



House of Commons
Home Affairs Committee

Private Investigators

Fourth Report of Session 2012–13

Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/homeaffairscom

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The Home Affairs Committee

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Committee staff

The current staff of the Committee are Tom Healey (Clerk), Richard Benwell (Second Clerk), Ruth Davis (Committee Specialist), Eleanor Scarnell (Inquiry Manager), Andy Boyd (Senior Committee Assistant), John Graddon (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3276; the Committee's email address is homeaffcom@parliament.uk.

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Key facts

- In January 2012, some 2,032 registered data controllers claimed they were operating a business as a private investigator, but industry groups have claimed that as many as 10,000 people are working in the field. No one knows precisely how many private investigators there are in the UK.
- As many as 65% of private investigators are former police officers.
- Currently, anyone can undertake private investigative activity regardless of skills, experience or criminality as there is no direct regulation of private investigations.
- Unscrupulous private investigators are the dealers in an illegal market in personal information, including: bank account details; telephone history; tax information; previous convictions; medical history; and the results of covert surveillance.
- Fees charged by investigators are opaque and vary enormously, from a small day fee of £250 for small firms or sole operatives, to several thousands of pounds per day for senior investigators, or difficult tasks.
- Sophisticated surveillance equipment is readily available for sale on the Internet, sometimes for less than £100.

Introduction

1. The phone-hacking scandal cast a new light on the sometimes murky world of private investigators. Individuals such as Glenn Mulcaire and Steve Whittamore might conform to a certain stereotype of the private investigator, but investigation in its broader sense is a multi-million pound industry which performs many socially-valuable functions. Private investigators are employed by law-firms, major corporations, individuals, local authorities and even government departments to carry out a wide range of work such as corporate due diligence, accident investigation, insurance claims inquiries and tracing debtors. The committee was told that, broadly speaking, their work can be classified into four types: business intelligence; litigation support; problem-solving; and domestic and personal investigations.¹

2. However, the rogue element of the industry not only causes significant harm in its own right, it drags down the reputation of the industry as a whole, damaging by association the reputations of many decent, honest, law-abiding and highly-skilled investigators.

3. Following our inquiry on phone-hacking last year, the Prime Minister announced a two-part examination of the role of the press and police in the phone-hacking scandal.² Phone-hacking brought to light the illegal activities of private investigators on behalf of the tabloid media. However, Lord Justice Leveson's work is focused only on a small portion of the work of private investigators.

4. Our intention is not to replicate the work of the Leveson Inquiry, but to explore how the work of private investigators impacts more widely on the world of law-enforcement, on the justice system and on the lives of ordinary people, not just those with a high media profile. In Part 1, we set out the role of the private investigator; in Part 2, we turn to the risks of an unregulated sector; and in Part 3, we recommend a number of remedies, including statutory regulation.

1 Some private investigators contrasted their work in legitimate data gathering with "information brokers", who they claimed were simply traders in information—both legitimate and illicit—without the investigative function.

2 Home Affairs Committee, *Unauthorised tapping into or hacking of mobile communications*, Thirteenth Report of Session 2010–12, 20 July 2011, HC 907

1 The role of the private investigator

What do private investigators do?

5. Private investigators in the UK are not subject to direct licensing or regulation. Powers to regulate under the Private Security Industry Act 2001 have not been commenced. According to the Institute of Professional Investigators, part of the reason that investigators were not regulated under the previous Government was the difficulty of defining what it is they do.³ The Act defined private investigation as:

any surveillance, inquiries or investigations that are carried out for the purpose of—(a) obtaining information about a particular person or about the activities or whereabouts of a particular person; or (b) obtaining information about the circumstances in which or means by which property has been lost or damaged.⁴

6. In the popular imagination, a private investigator is a lone operator, hired to solve a particular conundrum. This image remains accurate in some cases, but the solo sleuth is joined in the market by a range of small- and medium-sized enterprises and by a number of major corporations, which undertake large corporate contracts. The Data Protection Act 1998 required all private investigators (and others) processing personal information to register themselves as a data controller with the Information Commissioner's Office. As of January 2012, some 2,032 registered data controllers claimed they were operating a business as a private investigator. Threshold Security believed that there were between 3,000 and 10,000 investigators operating in the UK.⁵

7. The tools of the trade are also far more varied than the popular image. Invasive field work, such as direct surveillance and face-to-face inquiry still play a prominent part in the work of many investigators. However, for many others the mainstay of the work is desk-based, conducted through the Internet. Investigators emphasised that they make extensive use of open-source data, such as the Land Registry, the Register of Births, Deaths and Marriages and the Electoral Roll. Often, private investigators are highly skilled in their trade, with a background in the police, customs, intelligence and security services, military security or intelligence, journalism, academia, accountancy, or the law.⁶ For example, the Ravenstone Group told us that they primarily selected staff with experience in the police forces or Financial Services Authority to meet its clients' requirements.⁷

Legal functions

8. Private investigators have often been involved in tracing witnesses or serving people with court documents, on behalf of lawyers. Law firms may also employ private investigators for surveillance or background checks, or to obtain evidence for use in court.⁸ Dan Morrison,

3 Ev w9 [Institute of Professional Investigators]

4 Private Security Industry Act 2001 Schedule 2 Section 4

5 Ev w6 [Threshold Security]

6 Ev w17 [Bishop International]

7 Ev w22 [Ravenstone Group]

8 Q 403 [Julian Pike]; Ev 64 [ABI]

of Grosvenor Law LLP, told us that “most lawyers, particularly in litigation matters, would regularly instruct investigators”.⁹

9. Other investigators told us that their work was focused on helping others to fulfil their legal requirements, for example in relation to the Bribery Act 2010, the Proceeds of Crime Act 2002 and anti-money laundering regulations. GPW said that its use of the term “investigation” primarily related to the due diligence investigations. The work required “collation and analysis of legal, commercial, media and other material both directly accessible from the public domain and also expressed as opinions of informed individuals whose independent views we seek on behalf of our clients”.¹⁰

10. We also conducted a survey of newspapers and local councils, which revealed that there was significant use of private investigators by media organisations and public authorities. In most cases, investigators were used to serve papers or to obtain basic information available in open-source records. However, investigators were also employed on more sensitive issues, such as detection and prevention of potential insurance fraud or child protection cases.¹¹

Bolstering law-enforcement

11. Private investigators may also have a place in the changing landscape of law enforcement. Some police forces are beginning an experiment in procuring services previously carried out by police officers from private companies (through the national procurement hub) and there is some overlap between the firms that run private investigation services and those that are expected to undertake a policing role, such as G4S.¹² Moreover, the police will be facing cuts of 20% during this Parliament and may not be able to continue to undertake the full range of investigations they do at the moment.

12. We were told that private investigators had already helped to save billions of pounds for UK companies, taxpayers and the economy through their work in fraud detection.¹³ For example, Cerberus is a major player in the defence of intellectual property rights.¹⁴ Cerberus and other firms have used “trap purchase techniques” and undercover practices to assist in the recovery of stolen goods, working alongside local law enforcement agencies as well as the owners themselves.¹⁵ According to the Surveillance Group, in 2011 the insurance industry suffered losses of over £2 billion through fraud, which could be reduced by surveillance evidence gathered by private investigators.¹⁶

9 Q 403 [Dan Morrison]

10 Ev w23 [GPW]

11 Ev 85–86 [survey results]

12 Home Affairs Committee, *Work of the Permanent Secretary (April–December 2011)*, Second Report of Session 2012–13, HC 145, 29 May 2012

13 Q 416 [Dan Morrison]

14 Ev w16 [Cerberus Investigations Ltd]

15 Ev w17 [Cerberus Investigations Ltd]

16 Ev w7 [The Surveillance Group Ltd]

13. Several witnesses believed that as police cuts take effect, private investigators would step into the breach.¹⁷ We heard that investigators often take up cases that are very important to the public, but too small or too complicated for the police to deal with. The Association of British Investigators said that finite police resources meant that “the investigation of business crime appears not to be a priority for the police service”. The Association told us that victims of crime were even advised by the police to instruct private investigators, as they do in civil matters, to gather sufficient evidence to assist in a police investigation.¹⁸ The Information Commissioner’s Office agreed that official channels offered scant assistance in the recovery of some unpaid debts and other legitimate civil purposes, in which private investigators were a feasible option.¹⁹ Dan Morrison suggested that, in London, the Metropolitan Police, the City of London Economic Crime Unit and the Serious Fraud Office may not investigate a commercial fraud unless “very significant sums of money” were involved, because of limited resources.²⁰

14. Steve Bishop told us that there had been suggestions that the security industry could become “part of the police family”. He believed that evidence from professional investigators could be relied upon in court and that investigators could undertake investigations on behalf of the police and described his experience in murder investigations, with a mix of warranted and non-warranted officers, many of whom benefited from their knowledge as former police officers.²¹ The Ravenstone Group said that its evidence was regularly presented in both civil and criminal courts without challenge.²²

15. The business of private investigators is essentially the gathering and reporting of information, with a premium paid for information that is more difficult to obtain, confidential or important to the buyer. They undertake tasks that are important to an individual and to a business and often fulfil an important social role. In future, it is possible that increasing numbers of investigations that are now undertaken by police will fall to private investigators, though whether this is desirable is a matter for further debate.

16. In its response to this Report, we recommend the Government sets out its assessment of which policing roles could appropriately be undertaken by private investigators and which should not; how it believes cuts to police funding will affect the involvement of private investigators in law-enforcement; and what part private investigators will have in the new landscape of policing. In particular, given the evidence we received, it will be important that this assessment includes an analysis of the role of private investigators in fraud detection, recovery of stolen goods, maintenance of public order and major investigations, such as murder inquiries, with a statement of the risks associated with the involvement of private investigators in each of these areas.

17 Ev 64 [ABI]

18 Ev 65 [ABI]

19 Ev 70 [ICO]

20 Q 416 [Dan Morrison]

21 Ev w17 [Steve Bishop]

22 Ev w22 [Ravenstone Group]

2 The risks of unregulated investigation

17. While private investigation remains unregulated, there are serious risks that some private investigators will turn to illegal methods to achieve their ends. For example, using false cover stories to obtain access to confidential information—“blagging” or “pretexting”—or illegally paying public officials for access. These operators are sometimes referred to as “information brokers” in the industry.

A market in information

18. The growth in availability of information creates two new risks. First, it is increasingly easy to access, store and transfer large amounts of personal data. Second, ease of access means that almost anyone with an Internet connection can offer investigation-style services without any background in the industry, skills or experience.

19. The Association of British Investigators told the story of dilettante detectives who can sell their services without any training. It said that instead of posting sub-contracted instructions to a trusted fellow member, it was now “possible to outsource work instantly to a worldwide network of individuals purporting to be private investigators”, who were “inexperienced, part-time amateurs” and not notified under the Data Protection Act.²³ The Association argued that this had damaged the integrity, quality, financial probity and professionalism of the industry over the past 15–20 years.²⁴ Witnesses from the private investigation industry echoed these views—G4S said that “someone can be a butcher today and a private investigator tomorrow without any proper checks”.²⁵

20. The availability of other technologies had also facilitated entry to the private investigation industry. Gerry Hall of IPS International Ltd told us that the cost of surveillance technologies had fallen over recent years, so that a sophisticated transponder, which could be used for bugging, could be bought on the Internet for a few pounds.²⁶ The Surveillance Group expressed “grave concerns” regarding the illegal application of tracking and digital monitoring devices.²⁷

21. The Information Commissioner’s Office had received complaints about:

- a) aggressive and inappropriate surveillance techniques used by investigators working for insurance companies;
- b) surveillance carried out in marital contexts, e.g. one spouse using an investigator to spy on the other;
- c) tracking devices found on vehicles; and

23 Ev 65 [ABI]

24 Ev 65 [ABI]

25 Ev w2 [G4S]; Ev 64 [ABI]

26 Home Affairs Committee seminar on private investigators

27 Ev w8 [The Surveillance Group Ltd]

- d) private investigation companies' failure to give individuals access to information held about them, a requirement of the Data Protection Act.²⁸

22. In this context, we heard that a thriving market in personal data had developed. There was convincing evidence that the “reputable face” of private investigation, presented by a few major companies and trade associations, hides a market that slips below the radar of law-enforcement. The structure of the industry in the UK is pyramidal: Dan Morrison of Grosvenor Law LLP told us that there were four or five large investigating firms, then half a dozen medium-sized enterprises, followed by “many thousands” of sole traders.²⁹ The larger firms were careful to avoid taking on work that might compromise their corporate image, but the practice of sub-contracting was widespread. Kroll told us that its contractor base was continuously evolving as new contractors are added and others removed. When it submitted evidence, Kroll had 478 contractors on its database, including industry analysts, freelance journalists and business consultants, alongside academics, lawyers and licensed security consultants, translation agencies and expert providers such as fingerprint and other forensic specialists.³⁰

23. Mr Morrison said that subcontracting left the client “no way of controlling who is doing the work” and that “the feeder end of the market is populated by people who will basically leave no stone unturned, irrespective of the legality, probity or ethical propriety of what they are doing”.³¹ This effect was clear in the case described by Julian Pike, of Farrer & Co LLP, in which he advised the *News of the World* to carry out surveillance. The *News of the World* instructed former policeman Derek Webb to observe Charlotte Harris and Mark Lewis.³²

24. G4S told us that the market was sustained by demand from companies and 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.³³ The Association of Fraud Examiners also emphasised that illegal activity would not take place unless there was demand for it and went as far as to call private investigators the “man in the middle”.³⁴

25. The actions of private investigator Steve Whittamore are a case in point for the risks of an information-rich and an information-hungry society. The Information Commission told us that there were seventeen thousand lines of information in the dossiers of the Motorman files compiled by Whittamore, including 4,000 surnames.³⁵ These detailed a panoply of public employees illegally selling personal information, which had been gleaned from Government databases.

28 Ev 69 [ICO]

29 Q 433 [Dan Morrison]

30 Ev 80 [Kroll]

31 Q 433 [Dan Morrison]

32 Q 230 and Q 247 [Charlotte Harris]

33 Ev w2 [G4S]

34 Ev w21 [ACFE]

35 Q 8 [Christopher Graham]

26. Easy access to information poses a double risk. Personal data is easier than ever to access and a private profile of a person can be built from a desktop. The ease of access has also opened the information market to new and unscrupulous suppliers, who may not be registered with the Information Commissioner and are unlikely to understand the rules under which they ought to operate. Phone-hacking appears to be the tip of the iceberg of a substantial black market in personal information. This is facilitated by the easy availability of tracking and digital monitoring devices at very little cost.

Involvement in the justice system

27. The close inter-marriage between the private sector investigators and police forces is a boon for the sector, but a significant risk. The report by Her Majesty's Inspectorate of Constabulary, *Without fear or favour*, described the threat of corruption of police officers posed by links with private investigators.³⁶ The Serious Organised Crime Agency's 2008 report on private investigators found that their interaction with police officers was an "increasing threat to law enforcement".³⁷ It found that:

Criminal private investigators [...] use corrupt employees in specialist areas such as law enforcement, local government, the communications industry, utility service providers, banking and other public and private sector areas where useful information is held.³⁸

28. When we raised this issue with the Minister, Lynne Featherstone MP, she told us that she had not seen the report, although the Home Secretary and Ministers were made aware of it in April 2012.³⁹ It is freely available on the SOCA website.

29. We were very surprised that the Minister responsible for regulation of the private security industry had not even read the report of the Serious Organised Crime Agency on private investigators. The Government should set out a strategy for mitigating the risks posed by private investigators as soon as the Minister has read and reflected on the report.

30. Speechly Bircham, a firm of solicitors, told us that there was no way for a law firm to confirm a private investigator's probity. This contrasted with the public disciplinary record maintained by the Solicitors Regulation Authority.⁴⁰

31. We were presented with evidence that links private investigators with serving police officers, in a case that demonstrates the close involvement of investigators with the justice system. GMB described evidence that "confidential information from Police files has been leaked to the Consulting Association [headed by a private investigator]", including notes on people's presence at demonstrations and records of contacts with the police.⁴¹ Mike

36 HMIC, *Without fear or favour: A review of police relationships*, December 2011

37 Q 119 [Commander Spindler]

38 SOCA, *Private Investigators: The Rogue Element of the Private Investigation Industry and Others Unlawfully Trading in Personal Data*, January 2008

39 Q 462 [Lynne Featherstone]

40 Ev w28 [Speechly Bircham]

41 Ev w25 [GMB]

Schwarz, partner at Bindmans LLP, described “the unregulated, unsupervised and invisible participation of private investigators within the heart of the criminal justice process”.⁴² He shared evidence with us that suggested that a single private investigation firm had served three clients involved in one case as “surrogate solicitors” and passed legally privileged information between the parties, including information from the defence side to the police.⁴³ This was in breach of principles set out in the Solicitors Regulation Authority Code, such as rules on conflicts of interest, which are described as “critical public protection”.⁴⁴

32. Mr Schwarz also made serious allegations of police corruption. There was evidence which suggested that a private investigation firm had obtained confidential information about the police investigation.⁴⁵ He submitted documents which he said implied that about half a dozen payments totalling about £20,000 were paid by private investigators over a period of eight or nine months to confidential sources, possibly serving police officers.⁴⁶ According to Mr Schwarz, two of the key officers in the case were still on duty on the same case and one has retired and even been employed by the same private investigation firm.⁴⁷ The firm confirmed to us in subsequent correspondence that it had engaged the officer for consultancy work for a total of six hours’ pay.

33. He also suggested that the Independent Police Complaints Commission did not appear to be conducting an effective or speedy investigation into the allegations. It had decided simply to supervise the investigation of the Metropolitan Police Service’s own anti-corruption unit, rather than take on the investigation itself.⁴⁸

34. We contacted the private investigation firm implicated [RISC Management Ltd], which strongly denied the suggestion that any such payments were made.⁴⁹ Arrests of serving and former police officers were subsequently made and the matter should certainly be taken with the utmost seriousness.

35. In order to garner “premium” information that commands the highest prices, we heard troubling allegations that private investigators maintain close links with contacts in public service roles, such as the police forces. These links appear to go beyond one-off contacts and therefore to constitute an unacknowledged, but deep-rooted intertwining of a private and unregulated industry with our police forces. The Independent Police Complaints Commission should take a direct control over investigations in cases alleging police corruption.

42 Ev 88 [Mike Schwarz]

43 Q 411 [Mike Schwarz]; Q 412 [Mike Schwarz]

44 Ev 88 [Mike Schwarz]

45 Ev 88 [Mike Schwarz]

46 Q 418 [Mike Schwarz]

47 Q 433

48 Ev 88 [Mike Schwarz]

49 Ev 88 [Mike Schwarz]; Ev 92 [RISC Management Ltd]

3 The remedies

37. Though there is no direct regulation of private investigators, there is some legislation which governs the acquisition, storage and use of personal information—principally the *Data Protection Act 1998* and the *Regulation of Investigatory Powers Act 2000*. The penalties for the misuse of personal data are negligible and there is no regime of regulatory guidance for the sector.

Data offences

38. When a private investigator conducts “covert surveillance”, such as bugging, on instructions from a public authority, this activity falls under the *Regulation of Investigatory Powers Act 2000*. However, the Act provides no protection where the investigator’s client is a private individual. For these private cases, the main statutory protection comes from the *Data Protection Act 1998*.

39. There are three Commissioners with responsibilities that have a bearing on the private investigation industry: the Information Commissioner, whose responsibilities focus on the Data Protection Act; the Interception of Communications Commissioner, whose task is to keep under review the issue of warrants for the interception of communications; and the Surveillance Commissioner, with oversight of the conduct of covert surveillance and covert human intelligence sources by public authorities.

40. The division of responsibility between the Information Commissioner and the Interception Commissioner was not clear. The Minister, Lynne Featherstone, recognised that the disjunction between the different data commissioners was not ideal. She told the Committee that:

What I have always thought would be the ideal is if you had an over-arching commissioner, or not that you have an over-arching commissioner but you have the commissions co-located. I thought that might be very helpful, in terms of sharing and working together as the commissioner body.⁵⁰

41. Personal privacy would be better protected by closer working between the Information Commissioner, the Chief Surveillance Commissioner and the Interception of Communications Commissioner. We recommend that the Government aim, before the end of the next Parliament, to co-locate the three Commissioners in shared offices and introduce a statutory requirement for them to cooperate on cases where both the Data Protection Act and the Regulation of Investigatory Powers Act are relevant. In the longer term, consideration should be given to merging the three offices into a single Office of the Information and Privacy Commissioner.

Section 55 offences

42. Most of the actions pursued by the Office of the Information Commissioner were in relation to “blagging” information in contravention of section 55 of the Data Protection

50 Q 468 [Lynne Featherstone]

Act, which deals with the unlawful obtaining, disclosure and selling of personal data and the procurement of such actions. Christopher Graham, the Information Commissioner, told us:

*We are now in the 21st century, an information society, and keeping information secure is really important. All the things we want to do about open data, about data sharing, depend on people having confidence that the information they give to the authorities will stay secure [...] a range of penalties need to be available, not just a modest fine.*⁵¹

43. As the Information Commissioner emphasised, breach of section 55 of the *Data Protection Act* is an offence punishable only by a fine. In the Magistrates' Court, the fine is up to £5,000, in the Crown Court, it can be an unlimited fine, but cases rarely reach the Crown Court. Typically, fines have been around £100 per count, taking account of the defendant's means.⁵² The concern that these sentencing powers were not a sufficient deterrent was raised in 2006 in the previous Information Commissioner's reports *What price privacy?* and *What price privacy now?*.⁵³

44. Section 77 of the Criminal Justice and Immigration Act, confers on the Secretary of State an Order-making power to increase the penalty for offences under section 55 of the Data Protection Act. Both the Information Commissioner, Christopher Graham, and his predecessor, Richard Thomas, believed that this power should be invoked so that a stronger and more deterrent penalty could be available to the courts.⁵⁴

45. In order to provide a more effective deterrent, the Information Commissioner and Crown Prosecution Service could consider making greater use of powers to confiscate their criminal proceeds. The Proceeds of Crime Act 2002 gives prosecuting authorities the power to seek the recovery of any benefit the convicted defendant obtained by breaching the Data Protection Act, or any other statute. The Information Commissioner's Office obtained confiscation orders for the first time for section 55 offences in a case before Warrington Crown Court in 2011. The defendants were made subject to confiscation orders amounting to £73,700. This stands in contrast to the cases of Steve Whittamore, Glen Mulcaire and Sharon and Stephen Anderson, who may have profited considerably from data offences, but received relatively light sentences.

46. Confiscation orders should be sought where a person is convicted of data and privacy offences and has sold the information for profit.

47. We recommend that the Home Secretary exercise her power under section 77 of the Criminal Justice and Immigration Act 2008 to strengthen the penalties available for offences relating to the unlawful obtaining, disclosure and selling of personal data under section 55 of the Data Protection Act. The current fine—typically around £100—is derisory. It is simply not an effective deterrent.

51 Q 29

52 Ev 69 [ICO]; Q 21 [Christopher Graham], 9th Report - Referral fees and the theft of personal data: evidence from the Information Commissioner, HC 1473, Published 27 October 2011

53 Information Commissioner's Office, *What price privacy?*, HC 1056, 10 May 2006, Information Commissioner's Office, *What price privacy now?*, HC 36, 13 December 2006

54 Q 6 [Christopher Graham]

Policing

48. Commander Peter Spindler, Metropolitan Police Service Director of Professional Standards, told us that most forces had introduced “declarable associations policies”, which required all employees who had connections into certain industries to declare them to help forces to improve risk-management.⁵⁵ He said that the Metropolitan Police also maintained a register of business interests, governed by the *Police Regulations 2003*. This listed 14 categories of incompatible interests, including working as a private investigator.⁵⁶ However, across the country this was dealt with on a case-by-case basis, and it would be up to the individual Chief Constables to decide whether or not to authorise an officer to work as a private investigator.⁵⁷ Nor was there any requirement for police officers to record their contact with private investigators.⁵⁸

49. In response to our follow-up inquiries with Commander Spindler, we received a recall of historic cases known to the Directorate of Professional Standards Intelligence Bureau, including Operation Barbatus, Operation Two Bridges and Operation Abelard. In Operation Barbatus, for example, two former Metropolitan Police constables who had established a private investigations company, three other ex-police officers, two of whom were working as private investigators and one further man also employed as a private investigator were convicted.⁵⁹ Our evidence from Mr Schwarz suggested that this problem had not been rooted out.

50. The Metropolitan Police’s system of safeguards for reducing the risks of serving police officers being corrupted by conflicting interests—including declarable associations policies, a register of business interests and a list of incompatible interests—should be standardised across the country. However, these checks alone might not be enough to solve the problem. The Government must act to sever the links between private investigators and the police forces. We recommend that there should be a cooling off period of a minimum of a year between retirement from the police force and working in private investigation. Any contact between police officers and private investigators should be formally recorded by both parties, across all police forces.

51. If proper safeguards were put in place, some of our witnesses believed that private investigators could be granted *increased* access in certain circumstances. Steve Bishop proposed to give investigators limited access to certain police records through “a Central SPOC”, which could improve their contribution and alleviate the need for investigators to obtain the basic details unlawfully.⁶⁰

52. The Institute of Professional Investigators told us that the self-regulation exercised by the Association of British Investigators had been recognised by the Drivers and Vehicle

55 Q 110 [Commander Spindler]

56 Q 110 [Commander Spindler]

57 Q 122 [Commander Spindler]

58 Q 129 [Commander Spindler]

59 Ev 82

60 Ev w17 [Steve Bishop]

Licensing Agency (DVLA) with accreditation for access to the on-line vehicle-keeper database in certain circumstances.⁶¹ The Institute told us that investigators would like access to some public body databases such as the Land Registry and the DVLA database without the obstacles currently placed in their way. It suggested that licensing could be a first step in earning the professional respect that would one day make that access justifiable, as it was in other countries.⁶²

53. The Information Commissioner's Office recognised that, given the nature of the work they engaged in, even legitimate investigators may find it difficult to comply with the law. The Office was bound to apply the law as it stands and could create exemptions in the *Data Protection Act*, even if their absence may cause legal uncertainty for private investigators, who were acting responsibly and carrying out otherwise legitimate investigations.⁶³

Regulation

54. The most straightforward option for bringing structure and safeguards to the private investigation industry may be to introduce regulation to the sector. As the World Association of Private Investigators pointed out, at present there was nothing in law to distinguish companies that pursue legitimate business activities from corrupt operatives, but a licence could give a client confidence that they were hiring a legitimate investigator.⁶⁴ There was almost unanimous agreement among our witnesses that the sector would be improved by regulation.⁶⁵

55. Schedule 2 to the Private Security Industry Act 2001 contains provisions for licensing of private investigation by the Security Industry Authority through an order made by the Home Secretary. Consultation on a licensing regime commenced in August 2007 and an impact assessment was published in September 2008, which 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.

56. The Security Industry Authority already has an established model for licensing. It is an independent statutory body reporting to the Home Secretary, established by the Private Security Industry Act and responsible for regulating the private security industry. From January 2012 the cost of an Authority licence (which lasts for three years) is £220 (it was previously £245).⁶⁶ The Authority told us that there were two main elements to its licensing regime: first, whether an applicant had any background or criminal history that implied a risk for operating in the sector; and second, whether an applicant had the skills and competencies necessary for the role.⁶⁷

61 Ev 66 [ABI]

62 Ev w11 [IPI]

63 Ev 70 [ICO]

64 Ev 72 [WAPI]; Ev w16 [Cerberus Investigations Ltd]

65 For example, Ev 61 [Home Office]; Ev w1 [G4S]; Ev 64 [ABI]; Ev w4 [Threshold Security]; Ev w6 [Surveillance Group Ltd]; Ev w9 [Institute of Professional Investigators]

66 Ev 61 [HO & SIA]

67 Q 448 [Bill Butler]

Licensing a diverse industry

57. Bishop International was concerned that regulation should take into account the range of constituents in the industry and its variety of clients, services, levels of organisation and backgrounds; a one-size-fits-all approach may not be suitable for such a diverse sector.⁶⁸ Threshold Security was in favour of licensing in sub-categories, such as surveillance; desktop enquiries and data research; and physical investigation and interviewing.⁶⁹ In order to overcome this obstacle, the Surveillance Group suggested that any future consultation group needed to have a membership drawn from a diverse range of specialist areas.⁷⁰

58. We heard a range of opinions for the level of detail that should be included in regulations. For example, G4S believed that regulation needed to cover:

- a) standards of behaviour for companies and individuals operating in the industry;
- b) screening and vetting of personnel and sub-contractors to ensure disreputable individuals were deterred from joining the industry;
- c) training and accreditation of personnel, which would need to be sufficient to ensure standards of behaviour and performance were reasonable and easily assessable;
- d) incident reporting and management were sufficient to allow investigation by independent organisations, whether Government or industry appointed;
- e) grievance procedures, to ensure those who have issues with individuals or providers had the ability to pursue reasonable grievances;
- f) compliance and enforcement mechanisms to ensure the areas above were followed by those operating within the industry.⁷¹

59. The Surveillance Group found it “ridiculous” that private investigators could utilise tracking and digital monitoring devices without having to make an application for permission under the *Regulation of Investigatory Powers Act* and requested that any use of these devices by private individuals or private organisations should be prohibited under the licensing criteria.⁷² It suggested that it would be necessary to licence the use of electronic tracking devices for intrusive surveillance applications and that sentencing needed to be introduced to police the illegal accessing of data from digital devices.⁷³

60. G4S believed that a regulatory framework needed to be focused on the individual, rather than companies, in order to ensure that unethical or incompetent individuals could not operate in the market while ensuring ease of movement between companies for

68 Ev w18 [Bishop International]; Ev 80 [Kroll]

69 Ev w6 [The Surveillance Group Ltd]

70 Ev w7 [The Surveillance Group Ltd]

71 Ev w1 [G4S]

72 Ev w8 [The Surveillance Group Ltd]

73 Ev w7 [The Surveillance Group Ltd]

others.⁷⁴ Bisio Training agreed that without the sanction of removing an individual licence there would be no effective deterrent or remedy to those affected by wrongdoing.⁷⁵

61. Several witnesses emphasised that regulations should not be too burdensome for small and medium-sized enterprises (SMEs) or individuals, but should be robust enough to deter unethical behaviour.⁷⁶

62. Speechly Bircham suggested that the critical component of regulation would be a Code of Conduct, resembling the Code of Conduct for Solicitors. It said that there was no guidance on private investigators in the solicitors' Code, but believed that the two codes could be "easily integrated". Richard Thomas suggested that a fundamental aspect of regulation should be that for private investigators, a breach of section 55 of the Data Protection Act must entail disqualification from operating in the business.⁷⁷

Competency criteria

63. Five competency requirements were set out in the paper *Private Investigation and Precognition Agents Draft Core Competency Specification* in July 2007. These were: conduct investigations; conduct (formal) interviews; search for information and preservation of evidence; conduct surveillance; and understand and work to the relevant laws and standards.⁷⁸ However, Bishop International believed that the range of activities is so wide as to make any single competency course impossible as well as unnecessary.⁷⁹ Instead, it proposed that there should be a simple test of understanding of the law as it applies to investigations. The Highway Code was proposed a good example of how to educate people in order to test their knowledge of relevant law.⁸⁰ Bishop International also put forward that new who did not come from a relevant background should be required to find an apprenticeship with an investigation company. Their first year of employment could require a provisional license and, with the endorsement of their employer, could be followed by a full license one year from the start of an apprenticeship.⁸¹

64. However, Bishop International believed that the competency requirement was "absurd" because of the range of skills necessary. It pointed out that, according to the Home Office, 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":⁸²

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

74 Ev w1 [G4S]

75 Ev w15 [Bisio Training]

76 Ev w1 [G4S]

77 Q 7 [Christopher Graham]

78 Ev 73 [Risk Advisory Group]

79 Ev w19 [Bishop International]

80 Ev w19 [Bishop International]

81 Ev w19 [Bishop International]

82 Ev w20 [Bishop International]

records in the UK would be required to meet so-called competency requirements at considerable cost.⁸³

65. This may also be a problem in the case of professions which carry out some of the same activities as private investigators and compete against them, but are exempted from regulation under the *Private Security Industry Act*, such as journalists, lawyers and accountants.⁸⁴

66. The Risk Advisory Group believed that in-house investigators posed the same risks as private investigators.⁸⁵ Stringent conditions in the UK could drive away the international corporate investigations sector abroad with £100m of business.⁸⁶ The Risk Advisory Group believed that tasks such as corporate due diligence, merger and acquisition work, private equity funding and corporate finance support were sufficiently guarded by the *Data Protection Act*.⁸⁷ The case of Howard Hill, a corporate investigative partner who was not an accountant at the accountancy firm PKF, demonstrated that an “umbrella” professional licence could not necessarily provide sufficient regulatory protection.⁸⁸ The Ravenstone Group suggested that licensing, regulatory controls, monitoring and auditing should apply to investigation firms that provide any part of their services that are not covered by documented procedures audited by their clients. It suggested that operations whose clients are registered businesses and those clients regulate, monitor and audit the investigation activities to documented procedures be required to register this status. All investigation services could therefore be either licensed investigators or registered investigators.⁸⁹

67. The Association of Fraud Investigators suggested that “Private Investigator” become a protected title, as in the case of “social worker”, so that nobody could use the term to describe themselves without being subject to regulation.⁹⁰

The timetable for action

68. Security International pointed out that there had been attempts to regulate the industry since the 1960s.⁹¹ The Government suggested that any action should wait for the conclusions of Lord Justice Leveson’s inquiry.⁹² However, the current definition of private investigations in the PSIA excluded activities for the purpose of obtaining information

83 Ev w20 [Bishop International]

84 Ev w23 [GPW]

85 Ev 73 [Risk Advisory Group]

86 Ev w20 [Bishop International]

87 Ev 73 [Risk Advisory Group]

88 Ev w23 [GPW]

89 Ev w22 [Ravenstone Group]

90 Ev w21 [CFE]

91 Ev w14 [Security International]. For example, Tony Gardner, the *Private Investigators Bill 1969*; Norman Fowler, *Security Industry Licensing Bill 1970*; The Younger Committee on Privacy 1970; Michael Fidler, the *Private Detectives Control Bills 1 and 2 1973*; Bruce George, *Private Security (Registration) Bills, 1977, 1985, 1987*

92 Ev 61 [HO and SIA]; Q 472 [Lynne Featherstone]

exclusively for journalistic purposes and the Information Commissioner believed that there was “precious little evidence that this has much to do with the press these days”.⁹³

69. The Government insisted that it would move forward with regulation quickly and that the delay of a decade was down to the previous Government. However, the Association of British Investigators highlighted the “off/on abolition of the proposed regulatory authority”, the Security Industry Authority, in the Government’s cull of quangos.⁹⁴ According to the published minutes of a meeting of the Authority:

The Chief Executive explained that The SIA would have liked to address the regulation of PIs 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.⁹⁵

70. The Government has accepted a framework for a new regulatory regime proposed by the Authority and announced that new legislation will be introduced at the earliest opportunity to abolish the Authority in its current form and introduce a new regulatory regime for the private security industry.⁹⁶ This will inevitably delay the introduction of regulation of private investigators.

71. The Minister told us that the process of regulation would be swift, once a decision had been made, but that “the lengthy bit will be moving forward from when the legislation is passed”.⁹⁷ The next stage in the process would be training, capacity-building in the industry and the licensing application process. The Minister believed “that second part could be up to two years” and that the system should be in place before 2015.⁹⁸

72. “Private Investigator” should be a protected title—as in the case of “social worker”—so that nobody could use the term to describe themselves without being subject to regulation.

73. We recommend the introduction of a two-tier system of licensing of private investigators and private investigation companies and registration of others undertaking investigative work. Full licensing should apply to individuals operating or employed as full-time investigators and to private investigation companies. Registration should apply to in-house investigation work carried out by employees of companies which are already subject to regulation, such as solicitors and insurance companies. Both should be governed by a new Code of Conduct for Private Investigators, which would also apply to sub-contracted and part-time investigators. A criminal record for breach of section 55 should disqualify individuals from operating as private investigators.

93 Q 28 [Christopher Graham]; Ev w18 [Bishop International]

94 Ev 66 [ABI]

95 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>

96 Ev 61 [Home Office]; HL Deb 23 March 2011 col. 832ff

97 Q 470–472 [Lynne Featherstone]

98 Q 474 [Lynne Featherstone]

74. Whereas licensing will impose an additional regulatory burden on the industry, it could also provide the new safeguards necessary to provide some potential benefits. We recommend that the Government analyse the risks and benefits of granting increased access to certain prescribed databases for licensed investigators, in order to facilitate the legitimate pursuit of investigation activities. For example, a licence may confer the right to access the on-line vehicle-keeper database in certain circumstances. It should consider how this would interact with the changes proposed to data protection laws by the European Commission. The United Kingdom has rightly moved to a situation of information management rather than merely looking at data protection. We also recognise that appropriate sharing of data can prevent crime and contribute significantly to other outcomes that are in the public interest. However, any new access should be carefully monitored.

75. In terms of skills, we are convinced that competency does not ensure conscience. The core of any training regime for investigators ought to be knowledge of the Code of Conduct and the legal constraints that govern the industry. With this in mind, any contravention of data laws should result in the suspension of a licence and prohibition from engaging in investigation activity, linked to meaningful penalties for the worst offences.

76. It should be possible to implement such a regime quickly after the creation of the new Security Industry Authority, by the end of 2013 at the latest. The Government should include a timetable for implementation in its response to this Report. In view of the repeated delays, on-going abuses and the risks we have identified, the Government should take action quickly. There is no need to wait for the Leveson Inquiry to report before work to set out the principles of regulation and registration begins. Early publication of a draft bill could allow for public and Parliamentary consideration of potential legislation alongside the Leveson report.

Conclusions and recommendations

Bolstering law enforcement

1. The business of private investigators is essentially the gathering and reporting of information, with a premium paid for information that is more difficult to obtain, confidential or important to the buyer. They undertake tasks that are important to an individual and to a business and often fulfil an important social role. In future, it is possible that increasing numbers of investigations that are now undertaken by police will fall to private investigators, though whether this is desirable is a matter for further debate. (Paragraph 15)
2. In its response to this Report, we recommend the Government sets out its assessment of which policing roles could appropriately be undertaken by private investigators and which should not; how it believes cuts to police funding will affect the involvement of private investigators in law-enforcement; and what part private investigators will have in the new landscape of policing. In particular, given the evidence we received, it will be important that this assessment includes an analysis of the role of private investigators in fraud detection, recovery of stolen goods, maintenance of public order and major investigations, such as murder inquiries, with a statement of the risks associated with the involvement of private investigators in each of these areas. (Paragraph 16)

A market in information

3. Easy access to information poses a double risk. Personal data is easier than ever to access and a private profile of a person can be built from a desktop. The ease of access has also opened the information market to new and unscrupulous suppliers, who may not be registered with the Information Commissioner and are unlikely to understand the rules under which they ought to operate. Phone-hacking appears to be the tip of the iceberg of a substantial black market in personal information. This is facilitated by the easy availability of tracking and digital monitoring devices at very little cost. (Paragraph 26)

Involvement in the justice system

4. We were very surprised that the Minister responsible for regulation of the private security industry had not even read the report of the Serious Organised Crime Agency on private investigators. The Government should set out a strategy for mitigating the risks posed by private investigators as soon as the Minister has read and reflected on the report. (Paragraph 29)
5. In order to garner “premium” information that commands the highest prices, we heard troubling allegations that private investigators maintain close links with contacts in public service roles, such as the police forces. These links appear to go beyond one-off contacts and therefore to constitute an unacknowledged, but deep-rooted intertwining of a private and unregulated industry with our police forces. The Independent Police Complaints Commission should take a direct control over investigations in cases alleging police corruption. (Paragraph 35)

Data offences

6. Personal privacy would be better protected by closer working between the Information Commissioner, the Chief Surveillance Commissioner and the Interception of Communications Commissioner. We recommend that the Government aim, before the end of the next Parliament, to co-locate the three Commissioners in shared offices and introduce a statutory requirement for them to cooperate on cases where both the Data Protection Act and the Regulation of Investigatory Powers Act are relevant. In the longer term, consideration should be given to merging the three offices into a single Office of the Information and Privacy Commissioner. (Paragraph 41)
7. Confiscation orders should be sought where a person is convicted of data and privacy offences and has sold the information for profit. (Paragraph 46)
8. We recommend that the Home Secretary exercise her power under section 77 of the Criminal Justice and Immigration Act 2008 to strengthen the penalties available for offences relating to the unlawful obtaining, disclosure and selling of personal data under section 55 of the Data Protection Act. The current fine—typically around £100—is derisory. It is simply not an effective deterrent. (Paragraph 47)

Policing

9. The Metropolitan Police's system of safeguards for reducing the risks of serving police officers being corrupted by conflicting interests—including declarable associations policies, a register of business interests and a list of incompatible interests—should be standardised across the country. However, these checks alone might not be enough to solve the problem. The Government must act to sever the links between private investigators and the police forces. We recommend that there should be a cooling off period of a minimum of a year between retirement from the police force and working in private investigation. Any contact between police officers and private investigators should be formally recorded by both parties, across all police forces. (Paragraph 50)

Timetable for action

10. "Private Investigator" should be a protected title—as in the case of "social worker"—so that nobody could use the term to describe themselves without being subject to regulation. (Paragraph 72)
11. We recommend the introduction of a two-tier system of licensing of private investigators and private investigation companies and registration of others undertaking investigative work. Full licensing should apply to individuals operating or employed as full-time investigators and to private investigation companies. Registration should apply to in-house investigation work carried out by employees of companies which are already subject to regulation, such as solicitors and insurance companies. Both should be governed by a new Code of Conduct for Private Investigators, which would also apply to sub-contracted and part-time investigators. A criminal record for breach of section 55 should disqualify individuals from operating as private investigators. (Paragraph 73)

12. Whereas licensing will impose an additional regulatory burden on the industry, it could also provide the new safeguards necessary to provide some potential benefits. We recommend that the Government analyse the risks and benefits of granting increased access to certain prescribed databases for licensed investigators, in order to facilitate the legitimate pursuit of investigation activities. For example, a licence may confer the right to access the on-line vehicle-keeper database in certain circumstances. It should consider how this would interact with the changes proposed to data protection laws by the European Commission. The United Kingdom has rightly moved to a situation of information management rather than merely looking at data protection. We also recognise that appropriate sharing of data can prevent crime and contribute significantly to other outcomes that are in the public interest. However, any new access should be carefully monitored. (Paragraph 74)
13. In terms of skills, we are convinced that competency does not ensure conscience. The core of any training regime for investigators ought to be knowledge of the Code of Conduct and the legal constraints that govern the industry. With this in mind, any contravention of data laws should result in the suspension of a licence and prohibition from engaging in investigation activity, linked to meaningful penalties for the worst offences. (Paragraph 75)
14. It should be possible to implement such a regime quickly after the creation of the new Security Industry Authority, by the end of 2013 at the latest. The Government should include a timetable for implementation in its response to this Report. In view of the repeated delays, on-going abuses and the risks we have identified, the Government should take action quickly. There is no need to wait for the Leveson Inquiry to report before work to set out the principles of regulation and registration begins. Early publication of a draft bill could allow for public and Parliamentary consideration of potential legislation alongside the Leveson report. (Paragraph 76)

Formal Minutes

Monday 2 July 2012

Members present:

Keith Vaz, in the Chair

Nicola Blackwood
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert

Alun Michael
Bridget Phillipson
Mr David Winnick

Draft Report (*Private Investigators*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 40 read and agreed to.

Paragraph 41 read.

Amendment proposed, to leave out “In the longer term, consideration should be given to merging the three offices into a single Office of the Information and Privacy Commissioner”. —(*Alun Michael*.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Alun Michael

Noes, 5

Nicola Blackwood
Lorraine Fullbrook
Dr Julian Huppert
Bridget Phillipson
Mr David Winnick

Amendment accordingly negatived.

Paragraph 41 agreed to.

Paragraphs 42 to 76 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 3 July at 10.40 am]

Witnesses

Tuesday 7 February 2012

Page

Christopher Graham, Information Commissioner

Ev 1

Tony Imossi, President, Association of British Investigators, **Ian Hopkins**, Board Member and Past President, Institute of Professional Investigators, and **Ian Withers**, Governing Council Member, World Association of Professional Investigators

Ev 8

Commander Peter Spindler, Metropolitan Police, and **Roy Clark QPM**, retired Deputy Assistant Commissioner, Metropolitan Police

Ev 14

Tuesday 13 March 2012

Tommy Helsby, Chairman, Kroll, **John Conyngham**, Group General Counsel and Global Director, Corporate Investigations, Control Risks, and **Bill Waite**, Chief Executive Officer, Risk Advisory Group

Ev 20

Charlotte Harris, lawyer

Ev 27

Tuesday 17 April 2012

Richard Caseby, Managing Editor, The Sun, **Philip Johnston**, Assistant Editor, Home News, Daily Telegraph and **Jon Steafel**, Deputy Editor, Daily Mail

Ev 32

David Jordan, Director of Editorial Policy and Standards, BBC

Ev 41

Tuesday 22 May 2012

Dan Morrison, Partner, Grosvenor Law LLP, **Julian Pike**, Partner, Farrer & co LLP, and **Mike Schwarz**, Partner, Bindmans LLP; **Bill Butler**, Chief Executive, Security Industry Authority

Ev 48

Bill Butler, Chief Executive, Security Industry Authority

Ev 53

Lynne Featherstone MP, Parliamentary Under Secretary for equalities and criminal information

Ev 55

List of printed written evidence

1	Home Office and the Security Industry Authority	Ev 61; Ev 82
2	Association of British Investigators	Ev 64
3	Information Commissioner's Office	Ev 68; Ev 83
4	World Association of Professional Investigators	Ev 71
5	The Risk Advisory Group	Ev 73
6	Kroll	Ev 80
7	The Metropolitan Police	Ev 81
8	Home Affairs Committee Annex: Councils Survey Results	Ev 85
9	Home Affairs Committee Annex: Newspapers/Broadcasters Survey Results	Ev 86
10	Mike Schwarz, Bindmans LLP	Ev 88
11	RISC Management Ltd	Ev 92

List of additional written evidence

(published in Volume II on the Committee's website)

1	G4S	Ev w1
2	Threshold Security	Ev w4
3	The Surveillance Group	Ev w6; Ev w24
4	The Institute of Professional Investigators	Ev w9
5	Security International	Ev w12
6	Bisio Training	Ev w15
7	Cerberus Investigations Limited	Ev w16
8	Steve Bishop	Ev w17
9	Bishop International	Ev w17
10	The Association of Certified Fraud Examiners	Ev w20
11	The Ravenstone Group	Ev w22
12	GPW	Ev w23
13	GMB	Ev w25
14	Arlingtons Sharmas Solicitors	Ev w26
15	Speechly Bircham	Ev w26; Ev w28
16	Independent Police Complaints Commission	Ev w29
17	Mr Bhadresh Gohil	Ev w30

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2012–13

First Report	Effectiveness of the Committee in 2010–12	HC 144
Second Report	Work of the Permanent Secretary (April–December 2011)	HC 145
Third Report	Pre-appointment Hearing for Her Majesty's Chief Inspector of Constabulary	HC 183

Session 2010–12

First Report	Immigration Cap	HC 361
Second Report	Policing: Police and Crime Commissioners	HC 511
Third Report	Firearms Control	HC 447
Fourth Report	The work of the UK Border Agency	HC 587
Fifth Report	Police use of Tasers	HC 646
Sixth Report	Police Finances	HC 695
Seventh Report	Student Visas	HC 773
Eighth Report	Forced marriage	HC 880
Ninth Report	The work of the UK Border Agency (November 2010–March 2011)	HC 929
Tenth Report	Implications for the Justice and Home Affairs area of the accession of Turkey to the European Union	HC 789
Eleventh Report	Student Visas – follow up	HC 1445
Twelfth Report	Home Office – Work of the Permanent Secretary	HC 928
Thirteenth Report	Unauthorised tapping into or hacking of mobile communications	HC 907
Fourteenth Report	New Landscape of Policing	HC 939
Fifteenth Report	The work of the UK Border Agency (April–July 2011)	HC 1497
Sixteenth Report	Policing large scale disorder	HC 1456
Seventeenth Report	UK Border Controls	HC 1647
Eighteenth Report	Rules governing enforced removals from the UK	HC 563
Nineteenth Report	Roots of violent radicalisation	HC 1446
Twentieth Report	Extradition	HC 644
Twenty-first Report	Work of the UK Border Agency (August–December 2011)	HC 1722

Oral evidence

Taken before the Home Affairs Committee on Tuesday 7 February 2012

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Steve McCabe

Alun Michael
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: Christopher Graham, Information Commissioner, gave evidence.

