

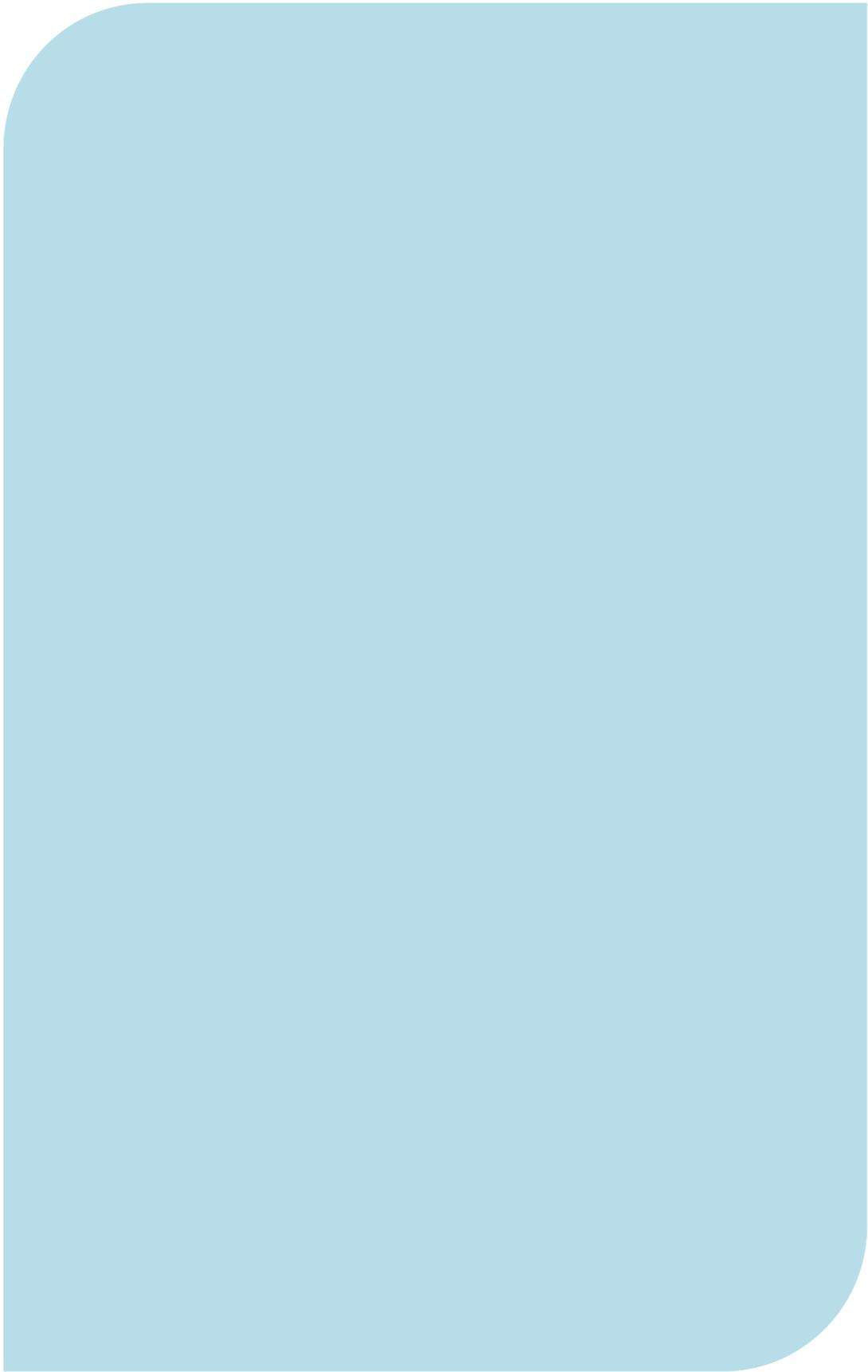


Office of Surveillance
Commissioners

ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to the Scottish Ministers
for 2014-2015

HC 126
SG/2015/56



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for **2014-2015**

Chief Surveillance Commissioner:
The Rt. Hon. Sir Christopher Rose

Presented to Parliament
pursuant to section 107(3)
of the Police Act 1997

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by the Scottish Ministers
25 June 2015

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1. Introduction

- 1.1. This is my ninth report since taking up my appointment as the Chief Surveillance Commissioner in July 2006 and relates to the period 1st April 2014 to 31st March 2015. It is also my last report, as I am retiring and shall be succeeded by The Rt Hon the Lord Judge with effect from 1st July 2015.
- 1.2. My statutory responsibilities have not changed; they are to keep under review:
 - 1.2.1. The performance of functions under Part III of the Police Act 1997 ('PA97');
 - 1.2.2. Except in relation to the interception of communications and intelligence services, the exercise and performance of the powers and duties conferred or imposed by or under Parts II and III of the Regulation of Investigatory Powers Act 2000 ('RIPA'); and
 - 1.2.3. The exercise and performance of the powers and duties conferred or imposed by or under the Regulation of Investigatory Powers (Scotland) Act 2000 ('RIP(S)A').
- 1.3. The powers and duties of the Surveillance Commissioners in scrutinising and deciding whether to approve authorisations under PA97 (property interference) and under RIPA and RIP(S)A (intrusive surveillance) have been explained in earlier reports and are publicly available on our website. Since 1st January 2014 and since 2nd February 2015 in relation to Police Scotland, the Surveillance Commissioners have also been responsible for granting prior approval for the renewal of all law enforcement "relevant sources" (commonly termed undercover officers).
- 1.4. There is a right to appeal against Commissioners' decisions to me. There have been no appeals lodged during this reporting period.
- 1.5. In performance of my duty under all three Acts to report annually, I continue to prepare a combined report.
- 1.6. I also act as the Investigatory Powers Commissioner for the Sovereign Base Areas, Cyprus, under the Regulation of Investigatory Powers Ordinance 2012. My office undertakes an annual inspection and I report separately to the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia.

2. Overview of the year

- 2.1.** The statistics relating to property interference, intrusive surveillance, directed surveillance and CHIS (covert human intelligence sources) are set out in section 4. For the first time, I also provide statistics relating to the authorisation of “relevant sources”.
- 2.2.** Whilst there has been no material change to OSC business in this reporting year, the introduction of responsibilities in relation to “relevant sources” in January 2014 has had a considerable impact in terms of the volume of paperwork now required to be seen by the Surveillance Commissioners and the workload of my small Secretariat and inspections team. I provide more detail about the new oversight arrangements in paragraphs 5.1 – 5.22.
- 2.3.** The statistical returns for the reporting year should be carefully interpreted in light of my comments at paragraph 4.6 which relate to a reduced level of reporting by some agencies. The statistics collected continue to indicate a downturn in the number of authorisations granted. This has been particularly stark in relation to the major user of directed surveillance – the Department for Work & Pensions – and continues to be far less used within local authorities when compared to its peak in 2009-10. I provide my views about the possible reasons for this at paragraph 5.29.
- 2.4.** As might perhaps be expected in light of the significant financial savings all public authorities have had to find, the OSC continues to witness on inspections the effect of reduced resources and the loss of experienced officers. There is no sign of a reverse to this trend. The number of collaborations between one or more public authorities continues to grow, and I have endeavoured to manage the inspection regime to avoid unnecessary duplication whilst recognising that, although particular parts of organisations are now working together, there might not, as yet, be the same delineation between those responsible for the stewardship of the participating authorities. The role of the Senior Responsible Officer¹ has never been more important.
- 2.5.** I continue to see a shift from the types of criminality detected by traditional foot and mobile surveillance, or through the use of covert technical equipment physically deployed to record the movements and conversations of subjects, towards a much greater use of surveillance in the “virtual world” of the Internet and Social Networking sites. This is perhaps not surprising given that many subjects, and certainly those with criminal intent, may prefer to operate their lives “on line” or away from obvious public view. I say more about this at paragraph 5.42.

¹ As set out at paragraphs 3.29 and 9.1 of the Home Office Codes of Practice (for Covert Surveillance and Property Interference, and CHIS, respectively) and at paragraphs 3.27 and 9.1 of the RIP(S)A Codes.

- 2.6.** The use of covert tactics by law enforcement agencies, public authorities and the security and intelligence services has attracted no less attention in the media, although the past year has seen several cases in the courts and some are still *sub judice*. We will also, outside the scope of this reporting year, see several important reports emerging from the enquiries led by Chief Constable Mick Creedon (Operation Herne); the Review by the Independent Reviewer of Terrorism Legislation, David Anderson Q.C. on the future regulation of investigatory powers²; the Independent Surveillance Review led by Professor Michael Clarke of the Royal United Services Institute; and the forthcoming major public inquiry announced by the Home Secretary, to be led by The Rt Hon Lord Justice Pitchford.
- 2.7.** We are in an era of unprecedented scrutiny of the use of covert tactics by State bodies and how these are authorised and managed. The OSC has had, and will continue to have, a key role in ongoing oversight of these matters on behalf of Parliament, the Government of the day, and the public. It concerns me that, after so many years of oversight under RIPA, RIP(S)A and the Police Act 1997, there remain some small, yet important, gaps in oversight which I allude to later in my report.
- 2.8.** It is worth reiterating that it is not my responsibility to suggest how much or how little use is made of the tactics that I oversee. That is a matter initially for Parliament and then for those individual officers to whom legislation has granted the power to authorise. I continue to find it wearisome that many commentators in the media do not accurately describe the extent and purpose to which these powers are used. I comment further at paragraph 5.50ff.
- 2.9.** I have ensured throughout the year that where lacunae exist in the legislation, or where there have been changes to nomenclature or to the status of certain public authorities or their ability to authorise is limited or prohibited through inaccuracies in the RIPA Schedule, these matters have been brought to the attention of policy officials. The lack of a speedy remedy is frustrating to those charged with enforcement duties, and may hinder or prevent proactive tackling of criminality. I provide more details about this at paragraph 5.33ff.
- 2.10.** As to internal matters, it has been a year in which the ability of my office to carry out its oversight functions has been sorely tested by technological impediments and because the processes by which successors for me and other Commissioners are appointed have been inordinately and inexcusably delayed through no fault of the Prime Minister's office or the OSC: such delay has disrupted the operations of this Office and must not be allowed to happen in the future. I provide further details at paragraphs 3.15ff and 3.18ff.

² As required by Section 7 of the Data Retention & Investigatory Powers Act 2014

3. Particular matters relating to the OSC

Reporting to the Prime Minister and the Scottish Ministers

- 3.1. During the reporting period I have not made a report to the Prime Minister or the Scottish Ministers about matters relating to the performance of the powers conferred by the Acts.

