factors, e.g.

- Failure to realise that since a substantial proportion of private investigators come from the public sector, where they have undergone substantial training in law and methodology, no effective training model has been created in the private sector. As such, development of courses had to be undertaken by interested Awarding Bodies and training providers, who themselves were equally uninformed about the sector.

- Failure to understand that private investigation is a wider activity than insurance investigation, process serving, tracing and domestic investigation. We believe that the 169-area schedule was a surprise to the SIA.
- The possibly unexpected realisation that professional private investigators have a substantially higher level of expected knowledge (in law, court practices, scene forensics, etc.) than the other sectors licenced at the earlier stages. It is the Institute's opinion that (ethical) private investigators' activities are more akin to those of the legal sector and that their activities are directed more to service *of* that sector, and as such the relatively minimal licensing/competency models applied to the manned guarding, CVIT and close protection sectors were unlikely to be applied as effectively or as quickly to investigators, even if the licence administration process was the same.
- Perceived resistance by some of the larger investigative bodies (e.g. The Risk Advisory Group, Kroll, Control Risks) to the introduction of licensing for their staff. They are considered 'major players' and influential at a high level, and suggestions have been made in the past that their methods have, on occasion, been questionable. Anecdotally, their reluctance could be the result of a number of considerations, and their lack of involvement (save Control Risks) in SIA consultations attended by the other associations make it impossible to accurately identify their concerns. However, given that only character (CRO) and competence checks were mooted from the off, the rationale for their resistance is unknown – even cost implications would arguably have been minimal as their staff are usually experienced before engagement, and the fees they enjoy are supposedly quite substantial.

Whether the case for statutory regulation has been made, including the potential for harm to both clients and subjects of investigations in the unregulated industry.

All IPI members, identified by the nominative MIPI or FIPI, have proved to their peers, through objective assessment of their character and their academic and professional qualifications that they know what they are doing, will always act ethically and correctly, and will always justify their costs. The same applies to members of the Association of British Investigators. To the best of our knowledge, these criteria have not been applied by any other organisation or association, at least to the same degree.

The IPI is absolutely committed to professionalization of this industry. As things stand, anyone can get a car, a computer and a desk and style themselves as a private investigator. No training is required, nor is good character a prerequisite as it is in other professions. Nor is a convicted person barred from conducting enquiries. Given that properly founded investigations can and usually do result in or prevent court proceedings, an untrained, unethical investigation will have consequences for the ill-informed client. Improperly obtained evidence will not be admissible in (expensive) court actions. And, of course, evidence not obtained because of lack of knowledge/training/experience is no use to anyone. Clients and lawyers may also find themselves answering for the actions of their instructed investigator.

From another perspective, in the absence of regulation a client whose motives are questionable will find an unethical investigator – stalkers, criminals, etc. come to mind. In the USA, investigators have frequently been used by stalkers (etc.) to trace their intended victims, sometimes with fatal results. Put simply – if police officers regularly use the PNC to find things out in domestic or legal proceedings (for themselves or for paying clients), and the

press uses unethical PIs for illegal activities to gain information *to sell to the public*, then an unethical PI will find a way to do the same, and for the same or worse purposes. Regulation that prevents or at least hampers this will make the unethical client think twice about undertaking an illegal activity either directly or through an agent. Such incidents can never be completely prevented, but at least the potential penalty will reduce occurrences of impropriety.

Another rationale – equity requires that both sides in a dispute have equal access to professional services. For example, would a defence lawyer expect a lesser service from their investigators than that provided by the Crown? The existence of a competence-based licensing regime would assist the legal profession by ensuring that only licenced, competent investigators serve them, and their clients' interests.

Whether compulsory licensing should be part of the regulation and, if so, whether it should include competency criteria.

For these and other reasons, the IPI supported the SIA in requiring that both character and competency criteria were addressed in licensing for our sector, and will continue to advocate this approach.

The likely cost of regulation to Government and the industry.

For the industry, cost is a consideration. This can be balanced by the knowledge that many PIs, coming from the public sector, will obtain their training prior to needing a private licence. However, potential investigators who do not have this background (in particular school-leavers, graduates and 'direct entrant' investigators) may have to finance their own training, or have that training provided by an employer who can bear the cost.

It has been suggested by the SIA and EDI (a qualifications Awarding Body) that 60 hours training is acceptable for competence in investigation. That is a 7½ day training course - an estimated £2,500 *minimum* based on the cheaper end of the market seminar rates.

A *basic* police suspect/witness interview course is 5 working days; a surveillance course is 3 weeks (plus a 4 week driving course!); a law course can last weeks. A restriction or expectation that competent investigators can be created in 60 hours is therefore, in our opinion, overly ambitious and does not serve the industry or the client. (This may address those already in the sector who need an update, of course.)

Unfortunately, this means that potential costs to the industry could be untenable unless provided 'in-house, on-the-job', supported or replaced by distance learning. In balance, the Spanish requirement of a degree level qualification is equally untenable.

We feel there is a place for competence in licensing, for the reasons stated *ante*, but accept that the answer to question on the provision of training and qualifications may yet need to be answered.

However, the following observations may assist:

A Solicitor, paying £1,600 per annum for a practising certificate, has paid about £10,000 for the qualification, pays about £1,100 per annum for Continuous Professional Development and has insurance of about £20,000 per annum. This is too dear for our sector, and implies a degree level qualification.

A Legal Executive spends about £500 per annum on CPD and, if working in a firm, is not separately insured. Professional Indemnity Insurance, not a condition of a licence under the current regime, costs anything from £200-£1,000 for reasonable cover.

A Bailiff pays £250 per TWO years, but must re-apply every two years at full cost, which has increased with every Court fees increase. Subject to having no claims, Insurance is £300 per annum, possibly slightly less. The process also includes advertising the application, (about £350) obtaining CCJ and CRB checks, two a time, one at the commencement of the application and one a week before the Application Hearing. (An extra £80p lus). So, the best part of £600 per annum, every year.

If it assists, a costing analysis was completed and contained in the PI/PA document of July 2007, which can be provided either by us, or the SIA.

The cost of regulation to Government is not something the Institute is qualified to comment upon, but that said, it should not be any greater than that to which it was exposed for the other sectors hitherto licenced.

Concluding Statement

The professionals in this sector have sought licensing for many years. They seek the recognition for their professionalism that licensing will demonstrate. They want to be licenced as soon as possible, and once licenced will seek to prove their eligibility to have access to facilities which have been denied them thus far.

It is true that investigators would like access to some public body databases (e.g. Land Registry, DVLA) without the obstacles currently placed in their way but it is not our case that licensing should automatically result in greater access, but it is our case that licensing will be a first step in earning the professional respect that will one day make that access justifiable, as it seems to be in other countries.

The professional associations' representatives have volunteered their time in assisting the SIA and associated bodies in development of a licensing regime that will address all the concerns of the industry, government and the public. We feel it is time that we had a return on our investment, one that reflects our own desire to be recognised as the professionals that we are, and to move away from the populist view of the man in the mac, or the phone hacking criminals who besmirch our profession's title.

January 2012

Written evidence submitted by Security International [PI07]

Executive summary

Attempts at licensing Private Investigators (PIs) can be traced back to the 1950s.

The PI Industry assisted a number of politicians in promoting their bills on security/investigation/privacy.