Q1 Chair: Could I call the Committee to order and ask everyone to settle down? This is the Committee's first session in our inquiry into the regulation of private investigators. I refer everyone present to the Register of Members' Interests, where the interests of all Members of this Committee are noted, and I welcome the Information Commissioner as our first witness. Thank you very much for coming in. You have read our terms of reference in respect of this inquiry. We have asked you to come because, of course, part of the regulation is already done by you in terms of data management.

Christopher Graham: Indeed.

Q2 Chair: In your written evidence to this inquiry, Commissioner, you state that there are relatively few examples of complaints against private investigators. Why is that?

Christopher Graham: Perhaps I could begin, Chairman, by agreeing with you that the Information Commissioner regulates part of the private investigator scene, but only part of it, and perhaps I could just explain. Of course, we enforce the Data Protection Act, and that is a very important aspect of the work that private investigators undertake. I should make it clear that we do not regulate private investigators as such. We regulate some of what all private investigators do and we are concerned about what some private investigators get up to.

But, as we stated in our evidence, despite the fact that we get thousands of complaints each year about breaches of the Data Protection Act, those involving private investigators are relatively few. I have some investigations in train at the moment, although I will not be specific because I do not want to compromise the investigation. For example, prosecutions for section 55 breaches—unlawful obtaining of personal information—have in the past involved some private investigators, but the most recent cases have involved individual members of staff who have misbehaved and have been accessing information that they should not access or selling information.

Q3 Chair: Yes. If you would give us a figure—it is obviously an estimate, but how many private investigators do you think there are?

Christopher Graham: The only figure I could give would be those who are notified with the Information Commissioner and who have said that they are notifying an investigatory process. I would estimate that figure to be around 2,000, but I might need to check back on that.

Q4 Chair: And actual complaints against those roughly 2,000 are very limited?

Christopher Graham: Very limited, but of course we have regulatory priorities and we have an information rights strategy. If the activities of private investigators were very high up on the radar, I would have prioritised them higher than I have. Our priorities are really around the financial services, the health sector and so on.

Q5 Chair: Of course, but do you think there ought to be regulation? Because you obviously only regulate a tiny part of this, those who register and those who are able to access data. I do not know whether you have been following the—

Christopher Graham: I am aware of the work of the Security Industry Authority and of the work of the various self-regulatory trade associations and self-regulatory bodies.

Chair: Sure, but do you think there ought to be statutory regulation?

Christopher Graham: I understood that was the direction of travel and it was simply a matter of time.

Chair: But what do you think? We understand that that is where—

Christopher Graham: It would greatly aid the work of the Information Commissioner if there were others labouring in this particular vineyard. We will look after the application of the Data Protection Act and we will deal particularly with breaches of section 55, the unlawful obtaining.

It would help us in our work, and I think it would give greater confidence to the public at large, if there was a comprehensive framework of regulation of private investigators. It is for others who are more intimately involved to comment on this, but the model surely would be the statutory regulator—the Security Industry Authority—as the backstop and an effective self-regulatory structure within that doing the day-to-day. Before I became Information Commissioner, my

7 February 2012 Christopher Graham

experience was as Director General of the Advertising Standards Authority, and that was the relationship we had with Ofcom for television and radio advertising. It is a system that works.

Q6 Chair: Indeed. We are not just looking at this issue because of what happened over the phone hacking, but that is one of the aspects of this matter that we will cover. In our report last June, we made reference to your office and we said that, “There should be additional powers for the Information Commissioner to deal with breaches of data protection, including phone hacking and blagging. Mobile phone companies should give greater prominence to security advice in the information provided to their customers”. Do you know if any of those recommendations that we made, specifically in relation to your office, have been implemented? Have you been given any additional powers to deal with these breaches?

Christopher Graham: The particular point that I made before the Committee last year was that sections 77 and 78 of the Criminal Justice and Immigration Act, dealing with the blagging of information and the unlawful accessing of personal information, should be implemented so that a stronger and more deterrent penalty could be available to the courts. As you know, at the moment it is just a question of a fine. I wanted to have access to the full range of penalties, so that when a health service worker or a bank clerk goes rogue they are not simply facing a modest fine in the Magistrates Court, because they are of limited means, but they could face a community punishment of tagging or whatever. The more serious players would know they were facing the prospect of jail. I have to say with great regret that no progress has been made on this at all, and it is now rather stuck with the Leveson inquiry because it has been tied up with what the press have had to say.

Chairman, remember that the ICO has nothing to say about hacking, which is a breach of the Regulation of Investigatory Powers Act, but as your Committee pointed out last year, this report, long overdue; in 2006 my predecessor drew attention to the unlawful trade in personal information, specifically flagged what was going on with some private investigators and called on the Security Industry Authority—

Q7 Chair: That has not been acted on, so you feel it should be acted on?

Christopher Graham: There was quite a good response from the industry and in the second report, which we published later in the year, progress was reported, but it is really about putting in place the regime for licensing, recognising private investigators and accepting that a breach of section 55 of the Data Protection Act ought to be a disqualification from operating in the business. There were warm words, but we need to see progress being made in that direction.

Q8 Chair: Finally from me, on 26 January you told Lord Justice Leveson that thousands of people whose personal data was illegally targeted by Steve Whittamore, uncovered during Operation Motorman,

will not be informed that their personal information had been used because your office has become overstretched and you did not have the resources to cope. This is pretty serious, isn’t it, if there are all these people out there—17,000-odd?

Christopher Graham: I did not quite say that.

Chair: What did you say?

Christopher Graham: What I said was that there are 17,000 lines in the Motorman files.

Chair: Seventeen thousand what?

Christopher Graham: Seventeen thousand lines of information in the dossiers of the Motorman files.

There are 4,000 surnames; I do not think I went into quite this detail with the inquiry, but there are 4,000—

Chair: No. But it is extremely helpful to the Committee.

Christopher Graham: Okay. There are 4,000 surnames within those dossiers. Those surnames may, of course, include multiple members of the same family and I cannot say that the same name does not appear in more than one of the four dossiers—there was one for News International, one for Associated, one for Trinity Mirror and so on.

Right from the first, individual citizens have been able to exercise their subject access rights under the Data Protection Act and they have been able to say to the Information Commissioner, “Do you have anything on me in the Motorman file?” We have had a number of applications. We have had lawyers acting for litigants in civil actions. There is access to that information under the Data Protection Act. But I realised that there was concern that I was not proactively alerting everybody.

Q9 Chair: Basically, you cannot do it because there are so many names?

Christopher Graham: Basically, I cannot do it for two reasons. One is that it is a breach of section 59 of the Data Protection Act for me, or any of my staff, to make available information we recover in the course of our investigations without lawful authority. A subject access request provides the lawful authority. A court order provides the lawful authority. What I have done, Chairman—

Q10 Chair: What is the second reason?

Christopher Graham: The second reason was that if, despite section 59, it was felt that I ought to be alerting all those 4,000 people, despite the fact that we do not have any addresses to go on, it is not clear who the 4,000 are, and so on and so on. If it was suggested that I should do that—and I said to the judge, “If that is a recommendation from your inquiry, of course, I will have to do that, but it would be a monumental task”, but it is not the monumental task reason that is stopping me doing it.

Q11 Chair: No. But you have 4,000 surnames and you are not able to contact these people. But this matter has been going on since 2005, is that right?

Christopher Graham: Since 2003, when we raided Mr Whittamore’s office, so the information would relate to the period 1999 to 2003.

Chair: So for nine years, you have—

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Christopher Graham: For nine years, individuals have been able to apply to the Information Commissioner and exercise their subject access rights under the Data Protection Act and that they have done. What I have done, because of the hue and cry, is to say we will put in place an arrangement, as we had for the construction industry database, of a fast track where you can email the Information Commissioner's Office and say, "Am I in the Motorman files or am I not?" If you are not in the Motorman files, we can tell you straight away. If we say, "There is a name that looks a bit like you—could be. We will help you to make a subject access request and we will investigate it". But, Mr Chairman—

Q12 Chair: At the moment, how many people have actually emailed and who knows about this, apart from your evidence presented—

Christopher Graham: It is being announced today because I was responding to the Hacked Off campaign and to various parliamentarians.

Chair: You are announcing to this Committee today that you are going to take these steps?

Christopher Graham: I am announcing to the Committee today that I put in place a fast-track system that enables anyone who believes they may be in the file to email my office, and there is information on our website to that effect with the address to email. We will then, as quickly as we can, give you a yes/no answer. In most cases, it will be, "No, we do not have anything", but if we have the slightest scintilla of a suggestion that your name might be in a file, we will then help you to make a proper subject access request to get all the details.

Q13 Chair: You do not feel that this should have been done nine years ago?

Christopher Graham: No. Because we have had lots of applications from individuals, and that is how we have been processing it.

Chair: Thank you. David Winnick and Mark Reckless on this point, and then we will move on.

Mr Winnick: Returning to earlier questions from the Chair—

Chair: Can I please take that in a second? Mr Reckless has a question on this point.

Mr Winnick: Okay.

Q14 Mark Reckless: I understand the expense difficulty issue, but are you seriously saying you do not have lawful authority to tell an individual that that individual is on the file?

Christopher Graham: No. I do have lawful authority to respond to a subject access request, but to answer your question—

Mark Reckless: We are clear on that, but if you can see that someone is there, you know how to contact that person, are you seriously saying that there is something illegal about your contacting that person to tell them that they are in there?

Christopher Graham: Proactively, I could not do it for everybody. The frustrating thing is, if I could show you the dossier—your colleagues on the Culture, Media and Sport Committee sent their Chairman to

have a look; I think he got the point. In effect, the dossiers are a series of notebooks noting down requests, in this case from newspapers, for information on particular individuals. It is pretty much written in code. You have a series of surnames. It is not absolutely clear who anybody is, so the idea that I should proactively have been alerting everybody is fanciful because—

Mark Reckless: Fanciful but not illegal?

Christopher Graham: Possibly both, but to get beyond fanciful—

Q15 Mark Reckless: How would it be made illegal by a judge saying in an inquiry report that it is okay to do it? Either it is illegal or not. It is a law made by this place, not by a judge in an inquiry report.

Christopher Graham: I have had court orders in relation to applications from litigants, in civil actions around hacking, who have been looking for evidence that journalists might have been interested in them, for whatever reason, and I have responded to the court orders. I have had subject access requests from individuals; I have responded to the subject access requests. If a judge in a statutory tribunal makes a recommendation that I should proactively inform everybody else, then I would take that as lawful authority. But I am just getting ahead of the game by saying—

Q16 Chair: Anyway, you have done it now?

Christopher Graham: Yes.

Q17 Mr Winnick: Mr Graham, you will accept, coming back to some of the earlier questions that the Chair put to you, that the areas covered by private investigators are pretty extensive and can be very sensitive?

Christopher Graham: Indeed.

Q18 Mr Winnick: What people must be surprised about is that anyone can undertake such activity regardless of—leaving aside skills or experience; that does not come into it, apparently—even criminality. Someone with a criminal conviction can become a private investigator without any difficulty whatever.

Christopher Graham: I am sure you are going to have to raise these issues with the Security Industry Authority and with the representatives of the industry who follow on next, but I agree with you that that is a concern.

Mr Winnick: A concern?

Christopher Graham: As the Information Commissioner, I am acting on individuals rather than the industry. I am dealing with individual behaviour, and where we have evidence of people breaching the Data Protection Act, that is what we investigate and act on. I keep coming back to the point that we raised right back in 2006 that, unless Parliament indicates that they regard the breach of people's personal information, people's privacy, as being sufficiently important to warrant more than a modest fine in the Magistrates Court, it is very difficult to send a message to the industry that they are operating in an area where the game is not worth the candle.

Q19 Michael Ellis: Mr Graham, is it your evidence to this Committee, from the information you have available to you and from your expertise, that the private investigating industry in this country is effectively out of control?

Christopher Graham: I do not think I can help the Committee in that respect. “Out of control” is a very dramatic way of saying “pretty unregulated”. The only bit that I can speak of with authority is the data protection aspect, which does come within my sphere of influence. I am saying that we are doing what we can to deal with those members of the industry who are not sticking to any standard of good behaviour but, more to the point, are breaking the law.

Michael Ellis: So it is not properly controlled.

Christopher Graham: It is not an industry that is properly controlled.

Q20 Michael Ellis: As far as breaches are concerned, particularly with private investigators, I read from your written evidence that you come across two fundamental areas where there can be breaches—for example, breaching of the data protection principles and the use of bribery or deception in order to obtain personal information. Do you often see those sorts of malfeasance?

Christopher Graham: Yes. It is the difference between the civil offence, not processing data fairly, and if you are in the investigation business you are going to be notified as a data controller, you are going to be processing data, so if you are not sticking to those principles there is a civil breach of the Data Protection Act. Then also, if you are going round bribing to get information, you are breaching section 55 of the Data Protection Act, which is a criminal matter. Both are of concern to us. I do not want to over-dramatise the situation and say that this is an area of mass trespass, but nevertheless both are serious breaches.

Q21 Michael Ellis: Section 55 of the Data Protection Act—what are the maximum penalties? You have referred to the fact that, usually, only fines tend to follow.

Christopher Graham: Under the law at the moment, section 55 of the Data Protection Act, it is a fine-only offence. In the Crown Court, it can be an unlimited fine; in the Magistrates Court, it is up to £5,000. Very rarely do we get cases into the Crown Court. In the Magistrates Court, although £5,000 is available, over the last year or so the run of play has been around £100 per count. That is simply because if a fine is prescribed, the magistrates have to take into account people’s ability to pay.

Q22 Michael Ellis: Yes. On the other hand, there will be well-publicised cases where, for example, police officers have misused information available on the Police National Computer. Then there are separate criminal sanctions in the case of people in a public office misconducting themselves, which are much more severe, are they not, and usually result in a custodial sentence?

Christopher Graham: They are. Misconduct in public office is a very serious offence with much more

significant penalties. If your information goes missing from your bank or your mobile phone company or your doctor’s surgery, it has gone missing and your privacy has been breached, whoever has done it. If it is a health worker—I can think of the case of the Liverpool Hospital health worker who was simply trying to settle scores with her ex’s family and trying to recover their numbers after they had gone ex-directory to escape her, or the Bury NHS walk-in centre nurse who was passing on accident details to her boyfriend who was working for a claims management company, or the Haywards Heath bank clerk spying, and so on. The details, I think, are familiar.

Michael Ellis: It often has a domestic flavour—

Christopher Graham: It has a domestic flavour. It is not about private investigators—nothing as exciting as that. It is just grubby and nasty. The point I have been making is that if all you are going to face is a fine of a few hundred pounds in the Magistrates Court, it does not send a very strong signal. It is not a very strong deterrent.

Q23 Michael Ellis: From recent media coverage, with the focus on hacking and the conduct of national newspapers and the like, one could be forgiven for forming a distinct impression that private investigators are often focusing on the instructions from national newspapers, but in fact that makes up a very small part of the industry. How much of a significant problem do you consider the element of bribery, corruption and illegality is generally within the industry?

Christopher Graham: The hacking issue, which is what got the Leveson inquiry started, does not come under my responsibility. It is about the Regulation of Investigatory Powers Act, so that is really nothing to do with the Information Commissioner’s Office. I observed to Lord Justice Leveson the week before last that, although there is plenty of evidence of breaches of section 55, it was not on my watch involving the newspapers. Similarly, it is not on my watch involving private investigators at the moment but, as I say, we have a number of cases in train.

Q24 Steve McCabe: Mr Graham, can I just check that I understood what you were telling the Committee earlier? Were you saying that a typical sanction for a breach of the data protection principles is a fine of about £100 in the Magistrates Court?

Christopher Graham: On the criminal offence of a section 55 breach—unauthorised obtaining or disclosure of information—the Magistrates Court is limited to a £5,000 fine. That is where these individual cases are going and it is not providing a very effective sanction.

On the breach of the data protection principles, the civil offence, I now have, since April 2010, some very effective deterrent powers in the form of a civil monetary penalty. It is a civil monetary penalty of up to £500,000. I have issued 10 of these.

The most recent was to the Midlothian Council; I am afraid I had to fine them £140,000. It is a record fine. Data protection in local government and in the health service is giving cause for great concern, but I am

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encouraged that the civil monetary penalty regime that I now have in place is sending a very strong message. I am supported by the Chief Executive of the NHS, Sir David Nicholson, and the Permanent Secretary of the Department for Communities and Local Government, Sir Bob Kerslake, who have both written with me joint letters to leaders in the health service and local government saying, "This is important. This is about privacy, this is about good management and please bear in mind that the Information Commissioner now has power to issue a civil monetary penalty of an awful lot of money".

Q25 Steve McCabe: Most of these sanctions that you will issue, are they likely to be against public bodies or public authorities?

Christopher Graham: A couple of examples have been in the private sector.

Q26 Steve McCabe: What size of fine did you level against them?

Christopher Graham: Of course, the fine is determined by the nature of the offence. In one case, we were dealing with a bankrupt solicitor, so the fine was a token. Another very early case was the training organisation A4e, who were being cavalier with information about some quite vulnerable people.

Q27 Steve McCabe: I am drawing the distinction because when you level a very hefty fine against Midlothian you are actually levelling it against the council taxpayers, aren't you? I am just trying to understand how effective this sanction is because it has a different impact if it is applied to an individual or a private company as opposed to a public authority. Can I ask about the situation where personal information is obtained by bribery or deception? What is the sanction in those circumstances?

Christopher Graham: In the case of bribery, it might well be a question of misconduct in public office and, of course, there is also the Bribery Act. In the case of trickery or misrepresentation, you are back to section 55 of the Data Protection Act. We need an even-handed approach to both the civil and the criminal offence. I have the effective power to deal with the serious breach of the data protection principles. I note your point that you think the private sector is getting off lightly, but let us follow the cases and the evidence and see where we go. What I would like is a similarly effective sanction to deal with the criminal offence and then I will be in a good position to enforce the Data Protection Act.

Q28 Steve McCabe: Can I just pursue this point some more? In evidence to this Committee, what you are saying is that the criminal sanction is nowhere near tough enough and you are telling the Committee that you think that that needs to be toughened up?

Christopher Graham: Absolutely nowhere near tough enough, and it is a disappointment to me that last year your Committee in its recommendation regretted that the 2006 Information Commissioner's report—*What Price Privacy?*—had not been better attended to, despite your recommendation. I have no evidence of any will in Government to get on and commence

section 77 and 78 of the Criminal Justice and Immigration Act and introduce those more effective penalties. The excuse now being given is that this is all a matter for Lord Justice Leveson, when the whole burden of my song is that there is precious little evidence that this has much to do with the press these days.

Chair: That is very helpful and certainly we will bear that in mind when we come to our recommendations. We do review previous recommendations, and if they are not acted on we write to the Home Secretary about it, so thank you for that.

Q29 Mark Reckless: For a section 55 offence, what type of criminal sanctions should be available in your view?

Christopher Graham: Sections 77 and 78 recommended the availability of a custodial sentence, and again I think from memory it was up to six months in the Magistrates Court and up to two years in the Crown Court. I cannot imagine that many people are going to go to prison, but if it simply says "fine only" in the legislation, then it does not open up all the other potential deterrent sentences that could apply to the smaller fry.

If you do not think that people's private information matters very much and that the worst you are going to get is a few hundred pounds in the Magistrates Court if you are caught, it must be very tempting for low-paid workers in the health service or in mobile phone companies to do a bit of business. If there is some eager private investigator pressing them, then one can understand why things might go missing.

We look to Parliament to say, "We are now in the 21st century, an information society, and keeping information secure is really important. All the things that we want to do about open data, about data sharing, depend on people having confidence that the information that they give to the authorities will stay secure, so we are going to put our money where our mouth is and say that a range of penalties need to be available, not just a modest fine".

Q30 Mark Reckless: You look to Parliament. Would you welcome it if, firstly, we legislated to make at least community sentences available for the breach you describe, and secondly, took a greater oversight in the Sentencing Council in terms of the application of the level of the fine and community service, as it might be?

Christopher Graham: I think the Sentencing Council has been contacted by the Ministry of Justice, and Lord Justice Leveson happens to be the Chairman of the Sentencing Council. What he said, when I was giving evidence the other day, was, "Not much of an incentive for the Sentencing Council to express a view about these matters if the law may be about to change". I thought that was an invitation to Government to commence sections 77 and 78 and then the Sentencing Council would give appropriate advice to the courts. What is required is a ministerial order, and if this Committee wants to support the Justice Committee, who made that recommendation in

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their most recent report¹ at the back end of last year, then that would be very welcome.

Q31 Alun Michael: You talked a bit there about higher penalties for those who disclose the information, and I understand that that is at the heart of your responsibilities. But can we look at those who put temptation in their way and who may act in a variety of different ways that have nothing to do just with data protection? Do you think that self-regulation has any place in regulating private investigators or do you think that is simply a non-starter?

Christopher Graham: I do not think it would be just self-regulation because if it is simply a coalition of the willing, if the trade association says to somebody, "You are not playing by the rules. You cannot be a member of our club anymore", does that have any impact if you can simply continue without being a member of that organisation? I accept that being a member of a reputable trade body probably helps bring in the business. I think that the best arrangement is an effective self-regulatory system sitting within the context of statutory regulation. The statutory regulator, who in this case would be the SIA, will be the longstop and the self-regulatory body would do a lot of the day-to-day work. That is a model that I have seen work elsewhere.

Alun Michael: Sorry, that is the SIA?

Christopher Graham: Yes, the Security Industry Authority.

Q32 Alun Michael: Yes. You are talking about the existing authority, as statute already allows, having its role extended?

Christopher Graham: This is not an area that I am greatly expert in and I am sure you will be taking evidence from the SIA, but my understanding was that the power is there to be exercised and it is just a question of getting round to it. We ought to bear in mind that the SIA itself was well on the bonfire of quangos at one stage, so it is not surprising if this has not got that far down this particular route.

As a regulator, I would say one is greatly aided if an industry organises itself so that it is delivering high standards within a regulatory framework. If you leave everything to the regulator, the chances are that the regulator will not prioritise a particular activity. When I was Director General of the Advertising Standards Authority, I used to get very frustrated with the Office of Fair Trading because they had longstop powers under the Control of Misleading Advertisements Regulations. The ASA would find against some low-cost airline. The low-cost airline would not be very interested in taking any notice of what we had to say. I would then refer it to the Office of Fair Trading. It took a lot of persuading of the OFT to get on and do something about that case. If it had just been left to the OFT, nothing would have happened.

Q33 Alun Michael: You are saying basically that there must be a statutory requirement, whether it is

the existing body or a different body, for it to act in specific ways, otherwise it will not do it?

Christopher Graham: You have a statutory framework, an effective self-regulatory system that operates within that framework, but I am saying that if you simply leave it to statute the chances are that the day-to-day will not get done. If you simply leave it to self-regulation, the chances are that the bad boys will not take any notice. The combination of the two is very powerful.

Q34 Mark Reckless: Surely there is an in between. You say self-regulation or statutory regulation, but isn't what is required for the regulator in this area, the OFT, to report to a Select Committee of Parliament, for its boss to be approved by that Committee and for its budget to be approved by that Committee? In that way, you put this sort of evidence in public and there is proper public oversight of these regulators.

Christopher Graham: I am not suggesting that the Office of Fair Trading were not doing their job. They had many responsibilities and these days, of course, resources are more and more constrained. If you work with the grain of an industry that wants to get things right, then a lot of the heavy lifting and the day-to-day can be done by the self-regulatory system. But you need to have that power in reserve, that big stick in the cupboard. I think it is called co-regulation. That is really quite a good way of delivering outcomes for consumers.

Q35 Michael Ellis: Mr Graham, I know you are a regulator. You seem to be calling for more regulation, which is perhaps not surprising, but what I want to ask you is this. I have noticed that you have referred to the fact that you feel if the sentences were increased people who breached these regulations would think twice before doing so. Is that your position?

Christopher Graham: Yes. That is the theory of deterrent penalties, isn't it?

Q36 Michael Ellis: Is it your view that people will always consider the possible penalties before they commit an offence?

Christopher Graham: I see where you are heading. My feeling is that the seriousness of breaches of privacy and the mishandling of personal data need to be higher up everyone's radar. One of the ways of getting that message across to everyone who has responsibility for personal information is, "Parliament takes this seriously, so should you". One of the ways in which you send that message is to say, "This is the sort of thing that can get you sent to prison". Then people sit up and take notice.

People still—in extremis, in difficult positions—will do silly things, and they will have to take the consequences for their actions. But at the moment it is just not taken seriously enough by staff, by managers, that personal information is not just a commodity to do what you like with. You must respect your customers and your consumers and citizens, and if you do not, the consequences are serious.

Chair: Thank you very much—very clear and most helpful.

¹ 9th Report—Referral fees and the theft of personal data: evidence from the Information Commissioner, HC 1473, Published 27 October 2011

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Q37 Lorraine Fullbrook: Commissioner, I would like to ask you about the written evidence that you have given to the Committee, in which you say, “Even legitimate private investigators may find it hard to carry out their work lawfully, given the Data Protection Act’s general prohibition of the covert collection of personal information”. Given that, do you think there is the correct balance in the Data Protection Act between protecting an individual and allowing legitimate data-gathering?

Christopher Graham: The whole framework of data protection law is up for debate at the moment because the European Commissioner, Mrs Reding, published her proposals for a new regulation very recently. There will be great debates about how this should go forward.

I feel there is a much greater threat from the illegitimate access to personal information at the moment than there is concern about lawful activities not going as well as they might because of the protection that the citizen has.

There is a way into information for dealing with crime, for example, but there is not that same protection for being able to deal with, for example, the recovery of civil debt. I can understand why there might be pressure for reputable private investigators to have greater access. I do not see how that greater access could be afforded without less protection for personal information where it really ought to be protected. I would have much greater confidence that one could go down the route of letting more people have access to more information if I felt that we were better organised to protect what really ought to be kept protected.

Q38 Lorraine Fullbrook: I take it that you believe that it is skewed against the individual, so what amendments to the Data Protection Act do you think—

Christopher Graham: It is skewed in favour of the individual.

Lorraine Fullbrook: Against the protection of the individual?

Christopher Graham: It does not help a private investigator working for a financial services company, trying to find out where somebody who has run off without paying their debts has gone, and I can quite see that people might express some frustration at that point. What I am saying is that we are not good enough at protecting personal information that should be protected, and until we are better at that I am not inclined to see any relaxation. There are lots of perfectly legitimate ways for investigators to get information without going down the dark alleyways of misbehaviour.

Q39 Lorraine Fullbrook: Do you think the Data Protection Act would need to be amended to give more protection to an individual’s information?

Christopher Graham: The Data Protection Act is going to be amended anyway in a few years’ time because the regulation is changing the framework. It may be that in the debates that will be taking place in the Council of Ministers, with members of the European Parliament and then ultimately back here at

Westminster, the point that is put forward can be taken on board. It is not a priority for me at all.

Q40 Chair: You mentioned the dark alleyways that seem to be a feature of this area of work. Do you think that if there is proper regulation the dark alleyways will cease, this will cease to be a shadowy group of people doing all kinds of work and it will come out into the open?

Christopher Graham: Professional investigators should work in the light. The dark alleyways will always be dark; you do not always have to go down there. With a proper balance between a good system, a good framework of statutory regulation, effective self-regulation by an industry that wants to clean up its act and with the Information Commissioner having appropriate powers to deal with breaches of data protection law, we should be in a fairly good place.

Q41 Chair: Just remind the Committee, what did you fine the Midlothian Council for? What was the fine for? What did they do wrong?

Christopher Graham: The Midlothian Council was the latest in a run of problems involving, I think, the social work department and child protection. I do not remember the exact details of the case. People throw their hands up in horror and say, “This is terrible, you are taking money off local authorities”. I should stress that—

Chair: Mr McCabe was just making the point that, at the end of the day, it was not the officers who paid, but the council tax payers.

Christopher Graham: Yes. The council tax payers would do well to get their local authorities to start paying attention.

Chair: Of course. Sorry, what did they do exactly? They used personal information inappropriately?

Christopher Graham: It is the usual business of emails being sent to the wrong people or faxes being sent to the wrong number or bits of a report being stuck in the wrong envelope. We do not issue civil monetary penalties just because there has been a mistake. It has to be that there is inadequate management; there is a pattern of behaviour; and the same thing has happened within a year of the last incident. I have five undertakings from local authorities this week. They do not involve civil monetary penalties, but they are breaches of the Data Protection Act.

Q42 Chair: In respect of the documents that you have and the announcement that you have made to this Committee this morning, how long do you think that process will take? Obviously, it depends on how many people email you. Given the publicity around phone hacking and these issues, you might get several hundred thousand people thinking that their personal information has been used in some way. Are you prepared for the deluge? I am sure every Member of this Committee will be sending you an email today; I certainly will.

Christopher Graham: Right, well, we will have a look and see. This is just one of the points that I was making before the Leveson inquiry—that regulators have to pick their battles and prioritise. I suppose I

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am reasonably confident that, although I will get a lot of emails, particularly from campaigners who are making a point, the access has been there all along. We have assisted those people who are concerned and we will do what we can. It may, of course, have an impact on other areas of our work.

Q43 Chair: Of course. I understand that the Culture, Media and Sport Committee has seen these documents. Is it possible for you to send, in a private and confidential manner, an extract to show the Committee exactly what you mean about the complication in this matter being dealt with quickly? We do not need actual names of people, but it would be good for the Committee—to inform us. We will not publish it.

Christopher Graham: I can send you the same illustration, which involved a lot of redaction, which I provided to the Culture, Media and Sport Committee. Mr Whittingdale paid a visit to Wilmslow to look at the books. Chairman, if you would like to do that, we would be delighted to facilitate that.

Mr Winnick: He would like to do that.

Chair: I will consider it, but if you could send us the redacted version first, that would be very helpful.

Christopher Graham: I will be delighted to.

Chair: A last quick point from Mr Reckless—very quick, please.

Q44 Mark Reckless: A very quick question on another matter, Mr Graham. Private CCTV systems. I

have written to you about a number of constituency cases where a private system appears to be being used—several cameras—to intimidate a neighbour, focused entirely on a neighbouring property, filming them 24/7 in the most intrusive way. You quite rightly said that you do not have any powers in this area and it is a matter for Parliament, but just now you have given us recommendations on a lot of different areas as to what Parliament might like to do. Do you think this area of private CCTV systems is one where there is a need for greater oversight?

Christopher Graham: There is a lot of work going on under the Protection of Freedoms Bill with consideration for a more appropriate regime for CCTV. At the moment it is concerned with public CCTV, but there is going to be a CCTV commissioner appointed. I would certainly be very ready to discuss with that commissioner how we ought to act jointly to deal with closed circuit television, because the very business of recording images is processing personal information.

Chair: Commissioner, thank you so much for coming in. As always, you have been extremely helpful with the Committee. We may write to you on other issues because we are just starting today. You are our first star witness, so please be aware that we might come back to you.

Christopher Graham: Indeed.

Chair: Thank you very much.

Examination of Witnesses

Witnesses: **Tony Imossi**, President, Association of British Investigators, **Ian Hopkins**, Board Member and past President, Institute of Professional Investigators, and **Ian Withers**, Governing Council Member, World Association of Professional Investigators, gave evidence.

Q45 Chair: Mr Imossi, Mr Hopkins and Mr Withers, you have heard the evidence that has been given by the Commissioner. I thank you all for coming to the Committee today. The fact that you are all together appearing on one panel does not mean that the Committee believes that you agree with everything each other says on these issues. It is common practice in an inquiry of this kind to get different groups together and we will ask you questions. It is more difficult with a panel of three with independent views, but I would be grateful if you could keep your answers as succinct as possible. Hopefully, our questions will be equally succinct.

Between you all, you represent the Association of British Investigators, the Institute of Professional Investigators and the World Association of Professional Investigators. That is quite a big remit. Perhaps I should put this question to each one of you. What are your estimates as to the number of private investigators currently operating in the UK? Mr Withers?

Ian Withers: I believe that it is approximately 5,000. This is based on the estimate put out some 10 years ago now by the Security Industry Authority and the Home Office implementation team at the time.

Chair: Mr Hopkins?

Ian Hopkins: I would go slightly higher than that, Mr Chairman. I would say between 5,000 and 10,000. Sorry to interrupt, it depends whether you include in-house investigators.

Chair: If you include in-house investigators, what would it be?

Ian Hopkins: Nearer the 10,000.

Chair: Mr Imossi?

Tony Imossi: Yes, Mr Chairman, I would agree with Mr Hopkins that if you include in-house it would be nearer the 10,000 mark. But I would emphasise that I did obtain the details from the Information Commissioner's Office under the Freedom of Information Act, which revealed that there are, in fact, 2,000 data controllers registered under the Data Protection Act. It would be my submission that if somebody who practises investigation is not notified under the Information Commissioner's powers, then really they would be irrelevant to the outcome of regulation.

Q46 Chair: What is it about the industry that causes the Information Commissioner to use the phrase "going down dark alleyways"—the shadowy nature of private investigators? Mr Withers, what has gone wrong with your industry?

7 February 2012 Tony Imossi, Ian Hopkins and Ian Withers

Ian Withers: I am not really sure that anything has gone wrong. The situation is that in 2001 the PSIA was brought into law. That is controlled in legislation. It was up to Government, through the SIA, to implement the part that affected private investigators. They have chosen not to do so, but the reality is that we have been clearly defined under the Act. The definition of what we do as licensable activities has been clearly specified. It is just a simple matter of creating a facility to start the regulation.

Q47 Chair: It is a matter of implementation. If the implementation was done, then the shadowy nature of private investigators would be lifted?

Ian Withers: Yes. From the public perspective, the biggest issue is who they go to if they feel that they have been wronged. If you have regulation, you have a regulator that you can file a complaint with and have it dealt with.

Chair: Mr Hopkins?

Ian Hopkins: I believe that the Act should have been implemented a lot earlier than it was, and I believe the problem was that there were more public concerns about people like wheel clampers, door bouncers and door supervisors. I do not perceive that there was a problem with investigators prior to the phone hacking scandal that has hit us over the last few months. Some 99.9% of investigators that I have worked with and know—I have been doing it for a long time—are quite genuine people who, if they need information, go the legal way to obtain it.

Chair: Mr Imossi, do you agree with Mr Hopkins and Mr Withers? Should this have been implemented?

Tony Imossi: Yes, I do, sir, but I do not agree that there was nothing wrong. Very much something has been wrong with the industry—always has been—and until statutory regulation is implemented, it will not even begin to start to address the problems. But it is—

Q48 Chair: What is wrong with the industry? This is your own industry that you are talking about?

Tony Imossi: The private investigation industry—well, the matters that have come to the surface over the past nine months are an exposé of exactly what has been wrong with the industry. I am a bit surprised to hear my friends here trying to convince you otherwise. It is very clear, I would submit, that statutory regulation will not go far enough to cure the problem. It does require that framework with an additional policing and regulatory facility in self-regulation.

This is a very unfortunate state of affairs that we are in because the Act did pass over 10 years ago and it should have been implemented. What is going to happen now, I think, is inevitable, and it is the SIA's plan to introduce licensing of businesses with a registration scheme for the individuals. The SIA have given the assurance that there is not going to be any watering down of the fit and proper criteria or the competency criteria but, of course, the licensing of the businesses will introduce far greater financial probity and accountability to those that really matter, i.e. those that—

Q49 Chair: We will come to that in further questions. That is very helpful. One final question from me is about the number of retired police officers who work as private investigators—indeed, there are examples of serving police officers who also work with authority as private investigators, and those who work without people knowing that they are private investigators. Mr Withers, is this a big issue?

Ian Withers: I do not believe it is at all.

Q50 Chair: What percentage of the industry are former police officers?

Ian Withers: I would say probably 50%-plus are former police officers and have retired quite properly and gone into the private sector.

Q51 Chair: You have no examples of police officers acting as private investigators while they are still serving?

Ian Withers: No, absolutely not. I have never come across anyone.

Q52 Chair: You know of no cases where police officers have been paid in order to act for private investigators?

Ian Withers: Absolutely not.

Q53 Chair: None. Mr Hopkins, you are a retired police officer.

Ian Hopkins: I am.

Chair: Having served for many years at the Met?

Ian Hopkins: I am.

Chair: You are an example of what appears to be a seamless—

Ian Hopkins: It was seamless. I had a particular expertise. I worked in the City of London Metropolitan Fraud Squad in the Met, and I just carried on doing what I was doing, but in the private sector. It was very seamless.

Q54 Chair: Would you agree with the percentage of about 50%?

Ian Hopkins: I would say slightly higher than 50%, yes.

Chair: What would you put it at?

Ian Hopkins: Probably 60% or 65% are retired police officers.

Q55 Chair: Do you think it would give police officers an unfair advantage because obviously they still would have mates in the force?

Ian Hopkins: Obviously, we still have mates in the force, but no, it does not give us an unfair advantage because they would be absolutely stupid to be supplying us with any information that was covered by the Data Protection Act.

Q56 Chair: You know of no examples where this has happened?

Ian Hopkins: None whatever, Mr Chairman.

Q57 Chair: Mr Imossi, you are not a former police officer?

Tony Imossi: No, I am not, sir, but we have undertaken research within our own organisation now.

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We are an organisation of circa 500 members and our research reveals that 40% of our members are former police officers.

Q58 Chair: You see no problem with this? You do not think it gives anyone an unfair advantage?

Tony Imossi: Not at all, sir. However, you could look at other areas—for example, former Works and Pensions officers who suddenly move into the private sector as investigators. If that individual working as a private investigator requires access to data in a legitimate scenario and he presents his former colleagues within that Government body a properly addressed request for data, quoting the exemptions under the Data Protection Act, two buddies might look more favourably towards each other's correspondence. My experience, whenever I present a request for access to information quoting the exemptions, is that it falls on deaf ears.

Chair: Very interesting. My colleagues are going to put questions to you. Please feel free, each one of you, to comment, but because we are time limited I would be grateful for brief answers.

Q59 Michael Ellis: Gentlemen, how representative of the industry are your organisations? Together, what percentage would you say you represent of private investigators?

Chair: Mr Imossi, do you want to start?

Tony Imossi: Yes. There is no reliable information that indicates exactly how many people there are out there practising as investigators. There is no requirement to register. The only requirement there is is to be notified under the Data Protection Act with the Information Commissioner and, as you have heard, the number is around 2,000 agencies. If the estimates are correct it could be 10,000, it could be 20,000; we simply do not know.

Q60 Michael Ellis: So the unscrupulous ones are unlikely to register with any of your organisations?

Tony Imossi: No, they—

Q61 Michael Ellis: They do not have to?

Tony Imossi: They do not have to. By necessity, they will not belong to a professional body, because they do not want to be accountable.

Q62 Michael Ellis: You have been asked about police officers working within your organisations or within the organisations that you represent. What about the other end of the extreme—what about people with criminal convictions? Do you think it is right and proper that people with previous criminal convictions should be working as private investigators or do you think that is something that could be regulated?

Ian Hopkins: It could be, Mr Ellis, but in the Institute of Professional Investigators, when someone applies for membership, we do a CRB check on them. If they have a criminal conviction, then they will not be allowed.

Q63 Michael Ellis: You do not allow them?

Tony Imossi: We don't allow them. We implemented the requirement to produce a criminal conviction certificate, which is basic disclosure, which is in fact all we are entitled to ask because we are not an exempt occupation. So we are not permitted to seek CRB standard disclosure, as Mr Hopkins suggests, but certainly it is part of our entry or procedure that we have a criminal certificate conviction submitted. It is not a zero tolerance. We follow the guidelines set by the Security Industry Authority in assessing the relevancy of anything that it should show.

Q64 Michael Ellis: I noticed that the Information Commissioner said on a couple of occasions that there are perfectly lawful means by which private investigators can obtain information without having to resort to the dark alleys and the like. Would you agree with that, or would you say that there are areas where you are finding it very difficult to legitimately inquire after insurance fraudsters or benefit fraudsters, or whatever else the investigators may be looking into? Do they reach brick walls, because they cannot legitimately pursue an investigation?

Q65 Chair: Before you answer that, Mr Withers, could you answer Mr Ellis' last question about your organisation and criminal convictions?

Ian Withers: Yes, indeed. There are two angles to the question. The first one is that the Act itself—the PSIA—has already determined and set into law the fact that criminality is subject to recency and relevancy as to whether or not a licence would be granted to an applicant had they brought it into play. As far as our organisation is concerned, we do not at this stage conduct a CRB or require it, because when we started as an organisation it was assumed that the SIA would bring in licensing and they would therefore determine who was going to get a licence or not. Our requirement was that they had to have a licence once the SIA started to operate.

Chair: Thank you.

Ian Withers: Thank you, Chairman.

Q66 Michael Ellis: What about the other point that I was asking about, gentlemen—the dark alleys and whether you think there are areas down which private investigators cannot go?

Ian Hopkins: You have a split here, Mr Ellis, between criminal and civil procedure. Under the criminal law, yes, there are alleyways that you can go down, under section 28 of the Criminal Justice Act, to obtain information. The difficulty comes on the civil side, where you can apply for a Freedom of Information Act or, unless you get a High Court order, you are struggling, because a lot of people will not respond to your requests.

Q67 Michael Ellis: Just to conclude my questions, do either of you two wish to answer that point in your own ways?

Tony Imossi: Yes. In October 2010, I submitted evidence to the Ministry of Justice call for evidence on the current data protection legislation framework and I gave several examples of where this problem lies. I gave real life case studies where requests for

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information held by data controllers were made, submitted quite legitimately—but again, it just hit a blank wall. What I was demonstrating there was the temptation for a client to go to the less scrupulous agency that offers these services and adopt some of these dark-alleyway tactics that the Information Commissioner refers to.

Michael Ellis: Thank you. Mr Withers, briefly?

Ian Withers: I think there are great difficulties in terms of conducting lawful investigations where you are proscribed from accessing information legally, and you literally have to provide a negative report to your clients, which can to a large extent frustrate due process.

Q68 Chair: In answer to my question, none of you said that you knew of any cases of leaked information being passed from the police to private investigators. Have all of you read the document *What Price Privacy*? You have. You did not see in there any reference to private investigators paying police officers?

Ian Withers: Yes, I did, Mr Chairman. From our perspective, it should be quite clear that those people that have accessed and obtained information are generally referred to within the industry as “information brokers”. They are not regarded the same way as private investigators, although it may well have been that private investigators would use an information broker to obtain information.

Q69 Chair: What is the difference between an information broker and a private investigator?

Ian Withers: The information broker is a person who obtains information, legally or illegally, for sale.

Q70 Lorraine Fullbrook: Does that mean you get somebody else to do your dirty work?

Ian Withers: It does not mean that at all. What it means to say is that those sorts of people are available out there and become more underground and will be available to those people that do choose to go that route.

Q71 Lorraine Fullbrook: But you would use their information?

Ian Withers: No, as a company we certainly would not. I merely pointed out that these people exist—

Chair: They exist.

Ian Withers:—and to distinguish between the private investigator and those people who obtain information such as the Chairman has referred to.

Q72 Chair: Mr Imossi, do you know about these information brokers? Do they have their own little organisation representing them or are they lone wolves?

Tony Imossi: The evidence that we saw in Leveson, *What Price Privacy*, indicates that it was an industry designed by and for the media. They are not people who have the methodology skills to investigate, per se. They simply steal information and sell it on. They may as well call them burglars.

Chair: Mr Hopkins?

Ian Hopkins: The one point I would make, Mr Chairman, is that if you are doing a serious investigation, there is no point in obtaining illegal information, because you cannot use it in evidence. It would be discarded and it would be a total and utter waste of time.

Q73 Mark Reckless: You say you cannot use illegal information, but we are hearing just now about this general prohibition on covert information gathering. What impact does that have on your business from the information—

Ian Hopkins: Covert cameras, are you talking about?

Q74 Mark Reckless: I am talking about the reference we had from the Information Commissioner just now to there being a general prohibition on covert information gathering.

Ian Hopkins: Information is gathered covertly, but not necessarily illegally.

Chair: Mr Imossi, do you agree with that?

Tony Imossi: I think the Information Commissioner was talking about another area, another problem. I do not think he was specifically intending to refer to legitimate investigations.

Q75 Mark Reckless: If, as he says, there is a general prohibition on covert information gathering, surely that handicaps your business—or was he wrong on that?

Tony Imossi: No. He is not wrong in saying that, making reference to it, but there is no crossover to what professional investigators do. That is not what we are about.

Chair: Mr Withers, anything to add?

Ian Withers: No, sir. I think it has been well covered.

Chair: You all agree on something.

Q76 Mark Reckless: Could you describe to the Committee where is the resistance coming from to a regulatory regime for private investigators?

Ian Withers: The Government.

Mark Reckless: The Government?

Ian Withers: Absolutely.

Q77 Mark Reckless: Not from private investigators themselves?

Tony Imossi: No, sir. The SIA have explained that the reason why it never came about before the change of politics was that they did not have the confidence that the training structure was in place to enable the operatives to reach the qualification. I do not necessarily agree with that view, but that was the view that was taken; secondly, that more consultation was required.

Now they have stepped back from that. In the aftermath of the change, the politics and the economics of everything, they have put forward this two-tier regulatory plan of licensing the businesses and registering the individuals. The proposal put forward by the Association of British Investigators is for there to be a twin-track system, where we have statutory regulation with an overridingly more professional, more policing, self-regulatory body. We have proposed a chartered institute of investigators, if

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we manage to achieve the collective application for a chartered status.

Q78 Mark Reckless: Are you telling us that all private investigators would positively welcome regulation?

Tony Imossi: It depends how you define “private investigators”. Professional investigators—the type of people who my members certainly are—all welcome some form of regulatory control; it would be a nonsense not to. But there are people out there who have been grouped within the wider perception of what private investigators do or who they are, who I am sure would run a mile away from any form of scrutiny that regulation would bring.

Chair: Thank you, Mr Imossi.

Q79 Mr Winnick: Mr Withers, I wonder if I could ask you about your organisation. You describe it as “The World Association of Professional Investigators”; it rather gives the impression of the United Nations. I mean, “World”—how many countries?