OSC guidance

- 3.2. My Commissioners provided an updated version of their 2011 Guidance to public authorities in December 2014. This document is written specifically for those working in public authorities who may wish to seek or authorise covert tactics, and I continue to see no need to give this Guidance wider publication.
- 3.3. Last year I reported that, in line with other departments and bodies, my office was required to redevelop its website to meet new government standards. We were assisted in achieving this by Home Office IT professionals for no charge. We were surprised to be presented in early 2015 with a requirement to pay £56k per annum for its ongoing maintenance in future years. My office is therefore looking elsewhere for such services in the future and will not be using its small budget for what appears to be an exorbitant amount for very little return.
- 3.4. Our website provides general advice to those with an interest in our work, as to who we are and what we do. It does not, for obvious reasons, contain details about operational activity or methods, nor the extent or types of covert activity undertaken by those so empowered. My Annual Reports (all of which are available on the website) provide this type of detail where it can appropriately be disclosed.
- 3.5. My office continues to be asked for advice by public authorities about matters of interpretation in relation to particular cases. I explained the risks this presents at paragraphs 3.5 and 3.7 of my last report and those arguments stand. As I also stated in last year's report, Authorising Officers are welcome to refer to our Guidance document, but Parliament and the courts require them to reach personal decisions based upon the individual merits of each application.

Inspection programme

- 3.6. The public authorities which I inspect are at Appendix E. This reporting year has also seen my Surveillance Inspectors undertake a number of additional inspections in relation to the need for prior approval by a Surveillance Commissioner of a "relevant source". There have also been a number of additional inspections of individual prisons and establishments overseen by the National Offender Management Service, for some of which this was their first OSC inspection.

Commissioners' meetings

- 3.7.** The Commissioners and Assistant Commissioners have met on three occasions during the reporting period.

Presentations and conferences

- 3.8.** Our capacity to address presentations and conferences remains limited. My Chief Surveillance Inspector and Surveillance Inspectors have continued to represent my office on several law enforcement agency authorising officer courses and will continue to do so when core business allows.
- 3.9.** During the year, my Chief Surveillance Inspector and one of my Surveillance Inspectors undertook and passed the newly introduced Senior Authorising Officer courses run by the College of Policing, aimed at those senior officers who will authorise “relevant sources” following the introduction of Statutory Instrument 2013/2788³.
- 3.10.** I took the opportunity to address the January 2015 meeting of the new Chief Constables’ Council, at which I was able to emphasise the importance of those senior officers’ role in the authorisation of “relevant sources”.

Liaison

- 3.11.** During the past year, I have met numerous Chief Constables and other senior officers in the law enforcement community. I have also met the Independent Reviewer of Terrorism Legislation, the Intelligence Services Commissioner, the Interception of Communications Commissioner, the Information Commissioner and the Surveillance Camera Commissioner. I have also held meetings with the Director of National Security at the Home Office, in relation to its sponsorship of my independent office.
- 3.12.** My Chief Surveillance Inspector continues to be my main point of contact with others. She is a member of the Covert Legislation and Guidance Peer Review Group and has continued to meet regularly the Chair and Secretary of the National Undercover Working Group. She also liaises with those in the Home Office charged with responsibility for RIPA (with the Scottish Government for matters relating to RIP(S)A) and PA97, and with her opposite numbers in similar oversight bodies. She also represented me at a meeting in February 2015 of the Independent Surveillance Review by the Royal United Services Institute.

³ The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013

- 3.13.** During the past year, my office has continued to provide advice to numerous bodies on matters relating to the use and authorisation of undercover operatives by law enforcement agencies as the new arrangements under the terms of Statutory Instrument 2013/2788 are put into effect. Since February 2015, similar Scottish legislation⁴ has been in force.

Home Office support

- 3.14.** My office is independent of government, but the Home Secretary is required by PA97 to provide me with the support necessary to fulfil my responsibilities.
- 3.15.** In my last report I commented on the antiquated nature of the security equipment with which we are provided to conduct our notification and prior approval processes. There have been several occasions during the past year when my office was incapable of receiving or sending these highly sensitive materials through secure means to the Surveillance Commissioners and the law enforcement agencies we oversee and thus we were at times unable to fulfil our statutory functions.
- 3.16.** Matters reached such a critical point in March this year, partly due to the increased paperwork resulting from Statutory Instrument 2013/2788, that I had no alternative but to have hand delivered to the Director of National Security a letter setting out the dire potential consequences of this lack of secure and reliable form of communication. I am pleased to say that this resulted in a swift and helpful temporary solution. But such was my concern, that I have advised that this matter must be added to the Home Office's corporate risk register and a permanent solution found.
- 3.17.** We have now been provided with new machines, and I believe the relevant policy officials and security advisors within the Home Office are fully aware of the extent of this problem. But I still await a satisfactory long-term replacement for what is an outmoded and increasingly unreliable means of secure communication. In the 21st Century, with the wide availability of so much advanced technology, I find it hugely frustrating that this office continues to have to operate with 20th Century equipment which is inadequate.

Recruitment and Appointments

- 3.18.** I also reported last year on the difficulties and considerable delays encountered in the recruitment of two new Surveillance Inspectors. I was forced, despite my independence and previous successfully managed external recruitment campaigns, to follow civil service procedures that do not sit comfortably with the unique roles undertaken by members of my inspection team.

⁴ The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014

- 3.19.** A further recruitment during the reporting year of a replacement Administrative Officer for my Secretariat took over nine months: this meant that my Secretariat was depleted to such an extent that, there was sometimes only a single member of staff manning the office to deal with the considerable, and at times, overwhelming documentation and enquiries from those we oversee. I cannot imagine the private sector bearing such difficulties, and it calls into question once again, the extent to which the necessary independence of the OSC is understood and heeded by others.
- 3.20.** In this reporting year, I have also sought to ensure that my successor, a new Surveillance Commissioner and, unexpectedly, a new Assistant Surveillance Commissioner, were appointed in time to enable a period of handover and training, and seamless transition with no interruption to our oversight and inspection processes. Mindful that such appointments take time, and with a General Election looming, I first wrote to the Lord Chancellor and to the then Cabinet Secretary for Justice in Scotland at the beginning of September 2014 to seek their recommendations to the Prime Minister and First Minister for the appointment of successors. I did so in accordance with the process for these appointments followed for the last 15 years.
- 3.21.** It was not until late January 2015 that the Lord Chancellor informed me that he had decided to adopt a different process in relation to 2 of these 3 appointments. In consequence, a new Assistant Surveillance Commissioner and Surveillance Commissioner were not appointed, as they could and should have been, before the General Election.
- 3.22.** One consequence is that I have been without one of three Assistant Surveillance Commissioners since the beginning of March, which has had an adverse effect on the inspection programme which, necessarily, is planned many months in advance. In relation to the future appointment of all Commissioners, careful consideration needs to be given to the procedures to be followed and I would expect my successor to be consulted on these (as I was not) by the Lord Chancellor at the time.

Changes in personnel

- 3.23.** One of my Assistant Surveillance Commissioners, His Honour David Hodson, resigned from the OSC for health reasons in February 2015. Although he was with us for only 2 years, his background as a judge, and as a one-time journalist, made his insightful inspection reports a pleasure to read.
- 3.24.** I shall leave this office on 30th June 2015. My successor from 1st July will be The Rt Hon the Lord Judge, the former Lord Chief Justice of England and Wales. I wish him well as Chief Surveillance Commissioner – a role of considerable importance which I have found both stimulating and interesting.

Recognition

- 3.25.** As I end my time as Chief Surveillance Commissioner, I pay tribute to all those I have worked with over the last 9 years. This is a small organisation which contains an impressive knowledge base of the law and operational practices of law enforcement agencies and other public authorities. The cooperation and camaraderie amongst all members of the OSC – Commissioners, Inspectors and the Secretariat - has made my job much easier and most enjoyable.
- 3.26.** I also acknowledge the way in which the leaders of the law enforcement agencies and other bodies have, I believe, come to regard the OSC as a critical friend. Whilst this office is, and will always be, an overseer of compliance with the law, it has been by working together with those we inspect that compliance standards have been raised to what are now, generally speaking, very good levels. This is not because we have softened our stance or become over-familiar with those we inspect. But officers in all public authorities know that if their authorisation processes are right, this should mean that they are unassailable if challenged later in court. A lot of hard work has been done to achieve this by taking on board, which can sometimes be difficult, criticism by the Surveillance Commissioners or Inspectorate. I encourage the maintenance of this approach and these standards, despite the challenges which most public authorities now face, particularly as a consequence of financial constraints.
- 3.27.** My thanks also go to the staff of the Security & Protection Group, Northern Ireland Office and to the staff of the Police Division of the Scottish Government for the important administrative support they provide to the Commissioners in Northern Ireland and Scotland respectively.

Expenditure

- 3.28.** I summarise the expenditure of the OSC at Appendix F. My budget for the year was £1.7m and, as has always been the case, my end of year actual expenditure was under budget, by £92k.

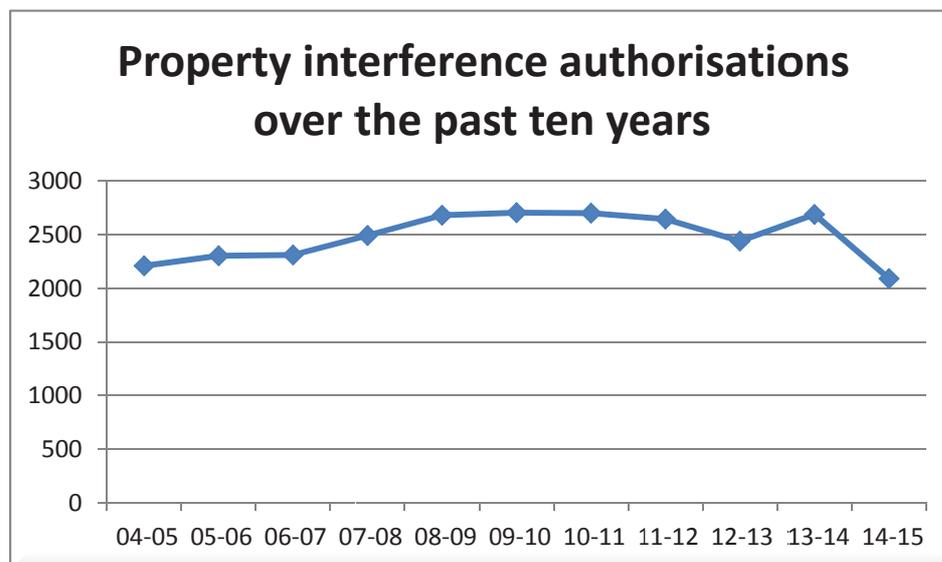
4. Statistics relating to the use of property interference and covert surveillance

General

- 4.1. Statistics provided by law enforcement agencies and those taken from my Secretariat's database for property interference and intrusive surveillance authorisations for the past three years are set out in tables at Appendices A-D. The chart comparisons below show the overall trend for each type of activity over the past ten years as reported to me when I request statistics for my report. Statistics can only provide a general record and ought not to be misconstrued. It is not for me to promote more or less covert activity, but to report upon that usage and the performance, in compliance terms, of those empowered to use such tactics.
- 4.2. As Statutory Instrument 2013/2788 has now been in operation for over a full reporting year, and the equivalent Scottish Statutory Instrument 2014/339 since February 2015, I include for the first time (at paragraph 4.16) statistics relating to the use of "relevant sources" (undercover officers) by the law enforcement agencies. I am mindful that I need to balance the importance of ensuring that the general public are provided with sufficient detail to reassure them that this is not a tactic used profligately by those so empowered, with the need to provide statistical information in such a way that those with a vested interest in seeking to determine whether their criminal enterprise has been targeted by such tactics, cannot do so.
- 4.3. I have therefore agreed with the Chair of the National Undercover Working Group that I will provide the following details: the number of authorisations notified to the Surveillance Commissioners between 1st April 2014 and 31 March 2015; the number of cancellations notified; and the number of those submitted for the prior approval of a Surveillance Commissioner for renewal as a "long-term relevant source".
- 4.4. These figures will reflect the total statistics for the United Kingdom and will not be broken down on a force, regional or national basis for obvious reasons. I applaud the open approach of the law enforcement agencies in making these details public through this medium, in an attempt to be as open as possible for what must otherwise, for the safety of those undertaking these vital and advisedly unrecognised dangerous activities, remain secret. I have also not broken down the statistics to reveal the type of undercover officer deployed – some might be trained to work on simple "test purchases", such as to detect the availability of drugs or stolen goods in a community; others to infiltrate organised crime networks committing the most serious levels of criminality; and others who are able to deploy in the "on-line" virtual world.