PIs continued to promote licensing up to the 1990s with support from a number of eminent politicians with little to no support from the remainder of the security industry.

A reluctance to license PIs in the past was due to the fear that it would give them a licence to snoop. (Reginald Maudling.)

The PI industry has been studied by a number of notable academics who published their findings in books and modules for Masters Degree courses.

Regulation has not been introduced because; it is difficult to establish the core activities of PIs. The number of PIs is unknown and this paper suggests it is below 5,000 rather than the normally published 10,000.

This paper suggests that until the publicity from The Leveson enquiry the activities of PIs has not caused the public any concern unlike the situation of ten to thirty years ago.

The reduction of unlawful activity by PIs can be attributed to the Human Rights Act 1998 (HRA) and the Data protection Act 1998 (DPA) which can now impose a financial penalty on a PI of up to £500,000. The DPA also makes the client responsible for the activities of their PI.

It is extremely difficult to establish a commonality on the wide and diverse services provided by a PI and subsequently reduces the chances of being able to establish a suitable competency requirement.

Over the past 40 years government of either persuasion had not been convinced that there was sufficient reason to license PIs despite the widely reported illegal activities. Why should there be justification now when the illegal activities are considerably less and there is adequate legislation in place in the form of the HRA and DPA to protect the public.

Regulation without compulsory licensing would mean that the activity is regulated and not the PI. Where the activity was being conducted by the end user themselves the legislation would in effect be protecting them from themselves.

Investigation no matter how it is packaged is an intrusion into a person's privacy. That intrusion is already regulated by the HRA and DPA and if it is consumer credit related

also by the Consumer Credit Acts 1974 and 2006. It is suggested that further regulation of PIs is a case of over licensing.

It is difficult to arrive at a suitable costing for the license fee because the number of PIs is unknown. It is assumed that the initial costs will be similar to those faced by the Security Industry Authority which ran at a loss despite the licence fees of £350 from over 100000+ personnel. Unless the licence fee is well in excess of that the public purse will have to meet the deficit in order to protect the public from a threat that is considerably less than it was ten to twenty years ago.

The additional cost of training for investigators to demonstrate their ability to achieve the required competency is likely to be in the region of £2000. This additional financial burden on an industry populated mainly by sole operators is I suggest a burden too far. Resulting in a decline in PIs and less revenue to finance the regulation.

Introduction

My references to PIs throughout this paper are those that are not employed by a Public Authority or employed in-house. I suggest that thorny subject is best left for a later date.

Attempts at licensing PIs can be traced back to the early 1950s. Members of the British Detective Association, later e the Association of British Investigators (ABI), attended the House of Commons to petition the then Home Secretary for licensing.

Peter Heims former president of ABI actively campaigned during the 1960s and early 1970s for licensing. Peter provided valuable assistance to a number of politicians who tried to introduce some form of control over PIs often included in a variety of Privacy Bills.

Tony Gardner; the Private Investigators Bill 1969.

Security Industry Licensing Bill 1970; Norman Fowler.

The Younger Committee on Privacy 1970.

The Private Detectives Control Bills 1 and 2 1973; Michael Fidler.

Private Security (Registration) Bills, 1977, 1985, 1987; Bruce George.

John Grant, principle of The Institute of Professional Investigators (IPI), in the mid to late 1970s continued these efforts. The IPI commissioned their own draft of a bill to license PIs.

In 1985 Chris Brogan took up the baton with support from both ABI and IPI. Chris' brief was to promote the licensing argument to industry, commerce and selected politicians and he received the valuable support of Lord Whitelaw and Bruce George.

At that time there was no support from the rest of Security Industry. The British Security Industry Association (BSIA) the largest security association refused to acknowledge that PIs formed part of the security industry. The International Professional Security

Association (IPSA) viewed PIs as too small in number to be considered in the licensing debate which continued until the enactment of the Security Industry Act 1997.

The reluctance over the years to license the activities of PIs despite well documented illegal activities was attributed to the fear that it would give PIs “A licence to snoop.” (Reginald Maudling.)

PIs have been the subject of a number of eminent publications.

Private Policing; Les Johnston; Deputy Director of The Centre for Police and Criminal Justice Studies. University of Exeter.

Private Investigators; Their services and their clients; Professor Martin Gill and Jerry Hart of Leicester University.

Private Policing; A module in Leicester University’s MSc in the study of Security Management.

Private Police; Hilary Draper; ISBN 0 14 02. 2061.5

Question 1

Why regulation has not already been introduced, ten years after the Security Industry Act established a statutory framework for it.

It is extremely difficult to establish the core activities of PIs. The Security Industry Authority’s (SIA) research has identified in the region of 100 activities performed by PIs. Admittedly many of them overlap. The National Occupational Standards for Private Investigators Draft 1.9 (January 2006) published by Skills for Security identifies 15 core skills. These skills relate to the services provided by the small/sole proprietor agencies which make up the vast percentage of the industry rather than the more niche areas of investigation such as; Fraud; Industrial Espionage; Due Diligence etc favoured by the larger agencies.

It is suggested that there are 10,000 PIs operating in the UK. The two main trade bodies in the UK the IPI and ABI have a joint membership of less than 1000. IPI also caters for serving police officers and military police officers. There are tracing agencies that operate for debt collection companies which specialize in tracing absconding debtors. I suggest that there are less than 50 of these agencies with few employing more than 5 personnel. How many retired police officers are operating part time to just keep their eye in, or individuals who whilst conducting other security functions occasionally provide an enquiry service are unknown. I would suggest that there are less than 5,000 whose main function is that provided by a PI.

Until the recent publicity now the subject of the Leveson enquiry the activities of PIs were in the last 10 years not thought to be of a major concern to the public. Investigation no matter how it is packaged is an intrusion into a person’s privacy. That Intrusion has to be lawful; reasonable and proportionate. Article 8 Human Rights Act 1998(HRA). The lawful basis in most instances will be provided by the Data Protection Act 1998(DPA); Schedules 2 and 3. The unlawful activities of PIs began to wane when these Acts were introduced. Clients were less prepared to run the risk of processing the personal data

supplied by the PI whose activities they were now responsible for. Unlawfully processed information could be challenged using breaches of Articles 8 and 6 (right to a fair trial) HRA. (Jones v University of Warwick (2003) EWCA Lord Woolf; Martin v McGuinness 2003 ScotCS198 (July)2003 Lord Bony; McGowan(Appellant) v Scottish Water EAT (2005) IRLR 167.)

Conclusion.

It is my submission that the answers to this first question are. The number of individuals that would be caught by this legislation is unknown and is likely to be less than half that figure normally suggested. The documented unlawful activity of PIs in the past ten years is perpetrated by a small number of individuals and is not to the same extent as it was ten to thirty years ago. The activities of PIs are so wide and diverse it has been difficult to establish sufficient commonality between the activities.

Question 2

Whether the case for statutory regulation has been made, including the potential for harm to clients and subjects of investigations in the unregulated industry.

In 1971 Leslie Huckfiled MP lectured members of the ABI on the ease with which private information could be easily obtained about members of the public.

In 1973 a 28 man squad lead by Detective Chief Superintendent John Hemsley conducted an investigation into leaks to PIs of information from Banks; Car Registration Offices; the Police Criminal Record Offices. Eighteen Private Investigators were arrested. The outcome of all eighteen cases is unknown to the writer . It is known that five were convicted two of which were sent to prison.