Ian Withers: Our members would cover probably around 40 countries—predominantly Europe, the far eastern states and a few in Australia.

Q80 Mr Winnick: So it is an ongoing bona fide organisation?

Ian Withers: Yes, absolutely. The members, where there is licensing, are all licensed. Contrary to perhaps common belief, the investigation business has become exceedingly international. It has become very European for the last number of years, and there is a considerable amount of work backwards and forwards between other countries and the UK and the UK and other countries.

Q81 Mr Winnick: In your memo, Mr Withers, you were perfectly frank about your past and you told us of convictions that occurred.

Ian Withers: Yes.

Q82 Mr Winnick: As I say, you have been perfectly frank and I have read this with interest. Presumably, you do not—otherwise you would not be involved—feel that what occurred should disqualify you from the work that you undertake?

Ian Withers: I do not believe so, sir. The convictions that you refer to unfortunately were obtained during the course of me doing perhaps more than I should for clients. That was indeed the case.

Mr Winnick: You describe it as, “A combination of youthful determination to provide successful results”.

Ian Withers: Indeed, indeed. This was in my twenties and 50 years ago. This is my 52nd year as a practising private investigator. In the 1960s, we did not have data protection, we did not have human rights, we did not have lots of legislation and restrictions that are now accepted as the norm. When a client came along, if the job seemed genuine, the client was genuine, we did our very best to achieve a result. Perhaps over-exuberance led to what we see.

Q83 Mr Winnick: You would say that you learnt the lesson?

Ian Withers: Oh, I certainly learnt the lesson, sir, believe me.

Chair: Can we move on?

Q84 Mr Winnick: I wonder if I can move on. Reference has been made to dark alleys; I think sometimes the expression is “the dark arts”. That is familiar to the three of you, is it—“the dark arts”?

Ian Withers: I have heard it in respect of the media, but certainly not in response to our own industry.

Q85 Mr Winnick: Yes. Do you think there are dark arts, which—

Tony Imossi: Sir, I think there is a lot of confusion, and I think using expressions like “dark arts” is possibly bordering on recklessness because there is no definition of what the dark arts are. I raised this issue last week before Lord Justice Leveson, because the confusion stemmed over into some discussion groups—not, I hasten to add, within my organisation—and a slant was being put on what dark arts were and how far it could be extended.

I have exchanged correspondence with the Information Commissioner, who has now given some clarity and set the matter straight, and this month my organisation will be publishing an extract of correspondence. But I do not think that, in a cleansing environment such as this, using expressions like “dark arts” without some definition and clarity is going to be particularly helpful.

Chair: Mr Hopkins?

Ian Hopkins: I agree with what Mr Imossi says.

Chair: Mr Withers?

Ian Withers: I would agree entirely, sir.

Chair: Something else you all agree on.

Ian Withers: Absolutely.

Q86 Mr Winnick: No doubt as a result, Chair, of our inquiries, the dark arts will be less dark at the end of them.

One final question. There have been various fictional accounts of private investigators, American films, but are you familiar with the character, the investigator, in *The End of the Affair*? Does it ring a bell at all?

Ian Hopkins: No.

Mr Winnick: Not at all?

Ian Withers: No, sir.

Mr Winnick: In which case, there is no use pursuing the question. Thank you.

Chair: You know Sherlock Holmes, of course.

Q87 Alun Michael: Should we have compulsory licensing? In other words, should it be illegal for people to undertake the investigative activities without being licensed or registered?

Ian Withers: Absolutely so, and I think that that should include the so-called in-house investigators that are the primary cause of the ongoing media inquiry.

Q88 Alun Michael: So you would say that it is for individuals and for organisations, then?

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Ian Withers: The Act as it is now relates to individuals and what they do, so it is going to take a new Act of Parliament to change that. Effectively speaking, individuals should be licensed and the licensable activities are a very good, simple and acceptable way of doing so.

Q89 Alun Michael: Would you agree that the organisation whose employees undertake activity also ought to be registered?

Tony Imossi: Yes. Not only that—if I could just add on—one of the key possible cures is also to make it an offence to actively engage someone who is unregulated.

Q90 Alun Michael: Understood. That is very helpful. At an earlier point, one of you said that there should be a body to which people can go if they want to complain about any activities. Would you also accept that people should not have to complain—they should know that they can depend on the behaviour of those within a specific industry such as yours?

Ian Withers: Absolutely. It is an unfortunate fact that there are those people out there who will take money from people and not perform the task. These are the people that we would hope regulation will weed out and should those issues ever occur there is a pathway for them to take their issue or complaint.

Q91 Alun Michael: There are two aspects. Obviously, one is the propriety of the activity that is undertaken—what is appropriate, what is right, what is within the law—but the other issue is that of competency. Would you agree that competency also ought to be a part of the licensing arrangement, and, if so, how should competency be assessed?

Tony Imossi: Sir, there is already an established qualification. In fact, there are two qualifications now that have been approved and recognised by the Security Industry Authority as meeting the national occupational standards and requirements. All we need to bring about is the training for it, and that is already—

Q92 Alun Michael: So that should be a part of the licensing requirement?

Tony Imossi: It should very much be part and parcel. Sir, if I can just go a little bit further. If you have looked at my written submission, you will have seen what the criteria are and how we self-regulate our members. That criteria gave confidence to certain sectors professionally, particularly the Law Society of England and Wales and the Law Society of Scotland, who now see and advise their members of the reputational risk in engaging any professional investigator who is not a member of the Association of British Investigators. So it is a system that works.

Q93 Alun Michael: In some other fields, we have come across difficulties in terms of accreditation of qualifications, where there are several; sometimes people move from one to another to get the easier

requirement. Would you accept that setting the level of standards within the system of accreditation ought to be a very clear part of the statutory arrangements?

Tony Imossi: It is already, sir. The national—

Alun Michael: No, but the statutory arrangements.

Tony Imossi: Yes, it will be because the qualifying body will have to meet the national occupational standards and be approved by the SIA, so that is already in place.

Q94 Steve McCabe: Gentlemen, I want to follow on from Mr Michael's point and make sure I have understood you correctly. All three of you are telling this Committee that anyone who works as a private investigator, in the broadest definition of that term, should be licensed to do that work and that the company they work for should be further regulated and it should be a regulatory offence if the company employs an individual who is not licensed. That is your position?

Tony Imossi: That is the recommendation from the Security Industry Authority.

Q95 Steve McCabe: So it should not be difficult to bring that forward if there is a will to do so.

The popular image, the fictional image, of private investigators is very much at odds with the picture that you present today. They are often presented as lovable rogues who have a slightly cavalier attitude to the rules and bureaucracy that binds other formal investigatory bodies. Is that a completely unrealistic image?

Ian Hopkins: It is, sir, but you will not get away from it while you have fiction writers coming up with these detective stories, a lot of which are as you describe them. It is totally against and it is totally abhorrent to what we actually do.

Tony Imossi: I consider myself lovable, but not a rogue. It is completely fictional.

Steve McCabe: The same?

Ian Withers: I quite agree. I think it is a misconception enjoyed by the public, but not the way real life actually works.

Q96 Steve McCabe: I was struck by this question, Mr Withers, particularly in view of the evidence that you gave about your own past. Is there any reason why someone who has a previous conviction, and discloses it, should be prevented from working as a private investigator, or does it depend on the nature of that conviction? If so, where would you draw the line?

Tony Imossi: There is a matrix drawn up by the Security Industry Authority as to what will be taken into consideration and what will be excluded. It seems very fair. It takes into account the Human Rights Act, the individual, and I am sure it works for the other sectors of the industry. The only line I would draw is—and here is where I cannot agree with Mr Withers—when you are in a representative capacity, engaging in a process of cleansing the industry, it is not right that you come with dirty hands. You have to

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be transparent and clean in order to put across your view that would not be tainted by the antecedents that you bear. This does not mean—

Q97 Chair: If you want to be a professional organisation that is respected?

Tony Imossi: Absolutely, sir. You cannot start having the poacher-turned-gamekeeper scenario. It just simply—

Q98 Chair: Even though they are former police officers, 60% of them?

Tony Imossi: That might speak volumes, sir, but I would not like to comment on that.

Q99 Chair: Okay. Steve Whittamore was at the centre of the Motorman Inquiry. Was he a member of any of your organisations?

Ian Withers: Certainly not our organisation.

Q100 Chair: You have heard of him, presumably? So none of you dealt with his company, JJ Services?

Ian Hopkins: No.

Q101 Chair: So how was he able to proceed to do his work without being a member of any of your organisations?

Tony Imossi: He had the captured market of the media. That was his market.

Q102 Chair: So he was known to be the private investigator who would deal with the media?

Tony Imossi: Known to the media.

Ian Withers: Or an information broker, certainly.

Q103 Chair: Or an information broker. Which was he? Was he a private investigator? Everyone thinks he

was a private investigator but, Mr Withers, you think he was an information broker?

Ian Withers: The media called him a private investigator, but in reality he was an information broker and those were the services that he provided.

Q104 Chair: Now that he no longer provides these services, who has taken his job as the main information broker to the media?

Tony Imossi: There was evidence before Leveson two weeks ago, I understand—I did not see it—that in fact he is back in business, and I think the Express Group was mentioned, but I have not seen any evidence of it.

Q105 Chair: Is he a member of any of your organisations now?

Tony Imossi: No, sir. No.

Q106 Chair: Does he operate under any particular companies? It is still JJ Services?

Ian Withers: Not aware.

Chair: So he has gone back into business?

Tony Imossi: So I understand.

Chair: Mr Withers, Mr Hopkins, Mr Imossi, thank you very much for giving evidence to us today. We might write to you again because this is only the first session. If there are any examples that you think will be helpful to this Committee—

Mr Winnick: Dark arts.

Chair: —I think Mr Winnick might want a seminar on the dark arts, I am not sure—please write to us and let us know. Thank you very much for coming.

Examination of Witnesses

Witnesses: **Commander Peter Spindler**, Metropolitan Police, and **Roy Clark QPM**, retired Deputy Assistant Commissioner, Metropolitan Police, gave evidence.

Q107 Chair: Mr Clark, welcome back. I know that you retired from the Met and thank you for coming to give evidence to this Committee on these matters. Commander Spindler, thank you also for coming here. You have heard all the evidence, I think, that has been given. We might make reference to what the Information Commissioner or representatives of the industry said.

I am particularly concerned about the role of police officers. Were you surprised, Commander Spindler, at the percentages that were just given to this Committee—that between 50% to 60% of private investigators are former police officers?

Commander Spindler: Mr Chairman, firstly, thank you for the opportunity to address the Committee this afternoon. Thankfully, I was reassured by those numbers because one of the points I did want to make for the Committee is that this is not just an issue for the Police Service; this is about all law enforcement agencies and, indeed, the military. There are

significant examples, if you take the wider definition of private investigators, where you broach into private security, technical surveillance that is undertaken by companies and training services provided in this new and emerging market, it is a far greater issue than just the Police Service.

Q108 Chair: Yes, of course, we will concentrate specifically on the Police Service for the purposes of today. Mr Clark, do you think that serving police officers should declare any contact that they have with private investigators?

Roy Clark: I do, Chairman, yes. I know from my long experience, which is why I am here, that in the past that has not been so and it is probably not so now. There are two elements here and, with great respect, I think part of the challenge facing the Committee—and we have heard various analogies to dark alleyways and dark arts—is that it is an iceberg we are talking about here, really. There is that section that

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is visible and above water, but I do not think that even regulation will change the fact that there will still be a covert—I think you would call it—unscrupulous element. I think you have also concentrated very much on information, but the dark arts go beyond purely information.

Q109 Chair: What do they go on to, Mr Clark, the dark arts?

Roy Clark: I emphasise that I am not here to speak from either the Police Service or my former place of work at Revenue and Customs, but I can think of one case that is well documented and went before the court. A private investigator was approached by a man because he wanted their advice on how to obtain custody of his child in a child custody case. The information he received from the private investigator was that it would be good if a conviction could be contrived against his partner. They went beyond giving that advice; they went as far as to obtain some drugs, ensure that they were placed into the car of the wife and ensure that the information got into the Police Service and that the wife's car would be searched and she would be arrested.

I emphasise that the police officers who undertook the search were entirely unaware of the circumstances and in the end, because it was the subject of police surveillance at the time, right was done. The perpetrators were arrested, charged and convicted and the lady was exonerated entirely.

Chair: But you sound deeply concerned that this is—

Roy Clark: I am, because, with great respect, I think it is not purely an information issue. It does go beyond that. There are people who masquerade as private investigators—people who never like to have that title attributed to them, but are there and known to organisations and to the criminal world and who will undertake certain activities that may or may not be aligned to mainline private investigation. They probably would not want to be called that, but they can use various knowledge, skills and awareness to do more than just obtain information.

Q110 Chair: Should we really stop former police officers from becoming private investigators, bearing in mind that they have a lot of contacts still in the force? Should we have a limit or even a period of purdah from when they cease to be police officers to when they become private investigators?

Commander Spindler: Before I answer that, may I just go back to the issue of associations of private investigators? That will lead on to a more detailed answer to your main question.

Chair: Of course.

Commander Spindler: We have introduced in most forces in recent years what we call “declarable associations policies”. In my own force, the Metropolitan Police Service, we have a policy that is owned by my directorate, the Department of Professional Standards, and there are six categories. Category 6 is persons, including former police officers, who are working in related fields of employment, i.e. private investigation and the security sector. So we are asking all our employees who have connections into that industry to declare those so that

we can better understand the relationships and then risk-manage those.

The second issue is we have a register of business interests. This is governed by the Police Regulations 2003 and leads on to the point that I was going to make in answer to future employment. It is very much held in accordance with the Human Rights Act, and article 8 in particular, where we judge what business interests are compatible or not. We have 14 categories of incompatible interests, and one of those is working as a private investigator.

Q111 Chair: So you would be surprised to note that one force has authorised three officers secondary employment as a private investigator? Would that surprise you?

Commander Spindler: It would surprise me. I have checked our own database for London, and while we do have a small number of officers who are involved in private security, and that is often training—

Chair: While serving as police officers?

Commander Spindler: Yes, but that could be as training, some of it could be providing services that are aligned to security, but we do not have any as private investigators.

Q112 Chair: You would disapprove of someone who is serving as a police officer also being a private investigator?

Commander Spindler: We would not authorise that in London.

Chair: The Met would not authorise it.

Commander Spindler: It is dealt with on a case-by-case basis, and it will be up to the individual Chief Constables as to whether they authorise it or not.

Q113 Chair: Mr Clark, we have received written evidence that police officers have accepted payments for information, and hopefully we will be calling some of the people who have written to us and spoken to us to give evidence to this Committee. You have been involved at the very highest levels on a number of issues. Have you seen evidence in your career of police officers accepting money for information?

Roy Clark: In my police service, there was evidence of that, and there was certainly great intelligence of it gathered in the late 1990s when there was a covert operation to scope police criminality. There was certain good intelligence and some evidence of payment received.

Chair: Commander Spindler?

Commander Spindler: If I could draw the Committee's attention to the Serious and Organised Crime Agency's *Threat to UK Law Enforcement from Corruption*, in their key findings, they defined “corrupters” into four categories, and one of those categories is private investigators. This was a document produced in 2010 for our ACPO Anti-corruption Advisory Group that is chaired by Deputy Chief Constable Bernard Lawson from Merseyside.

Chair: Yes. That is very helpful, but have you seen evidence of police officers receiving payments for information?

Commander Spindler: I have not, in my experience.

Chair: But you know about it.

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Commander Spindler: But it would not surprise me. What I was going to say was that the private investigators are described as an increasing threat to law enforcement in their activities as corrupters.

Q114 Chair: By SOCA?

Commander Spindler: By SOCA, yes.

Q115 Chair: You agree with that?

Commander Spindler: Yes, I do.

Chair: Corrupters of the police?

Commander Spindler: Yes.

Q116 Chair: So you know it is going on?

Commander Spindler: We believe it. We have intelligence, but proving it is a different matter. From a professional standards perspective, we have been investigating private investigation companies since the late 1990s.

Q117 Chair: Did you follow the evidence of DAC Akers at the Leveson inquiry yesterday? I suppose you did not.

Commander Spindler: I am afraid I did not.

Q118 Chair: She will, of course, be updating this Committee on her inquiry. Is there anything that you have seen that is new that you can tell the Committee about, in respect of Elveden or any of the other investigations?

Commander Spindler: My directorate is very much on the periphery of that, as DAC Akers is leading her own covert investigation and we support and assist, although I am sighted on some of it. What I will say is that we have more investigations and more evidence about inappropriate relationships with journalists than we do with private investigators. So there is more intelligence about leaks to the media than information leakage to private investigators.

Q119 Chair: You are telling this Committee that you share SOCA's concern about the activities of private investigators in respect of their relationship with the police?

Commander Spindler: I have no reason to doubt their strategic assessment that it is an increasing threat to law enforcement. For the Committee's information, the other three categories are partners and family friends, criminals themselves and, surprisingly enough, journalists and commercial interests.

Chair: That is very helpful, thank you.

Q120 Lorraine Fullbrook: Commander Spindler, you have said that a serving police officer cannot act as a private investigator, but can a serving police officer have a business interest as long as it was declarable?

Commander Spindler: Not as a private investigator.

Q121 Lorraine Fullbrook: So he could not have a business interest in a private investigating firm, even if it was declarable or not?

Commander Spindler: No, we would not authorise that.

Lorraine Fullbrook: Okay—interesting.

Q122 Chair: You mean the Met, but other forces may?

Commander Spindler: As I say, it is governed by police regulations. Each force will draw up their own criteria, and it is case by case but it is highly unlikely, if it is such an incompatible interest, that it would be authorised.

Q123 Lorraine Fullbrook: There is no national standard for that then?

Commander Spindler: Unfortunately, most of these things are dealt with on a case-by-case basis in accordance with the regulations and the Human Rights Act.

Lorraine Fullbrook: So somebody could not have shares in a private investigating company and declare it and it be acceptable?

Commander Spindler: That is my understanding, yes.

Q124 Chair: In answer to Mrs Fullbrook, do you think there ought to be a code that will standardise the situation all over the country so that the Met is not doing one thing and Gloucestershire or Leicestershire doing something else? Would it be helpful to have such a code?

Commander Spindler: The British Police Service tries to co-ordinate and ensure consistency across the country, through either Her Majesty's Inspectorate of Constabulary or the ACPO portfolios. This is a subject area where I believe the business interests are under the human resources portfolio. So these issues will be discussed.

Q125 Chair: Of ACPO?

Commander Spindler: Yes.

Q126 Chair: Who is the lead?

Commander Spindler: Peter Fahy, from Greater Manchester.

Chair: From Manchester.

Commander Spindler: The declarable associations one is under the professional standards portfolio.

Chair: Very helpful.

Q127 Mr Winnick: Commander, Mr Clark, or both—when a serving police officer of any rank has contact with private investigators, is that on record?

Chair: Mr Clark?

Roy Clark: That is a detail I cannot give you because my police experience is very dated, so I really—

Chair: Commander?

Commander Spindler: We do not have a system to record that.

Q128 Mr Winnick: That is unfortunate. It may well be legitimate in certain investigations, inquiries of any kind, for private investigators to be asked and the rest of it. Should the police officer not put that on record—that he has been in contact with X, Y or Z?

Commander Spindler: If it was part of a legitimate investigation, I would expect it to be recorded within the crime report. We have a crime report investigation system where an officer would detail the lines of inquiry they have undertaken, so if they have had contact in that context—

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Q129 Mr Winnick: Is it compulsory?

Commander Spindler: It is not compulsory, but it would be good practice.

Q130 Mr Winnick: You say “legitimate”, but what about illegitimate?

Commander Spindler: Unfortunately, if the activity was illegitimate, they are not going to record it—

Mr Winnick: Precisely.

Commander Spindler:—or bring it to notice.

Q131 Mr Winnick: As far as contacts—coming to some earlier questions—clearly, they do exist?

Commander Spindler: We believe it exists, as we heard earlier—that there are a significant number of officers who in retirement will work in private security, in the private investigation industry. Their serving colleagues will be looking for future employment and, towards the end of their service, may well increase their contact as they look at what their future opportunities are.

Mr Winnick: Some may say, Commander, that that is not ethical.

Commander Spindler: It depends on the nature of the contact. The private security and private investigator industry has a legitimate purpose in our society. They take a lot of work away from the Police Service, working for the corporate sector in due diligence and fraud investigations. These are all matters that will greatly assist the Police Service if they are dealt with by companies, so—

Mr Winnick: Some would say it would greatly assist serving officers near retirement looking for another job when they leave.

Commander Spindler: Sorry, could you just repeat that?

Mr Winnick: Some would say that would greatly advance the interests of those officers near retirement who are looking for another job when they leave the police.

Commander Spindler: Yes, it will, and they are going to use the skills that they have learnt while they have been employed in law enforcement.

Q132 Michael Ellis: Do I take it that you would both be in favour then of regulation of the private investigation industry?

Roy Clark: I certainly think it would be a step, but it would not be a panacea. It would not be an answer to everything.

Q133 Michael Ellis: What about self-regulation, as opposed to regulation by an external body?

Roy Clark: Part of the issue there would be what sanctions were available. It would also be that—I think we alluded to it just a moment ago—those that indulge in unscrupulous behaviour are likely to make that very covert. These are resourceful people. If I can use the word “cunning” in its fullest sense, these are cunning people and it is likely that if they are going to be registered, and involved in unscrupulous behaviour, it is not going to be easily detected.

Q134 Michael Ellis: That is what concerns me because, as you very rightly say, there are the

unscrupulous, there are those who masquerade as private investigators—but of course they are not members of the bodies from whom we have heard evidence already this morning and they misconduct themselves, they commit criminal acts, examples of which you have given today. Therefore, what would concern me is that historically Government has a tendency to regulate the law-abiding; meanwhile, those who are prepared to ignore the law ride roughshod over the regulations that can stifle the law-abiding.

Roy Clark: I agree entirely. We have heard reference to information brokers. I do not know where that definition came from, but they are doing exactly the same as private investigators except they choose to give themselves another name, or somebody has given them another name. There are a whole group of people out there who would not want to go anywhere near being called a private investigator. But they indulge in just the sort of behaviours that private investigators do, although, for their own reasons, they want to be covert.

Michael Ellis: Commander?

Commander Spindler: We do not have an ACPO position on regulation. I have consulted with colleagues from the Professional Standards Committee, which I am a member of, and it is not an issue that we have discussed in any great detail. From a personal perspective, I always found it very beneficial to deal with bodies who do have codes of conduct values, an ethical framework within which to work, so if we have an issue with a solicitor then we will refer to the matter to the Law Society.

Q135 Michael Ellis: I think it was the editor of the *Daily Mail* who called for proper press passes—a review of press passes for the journalism industry. Is that right? I think that is right. I wonder whether you think that might be a way forward in terms of the private investigators’ industry. It might possibly be a way forward in terms of self-regulation.

Commander Spindler: Again, if I go from a personal perspective, I have the ACPO lead for technical surveillance and we are looking very much at issues of accreditation—accrediting units and licensing of operatives—and this is all part of professionalising the service that we provide. While we can do that within policing, I would look very much to those who are providing similar sorts of services to the public to operate in the same sort of way.

Roy Clark: I was just thinking that tactically for the Police Service it would be a good thing, in as much as if you had a registered group of people who were engaged in private investigation and you had a group of people that were doing it but not registered, from an intelligence point of view and from a focus point of view, that would be a very interesting prospect.

Q136 Steve McCabe: Commander Spindler, I just wanted to ask, you said that ACPO did not have a position on regulation. I was slightly surprised about that, given that the whole business transformation that is taking place within police forces is likely to bring the police into much closer working relations with the private security sector. I would have thought that

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ACPO may have felt it necessary to give the Government some advice on how this will work. I am very surprised that you do not have a position on it as yet.

Commander Spindler: With the limited time that I have had to prepare, I have only spoken to a number of ACPO colleagues within my sphere of operation. We are very happy to take this back and come back to the Committee with a more considered position, but I would want to consult a bit more widely on that before I commit myself one way or the other.

Q137 Chair: There does seem to be an absence of leadership on this matter. The Met seems to have adopted a particular position as far as police standards are concerned, but there seems to be no national position—something that Mrs Fullbrook elucidated in a question to you. Should it be the responsibility of Sir Denis O'Connor to do this? Somebody needs to do something, do you not think?

Commander Spindler: It depends what it is you are looking for us to do.

Chair: Well some ethical standards, because, as Mr McCabe says, in the new landscape it is not clear where these things are going to go.

Commander Spindler: Partly because of the structure of policing in the UK, it is very much down to each individual Chief Constable to set the standards for their force within the police regulations. So we have the legislative framework and it is the interpretation of that. Adrian Lee, who is Chief Constable in Leicestershire, leads on—

Chair: Not Leicestershire. Leicestershire is Simon Cole, unless something happened yesterday.

Commander Spindler: No, he is somewhere in the Midlands, forgive me.

Chair: It is only the Midlands, because you are London-based, of course.

Commander Spindler: But Adrian Lee has—

Chair: So it is Northamptonshire.

Commander Spindler: It is Northamptonshire, yes.

Mr Winnick: It is all north of Watford.

Chair: Sorry, please conclude.

Commander Spindler: He has the lead on values and ethics and we work alongside him as a Professional Standards Committee, so on these ethical issues we do defer to his ACPO portfolio.

Chair: We will write to him. Mr Michael, waiting patiently.

Q138 Alun Michael: Not very patiently. I share the surprise that ACPO does not have a position and it would be very helpful if you were to consider this and to come back to us.

Can I put it to you that it would make for considerable clarity for the police, and for others, if there was a system of compulsory licensing, which made it very clear that those who are undertaking activities in the field of private investigation were only doing so legitimately if they were licensed and therefore regulated?

Commander Spindler: That is a distinct possibility, because the private industry are not governed by RIPA or the Police Act—which is the legislation that governs our activity as public authorities—unless they

are in fact working for another public authority and have had work contracted out to them, in which case they will need to ensure that the Director of the Surveillance Authority is informed.

Q139 Alun Michael: You indicated some lack of clarity about definitions, in the sense that the data broker phrase, which we have heard this morning, is clearly one that is not recognised by you as a term of art.

Commander Spindler: No, it is not.

Q140 Alun Michael: The licensing system is essential so that we know what we are talking about even. Would you also agree—and this may be something that you want to come back to us on, if you are going to supplement your evidence—that there should be both an individual registration, so that individuals undertaking activities are registered and regulated, and a company registration so that those who employ private investigators are properly registered and regulated?

Commander Spindler: These are all possibilities. I would prefer not to commit myself as a police spokesperson at the moment until we have had a bit more time to consider that and—

Alun Michael: Could we ask you to come back to us with a considered view on those points?

Commander Spindler: We will.

Alun Michael: Thank you.

Q141 Chair: Mr Clark, you have no such restrictions. Do you want to give us some blue skies thinking?

Roy Clark: Chairman, I was just about to say that I am not constrained anymore by ACPO but, yes, if I think about the sense of that. I make the point—and I have checked this out with my former bosses in HMRC, where I spent the last five years conducting criminal investigations—that it is not just the police who are living with this problem, and the information sources there are tremendous, but it is something that occupies my former organisation of HMRC. It takes up a massive amount of time and worry, and anything that would make the picture clearer, rather than this slightly diffused view we have of this problem at the moment, must make the life of the regulator, the organisation and those charged to deal with the matters, better.

Q142 Alun Michael: Could I ask you one final thing, which is the question of criminal convictions? Where should the line be drawn? Should anybody with a criminal conviction be barred from working as a private investigator, or should it only be particular types of offences or serious offences? Do you have a view on where the line should be drawn?

Roy Clark: Having wrestled in the past with the sort of work that Peter does now, I am aware that several police officers have convictions and remain as police officers—that was in the media recently—and for some quite surprising offences. There was one particular offence, at which I should think you would probably throw your hands in the air and say, “How could that possibly happen?” that I am aware of the

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detail of. When it is explained, it is quite understandable why there is a police officer in the Police Service with a conviction for conspiracy to pervert the course of justice.

Q143 Alun Michael: Accepting that it has to be dealt with on a case-by-case basis for the interests of justice—

Roy Clark: Yes, exactly.

Alun Michael:—but, in general terms, where do you think the line should be drawn?

Roy Clark: I think it should be an exception that a private investigator should have a conviction, after a clear examination as to the relevance and probably the timeliness of that.

Chair: Commander?

Commander Spindler: Mr Clark is quite right. There was a Freedom of Information Act request from the Press Association, which was published during the Christmas period, which talked about the numbers of officers that were serving with convictions. I do not think it is a question we had asked internally, and certainly in London we have a number that I am aware of. I think it will be very difficult to say that a private investigator can have no convictions when you have law enforcement officers who do have some. Hopefully, they are for relatively minor matters and many of them are traffic offences.

Q144 Alun Michael: To simplify it, would you think in general terms there ought to be a declaration and it ought to be considered by a regulatory body whether there was sufficient reason for debarring or not debarring somebody?

Commander Spindler: I would agree with you there. We certainly do need to set the line somewhere and state what offences would be incompatible and what convictions we would not expect a private investigator to have.

Q145 Mark Reckless: It is interesting to note that there is no ACPO policy in this area. I am not sure,

Mr Clark, whether you rather let the cat out of the bag by saying you are no longer constrained by ACPO, because of course ACPO always tells us that their missives are merely advisory. I do wonder though in this area, given it is regulation of what senior police officers may be doing after retirement, whether it may be more appropriate for the elected Commissioners to take a lead on this once they are in place. I think Adrian Lee has agreed the protocol and it gives a very strong role for the Commissioners. As witnesses, do you think that it could be the elected Commissioners representing the public who perhaps should lay down the regulation in this area?

Commander Spindler: That would need a change of legislation. The Police and Crime Commissioners certainly would hear the appeals, if we are talking about the business interests side of things.

Mark Reckless: The general policy.

Chair: Provision.

Commander Spindler: Yes, the Government's objective was to make the Police Service more accountable, and if that is through the Police and Crime Commissioners then—and I can only speak personally—I would have no difficulties with them. It is going to be their full-time job doing this and representing the views of the electorate.

Mark Reckless: Mr Clark?

Roy Clark: I agree.

Chair: Commander Spindler and Mr Clark, thank you very much for coming to give evidence to us—especially Mr Clark, whom we brought out of retirement for this purpose. If either of you has any further thoughts that could help the Committee in our inquiry—we have only just started it today—we would be very happy to hear from you. I will be writing to Mr Fahy and Mr Lee about these matters as well. Thank you very much indeed.

Tuesday 13 March 2012

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Lorraine Fullbrook

Steve McCabe
Alun Michael
Mr David Winnick

Examination of Witnesses

Witnesses: **Tommy Helsby**, Chairman, Kroll, **John Conyngham**, Group General Counsel and Global Director, Corporate Investigations, Control Risks, and **Bill Waite**, Chief Executive Officer, Risk Advisory Group, gave evidence.

Q146 Chair: Mr Conyngham, Mr Waite and Mr Helsby, thank you very much for coming. This is the latest session in the Committee's ongoing inquiry into private investigators. We are most grateful to all of you for coming, representing Kroll, Control Risks and the Risk Advisory Group, three of the largest investigation companies in this country. When there are three witnesses, it is always difficult to know when to come in. Please feel free to chip in to any of the questions that my colleagues and I ask of you. The only thing is we would very much like brief and succinct answers because we have other witnesses on other inquiries coming in after you. We will also try to ask brief and succinct questions of you.

Can I begin with you, Mr Helsby, and the others perhaps would like to comment. There appears to be a lot of concern about the way in which your industry is—I was going to say regulated, but not regulated may be better. Is that concern shared by the three of you? Mr Helsby, perhaps you can start.

Tommy Helsby: We do have a concern about the lack of regulation, principally because of the public image problem that it creates for what is loosely described as an industry. Private investigation, outside of novels, is a fairly broad and ill-defined activity. What I do and what my friends here do is a commercial activity driven by business needs, and has nothing to do with the kind of issues that have emerged in the press and given rise to the concerns over the past year.

Q147 Chair: Thank you. Mr Waite?

Bill Waite: We have supported regulation of the private security industry in terms of the core competencies that were outlined in the 2007 paper—that is, around issues such as formal investigations, surveillance and physical monitoring of individuals. We co-operated in 2003, 2006 and 2007 with the SIA to try to get some texture around what that regulation might look like.

Q148 Chair: Mr Conyngham?

John Conyngham: We, too, have supported regulation from the very beginning. Our concern is the same as Kroll's, as Tommy Helsby has just explained: the image that the activities we have been reading about in the press every day over the last months are giving to this industry, and perhaps our failure to explain properly what, in our part of this sector, we are doing and how important that has

become. I think we have seen in our industry how we have gone over the last 15 years from, on the due diligence side of affairs, perhaps being an optional extra, to being now a mainstream advisor: many pieces of legislation—the latest being the Bribery Act—are coming out, and we are telling companies how they must know who they employ, who they do business with and on what terms they do business. That is a very large part of what we do. There are other parts—the more intrusive parts of investigation, in relation to fraud investigation or malfeasance—where there is a need for regulation and there should be regulation, and we are regulated elsewhere for those purposes, in other jurisdictions. But we would like to maybe have a discussion this morning about the area of due diligence.

Q149 Chair: Yes. You are all quite clear. You seem to be distancing yourselves from the examples that the public has seen and Parliament has seen about illegality within the private investigation industry. You are quite clear that as far as your three firms are concerned there is no question of anyone involving themselves in illegality in the work that they do?

Bill Waite: That is quite right. We go to great lengths in our internal training protocols to ensure that people within the firm have a deep and detailed understanding of the relevant legislation. Indeed, we made that recommendation to the SIA when it was looking at competencies. We have FSA-level screening of our staff to ensure that they are essentially fit and proper to do what they do, and we support their skills and experience by additional training as and when required. But you have to understand that we work for governments, government departments, multinational and multilateral organisations, and our businesses are all significant businesses. We could not afford, apart from any other issue, to be involved in any activity that caused any kind of stigma to attach to our clients, or indeed to us.

John Conyngham: In Control Risks, investigations is by far not the only thing we do. We do many other activities. Indeed, investigations was, in effect, the last core area that the company got into—I was invited in 1994 to set up the investigations side. The company could have been in this area a lot earlier but it had concerns about possible reputational issues, how we would define an investigation, and how we could even

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guarantee the outcome of an investigation. We started up at Control Risks with a very clear mandate that this was to be internally highly regulated, with standard operating procedures and codes of conduct, and it has been from the very beginning. We read about what everybody else is reading about, but only with mild interest because it doesn't affect our business.

Q150 Chair: Mr Helsby?

Tommy Helsby: Kroll is a little different from the other two companies in the sense that we are an American-owned company and as such, we are licensed as investigators in 50 states in the US. We also have licences in Italy, in Spain, in Japan and, I think, in Singapore. We spent the last 12 years first as an independent public company and then as part of a much bigger public company—we are now private-equity owned—so we were subject to SEC regulation, to Sarbanes-Oxley—

Q151 Chair: So you think the American system is better than the system we have here?

Tommy Helsby: No. What I would say is that the regulation of investigative activity is a good thing as long as it is done in an efficient and proportionate manner, partly because, as I said at the beginning, we would like to raise the reputation of the industry. We would like people to think of what we do as a good thing and something that is on the right side of public policy. We know it is, but there are some people who do not operate by the same rules.

Q152 Chair: Do you think these people are dragging the good name of the industry down?

Tommy Helsby: Along with novelists.

Q153 Chair: Can I just ask you about police officers and the relationship you have with the police, but first, very quickly, will you tell us about your backgrounds—your careers before you took on your present career? What were you doing, Mr Helsby?

Tommy Helsby: I have worked for Kroll for 31 years, so I can barely remember. I was briefly a writer and before that I was doing a PhD.

Q154 Chair: Mr Waite?

Bill Waite: I spent seven years at the Bar, principally defending in criminal cases. I was then seconded to the Serious Fraud Office for three and a half years. I was on the way back to the Bar, but I was headhunted, actually by Kroll Associates. I left Kroll after two and a half years, raised venture capital and started the Risk Advisory Group 15 years ago.

Q155 Chair: Mr Conyngham?

John Conyngham: I qualified at the Bar in 1975 and initially worked for Her Majesty's Customs and Excise. Then I moved to Hong Kong, where for 10 years I was a prosecutor in the Attorney General's Chambers, specialising in fraud prosecution. I came back from Hong Kong in 1989 and went to Kroll Associates and set up the legal function there and the fraud function, and I have been at Control Risks since 1994.

Q156 Chair: Thank you. We were surprised at the number of former police officers who worked for private investigation firms. Do you have any figures for us as to the number of employees of yours who were formerly police officers?

John Conyngham: A very small minority. Out of a team of 50 sitting in our London office, we have three with police backgrounds, and I think that is what is interesting. If I could just briefly refer to some of the backgrounds of the people that we have, I am looking here at someone—I happen to know it is a female—who has a first-class degree and MPhil, both in philosophy, from Cambridge University; a Spanish national with a PhD in Russian politics from the School of Slavonic and East European Studies; a person based in Dubai with a master's degree in Middle Eastern—

Q157 Chair: Are these the police officers?

John Conyngham: These are not the police officers.

Chair: These are the others?

John Conyngham: These are all the other people. The police officers are one former inspector and a high profile ex-policeman, Ken Farrow, who was head of the Economic Crime Unit at the City of London Police until about six years ago.

Q158 Chair: Mr Waite?

Bill Waite: We have none.

Q159 Chair: None? Not a single former police officer works for your company?

Bill Waite: Not a single former police officer works for my company.

Q160 Chair: Mr Helsby?

Tommy Helsby: Among the various businesses under the Kroll banner in the UK we have a little over 400 employees. One of them is a former police officer.

Q161 Mr Clappison: Can I ask you if you regard your companies as private investigation companies? Perhaps start with Mr Waite.

Bill Waite: We have a number of different offerings. We have an employee screening business, we have a political risk and security business, we have a transactional due diligence business and we have an investigations business, which falls within those competence areas that I was talking about. It conducts formal interviews, and sometimes physical and electronic surveillance.

Q162 Mr Clappison: So you would regard yourself as a private investigation—

Bill Waite: No, I would regard our firm as a global risk management consultancy.

Q163 Mr Clappison: All right, global risk management. Would you gentlemen give a similar answer?

Tommy Helsby: I think a significant part of what we do is investigations. I tend to describe it as corporate investigations because it would be extremely unusual for us to be engaged outside of the business context.

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Q164 Mr Clappison: So it is more George Smiley than Columbo sort of thing?

Tommy Helsby: It is not George Smiley either. It is less exciting than that, I'm afraid.

Bill Waite: I think you have to realise that for a long period of time now, there has been a lack of resource in Government and Government Departments, including areas such as the police force. There was an initiative in 2001 called the Partnership Against Crime, when three of our firms were accredited as investigators to help support the police function in conducting internal investigations for corporates because the police resource wasn't there.

Q165 Mr Clappison: Can I ask you a bit about the type of work you undertake. You mentioned you worked for the Government. What sort of work do you do for the Government?

Bill Waite: There is a mixture. All that I am about to disclose is in the public record, so I am not disclosing any client confidentiality. We worked for the Bloody Sunday inquiry in the context of identifying witnesses and trying to help bring those witnesses to the inquiry to give evidence. We worked for the Directorate of Counter-fraud Services of the National Health Service—we had a permanent secondees there who helped to interview and recruit the senior staff for that, and develop internal processes and procedures; we also helped on a number of investigations around health tourism. We have done other investigations for bits of the Home Office, particularly where there have been allegations of breach of duty by senior officers within specialist units.

Q166 Mr Clappison: Do you work for local government as well?

Bill Waite: No, we haven't worked for local government.

Tommy Helsby: We have.

Q167 Mr Clappison: You have worked for local government?

Tommy Helsby: Yes, although probably much larger—our government-related work is generally international. We have worked for the public prosecutor for a Gulf State and for the Government of Ukraine. We are currently engaged by the Government of Afghanistan doing a bank fraud investigation.

Mr Clappison: I was thinking more of local government in this country.

Tommy Helsby: I understand. We have done some work for local government here.

Q168 Mr Clappison: What sort of work would that be for local government?

Tommy Helsby: Fraud.

Q169 Mr Clappison: You mentioned physical monitoring of people. What would that involve?

Bill Waite: The case example that I can give was a breach of duty by an internal employee who had been engaged in a £250 million fraud. The individual had been arrested but was released on bail at that point in time. There was a requirement to identify who else was involved in the criminal enterprise and to try to

identify which assets he had. So we placed him under physical surveillance and we monitored the individual. We then handed over the surveillance to some police officers, who arrested him, and when they arrested him he was in possession of a large amount of cash. The point behind that is we were working with the police. That case was taken on by another prosecutorial body because the police simply did not have the resource to conduct that sort of exercise.

Q170 Mr Clappison: Is there any sort of work that you would not undertake?

Bill Waite: A lot.

Q171 Mr Clappison: Just given us an idea, in general terms.

Bill Waite: The issues for us are, are we professionally competent to do it? Do we have the physical resource to do it? Is it appropriate to conduct the kinds of investigations that are being asked of us?

Q172 Mr Clappison: Are there cases where you say, "No, we don't spy on that type of person"?

Bill Waite: Yes.

John Conyngham: Most certainly, if we have concerns. For example, within our firm we have an ethics committee, which last year met 32 times to consider opportunities that were being put our way over which there were question marks as to whether we wished to undertake them. You might be surprised at the number of cases that we have turned down.

Q173 Mr Clappison: Can you give us an idea of the sort of cases you turn down?

John Conyngham: We will very quickly turn down requests to behave in an illegal manner. Again, you might be surprised at the times we are asked by, occasionally, professional advisors whether we can find out things that—

Q174 Mr Clappison: That is not a question of morality. That is a question of law. You know it is illegal.

John Conyngham: That is a question of law, yes.

Q175 Mr Clappison: Do you have morals on top of that, where you say, "No, we just don't spy on that type of person"?

John Conyngham: No. Many times it will perhaps have to do with the politics of the situation in the particular country. It is not particularly investigative, but five years ago we were given an opportunity for training in Libya. We were told by authorities here that it would be fine for us to do it. Our ethics committee decided it was not such a good idea.

Q176 Mr Clappison: Would you accept employment from, say, a multinational company in this country who wanted to do research into people who were challenging their reputation? Would you accept that sort of work?

John Conyngham: We might do.

Q177 Mr Clappison: You might do? So if the person concerned was a journalist who was writing articles,

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would you accept that work to look at the work the journalist was doing?

John Conyngham: No.

Mr Clappison: You wouldn't?

John Conyngham: No.

Q178 Mr Clappison: If it was a member of the public who was, say, challenging the reputation of a company?

John Conyngham: It would depend on whether we could understand on day one whether there was a valid reason for the company to request that type of investigation. Were there circumstances present at that moment in time that made the suggestions that were being made by an individual appear odd, so there was a need to better understand that person's background?

Q179 Mr Clappison: So you have never carried out an investigation into a journalist?

John Conyngham: No, not to my knowledge.

Q180 Mr Clappison: Is that true of all of you?

Bill Waite: It is certainly true of us, yes.

Tommy Helsby: One of the things that we have, as our equivalent to John's ethics committee, is our risk committee. There are a number of triggers that would automatically cause a referral of a new opportunity to that committee for scrutiny: the size of it, the investigative techniques that might be involved, the involvement of a government and any relationship to a journalist or journalism. We have undertaken libel cases on a number of occasions, both for newspapers or publishers and for the libelled person. In a sense, that would be a context in which we might well be investigating the journalist's activity but essentially to understand the nature of the fact base that was produced and so on.

Chair: Thank you, Mr Helsby. Are you done, Mr Clappison?

Mr Clappison: Yes, thank you.

Q181 Lorraine Fullbrook: Can I ask all three of you, have you ever bought or paid for information from an intermediary that is not employed by your companies?

John Conyngham: No.

Bill Waite: We often conduct research in multinational jurisdictions. So if we are doing due diligence for an oil and gas company and we require corporate records on a business in Angola, we will instruct a local law firm to retrieve those corporate records and we might instruct a local newspaper or accumulator of data to obtain that information; so in that context, yes.

John Conyngham: I took your question to mean information brokers.

Lorraine Fullbrook: Yes, exactly, because we have had other witnesses who do.

John Conyngham: That is why I gave a very quick "no".

Q182 Lorraine Fullbrook: The other witnesses we had a few weeks ago do use information brokers and there is no, if you like, due diligence process on how they acquire that information. They just buy it.

Bill Waite: We use third parties in different countries, as I have mentioned. We have worked in more than 100 different jurisdictions since I started the firm 15 years ago. We have an internal process of due diligence around third parties that we use. We have contractual provisions with those third parties that ensure that they at least contract to comply with local laws in relation to what we do and, again, this feeds back into our client base. If you are working for government departments or multilateral organisations, you have to be sure that they can rely on what you are producing, because in the vast majority of cases we are providing information to clients to help them discharge their regulatory burdens, whether it be under the Bribery Act, the Financial Services Act or the Foreign Corrupt Practices Act.

Q183 Mr Winnick: When it comes to working in various countries, is there some sort of line where you say—Libya was just mentioned in passing—"This regime is so obnoxious. Undoubtedly it has carried out crimes against humanity. We can't accept the contract on that basis alone"? Would that be the attitude?

Bill Waite: Yes.

Q184 Mr Winnick: Definitely?

Tommy Helsby: There are judgments on these issues as to what it is they are asking you to do. If a government that had a poor record on government corruption asked us to assist with developing an anti-corruption programme we would be inclined to say yes, but then we would want to make sure that there was some reality to it and it wasn't just a public relations exercise where our name was being used to disguise their continued disregard of international principles. There is a concern for our own reputation in relation to these things.

Q185 Mr Winnick: I understand that. In the past, say, in the apartheid period in South Africa—were your companies in existence at the time?—would you have accepted or did you accept work for the Government of South Africa?

Tommy Helsby: I certainly was around then and I can recall turning it down.

Q186 Chair: Thank you. Mr Waite and Mr Conyngham?

Bill Waite: Ours wasn't in existence but, to use Mr Helsby's analogy, we were instructed by the Kenyan Government to review its anti-corruption policies and procedures. We did that on the condition that our report would be made public and it was published.

Q187 Chair: Thank you. Mr Conyngham?

John Conyngham: The same. I don't think we go as far as a kind of ethical foreign policy. We will look at the situation in relation to each particular case and we don't shy away. Our mission is to help companies succeed in complex and hostile business environments. For example, in other parts of the company, in security-related matters, we may need to assist clients at the present time in parts of Sudan; but there are parts of Sudan that we most seriously will

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not go near—the Darfur region—and likewise in other jurisdictions. So we will look at the facts.

Q188 Steve McCabe: Gentlemen, you all represent big companies with government contracts, international operations. Do you ever subcontract the work to smaller companies or agencies?

Tommy Helsby: Yes. As Bill said earlier, I think, we have a very rigorous process of screening the contractors.

Q189 Steve McCabe: So you do subcontract. Is that same for the other two?

Bill Waite: No. We do not subcontract work. We use third parties to provide data in certain circumstances.

Q190 Steve McCabe: Let's not get hung up on the technicality. I am asking: are you entirely responsible for the contract at all times or is someone else, who is not an employee of your company, working for your company to do the work? That is the point I am making. I don't want to get tied up in a technicality.

