

2020



**EMPLOYEE INVESTIGATION IN UK**

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## **EMPLOYEE INVESTIGATION IN UK**

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### **ABSTRACT**

The motive of this paper is to explore the concept of Employee Investigation in the United Kingdom.

Employee Investigation is an area of investigation, which is present around the world in one or the other way. This concept comes under the security industry in the United Kingdom. It had been into existence for a very long time, but it has shown a drastic increase in its demand in the past 10 years.

The research paper focuses on the meaning of employee investigation along with the framework of legal enactments governing the powers and actions of an employee investigator. It also discusses the definition of Theft under The Theft Act, 1968 along with relevant case laws. Moreover, it covers the essential elements mentioned in the

definition of theft. The objective of the paper is to make the readers understand the concept of investigation in the United Kingdom. It helps readers to get an idea of the laws governing the powers of such public authorities. They also get to know about the security industry authority responsible for the appointment of employee investigators, store detectives, security guards, etc. and information related to licensing.

It specifies the codes of practice being laid down under the Police and Criminal Evidence Act, 1984. The codes describe the powers of police officers, employee investigators, etc to be carried out during the investigation.

### **INTRODUCTION**

EI or Employee Investigation is a field of investigation which has grown drastically from having just 200 Employee Investigator to 3000 Employee Investigators over the past 10 years in the United Kingdom. It has become an essential part of the security industry and the most lucrative for those who are employed as Employee Investigators.

## WHAT IS REGULATION OF INVESTIGATORY POWERS ACT, 2000?

An employee investigator is a person employed under the security industry to conduct various investigations either civil or criminal, as the case may be. Every country has its organization or authority to employ such kind of investigators. For example, SIA (SECURITY INDUSTRY AUTHORITY) in the United Kingdom.

As compared to a store detective in a retail market, an employee investigator is paid 60% higher. On the other hand, with an increase in the number of crimes around the world, the demand for employee investigators is very high in the UK as well as in every other country and also due to the limited number of such personnel.

The main work associated with an employee investigator is:

1. Identification of staff susceptible to be blackmailed
2. Collusion
3. Investigation of staff accidents
4. Misuse of computer
5. Security policy programs of the company

Meanwhile, the government has set up certain organizations and formulated a set of rules and enactments to govern the investigatory powers of public authorities such as the police officers.

RIPA (Regulation of Investigatory Powers Act, 2000) is a law enacted to govern the exercise of covert techniques and surveillance by the public bodies. Such an act is essential when the public authorities such as police officers, exercise covert techniques to gather private information about someone. It also makes sure that such techniques are being carried out keeping in mind its necessity, proportionality, and accordance with human rights.

Moreover, RIPA applies to a variety of investigations where there is a need to obtain private information. Such investigations are related to cases which include:

1. Terrorism
2. Public safety
3. Crime
4. Emergency services

Simultaneously, RIPA lays down guidelines and codes that apply to actions such as:

1. Interception of calls, messages, emails, etc.
2. Collecting data related to communication between the

suspects like call records, phone bills, or subscriber details.

3. Organizing covert techniques and surveillances in private or public places.
4. Attainment of encrypted data and passwords.

Although the Regulation of Investigatory Powers Act, 2000, governs the actions of investigators it is not relevant to an Employee Investigator. However, it is considered that such actions should be exercised in conformity to the guidelines and codes set up under the Act.

### **POLICE AND CRIMINAL EVIDENCE ACT, 1984**

The Police and Criminal Evidence Act, 1984, is an act of the Parliament that constructed a legal framework for the powers of the police officers in England and Wales and also enacted certain codes of practice to govern their powers. It is considered to be one of the most important areas to be approached while conducting an investigation and it also helps in finding out the path of investigation. As an employee investigator, it is very essential to exercise powers in conformity to the codes of practice set out in PACE as any breach to codes of practice may result in prosecution of the investigator.

This Act was enacted to maintain a balance between the powers of the police officers and the rights of the public. Although, PACE mainly deals with the powers of the police officers of search and seizure of individuals and premises, gaining entry to private premises, seizing objects collected through search, and interrogation of suspects held in custody. On the other hand, the government realized that these codes of practice imposed extra powers to police officers, which in turn, could be misused. As a result, PACE was modified by the Serious Organised Crime and Police Act, 2005, which entirely changed the powers of arrest, along with the category of arrestable offenses.