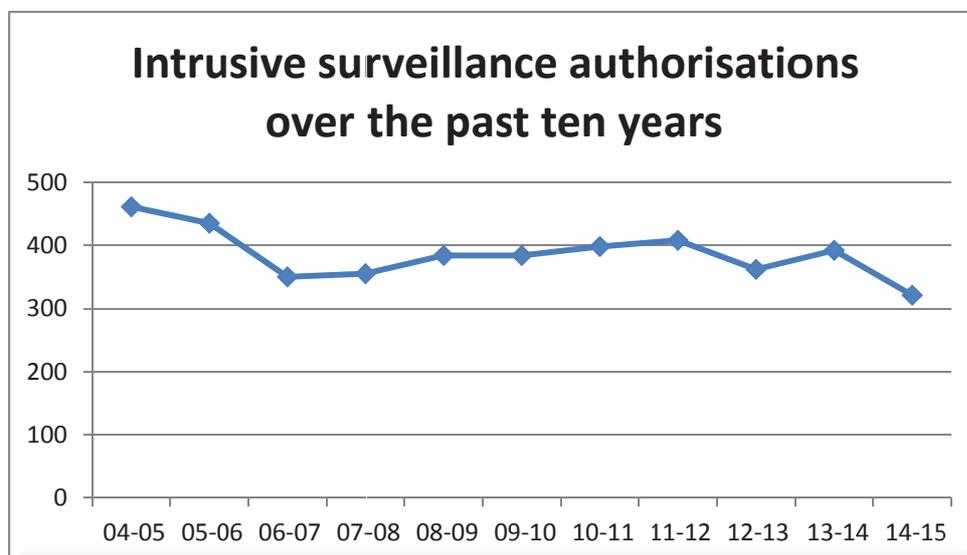
- 4.5.** It is also worth explaining that these statistics need careful interpretation. They represent the number of times a single, individual undercover officer has been authorised to deploy on a distinct and carefully defined operation. Thus, the total number of authorisations does not equate to the number of undercover operations undertaken during the reporting year, as a single operation might have a number of different undercover officers deployed upon it. Similarly, there is a limited pool of trained undercover officers, used on a variety of operations over the course of any year.
- 4.6.** The following statistics and illustrative charts are based upon a return rate of 94% from the law enforcement agencies, and of 90% from all other public authorities. For indeterminate reasons, this year's request to local authorities for these statistics reached some but not others. This has meant that in order to inform my report with figures in time for its publication prior to my retirement, and to meet my need to provide meaningful reassurance to the public about local authorities' use of covert powers, my Secretariat had to contact almost every authority (except the law enforcement agencies) by telephone to obtain their statistics. Whilst this led to a shorter timescale in which the statistics had then to be provided, further complicated by the timing this year of the Easter break and the General Election, there were still some public authorities who found it difficult to provide their returns promptly. This is not acceptable and Senior Responsible Officers in those authorities must take the necessary action to ensure that it does not happen again.
- 4.7.** It is worth reiterating that these statistics only reflect the information provided to me, which I must assume is accurate. The figures would not reveal covert activity conducted outwith the formal authorisation process: part of the inspection process is directed to identifying whether any such activity is likely to have occurred.

Property interference



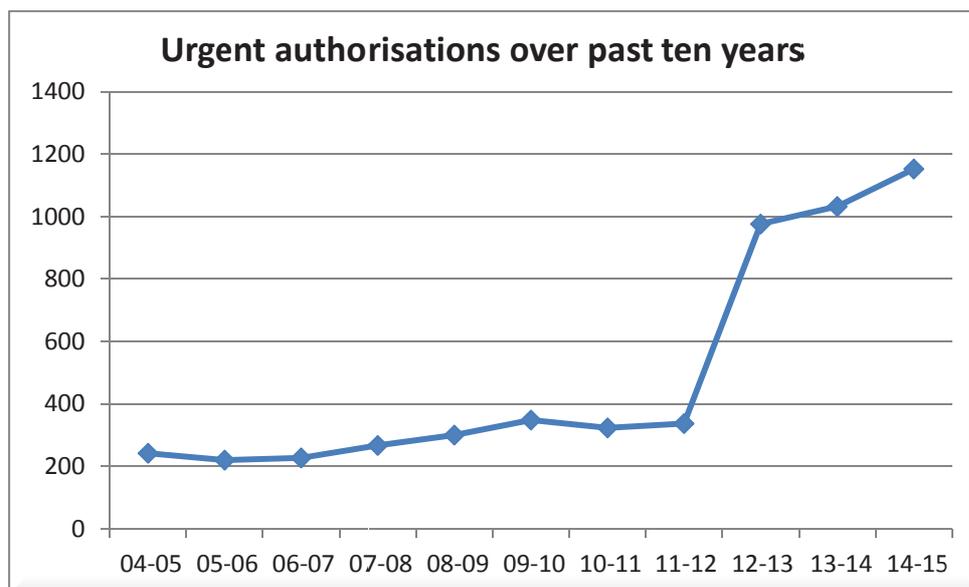
- 4.8.** Excluding renewals, property interference authorisations were granted on 2,091 occasions; a decrease of 598 on the previous year. No authorisations were quashed by Commissioners.

Intrusive surveillance



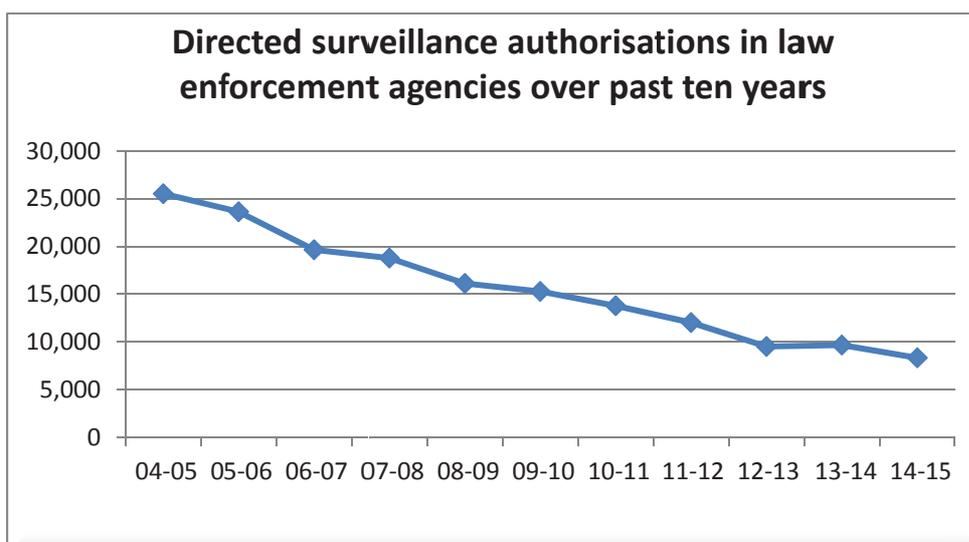
- 4.9.** The number of intrusive surveillance authorisations decreased this year compared to last, from 392 to 321. Two authorisations were quashed by a Commissioner.

Urgency provisions

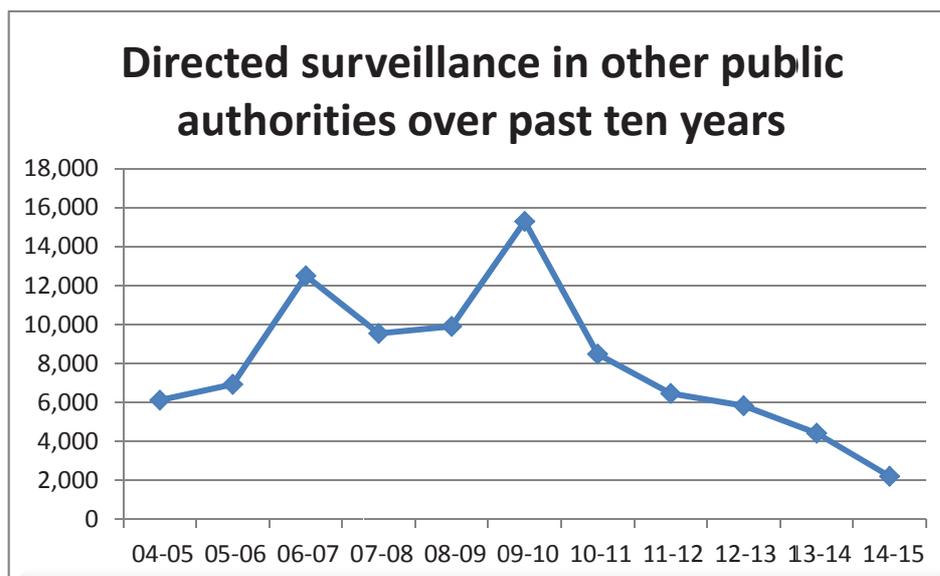


- 4.10.** The urgency provisions allowed by the legislation were reportedly used on 1,152 occasions. In 2012-13 I had noted a significant increase in the use of the urgency provisions. An increase in the use of the urgency provisions continues to be evident in this reporting year albeit at a far less exponential rate. There has been no obvious rationale for this trend which has been identified from my inspection programme. Without a protracted exercise involving the public authorities concerned, it is difficult to conjecture as to the reason for the high number of such authorisations.

