

## INTERMEDIARIES

### PRIVATE INVESTIGATORS

# The investigation into investigators

Although they often play a **vital role in solving insurance fraud cases**, many private investigators are not fully qualified or trained. **New licensing legislation** aims to weed out the unscrupulous from the worthy

20

ROXANE MCKEEKEN

The story emerged in October. Three unnamed insurers were to be investigated by the Information Commissioner's Office (ICO) for illegal activity because of the actions of private investigators (PIs) they had used. The ongoing investigation into the three insurers, as well as 16 other clients that used rogue PIs, is a clear warning to insurers that there could be repercussions if they contract PIs who then break the law.

It is just one of a number of indicators that pressure is mounting on PIs who are also under scrutiny as part of looming oversight into the so-far unregulated industry.

#### Role of PIs

PIs, and the methods they use, have been an integral part of the insurance industry for many years. Zurich head of claims Scott Clayton says: "It's

often seen as a dark world but, in fact, PIs are an absolutely vital part of fighting fraud and they work really hard to support the insurance industry."

Surveillance is one of the most powerful tools that PIs offer insurers. The practice typically entails filming claimants going about their daily activities (although reputable PIs say they never film people inside their homes). Clayton says: "Surveillance regularly allows us to see when people have submitted grossly inflated claims. In such cases the surveillance evidence we can provide in court can be dynamite."

PIs also protect the public by validating genuine claims, says Tim Yeo, chief executive of The Surveillance Group, one of the UK's largest providers of both PIs and training for investigators. "Surveillance is viewed as an insurer's tool, but it also benefits claimants,

proving that they have the injuries they have claimed for and speeding up the payment of their claims." He adds: "We also provide insurers with data on our findings that helps them reserve correctly for paying claims."

#### Phone hacking fallout

Despite these legitimate activities, PIs have come under the spotlight in recent months following revelations of their involvement in the phone hacking scandal and the subsequent Metropolitan Police investigation – Operation Weeting – into the illegal accessing of voicemails. The most high-profile example is private detective Glen Mulcaire's admission that he accessed voice messages on the phone of the murdered teenager Milly Dowler while working for the *News of the World*.

Indeed, as *Insurance Times* has reported previously, not all

#### TALKING POINTS ...

- Will the new licensing regulation for PIs extend to in-house investigators?
- What will happen to the three insurers being investigated for using rogue PIs?

#### TIMELINE

Progress of events pertaining to protection of privacy. New legislation on PIs is to be introduced in autumn 2014

#### 2002

The Private Security Industries Act is passed and it mentions the regulation of PIs. Legislation is not taken forward, however.

#### 1980s

#### 1984

The Police and Criminal Evidence Act makes it illegal to coerce the subject of an investigation into doing something they would not normally do.

#### 1990s

#### 1998

The Data Protection Act bans 'blagging', which is impersonating someone in order to get information.

PIs operate within the law. Besides phone hacking, it is understood that some use the illegal technique of blagging, where investigators impersonate someone to extract information.

More troublingly, perhaps, is that some PIs remain within the law but not within the bounds of what most members of the public would find acceptable. For example, it is not illegal to place a tracking device on someone's car. But it is safe to assume that customers would not like the idea that a PI acting on behalf of their insurer or broker was using this technique to validate claims.

**Regulation of PIs**

Combine public alarm about private detectives with the fact that they are unregulated, and it is unsurprising that we are now seeing both the ICO investigation and proposals to regulate PIs. Cunningham Lindsey head of fraud Christian Aplin says: "If fraud is suspected, of course you have to investigate, but the question is whether it's done compliantly and ethically. In other words, do PIs have professional standards and do they have benchmarks against which they are measured? The reality is, there are none. PIs are unlicensed so anyone can be one."

This is set to change, however, under a new regulatory regime. On 31 July 2013 the Home Secretary announced the

"Do PIs have professional standards and do they have benchmarks against which they are measured? The reality is, there are none."

**Christian Aplin, Cunningham Lindsey**

government's intention to regulate private investigation activities from autumn 2014. The regulator is to be the Security Industry Association (SIA) and, under the new rules, those carrying out private investigations will need to be licensed.

To gain a licence it is likely that investigators will need to pass a criminality test and to have undergone some training. It is expected that there could be a grace period following the new rules becoming law.

The penalties for breaking the new rules will be considerable. According to the SIA, anyone caught working as an unlicensed PI will face a fine of up to £5,000 and a prison term of up to six months. Critically for the insurance industry, it will also be a criminal action to appoint someone unlicensed to carry out a licensable activity.

**Insurer uncertainty**

The Home Office is still working out exactly which activities will be licensed, however. Until this is announced it presents a major unknown for insurers and claims firms that carry out

investigations in-house. For example, will an employee looking only at information in the public domain such as county court judgments be affected? Aplin says: "The insurance industry may be caught off guard because they may find they have to train and license members of their own staff, which will take time and money."

Whatever is decided, the insurance industry and its customers are likely to foot the bill for the costs of licensing both in-house staff as well as outsourced investigators, who can be expected to pass on their extra costs. Aplin says: "It's not going to be cheap. It will cost about £180 per person for a licence."

Depending on whether the investigator has already done the training needed to meet the requirements of the licence or not, further costs are possible. Aplin expects the BTEC Level 3 in private investigation to be the minimum qualification required and completing this course costs several hundreds of pounds per person.

A consequence of these expenses could be that some

useful and legitimate PIs go out of business. Law firm Hill Dickinson head of fraud Peter Oakes says: "My fear is that we will lose some intelligence in particular niches, such as staged accidents, because smaller firms may not be able to bear the financial burden."

Notwithstanding these worries, both the insurance and private investigations industries have broadly welcomed the plan for licensing. PI firm Armour Intelligence head of operations Martyn Bird says: "There are thousands of PIs out there advertising themselves and they are completely unregulated. So it's important to get some form of regulation."

The insurance industry should be aware, however, that further scrutiny of private investigations looms. The Financial Conduct Authority is looking into how insurers use PIs, including whether they incentivise them to produce information that would reduce claims payments. Whether this will lead to a full-scale probe and further rules on the use of private detectives remains to be seen. But this all means it would be well worth the insurance industry ensuring its dealings with PIs are in good order before it's too late.

**FCA finds inconsistent oversight of private investigators**  
[goo.gl/IGjNpo](http://goo.gl/IGjNpo)

The timeline features a central horizontal axis with circular markers for each year. Above the axis, the years 2000s and 2010s are indicated. Below the axis, a photograph of a man in a suit is shown. Text boxes with dotted lines connect specific years to their corresponding events.

- 2006**: Private Investigator Glen Mulcaire (right) and Clive Goodman, the *News of the World's* royal editor, are arrested over allegations they hacked into mobiles within the royal household.
- JANUARY 2011**: Police launch phone hacking investigation, Operation Weeting, following several public personalities, including actress Sienna Miller (left), claiming their phones were hacked.
- JULY 2011**: The *News of the World* closes under the pressure of Operation Weeting.
- JULY 2012**: The CPS announces eight people will be charged over phone hacking, including former *News of the World* editor Rebekah Brooks (right).
- JULY 2013**: The government announces plans for legislation, making it a criminal offence for private detectives to trade without a licence.