Section 161 of the Criminal Justice Act 1988 was introduced as a direct result of unsolicited letters from PIs to Peers of the realm offering to sell information obtained from banks, credit card companies, Police National computer. Section 161 made it unlawful to obtain buy or sell information obtained from a computer by deception. At one stage the House of Lords considered an amendment to make it unlawful to obtain any information by deception. This amendment was later withdrawn in view of a clause that was to be included in the Data Protection Directive 95/46 EC from which the DPA resulted.. That clause is section 56 much discussed in PI circles and prosecuted with some vigour by the Information Commissioner's Office. (ICO)

Conclusion

Past governments of either persuasion did not consider that a strong enough case had been argued for the licensing of PIs despite a greater proliferation of unlawful activity from the 1960s through to the 1990s than there is today. The DPA section 56 specifically deals with information obtained by deception. This section can be enforced by a fine of up to £500,000. In the next three years we are likely to be faced with even stronger Data Protection Legislation. Which will curtail the illegal activities of PIs even more so than the current DPA.

Question 3

Whether compulsory licensing should be part of the regulation and, if so, whether it should include competency criteria.

Regulation without compulsory licensing would mean that the activity of investigation would be regulated. Therefore any one searching the internet for other than their own personal use is likely to be caught by the regulation. Surely this would mean that in-house research/investigation would be caught by this legislation? This is protecting the consumer from themselves

If Compulsory Licensing is part of the regulation then an investigator who traces debtors for a consumer credit company would need to be licensed under the Consumer Credit Acts 1974 and 2006; The Data protection Act 1998 (The correct term is notification and costs £35 per year.); The proposed legislation. I suggest that is a case of over licensing.

The Competency Criteria for a Process Server will differ greatly from that of a Fraud Investigator. To establish the Golden Thread of competency, a term often used by the SIA, for PIs would in my view be so simplistic as to provide little to no protection for the consumer.

Conclusion

At this stage of the discussion I have no other comments to make with regard to this question.

Question 4

The likely cost of regulation to Government and the Industry.

Any form of regulation is likely to be based on similar regulation with similar set up costs. These costs will be expected to be met from the registration/licence fees imposed. If there are 10,000 PIs then the income using the fee introduced for licensing of a manned guard of £350 will be £3.5 million. For manned guards the licence fee is for a period of 3 years. That equates to just less than £1.2 million per year.

If I am correct then using the figure of 5,000. PIs the income will be £1.75 million equating to £600,000 approx. With 100,000+ manned guards the Security Industry Authority (SIA) failed to break even in its first years of operation.

If competence is a requirement then that will require some form of training to be met by the PI or his employers. I have earlier referenced the fifteen core competencies suggested by Skills for Security. The going rate currently in the Security Industry for a training day is £350. If it was possible to do 5 subjects a day that is a 3 day training period at a cost of £1050. That does not include travelling or accommodation. A more realistic timetable for the training to have any value and to allow for assessment of what has been learned is likely to be nearer 3 subjects a day. The cost to the PI in this instance will be 5 days @ £350 = £1750. That would put the cost to the PI to in excess of £2000. These costings do not take into account the cost of Continuous Professional Development which in my view

can only be met by attending courses/seminars. It is well known in PI circles that PIs are reluctant to go to school especially to revisit investigative processes that they have been providing for over 20+ years. Even more so where it may be a subject in which they have no interest or plans to provide as a service. Those retired police officers and agents who only from time to time provide investigation are in my view unlikely to wish to incur these costs which as the manned guarding industry experienced are not necessarily able to be offset to the client. Result less PIs to be regulated; less income to the regulatory body.

Conclusion

Unless a realistic fee is charged the public purse will have to meet the deficit to protect them from a harm which in my view is protected by the DPA and HRA and is considerably less than it was twenty thirty years ago. If the public purse is not to be the loser then a more realistic fee of in the region of £1,000 would seem to be the option. With training costs this is likely to decimate the business reducing the volume to be regulated.

January 2012

Written evidence submitted by the Information Commissioner's Office [PI08]

The Information Commissioner's Office (ICO)

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations. He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner is pleased to provide his evidence to the Committee because individual self-employed private investigators, and private investigation firms, are generally 'data controllers' for the purposes of the DPA. This means that when they collect, use or disclose 'personal data' – that is information that identifies someone – they have to do so in compliance with the DPA. Therefore some of a private investigators' activities can fall within the ICO's regulatory regime.

Private investigators and the Data Protection Act 1998

The DPA imposes various rules on those processing personal data – for example relating to data standards and security. However its provisions relating to the collection of personal data are probably of most relevance to the Committee.

The DPA requires that personal data has to be processed fairly. In short, this means that when information is collected about individuals, they should be aware of this, or be able to find out about it easily. There are limited exemptions from the DPA's fair processing requirements, for example where the police telling a suspect that they are collecting information about him would amount to a 'tip off' and would prejudice the purpose of crime prevention. However, the law usually requires information collection to be fair and transparent.

Because of the nature of their business, private investigators will often be engaged to collect information about individuals without their knowing about it. However, the very limited exemptions from the DPA's fair processing requirements mean that some of the information collection that private investigators do may not be in compliance with the DPA's fair processing provisions – even where a particular investigation may be taking place for a legitimate purpose.

The exemptions in the DPA are based on the purpose for which personal data is processed – for example crime prevention, regulatory activity or journalism – rather than on the nature of the organisation carrying out the processing. This means that a private investigation company working with an insurance company on a counter-fraud case could sometimes, depending on the circumstances, benefit from the DPA's 'crime prevention' exemption. This means that the private investigator may, quite legitimately, be able to collect information about suspected fraudsters covertly. However, there are other activities that some private investigators will engage in that are highly unlikely to benefit from an exemption – for example where investigators carry out 'matrimonial and relationship investigations'. Although the DPA's crime prevention exemption does not apply to civil matters such as the enforcement of debts

– bread and butter work for many private investigators – other exemptions may apply to civil matters, for example s.35 (disclosures required by law or made in connection with legal proceedings). However, if a company tries to recover a debt without taking legal action initially, private investigators employed by them at this stage are unlikely to be able to rely on an exemption.

A breach of the data protection principles, including their fair processing requirements, is not a criminal offence. The principles are enforced through civil sanctions. However, there is a specific criminal offence at s.55 of the DPA that relates to the unlawful obtaining of personal data. A private investigator will commit an offence where he knowingly obtains personal data without the consent of the data controller. This might be the case where an investigator uses bribery or deception to obtain information from a data controller. This offence is commonly referred to as ‘blagging’. We say more about this later in our evidence.

It is worth noting that the DPA, through the obligations it imposes on data controllers – particularly its security requirements and its non-disclosure provisions - should generally make it difficult for private investigators and others to obtain information about individuals from data controllers. The data protection default position is that data controllers cannot give out personal data to private investigators or other third parties without consent unless a specific exemption from the DPA’s non-disclosure provisions applies or it is otherwise fair to do so. This means that in some cases private investigators may choose not to make open requests for information, as the police would do for example, because the data controller may well be prevented by law from providing the information that the private investigator seeks for the purpose that he seeks it.