John Conyngham: No, we would be entirely responsible for the work at all times. We may request assistance.

Q191 Steve McCabe: But someone else may be doing it who is not one of your employees? This is a simple question. I am trying to establish whether the person who is doing the work at all times works for your company, or they work for another company. That is a very simple question. That is all I am asking.

Bill Waite: Well, it is a simple answer and the answer is that sometimes we use third parties to recover data in different jurisdictions that we feed into our investigation.

Q192 Steve McCabe: So it could be an individual, someone working for another company and not someone working directly for you?

Bill Waite: Generally it is accountants firms, law firms, people of that nature.

John Conyngham: We will have a written agreement incorporating our policies and procedures, in particular things like anti-bribery procedures, confidentiality, data protection. These are all documented in people that wish to work for us.

Q193 Steve McCabe: Obviously you ask them to sign an agreement. I appreciate that. Can you say with absolute certainty that you know at all times that these people who I am referring to as subcontractors—I take the distinction you are drawing—are maintaining the same standards and you can be confident they are co-operating at all times with the principles you set out for your own employees?

John Conyngham: When we do this we are putting our own reputations on the line, so we are rigorous in looking at who they are and ensuring that we monitor them—

Q194 Steve McCabe: I am not saying you don't try. Can you say with confidence—

Chair: It is very difficult for the Hansard writers when two people speak at the same time. Mr Conyngham?

Steve McCabe: I am just trying to get the answer clear, Chairman.

John Conyngham: I am saying that we choose them with care; we put the paperwork in with care; we monitor them; we visit them. We do not use that many of them because we are now operating in 34 countries ourselves, through our own offices, so that cuts down the need for—

Q195 Steve McCabe: How many would you use in an average year?

John Conyngham: I have no idea, sir.

Q196 Steve McCabe: Well, you operate in 34 countries and you do not use “that many”. Is that one per country, or is it maybe more than that?

John Conyngham: Our philosophy will be to do the vast majority of the work in-house. We do not have an office in Turkmenistan. If we need to do some work to gather some public records in Turkmenistan, we will be using local assistance.

Q197 Chair: Mr McCabe's point is that you have to use people outside your firm. There have to be third parties involved. They will do a piece of work for you. You do not have any control over the way in which they do their work. If you require some information urgently, they will go out and try to get that information. You do not go and check on the methods of every single third party that you contract out to, do you?

John Conyngham: We will have done, particularly over the last few years, increasing amounts of due diligence before anybody in our firm is allowed to use that individual as a subcontractor. We will have, to the best of our ability, checked out their methodologies.

Q198 Chair: Since this has been raised by Mr McCabe, could you write to us? You said you do not know the answer as to how many third parties that you use. If all of you could write to us and just give us a figure—we do not want to know who they are, but a figure—it would be very helpful.

Q199 Steve McCabe: It would be interesting to have some idea who they are as well. I think it would be quite interesting to see what kind of other companies get involved. I am not trying to accuse you gentlemen of anything. I am simply trying to understand what kind of network we are dealing with and what kind of subcontractors are, involved because I am curious to know how you are able to maintain your controls over these people.

Chair: Mr Waite, you were eager to say something.

Bill Waite: I was eager to say that the data that we are requiring third parties to supply to us is generally public record data; therefore, the prospects of trespassing on local laws, whether they be data protection laws or any other laws, are very, very remote. We are asking law firms or accountancy firms or media collators to produce records to us. That does not risk one trespassing on local laws.

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Q200 Steve McCabe: When you say “generally”, does that mean always, or that there may be occasions when it is not?

Bill Waite: I would say in about 95% of cases it is that kind of inquiry and, again, most of the work we do in terms of complex investigations will be done with law firms. If there is other investigation that is required, in those circumstances we will be talking to the local law firm to ensure what the local regulatory environment is, for the very reason that we do not want to fall over and either end up with inadmissible evidence or difficult evidence.

Q201 Chair: None of your firms have ever paid a police officer or a public official for information? Is that right?

Bill Waite: No. We are currently using a police officer as a subcontractor to review a Metropolitan Police investigation into a murder, to produce an expert report on whether that investigation was conducted competently.

Q202 Chair: A current serving police officer?

Bill Waite: No.

Q203 Chair: An ex-police officer?

Bill Waite: A retired police officer.

Q204 Nicola Blackwood: I just want to clarify one point. Have you ever employed or used a third-party subcontractor in the UK?

Bill Waite: Yes.

Q205 Nicola Blackwood: Could those also be included in the report that you send to us following this?

Chair: In the note.

Nicola Blackwood: In the note that you send.

Q206 Chair: Could you write to me with that information? My clerks will write to you with a list of things that we want from you.

Q207 Nicola Blackwood: The second point I wanted to clarify is: on what grounds would you refuse to use a subcontractor or third party?

Tommy Helsby: We have a process through which we allow contractors to be on our list. We require a background check; we want to inspect whether or not they are licensed, if they are in a jurisdiction where a licence is required, and that that licence is current. We want to know who their shareholders are, if it is a corporate entity that we are dealing with. We do our own background check on who they are.

Q208 Nicola Blackwood: How do you establish that in the UK, given that we do not really have a regulatory environment?

Tommy Helsby: I am saying where there is one, because we have work going on all over the world.

Q209 Michael Ellis: Gentlemen, your companies are international. They are corporate and at the quality tier, you would argue no doubt, of the industry that you represent. But what about those who would not

be quite so ready to come to this Committee and speak on behalf of their conduct? What about those in your industry whose standards fall far short? We know that they exist. I ask you to confirm that you also acknowledge that they exist and that they are prepared to cut corners and to operate under improper standards. How do you feel they should be best regulated? Is it your view, for example, that there should be statutory regulation of your industry, further statutory regulation?

John Conyngham: Yes. Not further—this could have been implemented; obviously the regulations could have come out under the present legislation and it has not happened—but certainly for certain activities that are intrusive, where the public have every right to feel that there should be protections in place. They are set out in the core competency areas in the 2007 PRIA. If it involves surveillance or formal interviewing in a criminal context, there should be licensing to cover those matters. The area we are suggesting at this time that should not be covered, and potentially is covered by the way this Act is worded at the moment, is commercial, regulatory and legislative due diligence that companies are required to do. At the moment it is covered in this legislation. It is not done by ex-police officers.

Q210 Michael Ellis: You accept, Mr Conyngham, that there are those that operate in your industry far below acceptable standards? Do you accept that?

John Conyngham: I think there is a very small minority, and I do not think one should underestimate the effect that data protection legislation has had on this industry. It has done a good job in weeding out. Companies themselves or people wishing to employ investigators now have a pretty good idea of the parameters of what is allowable and what is not allowable. Data protection has been around since 1998—a long time.

Q211 Michael Ellis: But Mr Conyngham, improprieties still take place, don't they?

John Conyngham: I am sure they do.

Q212 Michael Ellis: Mr Helsby?

Tommy Helsby: If I could just say regulation of the industry will not necessarily change what is going on. What we are talking about is people who are breaking existing laws. Those laws exist, they are around, and people are breaking those laws. To institute some level of regulation is not going to change that. There will still be people out there who are willing to break the law. But I do think that having regulation creates an opportunity for, as it were, the innocent client to be protected. At least the client who goes to a licensed investigator has some confidence in knowing that the things that the investigator will do will be within the law, because with many of the laws that we are talking about there is strict liability. If the investigator breaks the law, the client is held liable as well.

Q213 Michael Ellis: You would argue that further regulation simply adds to the burden of the law-abiding and does not have an effect on those who are prepared to circumvent the law in the first instance?

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Bill Waite: That has never been our argument. As I said at the beginning, we engaged with the SIA in 2003, 2006 and 2007 on the basis that regulation of certain activities should be statutory and those activities—

Q214 Michael Ellis: You contributed to the process in 2007, did you?

Bill Waite: We did. Two of us, Control Risks and Risk Advisory, were on the stakeholder advisory board to the SIA from about 2004 to 2006, 2007. We contributed to the competence discussion in 2007. We engaged with the SIA again in 2008, and we have written correspondence in relation to that. All of our discussions with the SIA have been about, “If you are going to have regulation it should be risk-based regulation. It should be focused on what the original Act was focused on, which was where is the risk of harm to the public?” The competencies or the areas that the public were at risk from were things like physical surveillance, search and seizure of evidence, formal interviewing processes. That is what is in the competence requirement and that is what should be formally regulated, and it should be statutorily regulated.

Q215 Lorraine Fullbrook: I would like to follow up on that if I can. The Government announced in October 2010 that there would be a planned transition to a new regulatory regime for the private security industry. One of the witnesses we had before us—granted, they were associations of smaller private investigators—has suggested that a system of co-regulation, involving effectively self-regulation by the industry, should be backed by a statutory regulator. Do you think this would work—self-regulation?

John Conyngham: Very briefly, we do not think co-regulation would work because we do not think there is any industry body that represents the entirety of the industry that you are beginning to see now. So we think it should be statutory regulation.

Bill Waite: You are dealing with very sensitive issues. In other areas of professional conduct the entire move has been away from self-regulation, and I am thinking about the Bar Standards Board for example. So to engage in partial regulation or self-regulation in an area that is as sensitive as this I don’t think would work. It would not be credible. It would not be effective. There is not a body out there that could engage with this. There isn’t the funding for it. So I think all of those arguments are very weak.

Q216 Lorraine Fullbrook: Mr Helsby?

Tommy Helsby: Just following on from that, one of the things that I think we are very keen to encourage the SIA or its successor to undertake is a recognition of corporate licensing as well as individual licensing. My company has 400 employees. Perhaps a dozen of them are engaged in activities that might be subject to this regulation. To require all 400 of them to be individually licensed, to pass exams, would be a severe burden.

Q217 Lorraine Fullbrook: The Government’s proposals are to have the businesses licensed and in

certain circumstances individuals would be licensed, which I think answers my question. You do not agree with self-regulation, therefore you would not have an organisational body to oversee that. You would prefer just straight legislation?

Tommy Helsby: Yes.

Q218 Alun Michael: You have suggested that legislation would weed out the lawbreakers. I do not quite understand that. Surely it is regulation that closes down those who do not stick to the rules?

Bill Waite: I am not sure I did suggest that. I think I suggested that statutory regulation should be there for specific activities because it sets standards.

Q219 Alun Michael: Okay. Within a system of licensing, should it be focused on individuals or companies or both?

Bill Waite: It has to be both, because there are a number of one-man bands. There is a small industry out there that services private clients. Our recommendation to the SIA, and our communication with the SIA throughout the period I have indicated, is that there should be corporate regulation. If you look at the FSA model in terms of financial services, it is up to the organisation to demonstrate to the regulator that its people are fit and proper, that they have adequate qualifications and that they have been through the appropriate training. I think that that is the obligation that should be shifted to the corporate. There would not be sufficient resource within a regulator, I would suggest, to investigate those issues down to the minutiae.

Q220 Alun Michael: There are management responsibilities, but you would accept that both the individual and the organisation would have responsibilities?

Bill Waite: Indeed. I think the corporate should have responsibilities around the fitness and properness of its people and the training they go through—ensuring that they do not have any criminal convictions and that they do have the adequate skills and experience—and to ensure that within itself it has appropriate procedures and controls for issues such as data protection and regulatory methodology. I would also suggest—this is outside the remit of what the SIA has been discussing—there should be a requirement for companies to carry professional indemnity insurance. At the moment we are very much engaged in, “If you breach the law you lose the licence,” but recourse for the individual that is affected has to be there as well. Waiting for a criminal prosecution or a fine that goes to the central treasury is not the same as having recourse to a fund in the form of insurance, which would give them—

Q221 Alun Michael: Would I be right in thinking that you would also want the situation to be one where the loss of a licence means loss of ability to trade?

Bill Waite: Indeed.

Q222 Alun Michael: It has been suggested that licensing could be split into a number of different

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subcategories—things like surveillance, data research and so on. Do you think that that would be workable?

Bill Waite: I think we all have a concern, which is the breadth of definition of designated activities under schedule 2 part 4, because if you read what that says, it covers, for instance, the activities of a headhunting firm. There is a significant percentage of our work that is directed to ensuring our clients comply with regulatory burdens that are imposed on them that have nothing to do with investigations in the context of surveillance, formal interviewing, or search and seizure.

Q223 Alun Michael: No, but if you have a situation where organisations are undertaking a wide variety of different functions, as all three of you have said your companies do, there is a need to be precise, isn't there, about the different aspects of activity?

Bill Waite: That is precisely right, and what we are saying is that there are certain activities that should be licensed—we have touched on them and the SIA came up with them in 2007—but there is a swathe of activity that is or might be caught by the current definition of this Act that should not be.

Q224 Alun Michael: Why not?

Bill Waite: Because there is no demonstrable risk to the public. In fact the contrary argument is maintained—that what we are essentially doing is helping our clients comply with their statutory obligations. I am talking about regulatory due diligence.

Q225 Alun Michael: I think it would be useful if you could expand on this in a note perhaps. I can see where you are leading us but it probably leads us into too much detail for this session.

Q226 Chair: I am sorry to stop fascinating questions and answers but we do have other witnesses. What I am proposing to do is we will write to you with specific questions and ask for specific information that you can give us. But in summary, your plea to this Committee is, "Please regulate the industry." Is that what you are all saying?

Bill Waite: We have been asking for that since 2003. So I think it is time to move it on.

Tommy Helsby: We are glad you are paying attention.

Chair: Thank you very much for coming in. We will be writing to you for further information. We might see you again.

Examination of Witness

Witness: **Charlotte Harris**, lawyer, gave evidence.

Chair: Ms Harris, thank you for coming to give evidence to the Committee. I apologise for keeping you waiting so long.

Charlotte Harris: That is fine.

Q227 Chair: We are most grateful. We know that you have already given evidence to Lord Justice Leveson.

Charlotte Harris: Yes.

Chair: Therefore, we may refer to the evidence that you gave to him in our questions to you today.

Could you tell us about your own experience? There you were, a partner in a very famous firm of solicitors, dealing with a number of very famous clients, including Members of Parliament, none who are present here today, I think, and you found yourself the subject of a private investigation. Is that right?

Charlotte Harris: No.

Q228 Chair: It is not right?

Charlotte Harris: No, it is not. I was a partner at a very good law firm, but possibly less famous than Mishcon de Reya. I was in Manchester, and I think that is significant actually. At the time I had just become a partner, and I think I was not an individual who was known at all in the press, or particularly at that point within the industry. I was a young mum and lawyer doing her best, having come across this particular set of cases and having come across the phone-hacking scandal at a provincial law firm in Manchester called JMW.

Q229 Chair: You are now with Mishcon de Reya?

Charlotte Harris: I am now a partner at Mishcon de Reya. There are two surveillance reports, so I will talk about them separately. By the time we get to the second surveillance report—there is no evidence that it came from News International and we do not know whether or not that was Derek Webb, but I don't think it was—at that point I was at Mishcon de Reya as a partner. Certainly, at that time, I had looked after more cases that had been reported on.

Q230 Chair: Are you saying that in 2010 you were the subject of an investigation?

Charlotte Harris: Yes. I am trying to get the dates right. The first report, which is the Derek Webb report, is 2010, I think. I was still in Manchester at that point and it is very early on.

The chronology of it is that I had done a case—my first case as a partner—for Max Clifford, which was quite a big one to start with; it was Max Clifford's phone-hacking case. We had been successful in that in that we had got an order from Justice Vos for disclosure. It was disclosure of the documents that now more people know about and have now been the subject of numerous proceedings and the police have notified victims, but at that stage phone-hacking wasn't known. Max Clifford had resolved the case, and certainly he has been very helpful moving forward in letting other people know what the position is. At that point I also initiated a claim for Skylet Andrew. To put it into context, five people were named in court when the Princes had taken their claim and Clive Goodman had gone to prison, along with Glenn Mulcaire. At this point News International was

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still saying that there was a one-rogue defence and that it had nothing to do with them, but there were five others.

Q231 Chair: Yes. Obviously this is a very large area. The Committee is very keen to hear your evidence about the private investigation surveillance of you. That is what we would like to concentrate on today.

Charlotte Harris: Sure, but it is very important that you understand the context of the Derek Webb surveillance. It would mischaracterise it if I came here and said, “Yes, I was a partner at Mishcon de Reya and they followed me around,” because that is not what happened. The underlying reasons for putting somebody under surveillance should form, I would hope, some of the considerations in terms of regulation going forward.

The reason behind it and the reason behind Derek Webb’s surveillance of me, a person who wasn’t in the public domain and who was from a law firm in Manchester, was that I had stumbled across, with others, a realm of criminal activity that News International didn’t want to come out. They believed that I was sharing this information, which I wasn’t, and so the email documentation that has been referred to said, “Shall we send somebody up to Manchester? Let’s try to stop this.” It was around the time of the election as well—it wasn’t going to look good. There was no reason at all to write any kind of article about any kind of scandal that would involve me because nobody would care. It would be of no interest at all.

Q232 Chair: So it is the context of specifically the information that you had discovered?

Charlotte Harris: So that they could put me and the other lawyer, Mark Lewis, under pressure and—it was clear from the documents—to stop working on these cases. The view that I gave to the Leveson inquiry is the same view as I will give to you, which is in those circumstances the appropriate thing to do is to write a letter to one’s senior partner and make a complaint if you think that there is intimidation.

Chair: Yes, we will come on to that.

Q233 Mr Winnick: How were you aware in the beginning, Ms Harris, that you were subject to investigation—what you have just been describing?

Charlotte Harris: The first time I became aware that I had been under surveillance was when an associate of mine, a client, told me that he wanted to meet—this is a year later—and gave me a surveillance report that had been circulated. It was not the surveillance report that had been taken while I was a partner at JMW. It was one when I had clearly just started at Mishcon de Reya, and it had lots of information about my move down to London and my children and my personal life and so on—incorrect information and correct information. When I got it I thought that News International may have been behind it, simply because they—

Q234 Mr Winnick: Can I just interrupt you there? You immediately came to the view that News International was likely to be behind it?

Charlotte Harris: No, I didn’t say that. I didn’t come to the view that they were likely to be behind it. I came to the view that they may have been behind it because they were mentioned within the documents. I certainly didn’t jump to any conclusion, which was why I spoke to Simon Greenberg at News International within days and brought him the report and showed it to him and said, “Could you look into this for me?” He assured me that they were not responsible for that report, but what he did do and what led to the Derek Webb surveillance—

Q235 Chair: Sorry, could you just tell us who Simon Greenberg is?

Charlotte Harris: Simon Greenberg was part of the management committee board who had been brought in to resolve the phone-hacking claims and remains there. It is called the MSC.

Q236 Chair: The board of News International?

Charlotte Harris: That is right. I brought it straight to them. I thought that was appropriate, to say, “Look, I’ve got this. It has been given to me and your name is in it.” It said within the report that surveillance had been undertaken on me and other lawyers in order to put pressure on us and stop us from doing these cases, so I thought it was appropriate to ask him if there was anything he knew about it. He said that he would look into it and he did. What he did was have a look in Tom Crone’s office and there we find the Derek Webb surveillance of the year before, which News International then said they had commissioned. It was commissioned with Farrer, who were their lawyers at the time. It was not jumping to a conclusion. Going to see Simon Greenberg at News International led to the discovery of these documents that were then handed to the police. The police let me see the file, which was really quite vast. When I say vast, it was vast compared to other evidence I have seen on other people. I looked through it and then I gave what evidence I could.

Q237 Mr Winnick: There is no doubt at all it was authorised by News International?

Charlotte Harris: No, they admitted it—the Derek Webb surveillance of when I was a partner at JMW. So when I am at the end of Max Clifford’s case and the beginning of Sky Andrew’s case, when we are getting there in terms of disclosure and uncovering the evidence, it is at that point that there is surveillance on me and others.

Q238 Mr Winnick: The only reason that was done was because the firm was representing—you were obviously involved—victims of phone-hacking?

Charlotte Harris: Yes. I was the only person at the firm working on it.

Q239 Mr Winnick: As regards your private life—you did mention it—did they go into details of whether it was accurate or not about you?

Charlotte Harris: They had a look and they said that it was inaccurate. They couldn’t find anything.

Mr Winnick: How disappointing for them.

Charlotte Harris: Yes.

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Q240 Mr Winnick: What about your children, because you have made a reference that you felt so uncomfortable with their looking into your family and children? Is there any indication that they were in fact doing that?

Charlotte Harris: My children were two and four at the time. They had my children's birth certificates. I know these things are on public record but, when you are a lawyer and you have written a letter to the other side and they don't like the content, the correct response is not to say, "Let's have a look at her children's records." It is just not the right response.

Chair: I think we would accept that.

Q241 Nicola Blackwood: You have given us a narrative that is quite straightforward. You went to News International and they immediately—

Charlotte Harris: It was as straightforward as that.

Q242 Nicola Blackwood: What was the response of News International? They just held up their hands and said, "Yes, we have been investigating you"? That is not the sort of response we received when trying to get answers.

Charlotte Harris: I understand. I went in. I was very nice.

Nicola Blackwood: We were quite nice.

Charlotte Harris: I know. I went in, but I think they were surprised, or Simon might have been pleased at how direct I was. What I didn't do was get this material and do what I had been accused of within the material for the surveillance to be put on me in the first place, which was to use the material, to leak it anywhere and so on. I would always take that straightforward approach. I went in, showed him the documents and said, "What is this? Please look into it." He said, "Yes, I will," and it only took a small amount of time for him to say, "Okay, I didn't think we had anything to do with the second document but we have found this." Given the situation at News International and the MSC, if they are under an obligation to look into—having been caught out on disclosure before—their lawyer's room and they find something, they have to give it over to the police now, otherwise they would be in even more difficulty.

Q243 Nicola Blackwood: Have you established who was responsible for the second document?

Charlotte Harris: No. No, I don't know. It was better than the first, I think.

Q244 Nicola Blackwood: What was the response of the police when you handed this over?

Charlotte Harris: Well, the police were given the document by News International. I gave the police the first set of documents that had the second report in, and then Simon Greenberg and the MSC, as I understand it, went through all the emails and so on and gave the police that material. The police then called me in and I looked at it. They showed it to me. The police don't normally give you a particularly emotional response to that.

Q245 Mr Clappison: Can you tell us where the second document came from?

Charlotte Harris: I am not going to say who the client was, because I don't think that is fair, but they were given it, so it was clearly in circulation somewhere.

Q246 Mr Clappison: But News International said it didn't come from them or wasn't anything to do with them?

Charlotte Harris: News International said it didn't come from them. I believe them on that document.

Q247 Mr Clappison: You mentioned before about the role of Farrer, the solicitors, in this. They presumably had not known about the first set of—

Charlotte Harris: They commissioned it. It was their idea, not Tom Crone's. Looking at the emails—this has been covered in Leveson when Julian Pike gave evidence, so this is nothing particularly new. Julian Pike said that he believed that there was some leakage of information—in my opinion rather unconvincingly because, as I said, just tell the Law Society or the Bar Council—and that the best thing to do, and he recommended to do, would be to put me under surveillance.

Q248 Mr Clappison: I find it slightly strange—

Charlotte Harris: So do I.

Mr Clappison:—that the instinct of a firm of solicitors would be to put personal surveillance on somebody involved on the other side.

Charlotte Harris: Well, he should have just asked me.

Q249 Steve McCabe: I don't know if you heard our earlier witnesses.

Charlotte Harris: No, I haven't.

Q250 Steve McCabe: They all represent big private investigation companies and they were telling us about the high ethical standards they employ. In the situation that was applied to you, I presume you would not think there was a fairly high ethical standard employed in the surveillance that was undertaken in relation to you?

Charlotte Harris: There is a vast variety of different types of private agents. I don't think that all PIs are terrible people. I think there are some good helpful people within the industry and they are essential for all sorts of reasons. I don't know, because in any report that I have seen in relation to me they didn't write down their methodology, so you don't know. Certainly there are some bits of information that can be found out about a person, or in my case about me, perfectly legitimately—for instance, birth certificates and so on. My grouse with this is the reason for putting somebody under surveillance inappropriately, finding out something in order to harass a person or to have some kind of political influence—for instance when MPs have been put under surveillance and for what reason. It might in some cases be because they are on a fishing expedition for a story, if a newspaper has commissioned somebody, or it might be to harass them so that they can gain some kind of power or advantage. That is wrong. It is the reason behind the commission I have a grouse with. Obviously there are certain methods—I don't think it is right to go through people's rubbish and certainly phone-hacking is just

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out of the question; I don't think that blagging is right. There should be some transparency, but they also do often behave very well and perform an essential service.

Q251 Steve McCabe: When they don't behave well—I mean, when they root through your rubbish—and—

Charlotte Harris: They know when they are breaking the law.

Q252 Steve McCabe: You questioned the basis of it being commissioned and if they get the facts wrong and then they are passed to somebody, should you have some automatic right to complain when that happens?

Charlotte Harris: Well, you can complain, because the laws in place are that if somebody breaks the law, then you can do something about it. You can sue them. There is nothing that is illegal, as it stands, in watching somebody, but there is a boundary that gets crossed, and I am not sure that everybody knows what the boundary is. What I can say from experience is I look into many cases that involve private detectives—cases that involve both surveillance and counter-surveillance, or use of private detectives in terms of fraud or in terms of finding out about somebody's debts and so on. It tends to be that where you have a "dodgy commission", if I can call it that, a dodgy agent that gets used. There are lots of reputable agencies and there are lots of reputable reasons why you might need to use a private investigator. If you want to look into something that perhaps you ought not to look into then you might use somebody else. I know many who tell me that they burn their notes.

Q253 Steve McCabe: I want to ask this one last question. You said, yes, you can complain. You can sue them. Are you satisfied that that level of legal redress is sufficient for the ordinary person who discovers they have been invaded in this way?

Charlotte Harris: In terms of regulation, I am always worried personally about both self-regulation and external regulation. You want to get it right. The laws are in place already and if they work and people do take action then the laws are there. However, if there was properly managed regulation where people can find a shorter, cheaper route, then that would be a good thing in terms of complaint particularly from people who don't wish to spend a vast amount of money. I think that it is about letting people know that if they are going to commission a private detective, they use somebody reputable and that the reputable person is not going to break any laws. Law firms have to do that anyway.

Q254 Mr Clappison: You have been careful to emphasise your concern about the reasons why people have surveillance put on them, but can I ask you a little bit about the actual type of surveillance used. From what you saw of these documents, did you form the impression that you may have been followed personally yourself, or members of your family may have been followed, without your knowledge?

Charlotte Harris: Well, it did say so. There were pictures of the house, and it was quite clear what had happened. There were pictures of the house. They had come up to see whether they could—I am not sure—see an exchange of information or whatever they wanted to see. I don't think that the notes necessarily gave vast detail of the amount of surveillance but—

Q255 Mr Clappison: You had been followed around?

Charlotte Harris: I don't know how much I was followed around. I think they might have had a post and watched from there.

Q256 Michael Ellis: Ms Harris, how did this associate get a copy of the report itself?

Charlotte Harris: I don't know.

Q257 Michael Ellis: I ask because not everyone would be in your position of having a third party inform them that you had been under surveillance. I don't expect you to tell us who the associate was, but how did he or she get hold of the report?

Charlotte Harris: I suppose the best answer I can give is that I deal with individuals who have privacy issues themselves. I am a privacy lawyer, so the kind of cases that I deal with are cases where there is sometimes surveillance or counter-surveillance going on, blackmail threats, all sorts of very unpleasant things, and so sometimes they might know that—

Q258 Michael Ellis: Was it another journalist?

Charlotte Harris: No. It wasn't. Just to make it clear, it was not a journalist.

Q259 Michael Ellis: From a rival publication?

Charlotte Harris: No. This was a business associate; not a journalist, not an MP and not anyone who anybody has heard of.

Q260 Michael Ellis: Could you tell from the report, which you then read, what the tenor, the reasoning or the rationale for the report being requested in the first place was? Very often the preamble to these reports outlines what the reason for the commissioning of the report was.

Charlotte Harris: Yes. I can go through it. Just to take care, because obviously I am giving evidence to you, let me say that I suppose some of you may have heard of the person. I don't want to make a sweeping statement saying nobody would ever have heard of them. I suppose it is possible to make that statement with a caveat: "probably not". But I don't know who everybody knows.

The report that I was given, that one where I don't know the origin, I think it was clear from that, because it basically said what it was, that the idea of the report was to find out private information about the main lawyers who were involved in the phone-hacking litigation—personal information—between them, so that that could be utilised if need be. I am not saying that this is News International but that report, it could have been—it looked a bit like a sort of gossip draft, as much as anything else.

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Q261 Michael Ellis: So it was focusing on private life as opposed, for example, to spending habits or another type of business client?

Charlotte Harris: Private life, political affiliations, career aspirations, that sort of thing; how well people got on.

Q262 Michael Ellis: You think it was designed to embarrass or to intimidate? Do you think it was designed to allow another party to exercise influence over your moves?

Charlotte Harris: It said it was.

Q263 Michael Ellis: I see. Do you think regulation would have prevented that from happening to you?

Charlotte Harris: Nobody regulated could, I think, have got the information that was in that report. I have thought about it quite carefully. I do not want to go into what was in the report, because that defeats the object of keeping it private, but there are certain bits of information that I just simply cannot understand how they could have been got from a public register, or even by following—

Q264 Michael Ellis: I understand. My final question is: if further regulation was put on some elements of the industry, do you think that would have the effect of simply burdening the law-abiding elements and that it would be ignored by those who operate in the darker recesses of the industry, or do you think it might have the effect of stopping impropriety within the industry that currently exists?

Charlotte Harris: It would make things easier for those who were commissioning a private detective for legitimate purposes if there was some form of code of conduct that people followed, however that works. That would make it easier. As for the perennial problems—the questions of whether everyone will go into the shadows, and whether it will be a burden to those who are law-abiding—I am not sure that anyone who is law-abiding particularly minds regulation, except if it is external regulation that becomes so bureaucratic that it becomes difficult to get the job done at all, which without hearing your evidence, I cannot tell.

Chair: Thank you very much. Lorraine Fullbrook has the final question.

Q265 Lorraine Fullbrook: Thank you, Chairman. There are two small final questions. You say Farrer initiated the surveillance on you?

Charlotte Harris: It was their suggestion, yes, and they commissioned—

Q266 Lorraine Fullbrook: Is this normal practice for law firms?

Charlotte Harris: No. If you were looking into a fraud case or a case where you had a blackmail element and were trying to find out about it, and there were legitimate reasons that you would be very open with the judge about, you might hire somebody reputable. But if I did not like what the other side

were writing to me and I thought, “I know, I’ll have a look through their parents’ bins and see where their children were born,” I don’t think that would go down well.

Q267 Lorraine Fullbrook: Thank you. I would like to ask about the legislation. The way it is currently framed means that even if regulation for private investigation were introduced, investigations for journalistic purposes would be excluded. What would you think of that?

Charlotte Harris: Investigative journalism has to be protected—good, proper investigative journalism at its best. We have the best and the worst of journalism in this country. So, yes, I can understand where the exclusions are, but what the newspapers must not do is get a private investigator, get him an NUJ card and say, “All right, you’re now excluded.” That needs to be looked into, because what Tom Crone said to the Leveson inquiry—I think it was to Leveson, wasn’t it, because he gave evidence to the various committees—was that Derek Webb was a journalist, so it was okay. If you are going to go forward with this and say that it excludes journalists, then you are going to, I would have hoped, need to look into the NUJ and make sure that people really are journalists and not private detectives who are just obtaining a card by filling in a form, because that would be a loophole that they will all jump through.

Q268 Chair: That is very helpful. We certainly will look at that and bear that in mind. You certainly seem to have taken this all rather well. It is a rather extraordinary set of circumstances.

Charlotte Harris: I am a mum. I have to take things well. I have a job to do; I am a lawyer.

Q269 Chair: Were you shocked or surprised? If you were describing your reaction when you first saw that surveillance report, what was it? How would you describe it?

Charlotte Harris: I took my own advice. The first thing I do, or the first thing I advise if somebody shows you a threatening document, is if at all possible tell your nearest and dearest and loved ones and people who are close to you. That gets rid of 90% of the stress of a threat. It is not always possible. I just took it home, showed it to everyone, said, “Look.” So then you feel a bit more relaxed. Then I went direct to who I thought the source was. I am in a very privileged position in that I am used to looking at this kind of thing. It just happened to be on me, and I went into autopilot of, “This is how you respond.” I might get very cross later, but when you are busy and you have similar cases for clients, and you are also working and looking after your family, there wasn’t a huge amount of time for a vastly dramatic response.

Chair: Indeed. We are most grateful to you. We know you must be very busy. Thank you very much for coming in today. We may write to you about one or two other issues.

Charlotte Harris: Absolutely. Thank you.

Tuesday 17 April 2012

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr Aidan Burley
Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert

Mary Macleod
Steve McCabe
Alun Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witnesses

Witnesses: **Richard Caseby**, Managing Editor, *The Sun*, **Jon Steafel**, Deputy Editor, *Daily Mail*, and **Philip Johnston**, Assistant Editor, Home News, *Daily Telegraph*, gave evidence.

Q270 Chair: Mr Caseby, Mr Johnston, Mr Steafel, thank you very much for coming today to give evidence to the Select Committee on our ongoing inquiry into private investigators. We are aware that, through your various organisations, you have given evidence to the Leveson inquiry. You can take it as read that the Committee is aware of your evidence, so we may be asking you questions based on what you have said. It is always difficult when you have three witnesses at the dais to know when to come in. If you want to come in on a particular issue when we have addressed our question to a member of the panel, feel free to indicate, and I will call you.

Are there any interests that need declaring in respect of this session, other than that that is in the Register of Members' Financial Interests? Thank you.

Perhaps I could start with a simple quick question to each of you, and then we will go on to substantive questions. Mr Caseby, if I could start with you. Have your newspapers in the past used private investigators, and have you now stopped the practice of using either a private investigator or an information broker?

Richard Caseby: The situation at the moment is that, in the past, we have used private investigators. I worked on *The Sunday Times* for about 23 years. I was managing editor for 13 years and last summer I moved over to *The Sun*. Private investigators have been used in the past on both *The Sunday Times* and *The Sun*. The situation at the moment is that, should anyone wish to use a private investigator, that would have to be signed off by the editor and the chief executive of News International. So far, since that rule came into force in October, no private investigator has been used.

Q271 Chair: Your journalists can use them, but you put in, in effect, a process—

Richard Caseby: Yes, there is a new protocol.

Chair:—in which the editor himself or herself—

Richard Caseby: The editor and then the chief executive of News International.

Philip Johnston: We have used private investigators hardly at all. We did a lot of work to establish whether anybody had used them beyond the normal protocols in the newspaper and could not find any use of private investigators over the past five years or so. I think there was one instance about six years ago where *The Sunday Telegraph* did employ a private investigator in

a case where the journalist was facing some sort of threat, and it was thought that it would be better to confront the individuals. It was a story about an organised crime syndicate. But other than that, no, we do not use them. We do investigations, but we use our own reporters to carry those out.

Q272 Chair: Do you have something similar to what we have just heard from News International, a protocol? Presumably, if a journalist wants to use a private investigator, you will allow them to do so. Is that right?

Philip Johnston: If a journalist wished to use one, they would have to go to their line manager or to the editor and explain why, and the decision would have to be taken at that point. They would not be allowed to use one without any permission to do so.

Q273 Chair: Mr Steafel?

Jon Steafel: The straightforward answer is that, for the moment, we simply don't use private investigators. In my experience of more than 20 years there, we have not done so. We did in the past use information providers, but we drew a line under that in 2007, stopped using them entirely, and use generally available resources nowadays.

Q274 Chair: In your experience, you have not used them, but you do not use them now?

Jon Steafel: Correct. We have not used them, and still do not use them. There was a period of time when we used information providers, as distinct from private investigators, and we stopped that in 2007.

Q275 Chair: I am surprised at that answer, because I think it is public knowledge that the *Mail* had instructed Steve Whittamore, who is a future witness before this Committee, to do some work for it. I think you paid him £143,000 to make 1,728 potentially illegal requests to find out phone numbers. Were you not aware of that?

Jon Steafel: I was drawing a distinction between private investigators and information providers. Mr Whittamore, whom we did indeed use in the 1990s and early 2000s, was an information provider, not what I would call a private investigator.

Q276 Chair: What is the difference?

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Jon Steafel: In my view, a private investigator is someone who conducts inquiries about an individual. They may research their background; they may choose to follow them; they may choose to examine their life. An information provider, simply in response to a request, perhaps from a journalist or in some cases it might be a bank, insurance company or a local authority, would supply information such as a phone number or an address. I think there is a significant distinction.

Q277 Chair: But you accept that in the case of Mr Whittamore, who was of course convicted of an offence, he went beyond the remit that you had put to him?

Jon Steafel: We have obviously looked into this very closely and the overwhelming majority of requests any of our journalists made to Mr Whittamore during the time that we were using him were for what we would call perfectly legitimate pieces of information, such as a phone number in order to trace somebody you need to speak to for a story, or an address in order to contact them. Certainly, as far as we have been able to investigate, no journalist to our knowledge ever asked him or required him to do anything that was unlawful. Whether he went on and did so, it is very difficult for us to be sure.

Q278 Chair: Do you think there is a case for an industry-wide protocol as to how to deal with private investigators or information brokers? You make the distinction, Mr Steafel. Mr Caseby and Mr Johnston, do you make that distinction? Do you think that there is a difference between those two sets of people and that perhaps people can call themselves information brokers, but in fact are private investigators? It is a way of getting around the protocols.

Richard Caseby: Yes, I think there can be confusion between the two services that are provided between a private investigator and an information broker. For example, *The Sun* uses what one could call an information broker. I would call it a search agent. One of those agents is called Searchline. Searchline has a website and it is largely used by adopted children trying to find their birth parents. You can log on to that and they will find addresses for people to find their long-lost relatives. You can look at their forums and see how much good they do in the world. These are all legitimate, publicly available databases. It is just that it is a one-stop shop. That is a search agent.

Q279 Chair: But there is no protocol in News International covering information brokers?

Richard Caseby: What there is now is that any third party, such as an information broker, will be required to give an undertaking that they abide by the law and also abide by the PCC Code.

Q280 Chair: Mr Johnston?

Philip Johnston: That is the same with us as well. I do draw a distinction between a private investigator carrying out surveillance activity and search agencies that are finding information that is publicly available. Personally speaking, with 23 years on the *Telegraph*, a lot of that time as a reporter, I never used one myself

at all but certainly with new technology and databases available in one place, the days have gone when you had to go to Companies House and spend hours there, and to the Land Registry and libraries to look up electoral rolls. These things are used by law firms as well. These are not uniquely used by newspapers.

Q281 Chair: We have the lawyers in next week to look at this issue. A final question from me on the Information Commissioner's offer that all your newspapers should go along to his office to check the files of Operation Motorman. Have you all taken up this offer and looked to see whether any of your journalists were involved in that issue?

Jon Steafel: In our case, initially we wanted to see whether we could see these files in 2006, and the then Information Commissioner took the view that it was inappropriate to disclose them to anyone for a number of reasons, not least because he thought it would be potentially a breach of his own Data Protection Act but also that it might be unfair to a company to provide information that might be ambiguous about its employees. Subsequently, things have changed. Last summer, we were able to visit the current Information Commissioner's Office. We were able to see some of the Motorman material. I did not go myself, but my colleague—

Q282 Chair: When you say "some", he offered to open all his files, but have you only had the time to see some, or did he only show you some?

Jon Steafel: As I understand it, what he made available to us was a part of the material relating to our company, so we saw a sample of the material, which was informative but also slightly difficult because there were many aspects of it that appeared contradictory or inconsistent. It was not a perfect picture of what had gone on.

Q283 Chair: Would you like to see more? You would like to see it all?

Jon Steafel: I think we have seen enough to understand what went on between our employees and Mr Whittamore.

Q284 Chair: So you do not want to see more?

Jon Steafel: I don't think we feel we need to.

Q285 Chair: Mr Johnston, have you looked at your files or the files that refer to your journalists?

Philip Johnston: My understanding is that neither of our two titles used Whittamore so we were not involved in Motorman at all. We were not named in Motorman.

Q286 Chair: But he has offered you the opportunity of looking at the files. You didn't take it up?

Philip Johnston: Not that I am aware of, no.

Q287 Chair: Mr Caseby?

Richard Caseby: Yes. I will take you back to 2006 when Richard Thomas, the then Information Commissioner, published his report *What Price Privacy?* and then *What Price Privacy Now?* I looked at his data, obviously with some interest, but also was

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confused by it because on the first face of it he was telling me that *The Sunday Times* had used Steve Whittamore 52 times. That did not accord with anything that I could check through my audits as a managing editor, so I wrote to him for more information, because he made several presumptions that were really quite—

Chair: “He” meaning the Information Commissioner?

Richard Caseby: Yes. He made several presumptions in that material, which were quite wrong. First, his numbers were wrong. There were not 52 transactions for *The Sunday Times*. It turned out to be four in the end, and he corrected that in his datasheet that he later published. That goes to the heart of the problem here because Steve Whittamore’s data, as I understand it, are really quite chaotic and very confused, so I have some sympathy for Mr Thomas and the fact that he could not quite make head nor tail of it.

Then again, Mr Thomas made about three different presumptions, which were quite wrong, in all that data. First of all, he regarded each transaction as one for illegal services—I am talking about back in 2006—which was an error. Also, as I said, he thought the numbers were accurate and based on reliable data, and they were not. Also, the thing that gave me most discomfort at the time was that he thought it unlikely that any public interest defence could be raised. So I wrote to him in 2006. I have a detail of the letter here.

Q288 Chair: Maybe you could send it to us. Thank you. That is very helpful information you have given, but as of now have you gone to look at the files?

Richard Caseby: Yes.

Q289 Chair: Are you satisfied that you have the name of any of your journalists involved in any activities?

Richard Caseby: I asked for the data at the time in 2006; he refused to give it. The files were opened again, I think it was last summer. Lawyers representing News International went down and looked at that data and drew a picture from them, but I have to say it is quite a chaotic picture. There are mis-names all over the place.

Q290 Chair: Do you not want to look at it again? That is it as far as you are concerned?

Richard Caseby: I don’t see that it is going to be particularly helpful. I heard the evidence of Christopher Graham, who gave evidence to this Committee. He set in process a means by which, if people feel they are a victim in any shape or form, they can approach the ICO and say, “Am I in the Motorman files?” He will give a straight yes or no. Then the ICO will help the individual make a proper subject access request. I think there is a process.

Chair: We have a quick supplementary from Mr Reckless, and then we will move on.

Q291 Mark Reckless: Mr Caseby, you said lawyers for News International went to look at this material. In our investigation into phone hacking and the media more generally, we have seen a lot of references to different lawyers for News International or other

News Corp entities. Were those lawyers either Harbottle & Lewis or Lord Macdonald?

Richard Caseby: Linklaters.

Mark Reckless: Linklaters in this case. Thank you.

Q292 Bridget Phillipson: Some newspapers routinely pay people for information about themselves, whether it is whistleblowers exposing wrongdoing or kiss-and-tell style stories. Do you draw a distinction between those kinds of payments and payments to third parties about the private affairs of others?

Richard Caseby: Obviously there is a distinction, because if you are paying someone for a story—you said a kiss and tell or some other subject; maybe it is a whistleblower giving some information that is certainly in the public interest and should be aired—one can pay them, but I would say since July one has to be extremely careful indeed with the introduction of the Bribery Act. You have to be aware and we give training to all our journalists on *The Sun* about that, because under the Bribery Act, if you induce someone to break a confidence under their contract of employment, you can be in very serious trouble. At the moment, you have to be sure that there is an extremely strong public interest before you can pay someone in those sorts of circumstances.

Philip Johnston: Certainly, if there is a public interest involvement then Richard is right. The Bribery Act does not seem to have a public interest defence there. In our sort of journalism and the areas that we would be investigating—recently abortion clinics, and before that exam boards—I don’t think this arises for us, to be honest.

Jon Steafel: I think there is a very significant distinction between people who approach a newspaper wishing to tell their story and wishing to be paid for their story, and people who are in the business of supplying information. If someone approaches us with a story they want to tell and requests payment, and they are entitled to request payment, then we listen and we subject that story to the fullest scrutiny we possibly can. We need to make sure that what they are saying is genuine, legitimate and they are entitled to say it. If they were going to be paid, they would not be paid until the story was published. It would only be published if we were satisfied journalistically, ethically, legally that it was appropriate to publish it. Richard’s point about the Bribery Act is a significant one. All of our journalists have received Bribery Act seminar training since the Act came in, in order that they are aware of the requirements of that Act in any such dealings with people.

Q293 Mr Winnick: Would you consider it unethical in some respects for private investigators to be used by newspapers to get stories?

Philip Johnston: Would I consider it in some respects to be unethical, or in all respects? In some, maybe. In principle, I do not have an objection to the use of private investigators. Our paper does not use them. In all the years I have been on the paper, on the *Daily Telegraph*, anyway, I can’t recall private investigators being used. I do not have an objection in principle. It is just that it is not our practice to do so.

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Q294 Mr Winnick: Would that be so for your two colleagues? You said you would take the same view—that it is not necessarily unethical.

Richard Caseby: No, it is not. I would take legal advice, obviously, before I did so.

Jon Steafel: I would have a similar view. As I said earlier, it is not my experience that we have used private investigators. As a principle, I would start from the position that our journalists ought to be able to find out the information themselves and we should not need to go to private investigators. On the rare occasion that we might have to, we would have to take strong legal advice and consider it very carefully.

Q295 Mr Winnick: Could I ask you this question? In view of the Leveson inquiry and all that led up to it and the obvious interest in the inquiry as it continues, would it be right to say that on this, as on other issues, there is greater concern about what you do or do not do as daily newspapers—greater concern about how you go about your daily business, as the result of the Leveson inquiry?

Richard Caseby: Absolutely. There are a number of features, obviously. I work for News International; I have worked there for over 20 years. I was shocked by some of the revelations accorded by the *News of the World*.

Q296 Mr Winnick: Deeply shocked?

Richard Caseby: Deeply shocked, yes, absolutely. Numerous people have been arrested, as such, and we will see where the law takes us.

Q297 Mr Winnick: It came as a total surprise to you?

Richard Caseby: Absolutely.

Mr Winnick: Thank you.

Richard Caseby: I would say that we have a new chief executive. We have new governance procedures, which he has outlined, and others have, to the Leveson inquiry. I am satisfied that the company is on the right path.

Philip Johnston: I would like to think we always took great care about how we went about investigating stories or gathering information. As Jon Steafel said, I think it is the function of journalists to do that themselves, by and large. It is also a good practice.

Q298 Mr Winnick: But Leveson has made the paper perhaps more concerned about that?

Philip Johnston: The whole industry has been, I think, shocked by what has happened as a result of the phone-hacking scandal. Certainly, we all think very carefully about what we are doing, yes.

Jon Steafel: I would not disagree with that. It is absolutely inevitable that, since last year, since the institution of the Leveson inquiry, all journalists have thought very hard about the way they go about their business; all editors have thought very hard about the instructions and advice they give to their journalists. But that is not because of a previous history that we should be embarrassed about. It is because we are alert to changes that are happening in the industry and concerns that are arising out of the inquiry. It is common sense.

Q299 Steve McCabe: Mr Caseby, this authorisation that the editor and the chief executive give for the use of a private investigator, do you know what criteria they use for determining that, and are there any written guidelines?