PACE was not only applicable to police officers but any other person concerned with the conduct of a criminal investigation. Any person attested with the power of conducting a criminal investigation or charging offenders had to follow the provisions of PACE.

On the counterpart, the act has been quite controversial on the part of its introduction, as it was thought to providing extra powers to the officers. Moreover, there had been cases in which there had been a breach of the provisions of PACE by the officers and as a consequence, individuals who stood due to trial were released.

For instance, in *Osman v. Southwark Crown Court*, the police officers searched Osman without providing their names and station, therefore, the search was held to be unlawful, being contrary to the provisions of PACE<sup>1</sup>.

### **CODES OF PRACTICE**

**PACE CODE A**- Pace Code A “*deals with the exercise by police officers of statutory powers to search a person or vehicle without first making an arrest and the need for a police officer to make a record of a stop or encounter*”<sup>2</sup>.

It deals with the statutory powers of the police officer of conducting a search of a person or a vehicle without arresting in the first place. At the same time, the officer must make a record of the search or encounter. It is believed that even if a person is not acting as a police officer, however, as an investigator who is licensed would also be governed by PACE. In case a police officer does not make a record of the search or encounter, then such a search would be unlawful, as it was carried out in breach of the codes of practice.

Certain principles are governing the practice of stop and search, as follows:

1. Every police officer or investigator exercising the power of stop and search must perform actions in a fair, responsible, and respectful manner towards the people suspected and should avoid discrimination.
2. According to The Equality Act, 2000, discrimination, harassment or victimization of the suspects based on age, gender, caste, religion, race, creed, sex, etc. by police officers, is deemed to be unlawful.
3. It is the duty of the police officer or investigator to avoid any means of discrimination, harassment, or victimization against the suspects while exercising their powers.
4. Moreover, intrusion on the liberty of the people stopped or searched must be brief.

**PACE CODE B** - Pace Code B “*deals with the exercise by a police officer of the statutory power of entry, search and seizure*”<sup>3</sup>.

This code deals with the powers of the police officers to gain entry into premises,

<sup>1</sup> *Osman v. Southwark Crown Court*, 1999 EWHC 622.

<sup>2</sup> Home Office, *Guidance: Police and Criminal Evidence Act 1984 (PACE) codes of practice*, GOV.UK (Mar. 26, 2013), [https://www.gov.uk/guidance/police-and-criminal-](https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice)

[evidence-act-1984-pace-codes-of-practice#pace-codes-of-practice](https://www.gov.uk/government/publications/pace-code-b-2013).

<sup>3</sup> Home Office & The Rt Hon Damian Green MP, *Policy Paper: PACE Code B 2013*, GOV. UK (Oct. 23, 2013), <https://www.gov.uk/government/publications/pace-code-b-2013>.

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carry out a search of that premises, and seize articles found in there related to the crime. Under this code, police have the power to enter into a premise and carry out a search to find out articles or objects essential for the investigation and accordingly, confiscating those objects for examination. Meanwhile, such powers should be exercised without a breach of codes of practice. If a police officer breaches the codes of practice, he/she could be held for trial and be prosecuted. These powers are mainly used for finding wanted criminals that might be hiding in any of the premises, material related to the crime, etc.

Principles governing the power of search and seizure are as follows:

1. The powers of search and seizure must be exercised fairly, responsibly, and respectably by the police officers in relation to the people occupying the premises being searched or seized.
2. According to The Equality Act, 2000, it is unlawful to discriminate, harass, or victimize any person based on age, caste, religion, sex, gender, race, disability, etc by a police officer or investigator while exercising their powers.

3. It is the duty of the police officer to avoid any kind of discrimination, harassment, or victimization and should foster good relations.

**PACE CODE C** - Pace Code C “sets out the requirement for detention, treatment, and questioning of suspects not related to terrorism in police custody by the police officers”.<sup>4</sup>

This code aims at setting out the provisions for detention, treatment, and questioning of suspects held in the police custody by the police officers or investigators, except for terrorists. This code consists of Annexes and does not include notes for guidance. Meanwhile, the code should be available at all police stations to be read in consultation with police officers, police staff, arrested people, and the general public.