The role of the client that engages a private investigator is important. It is highly unlikely that a private investigator will ever collect information about another individual purely for his own purposes. The investigator will always be engaged by a client, be it a corporate one or a private citizen. However, this does not mean that private investigators are not responsible as ‘data controllers’ under the DPA. It certainly does not mean that a private investigator that breaches the data protection principles, or commits a criminal offence, can avoid liability because he is acting as an agent of the client. However, in some cases both the client and the investigator could be legally responsible for the surveillance that takes place.

ICO engagement with the private investigation industry

The ICO engages with its stakeholders – including private investigators – through two main routes. Firstly, through its education, liaison and advice-giving role, and secondly through its complaints handling and enforcement functions.

We have had some involvement with the private investigation industry over the years. For example, we worked with the Association of British Investigators on its ‘Data Protection: A best practice guide for Professional Investigators’ (2008). We have also written various articles for the private investigators’ trade press. We are confident that our activities in this area have conveyed some important messages to private investigators about their legal obligations under the DPA. However, it may well be the case that our efforts here have only influenced the more reputable end of the market; not all private investigators are members of professional bodies.

We do not log precise numbers of enquiries received or complaints made to the ICO about the activities of private investigators. We do receive complaints about private investigators, but relatively few. We have received complaints about:

- aggressive and inappropriate surveillance techniques used by investigators working for insurance companies. (Not primarily a data protection issue.)
- surveillance carried out in marital contexts – e.g. one spouse using an investigator to spy on the other.
- tracking devices found on vehicles
- private investigation companies' failure to give individuals access to information held about them. (The companies often argue that they are not data controllers themselves because they are usually working for another company – a view we do not generally accept.)

The relatively low number of complaints we receive does not necessarily equate with levels of public concern about the activities of private investigators. It is worth noting that an individual may well complain about the company that engages a private investigator, rather than about the investigator him or herself.

ICO action against private investigators.

Most ICO action taken against private investigators has resulted from them 'blagging' information in contravention of DPA s.55 (unlawfully obtaining information). Most of these have been to do with tracing individuals for debt recovery purposes, asset investigation, insurance-fraud related enquiries and various legal or employment disputes. They have generally resulted in prosecution and the imposition of fines that generally appear low in relation to the income the defendants are likely to have earned from their 'blagging' activity. A fine of a few hundred pounds is not unusual.

Some s.55 cases show how illegally obtaining information can have an extremely detrimental effect on individuals' lives. In 2004 the ICO prosecuted a private investigator who was found guilty of attempting to illegally obtain a rape-victim's medical records. The victim suspects this was done to avenge the perpetrator's conviction for assaulting her and perhaps to obtain information about her that would help his appeal. The private investigator in this case claimed he could not remember who had hired him to obtain this information. If the investigator had known the circumstances of the case, his actions would have been deplorable. If he did not know, this shows that some investigators will agree to obtain information for clients with no care at all for the consequences of their actions. In October 2005, the investigator in this case was fined £750. As the victim reportedly told the BBC at the time, "*It's maddening really, for people that commit this crime to just receive a miniscule fine – I do think it is wrong.*"

'What price privacy?' and 'What price privacy now?'

The main work the ICO has done that impacts on the activities of private investigators are our reports to Parliament 'What price privacy?' and its follow-up report, 'What price privacy now' – both published in 2006. These reports documented the unlawful trade in personal information, in which private investigators were found to play a significant role. Our first report contained a recommendation that The Association of British Investigators should extend its National Occupational Standard for

Investigation to include explicit reference to section 55 offences, and undertake other specific measures aimed at raising standards among private investigators.

The reports detail cases where the activities of private investigators have put individuals in real danger. They also explain the relationship between private investigators, their clients and their sources of information. We recommend both our reports to the Committee as useful background information about the activities of private investigators. Our conclusion that the possibility of a prison sentence is required to provide an effective deterrent for s.55 offences is as valid now as it was then. As the Committee will know, the ICO continues to push the government to bring the relevant provisions in the Criminal Justice and Immigration Act 2008 into effect.

DPA and the Regulation of Investigatory Powers Act 2000.

The relationship between the DPA and the Regulation of Investigatory Powers Act 2000 (RIPA) in the context of private investigators' surveillance activities is sometimes misunderstood. There is clearly an overlap between the two pieces of legislation in so far as the surveillance activity that RIPA is intended to regulate can lead – in reality generally does lead – to the collection, use etc. of information about individuals – i.e. it leads to the processing of personal data and is therefore a data protection matter. The RIPA and DPA regulatory regimes are not mutually exclusive.

Private investigators do engage in activities that fall within RIPA's definition of 'covert surveillance' – for example placing a device on a vehicle to track its whereabouts. However, RIPA only applies where a private investigator is paid by, and is acting on instructions from, a public authority to assist the authority with its functions. RIPA provides no protection for individuals who are the subject of 'private investigations' – for example where one individual employs an investigator to collect information about another individual. The primary regulation of surveillance in private contexts comes about through the DPA, in so far as this involves the processing of personal data – as it usually will.

ICO will give due attention to any recommendations the Committee may wish to make about the relationship between the ICO and the Chief Surveillance Commissioner, the Interception of Communications Commissioner and about the interface between the DPA and RIPA in the context of private investigators.

Additional observations.

We do not wish to portray the private investigation industry in an unfairly negative way. We can certainly understand why individuals or companies may feel the need to employ an investigator, for example to recover unpaid debts or for other legitimate civil purposes. Official channels entities may offer little or no assistance in cases like this. We recognise that there are investigators that carry out legitimate activities in a lawful way.

However, it is the ICO's role to regulate compliance with the DPA. The DPA contains important requirements relating to the transparency of information collection, and has only limited exemptions. This means that, given the nature of the work they engage in, even legitimate investigators may find it difficult to comply with the law. Although the ICO, in accordance with good regulatory practice, sets priorities for action and takes a proportionate approach to enforcement, it must apply the law as it

stands. It cannot create read exemptions into the DPA if they do not exist, even if their absence may cause legal uncertainty for private investigators – even ones acting responsibly and carrying out otherwise legitimate investigations.

As we said in ‘What price privacy?’, the ICO is very supportive of the industry’s own efforts to police itself and to set professional standards for investigators. We expect data protection, and privacy more widely, to be recognised in any guiding ethical principles developed by, or for, the industry. Data protection training should be a part of any basic competency criteria. Issues concerning the obtaining of personal data, its quality and security are clearly matters for the ICO. However, we can only deal with the ‘informational’ aspects of a private investigator’s activity. We cannot address issues to do with the broader standards that society expects private investigators operating in the UK to meet – only a trade association with specific responsibilities for the private investigation industry could do this.

A private investigation company’s membership of a reputable professional body, or its supervision by an appropriate statutory regulator, does not mean that it will necessarily comply with the DPA. However, it would be the ICO’s prerogative to target its regulatory action at investigators that have not signed up to industry best practice and to adopt a relatively light-touch in respect of those that have.

Despite all the efforts that regulators or the industry itself may make, we have little doubt that without further steps there will remain a core of individual investigators and investigation companies that will continue to use unacceptable means, such as bribery, subterfuge and harassment, to carry out their business. If a regulatory regime is set up to police the private investigation industry, it will need to be supported by sufficient powers to deal with the less reputable part of the industry. Our own experience of dealing with private investigators suggests that criminal penalties and custodial sentences must be available in order to deal with the most serious examples of malpractice. We have also found that our own limited audit powers – we can only audit private sector organisations with their consent – are, ineffective against the less reputable private investigation companies. We say more about these deficiencies in our enforcement powers in ‘What price privacy?’.