Richard Caseby: We don't have particular written guidelines, because every case would be on a case-by-case basis. Every one has its own peculiar features. I have to say, in my 23 years or so at News International, I have never instructed or known of an instruction actually to put someone under surveillance from either of the two titles I have worked for.

Going back to your original point about the confusion between search agents and private investigators, and when I talk about having used private investigators in the past, you can use a private investigator who also happens to be a search agent. There is confusion in the industry, without a doubt, about that and that is how I would characterise it. Many years ago—I am talking about maybe 15 years ago—one might use a private detective for covert filming during a long-term investigation, whereas these days technology has moved on and reporters, trained investigative reporters, do that themselves because technology has changed. You do not need a briefcase with a camera in it any more. You can have one in a buttonhole.

Q300 Steve McCabe: Are the criteria that are used to decide whether or not you should authorise this kind of activity down to the judgment of the editor and chief executive, nothing else?

Richard Caseby: Exactly. Yes, it is their judgment.

Q301 Steve McCabe: Does that same process extend to payments to other third parties, or is this solely for information providers and private investigators?

Richard Caseby: Just to be clear, the governance procedure is that private detective work would be signed off by the editor and the CEO. Search agents—and I have talked about one or two already—are totally transparent about their business. As I say, anyone can use them, and anyone can log on there. Those are people where there is a separate authorisation procedure, as I explained.

Q302 Steve McCabe: Yes, I understand that. Sorry, maybe I should have been clearer. What I was trying to ascertain was, if you were about to make a big payment to a third party who wanted to sell their story or someone else's story, would that go through the same process of the editor and the chief executive authorising it, or does someone else make that decision?

Richard Caseby: No, it would largely be the editor on a straightforward story—

Q303 Steve McCabe: So no chief executive involvement there?

Richard Caseby: He might wish to know about it at a monthly title meeting, because obviously, we operate within a budget. That is purely about money rather than the ethical criteria around it, if we are talking about a large payment.

Philip Johnston: I think the same process would take place on our newspaper as well. We do not, for

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instance, any longer allow cash advances to journalists, so there is no method whereby just cash can be handed over. Not that I am saying it was in the past, but it is just simply a change in the way we do things. Any payment over a particular level would have to be authorised at least by the managing editor.

Q304 Chair: What level is that?

Philip Johnston: I think it is £1,000.

Q305 Chair: Anything over £1,000—paid to an information broker?

Philip Johnston: No, for information brokers we have a set fee with a particular company.

Q306 Chair: What is the fee?

Philip Johnston: I don't know. It is a contract with whomever the information—these are just search agencies, basically. You just ring up.

Q307 Chair: I am puzzled by—not puzzled; I am interested in what Mr Caseby said. He said there is confusion. Some of the private investigators you all deal with put themselves out to be information brokers. Who checks what they are? Whose responsibility is it to check whether it is in fact just a branding issue—that they are really private investigators, but they call themselves information brokers? Has anyone checked?

Richard Caseby: I would say it is the other way around. There is an information broker, or rather a search agent as we call them, and they do a particular point of work. They have access to legally available databases and they provide straight information. It is a desk-bound job. You could have a private investigator who might, if you wanted him to, operate surveillance or other activities, such as he might do for an insurance company or a debt collecting agency; but he might have another line of business, which is also acting as a search agent because he has access to these databases at the same time. It will be a business with two arms.

Q308 Chair: Yes, but nobody checks that, do they?

Richard Caseby: I do not believe we use anyone in that way. I am saying that has been, historically, a confusion and is one I think you should be aware of.

Q309 Chair: Mr Steafel, anything to add?

Jon Steafel: There is a distinction here, which I do think is important. Since 2007, we at the *Mail* have not used information brokers—

Chair: Or private investigators.

Jon Steafel: We were not using private investigators before that and we are still not using them. Since 2007, we have not used information brokers at all. They were banned in 2007. All our journalists know this. They use online subscription databases to research that information—eTrace and Tracesmart—which I am sure are comparable to the kinds of things Richard has mentioned. Those are services where the issue of checking out that they are not private investigators does not apply. Their legitimacy was established before we signed contracts with them and

they are simply online databases that people access information on. So, it does not apply to us.

Chair: Very helpful.

Q310 Michael Ellis: Why did the *Daily Mail* ban private investigators or the use of them so long ago?

Jon Steafel: Our actions were all in response to the Information Commissioner's reports, the two *What Price Privacy?* reports, which were in 2006. After the first one was published, we set about investigating what our relationship with information providers was. We contacted all those information providers to try to establish for certain that they could assure us that they were not doing anything that was in breach of the Data Protection Act. We checked with all of our staff that they fully understood their responsibilities. After the second Information Commissioner's report came out, we made further checks. Everyone who worked for us was written to. Their contracts were adjusted, so it made clear that everything they did had to be compliant with the Data Protection Act. Then we reached a point—

Q311 Michael Ellis: You discontinued using them?

Jon Steafel: We discontinued using those agencies, because—

Q312 Michael Ellis: I am just trying to establish, Mr Steafel, why the *Daily Mail* discontinued using them, if they are so routinely used by other newspapers and they are so innocuous that lawyers and others use them on a routine basis. Do your journalists do more than journalists in other newspapers themselves? Is that how it works?

Jon Steafel: I can't speak for why a decision was made by any other newspaper company as to whether they should use such people or not. What I can say is that our reason for ceasing the use of these people is that there was obviously an area of concern raised by the Information Commissioner's report. We did not want to be in a situation where anything that our journalists were doing might have been open to question as to whether it was legitimate or not, even though we were very confident that what they were doing was simply getting phone numbers and addresses.

Q313 Michael Ellis: It was routine?

Jon Steafel: It was routine, so we stopped it to remove any area of doubt.

Q314 Michael Ellis: I think you all differentiate between private investigators and information brokers. Mr Steafel, you have been calling them information providers. That is the same thing, is it? You discontinued, on the *Daily Mail*, using information providers in 2007.

Jon Steafel: That is correct.

Q315 Michael Ellis: Do you use the search engines, adoption services and other organisations that can be used to trace people?

Jon Steafel: We used two online search databases, eTrace and Tracesmart.

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Q316 Michael Ellis: Do you have investigative employees, in that case, who are not external agents as such but are servants of the company in the traditional sense, employees of the *Daily Mail*? Is that how information is sourced in some cases?

Jon Steafel: We have a large team of staff journalists, and much of what staff journalists do involves finding people in order to talk to them about the stories that they feature in. I am not quite sure what you are getting at.

Q317 Michael Ellis: I am just trying to establish whether it is not a question of using external private investigators because you have in-house private investigators.

Jon Steafel: No, not at all. The key thing to understand is that the dissemination of this kind of information is completely different now from what it was a decade ago. A decade ago, Google was in its infancy, Facebook didn't exist, and there was no Bebo. All of the very easy online things that people have at their disposal as journalists to try to find people and contact people were not there. They are now there, and every journalist with their laptop with internet access can use those.

Q318 Michael Ellis: Are you all confident, following what the Chairman was saying earlier, that you all have healthy protocols in place so that you in the management of the company are not being blindsided by people working for you who are doing things without your knowledge? Are you confident that there are protocols in place?

Richard Caseby: Absolutely. As I said, the new CEO of News International has put in new governance measures. We have also appointed a compliance officer across the entire company to make sure that these procedures are adhered to, and managing editors are also being trained, again.

Philip Johnston: We are confident too, and a good deal of work has gone into ensuring that all those protocols are understood by the staff as well.

Jon Steafel: Absolutely. All of the individual journalists know exactly where their responsibilities lie and what the boundaries of what they should and should not do are.

Q319 Chair: In answer to Mr Ellis, they have it in writing, have they?

Jon Steafel: They have been written to. Their contracts are clear. There have been seminars on data protection. Indeed, a very important part of the job of the individual executives who are in charge of groups of journalists, news editors, features editors and so on is rigorously to test and question the reporters working for them about the basis for their stories.

Chair: What would be extremely helpful, and I think the Committee would find most helpful, is if you could send us an example of the protocols that you have now put in place, something that you give in writing to your journalists so it is very clear what they are allowed to do and what they are not allowed to do. I think we would find that extremely interesting.

Q320 Dr Huppert: I am interested in the use of these information brokers, search agents and so forth. Presumably, there is no regulation of any of them. If you suspect in any way that any of the data in their databases had been obtained unethically or unlawfully, what procedure would there be for taking action on that?

Richard Caseby: Well, obviously, if we felt they had broken the law, we wouldn't use them. In a way, two things are happening.

Q321 Dr Huppert: Do you look to see in any way if they do?

Richard Caseby: Well, I am not the police. If they fall into trouble or it is brought to our attention that they are committing an illegal act or have got the material illegally, we would be concerned about it, but I have seen no evidence of that at all.

What I was going to say is there are two pressures at the moment. Obviously, there are the ethical pressures that you have mentioned around the Motorman report but also, as Jon has explained, there are technology pressures as well, and it is changing the way business is being done. For example, there is one piece of software run by the GB Group. It is rather similar to the means that Jon uses at the *Daily Mail*. They have access, legally, approved by the Information Commissioner, to 50 million telephone numbers, 14 million mobile telephone numbers and about 13 million ex-directory numbers. Those are all legally obtained, because people have consented to give those numbers, either through marketing procedures or from buying things online. It is a huge industry, and, in a way, search agents are being squeezed out of the picture because there is so much legitimate and legally available information now on databases.

Q322 Dr Huppert: You are implying that search agents do not provide legitimate and legally available data.

Richard Caseby: No—that was obviously a confusion. Obviously they do, as I explained. There are other databases one can use, like Trust Online, where you can search a public register of county court judgments for the last six years. All this is new and available and has all happened in probably the last 10 years.

Philip Johnston: That is a very important point in view of the Committee's inquiry into why the new regulatory framework has taken 10 years to be put into effect—if it is going to be put into effect. The whole industry, the availability of information and the ability to get the information has completely transformed in the last decade. It is now possible, if you so wish, to sit up at midnight in your own home with a laptop and get information from Companies House, the Land Registry or from anywhere yourself. That is what we would encourage more than anything else. However, it may be the case that a reporter is away from the office, out on the road for instance, doing a story over three days, or under abnormal pressure. Using one of these online agencies, which has access to the same information but can do it as a one-stop shop, is beneficial to the journalist.

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Q323 Chair: Mr Steafel, your journalists do not use it because they know how to use Facebook?

Jon Steafel: In answer to Dr Huppert's question, it does not really apply because, as I have said, we stopped using these kinds of information providers in 2007. The resources we use are either subscription databases or the profusion of online resources of the type that Richard and others have mentioned. It is out there.

Q324 Dr Huppert: Do you think there are circumstances where obtaining information by means of deception is acceptable in the media industry and, if so, what are the constraints? Obtaining information by means of deception: are there any circumstances where that would be a legitimate thing to do?

Richard Caseby: Well, yes. If you read the PCC Code, there are particular rules that are actually associated with the use of subterfuge. Obviously, the story has to be in the public interest. You have to be able to justify it in that course. Subterfuge—I make no bones about it, in my time on *The Sunday Times* and the investigations that *The Sunday Times* has done into laws, expenses, MPs, subterfuge has often been used. It was used in a recent story in *The Sunday Times* about the treasurer of the Tory Party.

Mr Winnick: Excellent story.

Richard Caseby: Thank you.

Q325 Chair: Let us not get diverted, colleagues. Mr Johnston?

Philip Johnston: I totally agree with that, yes.

Q326 Chair: You agree. Mr Steafel, do you agree?

Jon Steafel: It is very simple. Public interest is the only question, and your understanding of the public interest test is what you need to apply before you consider subterfuge.

Q327 Mr Clappison: Can I ask Mr Steafel, and perhaps the other gentlemen as well, you have told us you've no longer used either private investigators or information brokers since 2007. We are taking evidence from the BBC as well slightly later on, so I wonder if I could ask your personal opinion of this. In the light of the changes you have made, and also the developments that you have told us about this morning in the way in which information can be obtained these days, do you think it is necessary for either print or broadcast journalists to use private investigators any more? I am conscious the BBC have told us that we are using still substantial amounts of licence payers' money on this.

Chair: Mr Steafel, you do not use them, do you?

Jon Steafel: We do not use them, and we have not found it necessary to use them. I would not presume to speak for whether the BBC should or should not be using them.

Chair: They are coming in next; so, a matter for them.

Philip Johnston: We do not use them either. There may be circumstances when in order to get a story about some serious wrongdoing it is essential to do so.

Richard Caseby: They have not been used since the new governance procedures came into force, but I would not rule it out.

Q328 Chair: They are all out of date now. We have the internet. Are they all out of date, private investigators?

Richard Caseby: I did look at Christopher Graham's evidence to the Committee, and he said something quite telling. He said there is precious little evidence that this has much to do with the press these days. I think it is because time has moved on. If anything, journalists are peripheral customers of PIs these days, is the truth of it.

Q329 Nicola Blackwood: You have all clearly stated structures that you have put in place to manage internal decisions about information brokers and so on, and have made clear the value of investigative journalism, which I do not think anyone on this Committee would argue with. It has an incredibly important role to play. The problem is that the issue that hasn't really been addressed yet is how you judge the public interest when deciding to use deception or any of these other slightly difficult elements. Clearly, it is that sort of public interest test that failed with Milly Dowler and in other elements, and which the PCC does not quite seem to be able to grasp hold of. In addition to that, public interest is not necessarily what the public is interested in, and I think this is the difficult issue that you seem to be grasping.

Can I ask, in the light of Leveson and everything else that has gone ahead and the difficult decisions that have to be made in terms of deception, how have you changed the way in which you might approach a public interest test? How do you judge the public interest?

Richard Caseby: I would say that public interest, extreme public interest, starts with criminality and moves lower down the scale. The difficulty is that every story has its own individual features and pressures within it, so each story—and I know you might think this is a pat response—has to be judged on its own merits, but it has to be judged by someone who is the head of news, probably by the editor, and certainly with some legal advice. I think this has become far more focused with the introduction of the Bribery Act, because now, should anyone wish to pay anyone at *The Sun*, they have to notify the managing editor by e-mail so there is a record of this, and the public interest of that particular story will be discussed and a record kept of it. So there is far more focus on that now than there has ever been before, but I can't sit here and give you a definition of public interest. I can give you the sorts of scales of it, but every story has its own particular features.

Philip Johnston: I would agree with that. It is very hard to define it, and you have a lot of experienced journalists at different newspapers, with different priorities and different approaches, who bring that experience to bear when they decide to investigate a story and whether to write it.

Jon Steafel: I would agree certainly with the point that public interest as a factor in journalistic decision making is greater than it has ever been and editors and lawyers are involved all the time. In terms of defining public interest, yes, criminality is at the top of the scale, deliberate wrongdoing is very close, and there is a broader point of it being a reasonable and

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responsible role of the press to hold public bodies to a degree of scrutiny on behalf of their readers. That is a factor in defining what the public interest might be in any given story.

Q330 Lorraine Fullbrook: Gentlemen, I would like to ask you—and particularly in the case of Mr Caseby and Mr Johnston, who said they would not rule out the use of private investigators—as potential customers of private investigators, would you be in favour of a statutory regulatory regime of private investigators?

Richard Caseby: In all honesty, I do not think I know enough about the industry—as I said, we are peripheral customers—to start offering advice about how a regulatory framework should work for private investigators. The sort of work that they cover covers far more than the sort of thing that a newspaper might ever use them for, having read some of the earlier evidence from some of the larger commercial firms. I think we have our work cut out trying to regulate our own industry at the moment.

Philip Johnston: I read the evidence from the private investigation industry itself. They seem to be in favour of some sort of regulatory framework—provided, of course, as the Act says, that the newspaper industry, the press, are exempt from that statutory framework, which I think is in the Act.

Q331 Lorraine Fullbrook: Mr Steafel, do you have a view on this?

Jon Steafel: As I have said repeatedly, these are not organisations we use. As a general point, I would say that regulation of that industry is a matter for that industry and its customers. So the law firms, the banks, the insurance companies, the local authorities who have cause to use these firms, as well as private individuals, may well be the best-placed people to give you a view.

Q332 Lorraine Fullbrook: You all use information brokers or search agents, whichever you would like to articulate them as; do you think there should be a competency assessment of these people as regulation of propriety and ethics?

Jon Steafel: A competency assessment? I am not quite sure what you mean.

Lorraine Fullbrook: Yes, a competency assessment. You do not know when you get the information how you have come about getting it.

Jon Steafel: We do, because we are using these online databases, which are examined before we have done any contracts with them and agreed to use them—that their resources are only legitimate resources, such as electoral registers and telephone directories; the range of information that Richard mentioned earlier. We have established their bona fides before we have agreed to use them.

Q333 Lorraine Fullbrook: But I think you said that you really use your own people, your investigative journalists.

Jon Steafel: Absolutely, and they would use online resources.

Q334 Lorraine Fullbrook: Mr Johnston?

Philip Johnston: Exactly the same position, yes. We would establish the bona fides of the group, of the company that we are using, whether it is Tracesmart or one of the search agencies, in advance.

Q335 Lorraine Fullbrook: So how do you do that? How do you assess them?

Philip Johnston: We enter into a contract with them and we talk to them. We are only asking in these cases to obtain information that is legally available.

Q336 Lorraine Fullbrook: Mr Caseby?

Richard Caseby: Yes, I would say that a code of practice might be helpful because, in other words, we are having to impose our own on private investigators, so a starting point might be useful.

Q337 Alun Michael: I think we have to make a distinction, do we not, between the profession—if it is such—of investigation, of a private investigator, or a company that undertakes that sort of activity, and the activity itself. If there is a statutory regime for private investigators, should that also encompass the activity of investigation undertaken for journalistic purposes?

Richard Caseby: It would anyway, wouldn't it? If they are being statutorily regulated as an industry, obviously it would have an impact on our use of them, should we use them.

Q338 Alun Michael: Yes, so that would affect it whether it was in-house or—

Richard Caseby: Oh, I see what you mean. You are talking about in-house investigative journalists? I am sorry, I wasn't with you.

Alun Michael: Yes.

Richard Caseby: Of course not. They are not private investigators, they are investigative journalists. There is a big distinction.

Q339 Alun Michael: There is a big distinction and, as an ex-journalist, I appreciate that distinction, but there is a difficulty in how you draw the line legally, isn't there? For instance, how do you avoid private investigators reinventing themselves or redefining themselves as journalists in order to get round a regulatory provision if there is a journalistic—

Richard Caseby: I see what you are gunning at now. That is a particular problem, because I dare say that might happen.

Philip Johnston: Even though I did say that we do not object in principle, we don't actually use them, so that problem wouldn't arise.

Q340 Alun Michael: No, but I am making the point that there is a distinction between the “them”—at the moment, there is not a legal definition, and I think you agreed earlier that it is difficult to draw the line between investigators and information providers. If the activity is the issue, where do you draw the line as to whether that is legitimate or how it is regulated? Obviously you have talked about the way that you nowadays regulate in-house activity as well as the commissioning of private investigators. How does—

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Philip Johnston: I think you have to draw the line the way the Act did draw the line, which is to exempt certain areas from its provisions. I suspect this is one reason why it has taken so long to implement this particular aspect of it, because of the difficulties of definition. There is a whole list of exemptions in the Act, having defined what private investigation is. I think that is probably the only way you can do it.

Q341 Alun Michael: But you would accept that there is a risk that redefinition by people to say, "Well, we are inside the exclusion" could lead to problems for legitimate journalism?

Philip Johnston: Yes.

Q342 Chair: Thank you very much. Mr Caseby, I think that you would like to share with the Committee a particular case that you think is of interest.

Richard Caseby: Yes. Even the most well meaning investigations can sometimes come off the rails in their use of private investigators. In preparing for my appearance today, I refreshed my memory of some of the evidence that had been given by witnesses to the Leveson inquiry, and this paragraph caught my eye from the witness statement from Mr Alan Rusbridger, the editor-in-chief of *The Guardian*. In his witness statement, he said, "In 2000, we commissioned a report about allegations of corrupt links between an international corporation and officials in Europe and Whitehall. We used a corporate security company run by two leading former SIS officials. They could not substantiate the allegations and no report appeared", and that was that. Reading that paragraph, I think you could be forgiven for thinking that Mr Rusbridger was almost starring in his own version of a Jason Bourne movie, but in actual fact the truth is far more prosaic and perhaps troubling.

In 2000, Mr Rusbridger personally commissioned private investigators to probe the life of a Whitehall official whom he suspected may have been taking bribes from Monsanto, the biotechnology company, to influence government policy on GM food. But let me say from the outset this was a false allegation and there was no truth in it whatsoever. One of those put under investigation was Geoffrey Podger, the First Chief Officer of the Food Standards Agency. Mr Podger is a man of unblemished integrity. He is currently the respected head of the Health and Safety Executive. But this was a highly invasive operation, albeit it took place 12 years ago, which targeted not only Mr Podger but also his elderly mother. So, let me say this was a fishing expedition by Mr

Rusbridger, and he was not fishing for salmon with a fly. This was a deep ocean industrial trawl that dredged the seabed of Mr Podger's private life.¹

Chair: That is extremely helpful.

Q343 Mr Winnick: But what was the point?

Richard Caseby: Can I finish?

Mr Winnick: Mr Caseby perhaps has some sort of grouse against *The Guardian*. I do not know if *The Guardian* has ever done anything against the Murdoch press—I would not know—but if we are going to have these anecdotes and the rest, perhaps other newspapers could also be brought into the frame.

Q344 Chair: Order. I think what would be very helpful is if you could just tell us the point of bringing this to our attention.

Richard Caseby: I will get to the point, yes. Mr Rusbridger's statement on this matter to the Leveson inquiry I have to say I think was self-serving.

Chair: Your comment on another witness to Leveson is not an issue.

Mr Winnick: He wanted to get it off his chest.

Q345 Chair: But I think what would be very helpful is if you just came to the point of why you are trying to tell us this.

Richard Caseby: Okay. I think that he probably set off with the best of intentions with these private investigators, and his operation really came off the rails, and I think he probably owes something of an explanation as to what happened.

Chair: That is extremely helpful, and since you have raised it here, I will write to him about this. Thank you very much for coming, Mr Caseby, Mr Johnston and Mr Steafel. Thank you.

¹ The following response was received from Alan Rusbridger, 1 May 2012.

Thank you for the opportunity to respond to the allegations made by Richard Caseby in his evidence to the Home Affairs select committee on April 17 2012. Mr Caseby claimed that I personally commissioned private investigators to "probe the life of a Whitehall official". This is not the case.

Mr Caseby correctly quoted from my witness statement to the Leveson inquiry, which sets out the case clearly: "In 2000, we commissioned a report about allegations of corrupt links between an international corporation and officials in Europe and Whitehall. We used a corporate security company run by two leading former SIS officials. They could not substantiate the allegations and no report appeared."

This is the only occasion during my editorship that I have used a business intelligence firm, and to my knowledge I have never met or paid any private investigators.

Examination of Witness

Witness: **David Jordan**, Director of Editorial Policy and Standards, BBC, gave evidence.

Chair: Mr Jordan, if you would take the dais; thank you. We have an interest to declare, colleagues, from Mr Winnick.

Mr Winnick: I think Mr Jordan and I know each other, and therefore I should declare it accordingly.

Q346 Chair: Thank you very much. Mr Jordan, thank you very much for giving evidence. You have heard from your colleagues in the print media. I was a little surprised to read the evidence of the Director-General to the Leveson inquiry, where he told the inquiry that a third of a million pounds had been spent by the BBC hiring private detectives on more than 230 occasions between January 2005 and July 2011. Given that we regard the BBC as the most impressive journalist organisation in the world—or I certainly do—I was very surprised that you could spend a third of a million pounds of licence payers' money on using private investigators. Why did that happen?

David Jordan: First of all, I think it is important to say that that was £300,000 over six and a half years, so the total amount per annum was under £50,000 per year, which is, as I understand it, well under the insubstantial amounts that even Members of Parliament get paid these days for an annual amount. The second thing that I should say is that I think it is important that you understand when it talks about paying private investigators what that money was being spent on. Unlike my colleagues who have just given evidence, we incorporate all of the different range of activities, from information gathering right through to what we call security services, in that amount. So a very substantial proportion of that amount was spent on making sure that consumer investigation programmes like *Watchdog* or *Rogue Traders* or other programmes of that sort had what we call muscle with them when they go to doorstep errand plumbers and gas engineers and so on.

Q347 Chair: So these are not private investigators; these were bouncers?

David Jordan: No, they are private security companies, which are called private investigators, and in the interests of being as open and transparent as we possibly could we put all of that material in together. The amount of money that was paid for what you might call investigative purposes for private investigators was extremely small, even out of what I would regard as quite a small amount in relation to the overall news budget and current affairs budget of the BBC, or the overall budget of the BBC on an annual basis.

Q348 Chair: I am just using the words of your Director-General. He described them as private detectives, I understand.

David Jordan: No, he described them as private investigators.

Q349 Chair: Yes. So one would assume that they were doing private investigating, not acting as heavies around journalists who are knocking on people's doors on consumer programmes.

David Jordan: He makes it clear in his evidence to Leveson what kinds of activity that they were undertaking, and I think I defined the three kinds of activities. One is the security activity, which I described, where we routinely provide security for people who are undertaking dangerous activities, in the sense of doorstepping people and so on and so forth. One was surveillance activity, where again, in order to establish the whereabouts of people, we may employ private investigators rather than using our own journalists—who have no particular expertise and frankly can be better employed doing other things—to make sure we know where people are if we want to serve them a right of reply letter or doorstep them and so on. The third area is what you might call investigatory work, where they are finding things out, or to give another example—

Q350 Chair: So how much was paid on private investigators, Mr Jordan?

David Jordan: The amount that we have laid out was paid on private investigators, but if you see in our evidence—

Chair: No, how much was it?

David Jordan: It was divided down into a number of different amounts and the different amounts were—we could not and did not break them all down but, for example, £140,000 out of that £300,000 you mentioned was spent in *Vision Factual*, and *Vision Factual* is *Rogue Traders* and *Watchdog*, so the vast proportion of that would have been spent on security services and surveillance.

Q351 Chair: Mr Jordan, this sounds all very vague.

David Jordan: I don't think it is vague at all, Chairman.

Chair: We have heard from the print media that they have put in place protocols. I would expect from an organisation like the BBC, with some of the finest journalists in the world, you would have in existence protocols or instructions or guidance that is used in order to decide whether or not a journalist can use a private investigator, and the use of licence payers' money—because you are in a different position to, for example, the *Mail*—would be monitored very carefully by someone like you. Did this not happen?

David Jordan: We have substantial protocols in place that effectively would govern the use of any private investigators to do any work that involved the invasion of anybody's privacy. If you look at the chapter of our editorial guidelines about privacy, it makes it absolutely clear that we can only justify intrusions into people's privacy on the grounds of public interest. It sets out the most exhaustive public interest test of any journalistic organisation in the country.

Chair: I am sure it does.

David Jordan: It also talks about the absolute critical need for proportionality in any intrusion into privacy and that the level of intrusion is proportionate to the public interest involved. That is much greater clarity than, for example, is provided by the PCC, any newspaper, or indeed any other broadcaster.

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Chair: I am sure it is, and I am sure you are going to send me a copy at the end of this process.

David Jordan: You would be very welcome.

Q352 Chair: Going back to my original question, if we take away the heavies, the people who go along and look after journalists for consumer programmes when they knock on the doors of people who are behaving improperly, how much did the BBC pay on what you and I would regard as private eyes?

David Jordan: To undertake operations that included undercover operations in places like Northern Ireland, or investigating serious criminality, where you don't necessarily want to send in David Dimbleby or somebody who might be recognised, and to undertake a very limited number—

Q353 Chair: Yes, I know what they are for, but how much did you spend on them?

David Jordan: I think it is important that you understand what we are spending it on, to undertake a very limited number of searches for information—about £150,000 in total over that period.

Q354 Chair: Between 2005 and 2011?

David Jordan: Between 2001 and the middle of last year—1 January 2001.

Q355 Chair: Why did you stop using private investigators? You obviously made a decision that you would stop doing so.

David Jordan: I don't think we have ever said that we have made a decision to stop using private investigators.

Q356 Chair: So you are still using private investigators?

David Jordan: At the moment, I don't think we are, but we have not ruled out the possibility of doing so.

Q357 Chair: We got quite good clarity from the newspapers who were here, and I am not sure that the Committee is getting equal clarity from you, so let's be just clear on this. The BBC still tells its journalists that they can use private investigators as opposed to, for example, information brokers? Is that right? It is just a yes or no.

David Jordan: We do not make a distinction between private investigators and information brokers. Anybody wanting to use a private investigator for investigatory purposes—it would be a referral to me personally, and I would have to agree it, as well as a referral to senior line management in the area concerned. By definition, there are going to be very few occasions where we are ever going to use a private investigator in those circumstances.

Q358 Chair: Of course. So you still use them, they are able to use them, but if they do use them they have to come to you first personally and you will sign it off?

David Jordan: Exactly.

Q359 Chair: Thank you. Have you used them this year?

David Jordan: Not that I am aware of.

Chair: Thank you.

Q360 Nicola Blackwood: Mark Thompson said in his statement to the Leveson inquiry that, "The BBC believes that there are exceptional circumstances in which the public interest involved in a given journalistic investigation would justify the use of so-called blagging". Do you think that you could give us some examples of what kind of exceptional circumstances would justify that kind of activity?

David Jordan: Yes, I could. I think we undertook two in the context of our audit of the use of these kinds of techniques for the Leveson inquiry. The two that we came up with were, first, an instance where Steve Whittamore had been asked to trace whether a known and convicted paedophile, whom we believed was gaining access to children again, was on a particular aeroplane returning from a foreign country. We were anxious to make sure that this particular individual didn't gain access to children in the UK, and we were keen to investigate and keep an eye on what he was up to.

Q361 Nicola Blackwood: Did you inform the police about that?

David Jordan: We didn't because he was not on the plane.

Nicola Blackwood: Right.

David Jordan: Whether that was because Mr Whittamore gave us the wrong information or whether the information was just unobtainable, I do not know.

Q362 Nicola Blackwood: The second instance?

David Jordan: The second was that we were conducting an investigation into a bail hostel in Bristol. We believed that paedophiles who were resident in the bail hostel were gaining access to children in the area, and we were keeping a number of them under surveillance to establish whether that was the case, with prima facie evidence to the effect that it was. We lost track of one of them. We were very worried that this person was now going to be operating somewhere where we didn't know he was operating. We were anxious to inform the authorities that that was the case, and a phone call was made to his home.

Q363 Nicola Blackwood: Where you have these alleged paedophiles under surveillance, do you inform the authorities when you have them under surveillance and you know where they are, or do you only inform the authorities when you lose them?

David Jordan: We only inform the authorities if we think that there is some form of severe risk to someone in society from them, so until we have gained—

Q364 Nicola Blackwood: So you take it upon yourselves to carry out surveillance?

David Jordan: We have a very particular protocol in relation to undertaking these kinds of activities that involve an intrusion into people's privacy. We have to

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have prima facie evidence that something wrong is being done. We then have to stand up that evidence ourselves, and then we have to gather the evidence through secret recording or some other methods. We don't tell the authorities unless we have gathered evidence that something is going wrong and we can demonstrate it. The only other occasion on which we would inform the authorities is if we believed there was a severe danger to somebody from the activities that were going on, in which case we would go to the relevant authorities—the police or whomever else it happened to be. We keep these activities under constant review through the protocols that we have in place, and therefore we are always in a position to assess at any given moment whether we should be carrying on with our investigation or whether things are too dangerous to allow it to carry on and we should be reporting it to the relevant authorities. That goes for investigations into paedophiles and also, for example, for our investigation into care homes recently, where we uncovered abuse of patients in care homes. We would assess that constantly throughout the process to make sure that we—

Chair: Could you make your answers a little briefer, because we are pressed for time. It would be very helpful if you could.

David Jordan: I am just trying to be clear, Chairman.

Q365 Nicola Blackwood: Have you been given legal or police advice as to at what point it becomes dangerous not to inform the police? I wonder what kind of competence—

David Jordan: We take advice from lawyers and from relevant professionals.

Q366 Nicola Blackwood: You have given me two examples of cases where you thought it was appropriate to use these kinds of deception techniques. Are you aware of any examples of media organisations having used private investigators or these kinds of techniques for purposes that you would consider unacceptable?

David Jordan: On the BBC, we don't do celebrity journalism and intrusions into people's private lives on the basis of the facts of their private lives.

Nicola Blackwood: I did say media organisations in general.

David Jordan: We are not interested per se in whether somebody is having a relationship with somebody or whether they are not. We might be interested if that displayed some form of hypocrisy, or they were in the business of making policy that was diametrically opposed to their own personal activity or something of that nature, but we wouldn't be interested per se in people's private lives and reporting those. As I understand it, a lot of the intrusion into people's private lives that has taken place in the past in other parts of the media has been for the purpose of gaining information about people's private lives and relationships.

Q367 Nicola Blackwood: Do you have a specific public interest test that you would apply? Does it have a set of criteria?

David Jordan: We have. We have a public interest test, which is set out in our editorial guidelines at length and which most people think is the most extensive public interest test that exists in the British media. For example, it requires us to demonstrate that we are exposing or detecting crime, exposing significant antisocial behaviour, exposing corruption or injustice, disclosing significant incompetence or negligence, protecting people's health and safety, preventing people from being misled by some statement or action, disclosing information that would assist people to better comprehend or make decisions on matters of public importance. Those are the things that we set down, but we say that that is not an exclusive definition. There may be other elements to it as well.

Q368 Mark Reckless: Mr Jordan, you said in your letter to the Chair that the BBC had not changed its use of private investigators since the close of the *News of the World*. Would we be right to assume that is because the internal investigations that you launched after the closure of the *News of the World* gave the BBC a clean bill of health?

David Jordan: We conducted an audit in which we looked at all the uses that we have made of private investigators. We interrogated 6 million pieces of information over the period that we have already disclosed just to look at what we have done over the period. While we did not come up with anything that we thought could not be justified in the public interest, and we came up with very few instances of intrusions into privacy carried out by private investigators, we did think that we should tighten up the processes by which we dealt with the private investigators on top of the privacy considerations that I have already outlined to the Chairman and to Ms Blackwood.

Q369 Mark Reckless: You said that you used a private investigator on one occasion to discover the details of the owner of a vehicle from a number-plate.

David Jordan: Yes.

Q370 Mark Reckless: How do you imagine the private investigator obtained that information?

David Jordan: At that time, it was perfectly possible to obtain number-plate information without doing anything illegal.

Q371 Mark Reckless: Were a private investigator to obtain such information by, for instance, paying someone at the DVLA, would there be any circumstance in which the BBC would think that could be justified?

David Jordan: I don't know. I think there is a theoretical possibility it might be if you are investigating major corruption of some sort, but I am not aware of any instance where we have done that. Now we have changed our processes so that any decision to use illegal methods, even by a private investigator or a third party acting on our behalf, would have to be referred back to our editorial

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processes before it can be agreed. But I think the Director-General has made it clear that it is not impossible that in carrying out serious and substantial investigations, which are the sort that we do, and that are very much in the public interest, there may be times when journalists have to break the law.

Q372 Mark Reckless: On that point, Mr Jordan, you referred to having the most extensive guidance, I think, of any media organisation. You told us that for news expenditure on private investigators it is certainly no more than 0.011%. Do you think there is any danger that the BBC might become overly cautious in its use of private investigators for what may be properly purposed investigative journalism, and may there perhaps be a larger role for the BBC in investigative journalism?

David Jordan: I doubt very much whether there is a larger role, given that we haven't needed to use them for these purposes very much in the past. Certainly, from where I sit—and most major investigations carried out by the BBC are personally supervised to some extent by me or by my team—I don't see any signs that the BBC is being stopped from carrying out legitimate investigative inquiries in the public interest by any restriction on our use of private investigators. As I have already said, there is no restriction; there are simply processes in place to make sure we manage it correctly.

Q373 Lorraine Fullbrook: Mr Jordan, I have two supplementaries to some of the answers you gave to Nicola Blackwood before I ask my question. You said that in deciding whether you should inform the authorities, you contact lawyers and other professionals. Who are the other professionals?

David Jordan: For example, in the *Panorama* that we made not very long ago about the abuses of individuals in a residential facility—

Chair: Sorry, can you speak up, Mr Jordan?

David Jordan: Yes, I am sorry. I thought I was mic'd here. In the *Panorama* that we carried out recently about the abuse of individuals in a social care home in Bristol, clearly we were monitoring the material that was being collected by the person that we put in undercover on a daily basis, and clearly it was revealing some very disturbing things.

Q374 Lorraine Fullbrook: So journalists are the other professionals that you use as well as lawyers?

David Jordan: No, no. Then we showed that material to care specialists, who then assessed for us whether or not the activity that we dealt with and we were witnessing was so dangerous that we should step in and alert the Care Quality Commission, the police and other authorities immediately, rather than doing what we did and alerting them just before the programme was shown so they could take action.

Q375 Lorraine Fullbrook: Have you had any occasions where you have broadcast what you have been investigating before you have informed the police or other legal authorities?

David Jordan: I can't think of one off the top of my head, but I am sure that we have, yes. I don't think

we always inform the legal authorities that we are about to disclose law-breaking in advance of disclosing it, no.

Q376 Lorraine Fullbrook: Why?

David Jordan: Well, because our job is not to enforce the law. We are journalists. We carry out investigations into things. We are quite happy then to make available the information that we have found and we will disclose it to people who ask us to disclose it to them under the right circumstances, but we are not policemen. We are not carrying out investigations under law. We are carrying out journalistic inquiries. It is very important we maintain that distinction.

Q377 Lorraine Fullbrook: As a customer of private investigators, are you in favour of a statutory regulatory scheme for private investigators?

David Jordan: I am not sure what that would entail. I think there are two ways of approaching this in all professions. One is to have a statutory scheme of validation and the other one is to have some form of voluntary kitemarks or trade associations that indicate that the person that you are going to deal with is of good repute. I do not think I would have any objection to the latter. I am not sure that it needs a statutory regime in order to arrive at the same outcome, but we don't have a BBC policy on that matter.

Q378 Lorraine Fullbrook: Should your kitemark-type scheme include a competence assessment as well as regulation of propriety and ethics?

David Jordan: I think most such schemes allow for a system whereby complaints can be entertained, which would demonstrate if the person is behaving incompetently. That is how you discover incompetency in most professions; basically, people are complained against, and then there is an upheld complaint against them and competence is established. If you had a trade association or a trade body—and this is what lawyers and others do—and somebody felt that they had not behaved appropriately or ethically or whatever they are required to do, then a complaint could be made against them, it could be either upheld or not, and if it was upheld, you would know there was, as it were, a black mark against that particular company or those individuals.

Q379 Lorraine Fullbrook: How does the BBC currently assess the private investigators you use?

David Jordan: In the ones that we use for security services, we tender.

Lorraine Fullbrook: No, not the security services.

David Jordan: We tender for those.

Q380 Lorraine Fullbrook: You said at the beginning there was a distinction between security services and private investigators and that the money, the £330,000, was split between the two.

David Jordan: Absolutely.

Q381 Lorraine Fullbrook: How does the BBC assess the competency and accuracy of the

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information you are receiving from these private investigators?

David Jordan: In the same way as we would assess the competency of freelance journalists—for example by their reputation, by what they had done for other people and for us in the past, and by their general reputation for competence and integrity.

Q382 Dr Huppert: To follow on from what you were saying about how you select the private investigators you use, you are saying that essentially you would wait and see if anybody had complained about them behaving inaccurately, rather than taking a more proactive stance to assess whether the information that they provided to you is legitimate. Is that right?

David Jordan: No, I didn't say that. I was invited to speculate about a potential regime of governance for private investigators in the UK. I was offered an alternative between—and I was offered the opportunity to endorse a statutory system. I said I could myself conceive of a different system, which would be based on a more voluntary method of regulation and I speculated about it. I didn't mention anything to do with what the BBC does in relation to that—

Dr Huppert: So how do you select them?

David Jordan:—and I specifically said the BBC doesn't have a policy on it.

Q383 Dr Huppert: So you do not have any policy at all about how you would check that information was legitimate?

David Jordan: We do not have a policy on the regulation of private investigators.

Q384 Dr Huppert: But the private investigators that you do use—

David Jordan: We use on the basis of reputation and our own assessment of their competence and standing, which we do with freelance journalists and many other people who work—

Q385 Dr Huppert: But the focus is on their competence and their reputation, rather than on assessing whether what they do is strictly legitimate, strictly legal, strictly ethical?

David Jordan: Well, we are in control of what they do, so we assess whether they do things that are strictly legal, strictly ethical and all the rest of it. That is the whole point of the way in which we conduct—

Q386 Dr Huppert: To be clear, it would be entirely up to you if any of them did do things that were not legal, not ethical, not legitimate?

David Jordan: That is why we have changed our process to make absolutely clear that you don't do things that are outwith our editorial guidelines or are outside the law without our express approval.

Q387 Dr Huppert: You have also said on a number of occasions that to the best of your knowledge the BBC has not used any private investigators in the last

year for investigative work as opposed to security. Given that you also say that there is a protocol that says that you have to sign them all off—

David Jordan: I would know.

Q388 Dr Huppert: So when you say “to the best of your knowledge”, you mean definitely not?

David Jordan: Well, unless somebody has done something without asking me is what I am getting at, which is always possible—

Dr Huppert: They would not be allowed?

David Jordan:—but I think in the current circumstances, unlikely.

Q389 Chair: Mr Jordan, before I bring in Mr Clappison, can I just clarify, when did this change? You said “from now on”. From the beginning of this year you signed off—

David Jordan: We announced that we were bringing this policy change into place, and the guidance that governs it will be published within the next couple of months on our website, but we are already—

Q390 Chair: That is not an answer, Mr Jordan. I do not want to know about an announcement. I want to know when the policy changed. You said they now have to come to you and you sign off the use of a private investigator. When did it change—before they didn't come to you? It is quite simple.

David Jordan: An assessment of our use of these private investigators was sent to the BBC Trust some time ago and published as part of our evidence to the Leveson inquiry. At the moment it was sent to the BBC Trust, our policy changed.

Chair: So when was that?

David Jordan: Was it in July of last year? *[Interruption.]*

Chair: I just want a date.

David Jordan: Last year. I can send you a date if you would like.

Chair: I don't want the process as to what goes on.

David Jordan: I can send you a date.

Chair: From July last year you have changed your process.

David Jordan: Let me write to you on the exact moment.

Chair: You can write to me by all means, but just tell the Committee now. From July last year, the policy changed and the use of private investigators by a journalist has to come to you personally, from July—

David Jordan: I will send you the date, but the import of your remarks is accurate, yes.

Q391 Chair: All right. So you think it is July, but you don't know?

David Jordan: I will send you the date.

Q392 Mr Clappison: You adverted earlier on to the case of Mr Whittamore, and I think this is perhaps an apt moment to bring him in. You said there was this very strong public interest justification, which there was on the basis of what you have told us and what has been said elsewhere, regarding employing him, but surely something went wrong, didn't it—that you employed somebody like that, who as we now know

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was involved in many other activities that subsequently resulted in him being convicted? What went wrong with that employment?

David Jordan: I don't think we did know anything about Mr Whittamore at the time. This is way, way before the Information Commissioner's report of 2006 and at the time, Mr Whittamore was just one of a number of individuals and companies offering services in relation to tracking down and gaining information. That was a long, long time ago.

Q393 Mr Clappison: Well, it was in 2001, and he was subsequently convicted, I think, in—

David Jordan: That was 10 years ago.

Mr Clappison: Well, 10 years ago. I am asking you to look back on that and to say what went wrong. Did nothing go wrong?

David Jordan: I don't think anything specifically went wrong, given what we knew about Mr Whittamore at the time. On the other hand, what I would say to you is that the Information Commissioner found two instances where the BBC was mentioned in Mr Whittamore's information, but they were not published at the time. When we found about them as a result of an investigation done by our own *File on Four* programme, we did ask the Information Commissioner for further information about that. One of them was this instance, which happened in 2001, which we thought was thoroughly justified in the public interest. The other appeared to be an attempt to discover for another newspaper what the BBC's then wine bill was, and it was justifying that. Things don't change very much, do they, in relation to the BBC and the rest of the media, but there was an attempt to find out what the BBC's wine bill was and that seemed to be an inquiry that was handled by Mr Whittamore on behalf of another media organisation. So there were two instances. I can't say that things went—[*Interruption.*] I don't think they were able to find out what the bill was, and that may not have been a good thing.

Chair: Order. Mr Jordan, we are very short of time. You could write to us with a copy of the wine bill if you prefer. We don't wish to know now.

Q394 Alun Michael: I found your response on the question of a statutory regime very odd, because you seem to think that a regulatory system is purely about a complaints process, but the general expectation is that if you regulate a trade or a business, that will guarantee the quality and professionalism of the service given, and that applies whether it is a gas fitter or a solicitor or a journalist. So you need a system for dealing with complaints, yes, but that is not the point. So can we return to this issue of a statutory regulatory regime? Wouldn't it make it easier for you if you knew that anybody who was possibly going to be brought in by one of your teams was subject to a regime in terms of quality, performance and professionalism?

David Jordan: Yes. I don't disagree with a word that you have said, and I was trying to keep my remarks succinct in answer to the questions from Ms Fullbrook.

Q395 Alun Michael: Yes, but you focused merely on when things go wrong.

David Jordan: No, but any regulatory regime asks those who are governed by it to sign up to a set of standards; that is what you are saying.

Alun Michael: Yes.

David Jordan: And that would be helpful, but, on the other hand, the only regulatory regime that I am aware of also has mechanisms for assessing when people fall below those standards, whether it is in broadcasting or in medicine or in law.

Q396 Alun Michael: Sorry, with respect, the point is to get the high quality of service and to know what it is that you are buying.

David Jordan: Yes. My point to you is that you don't guarantee that simply by having a set of standards to which people sign up, because people still manage to fall below those standards even when they have signed up to them. You need a mechanism for assessing both that they sign up to them and that they adhere to them.

Q397 Alun Michael: Quite so. Well, the regulation would deal, first, with individuals and organisations undertaking that activity, but there is the question of drawing the line between procuring something and having things happening in-house. I asked earlier witnesses about where we draw the line if there is a regulatory system to ensure that an exemption for journalistic purposes doesn't end up with private investigators, or those who are perhaps not legitimately engaged, rebranding themselves as journalists for the purpose of avoiding legal regulation. What is your view on that?

David Jordan: That is why it is important to have processes in place, through your editorial guidelines or through the Ofcom code or whatever it is that you use, to make sure that whoever is working for you and whatever they are called is governed by the same set of editorial principles.

Q398 Alun Michael: Would you therefore say that the requirements that you place on anybody you procure—whether it is an independent journalist or a private investigator and your internal professionals, if I can put it that way—are subject to exactly the same standards?

David Jordan: I would. That is exactly my point.

Q399 Chair: So is it your evidence to the Committee that since you took on the responsibility of signing off the use of private investigators, no private investigators have been employed?

David Jordan: For investigatory purposes.

Q400 Chair: Yes, for investigatory purposes—not the bouncers who go along with your journalists.

David Jordan: Not the bouncers, and not the people who carry out surveillance.

Q401 Chair: I think we know what private investigators are. You have not signed off any?

