

Conflicts of Interest

The SIA Standards of behaviour state that

Standards of Behaviour for Private Investigators and Precognition Agents

Private Investigators and Precognition Agents should accept responsibility for their actions and diligently carry out their roles in ways which ensure that they:

- confirm clients' identities and establish that they have the legal right and correct ethical interest to commission an investigation.
- agree in advance with clients the objectives of the service and the fees, terms and conditions which will apply.
- deal with clients and others with discretion and courtesy and in ways which do not bring the reputation of either themselves in particular or their profession in general, into disrepute.
- respect and protect clients' and others' privacy and lawful confidentiality, including using appropriate and proportionate investigative and surveillance techniques
- carry out their work in ways which are ethical and fair whilst adhering to legal and regulatory requirements.
- accept only those commissions which they consider themselves qualified to carry out.
- promote, through their general demeanour and in dealings with clients, the general public, colleagues and the authorities, the professionalism and integrity of the private investigation community.

In addition Private Investigators should also;

Private Investigators should notify (register) the Information Commissioners Office to ensure that they have an entry on the Commissioner's public register that they are processing personal data.

This entry should include details of their use of personal data. For more information visit:

www.ico.gov.uk/tools_and_resources/register_of_data_controllers.aspx

The Solicitors' Regulatory Authority defines a Conflict of Interest thus:

'Conflicts of interests' means any situation where:

- you owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict (a 'client conflict');or
- your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter (an 'own interest conflict')

Action to be taken in a Conflict situation:

1. Identify to your own satisfaction that a conflict exists.
2. Notify the client that such a conflict has been identified, and advise them that;
 - a. You can no longer act on their instructions
 - b. Action up to that point will remain confidential between you and that client;
 - c. No disclosure will be made of the actions hitherto taken except by Order of a Court or with the prior consent of the client.
 - d. Any materials that the client requires to be returned to him/her, or which they want passed on to another investigator, shall be duly dealt with on payment of costs to date.
3. File any materials, files or other documents in a secure fashion.

The Companies Act 2006 states:

Section 175 - Duty to avoid conflicts of interest

(1)A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2)This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

(3)This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4)This duty is not infringed—

(a)if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b)if the matter has been authorised by the directors.

(5)Authorisation may be given by the directors—

(a)where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or

(b)where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.

(6)The authorisation is effective only if—

(a)any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and

(b)the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Health and Safety at Work Act 1974 – Relevant Statutory Provisions

Section 2: General duties of employers to their employees.

(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular—

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

(4) Regulations made by the Secretary of State may provide for the appointment in prescribed cases by recognised trade unions (within the meaning of the regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and shall have such other functions as may be prescribed.

(6) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

(7) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in [F2subsection (4)] above, to establish, in accordance with regulations made by the Secretary of State, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.

Section 3: General duties of employers and self-employed to persons other than their employees.

(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

Section 4: General duties of persons concerned with premises to persons other than their employees.

(1) This section has effect for imposing on persons duties in relation to those who—

(a) are not their employees; but

(b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of

access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

(a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom; or

(b) the safety of or the absence of risks to health arising from plant or substances in any such premises;

that person shall be treated, for the purposes of subsection (2) above, as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

Practicalities of Health and Safety Considerations in Investigation

1. Conducting Investigations

- a. When attending a scene of an incident, or a client's location, consideration must be given as to appropriate site safety procedures and safety wear. Attendance at a road traffic collision scene would require that the investigator wear reflective, hi-visibility jacket, weatherproof clothing, and safety headgear should also be considered.

2. Conducting Interviews

- a. When planning an interview, whether with a potential witness or a person who could be considered a 'suspect' however defined, the investigator should consider how that person is likely to respond to the questions to be asked. If there is any indication that the individual (or any third party present) would be offended and become angry and/or offer violence towards the investigator then the investigator should consider
 - i. not holding the interview at all;
 - ii. whether the location itself presents any risks to the investigator e.g. lack of exit routes, articles that could be used to cause injury, etc.;
 - iii. whether the anticipated benefit of the interview outweighs any such risks; and
 - iv. taking a corroborative witness to ensure probity and to underpin personal safety.

3. Search for and Preserve Evidence (Notwithstanding the advice offered in (1) above which applies to the collection of evidence at hazardous scenes.)
 - a. Exhibits themselves may contain hazardous chemicals or biological traces and in that event should be handled in accordance with advice provided by experts, or at least in properly considered and sealed bags/containers as indicated.
 - b. After initial handling and containment, consideration must still be given to safe storage and handling further along the chain of continuity/evidence.
 - c. Post-forensic analysis retention is also an issue as hitherto 'safe' items of evidence can become contaminated by hazardous chemicals (e.g. Ninhydrin) and must be handled in accordance with the advice of the forensic service concerned.
 - d. Where it is not clear what hazards may exist, consideration must be given to contacting an authority on the material obtained, ideally prior to its retention/examination/storage as applicable.
 - e. If the investigators' storage facilities are inadequate, materials should be stored by an appropriate entity, with full briefing provided on the need for security and compliance with the chain of evidence process.

4. Conduct Surveillance

Conducting surveillance, because of the ever-changing nature of the act itself allied to the varying nature of the locations within which surveillance takes place, presents a unique Health and Safety challenge for the Investigator. Much of the advice provided in parts 1-3 above will apply, in addition to the following.

- a. Ensure all equipment is safe to use, properly stored, and used in the manner intended by the manufacturer.
- b. Do not endanger yourself, your team, the target or third parties through ill-considered and/or dangerous practices, manoeuvres, actions or driving practices.