Directed surveillance

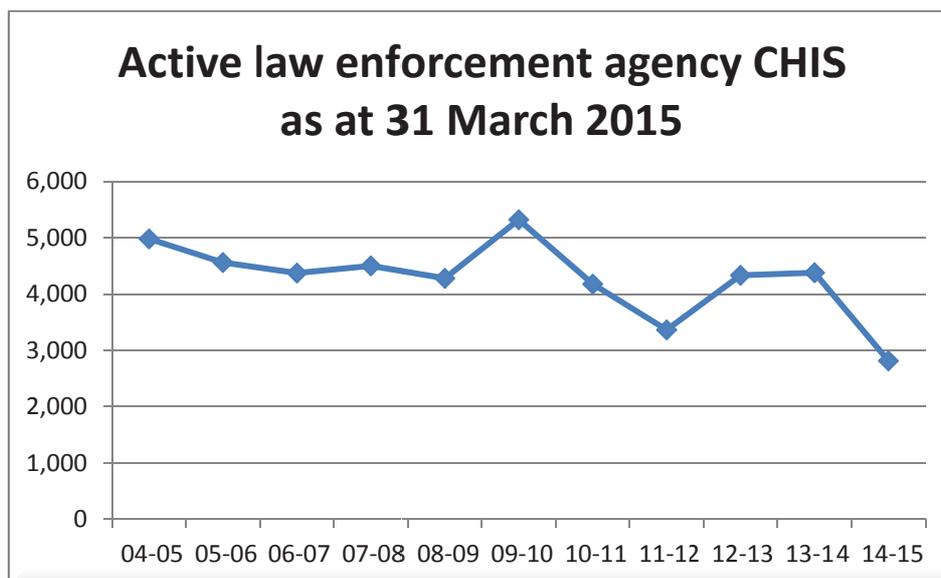


- 4.11.** Law enforcement agencies authorised the use of directed surveillance on 8,333 occasions, with 1,173 extant at the end of March 2015. This reflects a decrease on the previous year when the comparable figures were 9,664 and 1,484.

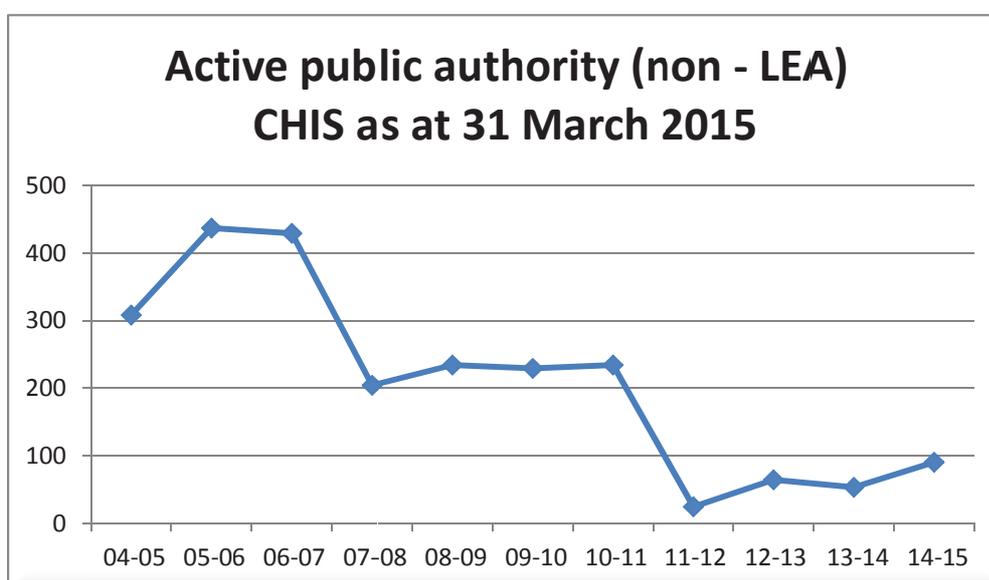


- 4.12.** Other public authority returns showed that directed surveillance had been authorised on 2,207 occasions. This shows a continued downward trend (from 4,412 such authorisations in the previous year). The Department for Work & Pensions (DWP) traditionally accounts for the overall majority of authorisations within this category. The DWP has reported a 72% reduction in the number of authorisations granted for this reporting year (from 3,225 to 894) which largely accounts for the overall reduction encountered. Excluding the DWP figures, there was otherwise a small increase of 126 authorisations granted (although the incomplete statistical returns make this a subjective figure).
- 4.13.** A total of 373 authorisations were presented to a magistrate for approval under The Protection of Freedoms Act 2012. Just 17 were rejected.

Covert Human Intelligence Sources

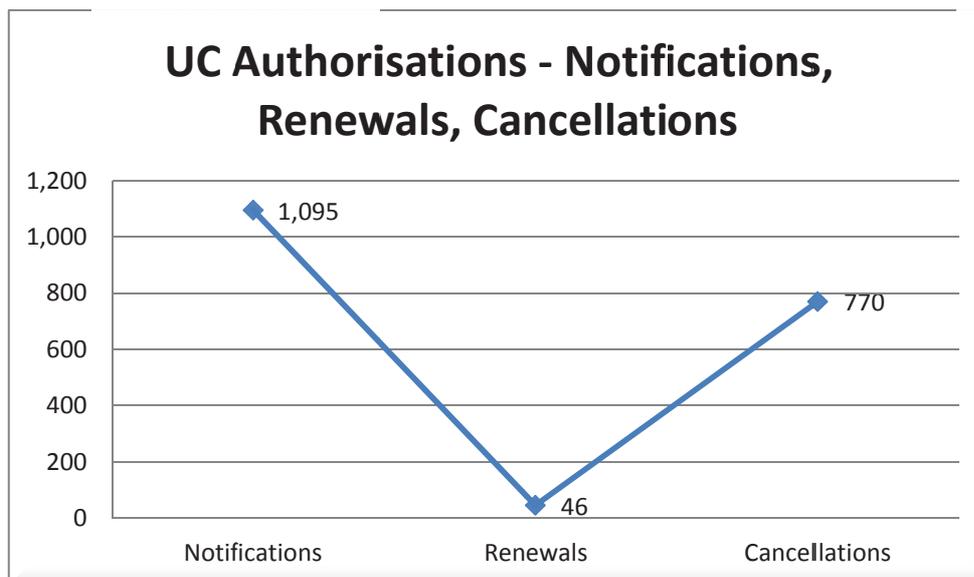


- 4.14.** During this reporting year, 2,998 CHIS were authorised by law enforcement agencies; 2,823 were cancelled within the same year (including some who may have been already authorised from preceding years); and at the end of March 2015, 2,812 remained authorised.



- 4.15.** Within other public authorities, there remained 90 authorised CHIS at the end of the reporting period. Only a handful (2.5%) of these public authorities uses CHIS, often for matters such as trading standards investigations.

Relevant Sources (undercover officers)



- 4.16.** During this reporting year, 1,095 relevant sources⁵ were notified to the OSC; 770 were cancelled; and 46 were submitted for the prior approval renewal process.

Section 49 – encryption

- 4.17.** During the period to which this report relates, NTAC⁶ have reported that 88 approvals were granted arising from 89 applications. Permission was not sought in ten cases after NTAC approval. From the remainder, 38 have, so far, had permission granted by a Circuit Judge. 37 Notices have, so far, been served in the span of this report. Of these, nine were complied with and 22 were not (this includes orders obtained in the last reporting year but not progressed at the time of the last report); the remainder are still being processed.
- 4.18.** It was decided not to charge in eight of the cases where a Notice had been served, and of those charged, it was decided in nine cases not to prosecute.
- 4.19.** So far, in the period of this report, NTAC has been informed that there have been three convictions, with other cases still in progress or awaiting trial dates.
- 4.20.** One conviction related to the charge of possession of indecent images of children, one to threats to kill, and one to murder. Other offences include: firearms, domestic extremism, possession of indecent images of children, kidnapping of children, human trafficking, insider dealing, fraud, evasion of excise duty, money laundering, perverting the course of justice, drug trafficking and drug possession with intent to supply.

⁵ As defined by Statutory Instrument 2013/2788

⁶ National Technical Assistance Centre

- 4.21.** These statistics were provided, timeously, by NTAC who are able to be accurate regarding the number of approvals granted. Unless informed by the case team, the statistics cannot properly reflect the snapshot at the time of this report and cannot reflect ongoing case progress.
- 4.22.** However, it appears that there have been delays in serving some Notices after approval has been granted, and information regarding the progress of the cases, although requested, is not as prompt as it should be. Notices, once approved, should be served without delay and the information supplied to NTAC as soon as possible.

Irregularities

- 4.23.** Law enforcement agencies reported to me 103 irregularities during the period covered by this report, and other public authorities reported 24. This compares to totals in previous years as follows (83 reports in 2013-14; 99 reports in 2012-13; 81 in 2011-12; and 129 in 2010-11). The nature of such irregularities changes little from one year to another, and has included such matters as pre-emptive activity before the authorisation has been granted through misunderstanding or poorly completed checks; overdue switching off of a recording device after cancellation of the authorisation; and use of a CHIS without an authorisation for use and conduct. It should be noted that law enforcement agencies are now required to report irregularities arising from Statutory Instrument 2013/2788 in relation to undercover cases and these matters are included for the first time in the figures produced. In no case has there been anything to suggest wilful misconduct or bad faith.
- 4.24.** It is worth reiterating that 127 reports represents a tiny proportion of the total number of authorisations legitimately granted in the same period and the fact that such reports are made to me and, for the most part, relate to short periods of unauthorised activity, demonstrates that the reporting authorities have in place effective oversight processes. Such reports are accompanied by a full explanation of what led to the error or oversight and what steps have already been taken by the public authority to seek to avoid any recurrence.
- 4.25.** Failure to obtain an authorisation under the Acts for which I have oversight is not unlawful, and where irregularities have been reported, I have no sanction. But it is nonetheless important that I am advised of such matters, to ensure that robust internal oversight can be demonstrated, that irregularities do not become regular and lest there be consequences for the safety of any future legal process which ought to be drawn to the attention of those concerned. There have been a small number in the last category which subsequently have been discussed by the relevant public authority with the CPS or other legal advice taken.

Misconduct

- 4.26. During the past year I have been made aware of, or had brought to my notice through the inspection process, a number of instances in which officers have been suspended or dismissed due to irregularities or misconduct involving the use or management of covert powers. The numbers are very small, but I include a few details of the types of case involved as a means of reassurance that internal oversight and processes developed within the law enforcement agencies are such that poor practice, or worse, is identified and appropriate action taken.

Example 1: A police force reported to me in June 2014 that an officer had secretly purchased his own commercially available vehicle tracking device which he deployed upon the vehicle of a suspected criminal without any form of RIPA or property interference authorisation having been sought or otherwise obtained. When this was discovered by the force, the officer was made the subject of internal disciplinary proceedings. A misconduct hearing was held and the officer resigned as a result of being found guilty of abusing his authority. These circumstances were publicised within the force in order to dissuade others from contemplating similar action in the future.

Example 2: In another police force, a Senior Investigating Officer, having been granted through the usual force arrangements prior approval from a Surveillance Commissioner to record discussions within a domestic residence belonging to the main subjects of his investigation, took it upon himself to extend the parameters of that authorisation without further consultation with the Senior Authorising Officer for the force or referring the matter back to the Surveillance Commissioner. In the event, some of the recorded product obtained contained matters that ought to have been dealt with as legally privileged material and managed accordingly. This was not done by the Senior Investigating Officer and was only identified by his successor as the prosecution case was being prepared, requiring overdue disclosure to the Defence. The matter is currently being investigated, although the officer concerned has since retired from the force.