David Jordan: I haven't signed off any, no.

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Chair: Excellent. It would be very helpful to have a copy of those guidelines—as we have asked the *Mail*, the *Telegraph* and *The Times* to provide—if you could send us one. You do not need to send us a copy of the wine bill of the BBC.

David Jordan: Thank you. We don't have one these days, unfortunately.

Chair: Thank you very much, Mr Jordan; we are most grateful.

Tuesday 22 May 2012

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Dr Julian Huppert

Alun Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witnesses

Witnesses: **Mike Schwarz**, Partner, Bindmans LLP, **Julian Pike**, Partner, Farrer & Co LLP, and **Dan Morrison**, Partner, Grosvenor LLP, gave evidence.

Q402 Chair: Mr Schwarz, Mr Morrison and Mr Pike, thank you for very much for coming. My apologies for keeping you waiting. The Committee is also looking at border security, and we were taking evidence from the new head of the UKBA. Can I start by referring everyone to the Register of Members' Interests and declare specifically that one of the firms, Bindmans, has acted for me in the past. Are there any other interests that need to be declared?

Alun Michael: Bindmans once represented me, a couple of decades ago and quite successfully.

Mark Reckless: I qualified as a barrister in 2007, as a solicitor in 2009, and I worked on matters, including dealings with private investigators, while at Herbert Smith.

Michael Ellis: I am a barrister, called to the Bar in 1993, and I declare my interest as such, although I am now non-practising. I do not believe that either I, or any of my family, have instructed any of the three firms represented here, but they may have done so in the distant past.

Mr Clappison: I was called to the Bar, and that is in the Register of Members' Interests.

Mr Winnick: The rest of us, fortunately, are not lawyers.

Chair: We are concluding our inquiry into private investigators. We have seen a number of groups. There is no reason in particular why we have called you all to give evidence, except that some have written in with specific written evidence to this Committee and others have been mentioned or named in passing or others are experts. So there is no particular reason why you are here as opposed to anyone else. But I would like to start with a question to each of you, concerning the involvement of law firms and their use of private investigators, possibly on occasions for illegal activities, and I want to know whether you know anything about this. Mr Pike?

Julian Pike: Absolutely not. No. We do instruct private investigators from time to time.

Chair: You will need to speak up, I am afraid.

Julian Pike: We do instruct private investigators from time to time, but certainly not for any illegal activity.

Q403 Chair: Why do you instruct private investigators? What would they do for a firm of solicitors?

Julian Pike: Typical examples would be tracing witnesses, serving people with court documents. Sometimes it is necessary and appropriate to carry out

some surveillance. Occasionally there are background checks that can be done on people, frankly, that are better done by organisations other than your own, in terms of time management, costs and expertise, and sometimes it is a corporate risk management exercise where you are looking at should a client enter into an agreement with another company, for example.

Dan Morrison: No law firm or no lawyer would instruct an investigator to do anything unlawful or illegal. That said, it happens beyond anyone's control. Just to echo what Mr Pike said, investigators are used for a range of assignments, from corporate due diligence—if a company is buying another company it wants to check out that company's customers, management and so on—right through to fraud cases, where you are tracing assets, finding people and so on. As I am sure we will come on to during this session, it is a very significant business and most lawyers, particularly in litigation matters, would regularly instruct investigators.

Q404 Chair: Mr Schwarz, you wrote to this Committee with evidence of examples. In particular, you describe it as "the unregulated, unsupervised and invisible participation of private investigators within the heart of the criminal justice process". This is a very serious charge that you have made from the firm that you represent. How deeply does this run?

Mike Schwarz: I only have experience of the one case, which is to do with the Ibori litigation, but what I have seen in that case is serious illegality on behalf of private investigators, RISC Management Ltd, instructed by an eminent firm of solicitors, Speechly Bircham, which involves apparent corruption right at the heart of New Scotland Yard.

Q405 Chair: What has happened as a result of that? You talk about corruption. Your evidence is quite strong.

Mike Schwarz: One of the problems is that it is not getting detected because it is unregulated. As I see it, the core is the operation of the police and their connection with the security firm involved; the police being the Proceeds of Corruption Unit within New Scotland Yard. The problem there is the key culprits appear to be the key players, who are the senior investigating police officer, DI Gary Walters, and two of the key investigators, who are DC John McDonald and DC Peter Clark. Together they top and tailed things so that the investigation appears to be directed

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in a way that their own apparent misconduct can't be detected, because they are in control of the evidence coming in and the evidence going out. By "going out" I mean being disclosed perhaps to fellow officers, perhaps to the Crown Prosecution Service, to the judge and to those making inquiries about their conduct.

Q406 Chair: So you are telling us that there is a connection between solicitors, private investigators and the police in respect of criminal matters, matters before the justice system?

Mike Schwarz: That appears to be the case because I have seen material, which I think has been submitted to the Committee, involving invoices from RISC Management Ltd to Speechly Bircham reporting on contact and—above all, perhaps—payments made by RISC Management to sources that they have, presumably police officers or those close to the investigation.

Q407 Chair: Mr Pike, does this happen other than in the criminal justice system? Have you heard of this before?

Julian Pike: I have no knowledge of such a case as that. I can't dispute what Mr Schwarz says, but I have no corresponding knowledge.

Q408 Chair: Mr Morrison?

Dan Morrison: No. I think, as Mr Schwarz has explained, if that were to happen, it would be very serious indeed, which would involve the criminal courts looking at that matter. But certainly from my experience of private practice—and I am involved in civil cases, mainly private cases for corporates and individuals—I have never seen that level of improper contact with police officers.

Q409 Chair: Mr Morrison, do people employ former police officers as private investigators because they know the system? Evidence was quite openly given to us that 60% of private investigators are former police officers, for example.

Dan Morrison: Yes.

Q410 Chair: Do you specifically go to former police officers who know the system?

Dan Morrison: I wouldn't say that one targets a former officer or a former customs official, or a former whatever, to tap into that person's expertise for an ongoing investigation or inquiry. It is fair to say that, if one looks at the world of private investigators—and again, just to disabuse any notion the other way, the industry is not one of many Max Gumshoes wandering around snooping through bins—these are sophisticated, professional people in the main. Obviously there is the odd exception. That community is staffed by ex-journalists, ex-law enforcement, ex-lawyers and so on. But certainly ex-law enforcement plays a reasonably significant part of that world.

Q411 Mr Clappison: Could I ask Mr Schwarz—and it sounds serious, the matters that you brought before the Committee this morning—just to have an understanding of where the private investigators fit

into this, what is the link between the private investigators and the departments to which you referred? What is it they are doing?

Mike Schwarz: They are instructed by the solicitors to act really as surrogate solicitors in the course of criminal investigation and the like, for example restraint proceedings, and so they liaise as if they are lawyers, though not regulated like lawyers, with the police. I have seen evidence—and I think the Committee has it—in emails sent by one of the investigators, Cliff Knuckey, to his instructing solicitor, Ian Timlin from Speechly Bircham, talking about his contact liaison with the police; the police being DI Walters or DC McDonald. They talk about that, and I think the Committee has that. The Committee may also have the invoices submitted by RISC to Speechly Bircham, in which they talk about—

Q412 Mr Clappison: What I want to get at is what do you say the private investigators are reporting back that they have done?

Mike Schwarz: There are a number of layers to this. There are five things. One is that they seem to be extracting information about the police investigation from the police, which, if they had an arms-length relationship with the police, no solicitor would expect to gain; for example, about the strategy of the police investigation—in the case I talked about, it is about the fraud in Nigeria or its impact on the financial services in the UK—right down to the minutiae, which is the interview and the strategy of the police in relation to suspects. So that is one thing. They extract information about the police investigation from the police.

Equally, what appears to have happened—and this is very unnerving for lawyers—is they appear to supply privileged information from the defence side to the police. For example, there is evidence that they may provide to the interviewing police officers information about someone's instructions. To give you an example, the person that I am representing has been prosecuted and had a co-accused, James Ibori. What appears to be happening is that the security firm, RISC, provided information to the police that they extracted from working closely with my client, and also provided information of what my client said to the police back to the Ibori team instructed by Speechly Bircham. So they are providing information about the defence case to the police.

Q413 Chair: Thank you. That is very helpful. Just to conclude that, presumably these are no longer serving officers in the Met?

Mike Schwarz: That is very worrying. One of them, DI Walters, who was heading the investigation—and this harks back to a comment made earlier—appears now to be working with RISC because you see him giving conference speeches for RISC. So having retired from the police—

Q414 Chair: A police officer involved in this case is now working for the private investigator?

Mike Schwarz: That appears to be the case, yes. The Committee has the brochure for the conference.

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Similarly, just to answer your direct question, it appears that DC McDonald and another colleague, DC Clark, are still not only involved in this unit but also active on the same case. They are still on duty in the same investigation.

Chair: Thank you very much. Yes?

Q415 Mr Clappison: Could I just come back to a question you asked Mr Pike on best practice as far as this is concerned? What would you regard as best practice in selecting private investigators to do the type of work to which you refer?

Julian Pike: I have limited experience, since I have tended to use the same firm for about 10 years or so because I know I can trust that firm to behave properly. In the sense of having the best practice, I do not have one as such but I have built up a relationship with a particular firm that I know I can rely upon to do things legally and properly. They also know that if they were to do something that wasn't correct they wouldn't be instructed again. I think that is the bullet answer to it.

Q416 Bridget Phillipson: A question for Mr Morrison: in your experience, how often do private investigators become involved in work that would normally be reserved for lawyers?

Dan Morrison: I wouldn't necessarily say that it is either/or, if that is how you are asking the question. Certainly, in certain types of cases—and I will give you a few examples in a moment—investigators will regularly work alongside lawyers in evidence-gathering. To take a classic example, commercial fraud cases: the Committee may or may not be aware that essentially in London the Metropolitan Police, the City of London Fraud Squad, and to an extent the Serious Fraud Office, will not investigate a commercial fraud unless very significant sums of money are involved.

There is a whole plethora of corporations and individuals who lose billions of pounds by reference to illegal activities, theft cases for example, where the police are just not an option. The police are not interested or do not have the resources, or what have you. In my experience, in those circumstances, an investigator will be used almost all the time in fraud cases to trace assets or find people or find witnesses, quite legitimately and quite properly. In other cases, for example personal injury cases, investigators are also used. You have all seen examples of benefit cheats being filmed playing with the kids or playing sport when they have been taking disability allowance for some period of time. So in certain types of cases, depending on the nature of the cases, investigators are used very significantly as a percentage of those types of actions.

Q417 Bridget Phillipson: Practising lawyers are subject to regulation, but in the cases you are talking about, of course, private investigators are not subject to the same kind of regulation of their activities.

Dan Morrison: They are. There is no regulation, in the sense that lawyers are subject to the Solicitors Regulation Authority or banks to the Bank of England or FSA. However, with investigators there is no

formal regulatory authority. The SIA—who you will hear from shortly—have a role. But I wouldn't call that a regulator. It is more of a set of minimum standards, so to speak. In terms of the obligations of investigators, they are subject to the data protection legislation, the Regulation of Investigatory Powers Act and other pieces of legislation and common law that do bind them. So they are not immune from the law when it comes to their acts.

Q418 Michael Ellis: Gentlemen, as far as the payment of private detectives is concerned, do any of you, yourselves, or do you know any colleagues who instruct private investigators by result, so they might get paid more if they can find a result that is to the liking of your client? Do any of you know anything along those lines?

Julian Pike: No, is the short answer.

Chair: Performance-related pay.

Mike Schwarz: I think the performance indicator I am aware of is different, in the sense that the private investigators pay the police for information and assistance that they gather. The records, which I think the Committee have, shows about half a dozen payments totalling about £20,000 over a period of eight or nine months. I think that is where the system is skewed in terms of payment. It appears to be inappropriate, if not corrupt.

Dan Morrison: I wouldn't agree with that. I can understand and would completely agree that payments to the police are completely improper and should never be made. In terms of in the civil space, in the commercial space, I have seen examples of investigators being paid by results. It is not dissimilar to lawyers. Lawyers are allowed to act on conditional fee agreements, perfectly proper, having been disclosed to the client and notice given to the other side.

Q419 Michael Ellis: Can you give me an example?

Dan Morrison: To anonymise it to protect client privilege, an example would be, as I mentioned before, you are acting for a bank. It has been defrauded to the tune of £10 million and you are looking for evidence of where the assets have gone and an investigator, through lawful means, identifies the location of an asset.

Q420 Michael Ellis: What about an example of a private client who might ask for a private investigator to be instructed to find out whether someone he knows is acting in an immoral fashion, and finding evidence of immorality would elicit a better remuneration package than not finding such evidence? How about that sort of example?

Dan Morrison: In that example, as a lawyer you are treading on thin ice because one has to take the view: what is the evidence being used for? As I mentioned, if you are involved in litigation—

Michael Ellis: It might be matrimonial proceedings.

Dan Morrison: Quite, but to juxtapose the two points: if you are involved in litigation, it is a court-facing dispute. You find out material through an investigator that is used or is relative to the court case, I think it is fair enough. In your example, sir, there is a

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suggestion that that evidence of immorality—as you put it—could be used to blackmail, could be used to leverage up. In those circumstances, as a lawyer your antennae would be twitching, and I think you would have to decline that kind of role.

Q421 Michael Ellis: We have all heard—and this Committee particularly—of the use of private detectives to target celebrities, but we are trying to get a more complete picture of their involvement in the legal system—so, people in public life. I presume that your firms have occasionally acted for people in public life and celebrities. Have you any observations about the use of private investigators or detectives in those sort of circumstances, and how do you think the involvement of private detectives in the legal system affects people who are not celebrities?

Julian Pike: From my point of view, I don't see any particular facet that attaches to whether someone is a celebrity or not. It is about whether or not there is a legitimate exercise to be carried out as to whether or not you instruct a private investigator. To my knowledge, I have never been involved in anything that involves investigating someone because they are a celebrity. That is just bizarre. I think that is just starting from a false premise.

Q422 Michael Ellis: For example, newspapers who might wish to investigate celebrities because of their own interests, you have not had any experience of that?

Julian Pike: No.

Dan Morrison: Acting for well-known people, you do see a trend. Normally well-known people are the targets of intrusion, generally speaking. Where newspapers try to find out information, it is not often through investigators. Normally it is through hiring paparazzi; normally it is through paying performance; normally it is through other methods. In my experience of acting for high-profile people in sport, entertainment, public life, I don't believe investigators are routinely used for that purpose. Newspapers can find other material out through different routes.

Q423 Michael Ellis: Interesting. Mr Schwarz, do you have anything to add to that?

Mike Schwarz: Not on the celebrity front, no.

Michael Ellis: Did you want to add any other point that is remotely connected?

Mike Schwarz: Only that obviously the most powerful people who are affected by criminal investigations have the most clout and, in cases like this, are most likely to have the influence and access to make the payments and to get private security firms involved. There have been wider allegations—which I don't know about, other than what I have read in the press—about RISC Management being involved, not only in the Ibori case but in four or five other high profile cases, where payments were made for access to information from the police about the nature of an investigation. There is a reported case from 2006 where *The Times* published material about Keith Hunter, one of the RISC Management Ltd directors, allegedly making payments to an extradition squad officer for information about that investigation. So

power and money appear to go together with inappropriate conduct by private investigators.

Q424 Chair: Thank you. Mr Pike, in your evidence to the Leveson inquiry—is that coming up later? It is not—you instructed a private investigator to look into the private life of Mark Lewis. Is that right?

Julian Pike: No. You need to be clear about the two different exercises that were carried out by our side.

Q425 Chair: Yes. How were you involved in this?

Julian Pike: I gave advice to News Group that some surveillance should be carried out, in relation to both Mr Lewis and Ms Harris. That actual surveillance was carried out by somebody who the *News of the World* chose to instruct. I had no direct dealings with them at all.

Q426 Chair: You advised News International that Mark Lewis and—

Julian Pike: Ms Harris, who has been before you.

Chair: Ms Harris, one of our witnesses?

Julian Pike: That is right.

Chair: Should be the subject of surveillance?

Julian Pike: That is right.

Q427 Chair: For that you used private investigators?

Julian Pike: No, I didn't use private investigators. I instructed one particular agency to do one particular job, which was to look at some public open documents. *News of the World* used an agent, who I had no knowledge of whatsoever, to carry out the surveillance, which I think is where it went wrong.

Q428 Chair: Is that normal, that a firm of your reputation would say to clients that two solicitors—they are both lawyers, aren't they?—

Julian Pike: That is right.

Chair:—should be the subject of surveillance. Is that normal?

Julian Pike: I totally agree it is very unusual, and I have certainly not had cause to do it before and I hope I don't have cause to do it again. In these particular circumstances there was justification for doing it, and I would frankly do it again tomorrow if I had the same circumstances.

Q429 Mr Winnick: Pursuing that, Mr Pike, why should the two be the subject of investigations by your firm? One can understand the *News of the World*, without justifying it; far from it. But, as the Chair said, a firm that I think is used by the Royal Family, certainly has a high status, a high profile, and legitimately so, why should two lawyers be the subject of such surveillance?

Julian Pike: I can't go into the complete detail of this. In fact, I would love to do it.

Chair: No, please, not today.

Julian Pike: But not today. We would be here for quite some time, I have to say.

Chair: We just want the principle behind it.

Julian Pike: The principle is that over a number of months we had some very serious concerns about breaches of confidentiality. As a result of those concerns, we thought it appropriate to do what we did.

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I have no regret about doing that. I totally accept it is highly unusual but, in these particular circumstances, it was entirely appropriate.

Chair: Can I just say to colleagues, we have other witnesses who are waiting, including the Minister. So can we make the questions very brief?

Q430 Mr Clappison: You mentioned a moment ago about looking at documents that are publicly available, but you also said that you instructed them for surveillance. Yes?

Julian Pike: That is right, yes.

Q431 Mr Clappison: That meant physically watching the solicitor on the other side?

Julian Pike: No. I advised the client they should carry out some surveillance. In this instance, yes, it would have involved watching somebody and carrying out surveillance. I agree.

Q432 Mr Clappison: Who was it you were watching?

Julian Pike: In this instance it was Mr Lewis and Ms Harris, but I stress—

Chair: We know who they are. We are aware of the Leveson inquiry. Mr Clappison, do you want to go on to your questions?

Mr Clappison: No, that is fine.

Q433 Dr Huppert: To move on from some of these specific instances that we have been touching on, and to work out where we take things in the future. Can I just understand, would you like to see a statutory regulatory regime for private investigators and, if so, what would it be?

Mike Schwarz: Perhaps I could start. I think there needs to be some mechanism for them to self-censor and control their actions and for their misconduct to be detected. What has happened in the Ibori case is it has gone undetected. To give you an example, the nearest thing to the regulation is the Independent Police Complaints Commission investigating allegations against the police involved, not directly the security firm involved. There, there seem to have been huge failings. They have been notified of these concerns since August of last year and apparently have not interviewed Speechly Bircham or approached RISC Management. As I said earlier to the Chair, two of the key officers are still on duty on the same case, and one has retired and joined RISC Management. So the teeth are non-existent and there needs to be much more.

Dan Morrison: Yes, I think that the industry needs to be regulated. I think the investigators want it to be regulated to remove this kind of shroud of cloak and dagger that sits behind it. One thing that the Committee needs to bear in mind is the structure, the nature of how it operates in the UK. In the UK, unlike the United States, you have four or five large investigation firms, Kroll, Control Risks and two or three more. Below that you may have half a dozen firms like RISC, with 20, 30 or 40 members of staff. Beneath that you have many hundreds, maybe thousands, of one-man bands. The way the industry works in practice is that there is a lot of subcontracting

that goes on. Large firms get the big jobs. They don't have the resource. They don't have surveillance teams on hand all the time. They then subcontract that out to specialist surveillance teams. What that tends to mean is basically, as a lawyer, there is no way of controlling who is doing the work. The benefit of a regulatory regime would be essentially to control and flush out the undesirables from the industry. Certainly, the feeder end of the market is populated by people who will basically leave no stone unturned, irrespective of the legality, probity or ethical propriety of what they are doing. So it seems to me if regulation can do one thing and one thing only, it would be to remove the many hundreds of one-man bands who profess to do this job properly but don't do it properly at all.

Julian Pike: I would echo very much what Mr Morrison said. Obviously I haven't seen any examples that Mr Schwarz has suggested.

Q434 Chair: You do not deal in criminal law, Mr Pike?

Julian Pike: I don't, no. While I don't doubt what Mr Schwarz says, I think one has to be slightly careful of taking a very rare case, by the sounds of it, and making that the standard, the rule, of what happens.

Q435 Chair: But you think there ought to be regulation?

Julian Pike: I think it has two benefits. I think it has a deterrence benefit. It would certainly discourage people to breach the law, in the same way, hopefully, that the law currently does generally. But I think it has a preventative point. So you have a basic level of competencies and hopefully, as Mr Morrison was saying, you start to weed out the bottom end where people misbehave. I think from my—

Q436 Chair: It should not be a bar for a former police officer to become a private investigator, but ought it to be a bar for someone with a criminal conviction to become a private investigator? A quick "yes" or "no" would be fine.

Julian Pike: At a certain level, yes. Obviously a drink-driving offence is not going to bar you.

Mike Schwarz: I slightly take issue with the presumption, which is that there should be no bar to the police joining investigators—

Q437 Chair: Yes. Do you think there ought to be?

Mike Schwarz: I think so. In RISC what you have is two former senior police officers within New Scotland Yard—Mr Knuckey being head of the money laundering unit, and Mr Hunter being a part of the international crime unit—going into, for want of a better word, private practice, RISC, and then instructing others, for example Martin Woods, to go right into the heart of a legal team; themselves, Mr Knuckey and Mr Hunter, doing work on behalf of a number of parties to litigation, apparently quite oblivious to conflict-of-interest rules.

Q438 Chair: You would be against police officers serving even a period of purdah between finishing

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their police officer's job and becoming a private investigator? You would be against that completely?

Mike Schwarz: I think it is absolutely inappropriate for police to be having such close liaison—as appears to have happened in this case—with former colleagues, friends, wining and dining them and paying them.

Q439 Chair: Finally on the law, clearly it is an offence for someone to pay a police officer. Is it a disciplinary offence for solicitors to pay somebody to pay a police officer? Mr Pike.

Julian Pike: Yes.

Chair: It is?

Julian Pike: It must be.

Dan Morrison: Must be.

Q440 Chair: Mr Schwarz?

Mike Schwarz: Yes.

Chair: It is. Thank you very much for your evidence. We will be writing to you after this hearing to see whether there is any other information you can assist us with, and we are most grateful to you for coming in. Thank you very much.

Examination of Witness

Witness: **Bill Butler**, Chief Executive, Security Industry Authority, gave evidence.

Q441 Chair: Mr Butler, thank you very much. I have to apologise for keeping you waiting. I am afraid we have had very exciting sessions that have kept us going for a period of time. We promise to ask succinct and to-the-point questions. I know that you will be succinct in your answers because after you we have the Minister responsible, who will be coming to give evidence to us.

I want to start with the issue of the regulation of private investigators. Of course, Parliament legislated in 2001 for regulation but it has not happened. Why?

Bill Butler: Matters of the policy as to when things start is obviously a matter for the Home Secretary rather than for us. If it helps, the timescale is set out in the evidence submission. Briefly, the SIA concentrated initially on licensing the large high-risk sectors, such as door supervisors and security guarding, from 2004. It considered licensing the private investigations sector in 2007–08, and an impact assessment was published at that time. Priority was given to rolling out licensing at the time in Scotland and then in—

Q442 Chair: Yes, but it hasn't happened. Should it happen?

Bill Butler: Yes, we believe that it should happen. We agree that the legislation is drafted, nothing has changed. The harms that were set out in 2008 still apply.

Q443 Dr Huppert: A number of the witnesses we have had have drawn a distinction between private investigators and information brokers. Do you think there is a clear line between the two?

Bill Butler: As a professional activity, private investigation can include information broking but not everybody who is an information broker would be a private investigator. I suppose, in essence, private investigation in its broadest definition is a form of information brokering, but so would credit-checking agencies who would not necessarily be private investigators. It is obviously relevant—particularly in the light of the concerns that have been expressed around Leveson—how that information is brokered. My view is that the No. 1 harm, which we identified in the 2008 consultation, was the risk that people obtained information improperly for these purposes.

That applies to any sector and is an offence, regardless of whether it being done by a private investigator or by somebody who is a credit referencing agency or somebody who is collecting CCTV data.

Q444 Dr Huppert: If we are to have regulation, would you want to see it fairly broad and cover some of the information brokers, or would you want to see it more narrowly focused?

Bill Butler: Our responsibility is to license the private security industry and I don't want to stray beyond the private security industry. It is quite important to stress that the way the Act is drafted is it is about activities that people conduct, not about their job description. Providing we get the definition right—and there may well be, in the light of the Leveson inquiry and the recommendations that Lord Leveson might make, room to review those definitions—I think that the right way to go is to define activities that we want to capture. My view is I would still like to define private investigations, so they are recognisably private investigations and we don't end up capturing other activity by mistake.

Q445 Dr Huppert: How would you phrase the line? I realise this is a tough question and answer.

Bill Butler: Fortunately I don't have to, of course. It would be the Home Office that would have to do that. The definition, as it is currently phrased, is a pretty good starting point. My view is that it may need a slight refining but I don't think that it would need fundamental redirection. Of course, our regime is about licensing individuals to conduct licensable activities. It is not about penalising people or prosecuting people who are committing offences anyway.

Q446 Chair: We have been very interested in the evidence we have receiving during this inquiry about the number of former police officers who have become private investigators. Do you see any problem with this?

Bill Butler: Not in essence. I can see problems if that relationship is abused in any way. In my current organisation—and certainly in my previous organisation, the Gambling Commission—I have people working for me, who were previously police

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officers, working as investigators for the regulator. I have people who formerly worked for HMRC as investigators working for me. I don't think, by definition, using investigatory skills appropriately is wrong. If the issue is sometimes people misbehave in that role, then they are misbehaving in that role. They are using relationships inappropriately. It wouldn't matter where they were or what they were doing.

Q447 Chair: At the moment how do you deal with misbehaviour? You must have had people writing to you about private investigators behaving inappropriately. How do you deal with that?

Bill Butler: Not yet, because I don't regulate them.

Chair: No, I know that, but people still write to you. What do you do with the letters that the public write?

Bill Butler: I am not sure that I have been buried in correspondence on private investigators because people—

Chair: They know not to write.

Bill Butler: They know not to write to us, and if they write to us we write back and say, "We don't regulate private investigators".

Q448 Chair: Yes. Are you the right body to regulate them? I am not suggesting you should empire-build here. I am not offering you the spot, but is this the right—

Bill Butler: It is very kind of you, but I am conscious of the fact that my Minister is listening. It is an area that fits within our regime. The approach that the regime takes, there are essentially two pillars. Are you a fit and proper person? What is your previous criminal history? How are your behaviours? The second part is, are you competent to carry out this role? In other words, have you been trained in skills that are relevant to this particular role? That mechanic works, I believe, for private investigations.

My understanding is that that is the standard model for best practice for regulation of private investigations in, I think, 50 American states. It is the way it is done in Australia and in most of Europe, where private investigations are regulated. So it fits and it fits into the security issue. As currently set out in the definition, the Act excludes work that is done on private investigations exclusively for journalistic purposes. Certainly that is an area that I would want to suggest should be looked at in the light of what Leveson says. Although—and I said this to Leveson—I am not volunteering to regulate journalists. I don't think that would be appropriate, but I think private—

Chair: Yes. I am not sure we are going to volunteer either.

Q449 Bridget Phillipson: On previous criminal history, if we were to regulate the industry in terms of private investigators, do you think that previous convictions should be a bar to being a private investigator?

Bill Butler: The way the regime works is that a previous criminal conviction is not an absolute bar. Before we make a decision we consider, on a case-by-case basis, how serious the offence was and how recent the offence was. For example, the Committee has heard evidence on section 55 offences. If we were

looking at private investigators we would look at whether they had a conviction in that area. That would be taken into account in deciding whether or not they were an appropriate individual to be licensed. The mechanic of that is fairly complicated. We have a tool on our website, and if you were particularly interested on how the criminality works I would be happy to write to you on that. Essentially, if you have a recent offence that it is non-custodial, it is normally two years before we would consider you for a licence.

Q450 Bridget Phillipson: You could have a conviction that occurred long before, but if that conviction was relevant to the work you wished to undertake, then the length of time might not be relevant?

Bill Butler: By the time you get to five, six, seven or eight years it becomes less relevant, and obviously some offences are more relevant to particular licensed activities that I conduct than others.

Q451 Bridget Phillipson: It is a balance between the conviction and the length of time?

Bill Butler: It is a balance. The objective of this is not to prevent people from working because they have a previous criminal conviction. It is to make sure that you reduce the risk of people being in the industry, with a criminal past, who could pose a danger to the public.

Q452 Chair: Mr Butler, one question on your other portfolio, not on private investigators. I am not sure whether you have appeared before this Committee before.

Bill Butler: I appeared at the last session of the Committee of the last Parliament.

Chair: Exactly. It was so long ago I couldn't remember.

Bill Butler: I haven't forgotten, Chair.

Chair: Good. We were a little concerned about the delay it took for people to get licensed by you for doing their work.

Bill Butler: Yes.

Q453 Chair: Has that all now been cleared?

Bill Butler: It is an area on which I am happy to talk for as long as you like.

Chair: About a minute would be fine.

Bill Butler: Yes. The Committee's concerns originally on licensing were around 2007, which I suspect—I wasn't in post at the time—was another reason why rolling out private investigations wasn't an option. We had serious problems. About three years ago we were delivering 50% of licences in less than six weeks. Our annual report, which is still subject to audit, will show that last year we delivered just over 90% of licences in less than five weeks. We have made significant improvements to our licensing times. Straightforward applications are taking less than 15 days. We have been able to reduce the cost of a licence by 10% from 1 January.

Chair: Excellent.

Bill Butler: I can't remember the last time anybody in the industry worried about the length of time.

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Q454 Chair: No, I have not had any casework letters on this. Finally, what you are telling this Committee is very clear and very succinct, which is, “The powers are there. The legislation is there. Get on with it”.

Bill Butler: I hesitate to say, “Get on with it”, because there are a number of things going on. One is the future framework for regulation is up for consideration, as part of the Government’s broader policy of looking at the role of non-departmental public bodies, and we need to do this properly.

Q455 Chair: Of course. But it has been 10 years, hasn’t it?

Bill Butler: What I am saying to the Committee is I believe it should be regulated. I believe we are equipped to regulate it. It needs to be done in a proper and measured way, and I think the recommendations of this Committee and Leveson are going to be important in terms of making sure that we now get it right.

Chair: Excellent. Mr Butler, thank you very much for coming in. We may write to you about other matters or follow up this evidence.

Bill Butler: Always happy to hear from you.

Chair: Thank you very much.

Examination of Witness

Witness: Lynne Featherstone, Parliamentary Under-Secretary of State for Equalities and Criminal Information, gave evidence.

Q456 Chair: Minister, good afternoon and thank you very much for coming to give evidence. You have a very wide portfolio, so some of my colleagues will be asking you one or two questions about other issues.

Lynne Featherstone: Really?

Chair: Indeed. As we do to most Ministers who come before us, or all of them. Since you were last here I gather they named a tub of ice cream after you. Is that right?

Lynne Featherstone: Yes. You may now call me Lynne Honeycomb, thanks to Ben & Jerry’s.

Q457 Chair: Indeed. Because of your strong commitment to same-sex marriage. Perhaps we can start with that. Are we going to have legislation about gay marriage?

Lynne Featherstone: The Government is committed to legislate before 2015 to enable same-sex civil marriage.

Q458 Chair: You are confident that that will happen?

Lynne Featherstone: I am confident.

Q459 Chair: What about the issue of forced marriage? Because, as you know, the Prime Minister, again, backed the Select Committee’s recommendation on the last occasion for legislation criminalising forced marriages. Is that coming?

Lynne Featherstone: As you will be aware, there was a consultation. The consultation has concluded with a response, and I am sure there will be an announcement shortly.

Q460 Chair: You are the Minister. So you will be doing the announcing, will you?

Lynne Featherstone: Who knows?

Q461 Chair: Let us now go to private investigators. You are the Minister responsible. Why are private investigators still unregulated after 11 years since the passing of the Act?

Lynne Featherstone: Right. I can’t comment on why they were not regulated under the last Government. I am sure the wider population would be surprised to

find that private investigators are not licensed. Since we came into Government, the first order was around the stage we had reached in terms of becoming a very developed and mature Security Industry Authority, so I would say absolutely ready to licence. However, the Coalition, when it came in, had a broader remit in terms of regulation itself and we had to wait until the regulation picture became clearer. Of course now we are just waiting for Leveson and indeed your inquiry to conclude, because there is some crossover, and we will go ahead as soon as those inquiries do conclude. Leveson concludes in—October, is it?

Chair: October, yes.

Lynne Featherstone: October, and obviously I am hoping you will be coterminous with that because we can—

Chair: We will be before that.

Lynne Featherstone: Okay. Well, we can get on with it as soon as Leveson completes.

Q462 Chair: During the course of the inquiry, Channel 4 published extracts of a report that was conducted by the Serious and Organised Crime Agency, an intelligence report, which the Committee has a copy of. We have obtained a copy from SOCA. No doubt you have seen this report, which is headed *Private Investigators: The Rogue Element of the Private Investigation Industry and Others Unlawfully Trading in Personal Data*.

Lynne Featherstone: I don’t know what previous Home Secretaries knew and what they—

Chair: No, I am asking about you. I am not asking about Jacqui Smith.

Lynne Featherstone: I myself have not seen the report. The Home Secretary and Ministers were made aware of the report in 2012, in April.

Q463 Chair: We will send you a copy of this report. We find it very odd that—this being a matter in the public domain, a television programme was done on this and on the basis of the television programme I asked SOCA for a copy of the report—you, the Minister and the Home Secretary, have not read it.

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Lynne Featherstone: I said I don't know if the Home Secretary has read it or not. I said she was made aware of it.

Q464 Chair: But you haven't?

Lynne Featherstone: I have not read it, but as it is a classified report I couldn't comment.

Q465 Chair: No, it is not classified because we have obtained a copy. They have redacted a couple of lines. I find this very odd that your officials have not brought it to your attention, because it is a very, very serious report. You are right that it was produced under the last Government and doesn't appear to have been acted upon. But it was publicised only a few weeks ago, and it says this, "The ability of the investigators to commit such criminality is supported by the absence of regulation". It goes on to talk about very serious criminality being undertaken by private investigators. Here is paragraph 11: "Many private investigators have been previously employed in law enforcement or in the armed forces or are employees of such individuals". It goes on to talk about deletion of databases. This is a pretty serious document, and I am very surprised you haven't seen it.

Lynne Featherstone: I am surprised myself, so I will be reading it forthwith.

Q466 Chair: Shall we write to SOCA to ask them to send you a copy?

Lynne Featherstone: That would be helpful, unless there is a copy lying around somewhere that I am not aware of. But, yes, I have not—

Chair: We don't normally leave these documents that come from SOCA lying around, but we can certainly—

Lynne Featherstone: I was being marginally facetious, but I would wish to read a copy.

Chair: Excellent. I think this is helpful to understand why we are so concerned about these issues.

Q467 Dr Huppert: Minister, you will know that it was 2006 that the *What Price Privacy Now?* report to the Information Commissioner came out, which identified a large number of problems about the marketing of private information, particularly with a whole range of media organisations. Sadly, that was ignored at the time and the follow up was also ignored at the time. Now is obviously the time to start looking at that aspect of information brokerage, as opposed to pure private investigations. Would you agree that we should be strengthening the penalties that are available for serious breaches of privacy in that sort of arena and give the Information Commissioner greater powers, as he has asked for?

Lynne Featherstone: There are two things here. Firstly, the Ministry of Justice has informed me that they are reviewing and looking at the penalties, particularly section 55 of the Data Protection Act. In terms of the Information Commissioner asking for more powers, there are differences between the Intercept Commissioner and the Information Commissioner. The Information Commissioner wants more powers, but quite often it is the Intercept Commissioner who is the appropriate Commissioner

to look at these matters, and it sits more appropriately with that Commissioner.

What happens is where there is a case or an issue before the Intercept Commissioner, if he or she wishes or thinks there is a need for the Information Commissioner, or there is traction for the Information Commissioner, and that would be more properly dealt with by the Information Commissioner then he will act as now and refer matters to them. However, we are looking at whether the Intercept Commissioner could provide guidance, because I think there is a lack of clarity for people as to which commissioner to go to, and that might assist them.

Q468 Dr Huppert: I think this Committee suggested a year ago that it might make sense to put all the commissioners together, to have an overall Privacy Commissioner with the separate units.

Lynne Featherstone: I know.

Dr Huppert: Do you think that would make this easier?

Lynne Featherstone: I can't comment in terms of Government, but my view is not necessarily. What I have always thought would be the ideal is if you had an over-arching commissioner, or not that you have an over-arching commissioner but you have the commissions co-located. I thought that might be very helpful, in terms of sharing and working together as the commissioner body. But, quite frankly, I wasn't sure whether having an über-commissioner would simply confuse matters.

Q469 Dr Huppert: They are currently located very separately, are they?

Lynne Featherstone: Various places.

Q470 Bridget Phillipson: Minister, you talked about when the Government might look to bring in regulation in the industry, and that you were awaiting the outcome of this Committee's inquiry and also Leveson. You said that Leveson concludes in October. So when do you anticipate that the Government will be bringing forward proposals?

Lynne Featherstone: I think the Government can act relatively quickly as soon as Leveson concludes, because the Private Security Industry Act 2001 is there and waiting to go, and there is not much change, so it will simply be a case of enacting secondary legislation, subject to negative resolution, and the legislative part can go quite quickly. The lengthy bit will be moving forward from when the legislation is passed, obviously depending on the will of Parliament, as ever. Once you have the legislation then the clock is going to start ticking on things, like the training, the industry capacity, the time it will take to apply, how to apply. They are going to have to demonstrate compliance, so before actual licensing there will be a time period.

Q471 Chair: Sorry, Ms Phillipson would like to know how long would that be. Obviously some work must have been done.

Lynne Featherstone: I would have to take advice, but I would think that second part could be up to two years.

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Q472 Bridget Phillipson: Do we need to wait for Leveson if it is just a question of enacting secondary legislation? Is Leveson going to tell us anything that we don't already know, given that it concerns a small section of the use of private investigators by the media?

Lynne Featherstone: At this point, having waited 10 or 11 years, I think it would be inappropriate not to wait to hear what Leveson had to say in case there was crossover. There may be issues, there may not be issues, but I think it would be inappropriate for us not to wait for Leveson and indeed your own inquiry.

Q473 Chair: The Leveson inquiry was not set up to deal with private investigators. As you know, this Committee agreed the terms of reference with the Prime Minister before it was published, and what Ms Phillipson and the Committee want to know is—it has been in legislation for 10 years; as you said, the previous Government passed on it—what is Lord Justice Leveson—

Lynne Featherstone: This Government did not—

Chair: The previous Government, I said.

Lynne Featherstone: Yes, but this Government is not going to pass on it.

Chair: No. But we are talking about four years from the election of this Government. If it is two years since the Government was formed, and you are waiting for Lord Justice Leveson to public his report in October and it is going to take you two years to get things ready, we are looking at 2014 and the general election is 2015.

Lynne Featherstone: I wasn't looking on it in electoral terms. I was looking at it in terms of getting it right, and making sure—

Q474 Chair: The Government will change at the next election in one way or the other. That is why electoral terms are important, Minister, don't you think?

Lynne Featherstone: I am saying, providing all goes to plan, it will be in before 2015.

Q475 Chair: It is two years until you get a recommendation from Lord Justice Leveson?

Lynne Featherstone: No, two years from the date that we get whatever.

Chair: Yes.

Lynne Featherstone: In terms of getting the industry ready, up and licensed, yes. The legislation will move quite quickly.

Chair: That sounds like an awful long time.

Q476 Mr Clappison: Are you satisfied with the Government's arrangements for guarding against the illegal disclosure of personal information by Government Departments?

Lynne Featherstone: Sorry, could you repeat that?

Mr Clappison: Are you satisfied with the arrangements for safeguarding personal information held with Government Departments, preventing its illegal disclosure?

Lynne Featherstone: Yes.

Q477 Mr Clappison: You are happy at the moment. Do you have any plans to review it or improve it?

Lynne Featherstone: Not as far as I am aware at the moment, but we keep a constant eye in terms of those things and there obviously have been breaches in the past. But at the moment I am not aware of impending doom.

Mr Clappison: I have other matters.

Chair: Yes, if you could raise it at the end that would be good.

Q478 Mr Winnick: As far as police officers are concerned, obviously I assume there can be no question of police officers acting as private investigators while they are in the service. But when they leave the service, do you think there should be any period of time before they are employed as private investigators?

Lynne Featherstone: That is an interesting question. To date that hasn't been the case, and in a way it is not surprising that serving police officers go into the business later. I think they are very well qualified to be in that industry. Whether or not there should be a gap, I don't think that is the key issue. The most important thing is that there is no inappropriate behaviour. Whether they go immediately into a private investigation or whether it is X years hence, the real harm and the real damage is if they use their relationship inappropriately, in terms of the sort of things you can see on television when they say, "Well, we're mates. You can let me have this bit of information". That is clearly completely unacceptable, whether it is immediate or in the future.

Q479 Mr Winnick: At this point in time, unless there is compelling evidence otherwise, if there is legislation—and, rather like the Chair, I put the emphasis on "if" during the course of this part of it, but be that as it may—you are not persuaded there is any necessity for any cooling off period once a police officer, of whichever rank, is employed as a private investigator once he leaves the service?

Lynne Featherstone: No. I am not convinced that it is the cooling-off period that is the issue. In a sense, that is the whole point behind everything we are doing about licensing and regulating, so that you have a fit and proper person and you have competency and you have a code of conduct. The reality has to be to stop people who would use their relationships inappropriately. That is the key to everything we are doing, in terms of a licensing regime, to get fit and proper people and get rid of those people who are not fit and proper.

Q480 Mr Winnick: When it is in conflict with other views, but time will tell.

Lynne Featherstone: They would lose their licence. If they did it, it would be breaking the rules and they would lose their licence. That is the whole point. If that is your whole career, and if you are an ex-police officer that must be a very good career option for you, and to lose your licence would surely be the most serious thing that could happen to you.

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Q481 Chair: Indeed. That is very, very helpful. We have received evidence during our inquiry that there are serving police officers who also have permission to be private investigators. We are trying to find out in which force, but we have not discovered yet, but that was the evidence that was given to us.

Lynne Featherstone: The Government certainly would not think it appropriate for a serving officer to work as a private investigator.

Chair: Indeed. Neither would this Committee, I think.

Q482 Bridget Phillipson: Just returning to Mr Clappison's point about the Government holding data. The Channel 4 programme the Chair referred to earlier, we took evidence from the producer of that programme that they uncovered—through Freedom of Information requests—various breaches by the Department for Work and Pensions, where staff had inappropriately accessed or passed on data to third parties, but that those breaches had not been reported to the Information Commissioner. Are you aware of that?

Lynne Featherstone: No, I am sorry, I am not aware of that.

Q483 Bridget Phillipson: Would you be able to look into it and perhaps report back to—

Lynne Featherstone: I am happy to look into it and write to the Committee.

Chair: If you could write to us that would be very helpful.

Q484 Dr Huppert: At a seminar that this Committee conducted, one of the witnesses talked about the French licensing system—I don't know if you are particularly familiar with it—where they have universities who actually offer courses in investigative work, which are then checked so that people can be sure that investigators were legitimate, competent as well as hopefully having the ethical requirements. Have you or any of your officials had a chance to look at what happens in other countries to see if there is best practice out there?

Lynne Featherstone: Certainly, my officials do look across the world and take notice of what is happening, and if there is any further work to be done it will be done by the SIA, rather than my officials. As far as I can glean, from all of the information that has come in, we are totally in step. In fact, we are going to have a better model because it will be a national model, based on the legislation and the licensing framework, and it will not be—like in Australia—broken down by state, which could get a bit messy.

Chair: We are now going to turn to a number of other matters that Members of the Committee wish to raise with you.

Q485 Mr Clappison: Since we have this opportunity to ask you about it, I am interested in the Government's dealing with the cases that are coming before the European Court of Human Rights concerning the freedom of individuals to wear a cross. I believe you are the Minister who is handling it, and there have been a number of reports about this that have had various suggestions made. Can you clear it

up for us? Is it the Government's view that individuals should be free to wear a cross at their place of work, except where there is a genuine health reason for not doing so, without fear of being dismissed by their employer?

Lynne Featherstone: Well, of course. I have to say that, apart from the two cases that have gone to the European Court of Human Rights, I am not aware of anyone in this country who has been asked not to wear a visible cross in their place of work. Under the Equality Act, you have to have a legitimate reason if you ask an employee not to wear a cross. In these two cases my understanding was that it was a company policy for front-of-house, but they worked as hard as they could with the applicant to offer her alternatives while they then did a survey of their staff and changed their policy, and she is still working for them. So that has gone. In the other case it was, as you rightly say, health and safety. This is now before the court, so I can't really comment.

Q486 Mr Clappison: Could we have a simple answer to the question. Do you think people should be free to wear a cross or not?

Lynne Featherstone: Of course we do, but people are free to wear a cross.

Q487 Mr Clappison: You think employers are wrong to sack people who wear crosses?

Lynne Featherstone: I think they have to prove in court that they have a legitimate reason for asking someone not to wear a cross. You are right, many people write to me. These are the only two cases in this country, where I understand—

Mr Clappison: As yet.

Lynne Featherstone: As yet, but these are two cases that have come to everybody's attention through a lot of publicity. Employers in this country are very reasonable and I think the Government is quite clear, everyone should feel free to wear a cross unless the law finds against them in that particular circumstance.

Q488 Mr Clappison: It does not sound like a very ringing endorsement of the right to wear a cross. You say it is up to employers to show—

Lynne Featherstone: No. I have made it quite clear this Government believes that everyone should be free to wear a cross and, as far as I understand it, everyone in this country is free to do so. But there have been two cases where there has been shown a legitimate reason why that wasn't the case.

Q489 Mr Clappison: No. You are accepting that the employer in that case had a reason, particularly the British Airways case. You are saying if the employer chooses not to allow people to wear a cross, then they can ask them not to do so and dismiss them if they so choose to do.

Lynne Featherstone: No, they have to go—

Q490 Mr Clappison: Is that wrong or right in your view?

Lynne Featherstone: The law states quite clearly that they have to be able to prove a legitimate aim. You can't just have ridiculous reasons for banning people

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from wearing a cross. That is why I am so cross with the sort of rubbish covering of this in the media, which has put the wind up a whole lot of people for absolutely nothing. When the vast—

Q491 Mr Clappison: I am struggling to see how you can have a legitimate—

Lynne Featherstone: I don't see why, Mr Clappison.

Mr Clappison: So you are saying that—

Lynne Featherstone: I am saying health and safety is a perfectly legitimate aim. If a nurse wears a cross, it harbours infection. If she or he leans forward, it goes into a patient. It is a perfectly legitimate aim, and I don't understand what your problem is with that.

Mr Clappison: The British Airways case, I am struggling to see how that is a health—I have another question that arises out of this. What would be a legitimate reason for British Airways saying—

Lynne Featherstone: I don't think it is appropriate for me to comment on something that is before the European Court.