An advantage of a regulator with specific responsibilities for the private investigation industry might be to make it easier for members of the public to make a complaint and to seek redress where they believe that they have been the victim of unacceptable investigatory practice. As it stands, an individual who wants to make a complaint because they have found a tracking device under their car, or because their voicemail messages have been intercepted, would probably be unsure where to go for assistance. The ICO may only be able to help them with some aspects of their complaint, if at all.

If there is to be a regulator with specific responsibilities for the private investigation industry, its relationship with other regulators and law enforcement agencies will need to be thought through carefully. There is a danger that the creation of an additional regulator could merely confuse affected individuals about who to take their concerns to. Clear lines of responsibility and, as far as possible, a one-stop shop for affected individuals will be important.

Summary.

Even legitimate private investigators may find it hard to carry out their work lawfully given the DPA's general prohibition of the covert collection of personal information.

There appears to be a hard core of private investigators whose activities put the privacy of individuals at unacceptable risk and who rely on illegal methods to obtain personal information. A lack of custodial sentences for breaches of s.55 of the DPA, coupled with the ICO's limited audit powers, mean the ICO and the courts are insufficiently equipped to deal with them.

A regulator with specific responsibilities for the private investigation industry could help to set the broad ethical and behavioural standards society expects investigators to meet, including respect for individuals' privacy. It could also provide a mechanism for individuals to raise concerns about the activities of private investigators.

The ICO would support any industry initiatives aimed at promoting informational best practice amongst investigators. However, this alone is unlikely to have the necessary effect on the less reputable part of the market.

January 2012

Written evidence submitted by Bisio Training [PI09]

The regulation of private investigators has not been introduced since the establishment of the Private Security Industry Act 2001 for the main perceived reasons that it is simply too difficult and expensive. A few years ago when engaged in a scoping exercise with Edexcel awarding body to create a professional investigator standard qualification being sought by the SIA, my company was led to believe that a minimum of 10,000 operatives throughout the UK would need training/testing to meet the basic standards desired. This was a conservative estimate and could easily be doubled if it included financial investigators, investigative journalists etc. The logistics of providing training and assessment of training needs, followed by the attendance at examination centres to achieve the award, leading to a licence seemed beyond the capability of such a loosely organised industry. However, my training company has addressed this and are currently accredited by EDI awarding body for the training to meet the Level 3 Professional Investigators Award, which has been approved by the SIA as meeting the standard for potential licensing. Bisio Training Ltd recently launched an online e-learning modular training programme for professional investigators and in December 2011 all nine of our first candidates successfully completed the programme and online examination gaining the Level 3 Award. Incidentally, we currently have an overseas learner registered on the programme demonstrating the flexibility of online training.

The case for statutory regulation appears to have been made by various well-reported incidents in the media over several years, the Guardian (Nick Davies) has been very informative on such cases, including some allegations stretching back to the 1980's surrounding the murder of a private investigator in London. I was a serving CID officer in Bath at the time and heard gossip from Metropolitan detectives I met in those days that caused me to be concerned about the private security industry. When setting up my investigative training company with my partners ten years ago I was quite adamant that we would only train public authority investigators or those regulated by the FSA etc. We studiously avoided training the unregulated private investigator sector. The incorporation of the European Convention on Human Rights into domestic law via the Human Rights Act 1998 had a massive effect on police investigators and during my secondment to the National Crime Faculty in 1998 I was instrumental in designing training for senior investigating officers in major crime that was compatible with guaranteed human rights and freedoms. I was therefore aware when I retired from the police service in 2001 of the importance that all investigative training should incorporate human rights issues particularly those of Article 6 and Article 8 to ensure the fairness and admissibility of evidence gathered during an investigation. I was not satisfied that an unregulated private investigator would grasp this ethos and the potential for abuses would still continue without statutory regulation.

Compulsory licensing of private/professional investigators is essential in order to have meaningful regulation of such an industry. Without the sanction of removing an operative's *individual* licence (not an organisational licence) there would be no effective deterrent and transparent remedy to those affected by any wrongdoing. The more professional investigators should welcome this to appear more credible and ethical to their clients/potential clients. Competency criteria as provided for by the EDI Level 3 Professional Investigators Award and endorsed by the Security Industry

Authority is also essential to raise or consolidate the standard of investigators currently operating and to provide a benchmark for those entering the industry. Again, I feel that investigators should welcome this to provide the credibility mentioned above.

The likely cost of regulation to Government and the industry is arguable, depending on the means being taken. As described above my training company is offering a very accessible means of preparation for the EDI examination, saving candidates costs of travel, hotel and abstraction from work by simply logging on to a nearby computer at their convenience. We currently offer our package, including the Level 3 examination at a police headquarters rented classroom under strict conditions for £399 plus VAT per person. We feel this is very cost effective to investigators, whether working alone or for a large organisation. The fee payable for the subsequent licence should cover the realistic costs of administration by the regulatory body, which could be housed with other similar regulatory bodies, e.g. the DVLA or Passport Offices where issues of identity would be more easily monitored.

January 2012

Written evidence submitted by Cerberus Investigations Limited [PI10]

Cerberus Investigations Limited (hereafter Cerberus) submits in the following memorandum that investigators and investigative agencies are diverse in the quality, capability and moral rectitude of their work.

Some investigators may be unaware of, or choose to ignore, such basic human rights as privacy and such basic obligations as being sure of the party instructing them; they may be correspondingly ignorant of legislation protecting these rights (such as the Data Protection Act) or enforcing these responsibilities (such as the Bribery and Corruption Act 2010).

However, other investigators are bound by high standards and observe the law, operating on the best of information rather than from the depths of ignorance or callousness.

Any regulation or legislation will always be observed by right-minded investigators conducting honest work.

It is for this reason that Cerberus submits that the Home Affairs Committee appreciates as best it can that, for all the publicity surrounding the subject for all the wrong reasons, not all investigators are corrupt; indeed, some provide a useful and helpful service.

It also submits that the different sorts of services provided by investigators, and the diverse range of clients, are also recognised. This is partly so that knee-jerk reactive regulations designed to curb shoddy practices such as unauthorised access to (usually famous) individuals' personal mobile records by investigators at the request of the popular press, do not negatively impact on honourable businesses such as Cerberus.

Submitter

This submission is made by Mr. Duncan Mee, owner and Director of Cerberus, whose experience as a corporate investigator amounts to nearly 30 years.

Mr. Mee's background is in the protection of intellectual property rights (hereafter IPRs). He has worked for and alongside IPR owners and attorneys in his time as an investigator.

Factual information

Cerberus provides information to enable IPR owners to protect their rights.

IPRs are most commonly infringed by counterfeiters but also by others, for example by people 'passing off' goods or services as those of the real IPR owner (i.e. brand) or by the unauthorised sale or supply of goods in trading areas the IPR holder has exclusive rights to (such as within the EU for instance). In all cases these infringements deceive the public to a greater or lesser degree depending upon the quality and pricing of the rouge goods and services and are likely to leave the consumer with an inferior product/service and with no consumer protection from the genuine brand.