Example 3: In another force, it was discovered during preparations for an inspection by the OSC that reviews relating to the use and conduct of an authorised CHIS had not been conducted at the relevant times stipulated by the Authorising Officer. It has been reported to me that in order to give the impression to one of my Surveillance Inspectors that all such reviews had been completed at the due time, such reports appear to have been fabricated and backdated through the collusion or coercion of the Authorising Officer and those responsible for the management of the CHIS under Section 29(5) of RIPA. The officers concerned, where they have not since left the force, are facing a gross misconduct panel hearing at the time I write this report.

4.27. Such activities as described above are very rarely encountered. Where they arise they are rightly treated with the utmost seriousness by the law enforcement agency concerned and are fully investigated. I cannot prevent such misconduct, but the examples underline the importance of oversight, both by the OSC and internally by public authorities vested with covert powers, to ensure that such abuses do not take place, and, if they do, that they are quickly identified and reported to me and remedial action taken. Complacency has high risks, and the importance of training, clear policies and procedures, quality assurance processes and ongoing internal scrutiny – all of which we exhort even where there is no use of the powers, as with many local authorities – cannot be overestimated.

5. Key issues arising from my inspections

Police undercover operations

- 5.1. My report last year provided a brief summary of the various inquiries and court decisions which have followed a number of revelations in recent years about the use of undercover tactics by law enforcement agencies. Many of these are ongoing a year later, and we shall, in due course and after my time in this office, have a Public Inquiry into undercover policing, as required by the Home Secretary.
- 5.2. A major review of undercover policing was undertaken by Her Majesty's Inspectorate of Constabulary whose report was published in October 2014⁷. This resulted in a considerable number of recommendations concerning such matters as training, accreditation, leadership, oversight, documentation, and the authorisation process and appropriate management of undercover officers in accordance with the legislation. Those recommendations are being addressed by the College of Policing and the National Undercover Working Group (NUWG), and I leave others to comment in due course on their implementation.
- 5.3. However, many of the compliance matters addressed within the report by HMIC and the subsequent recommendations have echoed those made by my Surveillance Inspectors over a number of years to individual law enforcement agencies, and to key members of the NUWG (some of whom have now moved on). We shall continue to address any individual compliance shortcomings we identify, and we now have the helpful adjunct of HMIC's thematic findings to reinforce what we had been saying for a long time, which had appeared to fall on "deaf ears".
- 5.4. It would be surprising to find there had been no change to compliance standards in this area of covert activity over the past year given the public interest, the wide and varied scrutiny by a number of different parties, some emerging case law, a reinvigorated NUWG, and the regime implemented under Statutory Instrument 2013/2788. I shall restrict my comments to the effect of the Statutory Instrument.

⁷ "An inspection of undercover policing in England and Wales" HMIC 2014, ISBN: 978-1-78246-515-7

- 5.5.** I repeat my simplified explanation of the new oversight process from last year's report, whereby, since 1st January 2014, there has been introduced a prior approval process⁸ for "relevant sources" – those undercover operatives (officers) employed by law enforcement agencies who have been authorised for longer than twelve months (either continuously or cumulatively in respect of a particular operation). From 1st January 2014, such "relevant sources" must be granted a renewal of their use and conduct by a Senior Authorising Officer (the ranks, generally Chief Constable or an equivalent, are set out in the Statutory Instrument) subject to the prior approval of a Surveillance Commissioner. In addition, any newly authorised "relevant source" must be notified to the Surveillance Commissioners, as must their subsequent cancellation.
- 5.6.** It is important to note that the Statutory Instrument relates only to "relevant sources" who hold an office, rank, or position with the law enforcement agencies listed within it. Those operating in an undercover capacity and used by the security or intelligence agencies, for whom there is no equivalent provision, will be subject to oversight by the Intelligence Services Commissioner. I do not oversee, nor are they notified to the Surveillance Commissioners, those "relevant sources" who, whilst they may hold an office, rank, or position with a law enforcement agency, are authorised for their deployment by a member of those other services. I am unable to do so as Statutory Instrument 2013/2788 currently stands. The inherent oversight "gap" that might result is a matter for others to resolve. This matter has been brought to the attention of the relevant policy officials, but I would be disappointed if a statutory resolution were not forthcoming without undue delay.
- 5.7.** Faced with the Statutory Instrument's almost immediate implementation at the start of January 2014, the law enforcement agencies and the OSC have worked hard to ensure the new regime has become a routine practice, comparable to that for the notification and prior approval of property interference and intrusive surveillance.
- 5.8.** There have been some errors and oversights along the way, as might be expected with the new process, especially one which is particularly complex in terms of the calculation of any cumulative periods spent on the same investigation or operation⁹. Some law enforcement agencies have been remiss in sending notifications to the OSC or have overlooked the need to tell us when relevant sources have been cancelled. Some miscalculations have occurred of the relevant authorisation periods for individual undercover officers. I am reasonably confident that these occurrences (approximately 10% of the total notified) will decrease as the new processes become more familiar.

⁸ This was initially limited to "relevant sources" authorised under RIPA. An equivalent regime in Scotland was introduced by The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 which came into force in February 2015.

⁹ As explained at paragraphs 5.24 – 5.25 of the Home Office CHIS Code of Practice.

- 5.9.** The impact on my Secretariat has been immense. Figures produced for planning and budgetary purposes at the turn of the calendar year showed, for the first nine months of the Statutory Instrument's introduction, an increase of approximately two thirds in the paperwork for the Secretariat and the Surveillance Commissioners.
- 5.10.** As well as processing the paperwork, which can run to many pages if the operation is particularly complex and involves a number of relevant sources, my Surveillance Inspectors have also undertaken a number of additional "relevant source" inspections in order to ensure the duty Surveillance Commissioner is made aware of any issues identified prior to receiving the formal request for renewal from the Chief Constable or equivalent Senior Authorising Officer. These reports are prepared for the information of the Surveillance Commissioner, but are also sent to the Senior Authorising Officer who will be considering the renewal application. In this way, I hope to ensure that any compliance issues can be addressed and resolved before any renewal takes place. These inspections are in addition to an already extensive programme of inspections each year, and, of course, are completely unpredictable as to quantity and timing. This requires an unprecedented flexibility and commitment from the Surveillance Inspectors and from the Surveillance Commissioners who have managed, without demur, this considerable increase of work.
- 5.11.** The impact of the changes brought about by the Statutory Instrument, coupled with the findings of HMIC's thematic report and the drive from all quarters to improve this aspect of covert policing, is starting to be seen in terms of overall compliance standards. There is still room for improvement, but the overarching message from me is that real progress is now tangible, not just from an examination of the documentation itself, but, perhaps as critically, from the discussions between my Surveillance Inspectors, Surveillance Commissioners and myself and those authorising and managing undercover officers.
- 5.12.** Complete eradication of rogue, unregulated activity by an undercover officer is impossible, and compliance errors are inevitable given the scale and complexity of such undertakings. But the chances of this have been reduced significantly, and where they do occur, they should be more readily spotted as the new, stricter oversight regimes are adhered to.
- 5.13.** One of the major changes brought about by the Statutory Instrument was the raising of authorisation levels to the most senior officers in the law enforcement agencies. I believe they have all now attended the required undercover training delivered by the College of Policing, and must now have a "licence" to authorise such cases, which will be renewed every two years if appropriate. In future, all officers completing the Senior Police National Assessment Centre which prepares them for senior police leadership, will have undertaken this training as part of that course.

- 5.14.** As a result of the Statutory Instrument senior officers in the law enforcement community have been, perhaps for the first time in their careers (with some experienced exceptions), exposed to an area of policing that has traditionally been managed and overseen by what might be termed a closed shop. The raised authorisation levels, coupled with the College of Policing's extensive training programme completed this year, means that undercover policing is now considered carefully at the highest levels within the agencies. My Surveillance Inspectors and Surveillance Commissioners have seen documentary evidence and held discussions directly with those concerned which support my view that the authorisation and review of "relevant sources" under RIPA are now subject to high and effective levels of scrutiny.
- 5.15.** We have seen a real change over the course of the year. Whilst there had always been some Authorising Officers (at both Superintendent and ACC rank) who took ownership of these activities and recognised the need for robust authorisations and their ongoing management, such enlightened and capable individuals were rare. Some real improvements over the course of the year can be identified as follows.

Commissioners' feedback

- 5.16.** Although the Surveillance Commissioners have all encountered criminal trials or appeals in which undercover activities played a part, their direct involvement with the authorisation process began properly on 1st January 2014. They have had no cause to quash or provide advisory comments against the continuation of any activities, although they have, at times, had cause to speak to officers directly, or via the Secretariat, to ensure that they have all the required paperwork, or to establish matters that have not been appropriately or thoroughly addressed within the documentation.
- 5.17.** Naturally, there are some law enforcement agencies or collaborative units which provide the bulk of these cases, by dint of their crime demographic or focus. The more experienced tend to provide very comprehensive and compliant documentation. Where key officers are new or inexperienced, or the law enforcement agency has undertaken few such operations, there may be a need for more guidance or a request for more detail. But, overall, the Commissioners' view is that improvements are evident.

Inspection reports

- 5.18.** This is echoed by the Surveillance Inspectors, all of whom had experience of running or authorising undercover activities in their previous police roles. To manage the new work, each Inspector acts as "on call" for undercover renewal cases on a monthly basis, during which time they undertake a detailed inspection of the vast documentation that surrounds such an authorisation and will discuss the case with key officers, before providing a report for the Surveillance Commissioner to consider, in line with the renewal paperwork submitted by the Senior Authorising Officer.