Q492 Mr Clappison: That is very clear, that you are not prepared to say that it is wrong.

Lynne Featherstone: I have said quite enough in this room. I have said that this Government absolutely stands behind people being free to wear whatever they want in terms of work.

Q493 Mr Clappison: Yes. Do you take a different view of symbols of other faiths?

Lynne Featherstone: No.

Q494 Mr Clappison: So it is an across-the-board policy, with the same view whatever the—

Lynne Featherstone: Yes.

Mr Clappison: Good.

Q495 Chair: I have a few points to raise, and if you don't know the answer, it is absolutely fine. Write to us about it. The issue of female genital mutilation has come to the fore in recent weeks. Obviously it has been with us as an issue for some time. Is the Government proposing to do anything about this?

Lynne Featherstone: Yes.

Q496 Chair: What?

Lynne Featherstone: As the Minister in charge of this, I am incredibly frustrated.

Chair: What are you proposing then?

Lynne Featherstone: The previous Government and ourselves have done everything we can. It is a criminal offence. You talked about forced marriage that isn't, but we haven't had a prosecution on FGM, which is often raised in questions. We have frontline guidelines. We are working with workers. We are working with the Crown Prosecution Service.

Q497 Chair: So where is it going wrong?

Lynne Featherstone: My own view is that we need to make quite a step change. I have been in Africa recently, in fact, talking in Ethiopia and Uganda about FGM with activists, who have had much more success than we have had here, where the diaspora is even more attached to cultural practices than perhaps the

mother country. In these countries across the world the laws are now coming in, in the country of origin, and I think that will be helpful and I am looking at various plans. We are also looking at the health passport, which was suggested by Jane Ellison at the APPG, and talking to colleagues in the Netherlands about how that is going.

Chair: I had my first such case last Friday at my surgery, where a woman came to claim asylum in the United Kingdom because of her young daughter. She didn't want to take her back to Nigeria because she felt that she would be—

Lynne Featherstone: She would be in danger.

Q498 Chair: Indeed. So it is good to know things are happening on that. You are also the Minister responsible for preventing witchcraft abuses. You have quite a wide portfolio, I understand. The Committee has received letters from people wanting to know when the Government is going to ban child branding, those who are allegedly possessed of evil. You have seen these cases, have you?

Lynne Featherstone: I have seen some of them. I would like to—

Q499 Chair: Is there anything the Government can do?

Lynne Featherstone: I would like to write to you on that, if I may, Mr Chairman, because it is complicated. But my view on branding would be it is illegal anyway. It is abuse.

Q500 Chair: Sure. If you could do that, it would be very helpful. Finally, you are about to appoint a new head of the EHRC. Trevor Phillips is going to leave. Would you tell us the timetable on this, because we are little concerned that the timetable is quite short. When is Trevor Phillips leaving his post?

Lynne Featherstone: He is leaving in September.

Q501 Chair: On what date?

Lynne Featherstone: I would have to write to you with the exact date. The appointment is for October.

Q502 Chair: When are you advertising for this post?

Lynne Featherstone: My understanding was the advertisement went in last Sunday. If it wasn't last Sunday, it will be next Sunday.

Q503 Chair: So you are advertising very shortly or you have just advertised?

Lynne Featherstone: Yes.

Q504 Chair: When do you hope to have a shortlist of candidates?

Lynne Featherstone: As soon as possible. As soon as the application time closes, which I believe is four weeks. But I can write to you with the detail of that?

Q505 Chair: Would you? Because what would be very helpful at the end of your shortlisting process, since this is a pre-appointment hearing, is if you give them to me.

Lynne Featherstone: Yes.

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Q506 Chair: Both our Committee and Human Rights will be having a joint hearing, we have decided. The Human Rights Committee is very concerned at the shortness of the timetable because a number of their Members are Members of the Upper House, the other place, and will not be here in September as we will be, I understand. Therefore, they apparently can't come back for this hearing. Just to pre-warn you, I will be writing to you. What would be very helpful is if we are told the list of shortlisted candidates, if you could do that.

Lynne Featherstone: I will write to you with more detail on the process.

Chair: That would be very helpful.

Q507 Mr Winnick: There is a good deal of concern. Indeed, there is a campaign that I have been written to—and perhaps other Committee members; the Chair, for all I know—regarding the reduction in finance for EHRC. There is a reduction, is there?

Lynne Featherstone: Yes, their budget has been quite radically changed. It is almost halved, or just over halved actually, but that has been announced a long time ago. That came in as part of the original spending review and budget for the EHRC. What I would say about that is, firstly, it leaves an organisation that is better funded than almost any other equalities body in Europe. More to the point, this isn't so much about the money. This is about creating what I believe the EHRC should always have been, which was a valued and respected national institution for upholding equality and human rights. It is such an important institution to people in this country, in both symbolic and actual substantive terms. But I do fear that it wasn't conceived very thoroughly, perhaps—I do want to phrase this elegantly—and that the three pre-existing commissions, the Women's Commission, the Disability Commission and the Commission for Racial Equality, were almost thrown together, if I may say so, without sorting out the personalities, the budgets or the personnel. This is an opportunity—and I feel very strongly about this—for the EHRC to actually focus on what it is doing and what it should be doing, and become that valued and respected national institution that I am sure everyone wants to see.

Q508 Mr Winnick: The fear is—and it seems to be very much felt within the ranks of those who are very concerned about equality covered by the organisation—that it will become less able to deal with cases of discrimination, be it on disability or race and the rest of it, as a result of what is happening.

Lynne Featherstone: Religion, indeed. I think it will be better able. It has been going off in a lot of directions that distracted it from its core purpose, and as an independent body, obviously, it is for the EHRC to determine how it is going to move forward, but we have created that framework, that vision and a budget,

and it will now hopefully move forward. It has a new chief executive who is working very hard to make it work.

Q509 Chair: Who is that?

Lynne Featherstone: His name is Mark Hammond. Change management of this scale is very, very challenging, but it is very important that we get it right because, as I say, this is an institution that we all need.

Q510 Mr Winnick: But it needs to be adequately funded.

Lynne Featherstone: As I say, regardless of the fact it is a halving of its budget, it is still going to be better funded than most other equality and human rights institutions. It may not do all the things that everyone from every part of the equality world wants it to do, but I think that may have been part of the problem in terms of becoming a high-functioning leading organisation.

Q511 Chair: Can I say how much I agree with what you have said about the fact that the three organisations were just thrown together by the previous Government. We did warn the previous Government on the Floor of the House—

Lynne Featherstone: I am sure you did.

Chair:—especially with regard to the race dimension, that this was simply not going to work, and I welcome the fact that you are looking at this again. But could I just ask you—since race has been raised—do you agree with Baroness Warsi, about her comments that members of the Pakistani community are prone to the grooming of young girls?

Lynne Featherstone: I don't know if those were her exact words. What I do think is that, in particular cases, where there is a cultural group of some sort and there seems to be a pattern, it is worthy of looking at. I don't think we should tiptoe around cultural niceties on these matters. But what I would say is that the issue of child sexual exploitation is much larger and more horrific than any of us have known to date, and while it may be Asian men, in that particular circumstance or in that particular part, 95% of paedophiles are white, and I think we are going to find sadly that where people look in their own localities they are going to find hideous things going on. I know that the Secretary of State for Education has asked the Children's Commissioner to hasten her work and publish early, and I think that work will be seminal in what it discloses to all of us.

Chair: You will be pleased to know that the Committee decided in private session that we will be having our own inquiry into this as well. As you say, it needs to be thoroughly looked at over a period of time and we, too, await the outcome of the Children's Commissioner's report. Minister, as usual, thank you very much for coming in. We are most grateful. We look forward to receiving your letters. Thank you.

Written evidence

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 2007.¹ The responses to the consultation were published in May 2008.² An interim impact assessment was published in July 2008.³

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 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.

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

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: £2.3 million.
- Training costs: £8.3 million.
- Average annual costs consist of a licence renewal fee: £2.3 million.
- Refresher training: £4.6 million (not all renewals will require full training).
- These costs cover a three year period. Present Value of cost is calculated over six 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 (ie 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 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 2,000 and 4,000. 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.

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- (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 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—eg one spouse using an investigator to spy on the other;
- tracking devices found on vehicle; and
- 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—ie 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 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 1,200 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

Supplementary written evidence submitted by The Risk Advisory Group [PI14]

Do you think of yourselves as private investigations companies?

The Risk Advisory Group (Holdings) plc is a global risk management consultancy. We have offices in London, Moscow, Dubai, Dammam, Washington DC and Hong Kong and serve governments, government departments, multilateral organisations and multinational corporations.

Our services fall into a number of different categories:

- political risk and security analysis, consultancy, training and operational support;
- employee CV verification—predominately for the financial services industry;
- regulatory compliance due diligence for companies that are subject to anti-bribery legislation, money laundering and export control restrictions;
- merger and acquisition, private equity funding and corporate finance support; and
- litigation support—this aspect of our work involves significant internal investigations, evidence gathering exercises and providing expert evidence. This area is substantially covered by the Security Industry Authority (SIA) competence requirements, issued in draft form in 2007, and most closely resembles what people may consider as “private investigations”. We, however, call such investigations “corporate investigations” because they are exclusively conducted for and on behalf of corporations either directly or through external legal advisors.

Within the above categories we also offer bespoke consultancy services. For example:

- When the Directorate of Counter Fraud Services was set up within the National Health Service, Risk Advisory was engaged to help recruit and train staff and to provide support on investigations.
- We have provided advice to governments and to corporations on such issues as anti-corruption.
- We have provided pro bono training to the Serious Fraud Office (SFO) and many industry and trade groups on due diligence and anti-corruption controls in the context of both the Foreign Corrupt Practices Act and the Bribery Act 2010.

To provide granularity around what is involved in litigation support; some examples below:

- We might be involved in internal fraud or breach of fiduciary duty cases—for example, we worked on a £250 million property valuation fraud case in conjunction with external lawyers, the police and the SFO.
- We might be asked to help trace witnesses—we were instructed to try and identify the whereabouts of witnesses for and on behalf of the Bloody Sunday Inquiry.
- Again for the Directorate of Counter Fraud Services, Risk Advisory investigated a number of “National Health Service tourists” and assisted in providing evidence which allowed the Directorate to issue proceedings and recover money.
- We have worked with corporations to conduct investigations which could then be handed over to the relevant prosecutorial authority.

Our work is often conducted in conjunction with law firms which use our services to inform litigation strategy and as evidence.

- In one such case, we undertook a significant analysis of an individual who was claiming legal aid to promote a civil claim for many millions of pounds. We were able to demonstrate, predominately through public records analysis, that he had deliberately and over a course of years disposed of assets and lied about the value of real property assets he held in a different jurisdiction. This led to a discharge of his legal aid certificate and a substantial recovery from him by the legal aid board.

- In another case, we undertook a detailed analysis of the circumstances of the death of a journalist. He was killed by US forces and there was a US military investigation. Our client's objective was to try and identify the true circumstances behind the death and in so doing, to try and influence the engagement rules applied by the US military.

Who works for you?

Our staff reflect our businesses and I thought it might be helpful for you to see the educational and professional qualifications of some of our people (annex 1).

You will note that we currently have no former police officers working within our company, although this has not always been the case. The longest serving former police officer who worked for Risk Advisory was, until he retired from the police, the head of the Public Sector Corruption Squad at New Scotland Yard. He retired from Risk Advisory in approximately 2004 and since that date we have not had a former police officer as an employee. We do, though, sometimes use retired police officers for specific tasks. For example, we recently used a retired Chief Superintendent to review a "cold case" to determine whether correct police procedures were adopted at the time of the original investigation and to identify whether any new procedures might be deployed to help solve the murder.

You will note that we do have a number of qualified lawyers who are employees. These individuals are generally engaged in cases which fall within our category of litigation support, which can involve corporate investigations.

Are you in favour of statutory regulation of private investigation companies?

Within our international businesses we are subject to local regulation which includes statutory regulation. Those of us who hold professional qualifications are also regulated—I for example, am regulated by the Bar Standards Board and a number of my staff are similarly regulated because they are solicitors, barristers or accountants. We are also, of course, subject to the general criminal law.

More widely we support the objectives of the Private Security Industry Act 2001 (annex 2).

Specifically, in areas where the public is at risk, which is the criterion that the statute is expressly intended to address, we would support statutory regulation.

In 2006 and 2007 we, together with the SIA and others, did some work on identifying risk areas. As a result of this a number of core skills or competencies were identified as being essential for private investigators to mitigate risks to the public.

Five competency requirements were set out in the paper "Private Investigation and Precognition Agents Draft Core Competency Specification", in July 2007 (annex 3). These were:

- conduct investigations;
- conduct (formal) interviews;
- search for information and preservation of evidence;
- conduct surveillance; and
- understand and work to the relevant laws and standards (annex 3, page 9).

From the outset we were of the view that these investigative techniques should be properly regulated because they can be invasive; they have the potential for causing personal distress and emotional harm as well as financial loss.

In short, if conducted without legitimate justification or inappropriately, they put the public at risk.

We were then, and still remain, at one with the SIA in this regard.

Our difficulty lies with the current wording of the Act, which arguably goes far beyond these types of investigations and potentially has the diametrically opposite effect.

That is, that the imposition of a regulatory regime around some of our activities is both unnecessary—because there is no prospect of the public being put at risk—and potentially damaging because what we do for our clients is intended, in a number of areas, to protect the public and the wider integrity of the global financial markets.

THE STATUTE

The relevant provisions are contained within Section 3, Schedule 2 of the Act (annex 2). As you know, Section 3 creates the concept of licensable conduct and designated activities. It also provides the criminal penalty.

The operation of Section 3, Schedule 2, 4., (1) (a) makes it unlawful, unless one holds a licence, to undertake “...surveillance, inquiries or investigations that are carried out for the purpose of:

(a) obtaining information about a particular person or about the activities or whereabouts of a particular person;...”

This sub-section and the Schedule are drafted very widely.

Professional headhunters for example “undertake ...inquiries...for the purpose of obtaining information about a particular person or about the activities or whereabouts of a particular person”.

They will do preliminary research to identify potential candidates who fulfil their mandate; this always involves speaking to people in the market about potential appointees. Questions will involve the location of those individuals, their key competencies, their strengths and their weaknesses. All of this activity will be done without the knowledge or consent of the candidate. Post the selection of a shortlist, more detailed questions may be asked about specific issues or incidents in which the candidate may have been involved, including questions which may relate to the candidate’s ability to operate in stressful environments, and their honesty and integrity.

We very much doubt that Parliament intended to encompass the activities of professional headhunters when enacting the Act, but because the requirement to obtain a licence is defined by conduct it is, we suggest, highly likely that this is the effect of the statute.

Similarly, we doubt that Parliament also intended to cover investigations conducted to ensure that our clients comply with the regulatory burdens imposed on them by statute.

Parliament has chosen to shift the responsibility of ensuring the integrity of the financial markets and ensuring that money is not laundered through business structures to the gatekeepers of those markets—the Regulated Sector (annex 4, paragraph 7).

Fundamentally, participants in the Regulated Sector are required to know who they are doing business with. Failure to comply with the regulations can result in fines, loss of licences, debarment and, for some, imprisonment (annex 5).

Financial institutions, law firms and accountancy practises are faced by a “diverse and dynamic” criminal and terrorist threat (annex 4, point 7.5).

Our task is to assist our clients in managing this threat.

We are instructed to investigate corporate shells, nominee structures, non-disclosed intermediaries and other such structures and devices to help our clients ensure they are not dealing with terrorists, criminals, politically exposed persons, foreign governments or foreign government officials.

Most clients, because they do not have the skills or resources, cannot undertake this type of investigative research themselves; those who do generally conduct low-level database-led due diligence. In more difficult cases or in geographies where there are language issues or a lack of readily available or reliable public records, they instruct firms like ours.

Obtaining consent to investigate, which would be a gateway (annex 2, Schedule 2, 4., (8)), is often not possible because we are asked initially to investigate corporations. The owners of those corporations are unknown, which is why we are asked to investigate.

Once identified, if the owners of a company that has been the subject of due diligence are, or may be, criminals or terrorists, it may then be a criminal offence for our clients to deal with the company in question or to notify the subject of the outcome of the investigation and to ask for retrospective consent to investigate the individual concerned.

Indeed, if criminal conduct is suspected, there is an obligation to file a Suspicious Activity Report. Disclosing to the “prospective client” that an investigation has been conducted to obtain retrospective consent from that client to investigate them, may involve the commission of a further offence of tipping off that individual (annex 6, Proceeds of Crime Act 2002, Section 333A).

There is a substantial list of statutes and regulations that require businesses to conduct due diligence (annex 7).

The most recent example is the Bribery Act 2010 (annex 8) which creates strict liability for companies where they, or any associated persons who perform services on their behalf, pay a bribe as a result of which the corporation derives a commercial benefit.

Here again Parliament has expressly shifted responsibility to corporations to try and preserve the integrity of the free market and to prevent bribery from occurring.

The only defence under the Bribery Act—which could have startling consequences including corporations being subject to unlimited fines and debarment under EU procurement rules—is for the company to establish that it has “adequate procedures” (annex 8, point 7) in place to prevent it and its associated persons from paying bribes. The burden is on the company to establish this defence.

The Ministry of Justice has issued guidance on what may constitute adequate procedures and Principal 4 of that guidance emphasises the need to conduct risk-based due diligence (annex 9, page 27):

“The commercial organisation applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.”

Having shifted the burden in the manner in which the Bribery Act has, we do not believe that Parliament would have considered the impact of Schedule 2, 4., and had it done so, we would suggest an exemption would have been made under the Private Security Industry Act in this regard.

Furthermore, we do not believe there is any risk to the public in us conducting regulatory investigative due diligence. It does not involve conducting formal interviews, surveillance, or the search for and seizure of evidence, but it can involve *“inquiries or investigations that are carried out for the purpose of obtaining information about a particular person or about the activities or whereabouts of a particular person”*.

We raised this issue in 2007 with the then Chief Executive of the SIA, Mike Wilson. In his response (annex 10) to our letter he stated that some of the exceptions in Schedule 2 might apply (annex 2, Schedule 2 (2), (9) and (10)).

Unfortunately he did not specify which exemption might apply. In our respectful view, it is an unacceptable position that we may be exposing ourselves to criminal sanction (annex 8), if this part of the Act comes into force, without any clarity being provided by either the SIA or Parliament as to what exemptions do in fact apply, if any.

We do not believe that, while these investigations may fall within a strict interpretation of Schedule 2, 4. of the Act, there is any good reason for regulating this conduct. Furthermore, we would suggest that the SIA is not a body or entity which has the required knowledge, skills or capacity to be an effective regulator in these areas.

Finally, we would assert that the relevant provisions of the Data Protection Act provide sufficient controls over this type of activity without the need for additional regulation.

In short, we would suggest there should be express exemption under Schedule 2 in respect of these activities.

Parliament clearly knew that there might be a need for clarification of the scope of Schedule 2 of the Act because it inserted a power under the Act for the SIA to recommend modifications to it.

We would therefore respectfully suggest that the Select Committee make such a recommendation (annex 2, Section 1(4), a).

MERGER AND ACQUISITION, PRIVATE EQUITY FUNDING AND CORPORATE FINANCE SUPPORT

There are similar arguments in relation to merger and acquisition activity, private equity funding and other general corporate finance support.

The Bribery Act does not exclude successor liability. Therefore, if you acquire a business without conducting effective due diligence you may be liable, as a corporation, for the historical acts of the acquired corporation.

Guidance from the Department of Justice in the United States in respect to similar legislation requires companies to carry out effective due diligence before they buy corporations or enter into joint ventures, or in circumstances where due diligence cannot be conducted before acquisition, requires due diligence to be conducted immediately thereafter (annex 11).

This can, and often does, involve looking at the manner in which individuals within corporations actually conduct their business relationships and would therefore involve obtaining information about a particular person or the activities of a particular person.

Such inquiries are undertaken in the first instance without conducting formal interviews, searches or surveillance.

If prima facie evidence of corruption is identified our clients are notified. At that point they may withdraw from the transaction completely or proceed with the transaction and after the acquisition initiate their own internal investigation.

Outside the Bribery Act, private equity and corporate finance firms often conduct rigorous due diligence on both individuals and firms to ensure that they understand what they are buying. In some instances this is done openly and transparently. In others, it is not. That may be because there is an insolvency process, an auction with limited disclosure through a document room or because timelines are tight.

In some circumstances a business may be considering strategic acquisitions and want to know details about a business in which it has an interest before entering into a more open process. In most circumstances, which are regular features of business in the UK and elsewhere, obtaining an individual's consent to investigate may not be commercially viable, but it is critical to good business, proper corporate governance and the preservation of shareholder value that such investigative due diligence is undertaken.

Again, such investigations do not involve formal interviews, surveillance or the gathering and preservation of evidence. There is no identified risk to the public and thus one would seriously question, in these circumstances, whether the intent behind the Private Security Industry Act is met and therefore why such activity should be regulated.

We would once again suggest that in these circumstances the Data Protection Act provides sufficient protection to individuals.

Had Parliament considered this issue we suggest it would have excluded such activity from the ambit of the Act.

We would therefore respectfully suggest that such investigations are excluded from Schedule 2, 4. of the Act.

STATUTORY REGULATION ANOMALIES

The information contained in the Information Commissioner's 2005 report "What Price Privacy?" published in May 2006, together with the evidence the Information Commissioner gave at this Select Committee, does not support the contention that lawyers should be exempt from a licensing requirement if they conduct or instruct others to conduct formal interviews, surveillance or search and seizure in the context of an investigation.

In fact, that evidence suggests that there is a far greater risk to the public from lawyer's activities than from the activities of private investigators in respect of whom, the Information Commissioner said in his evidence to this Select Committee, he had received very few complaints.

In his conclusions to the May 2006 report the Information Commissioner wrote:

"The press are not the only drivers of this market of course. This report highlights many other businesses which regularly turn to private investigative firms and through them to the shadier end of the tracing market, requesting personal information they must know or suspect has been unlawfully obtained.

It may only be exceptions on the fringes, but it is clear that insurance companies, solicitors, local authorities, finance companies and other lenders are implicated in this trade...", (annex 12, point 7.3).

The evidence provided to Lord Leveson's inquiry also demonstrates serious issues about the conduct of external and internal legal advisors.

The Act also currently exempts from its provisions individuals working as employees of companies which are not otherwise security companies. Again, given the nature of concerns raised by the Information Commissioner, particularly with reference to local authorities, finance companies and other lenders, one questions whether their staff at least should be subject to the same licensing requirements and/or competence tests.

Accountants are similarly excluded from the provisions of the Act.

In this regard we would point to the recent arrest of a PKF partner and at least one other member of staff in January 2012 (annex 13).

Moreover, if the purpose behind the statute is to mitigate risk to the public, it makes little or no sense that if a qualified lawyer or accountant works in a legal or accountancy practice and provides services which fall within Schedule 2, 4. they do not need to be licensed, but if the same individual works in a risk management consultancy they do (annex 2, Schedule 2, 4., (4) and (5)).

The impact of these sections simply serves to create an anti-competitive environment without any evidential basis for that position.

For the avoidance of doubt, our view is that any company, or individual, which conducts formal interviews, surveillance or search and seizure should be licensed whether they are a law firm, an accountancy firm, a risk management consultancy or a private investigator (or a journalist). Nor do we believe that there is any evidential basis for reaching the conclusion that the risk to the public is less from an in-house investigator than from an external investigator. In fact the Information Commissioner's report would support the opposite conclusion.

Did you contribute to the consultation process in 2007?

We have contributed in a number of areas. When the SIA was first established we were on the stakeholder advisory panel which was subsequently disbanded.

Before that we took part in a Confederation of British Industry (CBI) initiative in conjunction with the City of London Police and the Metropolitan Police that was designed to permit "accredited investigators" to work with the police more closely and in some circumstances, to share intelligence and evidence.

The objective behind this initiative was, in circumstances where clients had suffered fraud, to allow investigators to conduct investigations in conjunction with the police, thereby freeing up significant police resources, and through the police to exercise police powers to obtain and secure evidence.

In 2007 we contributed to the debate about competences (annex 3).

We have also, at various times, contributed to the debate by either writing to or meeting with the SIA.

If there was a system of licensing should it be individuals or companies?

Again, we shared our thoughts on this in 2003, 2006 and 2007. We believe only companies should be licensed and that there should be an obligation on them to ensure that those within their organisation who provide the type of professional investigative support we have described above should be both “fit and proper” and have the necessary competences to do so.

In addition to corporate licensing, we believe both in transparency, to allow clients to make informed decisions, and in the ability of clients and those affected by breaches of their rights, to obtain recourse.

Therefore we would recommend that companies be required:

- to ensure that directors are fit and proper—with no criminal convictions;
- to file full audited accounts;
- to have paid all relevant taxes;
- to be registered pursuant to the Data Protection Act;
- to provide professional indemnity insurance to cover their activities;
- to screen staff to FSA levels;
- to establish that staff undertaking private investigations have the necessary skills or are in the process of acquiring those skills;
- to have an established training programme;
- to demonstrate appropriate information security policies and procedures around their treatment of personal data and sensitive personal data;
- to have such other policies and procedures as are required to protect their clients’ confidential and proprietary information; and
- to the extent that third parties or subcontractors are used, to have appropriate controls around the instruction of those individuals or companies.

If individuals wish to provide investigative services they should be personally registered and, in order to obtain such registration, be able to demonstrate that they comply with the same criteria.

We believe our views correspond with those expressed in the SIA Fact Sheet issued in January 2012 (annex 14).

It has been suggested that there should be a form of co-regulation, part by statute and part by industry—would that work?

We are firmly of the view that such a mechanism would not be appropriate. The weight of the debate is away from self-regulation or partial self-regulation.

Moreover, there is no industry body in the UK that is capable of discharging such an obligation. In our view, to establish one, given the breadth of the sector, is not something which could easily be done. Aside from competence issues there are equally significant funding issues.

Whatever follows the SIA should be the statutory regulator.

SUPPLEMENTAL QUESTIONS ASKED BY THE SELECT COMMITTEE AT THE HEARING ON 13 March 2012

Do you buy information from third parties?

We buy a significant amount of information from third parties. These include:

Commercial database providers

We subscribe to over thirty different commercial providers of information in order to access media records, company information, credit and litigation data and international watch list information, for example:

- Factiva—media database;
- Dun & Bradstreet—company credit information;
- Creditreform—personal and company credit information;
- Lexis Nexis—media, company and litigation information; and
- Complanet—international PEP and watch list information.

Official information sources

Typically these are company registries, many of which are departments of the state and we access such sources all over the world. In the UK these include:

- Companies House—UK company information;
- Jersey Financial Services Commission—Jersey company information; and
- Land Registry—UK land ownership information.

Many of these databases collate publicly available information but that is not always the case.

For example, credit information is often protected and a company seeking to access such information is required to demonstrate a need or reason to access such information. These include:

- Experian—UK consumer and corporate credit information; and
- Equifax—also an UK consumer and corporate credit information.

Other commercial providers require the user to provide a reason for searching. In the case of Zyklus Inkasso, a German consumer credit provider, a drop-down list of acceptable reasons for conducting a search must be completed.

In some circumstances the database relies on information which is public, having been derived from registers, but is not “publicly available” and therefore would not fall within the provisions of Schedule 2, 4., (7) (a) of the Act. An example of this is a private news clippings agency that we have used in the past in Cyprus.

Law firms and accountancy firms

In some jurisdictions corporate records and other filings have to be obtained through law firms or accountancy firms. For example, in many African countries company records may only be accessed by a registered lawyer or accountant (eg Nigeria). In such cases, we would use a law firm to access this information.

Licensed private investigators

In some countries, Italy for example, access to some court records is restricted in that they can only be obtained by, amongst others, licensed investigators. In these circumstances a formal application to the court is made. Where that is the case we would use such investigators to obtain such data.

We also use licensed investigators, where the local regulatory regime requires it, to conduct investigative activity in support of wider international investigations we may be undertaking. This is done in conjunction with local lawyers to ensure compliance with local law.

Unlicensed investigators

In some jurisdictions, such as the UK, there is no requirement for investigators to be licensed but from time to time we may instruct them to conduct specific tasks, such as physical surveillance.

In the case of our company the decision to undertake such a step is only taken in conjunction with the client and their legal advisors and when both they and we independently form the view that such a step is both necessary and proportionate to the issues which have to be addressed. In other words, we apply the relevant test created by the Regulation of Investigatory Powers Act 2000 (annex 15). The example cited above was such a case.

Regional or sector experts

We often seek local views on political or security risk, or business related issues in markets where there is no, or very limited, publicly available information.

This might be specific—in respect, for example, of local intelligence on a terrorist incident, we may speak to third parties to try and determine where a bomb was, what its impact was and who may have been responsible.

It may be more general such as taking an expert regional view on the competences or capabilities of a local terrorist group.

In the context of anti-corruption due diligence we similarly might take a local expert view on whether an individual is or is not a politically exposed person, a foreign government official, related to a foreign government official or a known nominee for a foreign government official. We may also, for example, take regional experts' views on the openness and transparency of a particular tender process, the key competences of the directors of a business which won a tender or their access to capital to finance the exploitation of licenses they have been awarded. Answering those questions may provide tangible data from which our clients can determine whether they are risking contravening the Bribery Act, for example.

Media consolidators

In some environments historical media coverage is not online and is manually consolidated by an individual or a company. We may buy information from such a consolidator. The information which they provide, whilst once public, is no longer “public” and may therefore not fall within Schedule 2, 4., (7) (c), (annex 2). Again the Cyprus example is relevant.

How many people do you buy information from?

There is no simple answer to this question because we offer a number of different services which relate to the provision of information to our clients. These services require different types of sources of information as indicated above.

However, as we have already indicated, we have operated in more than 150 jurisdictions, therefore the number and types of information sources are significant.

Information brokers

For the avoidance of doubt we would wish to make it plain that we do not use “information brokers” in the sense of the term identified in the 2006 report, nor, in so far as we understand it, in the sense given by other parties who have provided evidence to this Select Committee.

2 April 2012

Supplementary written evidence submitted by Kroll [PI15]

Thank you for the opportunity to clarify to the Committee our position on the use of independent contractors. I will write to you separately on our broader perspective on regulation of the private investigation business.

Due to the broad and international nature of the services Kroll provides, it has established a network of independent contractors in order to provide a complete range of services to clients. It would not be feasible or practical for Kroll to employ staff in all locations in which it performs services. In addition, many of our individual independent contractors have specific professions and expertise upon which Kroll relies in order to provide services to clients and are used on an occasional basis as and when needed for a case.

For each aspect of a project, we would consider whether the expertise we have within our company is the most appropriate to deliver the best service to our client and will not hesitate to draw on external support where necessary. All projects will, of course, be managed by Kroll employees. We take full legal and professional responsibility for the actions of our contractors, just as if the work was being performed by an employee. We are, after all, responsible for the end result to our clients. As we have grown, more of our work is brought in-house; but equally, the professional and geographic range of our services constantly grows, creating the need for additional expertise which initially will be externally sourced. Currently, less than one third of professional time is represented by contracted services.

Kroll’s work in the London office is predominantly international. Of our billings in 2011, 80% by revenue were for clients outside the UK; and of the 20% for UK clients, many were international law firms in London whose clients were outside the UK. Only about 10% of our work is actually focussed on UK subjects; although the actual work is, of course, largely desk based analysis done in London. Consequently, we have a constant need for expertise on languages, culture, politics, industry and business practice across our region (Europe, Central Asia, the Middle East and Africa); but those needs are not so predictable that we can always have them in-house.

Our contractor base is continuously evolving as the business and market needs develop. New contractors are added and others removed. We currently have 478 contractors on our EMEA database. Less than half (217 out of 478) of our current EMEA independent contractor base are UK companies or individuals and of those most provide services both in and outside of the UK. Of the 217 in the UK, fewer than 90 active independent contractors are individuals. Over half of these are business researchers (including industry analysts, freelance journalists and business consultants) but this also includes academics, lawyers and a number of former full time employees who do occasional project work. This number also includes licensed security consultants, translation agencies and expert providers such as fingerprint and other forensic specialists.

We have in place strict procedures governing our use of independent contractors to ensure that independent contractors are used and managed appropriately and given guidance and direction on the services and the information they provide to us. A copy of Kroll’s Independent Contractor Use policy is attached.⁴

As with employees, Kroll’s internal procedures require that independent contractors are background checked. Independent contractors complete a questionnaire in which they are asked, amongst other things, whether they have been convicted of a crime or offence and whether they have had, for any reason, any licences or permits suspended or revoked. They are also asked to confirm what measures they have in place in order to adhere to applicable data protection and privacy laws. Background checks typically include professional licensing

⁴ Not printed

verification and global compliance database checks. As you will be aware, criminal records checks can only be carried out in limited circumstances. The results of the checks are reviewed by legal and must be satisfactory in order for the independent contractor to be added to Kroll's approved database. Background checks are repeated every two to three years.

In addition, independent contractors are required to sign Kroll's independent contractor engagement agreement (copy attached)⁵ in which they warrant that they will comply with all applicable laws, rules and regulations when providing services to Kroll, including anticorruption legislation, and that they will not carry out any work that could constitute a conflict of interests with the services they provide to Kroll. They also represent that they hold any licences necessary to provide the services and agree to comply with Alteryx's Code of Conduct and Business Ethics (Alteryx is Kroll's US-based holding company) (a summary of the Code is included at Exhibit B of the independent contractor engagement agreement). The case manager is responsible for communicating and confirming that the independent contractor adheres to this policy. Our standard independent contractor engagement agreement also contains a restriction on sub-contracting without our prior written consent.

We provide legal and compliance training to our employees including on the use and management of independent contractors. We encourage active management of independent contractors and require that employees clearly specify the scope of their instructions each time an independent contractor is tasked. Statement of works can be completed on the form appended to the Independent Contractor engagement agreement or by email. Our procedures ensure that only approved independent contractors are tasked and the system set-up prevents any unapproved independent contractor from being paid without a waiver from Legal or Compliance.

Kroll has a global compliance function based in New York and overseen by Alteryx's Compliance department that monitors Kroll activity worldwide, including use of independent contractors, with the aim of ensuring compliance with local laws and regulation. Compliance regularly audits use of independent contractors to check adherence to our internal procedures. From a legal perspective, Kroll accepts liability for the actions of its duly authorised independent contractors in the same way as it would the actions of its employees. Our independent contractors are also covered under our professional liability insurance.

Kroll operates regional Risk Committees whose approval is required before certain types of engagements can proceed. Each Committee is made up of representatives of senior management, legal and Compliance and assesses prospective engagements in terms of financial, political, operational and legal risk. When a case is submitted for review, any use of independent contractors is discussed and reviewed as appropriate and any appropriate limitations or conditions imposed on their use.

30 April 2012

**Supplementary written evidence submitted by Commander Peter Spindler,
Directorate of Professional Standards, Metropolitan Police [PI21]**

I write in response to your letter dated 29 May 2012 and want to thank you for the opportunity to clarify my answers to the Committee on 7 February 2012. I think it is important for me to contextualise the questions and answers I gave in response.

Firstly, at Q113 you began by stating that you "had received written evidence that police officers have accepted payments for information...." I was then asked whether I had seen evidence of police officers receiving payments for information. My reference to "evidence" needs to be seen in the context of the qualification at Q116. It is there that I confirm we have "intelligence" about corrupt activities however getting it to a stage of proof, where in police parlance it is to an "evidential standard" is a different matter.

I was unaware of what the "written evidence" you were referring to at the time and therefore unable to answer your question case specifically. However, even if I had known the specifics, it would have been inappropriate for me to comment further than I knew of allegations at the time, due to the sensitive nature of any ongoing counter corruption investigation.

I have since asked for a recall of historic cases known to the Directorate of Professional Standards Intelligence Bureau and have identified three which relate specifically to private investigation companies and therefore may be of interest to the Committee. I have attached a précis of these and will be more than happy to discuss them in greater detail when we meet with DAC Gallan at New Scotland Yard on 7 June to discuss the broader corruption profile.

⁵ Not printed

APPENDIX TO LETTER TO KEITH VAZ MP

OPERATION BARBATUS

Six men were sentenced in connection with what was one of the most extensive investigations ever carried out by the Metropolitan Police Service (MPS) anti-corruption team. The offences were committed between 1999 and 2004 and were identified by a pro-active, intelligence-led operation. The offences included conspiracy to cause unauthorised modification of computer material, conspiracy to defraud, conspiracy to intercept communications unlawfully, conspiracy to cause criminal damage to property, and aiding and abetting misconduct in a public office.

Those convicted included two former MPS constables, Jeremy Young and Scott Gelsthorpe, who had established a private investigations company, Active Investigation Services (AIS), three other ex police officers, two of whom were working as private investigators, and one further man also employed as a private investigator.

AIS used sophisticated bugging and IT technology to hack into computers and tap landline telephones engage in corporate espionage and invaded the privacy of members of the public. Among the illegal services offered by the company were accessing medical records, bank details and phone bills as well as fitting bugs to people's cars.

The investigation found that the men were illegally obtaining information from the PNC, including checks on people and vehicles. An audit of the details requested found they had all been checked by one of the men, who at the time was an Acting Inspector in Staffordshire Police.

OPERATION TWO BRIDGES

This was an investigation into Law and Commercial (previously Southern Investigations) and brought to light evidence re the planting of drugs on the wife of Simon James (a client) to ensure he won a custody battle for the couples son. Ultimately James (seven years) Jonathan REES the PI (seven years) and Austin WARNES, serving MPS officer, (five years) were imprisoned for Conspiracy to Pervert the Course of Justice.

OPERATION ABELARD

The investigation into the murder of Daniel Morgan instigated after a review of the murder by the MPS Murder Review Group; no charges resulted from this first Abelard investigation. Operation Abelard II brought together material from the previous investigations and as a result, William Jonathan Rees, was amongst four men charged with murder. Mr Morgan had worked with Mr Rees in Southern Investigations. This prosecution failed in March 2011 owing to disclosure issues (the prosecution offering no evidence). A fifth man, serving MPS police officer Sidney Fillery, had also been charged with perverting the course of justice, it being alleged he had interfered with the investigation (this charge was stayed in February 2010). Fillery subsequently retired and became Rees' partner in Southern Investigations. The corruption allegations surrounding the initial investigation led to the then PCA appointing Hampshire Police to investigate, however their report did not identify any corruption.

June 2012

Written evidence submitted by Lynne Featherstone MP, Parliamentary Under Secretary of State [PI22]

At the Home Affairs Committee Inquiry's evidence session on 22 May, I undertook to write to you about the Government's plans for tackling child abuse linked to faith or belief, for example belief in witchcraft or spirit possession.

There has, as the Committee will be aware, been much media and public interest in child abuse cases in which the perpetrators believe the victim is a witch or has been possessed by evil spirits. There have been a number of previous high profile cases over the last few years where belief in supernatural forces has been a factor in the abuse of children, including that of Victoria Climbié.

The Department for Education hold the overall lead on child safeguarding issues and in February 2011, my Ministerial colleague the Parliamentary Under Secretary of State for Children and Families, Tim Loughton, committed to establishing a working group to tackle the issue of abuse linked to faith or belief. The group, which is comprised of partners from the community, faith and voluntary sectors as well as local statutory partners, the Home Office and the Department for Education (DfE), have developed an action plan of measures they believe will help address this issue. The plan is owned collectively by the partners and actions are being led by each of them, both at a local and national level. A number of organisations have already produced information and resources about child abuse linked to belief and the action plan will draw upon this existing good work. It is aimed to publish the action plan later in the Summer.

Although the level of violence involved in such cases is particularly shocking, these are nevertheless first and foremost cases of child abuse that fall within the police's child protection and child abuse investigation

responsibilities. However, child abuse linked to faith or cultural beliefs can have links to other abuse crimes including trafficking and domestic violence, and a successful approach to tackling the issue will need to address the linkages between these types of harm. There are also other forms of child abuse which take place within cultural and faith contexts, such as forced marriage and female genital mutilation, which local areas may benefit from addressing jointly.

Robust data on the prevalence of this type of abuse is extremely difficult to obtain. The most recent statistics nationally are from research into child abuse cases involving belief in witchcraft or spirit possession published in 2006.⁶

That research covered the period 2000–05 and found 38 cases involving 47 children which were relevant and sufficiently well documented. DfE have therefore commissioned a small scale research study to draw together what is already known about the issue and it is hoped to publish this research in the Autumn.

I further undertook to write to you in response to Bridget Phillipson's statement (at 0482), that "various breaches by the Department for Work and Pensions, where staff had inappropriately accessed or passed on data to third parties, but that those breaches had not been reported to the Information Commissioner".

I have raised this with the Department for Work and Pensions (DWP) who have provided me with the following information.

1. The Information Commissioner's Office (ICO) has published guidance to data controllers which covering the notification of data security breaches to the ICO. This guidance is published on the ICO's website at the following address, but for convenience I attach a copy of the document. http://www.ico.gov.uk/for_organisations/data_protection/the_guide/principle_7.aspx
2. The guidance explains that while there is no legal obligation in the Data Protection Act for data controllers to report breaches of security that result in loss, release or corruption of personal data, the Information Commissioner expects that serious breaches should be brought to the attention of his office. The term "Serious breaches" is not defined in the guidance, however certain criteria are expected to be applied by data controllers in assessing whether to report a particular incident. These criteria include an assessment as to the level of significant actual or potential harm to the data subject(s) concerned, the sensitivity of the personal data, and the volumes of individuals affected.
3. Bridget Phillipson made reference to the Freedom of Information response by the DWP that was itself mentioned in the Channel 4 Dispatches programme and which was screened on 14 May 2012. All the cases detailed in the response were dealt with by the Department in accordance with the Department's disciplinary procedures. While the DWP takes its responsibilities to protect personal data extremely seriously in accordance with its statutory obligations, none of these particular cases amounted to a breach of data protection legislation of a sufficiently serious nature to require reporting to the ICO in accordance with the published guidance. The DWP have also asked me to point out that the same Freedom of Information response did actually provide details of all the cases that had been reported to the ICO in accordance with these procedures since 2007.
4. The DWP have also stated that they work very closely with the ICO to ensure that appropriate action is taken in cases where outsiders attempt to illegally procure personal data.

I trust that these responses are sufficient to answer the points raised.

June 2012

Supplementary written evidence submitted by the Information Commissioner [PI23]

Thank you for your letter of 16 March with your follow-up points arising from my evidence of 7 February.

To respond to each of your points in turn.

NUMBER OF PRIVATE INVESTIGATORS

My estimate of around 2,000 private investigators is correct.

If the committee are interested in how I arrive at that figure, the ICO has two templates under which private investigators can choose to notify. Under N810 "Private Investigation", on 1 March 2012 the public register shows that the number of data controllers that had chosen the template N810 "Private Investigation" as the purpose on their registration was 1,061. Under N811 "Private Investigation & Debt Administration and Factoring", on 1 March 2012 the public register shows that the number of data controllers that had chosen the template N811 "Private Investigation & Debt Administration" as the purpose on their registration was 670.

⁶ *Child abuse linked to accusations of "possession" and "witchcraft"*, Eleanor Stobart, 2006. Research commissioned by the Department for Education. www.education.gov.uk/publications/standard/publicationDetail/Page1/RR750

This makes a total of 1,731 altogether. However, we are aware that there are some data controllers who do private investigation work but choose a different template to either N810 or N811 and we also provide a list of purposes that can be added to a registration and P126 is the purpose code for private investigation.

On 26 March 2012, we asked our IT service provider to run a report which asked for the number of registrations on the public register which contained the P126 purpose "Private Investigation". This found 2030.

OPERATION MOTORMAN MATERIALS

I enclose a copy of the two sets of invoices that we provided to the Culture Media and Sport Select Committee in 2009. These were redacted to remove personal information. As I have previously explained; I am prevented by section 59 of the Data Protection Act from further publishing material recovered from the investigator Steve Whittamore without "lawful authority". I also enclose sample pages from one of the Motorman ledgers, similarly redacted.⁷ This is from the "yellow book", described as containing orders from journalists working for "Mail, Express and others". This is similar to the material supplied to the Culture Media and Sport Committee.

ICO INVESTIGATIONS

In the past two years, we have not prosecuted any private investigators for offences under the Data Protection Act. We have however been engaged in one long-running and complex investigation which we expect to be able to bring to court imminently.

The ICO is in a process of developing our intelligence capacity and this has resulted in a number of organisations being identified as offering services which we believe would be illegal. We have at this stage identified seven such organisations and we are at the intelligence gathering stage in relation to this exercise.

The ICO is also working with other regulators and law enforcement bodies. In February, the Serious Organised Crime Agency (SOCA) successfully prosecuted four private investigators who had been "blagging" personal information in order to facilitate various frauds. The four were gaoled under the Fraud Act. SOCA have agreed to share some of the evidence obtained in Operation Millipede with the ICO. A SOCA press statement said "SOCA worked in partnership with a number of bodies including the Information Commissioner's Office. SOCA will now hand over any such information to its partners to determine whether further action is appropriate." Similarly the Metropolitan Police have agreed to share some of the evidence relating to private investigators that they uncover during aspects of the Operation Wheeting investigation into phone-hacking at the News of the World. This information will be collated and used within the investigations department to inform and support proactive investigations into rogue elements within the private investigator community.

We have had a number of other complaints referred to us regarding those offering or supplying private investigation services that may have committed section 55 offences. These complaints have, on the whole, overlapped the police investigations linked to operation Wheeting and as such we have accepted that the police investigation would take precedence in those circumstances.

I regret I am not able to provide more precise statistical information for the Committee.