Cerberus assists the growth and development of IPRs especially through so-called 'verification of use' work, where a trade mark's nature and extent of use – including date(s) of first use and the exact goods and services to which they apply – have to be accurately ascertained (often to see if the mark is vulnerable to cancellation proceedings

through non-use for five years). Such enquiries must be carried out without alerting the other party for them to have any value, since otherwise the other party will protect itself by making some small use.

Cerberus is instructed by IP lawyers, both from law firms and from within large brand owners that have their own in-house legal teams. Instructions are also taken from Trade Mark Attorney firms and sometimes from the smaller IPR owning brands directly. Cerberus hardly ever undertakes work from individuals and does not, for instance, assist with divorce or other non-corporate work.

Cerberus is aimed at professionals with full knowledge of the laws in whatever jurisdictions apply. It therefore provides a corporate investigation service, rather than being aimed at individuals for 'private investigation' work.

Cerberus works for many of the largest law firms here in the United Kingdom and abroad, and through them or similar IP professionals, assists some of the largest brand owners in the world.

At present there is nothing in law to distinguish companies such as Cerberus from corrupt lone operatives. The excellent reputation that Cerberus holds has been gained from full compliance with all data gathering techniques and regulations over many years by the two owners of the business (including from before they established this company seven years ago) with some clients of over 25 years standing. The company employs 8 people, none of whom are ex-police or from a security background.

The present industry organisations, such as the Association of British Investigators (ABI), are of little relevance to what Cerberus does. The ABI is run by ex-police and seems to be mostly for ex-police engaged in the activities of *private* rather than *corporate* investigation. Such individuals or companies offer services such as process serving and surveillance for individuals. Most of these are single operatives.

Cerberus undertakes its investigations in order to supply high quality and scrupulous information to well-informed clients. Many of the results are required to be presented before courts, and all results must and do conform to legal standards.

Cerberus has used discreet pretext approaches and undercover investigation in order to ascertain the supply chain and ultimate source of counterfeit goods, so that trading standards officers and police have been able to conduct raids to apprehend criminals making money from selling inferior, counterfeit or unauthorised goods to an unsuspecting public.

Cerberus has used trap purchase techniques and undercover techniques to lead to the repatriation of stolen goods, working alongside local law enforcement agencies as well as the owners themselves.

Cerberus undertakes monitoring of online or other auctions in order to help protect the IPRs of companies whose huge research and development costs contribute to the economy and whose hard work and inventiveness is threatened by criminal imitation of their endeavours. It assists in the removal of these infringing listings.

Cerberus makes use of covert enquiries to elicit the intentions of cybersquatters who infringe the IPRs of brand owners or, where possible, to secure a price more reasonable than could be secured if the brand owner approached the cybersquatter directly, for example, to gain rapid ownership of domain names bearing their brand names.

Cerberus was involved in the 2009 film *Erasing David*, which highlighted to the general public the security risks of leaving information with agencies which could be obtained by unscrupulous parties under pretence, or leaving un-shredded documentation in bins.

The discreet pretext approaches employed by Cerberus are necessary to procure the information needed by the lawyers to protect the IPRs.

January 2012

Written Evidence submitted by Steve Bishop [PI11]

When Molly Meacher was the Chairperson of the SIA she envisaged the Security Industry becoming part of the police family. A properly trained, regulated and licensed professional investigator would be of immense value to the police because if they could be relied upon to obtain evidence fairly, evidence that would withstand scrutiny under s78 PACE, then they could be used to undertake investigations on behalf of the police. There is, in my personal opinion, a huge amount of work carried out by the police which could be hived off to professional investigators. Their files of properly obtained, properly presented evidence could then be handed to the police for arresting, interviewing and charging of the suspect. A great deal of police time is taken up intelligence gathering, carrying out surveillance, taking statements and preparing files, all of which could be achieved by licensed and regulated but non warranted investigators. Indeed, more than 66% of the investigators working in the Major Investigation Team in which I am a manager are non warranted officers. We have, since workforce modernisation over 2 years ago, investigated over 30 murders balancing enquiries accordingly between warranted and non warranted officers. Indeed, on occasions we have contracted in investigators from the private company G4S to carry out enquiries on major incidents. Although these are all ex police officers who have been through vetting again since their retirement, they are essentially professional ***Private Investigators***. We are one of only a handful of forces that have opted for this approach to major crime investigation but other forces still use warranted officers to carry out functions capable of being carried out by non warranted officers. The police are stretched to the limit and with further cuts looming that is unlikely to improve in the near future. Would it not fit in with David Cameron's philosophy if more work could be undertaken by professional ***private*** investigators, going therefore from a public service to a private service. The only caveat would be of course that the investigators should be properly trained, vetted and regulated. My only other recommendation would be to give these investigators some sort of limited access to certain police records which could be achieved through a Central SPOC. This would alleviate the need for investigators to even consider obtaining some of the most basic details unlawfully.

January 2012

Written evidence submitted by the World Association of Professional Investigators [PI12]

The Association:

The World Association of Professional Investigators, WAPI, is a not for profit Company set up as a private investigator's trade Association and Representative Body, "formed by professionals, for professionals". It provides an Association for those engaged professionally in all areas of investigation, including public sector and private sector, companies and individuals, corporate and domestic. The Association began life as an open Professional Investigator Association in 2000, shortly after the UK Government announced the beginning of regulation of the Security Industry, which was to include the Investigative Sector. WAPI was created to empower the many Investigators throughout the UK, Ireland, EU and beyond, who would eventually need a licence to function within the UK/EU, and who were not being represented by the other long established UK Associations, or as many saw them, rather "exclusive" clubs who sat in judgement over the vast majority of those operating within the Sector. The current Membership stands at 420 Members and 1200 eGroup Subscribers

Once regulation became a fact, at least for most Sectors within the Security Industry, some panic set in, as to what criteria was to be imposed for a licence! The vast majority of UK Investigators come from a law enforcement background, many having retired and embarked on a new PI Career, and felt that their experience and various investigative based qualifications were more than enough to be proven as competent.

It has been published by the SIA that there are over 10,000 practising Investigators in the Private Sector alone, and of this number less than 5% have joined the Investigation Associations in the UK. When WAPI was started, the Governing Council mandated that it would be open to all and any practising investigator, private or law enforcement and that Private Investigator Members would have to have, or be granted a licence as and when the regulation started for the Investigator Sector.

Thus the determination of who was competent and qualified was to be /or left entirely to the SIA – Security Industry Authority, and not left in the hands of an "exclusive" Association who would test and examine their membership applications. Furthermore, in accord with the "open" views of the original and successive WAPI Governing Council, the eGroup (an Internet exchange open to Investigators to exchange assignments, news and to seek advice or guidance) was made "open" meaning for all practising Investigators (whether or not a WAPI Member) to be able to join, free and without restriction, enabling a wide range of networking opportunities, a massive Advice Facility where most Investigative based questions or problems can be examined and discussed across a membership in excess of a thousand. It would be true to say that very few – if any questions posed have not been resolved on the WAPI eGroup!

Over the past 11 years, WAPI GC Members have represented the Association's Membership at numerous Meetings and Conventions including the Home Office, SIA, Information Commissioner and contributed to the National Occupational Standards generated for the Investigation Sector. WAPI has also attended and participated in a number of EU organised Events looking at trans-European regulation and common standards.