- 5.19.** These inspections have shown that our oversight role has had a key impact in three particular respects: first, the role and duties of those charged with managing undercover operatives under Section 29(5) (Section 29(4) as amended) of RIPA are now far better defined, especially with regard to keeping a clear firewall between the operational team and those charged with the duty of care to the undercover operative; secondly, collateral intrusion arising from the deployment of an undercover officer has, for too many years, merely been paid “lip service”, but this aspect is starting to be far better addressed; and thirdly, the written details evidencing the Authorising Officer’s considerations at authorisation, review and renewal, are far more clearly articulated than was often the case in the past.
- 5.20.** There is always room for improvement, in relation to two matters in particular. First, each undercover operative must have a risk assessment that provides the Authorising Officer with sufficient detail about their use in the proposed operation, so that he or she can consider the “duty of care” issues from an informed standpoint. Whilst some risk assessments are extremely good, far too many remain over-formulaic and contain little of relevance about the risks of using that individual in the expected scenario. Given the very real risks to those prepared to undertake this vital policing activity, it is not good enough for those who produce the risk assessment, or those who accept it, to do so on anything less than a bespoke and meaningful basis.
- 5.21.** Secondly (and the same criticism can be applied to other types of covert activity authorised under RIPA, RIP(S)A or the Police Act), too many Authorising Officers provide little more than a signature, date, and perhaps some anodyne phrase, at the cessation of the covert activity. If the Authorising Officer was satisfied that it was necessary and proportionate and, in the case of a CHIS or “relevant source”, the risk was justified and the levels of potential collateral intrusion acceptable, so that covert activity was authorised in the first place, it is incumbent upon the Authorising Officer to ensure that, at the time of its cancellation, all such activity, conducted in his name, has been undertaken in accordance with his direction, that any product from the activity is now being managed appropriately, and that all equipment has been removed or accounted for. I also expect some comment as to the usefulness or otherwise of the tactic and any tangible outcome. This is an area on which my Surveillance Inspectors continue having to comment, and the Surveillance Commissioners have similarly noticed that “relevant source” authorisations can be cancelled with few, if any, observations from the Authorising Officer, even where an operation may have been running for several months.
- 5.22.** On a more positive note, I have seen a number of undercover operations drawn to a close as soon as the Senior Authorising Officer felt there could be no further justification for its continuation on the grounds of necessity or proportionality. In fact such a decision may be due to the availability of resources and funding for this type of police work in the current climate, but I also believe the new regime has focused minds appropriately.

The impact of The Protection of Freedoms Act 2012

- 5.23.** I have considered whether the changes brought about for local authorities in England and Wales by The Protection of Freedoms Act 2012 in relation to the authorisation of directed surveillance or CHIS have made a positive difference. Based upon the findings of my Surveillance Inspectors and Assistant Surveillance Commissioners, who have now inspected several hundred local authorities since the changes were implemented (requiring a magistrate's approval in addition to the authorisation by the body's Authorising Officer), and my discussions with key parties within the wider judiciary, I have to say there is little evidence that this was a move for the good.
- 5.24.** The relevant provisions of this Act appear to have been based on a political reaction to a media frenzy in which the issues were often poorly understood or articulated. One local authority (out of several hundred) had used directed surveillance in a disproportionate manner to identify whether a local family lived, as claimed, within the catchment area of a particular school. Other local authorities had occasionally (and the numbers were very low) used RIPA powers, as a last resort, to identify those who allowed their dogs to foul public areas. The former case led to a complaint to the Investigatory Powers Tribunal which was upheld.¹⁰ But the investigation, at times necessarily covert, of dog fouling, particularly if children's health was at risk, seemed to me to be a necessary and proportionate use of RIPA.
- 5.25.** As a consequence, perhaps a direct one in some cases, my inspection regime has seen a significant drop in the number of authorisations for directed surveillance and CHIS by local authorities. The significant cutbacks in public spending and the lack of available officers to conduct such activities will have also played a part, as will the move towards more collaborative working between councils and with major bodies such as the Department for Work & Pensions.
- 5.26.** Where approval applications have been taken to magistrates, we see mixed results in terms of the attention to detail applied, and the knowledge base of some of those tasked with approval. The number of refusals has been low, although this may be due to the generally high standard of the original applications and authorisations placed before the magistrate – which begs the question of whether such additional scrutiny was ever necessary. My inspections prior to 2012 did not identify any profligate use of covert tactics or general disregard of their responsibilities by Authorising Officers in local authorities.
- 5.27.** I have good reason to believe that training provision for magistrates in relation to RIPA and The Protection of Freedoms Act 2012 has been minimal and several councils have ended up providing this themselves to enable the new procedure to work effectively: this is commendable but not, presumably, what Parliament contemplated.

¹⁰ IPT/09/01 Ms Jenny Paton and Others v Poole Borough Council

- 5.28.** In short, I remain to be convinced of the value of this additional approval procedure which, obviously, promotes delay.

Use of covert powers by other public authorities

- 5.29.** The statistical returns for 2014-15 by other public authorities, as opposed to the law enforcement agencies, show a small increase in the number of CHIS authorisations granted, but an overall downturn once again on previous years. My Assistant Surveillance Commissioners and Surveillance Inspectors continue to explore with the parties concerned the reason for this continued lack of, or reduction in, the number of authorisations over each passing year. Very often, this is explained through the greater use of overt enforcement powers or partnership working with other local authorities, the police or simply through having no resources available to sustain such covert activity, save perhaps for the most pressing and hard to detect criminality.
- 5.30.** However, as we emphasise through the inspection process, there may be occasions when a local authority has no option but to resort to covert activity, and thus the need to remain “match fit” is paramount. Ongoing training and awareness sessions, the ready availability of clear policy and guidance materials to all staff, regular discussions amongst enforcement teams and the robust oversight and scrutiny provided by a Senior Responsible Officer, as required by the RIPA and RIP(S)A Codes of Practice, are vital. “Table top” exercises can ensure that those responsible for investigations and those who would act as applicant or Authorising Officer in a given situation, can have a dry run using realistic scenarios and completing the forms for peer review or scrutiny by the in-house legal team, to ensure their knowledge is kept up to date.
- 5.31.** It is also important that senior officers in local authorities check that investigations and enforcement activities are not inadvertently straying into activity that should be, or is capable of being authorised under the Acts. Some local authorities adopt the good practice of regular enforcement or RIPA-related meetings to check and test for this. As can be seen from my comments at paragraph 5.44, the need for, or advisability of obtaining, an authorisation for activities that are conducted in the virtual world of social networking sites can very quickly arise and should be the subject of clear corporate policy, procedure and oversight within every public authority.

Collaborative working arrangements

- 5.32.** One of the significant impacts of the public spending cuts has been the need for public authorities to share certain business functions, such as the provision of IT, legal and personnel services, as well as looking increasingly at tackling criminality and disorder within a collaborative partnership. My inspection regime continues to try to keep pace with such agreements to avoid duplicatory visits and to ensure compliance with the law is maintained when authorisations or covert activities are shared between two or more parties, including, on occasion, privately contracted services (though this remains relatively rare).

Powers afforded to public authorities

- 5.33.** Over the course of this, and preceding years, my Assistant Surveillance Commissioners and Surveillance Inspectors have identified a number of public authorities who, either by choice or through a legislative oversight, have lost the power to authorise covert activities they previously held. In some cases, this has been a carefully considered decision and causes no difficulty. But I have identified a number of public authorities where the lack of such powers has meant that their investigative or enforcement duties are severely restricted or must even be curtailed. I provide examples below.

Example 1: This public authority undertakes investigation into fraudulent activities involving vast sums on a national scale. It voluntarily surrendered its CHIS powers several years ago and has, ever since, been the subject of criticism by the OSC for leaving itself without a power of authorisation for a means of detecting such serious criminality that, in the opinion of the OSC, it still uses without the protection that RIPA affords both the organisation, and more importantly, the individuals who are providing intelligence.

Example 2: Changes to another regulatory body resulted in the division of some of its responsibilities. Whilst the newly formed and renamed organisation was listed in Statutory Instrument 2010/521, and assigned the necessary powers, it had no available officers of the designated ranks to grant such authorisations, whilst its parent body had retained the ranks, but had no further need for the powers, having transferred its regulatory objectives to the other body. Until this is remedied, the new organisation cannot authorise directed surveillance or use of a CHIS, unlike similar regulatory bodies, and which tactics are likely, in the view of the OSC, to be vital in identifying and tackling major fraud that has very real implications for public health.

Example 3: When a large Government Department reviewed its various units and split off one part to become an independent body in its own right, the powers that unit had previously used under RIPA were not catered for in the transition. This meant that the tactics its enforcement officers and investigators had previously used were now unavailable to them, even though the nature of their work and need for investigative activity had not changed.

- 5.34.** It is not for me to resolve such lacunae or short term decisions to relinquish powers which may later be needed. However, where possible, such matters have been drawn to the attention of the Home Office to seek remedial changes to the relevant Statutory Instrument. In one case, the particular body has been without the necessary protection of RIPA since 2012.

5.35. I appreciate that finding a suitable legislative opportunity to correct such matters has to be identified, but the risk of continuing inactivity or lack of political will to bring about such change, have serious practical consequences: criminals or practices which might endanger public health cannot be as expediently investigated, prevented and stopped as the public would rightly demand.

Matters relating to Northern Ireland

5.36. Two matters continue to give me some concern and, in the absence of any movement on the first and the very real risks involved in the second, I feel it is time to comment in this report.

5.37. There is provision within RIPA (at Section 31) for the Office of the First Minister and Deputy First Minister to be able to make an order specifying which authorities, with devolved functions in Northern Ireland, can lawfully authorise directed surveillance and the conduct and use of CHIS. Section 61 of RIPA enables the Prime Minister to appoint an Investigatory Powers Commissioner for Northern Ireland, after consultation with the First Minister and Deputy First Minister in Northern Ireland. As yet, there has been no such appointment made. In consequence, save in relation to the Police Service for Northern Ireland, the Northern Ireland Prison Service, the Police Ombudsman for Northern Ireland, and those public authorities overseen separately by the Intelligence Services Commissioner, neither I nor anyone else has oversight responsibilities in relation to (devolved) public authorities in Northern Ireland with regard to covert activity. I have already raised this matter with the Secretary of State for Northern Ireland.

5.38. In consequence, although every council in England, Wales and Scotland has now been inspected on several occasions by the OSC, those same bodies in Northern Ireland have not had independent oversight. I sincerely hope that the new Government and the Office of the First Minister and Deputy First Minister will finally grasp the nettle and ensure that the statutory requirement for oversight in Northern Ireland is met as elsewhere throughout the United Kingdom.

5.39. Secondly, through my inspection and independent oversight process, I have recently become aware of legislative conflicts that exist between public authorities in relation to the protection of the identities of covert human intelligence sources.

5.40. If any individual is authorised under RIPA (or RIP(S)A) as a covert human intelligence source, the public authority owes a duty of care to that person. The Home Office CHIS Code of Practice is very clear – at paragraph 7.7 it states that “The records kept by public authorities should be maintained in such a way as to preserve the confidentiality, or prevent disclosure of the identity of the CHIS, and the information provided by that CHIS”.

- 5.41.** Any requesting body empowered to seek the true identity of any CHIS must ensure that it meets the requirements of the CHIS Code of Practice for the handling, storage and eventual destruction of those records. If any individual is placed at future risk due to the inadequate standards of security of the requesting body, the risk to the CHIS is obvious and grave. This matter needs to be urgently addressed – probably by legislation.

Social Networks

- 5.42.** Perhaps more than ever, public authorities now make use of the wide availability of details about individuals, groups or locations that are provided on social networking sites and a myriad of other means of open communication between people using the Internet and their mobile communication devices. I repeat my view that just because this material is out in the open, does not render it fair game. The Surveillance Commissioners have provided guidance that certain activities will require authorisation under RIPA or RIP(S)A and this includes repetitive viewing of what are deemed to be “open source” sites for the purpose of intelligence gathering and data collation.
- 5.43.** I am pleased to see that law enforcement agencies have provided and are continually developing detailed guidance to their officers and members of staff about accessing such sites, and the College of Policing is working closely with national leads and other interested parties to ensure a consistent and lawful approach.
- 5.44.** Many local authorities have not kept pace with these developments. My inspections have continued to find instances where social networking sites have been accessed, albeit with the right intentions for an investigative approach, without any corporate direction, oversight or regulation. This is a matter that every Senior Responsible Officer should ensure is addressed, lest activity is being undertaken that ought to be authorised, to ensure that the right to privacy and matters of collateral intrusion have been adequately considered and staff are not placed at risk by their actions and to ensure that ensuing prosecutions are based upon admissible evidence.