April 2012

⁷ Not separately printed

Annex 1

COUNCILS SURVEY RESULTS

Name	Employed PIs in post 5 yrs	Money spent in post yr	Standard rate	Retainer	Main purposes	Guidance	Legal advice	DPA	Measures taken to ensure legally acquired
Bristol City Council	Frequently	Under £10,000	£100 for successful trace; service of documents £96	No	Tracing debtors; service of documents	No	Consideration of Data Protection Act where applicable	No	Written checks for compliance with the Data Protection Act
Cambridgeshire County Council	Never	None	n/a	No	n/a	No	n/a	n/a	n/a
Cumbria County Council	Never	None	n/a	No	n/a	No	n/a	n/a	n/a
Devon County Council	Occasionally	Under £1,000 (£34.50)	No w/h, no fee	No	Debt recovery	No	None	n/a	None
East Sussex County Council	Occasionally	Under £10,000	n/a	No	Surveillance of benefit claimants and in a child protection case; regular use of process servers	No	No information	No information	No information
Essex County Council	Occasionally (once)	Under £1,000	Fixed rate	No	Benefit fraud investigation	No	None specific	n/a	RIPA compliance
Hampshire County Council	Occasionally	Under £10,000	Job rate	No	Litigation use (evidence gathering in fraud cases)	Yes	Legal services approve RIPA application	New safeguards: risk assessment, RIPA compliance, no filming of third parties unless anonymised	Risk assessment and policy checks
Herefordshire Council	Never	None	n/a	No	n/a	No	n/a	n/a	n/a
Hertfordshire County Council	Occasionally (three times)	None	No	No	Surveillance in social care case and protection	No	No information	No information	No information
Lincolnshire County Council	Occasionally	Under £10,000	Daily rate of £950 + VAT for a team	No	Covert surveillance in relation to counterfeiting and investigation of money laundering and fraud cases	Yes	Internal legal services	No change	Clear instruction, RIPA authorisations and record-keeping
North Yorkshire County Council	Occasionally	None	Daily rate	No	Child protection cases	Yes	Internal legal services ensure RIPA compliance	Procedures are reviewed annually	RIPA procedures included in the instructions to the investigator
Northamptonshire County Council	Occasionally	None	Hourly rate	No	Insurance fraud cases	Yes	Not recorded	RIPA compliance	Only RIPA compliant and accredited firms are used
Northumberland County Council	Frequently	Under £1,000	Hourly rate	No	Process serving	Yes (mainly RIPA guidance)	Internal advice from legal services	Unknown	n/a (not used for surveillance)
Nottinghamshire County Council	Occasionally	Under £10,000	Hourly rate of £45	No	Child protection cases	govern surveillance cases	Could not provide information at reasonable cost		The Council seeks to procure the services of reputable firms.
Oxfordshire County Council	Occasionally as private investigators, frequently as process servers	Under £50,000	Job rate for debt collection (£65); hourly rate for child care matters (£35, plus mileage)	No	Debt recovery (principally service of papers and locating debtors) and child care (principally process servers)	Yes	Internal advice from the County Solicitor and Monitoring Officer	Introduction of Regulation of Investigatory Powers Act procedures, 2 recent authorisations made in child abuse cases.	Contractual confidentiality requirements and use of small number of respected investigators.
Suffolk County Council	Never	None	n/a	No	n/a	No	n/a	n/a	n/a
Surrey County Council	Never	None	n/a	No	n/a	No	n/a	n/a	n/a

Annex 2

NEWSPAPER/BROADCASTERS SURVEY RESULTS

Name	Employed PIs in past 5 yrs	Money spent in past yr	Standard rate	Retainer	Employed in other capacities	Changed since Nov	Guidance	Legal advice	DPA	Measures taken to ensure legally acquired
BBC	Responded to say "cannot help."									
Daily Express	Never	None	n/a	No	No	No	Yes	Advice is privileged	n/a	n/a
Daily Mail	Never	None	n/a	No	No	No	No	n/a	n/a	n/a
Daily Star	Never	None	n/a	No	No	No	Yes—don't use them	None—never use them	n/a	n/a
Daily Telegraph	Responded with quote "Not aware of anyone using or paying a PI"									
Eastern Daily Press	Never	None	n/a	No	No	No	No	None	n/a	n/a
Express & Star	Never	None	n/a	No	No	No	No	n/a	n/a	n/a
Wolverhampton										
Financial Times	Occasionally—we can recall one occasion in the last several years, on a post-publication complaints matter	None	n/a	No	No	No	No	Any legal advice received is privileged	No	n/a
Independent	Never	None	n/a	No	No	No	Yes	Reluctant to disclose	n/a	Code of conduct; would only use PIs in the most exceptional circumstances
Leicester Mercury	Never	None	n/a	No	No	No	No	n/a	n/a	n/a
Liverpool Echo	Never	None	n/a	No	No	No	No	n/a	n/a	n/a
Northern Echo	Never	None	n/a	No	No	No	No	n/a	n/a	n/a
Shropshire Star	Never	None	n/a	No	No	No	No	n/a	n/a	n/a
Sunday Herald	Never	None	n/a	No	No	No	No need	None	No	n/a
Sunday Telegraph	Responded with quote "to the best of my knowledge, has not hired a PI...not opposed to the concept"									
The Mail on Sunday	Never	None	n/a	No	No	No	Yes—they are forbidden to use them	Internal legal advice (pre 2007)	We banned use of PIs in 2007	n/a
The Sun Newspaper	Occasionally	Under £10,000	In the most recent commissions, which involved sourcing information, the average payment was £170 per job	No	No	Yes. Prior to usage, authorisation has to be granted by the News International CEO	Should any authorisation be given by the CEO for use of a private investigator, any such commission would be carried out under the supervision of the News Group legal department. Since the rule came into force in October 2011 there have been no requests by the Sun to use a private detective.	The new rule about CEO authorisation for the use of private investigators came about after legal consultation.	Detailed records do not go back as far as 1998, however use has declined significantly in recent years.	We expect all third party contributors to abide by the law. A new editorial code is being drafted to make it explicit that adherence to the law and the Press Complaints Commission Code will be a contractual obligation of any commission.

<i>Name</i>	<i>Employed PIs in past 5 yrs</i>	<i>Money spent in past yr</i>	<i>Standard rate</i>	<i>Retainer</i>	<i>Employed in other capacities</i>	<i>Changed since NoW</i>	<i>Guidance</i>	<i>Legal advice</i>	<i>DPA</i>	<i>Measures taken to ensure legally acquired</i>
The Sunday Times	Occasionally	None	It is assessed by job	No	No	Yes—only with Editor's approval and the agreement of the CEO	Yes—if authorisation is given, we will have a written agreement with any investigator which requires them to abide by the PCC code and the law.	Legal advice is privileged, but use of investigators	Use of PIs has diminished considerably in recent years as more information becomes readily available on the internet .	See answer to Q 7
The Times	Occasionally	None	n/a	No	No	No	We have not used investigators for four years. If we did, we would discuss how and why.	n/a	n/a	n/a
Yorkshire Post	Never	None	n/a	No	No	No	No	n/a	n/a	n/a

Supplementary written evidence submitted by Mike Schwarz,⁸ Bindmans LLP [PI16]

Solicitor of Bhadrash Gohil, private investigators and the criminal justice system—case study, Bhadrash Gohil, James Ibori and RISC Management Limited.

INTRODUCTORY COMMENTS

1. The theme of what I can contribute to the Committee's enquiries is that where private investigators are allowed to work, unregulated, at that heart of the criminal justice system, there is a real danger, that:

- *at best*, its careful checks and balances built up over centuries will be unsettled and that this may occur undetected and uncorrected; and
- *at worst*, police corruption and miscarriages of justice will occur, due process will be thwarted and the public's confidence in the criminal justice system will be undermined.

2. My contribution is based principally on my knowledge of the case of Bhadrash Gohil "BG".⁹ Since early 2012 I have been instructed to advise and represent him about a proposed appeal against his criminal convictions from 2010. These in turn arose from the investigation by the Metropolitan Police Service's ("MPS") specialist Proceeds of Corruption Unit into the financial and criminal activities of James Ibori ("JI"), a powerful and high profile Nigerian politician and his associates. My evidence to the Committee is based principally upon my review of the case papers.¹⁰

3. My contribution should be read in the light of submissions made to the Committee on his behalf but before I was instructed—a document dated 10 January 2012, with 10 attachments. To those attachments I add the following:

11. E-mails dated 24.4.07, 6.7.07, 20.8.07, 23.8.07, 13.9.07, 10.3.08;
12. Agenda for conference on 1.3.12;
13. RISC invoice to AS 24.4.07;
14. Article—"Scotland Yard detectives identified in UK bribing scandal..."

4. The case has been characterised by the active and widespread involvement of a firm of private investigators—RISC Management Limited ("RISC"),¹¹ in particular Keith Hunter "KH" and Cliff Knuckey "CK". RISC appear to have played a role in three particular respects.¹² First, RISC were, instructed by the solicitors Speechly Bircham "SB"¹³ who in turn were instructed by "JI", the key target of the police investigation.¹⁴ Second, RISC also worked for Arlington Sharmas solicitors "AS", the firm at which BG was an equity partner, specialising in commercial/private work. Third, RISC were heavily involved in advising BG personally about his position and assisting in the preparation of his case, before and after his arrest and before and after he was charged. The relevant proceedings, stemming from police "Operation Tureen", included restraint proceedings, police investigations, followed by a number of separate, but interlinked criminal prosecutions for financial offences such as fraud and money laundering ("the Ibori litigation"). Regulation of solicitors.

5. As the Committee knows, those affected by the criminal justice system are normally represented by lawyers, solicitors (and barristers). Solicitors play a pivotal role in the preparation and presentation of criminal cases—advising their client, identifying key evidence for and against their client, including proofing defence witnesses, liaising with the police and Crown prosecutors, liaising with their client's co-accused or his/her lawyers, instructing counsel. The smooth running and integrity of the trial process is dependent on the performance of all parties, in particular those engaged in the nuts and bolts of its preparation—defence solicitors and investigating police officers.

6. Solicitors are, as the Committee also knows, heavily regulated. They are regulated by the Solicitors' Regulation Authority "SRA"¹⁵ and bound by its handbook, its 10 key "principles" and its code of conduct ("the Code").¹⁶ I shall refer to relevant rules, below.

⁸ <http://www.bindmans.com/>. See biography submitted separately. I specialise in criminal defence work, including the principles of a fair trial and due process. I do not profess to be an expert in the regulation of solicitors or of private investigators.

⁹ These submissions should not be interpreted as a waiver of my client's legal privilege.

¹⁰ I also rely on other material, some referenced in these submissions, some not: such as the findings of fact by Mr Justice Tugendhat in *Flood v The Times* ([2009] EWHC 2375 (QB)); newspapers articles. It is important to record that the veracity of some of this material on the basis of which I express my views is vigorously contested by those affected by it.

¹¹ www.managingrisc.com

¹² Client confidentiality rules prevent me from identifying other parties who appear to have been assisted by RISC in connection with the proceedings.

¹³ speechlys.com.

¹⁴ For example RISC assisted SB with restraint proceedings. JI was represented by other solicitors, CLP solicitors, when he was prosecuted.

¹⁵ sra.org.uk/home/home.page

¹⁶ <http://www.sra.org.uk/solicitors/handbook/intro/content.page>; see in particular the 10 "principles": <http://www.sra.org.uk/solicitors/handbook/handbookprinciples/content.page>; and the Code of Conduct itself, <http://www.sra.org.uk/solicitors/handbook/code/content.page>.

7. All citizens are, of course, bound by the criminal law and may be prosecuted for offences such as obstructing a police officer, perverting the course of justice, corruption, bribery. I shall not develop these points, but obviously those considerations apply to many of the points I make, below.

RISC

8. In the Ibori litigation, RISC played many of the key roles, outlined above, of solicitors. So far as their role as agents for SB and JI is concerned this was perhaps partly because SB, primarily a commercial firm (in particular the individual solicitors involved¹⁷) did not have the expertise or experience in criminal matters and the legal issues and procedures raised by the Ibori litigation. However, this does not explain how or why RISC managed to work, apparently independently of SB and JI, on so many other aspects of the litigation and for so many other parties.

9. In doing so, RISC's performance appears, in many aspects, to have breached many of the key standards required of solicitors. I shall now refer to the relevant standards and summarise the features of the Gohil case which give grounds for concern.

CONFLICTS OF INTEREST

10. Chapter 3 of the SRA Code requires solicitors properly to handle conflicts of interest. The SRA describe this as "a critical public protection". Conflicts may arise between the solicitor's interest and their client's ("own interest conflict") or between the interests of two of the solicitor's clients ("client conflict"). Solicitors must "never" act where there is "significant risk of" an "own interest conflict". Such a conflict may arise if a solicitor's ability to act in the best interests of the client is impaired by, among other things, "a personal relationship", "appointmentto public office", or "employment". They must not normally act where there is a "client conflict".

11. Features of the Gohil case relevant to this standard include the following.

12. Both KH and CK were, before joining RISC, police officers working at New Scotland Yard. KH "was involved in high-profile investigations of national and international organised crime during his career at New Scotland Yard".¹⁸ CK was "Head of Metropolitan Police Money Laundering Investigation Team (MLIT)".¹⁹

13. They maintained close connections with the police, including officers involved in and during the Gohil investigation also based at New Scotland Yard. "As a former police officer [KH] enjoys many ...genuine friendships with currently serving and retired police officers".²⁰

14. DI Gary Walters "GW" was the senior investigating officer in the Gohil team and an officer involved in interviewing BG. CK knew GW outside the Ibori case.²¹ I understand that before the Ibori case GW was close friends with KH and since the Ibori case, and after GW retired from the police, he has worked with RISC.²²

15. I understand that CK was a former police colleague of DC McDonald "DCM". He played a pivotal role in the Gohil investigation. He was a "disclosure officer",²³ an interviewing officer and a leading investigating officer. I have seen evidence that RISC had significant contact with DCM during the course of the Gohil investigation.²⁴

16. I understand that Martin Woods "MW", a former police officer who, after leaving the police, worked as a consultant for RISC²⁵ and worked within AS's offices to support the preparation of BG's defence.

17. RISC played a significant role in the preparation of BG's case—during the police investigation and, after charge, preparation for trial.

CLIENT CONFIDENTIALITY

18. Chapter 4 of the Code deals with the protection of solicitors' clients' confidential information and also the disclosure by solicitors of material information to their clients. The Code confirms that the protection of confidential information is a "fundamental feature" of solicitors' relationship with their clients and where a

¹⁷ Ian Timlin "IT" and Julie Thrower "JT".

¹⁸ See KH's profile at http://www.managingrisc.com/RISC_Management_Team.aspx.

¹⁹ See his statement, 7.9.09, attachment 5 to the January submissions for BG to the Committee.

²⁰ Finding of fact by Mr Justice Tugendhat, para 116 of *Flood v The Times*, a case in which it was alleged that Mr Hunter made corrupt payments to a Detective Sergeant in the Metropolitan Police Service's Extradition Unit.

²¹ See e-mail 13.9.07 from CK, attachment 11, "I know Gary WALTERS".

²² Extract from seminar timetable on 1.3.12 at which "Gary Walters, RISC Management Limited, London" was a speaker at 9.10, attachment 12.

²³ "Disclosure officers" are crucial in collating all evidence emanating from a police investigation and providing relevant material to the defence, as well as the Crown Prosecution Service. See Criminal Procedure and Investigations Act 1996.

²⁴ See below and comments in e-mails, attachment 11.

²⁵ He now works with CK at Hermes Forensic Solutions—see <http://hermesforensicsolutions.com/aboutus.php>.

solicitor is unable to observe these rules, a conflict of interest may arise. So, for example, the Code advises (O(4.4)) that “you do not act for A in a matter where A has an interest adverse to B, and B is a client for whom you hold confidential information which is material to A in that matter”. In relation to SB’s role I should also quote this from the Code (IB(4.3)) “you only outsource services when you are satisfied that the provider has taken all appropriate steps to ensure that your clients’ confidential information will be protected”.

19. Features of the Gohil case relevant to this standard include the following.

20. RISC acted formally and informally for a number of separate parties in the Ibori case: for JI through SB; for AS (including BG in his capacity as a partner in AS); for BG personally; and for other parties to the Ibori litigation whom I cannot name for reasons of confidentiality. I assume that RISC acquired confidential information about JI’s case. RISC did acquire confidential information about AS and about BG.²⁶ I have little doubt that RISC would have had confidential information about JI material to BG and about BG material to JI. RISC did not convey JI’s information to BG. I cannot say, at the moment, whether RISC conveyed BG’s information to SB or to JI or to both.

21. I can say that, in accordance with the Code, had RISC been a solicitors’ firm, they would have been under an obligation to pass material information about one client to another and had principles of confidentiality applied to prevent them from doing so, a conflict of interest would have arisen meaning that they should have stopped acting for the conflicted clients. A solicitors’ firm should not have put itself in a position where such a risk would have arisen and would have stopped acting for the conflicted clients as soon as the risks became apparent. It does not appear that RISC took any of these precautions. They do, however, appear to have denied that they had acted for AS, though there is evidence to suggest the contrary.²⁷

22. I also am concerned that RISC appeared to have provided the police with confidential information about AS to the police, without my client’s consent.²⁸ I am also concerned that it appears RISC passed confidential information about BG’s own case to other “sources”, presumably including the police.²⁹

OBLIGATIONS TO THE COURT

23. Chapter 5 of the Code regulates solicitors conducting litigation. Solicitors must not mislead the court. They must not offer payments to witnesses dependent upon their evidence or the outcome of the case. They must not act in litigation where they or anyone within their firm will be called as a witness. Obviously, no one should commit criminal offences, such as obstructing the police, perverting the course of justice, corruption and bribery.

24. Features of the Gohil case relevant to this standard include the following.

25. CK may have given evidence for the prosecution. He gave a statement to the police.

26. Further his statement to the police does not appear to be accurate. He said that RISC did not invoice AS direct for their work, implying that AS were never a client of RISC. A RISC invoice to AS appears to contradict this.³⁰

27. CK could have been a witness for BG in his defence. He could have given evidence on a critical and contentious issue at trial—whether BG had breached anti-money laundering rules and procedures.³¹

28. There is evidence which suggests that RISC had regular meetings and close dealings with police officers involved in the Ibori litigation and/or others close to the operation. There is evidence which suggests that RISC obtained confidential information about the police investigation. There is evidence which suggests that RISC passed on confidential information about suspects’ defences or instructions, including BG’s, to their contacts.³²

29. If any of this is true then it is entirely possible that not only was the SRA’s Code breached but the proper course of justice was affected. For example obvious lines of police enquiry may not have been followed up or may have been thwarted; full disclosure of relevant material—supporting the defence case or undermining the prosecution’s—may not have been made to defence lawyers; defence cases may have been prejudiced; inaccurate evidence may have been presented to the court at trial or at pre-trial hearings; requests for mutual legal assistance may not have been made or granted on the correct basis.

²⁶ See CK’s statement, 7.9.09, attachment 5. CK also gave a statement to the police, dated 7.5.08 which, for legal reasons, I may not be able to present to the Committee. See also RISC invoice to AS dated 24.4.07, attachment 13.

²⁷ Statement by CK to police 7.5.08 and RISC invoice attachment 13.

²⁸ CK statement to the police, dated 7.5.08

²⁹ See attachment 1, RISC invoices

³⁰ Statement by CK to police 7.5.08 and RISC invoice attachment 13

³¹ See CK’s statement, 7.9.09, attachment 5.

³² See RISC invoices, attachment 1. See e-mails in attachment 11—e-mails dated 24.4.07, 6.7.07, 23.8.07, 13.9.07, 10.3.08. See press reports with January submissions—such as attachment 8, Evening Standard article. Note—these allegations are firmly denied by RISC.

REGULATION

30. Chapter 10 of the Code is about solicitors' co-operation with their regulators and ombudsmen, primarily the SRA and the Legal Ombudsman. It includes the obligation (IB(10.10)) to have a "whistle-blowing" policy. I understand that the regulation of private investigators is covered, if it is covered at all, by the Private Security Industry Act 2001 which set up the Security Industry Authority.

31. Features of the Gohil case relevant to this standard include the following.

32. RISC's activities are obviously not covered by the SRA or Legal Ombudsman, though their activities may be subject to scrutiny indirectly through SB's accountability to these bodies.

33. I do not believe that RISC are members of the SIA, a largely voluntary arrangement.

34. Concerns about RISC's activities and the police officers have been brought to the attention of the Independent Police Complaints Service, "IPCC". I have a number of reservations, including the following, about this mechanism in so far as it might address concerns about RISC.

35. First, the IPCC is principally responsible for investigating the activities of serving police officers rather than private security firms.

36. Second, the IPCC do not appear to be conducting an effective or speedy investigation into the allegations. For example, first, it has decided simply to supervise the MPS' own anti-corruption unit's investigation.³³ Given the gravity of the issues raised and the concerns expressed, I think that this is an investigation which the IPCC should conduct in house. Second, there is the question of delay. I understand that although allegations about RISC's and police officers' conduct were relayed to the IPCC in August 2011, the police have still not contacted RISC. Recent activity appears to have been prompted by enquiries on behalf of BG of the IPCC of the progress it was making and press interest. Third, in an earlier case—connected to the Gohil case only in the sense that there were allegations that KH and RISC's predecessor company ("ISC") had made corrupt payments to a police officer at New Scotland Yard³⁴—concerns were also expressed that the police were not properly conducting their investigations into those allegations.

37. For completeness the Committee should be aware that I raised my concerns about apparent police misconduct with the Director of Public Prosecutions personally. I wrote to him on 30 March 2012. It was the gravest of concern to me that the DPP appeared, in response, to have done no more than to pass my letter to the very prosecution team (a team including among others DCM) about whom concerns have been expressed. I have subsequently (27 April 2012) referred the DPP to an article with explicit allegations about that team.³⁵ I await a reply to that latest correspondence.

RELATIONS WITH OTHERS

38. Chapter 11 of the Code is designed to ensure that solicitors do not take unfair advantage of those they deal with and that they "act in a manner which promotes the proper operation of the legal system". For example (IB(11.4)) requires solicitors not to communicate with another party when they are aware that the other party has retained a lawyer in a matter, except in limited, defined circumstances.

39. At least two features of the Gohil case are relevant to this standard—RISC's contact with my client and their contact with other suspects—all of whom were represented by lawyers at the time RISC had contact with them.

40. As to BG, from November 2007, when he was arrested, he instructed lawyers to represent him and this was the position until his convictions. RISC continued to communicate with him about key issues connected with his case and played an active role in preparing his defence, sometimes with but often without BG's lawyers' involvement. This appears to have occurred over a significant period of time. While there may be an argument that consent was implied for this to occur, the hybrid position of RISC (acting on behalf of Ibori, but not being solicitors) and the non-disclosure of information from JI material to BG leads me to conclude that the stronger argument is that RISC (and SB) should not have put themselves in this position and, after it did arise, should not have allowed it to continue. Above all, it was not known to BG or his lawyers, until JI was sentenced, that JI was making allegations against BG's interests.

41. As to other suspects, SB instructed RISC to contact others co-accused with JI and BG—Udoamaka Okoronkwo, Christine Ibori-Ibie and Adebimpe Pogson—even though they were represented by their own solicitors. Further, the apparent aim of that contact was to ensure that these three women gave responses to police questions in an interview which would be to JI's advantage, and not necessarily to the advantage of the three women.³⁶

³³ DPS—Anti Corruption Command, DCC8 Specialist Investigations.

³⁴ See Times article by Michael Gillard dated 2.6.06, attachment 7, and *Flood v The Times*, litigation concluding with Supreme Court judgement [2012] UKSC 11.

³⁵ Article entitled "Scotland Yard Detectives Identified in UK Bribing Scandal..." attachment 14.

³⁶ See attachment 11, e-mail 20.8.07 from IT of SB.

CONCLUSION

42. The rules regulating the conduct of solicitors are rigorous, and rightly so, particularly when it comes to the criminal trial process, this being such a fundamental and visible part of the constitution.

43. While I am sure the Committee shares these views, the following selected extracts from the SRA's principles and Codes, and its explanatory notes to them, bear quoting.

"Those involved in providing legal advice and representation have long held the role of trusted adviser. There are fiduciary duties arising from this role and obligations owed to others, especially the court". "You [solicitors] must: uphold the rule of law and the proper administration of justice; act with integrity; not allow your independence to be compromised; ...behave in a way that maintains the trust the public places in you and in the provision of legal services".

"Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional practice which undermines this trust damages not only you, but also the ability of the legal profession as a whole to serve society".

44. The unregulated unsupervised and invisible participation of private investigators within the heart of the criminal justice process has the potential to undermine all of this.

13 May 2012

Written evidence submitted by RISC Management Ltd [PI26]

We write to you in response to the evidence given by Mike Schwarz of Bindmans to the Home Affairs Select Committee ("the Committee") on Tuesday 22 May 2012.

Before we provide our specific responses to questions 404 to 440 in the transcript of the Committee for 22 May 2012, we would make some preliminary observations as follows:

1. Following Mr Schwarz's evidence to your Committee our Company's offices were raided by the Metropolitan Police the following day (23 May) and Mr Hunter was arrested on suspicion of "perverting the course of justice". After consultation with his legal adviser Mr Hunter agreed to provide a full response in interview to the allegations that were made by Mr Schwarz and the purported evidence that Mr Schwarz claims supports the very bold assertions he is now making on behalf of his client, Mr Bhadresh Gohil, who is currently serving seven years for conspiracy to defraud and money laundering charges. This is the very same evidence that we anticipate Mr Schwarz had arranged to be provided to the Committee. These issues are now therefore the subject of an ongoing criminal investigation, which is hugely damaging for our business, but despite that fact, our Company wishes to provide you with a full response to the irresponsible allegations being made by Mr Schwarz, in the same manner that we have provided to the Police.
2. Prior to Mr Schwarz seeking to be invited before your Committee we should also make clear a number of key facts. The first is that the evidence that allegedly demonstrates that unlawful payments have been made to Police officers largely comprises an anonymous written statement that, alongside some other basic materials, including invoices and related narrative, initially surfaced when they were posted anonymously to the Evening Standard in late Summer 2011. The Evening Standard later passed this material onto the relevant section of the Metropolitan Police. As it is clearly the case that the unsigned written statement was authored by Mr Gohil, a fact that must have been known to Mr Schwarz, we cannot understand that, in view of the serious allegations that Mr Schwarz is now seeking to make, he did not arrange to make a direct criminal complaint to the Police. Instead, Mr Schwarz has continued to leak the material and "talk it up" to various media channels in the UK and elsewhere. As a result, RISC has faced many press inquiries, in particular from the Guardian and the BBC, with whom Bindmans have a close relationship. All of these press inquiries have been answered in full. It is also notable that the Guardian was represented in the Committee Room when Mr Schwarz gave his evidence to the Committee. Why have Mr Schwarz and his client, Mr Gohil, sought to adopt this approach rather than make a formal complaint to the Police? We would suggest it is because the evidence they are seeking to rely upon is not only highly contradictory and fanciful, but also because it simply does not support the allegations Mr Schwarz is now seeking to make with the protection of Parliamentary Privilege.
3. Further, we should make the Committee aware that prior to his appearance Mr Schwarz made contact with Keith Hunter of RISC on 11 May for the purpose of seeking to ask him a number of questions relating to these matters. Mr Hunter openly sought to answer Mr Schwarz's questions, which notably fell along way short of the allegations he sought to make before your Committee. More importantly, in that conversation Mr Hunter expressly denied that many of the meetings that were allegedly recorded in a narrative document could have taken place and that RISC had ever made payments to serving Police officers (please see the attached transcript of the call between Mr Hunter and Mr Schwarz). Whether or not Mr Schwarz chose to believe

our statements, we find it pretty damning that, having contacted RISC and addressed some of these matters to us, he failed to mention this fact to your Committee or the fact that we had denied all of the critical allegations.

4. The documents provided to you, which we assume are the same set of documents provided to the Metropolitan Police, consist of the following documents: (1) a letter dated 1 August 2011 from Liberty Media to Kit Malthouse; (2) two invoices, one from Speechly Bircham and one from RISC; (3) an unreferenced narrative allegedly relating to the detail of services provided by RISC in the period 1/8/2007 to 30/5/2008; and (4) an unsigned statement headed “Research” which appears to have been authored by Mr Gohil. No document in this miscellaneous set of documents provides any evidence that unlawful payments were made to serving Police officers, for the simple fact that RISC has never made any such payments, whether in the context of its work for Speechly Bircham, Arlington Sharma or at all. Indeed the Police have themselves stated during the interview of Mr Hunter that they have doubts as to the “authenticity” of the material, which probably more than anything else explains why the Police had not acted on the material prior to having their “hand forced” by Mr Schwarz’s evidence. Indeed, after now having the opportunity to review the alleged RISC narrative that Mr Schwarz seeks to rely upon as evidence for his allegations, it is quite clear from RISC’s own records that the document is false in numerous respects. For example, it refers to meetings between Mr Hunter and DI Walters (that Mr Schwarz was so ready to rely upon in giving his evidence to the Committee) despite the fact that in the course of 2007 and 2008 Mr Hunter never met with DI Walters on any occasion. It also refers to meetings that Mr Hunter is alleged to have had at “NSY” (sic New Scotland Yard), when Mr Hunter has not attended at New Scotland Yard on any occasion for more than 10 years, a fact that could be confirmed from visitor records. Numerous other examples of material inaccuracies also exist throughout the narrative document (for example, it references Mr Hunter having various meetings that certainly never took place) and the narrative is not a standard document that RISC would ever produce.
5. The main document that Mr Schwarz seems to rely upon is, in fact, the unsigned statement, which appears to have been produced by his own client, which, if read carefully, is full of assertion as opposed to any factual evidence to support the allegation it attempts to make. The document is also highly contradictory, on the one hand seeking to suggest it evidences “unlawful payments” to serving Police officers when it does not, but on the other hand seeking to suggest that RISC was also working for the Police and leaking legally privileged material to them. The allegation either has to be that RISC was paying to obtain information from the Police (which it was not) or that it was trading information with the Police (which it was not)—it cannot be both.

It is, of course, extremely easy to make such allegations, but much more difficult for a business to then prove a negative, that it did not do anything. We are, however, entirely open to providing a paragraph by paragraph rebuttal to the unsigned statement of Mr Gohil, as we have done to the Police, if that is required. However, we recognize that for the purpose of your current inquiries we must directly address the allegations made by Mr Schwarz and, in particular, that RISC has made payments to serving Police officers. We will therefore now address the specific comments made by Mr Schwarz in his evidence to the Committee.

QUES 404

It is notable that despite the very serious allegations that Mr Schwarz goes on to make generally about contacts between private investigators and the Police, he actually states that he only has experience of “one case”. Further, in his call with Mr Hunter he stated that he was “sorry to come to this cold” or if he had “got the wrong end of the stick” having only “relatively recently taken on the case” and that he was only getting his information “fourth hand”. This contrasts strongly with the very serious allegation Mr Schwarz then appeared to be willing to make, which wholly ignored the responses that had already been given by RISC, and we suggest must strongly call into question his motivation and agenda for seeking to get in front of your Committee. What we can say on behalf of RISC is that our Company has never, either in the context of its work for Speechly Bircham or anyone else, made payments to serving Police officers. It is simply nonsense.

QUES 405

It is not entirely clear what Mr Schwarz was attempting to assert in this paragraph, other than the fact he made two apparent and serious assertions: (1) that Police officers have “top and tailed” the evidence, which seems to suggest that they have in some way interfered with evidence. However, in condemning the named officers by his statements, he not only fails to provide any evidence to support the same, but also fails to give any specifics of what was allegedly done by these officers and (2) that RISC had inappropriate or in some way unlawful contacts with the named officers, presumably resulting in unlawful payments to one or other of those officers. Firstly, RISC has never made unlawful payments to any of these officers or any serving Police officer. Secondly, as we have stated, no one at RISC had any contact with DI Walters through the course of its work for Speechly Bircham and is unaware that any contact took place with Mr MacDonald or DC Clark. In monitoring a Police investigation and advising on possible approaches that might be adopted by the Police, we can confirm that on occasions RISC will have open and direct dialogue with members of an investigation team,

but any such contact is entirely legitimate and would be no different to that which criminal defense solicitors have with the Police. Mr Schwarz seems to suggest this is “inappropriate” because private investigation firms are “unregulated”. But this ignores both the fact that professional Police officers are fully aware of their own legal and other obligations, but more importantly the fact that it is Mr Schwarz’s client, Mr Gohil, a member of a regulated profession who is currently serving seven years for money laundering.

QUES 406

It is notable that even with the protection of Parliamentary privilege, Mr Schwarz only states that “... payments made by RISC Management to sources that they have, *presumably* Police officers...”. This statement goes further than anything we can say to show that Mr Schwarz recognises that the narrative document he is relying upon, the inaccuracy of which RISC maintains, does not actually establish evidence of his key premise. RISC can confirm it has never made payments to sources who are currently serving Police officers and would never do so.

QUES 409–410

Former Police officers clearly have a skill-set that is well suited to private investigations. Similarly, ex-military, former intelligence officers, journalists and lawyers work in the industry and RISC see no issue with utilizing networks, skills and contacts where it is appropriate to do so.

QUES 411

Mr Schwarz is seeking to suggest to the Committee that any exercise in monitoring a Police investigation, in a similar way to a public company seeking to retain leading PR or lobbying companies to monitor relevant legislation, is in some manner incorrect. It is not. It would, of course, be incorrect to go further and to make payments to Police officers or to provide lavish hospitality to them but, as we have sought to make clear, we have and would never adopt such practices. We would also repeat the point that any suggestion that RISC had any contact with the senior investigating officer, DI Gary Walters, is entirely incorrect. No current RISC employees had any contact with any of the other investigating officers. No current employee of RISC is aware of any contacts with the other officers mentioned by Mr Schwarz, although it is possible that open and legitimate contact was made by former employees.

QUES 412

This is the most extraordinary part of Mr Schwarz’s evidence, which should cast even further doubt on his motivation. He is here alleging that at some level RISC and other private investigators trade legally privileged material with the Police, something which would not only be highly unethical, but an allegation which is not supported at any level by any evidence Mr Schwarz has allegedly provided to the Committee. Not surprisingly therefore, having made the general accusation, Mr Schwarz provided no detail of specific material relating to his client, Mr Gohil, that was allegedly provided by RISC to both the Police and the Ibori defence team. As we have already said, apart from the fanciful nature of these and other allegations, why would we be paying Police officers if we had valuable information to trade in this manner? It is an outrageous accusation and one we can only suppose is part of an extreme strategy being deployed by Mr Schwarz in the hope of “manufacturing” grounds of appeal for Mr Gohil.

QUES 414

Mr Schwarz’s allegations against DI Walters and RISC are firstly that he assisted RISC when he was a serving Police officer during its engagement for Speechly Bircham, and secondly that he was subsequently or is employed by RISC. This falls at the first hurdle because no such contacts ever took place between RISC and DI Walters in relation to these matters, and further, Mr Walters has never been employed by RISC at any time since leaving the Police. He was contracted briefly on behalf of RISC to present a conference paper in Zurich on 29 February 2012 and 1 March 2012 in respect of which he was paid expenses by a leading and well-respected law firm. He subsequently undertook one further specific assignment in December 2011 due to his extensive knowledge of anti-money laundering issues, but since that time he has undertaken no work for RISC. His engagement with RISC as a consultant amounts to a total of six working days over a two year period since his retirement. He has never been a RISC employee.

QUES 418

The evidence Mr Schwarz seeks to rely upon does not provide any evidence of payments to serving Police officers and we simply confirm again that RISC has never made and never would make payments to serving Police officers in relation to its work for Speechly Bircham or any other client.

QUES 423

Mr Schwarz specifically states that RISC was involved in “... four or five other high profile cases, where payments were made for access to information from the police...” However, apart from mentioning one case

reported in the Times in 2006, he provides no evidence or even any details for these most serious allegations. It is quite extraordinary that Mr Schwarz can be allowed to make such unspecific but serious allegations without being challenged to produce any evidence of the same. Indeed, in the case publicized in the Times he refers to in his evidence, which involved allegations of payment to an officer in the Scotland Yard Extradition Unit, it is undoubtedly the case that Mr Schwarz knows that this issue was the subject of both a criminal investigation which was closed because there was no, let alone sufficient, evidence of any such payments. Indeed, the Times newspaper, during subsequent civil litigation with the officer, admitted in open Court that it had no evidence of the officer receiving any corrupt payments—a fact that Mr Schwarz could have easily established if he had researched the case. The officer concerned was completely exonerated and allowed to return to the Extradition unit with his integrity unblemished.

QUES 433

We make no comment in relation to Mr Schwarz's views as to how our industry should be regulated, other than to make the fundamental point that he is basing his conclusions, not on clear evidence produced in many cases, but on very scant evidence in a case directly concerning a client of his who is now languishing in a UK prison, having been convicted of very serious criminal offences that led the trial judge to condemn his actions as a solicitor. Mr Schwarz as an experienced solicitor and having read the anonymous statement upon which he now seeks to rely (presumably in the knowledge it was written by his client) would know that if it was put forward as evidence of anything in a Court of law would be exploded for the numerous contradictions and fantastical statements it makes concerning conspiracies that abounded during the investigation of his client's criminal activities. We would suggest that it is this fact that led the Police to question the reliability of the evidence that Mr Schwarz is now seeking to rely upon—a fact that may also explain why he is only prepared to make such statements to your own Committee.

In conclusion we would repeat the statement that RISC has never made payments to serving Police officers nor has it sought to trade legally privileged information about its clients with members of the Police. In fact we would ask the Committee to give serious consideration to questioning the motivation of Mr Schwarz in seeking an audience before your Committee and whether his agenda has been to assist the Committee or to pursue an agenda for a disgraced professional at the expense not only of our business reputation, but more critically the reputation of former and currently serving Police officers who have little ability to defend themselves.

Annex

TRANSCRIPT OF THE CALL BETWEEN MR HUNTER AND MR SCHWARZ

Transcript of conversation between Keith Hunter, CEO of RISC Management, and Mike Schwarz, partner at Bindmans LLP, on 11 May 2012.

KH: Hello?

MS: Hi, is that Keith?

KH: It is

MS: It's Mike Schwarz here from Bindmans thanks for ...er...for speaking to me.

KH: Mike, no problem, hang on...um...just...I'm, I'm, you're on loudspeaker coz I'm just getting a colleague to join me who's been dealing with this bloody...er... media thing, so...um...if you don't mind Mike just bear with me for...

MS: No, that's fine

KH: I know you are in a rush as well, so I'm, I'm sorry, I've, I've literally just...

MS: Er... I've managed to move things to have a bit more time so don't worry about that

KH: Ok, perfect, It's alright I've just had to come out of a meeting but no, no worries, don't worry er... (Aside: let's just turn that off)

MS: Shall we start off by telling you where I am coming from?

KH: Yes please

MS: Um I'm, as I said in the email, acting for Bhadresh Gohil and we've become aware of these allegations of Police misconduct...

KH: Yup

MS: ...and we think, just to be completely frank that if there is police misconduct that probably taints the fairness of his trial and therefore may affect the, the safeness of his convictions...

KH: Right

MS: ...and they saw in the... um... the press, for example that link that I sent you, that...um...that RISC and and perhaps you personally may be able to shed some light on on that..um...because you might be able to see what, kind of, what's going on within the police?

KH: Yeah, I mean, I I can tell you what I know from my own...erm...er... benefit and and you know I I know Bhadresh... er... very well and please do give him my best regards er...

MS: I will do, yeah

KH: ...Erm but but there is no, no truth at all to the the...er...the...erm...the stories which have come out through some Nigerian...erm...media...er...story,...er... unfortunately the UK media have also picked it up and have been trying to do some stories themselves... er... because I think it helps them in relation to the Leveson matter that's, that's going on at the moment...

MS: Right

KH: ...but...um... I can categorically say that there is no inappropriate...erm...er...actions between RISC and any police officers and and the stories that have come out are completely untrue, inaccurate, you know, there, there were just so many inaccuracies with with what has been recorded, which...

MS: Right

KH: ...which we can easily prove are are wrong so unfortunately I don't think there's there's really a foundation, well, I mean, aha please...er...forgive me for suggesting it but I don't I don't necessarily see that that story, because because it is so wrong and untrue, really does go any further for for helping your client

MS: Oh right, 'coz I've I've been told about...um...a RISC...erm... billing guide or narrative that suggests that...um...that meetings may have taken place between...um...police officers and people from RISC...

KH: Yup, no.

MS: ...have you have you seen those those stories about billing guides and stuff like that?

KH: Billing? What, what's that?

MS: Well, sort of... lists of...um... of meetings between, or work done by RISC employees on the Ibori case.

KH: Yeah

MS: Which suggests meetings with...um...with police officers, I I don't know if you've you've seen...

KH: Ah

MS: ...those stories or, in fact, seen the...

KH: I've I've seen some, some, you know, I don't know which one you are talking about because there's there's a few little...um...media stories out there...

MS: Yeah

KH: ...um...but what they are trying to say is that yeah there's certain narratives which have gone to...um...I I don't know I don't know where they've gone or where, how they've been ...um...er... produced in the first place coz it's something that we don't do as a as a business so...

MS: Yeah

KH ...where they've got this narrative from and and dates of meetings but I've certainly seen certain... um...meeting notes and meeting dates which have been suggested to me and they are completely false

MS: What do you, what do you mean? The documents are false?

KH: Well, I don't know because I (MS: or what has been extracted from them?)I haven't seen the document, that's the problem...

MS: Right

KH: ...because they are not a document which is known to RISC, I mean...

MS: Right

KH: ...clearly if there is a RISC invoice, there is a RISC invoice, but...

MS: Yeah

KH: ...it looks like someone, and I don't know who, has put a narrative together...um...that may be something to do with the invoice or not. I'm, you know, I am I'm I'm purely guessing here...

MS: Right

KH: ...er...but when I've been presented with certain dates which presumably are on these documents that that are...

MS: Right

KH: ...in circulation, they mean nothing to me and I can certainly, categorically, 110% confirm that that those meetings didn't take place.

MS: Oh right, coz I was I was told about a meeting on the 4th of February in 2008...

KH: Right

MS: ...when someone from RISC met a source and made a payment to to to this so called source

KH: Yup

MS: ...um...

KH: It's it's certainly...um...nothing that...er...I think the suggestion, and I think that's all it is...

MS: Hmmm

KH: ...a suggestion that the source or sources were police officers working on the Ibori case...

MS: Right

KH: ...and there is no way that...er...we would be making any payments to any serving police officers because...

MS: Right

KH: ...because clearly that's not what we do...erm...but but in addition to that ...erm... the meetings which have been suggested...

MS: Right

KH ...as far as I am concerned didn't take place.

MS: Oh right, but...um...Bhadresh told me that there were meetings between Cliff Knuckey and perhaps you with police officers you being instructed by Speechly Bircham and there's police officers being involved in the Ibori investigation, that that that's right isn't it?

KH: No, that's not right.

MS: What, you didn't have any meetings?

KH: No

MS: Or conversations?

KH: No

MS: You nor Cliff nor anyone?

KH: Er...I I I certainly didn't and...um...if that's what, if that's what Bhadresh is saying then he's, he's, he's wrong

MS: Um well I may have got the wrong end of the stick of course, and I've got...um...the trouble is, I'm sorry, I'm sorry to throw things at you, I've got things fourth hand so...

KH: Yeah, No, no, no, I, I understand but but I am certainly not in a position to, um...you know, I'm certainly not in a position to sort of...um...confirm, deny or whatever, but all I can say is that what, what is out in the...erm...in the media is... is not right.

MS: (inaudible)...I understood that RISC and particularly you and Cliff on behalf of Speechly Bircham and Ibori were having discussions with, and meetings with the police about the, about the case either...(inaudible)...or perhaps the criminal investigation? Have I, have I got the wrong end of the stick there or...?

KH: Um...well, I know that that the police at some stage came into our offices to take statements from us...

MS: Right

KH: ...regarding obviously the case...um...so there, there was obviously a liaison there er and and a... but...um... you know ... what, what's been alleged or, or what's been put in in in the...er... media is completely false.

MS: Um...coz...I saw a statement that I think...um...Cliff had given to the police in, on the back of a production order, is that, is that the sort of contact you are talking about...

KH: That...

MS: ...about here...(inaudible)?

KH: That's, that's, that's, that's exactly it.

MS: ...Is that, is that the only work you...I'm sorry if I've got the wrong end of the stick...is that the only work that RISC have done on the case or contact they've had with the police.

KH: Yeh, I mean, I mean as far as, as I am concerned that, that is it.

MS: Right

KH: Um...

MS: Just the, there was one, one or two meetings then where the police have been initiating contact.

KH: Yeah, it is, it is a little while ago now but all I remember is that, that we were, well not we, Cliff made a, a statement to the police on whatever it was that they were asking for as part of their production order.

MS: Right, but my understanding is that production order was about...um...RISC's work with Speechley Bircham and Arlington Sharma's and if it was about that then presumably that, that, that suggests that RISC was doing work with all of those people, again I'm, I'm sorry to come to this cold, coz I have only relatively recently taken on the case but is that, is that, were the police barking up the wrong tree and you hadn't really had much dealings with any of those people?

KH: Well, I, I...er... again I think that it's, if we are going to go down a particular route here...

MS: Yeah

KH: ...it may be better that you take instructions from your client and actually, and actually come back to us with some, some, you know, specifics that you, you want some answers to and, you know, I don't think we are in any way...er...trying to...erm... erm... the...you know, stopping anything that that your client maybe considering doing because, at the end of the day, obviously we, we, we did work with him as you well know, so, erm...

MS: Well, I was going, I was going to ask about that because, I'd understood that you did work with him and very kindly helped prepare his, or gave some input into his defence case, that, that's right, you were doing that sort of work, is that right?

KH: Yes

MS: And was it Martin Woods there as well helping out?

KH: ...(inaudible)

MS: ...(inaudible) Cliff and to you and to Martin...

KH: OK

MS: ...the three of you that were helping out?

KH: Erm I don't, again, I think you are going to specifics there, where I think you should take instructions and then come back to us and and please put it put it on an email Mike and, and we...

MS: Yeah

KH: ...we'll be more than happy to go through it with you and...erm...and as I say, if we can, if we can help in any way then you know...

MS: Can I check on the Martin Woods thing, coz as I saw Bhadresh yesterday and talked about a number of things unconnected with this, but one of the things to do, to do with RISC was he said that Martin had been, or was consulting with you and was shipped in to help with...um... with Arlington Sharma and, in particular, Bhadresh's preparation of his case, is that, I mean does that, is that...?

KH: Um...you know, I can't recall...um...on, on that specific...um...you know, clearly I know the guy and, and I know that, that from time to time he has worked with us, now whether it was...

MS: Yeah

KH: ... specifically on that or not, you know, to be fair, I don't know.

MS: Right

KH: But I am sure these are things we can find out...

MS: Yeah

KH: ...if you want to put it to us.

MS: Yeah OK, and what about Gary Walters coz I gather that he is now connected with RISC?

KH: No

MS: Is that right?

KH: No, he is not connected with RISC at all.

MS: He is not

KH: No

MS: Right, ok. So just coming to...right ok... so, what...um...so is there anything I can further do that might help you because I, I gather from your tone that you are getting grief from other people?

KH: No, no, I mean...it's...er.. no hopefully...er... my tone is as it always is and...er, Sorry, it's a Friday afternoon and I am just aware I have got two clients in another meeting...erm...so all I'd say Mike is that if you, if you want to put anything to us that, that you know may help Bhadresh, or, or clarify issues I'm, I'm sure we can, we can try and help.

MS: Right OK. Yeah...well...er...sorry, just...um...just one more point, just checking this point, there's no truth in the suggestion that anyone from RISC, you, Cliff, had any dealings or negotiations or discussions with the, with the police even sort of innocent ones about the preparation of, of say...um... the defence or the restraint proceedings or Bhadresh's case?

KH: Er...again, you know, I, I can't comment other than...er...as I've already said, is that...er...I can categorically say...er...that we never had meetings with police, that police were never paid by RISC...er...and that whatever we've done...er...to, to help any client is, is obviously use our best endeavours and, and be very professional about it.

MS: So the only contact with the police was when they came knocking at the door asking for a statement, is that that, that sounds like what you are saying?

KH: Er, you know, again, please don't put words in my mouth...er... as I said to you I think the best things Mike is for...

MS: Right, OK.

KH: ...you to just put (MS: inaudible) something...er...to us...um...and by all means, you know, take further instructions from...

MS: Sure, OK.

KH: ...Bhadresh but, you know, the...erm... I think that's probably the best line really.

MS: Well that's great, look, I'm grateful for your time and I will leave you to get back to your clients, thanks again for speaking to me...(inaudible)

KH: Ok Mike, you've got, you've got my details and clearly I've got yours now, so...er...if there is anything then let me know.

MS: Brilliant. Thanks again for your time.

KH: OK. Pleasure. Bye.

MS: Bye

KH: Call finished at...er...2.40pm on Friday the 11th of May.

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