During the last 10 years of the SIA, despite numerous meetings and Consultations, the reality is that very little was developed in respect of regulating the Private Sector. Totally contrary to the views of most operating in the Sector, the SIA wanted to introduce Training and Exams for those needing to be licensed!!

WAPI firmly believe that the criteria for competence should be determined by a combination of investigative based qualifications and/or proven experience, and published a Proposal years ago outlining a simple points based system using these factors. Grandfather Rights were disregarded by the SIA, again argued by WAPI who urged the SIA to keep in mind that HGV and PSV Drivers are afforded Grandfather Rights in recently launched new standards for on-going licences for HGV/PSV. Indeed many other Trades and Professions have become regulated over past years with Grandfather Rights built in.

These are the type of Issues that WAPI represented to the various Authorities for our members and the wider Sector during the period 2001 to 2010 through the Multi Association ISG – Investigator Sector Group which was made up from a Representative from all the Investigation Associations to represent the common concerns of the broad Sector.

Membership standards & Ethical Standards:

All Applicants to WAPI for Membership are required to supply positive ID, References as to Character and proven Experience and/or Qualifications. WAPI elected not to demand a CRB check because at the time WAPI was created, it was assumed that the SIA as part of the regulatory process would conduct an enhanced CRB. This is an area now being re-considered by the Governing Council, in light of the shelving of Investigation Sector regulation. Applicants however, are required to sign that they will comply with and accept the published Ethical Code for members, plus that they will accept the Associations Complaints and Discipline Procedures (For dealing with Client or other Complaints against a Member, and to resolve Disputes between Members)

Self Regulation:

WAPI reminds the Membership and eGroup Members for the need to be and to remain legally and ethically compliant at all times – This is achieved through the medium of the eGroup and through the Annual Conventions. The WAPI eGroups are open to all Investigators, not just our own Membership.

Any Member who is convicted of any criminal offence will have their membership of the Association cancelled (or suspended pending any Appeals procedures) The determination for continued membership after a conviction was to have been based on the SIA decision as to whether a licence would be issued taking into consideration the specified criteria of “Recency and Relevance” in respect of the nature of the conviction.

Regulation:

Perhaps of greater importance and during these times of uncertainty in respect of Investigators following the Hacking and Blagging Disclosures and given the stalling of Investigator regulation, is that it has become extremely important that Users and potential Users of Professional Investigative Services including Members of the Public, Legal Profession, Media, Business and Corporate Clients are able to select a credible Professional Investigator who is recognised as a “Professional” and as such is a Member of an established and approved Professional Association such as The World Association of Professional Investigators.

The wider Investigation Sector has for over 60 years been seeking regulation – licensing, as has been the norm in many other countries since the early 1900’s in the 1950’s one Association submitted that Investigators could and should be regulated by the certification method through the County Court, a well tried and efficient method which had for years been applied in respect of Private Bailiffs, known as Certificated Bailiffs. Again in the early 1970’s The Younger Commission (Privacy) heard Evidence (from this Witness) along the same lines, to have all Investigators Certificated as (Certificated Enquiry Agents) through the County Courts, a self-financing method whereby the Applicant could satisfy a Registrar/Judge as to Character and Competence and with References, whereupon he could become Certificated, this would immediately bring in self-regulation this would ensure that Certificated Investigators would avoid any act which may lead to suspension or cancellation of the Certification.

To this end, WAPI seek to garner support for PI Regulation by way of transferring from the Private Security Industry Act 2000 to the Tribunals, Courts and Enforcement Act 2007 the regulation of Private Investigators thereby affording an immediate positive step in regulating the Sector for the benefit of all concerned.

January 2012

Written evidence submitted by Bishop International [PI13]

Executive Summary

As chief executive of a corporate investigations business that has operated from London for more than 20 years, I am, in principle, in favour of licensing private investigators.

However, some of the requirements set out by the Home Office in its response to the Partial Regulatory Impact Assessment in 2007 were, in my opinion, misguided and mismatched to the realities of the sector. The ill-conceived nature of the legislation and the resulting difficulties of implementation may have stalled licensing.

The legislation and suggested regulation do not take into account the range of constituents in the industry, their very different clients, services, levels of organisation and variety of backgrounds. It suffers from a one-size-fits-all approach. There are three main areas which require amendment if the legislation is to work to the benefit of the public, the sector and the regulator.

The first area of concern is the requirement to license anyone working to obtain information “about the activities of a particular person.” The requirement threatens the use of specialists employed on a freelance basis and, therefore, should be reconsidered. The second area of concern is the requirement for a public register of investigators. It threatens the safety of investigators, particularly those working on issues related to organised crime.

The third area of concern is the assertion that a “competency requirement” would protect the public from possible harm, a claim which I believe to be unfounded and which would impose an unreasonable and unproductive burden upon investigation businesses.

Memorandum

Rationale for Regulation

In 2007 the Home Office maintained that “the only current mitigation against the potential harm caused by unethical individuals or companies” is being reported to the police or to the Information Commissioner. It went on to say that “neither prevents an individual from operating within either sector to begin with.” The implication is that “unethical” people should be prevented from entering the sector. That is no more possible than it would be for any other sector. What is possible is to prevent people with criminal records from entering the sector.

The Home Office recognised that “the full scale of any potential harm caused by individuals or companies operating unlawfully or unethically within the private investigation or precognition sector is not known” and that “there is no ready source of quantitative information.” The recent phone hacking scandals have given cause for concern. However, to the best of my knowledge, only four people who have styled themselves as private investigators have figured in the inquiries to date and only one has been arrested. While others may come to notice whose behaviour would be deemed unacceptable, they are unlikely to represent a significant proportion of the sector. It does not seem rational to create an expensive regulatory burden for an entire sector because of the ill-considered or illegal activities of a handful of people.

In the one table of statistics presented by the Home Office in 2007 which recorded confirmed or suspected breaches of Data Protection laws, the figures were unimpressive: 23

investigators under investigation, 4 considered for prosecution, 6 considered for cautions and 6 for undertakings and 7 actively being investigated. As of 2007, formal action taken against investigators since the 1998 Data Protection Act included 14 prosecutions, 1 caution and 4 undertakings. To put that into context, the Security Industry Authority estimated that there may be as many as 10,000 investigators in the UK. The numbers of suspected and confirmed breaches do not seem to justify the full weight of a complex regulatory system.

In 2007 the Home Office pointed out that there is not “a uniform or consistent approach by employers for vetting (either in terms of competence or probity) private investigators.” If it became possible for investigation companies to learn whether a prospective UK employee or contractor has a criminal record, it would answer, as far as possible, the question of probity. The issue of competency is dealt with below.

The Licensing Requirement

The broad scope of the Home Office licensing requirements for the private investigation sector does not take into consideration aspects of investigations at the corporate level. The stated requirement is for anyone to be licensed if they are obtaining information “about the activities” of a particular person. That, however, conflicts with the requirements within the corporate world for effective due diligence. Corporate investigation companies inevitably need to go outside the traditional investigative world to employ people with esoteric knowledge.

Such inquiries often relate to a significant transaction in the City of London. In such circumstances, we employ people on a freelance basis who have an intimate understanding of a business sector or community. Investigations that require socioeconomic or other technical knowledge may require the expertise of an academic. Such people are not investigators by vocation. They are consultants taking on a one-off assignment. Investigative work is not the substance of their livelihood. They will not have any interest in being licensed as investigators and there should not be any requirement for them to do so.