Principles governing power of detention and treatment, are as follows:

1. Expeditious dealing with all persons held in custody and should be released when their detention is no longer required.
2. An officer should not be in breach of the Code unless the delay occurred is justifiable and reasonable steps have been taken for its non-occurrence.

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<sup>4</sup> Home Office, *Statutory guidance: PACE Code C 2019*, GOV. UK (Aug. 20, 2019),

<https://www.gov.uk/government/publications/pace-code-c-2019>.

The officer must record the delay and shall show its occurrence and reason for delay.

3. When an officer has reason to suspect or is told in good faith, of a person being mentally disordered or mentally vulnerable, he/she should be treated accordingly, unless there is any clear evidence, available.
4. A person appearing to be under the age of 17, shall be treated as a juvenile, in the absence of any evidence to believe that they are older.

**PACE CODE D-** PACE Code D deals with “*exercise by police officers of statutory powers to identify persons*”<sup>5</sup>.

This code deals with the powers of the police officers exercised for identifying possible suspects to criminal offences during their investigation. Under this code, various techniques are used by the police officers to identify persons related to the criminal offence during the investigation. At the same time, they are required to maintain accurate and reliable criminal records.

<sup>5</sup> Home Office, *Policy Paper: PACE Code D 2017*, GOV. UK (Feb 23, 2017), <https://www.gov.uk/government/publications/pace-code-d-2017>.

Principles governing the powers under this code, are as follows:

1. The powers referred to in this code, must be used fairly, responsibly, and with respect to people.
2. As stated earlier, The Equality Act, 2000, makes it unlawful for police officers to discriminate, harass, or victimize people based on sex, caste, religion, gender, race, age, etc.
3. Meanwhile, the police officer also must avoid discrimination, harassment, or victimization of any person and should foster good relations.

**PACE CODE E-** Pace Code E deals with “*requirement for audio recording interviews with suspects*”<sup>6</sup>.

This code is mainly concerned with conducting audio recordings of suspects during interviews. It is done so that the police officers have a record of the interview. Such recordings could be used by the officers in the courts as proof of evidence. Moreover, these audio recordings shall be conducted openly to develop confidence in its reliability as an equitable and accurate record of interview.

<sup>6</sup> Home Office, *Guidance: PACE Code E and F 2018*, GOV. UK (Jul. 26, 2018), <https://www.gov.uk/government/publications/pace-codes-e-and-f-2018>.

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An officer can forbid the interviewer from carrying out an audio recording of the interview, due to:

- a. Unavailability of the required equipment or interview area, or
- b. Failure of equipment, or
- c. The clarity that there would be no prosecution.

**PACE CODE F**- Pace Code F should be considered if an interviewing officer makes a visual recording with the sound of an interview with a suspect.<sup>7</sup>

This code is mainly readout with code E, as it talks about audio recording, and in this code, there is a video recording along with an audio of the interview with a suspect.

This also serves as evidence in the court of law. These recordings are mostly carried out for confessions made by the suspects while they were in custody, of a commission of an offence.

**PACE CODE G**- Pace Code G deals with the statutory power of arrest under section 24 the PACE Act 1984 as amended by section 110 of the Serious Organized Crime and Police Act, 2005<sup>8</sup>.

This code is concerned with the powers of arrest of an arresting officer. A lawful arrest consists of two major elements:

- a. Involvement, suspected involvement, or attempted involvement of a person in the commission of a criminal offence, or
- b. There are reasonable grounds for believing that the person's arrest, is necessary.

The arresting officer must inform the arrested person, the grounds of his arrest and other relevant circumstances of the arrest and shall also inform the custody officer about these on arrival at the police station.

Along with this, a constable can arrest without warrant related to an offence. A constable can arrest anyone:

- a. Who is about to commit an offence or is committing an offence.
- b. On whom the officer has reasonable grounds of suspecting to commit an offence.
- c. On whom the officer has reasonable grounds of suspecting him/her to be guilty of an offence.

<sup>7</sup> *Id.*

<sup>8</sup> Home Office, *Policy paper: PACE Code G 2012*, GOV.UK (Jul. 18, 2012),

<https://www.gov.uk/government/publications/pace-code-g-2012>.