Common inspection findings

- 5.45.** I continue to find the inspection process is generally welcomed by those we inspect – although the OSC is a compliance inspectorate, we try at all times to encourage improvements and willingly share good practices we have identified in other public authorities. As before, I do not, for obvious reasons, divulge in this report details of operations or individual authorisations, nor comment upon the performance of individual public authorities or members thereof. The inspection reports completed by my Assistant Surveillance Commissioners and Surveillance Inspectors, and endorsed by me, contain evidence-based detail and wider contextual observations for the Chief Officer of each public authority.

5.46. The quality of authorisations within law enforcement agencies has, as I said last year, now reached a good overall standard and, in some cases, very good indeed. In other public authorities, we identify some good documentation, but not consistently. I am mindful that in the law enforcement agencies, an Authorising Officer is likely to be dedicated to this role and will see such paperwork on a daily basis. With the continuing decline in use of the powers elsewhere, it is perhaps unsurprising that what might be a very occasional, and perhaps novel, undertaking by a local authority Authorising Officer will be less competent.

5.47. The following are some of the key issues we identify on inspections that require improvement:

- Unsubstantiated and brief, or, conversely, excessively detailed intelligence cases
- Over-formulaic consideration of potential collateral intrusion and an explanation of how this will be managed
- Limited proportionality arguments by both applicants and Authorising Officers – the four key considerations (identified by my Commissioners and adopted within the Home Office Codes of Practice), if addressed in turn, should provide a suitably reasoned argument
- More surveillance tactics and equipment authorised at the outset than appear to have been utilised when reviews and cancellations are examined
- A regurgitation of the original application content at reviews, including a "cut and paste" proportionality entry that fails to address why the activity is still justified, in place of a meaningful update to the Authorising Officer about what has taken place in the intervening period
- At cancellation, a rarity of meaningful detail for the Authorising Officer about the activity conducted, any collateral intrusion that has occurred, the value of the surveillance and the resultant product; and whether there has been any tangible outcome
- Similarly, paltry input by Authorising Officers at cancellation as to the outcome and how product must be managed, and any comment about the use or otherwise of all that had been originally argued for and authorised
- In the case of higher level authorisations for property interference and intrusive surveillance, an over-reliance by Senior Authorising Officers on pre-prepared entries that alter little from case to case, or at times, regardless of who is acting as the Authorising Officer
- In those same cases, often poorly articulated personal considerations as to the matters of necessity, collateral intrusion and proportionality; no or few entries at reviews; and little meaningful comment at cancellation
- On the CHIS documentation, less common, but still encountered, the failure to authorise a CHIS promptly as soon as they have met the criteria; and in many cases (more typically within the non-law enforcement agencies) a failure to recognise or be alive to the possibility that someone may have met those criteria
- A huge variation in the standard of risk assessments, whereby some provide an excellent "pen picture" of the individual concerned and the associated risks, whilst others can be over-generic and are not timeously updated to enable the Authorising Officer to identify emergent risks

- Discussions that take place between the Authorising Officer and those charged with the management of the CHIS under Section 29(5) of RIPA are not always captured in an auditable manner for later recall or evidence, though this is starting to improve following our advice
- As resources become stretched within police forces, the deputy to the person charged with responsibilities for CHIS under Section 29(5)(b) often undertakes those functions: as with an Authorising Officer, this is a responsibility which cannot be shared or delegated
- A continuing lack, in many public authorities, of ongoing refresher training for officers who may have been trained many years ago, or who have not been eligible for specialised training by dint of career progression or role.

The need for inspection

- 5.48.** The law enforcement agencies recognise the value of an annual inspection by the OSC, viewing it as a corporate health check and welcoming the learning it provides and reassurance where compliance levels are good. In most law enforcement agencies, despite the presence, to one degree or another, of the areas of improvement noted above, the inspection reports identify examples of good practice and, on the whole, are positive with many now having recommendations that are for fine tuning as opposed to basic remedial issues.
- 5.49.** It may be harder for those public authorities who have ceased to make extensive use, if at all, of the powers, to see the need for an OSC inspection. I repeat what I said last year, that my office provides the only independent scrutiny of these bodies to ensure that they remain alert to the potential for such use and have appropriately trained officers and corporate procedures in place to ensure that any covert activities are undertaken in accordance with RIPA or RIP(S)A as Parliament has decreed.

Public reassurance

- 5.50.** During the past year we have continued to have disclosures by Edward Snowden; inquiries continue into the police service for various historical actions; there are ongoing court proceedings about the activities of undercover officers; and we have had the results of the “phone hacking” trials. We also continue to see media articles about the use of surveillance and other covert activities that could lead the public to assume that “Big Brother” is alive and well.
- 5.51.** The annual statistics provided by the OSC should provide some reassurance that, first, all such activity that we oversee (bar the extremely rare instance such as described at Example 1 of paragraph 4.26) is accounted for and must pass through several stages within a public authority before being authorised and then undertaken, with ongoing oversight until cancellation; and secondly, the number of authorisations for these types of covert activity is far less than is sometimes portrayed by others, who continue to confuse these activities with the access to communications data powers (Part 1 of RIPA) or repeatedly state – wrongly – that powers brought in to detect matters of national security are being used for lesser criminality.

- 5.52.** The OSC remains, predominantly, judge-based and is entirely independent of Government, with its independence underpinned by the legislation. The OSC has unfettered access to the records of authorised covert activities, and our inspection, notification and prior approval processes mean that the Surveillance Commissioners, Assistant Surveillance Commissioners and Surveillance Inspectors can question, and where necessary challenge, those charged with their authorisation and management. This we do.
- 5.53.** I am able at this juncture to reflect on the last 9 years, during which I have read several thousand detailed reports by my Surveillance Inspectors and Assistant Surveillance Commissioners; have met a large number of Authorising Officers and key members of the law enforcement agencies across the United Kingdom; and have held regular discussions with my Surveillance Commissioners and inspection team; as well as having met numerous interested parties on all sorts of matters related to the use of covert tactics by all types of public authority.
- 5.54.** With the advent of hugely powerful technological advances that enable the State to monitor and record the activities of its citizens, coupled with the way in which many people now carry on them or store their most personal information and interactions with others on a small device that can reveal more about them than would ever be possible through old-fashioned foot or mobile surveillance, there has never been a greater need for independent bodies such as the OSC to conduct oversight and ensure, so far as possible, that the considerable powers of surveillance now available to public authorities are only undertaken in accordance with what Parliament has said are acceptable criteria and managed with all due diligence.
- 5.55.** I believe, as I hand over my tenure of this role, that the use and authorisation of property interference, intrusive surveillance, directed surveillance and CHIS by law enforcement agencies is now managed in accordance with well established procedures and undertaken by officers who apply themselves with due care and attention to ensure that they are compliant with the law and act in good faith. Other public authorities use their covert powers less frequently and compliance standards are not always as good, but I nevertheless find that those charged with the role of Authorising Officer take their quasi-judicial role seriously and welcome the feedback provided through the inspection process.
- 5.56.** The public can be reassured that these powers are almost always used only when necessary and proportionate and to ensure that those who are planning or have committed offences or acts that threaten the safety and well-being of the public, are held to account. The OSC exists and operates to ensure that this remains the case.

6. The year ahead

- 6.1. I anticipate continued development of collaboration agreements in England and Wales and that the inspection programme will endeavour to keep pace with these new structures.
- 6.2. I also anticipate that my successor will continue to press the Home Office for a satisfactory and secure means of communication between my geographically dispersed Commissioners and Surveillance Inspectors, the OSC office and those public authorities, particularly law enforcement agencies, which we oversee.

**AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997 (AS AMENDED)
DURING LAST THREE YEARS**

	2012-2013		2013-2014		2014-2015	
	England, Wales & N.I	Total	England, Wales & N.I	Total	England, Wales & N.I	Total
Total number of authorisations (not including renewals)	2343	2440	2631	2689	2020	2091 ¹¹
	97		58		71	

PRIOR APPROVALS

	2012-2013		2013-2014		2014-2015	
	England, Wales & N.I	Total	England, Wales & N.I	Total	England, Wales & N.I	Total
Number of cases	225	243	183	187	183	188 ¹²
By category:						
• Dwelling	158	174	141	3	125	5
• Office premises	47	49	31	1	27	0
• Hotel bedroom	17	17	11	0	28	0
• Matters subject to legal privilege	1	1	0	0	2	0
• Confidential journalistic material	1	1	0	0	0	0
• Confidential personal information	1	1	0	0	1	0

¹¹ Statistics provided by the law enforcement agencies.

¹² Statistics provided from the Office of Surveillance Commissioners Authorisation Register (OSCAR) database.

**AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997 (AS AMENDED)
FOR THE LAST THREE YEARS BY OFFENCE**

	2012-2013			2013-2014			2014-2015		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total ¹³
Assault	51	1	51	65	1	66	78	2	80
Burglary/Robbery	269	1	269	235	0	235	182	2	184
Bribery and Corruption	35	-	35	28	0	28	42	1	43
Conspiracy	34	0	34	77	0	77	87	1	88
Drug trafficking	1397	95	1468	1295	49	1344	1279	49	1328
Firearms offences (including armed robbery)	115	4	119	83	1	84	119	9	128
Fraud	59	-	59	92	1	93	68	0	68
Kidnap/extortion	140	2	140	150	2	152	123	4	127
Money laundering	148	5	148	105	1	106	110	0	110
Murder/loss of life	189	30	200	146	2	148	183	1	184
Organised illegal immigration	13	0	13	19	0	19	15	0	15
Sexual offence	40	-	42	39	0	39	47	2	49
Tax evasion	14	0	14	8	0	8	1	0	1
Terrorism	14	2	14	16	1	17	12	1	13
Other	49	11	50	31	0	31	31	1	32

¹³ Statistics extracted from the Office of Surveillance Commissioners Authorisation Register (OSCAR) database.

**AUTHORISATIONS GIVEN UNDER PART II (INTRUSIVE SURVEILLANCE) OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000
DURING THE LAST THREE YEARS**

	2012-2013			2013-2014			2014-2015		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Total number of authorisations (not including renewals)	336	26	362	383	9	392	309	12	321¹⁴

¹⁴ Statistics provided by the law enforcement agencies.