This is not a negligible issue. If the sector is unable to employ such people on a freelance basis our corporate clients, including listed companies, financial institutions and law firms, will lose the ability to learn what they need to know, either in advance of a transaction or when trying to recover from a civil or criminal loss. It would be a crippling blow to an otherwise well-used and highly effective service that accomplishes what the Security Industry Authority says it wants to achieve—“protection of the public.”

I would suggest that such people employed on a freelance basis should be considered to be conducting an activity which is “incidental” to their normal work and therefore exempt from the licensing requirement. Furthermore, investigation company directors should be licensed to decide who may qualify for exempt status on the grounds of carrying out an activity which is “incidental” to their day-to-day activities.

License Register and Identification

There should not be a public register of licensed investigators. Nor, as the Home Office suggested, should there be a requirement for the license to be carried and produced on request.

It appears that the Home Office was uninformed about the nature of investigations, particularly those carried out in connection with organised crime. For purposes of such investigations it is often necessary to pose as something other than an investigator.

If, in those circumstances, someone was found to be carrying such identification they could be in danger of losing life or limb. The suggestion illustrates a gross ignorance of the nature of investigative work.

The Competency Requirement

I have a strong objection to the implementation of competency criteria as outlined by the Home Office. The specific requirements as defined in the Security Industry Authority's October 2006 document "Private Investigator Best Practice" are so rudimentary and wide-ranging as to be practically meaningless. It is a list of many administrative tasks, general observations about the need to understand relevant law, advice on how to interview people and gather evidence, how to carry out surveillance and suggested standards of behaviour.

Given that, by the SIA's own admission, the vast majority of people who enter the investigative trade come from related areas of work (police, customs, intelligence and security services, military security or intelligence, journalism, the law, etc.), it seems senseless to have people who have spent years in such endeavours "taught" those skills by people who may have no more—and possibly less—competence than they have. It is more galling that they would have to pay for such instruction and assessment.

Individuals tend to find their own place in the market. A career in police surveillance does not necessarily qualify someone to understand an international fraud. Conversely, a career in the Crown Prosecution Service does not qualify someone to understand the practicalities of surveillance. However, both career paths may enable an individual to work productively as an investigator. The range of activities is so wide as to make any single competency course impossible as well as unnecessary.

The Home Office asserted in 2007 that to impose licensing without competency requirements "would not effectively address the risk posed to the public," when in fact the only risks identified in its public documents were the 14 prosecutions for breaches of the Data Protection Act. If each of those offences had been committed by a separate investigator—taking into consideration the SIA's estimate of 10,000 investigators in the UK—the percentage of offenders in the licensed population would be .0014%. That hardly justifies the imposition of a competency regime and its associated costs.

The suggestion that licensing without competency requirements would not address "the harm" of unlawful or unethical practices by "rogue elements" within the sector is nonsense. It implies that the converse is true, i.e. that competency requirements would "greatly reduce the likelihood of harm through unlawful behaviour." There is no evidence whatsoever for that assertion. People with criminal intentions do not generally object to paying for a course if it gives them the legitimacy to carry on illegal practices.

A reasonable argument can be made for testing an understanding of the law as it applies to investigations. The Highway Code is a good example of how to educate people in order to test their knowledge of relevant law. There is no reason why a similar system cannot be adopted to test investigators on their knowledge of law relevant to their work. From the

regulator's view it would be cheaper to administer and from the licensee's point of view cheaper and easier to use.

New entrants to the investigations trade who do not come from a relevant background should be required to find an apprenticeship with an investigation company. Their first year of employment should require a provisional license (which would amount to a criminal record check) and, with the endorsement of their employer, they should be entitled to apply for a full license one year from the start of their apprenticeship.

The Home Office Preferred Alternative

The assertion by the Home Office in 2007 that the SIA concluded that its "research" had "demonstrated support for a formal training route" is belied by the fact that its conclusion was based at least partly on responses from "a range of education and training bodies." It is hardly surprising that education and training bodies would welcome the prospect of a whole new sector for training.

As the Home Office pointed out at the time, "it will not be possible to assure 100% compliance with licensing, and there will always be elements of unlawful or unethical practices." That statement is incontrovertible. What is not true is the assertion that "competency requirements reduce that risk." This is the crux of the issue. Competency bears no relation whatever to honesty or ethical behaviour. Harold Shipman, the doctor who murdered at least 250 of his patients was—until caught—regarded as a highly "competent" medical practitioner. Albert Einstein, who failed a high school examination, and might therefore have been thought of as academically incompetent, became one of the greatest physicists of the 20th century and wrote extensively on the ethical responsibilities of science. Competency has nothing to do with how people behave. Cost and Impact of Options

In 2007 the Home Office estimated that the "typical learning route" for a company employing ten investigators would cost £9,000, which would be in addition to the licensing fees. That would be followed by on-going "refresher training." Including loss of earnings, the costs for a 10-person company was estimated as £11,450 initially with periodic additional costs of £7,390. The figures would be likely to be considerably higher today.

If one accepts that competency requirements have no benefit, i.e. they will not have any significant impact on "harm" to the public, analysis of the proposed costs becomes irrelevant. No fees, no matter how great or how small, will protect the public or other interested parties from illegal or unethical behaviour. Since that is the stated purpose of the "competency requirement," imposing such costs on investigators and investigation companies is an unreasonable burden.

The absurdity of the competency requirement becomes even more obvious when one considers the Home Office's observations about "European Issues." If an investigator from another EU country were to come to the UK to carry out an investigation he or she could legally do so "without being subject to any prior check." In other words, a resident of another EU country could arrive in the UK to carry out an investigation without any criminal record check and with no consideration given to the "harm" that person might cause, while people who have established track records in the UK would be required to meet so-called competency requirements at considerable cost.

Competition Assessment

The Home Office's 2007 assessment of the investigation market missed an important point. It is not simply a question of whether the UK sector will suffer because of the proposed regulations. The bigger issue is whether corporations, financial institutions and law firms that depend upon UK companies to undertake investigative work will find that they cannot get the service they need.

During the last 25 years the UK has built a sophisticated corporate investigations sector that services companies around the world. There may be as many as 20 companies in the UK that undertake investigations at a corporate level. It is likely that the sector is worth more than £100 million to the nation's income. If the regulatory framework in the UK becomes too onerous or cumbersome, the business will migrate to more amenable jurisdictions.

The Home Office's assertion in 2007 that "it is not believed that regulation will significantly limit the ability of suppliers to compete" is true enough within the UK market. However, the real competition is for the £100 million worth of business in the international corporate market. It is that business which will suffer if the proposed regulatory scheme is not reconsidered. Moreover, the ability of the business and legal community to make best use of a highly specialised service would be severely hampered.

Conclusion

A licensing regime for investigators under the aegis of the Security Industry Authority would make sense providing it operates in a relatively simple and economic manner. It should include a criminal record check that would eliminate known criminals from the investigation trade. It should also include a written test not unlike that for a driver's license to ensure that investigators are aware of applicable law. The costs associated with such a regime would be acceptable to most people in the sector and would, in so far as it is reasonably possible, protect the public from harm.

January 2012