- d. On whom the officer has reasonable grounds to suspect him/ her to be guilty of an offence that has been committed.

**PACE CODE H**- Pace Code H deals with the detention, treatment, and questioning by police officers under the Terrorism Act 2000<sup>9</sup>.

This code is concerned with the powers of detention, treatment, and questioning of terrorists by the police officers under the Terrorism Act, 2000.

### **SECURITY INDUSTRY AUTHORITY (SIA)**

The security industry authority is an organization set up in the United Kingdom for regulating the private security industry. It sets out competency standards and specifies qualifications for licensing of security personnel. The security industry includes:

- a. Store detectives
- b. Close protectors
- c. Employee investigators
- d. Public Space Surveillance
- e. Security Guards

All the people working in the security industry must have an SIA license to

perform their duties and work as a security professional. If a person involved in a licensable conduct without a license, such an involvement would be considered a criminal offence. Further, if the person is found to be guilty, he/she shall be sentenced for 6 months of imprisonment or a fine of £5,000, or both. Thus, a security professional must obtain a license to carry out its activities. Moreover, for obtaining an SIA license, there is a need to have an SIA certificate.

It is essential to know that the above-mentioned personnel are required to wear an SIA badge every time to mark them out as qualified security personnel. Along with this, there are circumstances under which covert licensing conditions may apply to the public-facing security officers. As a Close Protector, also known as a Body Guard, does not always have to wear his SIA badge, as mostly his role is covert and non-public facing, and doing so would help him to not be disclosed in the public. Being a close protector, it is pretty obvious that he/she, knows who is their client and they know their work, so they don't need any identification but it might be required for a spot check or by the police officer, so it should be produced at that time. The same

<sup>9</sup> Home Office, *Guidance: PACE Code H 2019*, GOV.UK (Aug. 20, 2019),

<https://www.gov.uk/government/publications/pace-code-h-2019>.

conditions apply, in the case, of a Store Detective or Employee investigator as to Close Protector. These conditions are set up to protect society against the unlicensed members of the public.

The SIA defines the skills and knowledge required for individuals to work as a security professional. They also issue licenses as per the required competency, eligibility of the applicants. The SIA is also responsible for keeping a check on whether the standards and specifications of the industry are met by the stakeholders or not. On the other hand, carrying out licensable activities such as Public Space Surveillance (CCTV) requires an SIA license. These acts cannot be carried out unless there is an exemption under section 4(4) of the Private Security Industry Act, 2001 to an employer or company, for undertaking Public Space Surveillance (CCTV). Getting an SIA license requires filling of the application form for the correct area of operations where the individual would be working. The SIA only helps individuals with the skills, knowledge, and laws that would be governing him.

The cost for license application is £220, under which license is issued for three years only. The application fee is non – refundable. The license has certain benefits in the form of tax relief. Any individual

who is paying for availing his license can claim tax relief against their taxable income. For instance, if a person is paying the basic rate of tax, then currently he can claim a relief of £44.

### **MEANING OF THEFT UNDER THE THEFT ACT, 1968**

There is no doubt that as a Store Detective or an Employee Investigator, one has to encounter various acts of torts. Among these, the most vulnerable would be theft. An employee investigator must have full knowledge of the law. To gain such knowledge, it is quite obvious, they must be aware of what constitutes theft and the meaning of theft under Theft Act, 1968.

#### **THEFT**

The basic definition of theft is being described under section 1 of the Theft Act, 1968. It states that “A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it”.

“It is immaterial whether the appropriation is made to gain, or is made for the thief’s benefit”. In layman’s language, it means when a person takes someone else’s property into his/her possession without their permission, and that too with the

intention of permanently depriving the other person of his property, would be liable for theft.

For example, A takes cash kept on a table at B's house without his permission and spends that money to buy products for himself, such an act would amount to theft.

The above definition involves various essential elements such as 'dishonestly', 'appropriates', 'property', 'belonging to another', etc. which needs to be discussed separately.