**AUTHORISATIONS GIVEN UNDER PART II (INTRUSIVE SURVEILLANCE) OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000
IN THE LAST THREE YEARS BY OFFENCE**

	2012-2013			2013-2014			2014-2015		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total ¹⁵
Assault	5	0	5	15	0	15	15	0	15
Bribery and Corruption	3	0	3	4	0	4	3	1	4
Burglary/Robbery	3	0	3	9	0	9	4	0	4
Conspiracy	0	0	0	5	0	5	11	1	12
Drug trafficking	79	4	83	118	0	118	144	4	148
Firearms offences (including armed robbery)	4	0	4	9	0	9	10	1	11
Fraud	2	0	2	7	1	8	2	0	2
Kidnap/extortion	3	0	3	3	0	3	7	1	8
Money laundering	2	0	2	9	0	9	5	0	5
Murder/loss of life	31	4	35	53	2	55	74	1	75
Organised illegal immigration	3	0	3	1	0	1	1	0	1
Sexual offence	1	0	1	5	0	5	8	0	8
Tax evasion	0	0	0	0	0	0	0	0	0
Terrorism	1	0	1	2	0	2	2	1	3
Other	1	0	1	2	0	2	4	2	6

¹⁵ Statistics extracted from the Office of Surveillance Commissioners Authorisation Register (OSCAR) database.

Inspection priorities

Appendix E

Subject to annual inspection

British Transport Police
Competition and Markets Authority
Department for Work and Pensions
Environment Agency
HM Revenue and Customs
Home Office – Immigration Enforcement
Home Office – Border Force
National Crime Agency
National Offender Management Service - HM Prison Service
National Resources Wales
Northern Ireland Prison Service
Police Forces for England and Wales
Police Scotland
Police Service of Northern Ireland
Royal Mail Group plc
Royal Military Police
Scottish Prison Service

Subject to inspection every other year

Care Quality Commission
Civil Nuclear Constabulary
Department for Environment and Rural Affairs
Department for Business, Innovation and Skills
Driver and Vehicle Standards Agency
Gangmasters Licensing Authority
Health and Safety Executive
Independent Police Complaints Commission
Marine Scotland
MoD Police and Guarding Agency
NHS Counter Fraud and Security Management Service
NHS Scotland Counter Fraud Services
Office of Communications
Office of the Police Ombudsman for Northern Ireland
Police Investigations and Review Commissioner
Port of Dover Police
Port of Liverpool Police
Royal Air Force Police and Security Service
Royal Navy Police
Scottish Environmental Protection Agency
Serious Fraud Office
Transport Scotland
Welsh Assembly Government

Subject to inspection every third year

British Broadcasting Corporation

Charity Commission

Department of Health – Medicines and Healthcare Products Regulatory Agency

Financial Conduct Authority

Fire and Rescue Services in England and Wales

Food Standards Agency

Gambling Commission

General Pharmaceutical Council

HM Chief Inspector of Education, Children's Services and Skills

Local Authorities (Unitary, Metropolitan, London Boroughs, County, District, Scottish and Welsh)

Maritime and Coastguard Agency

Office of the Information Commissioner

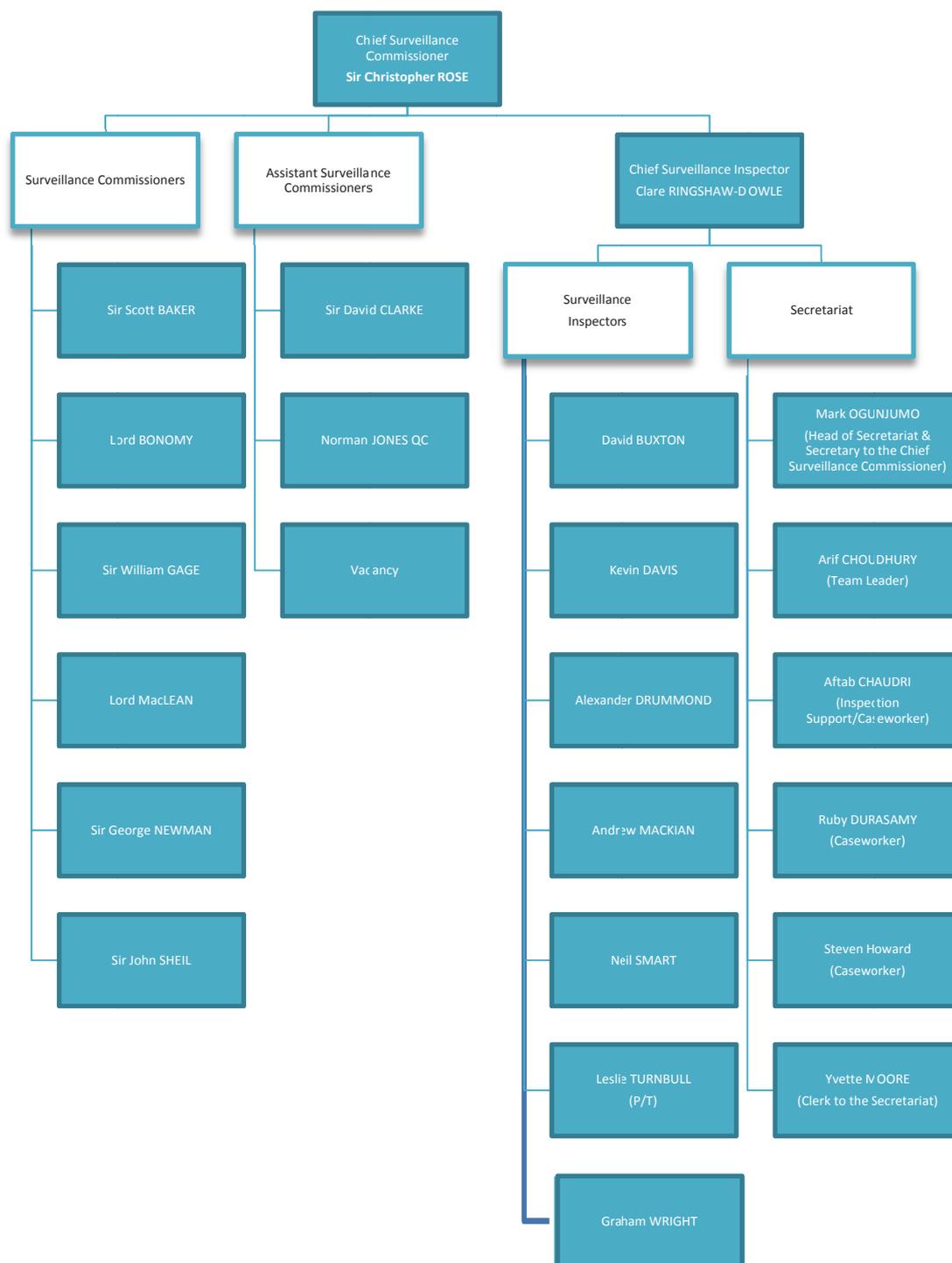
Scottish Accountant in Bankruptcy

Appendix F

OSC expenditure for April 2014 – March 2015

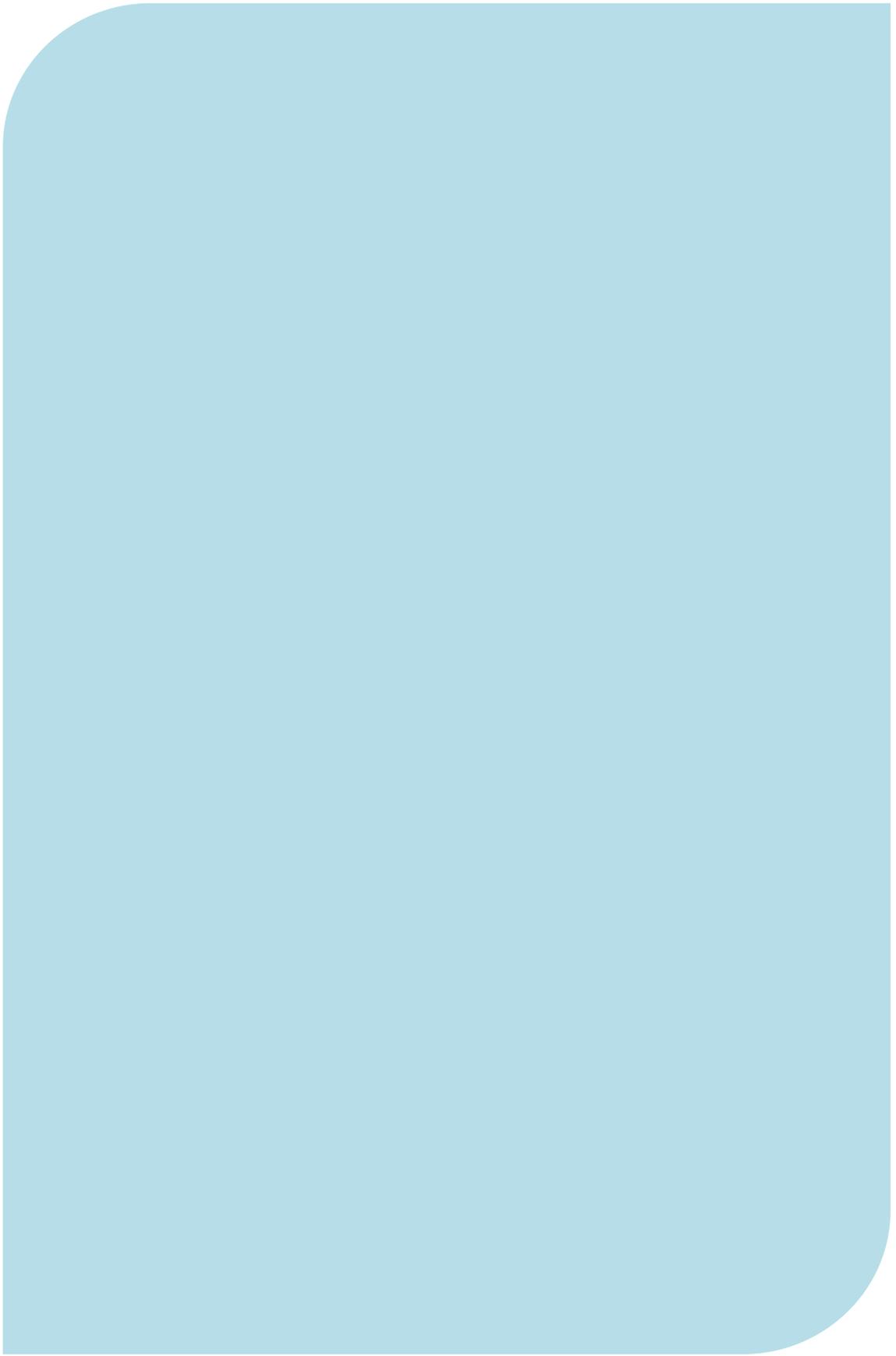
	Total (£)
Staff costs, including recruitment and training	1,312,736
Travel and subsistence	120,708
Conferences and meetings	5,845
IT and telecommunications	17,034
Stationery, including printing, postage and publications	14,875
Office and security equipment	7,518
Accommodation	128,941
Other	398
	1,608,055

MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS AS AT 31 MARCH 2015



Members who have left during the reporting period:

HH David Hodson





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