### 1. DISHONESTLY

'Dishonestly' in its literal sense means without honesty. When an individual does an act without honesty, it is deemed to be a dishonest act. Under the law of torts, when a person appropriates property belonging to another person, it may not be regarded as dishonest:

1. If the person appropriates property believing that he has the right to deprive it of the other person, or
2. If the person appropriates the property in the belief that he would have gained the consent from the owner or other person, on their knowledge of such appropriation, or
3. If the person appropriates property believing that the owner to the property could not be discovered

undertaking certain reasonable steps.

Moreover, a person's intention in the appropriation of property that belongs to another person, may be regarded as dishonest, even if he is willing to pay for the property.

### 2. APPROPRIATES

'Appropriates' means taking. It refers to taking possession of an object or article which belongs to another person and that too, without their permission. Therefore, there must be 'appropriation' of property, for an act to be a theft.

It can be said, when a person assumes the rights of an owner on a property, it amounts to appropriation.

### 3. BELONGING TO ANOTHER

The term 'belonging to another' means when a property is in possession of a person who is not the owner of that property. Further, the property can be regarded as belonging to any other person who is the owner or has possession or has control over that property. According to the above-said definition, a person can be made liable for his property, if that property is in the possession or control of another person.

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In *R v. Turner*<sup>10</sup>, the defendant took his car to a service station for some repairs. When he returned, to pick his car, he saw that his car was available outside with the keys in. As a result, he drove the car back without paying the repair bills. He was held liable for theft of his car, as it was held in possession or control of the service station.

When a person gives his property to someone else and makes him obligated to retain that property or deal with that property in the prescribed way, then also, the property is regarded as belonging to another. Similarly, if a person receives property by mistake, then he/she is under an obligation to return or restore that property to its true owner, and to the extent that property is being restored or returned, the property is regarded as belonging to the person who is entitled to such return.

#### **4. INTENTION OF PERMANENTLY DEPRIVING THE OTHER OF THE PROPERTY**

Intention plays a major role for an act to constitute theft. When a person appropriates property belonging to another without the intention of making the other person lose its property, then it may not be regarded as 'with the intention of

permanently depriving the other of it'.

It is important for the person who dishonestly appropriates property belonging to another, the intention of making that person lose the thing itself. There are instances, where the person does not appropriate property belonging to another with the intention of permanently depriving the other. It is being referred to in *R v. Lloyd, Bhuee & Ali*<sup>11</sup>.

In *R v. Lloyd, Bhuee & Ali*, Lloyd was a projectionist at a cinema. For a couple of months, he took films from the cinema and gave it to Bhuee & Ali, who copied those films for distribution purposes and gave it back to Lloyd and he brought them back to the cinema. The court left the question of intention to permanently deprive the other to the jury to decide. Instead, the court convicted them for conspiracy to steal. The defendant, further, appealed to the court that the question of intention of permanently depriving could not arise, as the films were returned to the cinema. As a result, the apex court quashed the conviction.

#### **CONCLUSION**

An Employee Investigation is a process under which an individual, being employed in the security industry, has to

<sup>10</sup> *R v. Turner*, [1971] 1 WLR 901.

<sup>11</sup> *R v. Lloyd, Bhuee & Ali*, [1985] QB 829.

## REFERENCES

perform certain actions such as interviews, arrests, detention, search, seizure, etc. which in turn forms a part of an investigation against any criminal offence. Employee Investigators are vested with various powers to carry out their investigations but at the same time, they are governed by certain laws and enactments, such as PACE, 1984, and, The RIPA, 2000.

It must be understood that having so much powers, these officers still need to work efficiently, effectively, and carefully without a breach to any of the laws by which they are being governed.

We must also learn that, instead of having several such officers, there's still an increasing demand around the world. Moreover, this industry and officers play an eminent role in securing and safeguarding the interests of members of the public in the United Kingdom.

1. Introduction to Employee Investigation, ALISON, <https://alison.com/topic/learn/40090/introduction-to-employee-investigation>.
2. Home Office, Guidance: Police and Criminal Evidence Act 1984 (PACE) codes of practice, GOV.UK (Mar. 26, 2020), <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>.
3. The Security Industry Authority (UK), UK PRIVATE INVESTIGATORS, <https://www.uk-private-investigators.com/security-industry-authority/>.
4. The Theft Act, 1968 (UK).
5. R v Lloyd, Bhuee & Ali, [1985] QB 829.
6. R v. Lloyd, Bhuee & Ali, [1985] QB 829.